

1 **BEFORE THE WASHINGTON STATE**
2 **EXECUTIVE ETHICS BOARD**

3 In the Matter of:

EEB Case No. 2014-056

4 [REDACTED]

FINAL ORDER

5 Respondent
6

7
8 **I. PROCEDURAL HISTORY**

9 On November 14, 2014, the Executive Ethics Board (Board) found reasonable cause to
10 believe that the Respondent, [REDACTED], violated the Ethics in Public Service Act while
11 employed with the Washington State Military department. Notice of the Reasonable Cause
12 Determination and the right to request a hearing was served upon [REDACTED] by regular mail and
13 certified mail on November 17, 2014. [REDACTED] failed to respond to the Reasonable Cause
14 Determination within 30 days as required by WAC 292-100-060(2).

15 The Board entered an Order of Default on March 13, 2015. On March 17, 2015, Board
16 staff provided [REDACTED] with notice by regular and certified mail of the Board's Order of
17 Default.

18 On March 26, 2015, [REDACTED] filed a motion to vacate the Order of Default within 10
19 days as required under WAC 292-100-060(4).

20 On May 8, 2015, the Board heard argument on the motion to vacate the Order of
21 Default and the motion was denied.

22
23 **II. FINDINGS OF FACT**

24 1. [REDACTED] was hired by the Washington Military Department (WMD) on April
25 12, 2008 and promoted to Administrative Assistant 4 on July 15, 2008. [REDACTED] was an
26 Administrative Assistant 4 at all times pertinent to the Board's investigation.

1 2. ██████████ was issued a Windows phone by WMD in late April 2013.

2 3. The Verizon service plan for her state issued cell phone included 400 minutes,
3 unlimited data, unlimited mobile to mobile, unlimited night and weekend minutes, unlimited
4 picture and video messaging, and unlimited text messaging for a monthly charge of \$64.09.
5 There were never any over usage charges applied to the plan. The service plan was paid for by
6 WMD.

7 4. On June 2, 2014, concerns were brought to the attention of the WMD Human
8 Resources Division (WMD HR) that ██████████ may be using her state issued cell phone for her
9 personal benefit. As a result, a review of ██████████'s state issued cell phone usage was
10 conducted. The results of that review by WMD HR showed a significant amount of personal
11 use by ██████████. Based on this informing, Adjutant General Bret Daugherty directed an
12 investigation be completed.

13 5. The WMD internal investigation included a review and analysis of ██████████
14 state issued cell phone bills from May 24, 2013 to May 23, 2014. ██████████ was provided
15 copies of the phone bills and asked to label the calls as work or non-work related. The phone
16 bills were then analyzed to determine when the calls were made. The results indicate a large
17 amount of calls were made during work hours that were non-work related.

18 6. ██████████ told WMD investigators that she could not afford her own cell phone
19 and used the state issued cell phone to keep in contact with her family members. She further
20 stated that she understood the phone service plan to be unlimited so her use did not cost the
21 state anything and that she wouldn't have used it if she thought that it would.

22 7. ██████████ also told the WMD investigator that she occasionally used her state
23 issued cell phone to make and receive personal phone calls, including her family members.
24 She indicated that her use was approximately 80% for work and 20% personal. An analysis of
25 her state issued cell phone showed otherwise.

SUMMARY OF CELL PHONE USE FOR 253-468-8724

Dates Covered	Number of Minutes Used						Number min during work hours that were not work calls	Number of Texts	Data Used (megabites)
	Share plan Min	Mobile to mobile Min	Night and Weekend Min	Total Min	Number claimed work related	Non Work Related			
05/24/13- 06/23/13	295	7	54	356	43	313	116	189	2269
6-24/13 -7/23/13	300	4	64	368	4	364	188	115	488
7-24/13 - 8/23/13	115	5	128	248	5	243	39	157	1012
8/24/13- 9/23/13	252	10	103	365	19	346	140	117	1236
9/24/13- 10/23/13	61	0	28	89	6	83	19	51	1505
10/24/13- 11/23/13	116	7	50	173	0	173	81	80	1446
11/24/13- 12/23/13	146	7	35	188	28	160	76	51	1484
12/24/13- 1/23/14	350	2	41	393	19	374	303	84	2590
1/24/14 - 2/23/14	162	0	46	208	16	192	96	197	2600
2/24/14 - 3/23/14	138	0	137	275	0	275	55	84	2452
3/24/14- 4/23/14	121	0	89	210	5	205	58	83	2691
04/24/14- 05/23/14	284	7	127	418	23	395	113	93	3149
Total	2340	49	902	3291	168	3123	1284	1301	22922
HRS	39	.82	15	54.86	2.8	52	21.4		

8. As indicated in the chart¹ above, [REDACTED] was on her state issued cell phone for 54.86 hours over the course of one year. Only 2.8 hours were identified by [REDACTED] as work related. This would indicate that [REDACTED]'s personal use was 94.7% of the total use and only 5.3% of her use was work related. The chart identified that [REDACTED] spent a total of 21.4 hours on personal calls on the state issued cell phone during her work day over the course of a year.

