

1 **BEFORE THE WASHINGTON STATE**
2 **EXECUTIVE ETHICS BOARD**

3 In the Matter of:

EEB Case No. 2015-081

4 Douglas Popwell,

FINAL ORDER

5 Respondent
6

7 **I. PROCEDURAL HISTORY**

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9 On March 24, 2017, the Executive Ethics Board (Board) found reasonable cause to
10 believe that the Respondent, Douglas Popwell, violated the Ethics in Public Service Act while
11 employed as an Engineering Aide 3 at the Department of Natural Resources (DNR). Notice of
12 the Reasonable Cause Determination and the right to request a hearing was served upon Mr.
13 Popwell by regular mail and certified mail on March 27, 2017. Mr. Popwell failed to respond
14 to the Reasonable Cause Determination within 30 days as required by WAC 292-100-060(2).

15 The Board entered an Order of Default on July 14, 2017. On July 17, 2017, Board staff
16 provided Mr. Popwell with notice of the Board's Order of Default by regular and certified
17 mail.

18 Pursuant to WAC 292-100-060(4) Mr. Popwell was allowed 10 days to request
19 vacation of the Order of Default. Mr. Popwell has not moved to vacate the order entered on
20 July 14, 2017.

21 **II. FINDINGS OF FACT**

22 1. Mr. Popwell was hired by DNR in October of 1993 as an Engineering Aide 3 in
23 the Public Land Survey Unit of the Engineering and General Service Division of DNR and
24 was in that position for all times pertinent to this investigation.

25 2. The majority of work completed by Mr. Popwell for DNR involves indexing, a
26 process of populating fields in the Application Xtender database with information derived

1 from land survey documents and maps. The information in the database is used by DNR
2 customers (public, land survey professional, federal, state, county, and city agencies, and title
3 companies) to research land boundary survey maps and documents statewide.

4 3. On October 4, 2014, Mr. Popwell was issued a Letter of Reprimand by his
5 supervisor, Kris Horton (Ms. Horton), for his failure to meet indexing production expectations.
6 Included in the Letter of Reprimand was expectations on his personal use of the internet,
7 “[y]ou are expected to keep personal Internet use within the parameters of the DNR Policy
8 P005-006 Use of State Electronic Communication Systems, which advises... approximately
9 five minutes or less per occurrence and a norm not to exceed fifteen minutes per week...”

10 4. On November 13, 2014, Dale Mix (Mr. Mix), Division Manager, requested an
11 internal investigation be conducted by Human Resources (HR) into Mr. Popwell’s lack of
12 productivity and especially into his non-work related internet activity during work hours.

13 5. The internal investigation of Mr. Popwell requested by Mr. Mix on November
14 13, 2014, was completed by HR on July 17, 2015. The internal investigation included
15 interviews with Mr. Popwell’s supervisor, Ms. Horton, Mr. Popwell’s prior supervisor, Mick
16 Sprouffske (Mr. Sprouffske), and a review of Mr. Popwell’s internet history for the period of
17 April 13, 2015 through June 26, 2015.

18 6. Ms. Horton told DNR investigators that she had been Mr. Popwell’s supervisor
19 since April 2013. Ms. Horton also told DNR investigators that she believed that Mr. Popwell
20 was misusing his state computer and time browsing the internet for non-work related reasons.
21 Ms. Horton stated that she believed that some of Mr. Popwell’s computer time was being used
22 to manage his personal AdvoCare business.

23 7. Ms. Horton told DNR investigators that on July 2, 2013, she had a one-on-one
24 conversation with Mr. Popwell concerning his personal use of the internet. Ms. Horton told
25
26

1 DNR investigators that Mr. Popwell responded that he already knew about the policy and
2 would make sure that he did not overuse the internet or go to sites that were not allowed.

3
4 8. On July 3, 2013 Ms. Horton had a staff meeting where she discussed the DNR
5 ethics policy. At that meeting Mr. Popwell became defensive and made statements about what
6 use of state resources should be allowed for personal reasons and that he has always been
7 allowed to use the internet. Following the meeting, Ms. Horton sent an email to her staff
8 requesting them to respond that they understood the DNR ethics policy. Mr. Popwell
9 responded that he understood and that he had a conversation with an HR staff member to get
10 clarification on “de minimis use.”

11 9. Ms. Horton told DNR investigators that on February 10, 2014, she again had to
12 meet with Mr. Popwell to discuss her concerns about his personal use of the internet during
13 work hours. On October 6, 2014, Ms. Horton issued a Letter of Reprimand to Mr. Popwell for
14 his failure to meet indexing production expectations. In the letter, Ms. Horton again includes
15 the DNR policy regarding personal internet use.

