

BEFORE THE WASHINGTON STATE  
EXECUTIVE ETHICS BOARD

In the Matter of:

[REDACTED]

Respondent.

No. 2014-059

STIPULATED FACTS,  
CONCLUSIONS OF LAW AND  
AGREED ORDER

THIS STIPULATION is entered into by Respondent, [REDACTED], and Board Staff of the WASHINGTON STATE EXECUTIVE ETHICS BOARD (Board) through Kate Reynolds, Executive Director, pursuant to chapter 42.52 RCW, chapter 34.05 RCW, and WAC 292-100-090(1). The following stipulated facts, conclusions of law, and agreed order will be binding upon the parties if fully executed, and if accepted by the Board without modification(s), and will not be binding if rejected by the Board, or if the Respondent does not accept the Board's proposed modification(s), if any, to the stipulation. This stipulation is based on the following:

**A. STIPULATED FACTS**

1. On September 10, 2014, the Executive Ethics Board (Board) initiated a complaint alleging that [REDACTED], Director of Operations with the Washington State Department of Transportation (WSDOT), may have violated the Ethics in Public Service Act in his efforts to influence the outcome of an internal investigation involving his son, [REDACTED].

2. Board staff was informed by WSDOT Internal Audit that WSDOT had already started an internal investigation into similar allegations. WSDOT requested time to complete the WSDOT investigation before responding to the Board's request for information. Board staff agreed to wait for

the response until WSDOT's internal investigation was completed. Board staff received the WSDOT's investigative report and findings on January 8, 2015.

3. According to the information received, Josh has worked for WSF since June 1, 1998. He was promoted to a permanent ticket seller on July 27, 2008. At the time of this incident he was assigned to work at the Fauntleroy Ferry Terminal.

4. On October 16, 2013, Kathy Booth (Ms. Booth), Revenue Control Manager with WSF, sent an email to all terminal supervisors requesting that they conduct random cash counts on all ticket sellers. On Sunday, October 20, 2013, Sue Lowery (Ms. Lowery), a Fauntleroy Ferry Terminal Supervisor, conducted one of these random cash counts on Josh's change funds.

5. Ms. Lowery contacted Josh at 4:20 pm, the start of his shift. Ms. Lowery asked Josh to come into the terminal supervisor's office so she could complete a count of his change funds. According to Ms. Lowery when she opened the cash storage box to start the count, Josh stated, "it's not all there." There should have been \$800 in the box. After a count it was determined there was only \$271; \$529 short. At some point during the count, Josh told Ms. Lowery there was something he needed to take care of and that he planned to pay it back tomorrow.

6. [REDACTED] indicated in his statement to the internal investigators (investigators) that he received a call at his home on Sunday, October 20, 2013 from Doug Schlieff (Mr. Schlieff) notifying him of the incident involving Josh.

7. On Monday, October 21, 2013, the day after the incident occurred, Ms. Booth contacted Mr. Schlieff in his office. Mr. Schlieff told Ms. Booth that he had been in contact with Josh and that Josh would be resigning and paying the money back on Tuesday, October 22<sup>nd</sup>. Ms. Booth recalls there was a conversation regarding the sensitivity of this case because it involved the son of [REDACTED] and that they wanted to deal with it as quietly as possible to avoid embarrassment to [REDACTED] Mr.

Schlief told Ms. Booth that Josh would be returning the money to Mr. Schlief's wife, Ms. Schlief, who was a ticket seller at the Bremerton Terminal.

8. On October 21, 2013, Mr. Schlief directed Darren Shapley (Mr. Shapley), Terminal Manager, to move Josh's supervisor files from the Agent's Drive on the WSF server to a more secure file location. Mr. Schlief indicated to investigators that he requested this because these files are open to all Terminal Supervisors and he thought that many of them might want to access the files once they learned of the missing funds incident and who was involved. He also indicated he requested this because a large number of people have access to the files and it is not unusual for documents to disappear from these files.

9. On October 21, Josh returned \$529.00 to Ms. Schlief, at the Bremerton Terminal. On October 22, Ms. Schlief gave the money to Mr. Schlief. Mr. Schlief found out that Josh was not going to resign as initially thought. He assigned the case for investigation to Terminal Manager, Dan Ferguson (Mr. Ferguson).

