

BEFORE THE WASHINGTON STATE
EXECUTIVE ETHICS BOARD

In the Matter of:

██████████

Respondent.

No. 2015-025

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 February 18, 2015, the Executive Ethics Board (Board) received a complaint referred by the State Auditor's Office (SAO), alleging that ██████████ former Communications Consultant with the Department of Enterprise Services (DES), may have violated the Ethics in Public Service Act by using state resources for her personal benefit.

2. ██████████ has worked for the DES from the date the agency was formed, October 1, 2011, until April 30, 2014. At that time ██████████ left DES to work for the Washington State Health Care Authority (HCA).

3. On May 7, 2014, the SAO received a whistleblower complaint alleging that Ms. [REDACTED] was using state computer resources for non-work related activities. The SOA conducted a review of [REDACTED]'s computer hard drive to see if there was evidence to support the allegation.

4. [REDACTED] had received a new computer in July of 2013. Due to this, the review of [REDACTED] internet history was limited to the months of July 2013 to April 2014. The SAO's review showed that for the period of July 2013 through January 2014 her internet use for non-work related activities was brief and infrequent. The SAO investigation concluded that for the months of February, March and April of 2014, [REDACTED] non-work related internet activity did not meet the de minimis exception. During this period, [REDACTED] accessed her personal email account (Comcast.net) on 84 occasions, personal bank accounts, movie review sites, online encyclopedia pages, and movie rental sites. [REDACTED] non-work related internet activity for this period is summarized below:

- February 2014 – 148 minutes of non-work related internet activity over a seven-day period.
- March 2014 – 528 minutes of non-work related internet activity over a 19-day period.
- April – 504 minutes of non-work related internet activity over a 16-day period

5. [REDACTED] told the SAO investigator that it was not unusual for employees at DES, at least in her area, to go to their personal Facebook page, youtube, online banking, etc. That this type of activity occurred on breaks and during lunch and she believed that it was allowed as it was considered de minimis use.

6. [REDACTED] told the SAO investigator that she would come in to the office and spend about ten minutes checking her personal email and then check it periodically throughout the day. Ms. [REDACTED] told the SAO investigator that she would go to the Netflix site and pick out movies and she

would check her bank account to see what bills had been paid. She further stated that she would do this type of non-work related internet activity about every day and that she has done so for years during her breaks and lunch. Some examples of [REDACTED]'s daily internet activities showing the time of day accessed are shown below:

February 21, 2014 – 10:47 am to 10:59 am – 12 minutes
February 21, 2014 – 1:23 pm to 1:49 pm – 26 minutes
February 24, 2014 – 12:04 pm to 12:29 pm – 25 minutes
February 25, 2014 – 12:35 pm to 12:46 pm – 11 minutes
February 26, 2014 – 9:11 am to 9:17 am – 6 minutes
February 26, 2014 – 11:33 am to 11:51 am – 18 minutes
March 7, 2014 – 10:04 am to 10:48 am – 44 minutes
March 10, 2014 – 1:43 pm to 2:01 pm – 18 minutes
March 11, 2014 – 11:28 am to 11:37 am – 9 minutes
March 12, 2014 – 11:39 am to 11:51 am – 12 minutes
March 13, 2014 – 10:07 am to 11:02 am – 55 minutes
March 13, 2014 – 12:26 pm to 12:38 pm – 22 minutes
March 19, 2014 – 12:01 pm to 12:35 pm – 34 minutes
March 20, 2014 – 2:38 pm to 3:08 pm – 30 minutes
March 25, 2014 – 1:38 pm to 1:55 pm – 27 minutes
March 27, 2014 – 10:37 am to 11:16 am – 37 minutes
March 27, 2014 – 12:44 pm to 1:12 pm – 28 minutes
April 1, 2014 – 2:19 pm to 2:46 pm – 27 minutes
April 2, 2014 – 9:08 am to 9:38 am – 30 minutes
April 2, 2014 – 11:26 am to 11:39 am – 13 minutes
April 2, 2014 – 12:16 pm to 12:48 pm – 32 minutes

7. In a written response to Board staff, [REDACTED] indicated that she believed that her internet activities were de minimis and permitted. She believed that as long as she was not using state resources to make money or participate in a political campaign it would be considered de minimis and allowed.

8. [REDACTED] indicated that she was not aware her use was a violation of policy or the Ethics Act and that now that she is aware, she will no longer use the internet for personal use.

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 a personal 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.

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 Amy Emerson 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, Amy Emerson 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 three thousand dollars (\$3,000) associated with the improper use of public resources, RCW 42.52.160. The Board agrees to suspend one-thousand, five-hundred ^{and} ~~and fifty~~ dollars (\$1,500) 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 ^{and} ~~and fifty~~ 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]

12-3-15

Date

Respondent

Presented by:

K. Reynolds
KATE REYNOLDS
Executive Director


12/16/15
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):

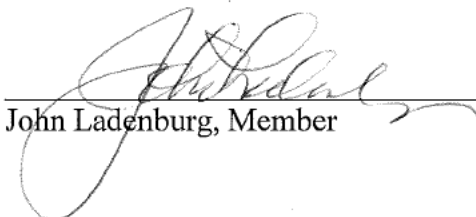
DATED this 15th day of January, 2016


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