¹ This chart was created from the results of the WMD analysis of [REDACTED] phone (253-468-8724) and created by WMD investigators.

1 9. ██████ told WMD investigators that she did not use her state issued cell
2 phone when at work, only when she was away from her worksite and even then she would
3 only use it to check her email.

4 10. On June 9, 2014, at 3:32 p.m., ██████ state issued cell phone was taken
5 into custody by WMD investigators. ██████ was asked to log into the phone. Once the
6 phone was unlocked, the first screen that appeared was the game screen containing the
7 following games, AE Hearts, AE Roulette 3D, Slot Machine, and Tetris Classic Pro.

8 11. An analysis of the Windows phone revealed the number of times each game
9 had been played since the phone was issued to ██████ in April of 2013 until June 9, 2014.

- 10 • AE Hearts – 291 games played;
- 11 • Roulette – 150,020 bets were placed;
- 12 • Classic slots – 3,665 games played;
- 13 • Fruit slots – 2,171 games played;
- 14 • Wild slots – 1,532 games played;
- 15 • Pirate slots – 4,395 games played;
- 16 • ET slots – 1,194 games played;
- 17 • Cake slots – 154 games played; and
- 18 • Tetris did not appear to have been played.

19 12. In an interview by WMD investigators on June 23, 2014, ██████ stated, “I
20 never played games on my cell phone.”

21 13. In addition to the games, the WMD investigator analyzed the Windows phone
22 for internet usage, text messages sent/received, and personal photos. Their analysis revealed
23 the following evidence of personal use located in a “Recent internet use folder.”

24 **Internet Use**

- 25 • At least 100 visits to check and send AOL email.
- 26 • Non-work related searches, including, dogs, knee/leg pain, and job searches for administrative assistant positions and jobs working with pets in the Tacoma area.
- Facebook application downloaded onto the Windows phone by Ms. ██████

Text Messaging

- 1,301 text messages and 16 different text threads with different contacts.

1 **Personal Photos**

- 2 • Over 60 personal photos

3 14. ██████████ told investigators that she used the state issued cell phone for
4 Facebook and she also indicated that all but a few of the texts were work related.

5 15. At the time of the allegations, ██████████ was the Administrative Assistant to the
6 Emergency Management Division (EMD) Director, Robert Ezelle. Mr. Ezelle told WMD
7 investigators that ██████████ is also the Administrative Assistant to the Director prior to his
8 appointment. He also stated that it was his understanding that only supervisors and managers
9 were provided with work cell phones and he was unaware she was assigned a phone. He
10 further stated that it wasn't until he contacted her about spending so much time on her personal
11 cell phone at work that she told him that it was a state issued cell phone.

12 16. Mr. Ezelle also told investigators he would see ██████████ pressing on her phone
13 screen and that she would cover it up when he would walk by. He stated he has noticed her
14 personal phone usage has increased over time. He eventually confronted ██████████ about her
15 state issued cell phone use.

16 17. Peter Antolin, Assistant Director of the EMD, told investigators that he
17 observed ██████████ using her state issued cell phone quite a bit and when she was at her desk
18 she would often have her head down looking at the state issued cell phone, sometimes for
19 extended periods. He went on to say that he would sometimes see her cover the state issued
20 cell phone up as he walked by.

21 18. Mr. Antolin also told investigators that during the Oso mudslide, another EMD
22 manager told him that he had noticed ██████████ on her cell phone for extended periods of time,
23 not talking but utilizing the screen. He felt that her behavior was inconsistent with how other
24 Administrative Assistants in the division would operate and thought he should bring it to his
25 attention. Mr. Antolin stated that he later saw ██████████ on a cell phone and asked her not to
26 spend as much time using the cell phone because he needed her to focus on other things. At

1 this time, Mr. Antolin believed the state issued cell phone [REDACTED] was using was a personal
2 cell phone.

3 19. Mr. Antolin told investigators that he was also unaware that [REDACTED] was
4 assigned a work phone and only became aware of it when he had a meeting with Mr. Ezelle
5 regarding [REDACTED] evaluation and personal use of the state issued cell phone.

