

BEFORE THE WASHINGTON STATE
EXECUTIVE ETHICS BOARD

In the Matter of:

[REDACTED]

Respondent.

No. 2015-032

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 April 23, 2015, the Executive Ethics Board (Board) received a complaint referred by the State Auditor's Office (SAO) alleging that [REDACTED], a Chaplin for the Washington Corrections Center for Women (WCCW), may have violated the Ethics in Public Service Act by using state resources for personal business.

2. [REDACTED] is the Chaplin for the WCCW and has been employed there for over 25 years. For all times pertinent to this investigation, [REDACTED] worked at WCCW as the Chaplin for the facility.

3. The complaint alleged that [REDACTED] used state computer and time for personal gain. Specifically, it is alleged that he was using his state issued computer during working hours for browsing the internet and making purchases of tools and items intended for his personal use and landscaping business and /or volunteer activities. During the investigation, a copy of [REDACTED] computer hard drive and computer emails were obtained.

4. [REDACTED]'s personal use of email was found to be brief and infrequent but his internet browsing was not. The data collected was sporadic due to internet history files being overwritten through the computer's normal processes. Review of his internet use encompassed 26 days between July 1, 2013 and October 31, 2013. The SAO review concluded that [REDACTED] spent about 800 minutes browsing the internet during those 26 days and that the activity appeared to be non-work related.

5. During the week of July 28, 2013 the subject searched classified and vendor websites for 249 minutes. The browsing activity was as follows:

- i. July 28th: Searches for lawnmowers, trailers, and tools for 50 continuous minutes.
- ii. July 29th: Searches for lawnmowers, trailers, and tools for 69 minutes within a 90-minute period.
- iii. July 30th: Searches for tools and home improvement items for 73 minutes during two separate periods within a 240-minute period.
- iv. August 1st: Searches for tools for 57 minutes within a 90-minute period.

6. The search showed that on July 24, 2013 the subject browsed various websites searching for lawnmowers, tools and miscellaneous home improvement items for 66 minutes during a two hour period.

7. [REDACTED] told the SAO investigator that he has a business license for landscaping work but clarified that he does not run an outside landscaping business. He explained that his tax accountant recommended he obtain the business license in order to be able to deduct expenses incurred from his

volunteer activities. [REDACTED] volunteers as a "handyman" for his church, homeowners association and other charitable organizations.

8. When asked by the SAO investigator about his internet browsing for lawn mowers, miscellaneous tools, trailers, tractors and home improvement items, [REDACTED] admitted the searches were for personal items. He told the investigator that the inmates are at lunch from 11:30 am until 1:30 pm and since he did not have obligations to them at that time, "I could see me browsing at that time. I know I could have made better use of my time but I had no malicious intent."

9. [REDACTED] later provided an additional written explanation to the SAO investigator about his browsing. He admitted his computer use was for non-work related activity but said that some of the work that would be considered outside the scope of his Chaplin duties was done with the knowledge and consent of his supervisor at the time.

10. On December 18, 2014, Associate Superintendent Felice Davis (Ms. Davis) told the SAO investigator that it did not make sense for [REDACTED] to be browsing the internet during work hours for items not related to his job duties as Chaplin. She had only been his supervisor since November 2014, and was not sure what the situation was prior. [REDACTED] received a letter of reprimand for his internet use, and for his failure to complete an Outside Employment/Volunteer Activity form as required by their policy.

11. On December 24, 2014, the facility's superintendent, Jane Parnell (Ms. Parnell), told the SAO investigator that it did not make sense for this type of browsing activity to take place in order for [REDACTED] to complete his work duties. Ms. Parnell advised that [REDACTED] has a history of pushing limits to what he can and can't do.

B. CONCLUSIONS OF LAW

1. The Ethics in Public Service Act, Chapter 42.52 RCW, prohibits state employees from use of 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 officers or employees 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 personal benefit in violation of RCW 42.52.160, when he used his state issued computer and time for his private benefit.

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. It is a mitigating factor that it appears [REDACTED] supervisor at the time of the violation was aware and approved of [REDACTED] cutting and providing firewood to WCC.

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 his 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 dollars (\$2,000) for the violations associated with RCW 42.52. 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 civil penalty in the amount of one thousand dollars (\$1,000) 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]

24 Feb 2017

Date

Respondent

Presented by:

K. Reynolds

3/7/17

KATE REYNOLDS

Date

Executive Director

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

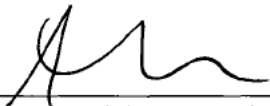
Stipulation is

ACCEPTED in its entirety;

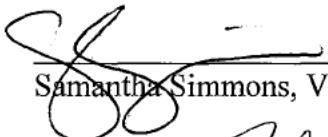
REJECTED in its entirety;

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

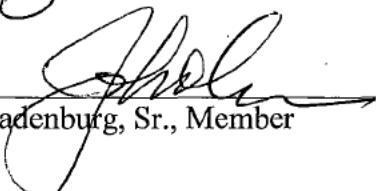
DATED this 24th day of March, 2017



Anna Dudek Ross, Chair



Samantha Simmons, Vice-Chair



John Ladenburg, Sr., Member

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

[REDACTED], Respondent Date