

BEFORE THE WASHINGTON STATE
EXECUTIVE ETHICS BOARD

In the Matter of:

██████████

Respondent.

No. 2016-016

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 January 25, 2016, the Executive Ethics Board (Board) received a referral from the State Auditor's Office (SAO) following a whistleblower complaint alleging that ██████████, ██████████, an IT Specialist 2 with the Department of Health (DOH), may have violated the Ethics in Public Service Act when she used state resources for personal gain. The complaint specifically alleged that ██████████ was arriving late for work and leaving prior to the end of her scheduled shift and that she was incorrectly documenting her hours on her Positive Time and Attendance Report (PTA).

2. [REDACTED] was hired by DOH in 2006 as an IT Specialist. For all times pertinent to this investigation, [REDACTED] was employed by DOH as an IT Specialist 2; [REDACTED] left state service in June 2016.

3. Board staff reviewed the investigative report provided by the SAO as well as the internal investigation completed by DOH Human Resources. [REDACTED] official schedule as indicated on her PTA was four 10-hour workdays from 5:30 am to 4:00 pm.

4. [REDACTED] worked in a secured building accessible by an electronic key card. A total of 197 working days were reviewed and on 192 of those days she arrived after her scheduled start time. From March 3, 2014 to March 12, 2015, the building access log showed her average arrival time was 6:16 am.

5. [REDACTED] computer access was also reviewed. According to her supervisor Charles Lander (Mr. Lander), her job required her to be logged on to her computer for most of her daily duties. Because a portion of the data had been overwritten as part of the computer's normal operating process, the amount of activity examined was limited to 28 working days. From January 23, 2015 through March 12, 2015, [REDACTED] computer showed her average log out time was 3:20 pm. [REDACTED] approved leave slips were reviewed for this time period and it was determined that she did not submit any leave slips for her late arrivals and only two for her early departures.

6. When interviewed, [REDACTED] said she used her lunch period at the start of the day, which allowed her to arrive 30 minutes late at 6:00 am. She said she worked straight through her shift, leaving her desk only to use the restroom. [REDACTED] said she did not use her two 15-minute breaks, which allowed her to leave 30 minutes early.

7. Mr. Lander told the SAO investigator that he did not begin supervising [REDACTED] until November 2014. Mr. Lander's own work shift did not begin until 7:30 am so he did not know

what time [REDACTED] arrived. He believed her scheduled hours were 6:00 am to 4:00 pm, but later, after reviewing her PTA during the investigation, learned that her scheduled hours were 5:30 am to 4:00 pm. Mr. Lander said he had not given [REDACTED] permission to use her lunch period and breaks to leave early. Mr. Lander told the investigator that he believed [REDACTED] regularly took a lunch break during her shift because he would often not see her in her workspace from 12:00-1:00 pm or he would see her returning to the building in the afternoon around 1:00 pm.

8. Mr. Lander said most of [REDACTED] duties would require her to be logged on to her computer but she might have occasional other duties or a meeting in the afternoon that might account for her not being in the office at the end of the day. He did not regularly keep track of the time she was not at her worksite. Mr. Lander said occasionally [REDACTED] came to him and asked to use her lunch break to leave early for some extenuating circumstance. On these occasions, he would allow it, but would remind her that it was against policy.

9. During the internal DOH investigation, Mr. Lander stated that he had not paid any attention to the 5:30 start time on [REDACTED] PTA and had never asked her about it because he felt she did quality work.

10. [REDACTED] former supervisor, Stephanie Price (Ms. Price), was interviewed and she recalled being told by [REDACTED] what time she started work but did not recall specifically what time that was. She thought it was either 6:00 or 6:30 am. Ms. Price said she had no knowledge that [REDACTED] worked 10 straight hours without a lunch and that as a Human Resource Consultant that would have been a concern. Ms. Price thought [REDACTED] usually took a lunch break that lasted a half hour to an hour. Ms. Price said she had not noticed the start and end times documented on [REDACTED] PTA. She told investigators during the time she was supervising [REDACTED] she

did not work on the same floor as her and did not have knowledge of her daily arrival or departure times.

11. Ron Key (Mr. Key), DOH Human Resources, was also interviewed during the investigation. Mr. Key advised that there was no agreement on file for [REDACTED] to work through her lunch break or allow her to leave early. Mr. Key stated that any agreement she had would be an informal one between her and her supervisor and HR would not support or condone it.

12. The Collective Bargaining Agreement between the State of Washington and Washington Federation of State Employees, in Article 6.5 (meal periods) and 6.7 (rest periods) states, in part, that meal and rest periods may not be used for late arrival or early departure from work and that rest and meal periods will not be combined.

13. During the investigation, [REDACTED] admitted to regularly arriving late for work and departing early. She felt that some of the hours were offset by working through some lunch and break periods. She further stated that she had some additional duties such as new employee assistance, meetings, phone calls and dealing with other LMS issues in the afternoon that would not require her to be using her computer and so her log out time should not be the only indicator of when she left for the day. She was not sure if she would have remained logged in or would have logged off her computer prior to going on to these other tasks.

14. [REDACTED] provided a written response to the SAO investigation, maintaining that her original scheduled hours, from 2008 on, were 6:00 am to 4:00 pm and reflected a lunch period. When told she would need to show a lunch break on her PTA, she changed the hours to 5:30 am to 4:00 pm to reflect a half hour lunch. She said she had not been instructed by any of her supervisors over the years that this was unacceptable, or she most likely would have changed from the 4/10 to a 5/8 schedule because a 5:30 am arrival was not possible for her.

15. The DOH internal investigation found it “more likely than not” that [REDACTED] provided false information on her PTA when she documented that she was arriving at 5:30 am. Her average arrival time was 6:16 am. Although her log out times on her computer were an average of 40 minutes before the end of her scheduled shift they were unable to determine with certainty that she was leaving work before the end of her shift. The internal investigation acknowledged that supervisory oversight including review of her submitted PTA’s could have been more attentive. Several factors including organizational change, supervisor turnover and changes, and workstation changes and logistics contributed.

16. Following the internal investigation findings, [REDACTED] was suspended without pay for two weeks resulting in a loss of pay of \$2,377.77.

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 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 a personal benefit when she was paid for time she did not work, 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. It is a mitigating factor that supervisory oversight of [REDACTED] could have been more stringent. It is a mitigating factor that [REDACTED] was suspended without pay, costing her \$2,377.77.

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 one thousand two hundred dollars (\$1,200) for the violations associated with RCW 42.52.

12. The civil penalty in the amount of one thousand two hundred dollars (\$1,200) 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] _____ Date
4.19.17
Respondent

Presented by:

Kate Reynolds _____ Date
KATE REYNOLDS 5/2/17
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;

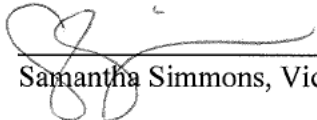
MODIFIED. This stipulation will become the order of the Board if the

Respondent approves* the following modification(s):


DATED this 12th day of May, 2017



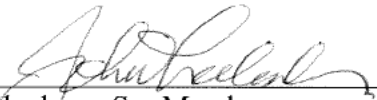
Anna Dudek Ross, Chair



Samantha Simmons, Vice-Chair



Lisa Marsh, Member



John Ladenburg, Sr., Member



Shirley Battan, Member

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

[REDACTED], Respondent Date