

BEFORE THE WASHINGTON STATE
EXECUTIVE ETHICS BOARD

In the Matter of:

[REDACTED]

Respondent.

No. 2016-010

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 January 13, 2016, the Executive Ethics Board (Board) received an agency referral from the Employment Security Department (ESD) alleging that [REDACTED], a WorkSource Specialist with ESD, may have violated the Ethics in Public Service Act by using state resources for her personal benefit and gain when she used her state computer to send and receive personal emails.

2. [REDACTED] was hired by ESD in August 1992; she was employed as such for all times pertinent to this investigation.

3. In response to an anonymous complaint that [REDACTED] was using her email inappropriately, ESD Human Resources began an investigation which included a review of Ms. [REDACTED]'s emails for approximately an eight-month period from January 1, 2015 to August 2015. In October 2015, the review was completed by Claire Barrett (Ms. Barrett), a Workforce Data Consultant.

4. A total of 4,465 emails were reviewed for the time period. It was determined 599 of the emails were of a personal nature and/or questionable content. Review of her email noted a significant amount of correspondence between [REDACTED] and family members using her ESD email account. It also noted that a number of emails sent to various individuals would start out work related and then veer into personal subject matter. Additionally, [REDACTED] forwarded work related items to her personal computer.

5. [REDACTED] had her Facebook page linked to her ESD email account so she would receive Facebook notifications on her ESD email. [REDACTED] explained that emails from Facebook and Mamapedia "probably accounts for many of the emails I received since they probably send 40-60 emails monthly." In a response to Board staff [REDACTED] advised it was her daughter who had created her Facebook account and had linked it to her work email address. She said she had made attempts to delete the Facebook account but was unsuccessful. Ms. [REDACTED] acknowledged she should have consulted with IT personnel to have it removed.

6. During the investigation, [REDACTED] agreed with the investigators' assessment that a number of her emails "would start out work related and veer into personal subject matter." She explained that given the length of time in her position, she has worked with many WorkSource clients and their families for over 20 years and developed personal relationships

with them. She conceded a number of her emails might start off business related but drift into personal topics and discussions.

7. [REDACTED] acknowledged a number of individuals on the email recipient list were personal friends and/or family members and advised that she has taken a number of corrective steps to ensure she does not receive emails from them on her work account any longer.

8. [REDACTED] explained that because she spends time in the field and does not have a state issued phone, she often forwards work emails to her personal Gmail account so that she can access them on her personal cell phone while in the field. [REDACTED] was told this was not acceptable.

9. In December 2015 a pre-disciplinary meeting was held with [REDACTED] and a number of agency policies regarding proper employee conduct were reviewed with her. Ms. [REDACTED] acknowledged her mistakes and advised that she had taken actions to correct her behavior. As a result of the investigation, [REDACTED] received a five percent (5%) reduction in pay for a three-month period.

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. WAC 292-110-010 Use of state resources states, in part:

.....

(2) The following are permitted uses:

(a) Use of state resources that is reasonably related to the conduct of official state duties, or which is otherwise allowed by statute.

(b) An agency head or designee may authorize a use of state resources that is related to an official state purpose, but not directly related to an individual employee's official duty.

(c) An agency may authorize a specific use that promotes organizational effectiveness or enhances the job-related skills of a state officer or state employee.

(d) A state officer or employee may make an occasional but limited personal use of state resources only if each of the following conditions are met:

(i) There is little or no cost to the state;

(ii) Any use is brief;

(iii) Any use occurs infrequently;

(iv) The use does not interfere with the performance of any officer's or employee's official duties; and

(v) The use does not compromise the security or integrity of state property, information, or software.

3. Based on the stipulated facts above, [REDACTED] used state resources for a personal benefit in violation of RCW 42.52.160 and WAC 292-110-010.

4. 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 aggravating factors that these types of violations significantly reduce the public respect and confidence in state government employees. It is a mitigating factor that [REDACTED] was disciplined by her agency and received a five percent (5%) reduction in pay for a three-month period.

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.

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) with one thousand dollars (\$1,000) suspended.

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]

5/24/17
Date

Respondent

Presented by:

K. Reynolds 6/6/17
KATE REYNOLDS Date
Executive Director

III. 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

✓

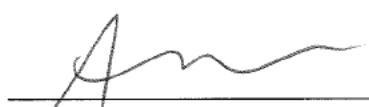
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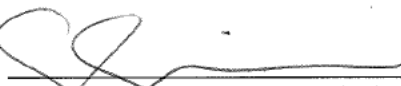
REJECTED in its entirety;

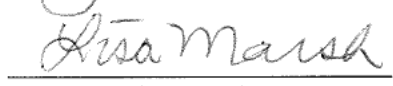
MODIFIED. This stipulation will become the order of the Board if the


Respondent approves* the following modification(s):

DATED this 10th day of May 2017


Anna Dudek Ross, Chair


Samantha Simmons, Vice-Chair


Lisa Marsh, Member


Shirley Battan, Member


John Ladenburg, Member

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

 , Respondent Date