10. Washington State Ferries established "Rules of Conduct" that are necessary to maintain an efficient and productive work environment. These rules apply to all WSF employees regardless of position. Violations of Code of Conduct rules one through six are ground for immediate termination. Violation of the other rules may lead to immediate termination or, if less serious, to progressive discipline. Josh was alleged to have violated Code of Conduct rules (#3), (#5), and (#8) as shown below:

#3. Theft

Stealing or improper use of WSF property. Removal of property without proper authorization, possession of stolen property, stealing or attempting to steal the personal property of a co-worker or customer.

#5. Falsification of Documents or Disclosure of Confidential Records

Alteration of records, including employment applications, pay records and/or improper disclosure of personnel, safety and. medical records.

#8. Cash/Check Handling Procedures

Misuse or improper use of ferry system cash for personal benefit. Co-mingling personal assets with ferry system assets or exchanging personal checks for ferry system cash.

11. On October 21, 2013, [REDACTED] informed his supervisor, George Capacci (Mr. Capacci) of the incident involving Josh and stated that he needed to recuse himself as the appointing authority in this case and that Mr. Capacci would have to be the appointing authority. [REDACTED] told Mr. Capacci what he knew of the case and that, if needed, he could provide information on the disciplinary process because he had been doing all of the discipline for Terminals and Vessels employees.

12. Mr. Capacci told investigators that he informed his supervisor David Moseley shortly after he was advised by [REDACTED] Mr. Capacci told investigators that the next time he heard anything about the incident with Josh was on October 26, 2013 when Mr. Schlieff provided him information about the incident. Mr. Schlieff advised him that because of the sensitivity of the case he had Josh's file removed from the Agent's Drive.

13. Mr. Capacci told investigators that between October 21 and December 6, 2013, he did not speak to [REDACTED] about the incident involving Josh. Mr. Capacci was asked by the investigators if [REDACTED] had ever offered him information regarding discipline in other case where there was missing working funds involved. Mr. Capacci indicated that he did not recall if [REDACTED] ever made that offer of help but that at some point he received information in the form of a chart he assumed came from Mr. Schlieff.

14. [REDACTED] told investigators that sometime between October 20 and December 6, 2013; he initiated a conversation with Mr. Capacci indicating that it was wrong to have placed Josh on leave without pay prior to a Loudermill hearing, which bars discipline of public employees prior to a hearing.

15. On November 4, 2013, a fact-finding conference was held with Josh. In attendance were Mr. Ferguson, Dennis Conklin, Inland Boatsman's Union of the Pacific (IBU) Regional Director, Jim Ubelhart, IBU Business Agent, and Jim Schofield (Mr. Schofield), Senior Human Resource Consultant (HRC). At that time, Josh admitted to taking the money (\$529) but that he was only borrowing it and he planned on returning it. It is clear from this first meeting that the IBU would be advocating that Josh did take the money and that it was not theft but a misuse of funds and therefore requires progressive discipline prior to termination.

16. After the fact-finding conference, it is normal to have a meeting between the appointing authority and Mr. Schofield. Based on this a meeting was held with Mr. Capacci, Mr. Schlieff, and Mr. Schofield. It was at this meeting that Mr. Schlieff first indicated that there was no evidence that Josh really stole funds. At that time, Mr. Schofield thought the only reason Mr. Schlieff would say that was because of his personal relationship with [REDACTED] and Josh because only about 20 days earlier Mr. Schlieff and [REDACTED] strongly believed that another employee, with similar alleged violations, should be fired for theft.

17. On November 25, 2013, a pre-disciplinary (Loudermill) hearing was held for Josh. Mr. Capacci informed Josh of his intent to terminate him from WSDOT employment.

18. On November 26, Mr. Capacci received a letter from the IBU. The letter stated that no WSF employee has ever been terminated on issues similar to those in Josh's case. The letter provided

an example of a case in 2000 with similar facts involving a ticket seller's theft of WSF funds and falsification of documents.

19. On November 27, 2013, Mr. Schlieff provided a spreadsheet to Mr. Capacci and Stacey Ragsdale, HR Manager, identifying comparable case information involving 32 cases going back to 1994 with missing funds and the discipline that was imposed. This document contained only name, violation, and type of discipline imposed with no indication of Mr. Schlieff's opinion regarding what discipline should be imposed in Josh's situation.

