BEFORE THE WASHINGTON STATE
EXECUTIVE ETHICS BOARD

In the Matter of:
Mary Lee Root,
Respondent

EEB Case No. 2014-056
FINAL ORDER

I. PROCEDURAL HISTORY

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

The Board entered an Order of Default on March 13, 2015. On March 17, 2015, Board staff provided Ms. Root with notice by regular and certified mail of the Board’s Order of Default.

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

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

II. FINDINGS OF FACT

1. Ms. Root was hired by the Washington Military Department (WMD) on April 12, 2008 and promoted to Administrative Assistant 4 on July 15, 2008. Ms. Root was an Administrative Assistant 4 at all times pertinent to the Board’s investigation.
2. Ms. Root was issued a Windows phone by WMD in late April 2013.

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

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

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

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

7. Ms. Root also told the WMD investigator that she occasionally used her state issued cell phone to make and receive personal phone calls, including her family members. She indicated that her use was approximately 80% for work and 20% personal. An analysis of her state issued cell phone showed otherwise.
SUMMARY OF CELL PHONE USE FOR 253-468-8724

<table>
<thead>
<tr>
<th>Dates Covered</th>
<th>Number of Minutes Used</th>
<th>Number of Texts</th>
<th>Data Used (megabites)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Share plan Min</td>
<td>Mobile to mobile Min</td>
<td>Night and Weekend Min</td>
</tr>
<tr>
<td>05/24/13 - 06/23/13</td>
<td>295</td>
<td>7</td>
<td>54</td>
</tr>
<tr>
<td>6-24/13 - 7/23/13</td>
<td>360</td>
<td>4</td>
<td>64</td>
</tr>
<tr>
<td>7/24/13 - 8/23/13</td>
<td>115</td>
<td>5</td>
<td>128</td>
</tr>
<tr>
<td>8/24/13 - 9/23/13</td>
<td>252</td>
<td>10</td>
<td>103</td>
</tr>
<tr>
<td>9/24/13 - 10/23/13</td>
<td>61</td>
<td>0</td>
<td>28</td>
</tr>
<tr>
<td>10/24/13 - 11/23/13</td>
<td>116</td>
<td>7</td>
<td>50</td>
</tr>
<tr>
<td>11/24/13 - 12/23/13</td>
<td>146</td>
<td>7</td>
<td>35</td>
</tr>
<tr>
<td>12/24/13 - 1/23/14</td>
<td>350</td>
<td>2</td>
<td>41</td>
</tr>
<tr>
<td>1/24/14 - 2/23/14</td>
<td>162</td>
<td>0</td>
<td>46</td>
</tr>
<tr>
<td>2/24/14 - 3/23/14</td>
<td>138</td>
<td>0</td>
<td>137</td>
</tr>
<tr>
<td>3/24/14 - 4/23/14</td>
<td>121</td>
<td>0</td>
<td>89</td>
</tr>
<tr>
<td>04/24/14 - 05/23/14</td>
<td>284</td>
<td>7</td>
<td>127</td>
</tr>
<tr>
<td>Total</td>
<td>2340</td>
<td>49</td>
<td>902</td>
</tr>
<tr>
<td>HRS</td>
<td>39</td>
<td>.82</td>
<td>15</td>
</tr>
</tbody>
</table>

8. As indicated in the chart above, Ms. Root was on her state issued cell phone for 54.86 hours over the course of one year. Only 2.8 hours were identified by Ms. Root as work related. This would indicate that Ms. Root’s personal use was 94.7% of the total use and only 5.3% of her use was work related. The chart identified that Ms. Root 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 Ms. Root’s phone (253-468-8724) and created by WMD investigators.
9. Ms. Root told WMD investigators that she did not use her state issued cell phone when at work, only when she was away from her worksite and even then she would only use it to check her email.

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

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

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


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

**Internet Use**

   - At least 100 visits to check and send AOL email.
   - 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. Root.

**Text Messaging**

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

- Over 60 personal photos

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

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

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

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

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

19. Mr. Antolin told investigators that he was also unaware that Ms. Root was assigned a work phone and only became aware of it when he had a meeting with Mr. Ezelle regarding Ms. Root’s evaluation and personal use of the state issued cell phone.

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

21. Ms. Root attended a four hour Ethics in State Government Training Course on June 21, 2011. Ms. Root has completed the agency’s policy “Annual Review Checklist” which includes the department’s ethics policy and the policy regarding the use of department internet, email, and computer systems for the years 2012 through 2014.

22. Ms. Root resigned her position at the EMD and state service on August 13, 2014.

III. CONCLUSIONS OF LAW

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

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

2. Under WAC 292-110-010 (use of state resources) state employees may use state resources for personal use as long as the use is reasonably related to the conduct of the state
employees; authorized by an agency head or designee as related to an official state purpose; or for a specific use that promotes organizational effectiveness or enhances job-related skills. Additionally, state employees are allowed occasional but limited use of state resources as long as the following conditions are met:

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

3. Pursuant to chapter 42.52 RCW, the Executive Ethics Board has jurisdiction over Mary Lee Root and over the subject matter of this complaint.

4. Based on the evidence included in the WMD internal investigation, Ms. Root used her state issued cell phone for her private benefit or gain in violation of RCW 42.52.160. Ms. Root’s activities do not meet the permitted uses or exception for the use of state resources as provided for in WAC 292-110-010.

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

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

IV. FINAL ORDER

Based on the foregoing:

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

FINAL ORDER
EEB No. 2014-056 (Root)
V. AUTHORITY AND PROCEDURE.

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

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

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

DATED this 17th day of July, 2015.

Anna Dudek Ross, Chair

Lisa Marsh, Member

Samantha Simmons, Vice-Chair

Sumeer Singla, Member