16
17 10. Ms. Horton indicated to the DNR investigator that Mr. Popwell’s internet use
18 has been “like a bad habit” and she had worked with him to change it but she had not seen a
19 change. Her observation of his computer screen and his low indexing production would
20 suggest a need to look at his internet use.

21 11. Mr. Sprouffske told the DNR investigator that he was Mr. Popwell’s supervisor
22 for the period of November 2005 through December 2012. Mr. Sprouffske told the
23 investigator that he had discussions with Mr. Popwell regarding tardiness and personal internet
24 use. He further stated that he had made it clear to Mr. Popwell that he was to follow DNR
25 policy. Mr. Sprouffske did not recall the dates of the conversation indicating that he did not
26 have documentation of the discussions.

1 12. DNR conducted a review of Mr. Popwell’s internet activity for the period of
2 April 13, 2015 through June 26, 2015. A period of 50 working days. The review revealed
3 that Mr. Popwell had 7,831 website visits, 671 appeared to be work related, 7,160 or 91.4 %
4 appeared not to be work related. A summary of the personal use is shown below:
5

- 6 • Google – 2,911 visits
- 7 • US Bank – 99 visits
- 8 • Walmart – 66 visits
- 9 • WSECU – 440 visits
- 10 • AdvoCare (personal outside business) – 162 visits
- 11 • Cabalas – 61 visits
- 12 • Craigslist – 214 visits
- 13 • Ebay – 103 visits
- 14 • Facebook – 249 visits
- 15 • YouTube – 205 visits
- 16 • Gmail – 259 visits
- 17 • Yahoo webmail (inbox) – 465 visits.

18 13. Mr. Popwell told the DNR investigators that he understood DNR’s policy on
19 the Use of State Electronic Communication Systems and that he understood Ms. Horton’s
20 expectation regarding the use of work time and his work computer for personal activities
21

22 14. The DNR Investigator showed Mr. Popwell an Excel spreadsheet showing all
23 of Mr. Popwell’s personal internet use for the period of April 13, 2015 through June 26, 2015
24 and asked him if he believed it was personal use. After reviewing the spreadsheet for a few
25 moments Mr. Popwell told the investigator that he agreed the activity was personal use stating,
26 “sure looks personal.” Mr. Popwell further stated that he had no idea of just how much
personal use there was.

 15. Mr. Popwell admitted to the DNR investigator that he had made online
purchases of items like vitamin supplements and an aviation headset from eBay. Mr. Popwell

1 admitted to the DNR investigator that he was a distributor for the AdvoCare Company but
2 claimed he never made money on the internet using his work computer. He admitted to
3 accessing the AdvoCare website on his work computer to look at his earnings and to see what
4 was new with the company.
5

6 16. Mr. Popwell was asked specifically about a June 17, 2015, entry showing a
7 google search for "AdvoCare twill racing shirts" and asked the purpose of the visit. Mr.
8 Popwell replied that he was inquiring for a friend and that he did not make a purchase.

9 17. The DNR investigator asked Mr. Popwell if he thought it was appropriate for
10 him to spend work time using his computer to look into AdvoCare just one day after receiving
11 discipline from the Division Manager, Mr. Mix, for not meeting indexing production
12 expectations (refer #5 above). Mr. Popwell responded, "[n]o."
13

14 18. Mr. Popwell admitted that he had created a post on Craigslist to sell an
15 engagement ring during work hours using the state computer.

16 19. On September 18, 2015, Mr. Popwell was terminated for his continued failure
17 to meet the minimum indexing production expectations and his unwillingness to adhere to
18 DNR policy regarding the use of his work computer and time for personal non-work related
19 internet browsing.
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21 III. CONCLUSIONS OF LAW

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

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

1 **V. AUTHORITY AND PROCEDURE**

2 Pursuant to RCW 34.05.470, Respondent has the right to file a Petition for
3 Reconsideration stating the specific grounds upon which relief is requested. The Petition must
4 be filed with the Executive Ethics Board at 2425 Bristol Court SW, Olympia, Washington
5 98504, or by U.S. Mail at P.O. Box 40149, Olympia, Washington 98504-0149, within ten (10)
6 days of service of the Final Order upon Respondent.

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

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

15 DATED this 8th day of September, 2017

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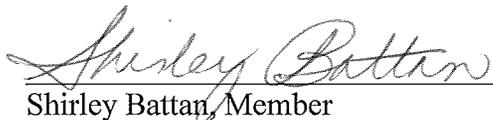
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19 Anna Dudek Ross, Chair

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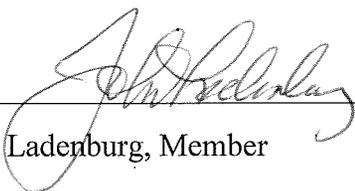
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19 Lisa Marsh, Member

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23 Samantha Simmons, Vice-Chair

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23 Shirley Battan, Member

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26 John Ladenburg, Member