

BEFORE THE WASHINGTON STATE
EXECUTIVE ETHICS BOARD

In the Matter of:

██████████

Respondent.

No. 2014-093

STIPULATED FACTS,
CONCLUSIONS OF LAW AND
AGREED ORDER

THIS STIPULATION is entered into by Respondent, ██████████, 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 December 9, 2014, the Executive Ethics Board (Board) received a complaint alleging that ██████████), Community Corrections Officer 3 with the Department of Corrections (DOC), may have violated the Ethics in Public Service Act by using state resources for her personal benefit and visiting non-work related websites including sites in which ██████████ would be compensated for providing product feedback.
2. ██████████ was initially hired by DOC in May of 2001. ██████████ has been in her current position as a Community Corrections Officer since March 6, 2010.
3. On June 24, 2015, the copy of ██████████'s computer hard drive was analyzed for information to support the allegation. Because some of the internet history files on ██████████

computer had been overwritten through the computer's normal processes, the data reviewed was sporadic relative to dates. Board staff reviewed 46 days of internet history from October 1 through December 16, 2014. During this time, there were 22 days when non-work related internet browsing activity occurred.

4. The complaint also alleges that [REDACTED] was using state resources to conduct mystery shopping activities during work hours. A search of [REDACTED]' computer hard drive for evidence of this type of activity was conducted. Some examples of what was found are described below.

Over 20 different URLs (web addresses) related to product surveys and mystery shopping were identified, including:

- Marketforceshopper.com – last visit 12/3/14 @ 10:23 am
- Shoppers.nwwlpc.com – last visit 12/3/14 @ 10:22 am
- Mymysteryshop.com – last visit 9/23/14 @ 12:52 pm
- Maritzmysteryshopping.com – last visit 4/21/14 @ 5:49 pm
- Trendsource.com – last visit 4/14/14 @ 4:51 pm
- Shopperkinesis-cem.com – last visit 3/28/14 @ 3:53 pm
- Sassiesshop.com – last visit 3/18/14 @ 3:53 pm
- Qams.com – last visit 11/21/13 @ 11:56 am
- Intellishop.com – last visit 11/8/13 @ 4:27 pm

Located within internet favorites folder was a folder labeled "MYSTERY SHOPS." There were 20 different URLs related to mystery shopping in the folder. Some of these URLs are shown above.

5. [REDACTED] indicated in her response that she has done "mystery shopping" sporadically over the last few years as a way to obtain a free meal, free entertainment, or services. [REDACTED] further stated that she does not make a profit and she is simply reimbursed up to a certain amount for expenses she would incur, for example, purchasing a meal for the purpose of evaluating the service. She also indicated that on a rare occasion a company might pay her more than the reimbursed expense in an effort to deflect the cost of gas and other expenses. [REDACTED] also indicated in her response that she would occasionally use state resources on her personal time to complete a survey.

6. A search of [REDACTED] emails from March 23, 2010 to December 16, 2014, revealed twelve emails directly related to mystery shopping. One of the emails was related to a discrepancy in her pay for a mystery shopping review that she had completed.

7. In the period of January 28 through June 26, 2013, [REDACTED] sent/received over 120 personal emails. Most of these emails were related to her children's school activities. Some were payment confirmations for AT&T, Wal-Mart, Delta Airlines and other banking/investment confirmations.

8. [REDACTED] acknowledged in her response to the complaint that she would on occasion, make purchases online by entering her credit card information. She also stated that her time on the internet was never in lieu of working but only during the lengthy time it took to open and print very large packets. She further stated that she was not aware that doing so was a violation of DOC policy or ethics laws.

B. CONCLUSIONS OF LAW

1. The Ethics in Public Service Act, Chapter 42.52 RCW, prohibits state employees from using state resources for their benefit. RCW 42.52.160(1) 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. Based on the stipulated facts above, [REDACTED] used state resources for private benefit in violation of RCW 42.52.160.

3. 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 that they were continuous in nature. It is a mitigating factor that the violation was unintentional in that Ms. [REDACTED] was not aware her actions would violate the Ethics Act, based on her own prior understanding of DOC's policy on the de minimis use of state resources.

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 she 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 [REDACTED] 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 two thousand five hundred dollars (\$2,500) associated with the improper use of public resources, RCW 42.52.160. The Board agrees to suspend one-thousand dollars (\$1,000) on the condition that [REDACTED] complies with all terms and conditions of this Stipulation and Order and commits no further violations of RCW 42.52 for a period of two years from the date this agreement is executed.

12. The non-suspended portion of 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]
Respondent

10-04-2016
Date

Presented by:

K. Reynolds
KATE REYNOLDS
Executive Director

10/5/16
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 18th day of November, 2016

absent
Anna Dudek Ross, Chair

[Signature]
Samantha Simmons, Vice-Chair

Lisa Marsh
Lisa Marsh, Member

absent
Sumeer Singla, Member

[Signature]
John Ladenburg, Member

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

 , Respondent Date