20. On December 2, 2013, Mr. Schofield sent a memorandum to Mr. Capacci providing historical information including a summary of 26 comparable cases going back to 1998 involving theft of WSF funds or the misuse or improper use of the ferry system cash for a personal benefit. These cases are somewhat different than those given to HR by Mr. Schlieff on November 27, 2013. The memorandum also provided Mr. Schofield's opinion that it would be appropriate to terminate Josh from employment with WSF and included supporting information.

21. After reviewing all of the documents provided, Mr. Capacci decided that termination was the proper discipline for Josh. On December 5, 2013, he called Josh and his union representative to advise them of his decision and added that the official letter would be mailed out on December 6, 2013.

22. On December 5, 2013, Josh applied for unemployment benefits through the Washington State Employment Security Department (ESD).

23. On December 6, 2013, [REDACTED] was notified by Mr. Capacci that he had decided to terminate Josh's employment with WSDOT. Sometime during the week on December 19, 2013, Mr. Capacci asked [REDACTED] if anyone from HR had contacted him asking him to prepare background information, specific to the history of other actions taken in cases similar to that of Josh's case. Mr.

██████ told Mr. Capacci that no one from HR had contacted requesting him to provide historical information for similar cases. Mr. Capacci requested ██████ to provide him with that background information in order for him to prepare for the upcoming grievance hearing and any other proceeding related to this case.

24. On December 9, 2013, the IBU filed a level 1 grievance on behalf of Josh for wrongful termination.

25. On December 11, 2013, Mr. Schlieff sent ██████ the spreadsheet document he (Mr. Schlieff) provided to Mr. Capacci on November 27<sup>th</sup>.

26. On December 11, 2013, using the information included in the spreadsheet provided by Mr. Schlieff, ██████ created a document identified as "Historical Information." The document showed no cases where an employee was terminated without some sort of progressive discipline prior to termination.

27. On December 16, at 10:40 am, ██████ emailed the "Historical Document" to Mr. Schlieff's WSDOT email account. At 10:54 am, the document was printed by Mr. Schlieff and then at 10:56 am, the document was modified by Mr. Schlieff. At 12:56 pm, Mr. Schlieff emailed the document from his WSDOT email account to his personal email account.

28. On December 16, 2013, Mr. Capacci sent a letter to the IBU denying level one of the grievance process.

29. On December 18, 2013, the IBU filed a level two grievance and requested a Pre-Arbitration Review Meeting (PARM).

30. Jerry Holder (Mr. Holder), Washington State Office of Financial Management Human Resources Labor Relations Chief Negotiator, works exclusively with the WSF and becomes involved in grievances according to the steps in the bargaining agreement. As part of that process the union

(IBU) can request a PARM. At that point, Mr. Holder has the authority to settle or decline to settle the grievance.

31. Mr. Holder indicated that on December 18, 2013 the PARM was scheduled for January 7, 2014. After he had received the request for the PARM he contacted Mr. Schlieff to obtain historical information on what the agency had done in similar cases.

32. On December 20, 2013, Mr. Schlieff sent Mr. Holder the "Historical Document" written by [REDACTED]. Mr. Schlieff didn't tell Mr. Holder that the document was originally authored by Mr. [REDACTED]

33. Mr. Holder confirmed that on December 19<sup>th</sup> or 20<sup>th</sup> he received a document from Mr. Schlieff containing that information. Mr. Schlieff did not inform him who drafted the document. In reading the document, Mr. Holder believed the writing style was somewhat familiar to him. He was aware that Josh was the son of [REDACTED] and knew that [REDACTED] had recused himself. He didn't feel that it would have been appropriate for him to have authored the document. Mr. Holder went to the properties of the document in Word and learned that the original author was [REDACTED]. At that point Mr. Holder felt obligated to tell Susan Moriarty (Ms. Moriarty), WSF Labor Relations Manager.

34. After the PARM, Mr. Capacci called Mr. Holder and told him that he felt that he had made a mistake in the disciplinary action against Josh and wanted to know how he could fix it. Mr. Holder and Ms. Moriarty felt that this change of opinion by Mr. Capacci was brought about by the persuasion and influence of [REDACTED] and Mr. Schlieff.