6 20. In April of 2012, [REDACTED] received a Letter of Reprimand from the WMD for
7 inappropriately using computer resources. The letter included a copy of the Washington State
8 Executive Ethics Board publication "Ethics in Public Service" and a copy of the WMD policy
9 IT-306-05, regarding the use of internet, electronic mail and computer systems. The letter
10 went on to say that further violations of this nature shall be deemed as "just cause" for
11 additional disciplinary action up to and including dismissal from employment.

12 21. [REDACTED] attended a four hour Ethics in State Government Training Course on
13 June 21, 2011 [REDACTED] has completed the agency's policy "Annual Review Checklist"
14 which includes the department's ethics policy and the policy regarding the use of department
15 internet, email, and computer systems for the years 2012 through 2014.

16 22. [REDACTED] resigned her position at the EMD and state service on August 13,
17 2014.

18 19 III. CONCLUSIONS OF LAW

- 20
21 1. RCW 42.52.160(1) – Use of persons, money, or property for private gain, states:

22 No state officer or state employee may employ or use any
23 person, money, or property under the officer's or employee's
24 official control or direction, or in his or her official custody, for
the private benefit or gain of the officer, employee, or another.

- 25 2. Under WAC 292-110-010 (use of state resources) state employees may use state
26 resources for personal use as long as the use is reasonably related to the conduct of the state

1 employees; authorized by an agency head or designee as related to an official state purpose; or
2 for a specific use that promotes organizational effectiveness or enhances job-related skills.
3 Additionally, state employees are allowed occasional but limited use of state resources as long
4 as the following conditions are met:

- 5 (i) There is little or no cost to the state;
- 6 (ii) Any use is brief;
- 7 (iii) Any use occurs infrequently;
- 8 (iv) The use does not interfere with the performance of any officer's or
employee's official duties; and
- 9 (v) The use does not compromise the security or integrity of state
property, information, or software.

10 3. Pursuant to chapter 42.52 RCW, the Executive Ethics Board has jurisdiction
over [REDACTED] and over the subject matter of this complaint.

11 4. Based on the evidence included in the WMD internal investigation, [REDACTED]
12 used her state issued cell phone for her private benefit or gain in violation of RCW 42.52.160.
13 [REDACTED] activities do not meet the permitted uses or exception for the use of state resources
14 as provided for in WAC 292-110-010.

15 5. The Board is authorized to impose sanctions for violations to the Ethics Act
16 pursuant to RCW 42.52.360.

17 6. In determining the appropriateness of the civil penalty, the criteria in WAC 292-
18 120-030 have been reviewed.

20 IV. FINAL ORDER

21 Based on the foregoing:

22 IT IS HEREBY ORDERED Respondent [REDACTED] is liable for and shall pay a
23 civil penalty of two thousand dollars (\$2,000). The payment shall be made to the Executive
24 Ethics Board within forty-five (45) days of this Order.

1 **V. AUTHORITY AND PROCEDURE.**

2 Pursuant to RCW 34.05.470, Respondent has the right to file a Petition for
3 Reconsideration stating the specific grounds upon which relief is requested. The Petition must
4 be filed with the Executive Ethics Board at 2425 Bristol Court SW, Olympia, Washington
5 98504, or by U.S. Mail at P.O. Box 40149, Olympia, Washington 98504-0149, within ten (10)
6 days of service of the Final Order upon Respondent.

7 The Petition for Reconsideration shall not stay the effectiveness of this order nor is a
8 Petition for Reconsideration a prerequisite for seeking judicial review in this matter. A timely
9 Petition for Reconsideration is deemed denied if, within twenty (20) days from the date the
10 petition is filed, the Board does not (a) dispose of the petition or (b) serve the parties with a
11 written notice specifying the date by which it will act on a petition.

12 Respondent has the right to petition the superior court for judicial review of the Board's
13 action under the provisions of chapter 34.05 RCW. For the requirements for filing a Petition
14 for Judicial Review, see RCW 34.05.510 and sections following.

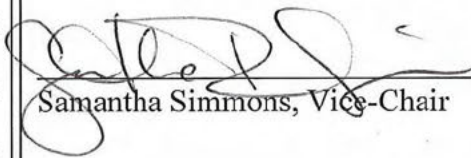
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16 DATED this 17th day of July, 2015.

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20 Anna Dudek Ross, Chair

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23 Lisa Marsh, Member

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26 Samantha Simmons, Vice-Chair



Sumeer Singla, Member