35. On January 14, 2014, Josh's request for unemployment compensation through the Employment Security Department (ESD) was denied. On January 27, 2014, Josh appealed the denial of unemployment compensation. In Josh's request for an appeal he included a letter with his reasons



for the appeal. He also included a document identified as "Historical Information" which he described in his letter as a document that was developed by management.

36. [REDACTED] told investigators that he assisted Josh with the letter and provided him with the document identified as "Historical Information." He said he mostly worked on the letter at home but that he may have done some edits while at work on his work computer. No computer evidence was located to show that [REDACTED] worked on the letter while at work.

37. On March 3, 2014, [REDACTED] sent a letter to the Honorable Mary Ellen Goodwin, Administrative Law Judge (ALJ) at the Office of Administrative Hearing. In the letter he identified himself as the Director of Operations for the WSF and advocated that Josh should not have been terminated from the WSDOT based on past similar cases. The letter undermined WSDOT's decision to terminate Josh with the declared goal of securing unemployment benefits for Josh.

38. On November 20, 2014, [REDACTED] was terminated from his position with WSDOT. Mr. Rodgers had served in state service for 42-years. His termination was a result of similar violations of WSDOT ethics policies and other actions that could be seen as undermining the executive leadership of WSDOT.

39. In his final statement to WSDOT, [REDACTED] admitted that his actions regarding his involvement in obtaining unemployment benefits for Josh was not appropriate.

## **B. CONCLUSIONS OF LAW**

1. The Ethics in Public Service Act, Chapter 42.52 RCW, prohibits state employees from conducting activities incompatible with their public duty (conflict of interest). RCW 42.52.020 states:

No state officer or state employee may have an interest, financial or otherwise, direct or indirect, or engage in a business or transaction or professional activity, or incur an obligation of

any nature, that is in conflict with the proper discharge of the state officer's or state employee's official duties.

2. Based on the stipulated facts above, [REDACTED], conducted activities incompatible with his public duty concerning his involvement in assisting his son Josh, in obtaining unemployment compensation in violation of RCW 42.52.020.

3. The Ethics in Public Service Act, Chapter 42.52 RCW, prohibits state employees from securing special privileges. RCW 42.52.070 states:

Except as required to perform duties within the scope of employment, no state officer or state employee may use his or her position to secure special privileges or exemptions for himself or herself, or his or her spouse, child, parents, or other persons.

4. Based on the stipulated facts above, [REDACTED] used his position as Director of Operation for the Washington State Ferries (WSF) to secure a special privilege for his son, Josh, when he used his position in an effort to influence an Administrative Law Judge for the Employment Security Department (ESD) to provide unemployment compensation to his son Josh, in violation of RCW 42.52.070.

5. The Board is authorized to impose sanctions for violations to the Ethics Act pursuant to RCW 42.52.360. The Board has set forth criteria in WAC 292-120-030 for imposing sanctions and consideration of any mitigating or aggravating factors.

### **C. AGGRAVATING AND MITIGATING FACTORS**

In determining the appropriateness of the civil penalty, the Board reviewed the criteria in WAC 292-120-030. In the matter at hand, it is an aggravating factor that, these types of violations significantly reduce the public respect and confidence in state government employees and [REDACTED] was in a position within the Executive Management of WSDOT, WSF. In the matter at hand, it is a

mitigating factor that as a result of the WSDOT internal investigation [REDACTED] was terminated from state service.

#### **D. STIPULATION AND AGREED ORDER**

1. Pursuant to chapter 42.52 RCW, the Executive Ethics Board has jurisdiction over [REDACTED] and over the subject matter of this complaint.
2. Under RCW 34.05.060, the Board can establish procedures for attempting and executing informal settlement of matters in lieu of more formal proceedings under the Administrative Procedures Act, including adjudicative hearings. The Board has established such procedures under WAC 292-100-090.
3. Pursuant to WAC 292-100-090(1), the parties have the authority to resolve this matter under the terms contained herein, subject to Board approval.
4. [REDACTED] agrees that if any or all of the alleged violations were proven at a hearing, the Board may impose sanctions, including a civil penalty under RCW 42.52.480(1)(b) of up to \$5,000, or the greater of three times the economic value of anything received or sought in violation of chapter 42.52 RCW, for each violation found. The Board may also order the payment of costs, including reasonable investigative costs, under RCW 42.52.480(1)(c).
5. [REDACTED] further agrees that the evidence available to the Board is such that the Board may conclude he violated the Ethics in Public Service Act. Therefore, in the interest of seeking an informal and expeditious resolution of this matter, the parties agree to entry of the stipulated findings of fact, conclusions of law and agreed order.

6. [REDACTED] waives the opportunity for a hearing, contingent upon acceptance of this stipulation by the Board, or her acceptance of any modification(s) proposed by the Board, pursuant to the provisions of WAC 292-100-090(2).

7. If the Board accepts this stipulation, the Board agrees to release and discharge [REDACTED] from all further ethics proceedings under chapter 42.52 RCW for any allegations arising out of the facts in this matter, subject to payment of the full amount of the civil penalty due and owing, any other costs imposed, and compliance with all other terms and conditions of the stipulation. [REDACTED] in turn agrees to release and discharge the Board, its officers, agents and employees from all claims, damages, and causes of action arising out of this complaint and this stipulation.

8. If the Board accepts this stipulation, it does not purport to settle any other claims between [REDACTED] and the Washington State Executive Ethics Board, the State of Washington, or other third party, which may be filed in the future. No other claims of alleged violations are pending against Steven Rodgers at this time.

9. If the Board accepts this stipulation, it is enforceable under RCW 34.05.578 and any other applicable statutes or rules.

10. If the Board rejects this stipulation, or if [REDACTED] does not accept the Board's proposed modification(s), if any, this matter will be scheduled for an administrative hearing before the Board. If an administrative hearing is scheduled before the Board, [REDACTED] waives any objection to participation by any Board member at the hearing to whom this stipulation was presented for approval under WAC 292-100-090(2). Further, [REDACTED] understands and agrees that this stipulation as well as information obtained during any settlement discussions between the parties shall not be admitted into evidence during the administrative hearing, unless otherwise agreed by the parties.

11. [REDACTED] agrees to pay a civil penalty in the amount of one-thousand, five-hundred dollars (\$1,500) for violations of RCW 42.52.

12. The civil penalty in the amount of one-thousand, five-hundred dollars (\$1,500) is payable in full to the Washington State Executive Ethics Board within forty-five (45) days after this stipulation is signed and accepted by the Board, or as otherwise agreed to by the parties.

## II. CERTIFICATION

I, [REDACTED], hereby certify that I have read this stipulation in its entirety, that my counsel of record, if any, has fully explained the legal significance and consequence of it. I further certify that I fully understand and agree to all of it, and that it may be presented to the Board without my appearance. I knowingly and voluntarily waive my right to a hearing in this matter and if the Board accepts the stipulation, I understand that I will receive a signed copy.

[REDACTED]

3/23/16  
Date

Respondent

Presented by:

*Kate Reynolds*

KATE REYNOLDS  
Executive Director

3/29/16  
Date

## II. ORDER

Having reviewed the proposed stipulation, WE, THE STATE OF WASHINGTON EXECUTIVE ETHICS BOARD, pursuant to WAC 292-100-090, HEREBY ORDER that the Stipulation is

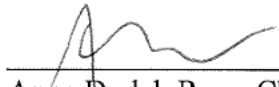
✓ ACCEPTED in its entirety;

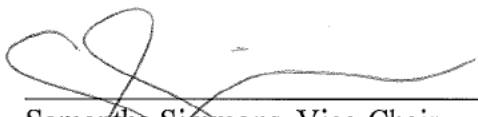
       REJECTED in its entirety;

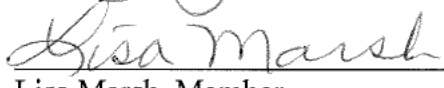
       MODIFIED. This stipulation will become the order of the Board if the Respondent approves\* the following modification(s):


\_\_\_\_\_  
\_\_\_\_\_

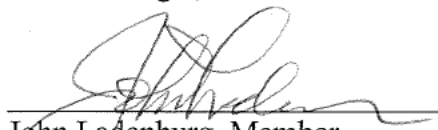
DATED this 13<sup>th</sup> day of May, 2016

  
Anna Dudek Ross, Chair

  
Samantha Simmons, Vice-Chair

  
Lisa Marsh, Member

  
Sumeer Singla, Member

  
John Ladenburg, Member

\* I,                     , accept/do not accept (circle one) the proposed modification(s).

                    , Respondent                      Date