

BEFORE THE WASHINGTON STATE
EXECUTIVE ETHICS BOARD

In the Matter of:

██████████

Respondent.

No. 2016-049

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 July 19, 2016, the Executive Ethics Board (Board) received a complaint alleging that ██████████ Transportation Engineer 3 with the Washington State Department of Transportation (WSDOT), may have violated the Ethics in Public Service Act by using state resources for his private benefit and gain by using a state Orca Card to pay for personal commute trips from home to work. The complaint further alleged that on occasion ██████████ would use the state Orca Card to pay for personal trips on days when he was not working.

2. [REDACTED] has been employed by WSDOT since June 18, 2001. For all times pertinent to this investigation, [REDACTED] was employed as a Transportation Engineer 3. [REDACTED] work schedule was Tuesday through Friday from 6:30 am to 5:00 pm.

3. Azim Sheike-Taheri (Mr. Sheike-Taheri), Assistance Regional Director, told Board staff that he reserved the office Orca Card for June 2, 2015. When he went to pick it up, he was told that it was not there and that [REDACTED] checked it out, had it for a long time, and would not return it.

4. Mr. Sheike-Taheri told Board staff that after the incident he went to discuss the issue with [REDACTED] manager, Martin Palmer (Mr. Palmer), and asked him to have [REDACTED] return the card.

5. Mr. Palmer sent [REDACTED] an email requesting he give the Orca Card back right away.

6. Mr. Sheike-Taheri then contacted the Commute Trip Reduction (CRT) Coordinator, Patrick Sampson-Babineau (Mr. Sampson-Babineau), to ask him to have [REDACTED] return the Orca card and determine the card's usage.

7. Mr. Sampson-Babineau sent an email to James Hermanson at King County requesting a complete trip history for the Orca Card checked out by [REDACTED] Orca Card # 10573995. On June 17, 2015, Mr. Sampson-Babineau received the complete history of use for Orca Card #10573995 for the period of January 1 through June 11, 2015.

8. Donna Danninger (Ms. Danninger), WSDOT Northwest Region Office Receptionist, indicated in her response to Board staff that she has was responsible for six Orca Cards. She stated that the cards were to be used only for official WSDOT business.

9. Ms. Danninger indicated that [REDACTED] would request the Orca Card often and that there were times that she had to call him to return it. Ms. Danninger further stated that most of the time she called him or whenever she would see him she would ask for it and he would tell her that he

needed it to go to Seattle. She added that the last time he had the Orca Card; he kept it for many weeks.

10. Mr. Sampson-Babineau indicated in his response to Board staff that he contacted Mr. [REDACTED] in late May or early June 2015 to discuss with [REDACTED] that he needed to return the card, that he needed to follow the sign-out procedures and that other people needed to use the card as well. Mr. Sampson-Babineau informed his supervisor and [REDACTED] supervisor to get the Orca Card back from him.

11. Ms. Danninger indicated in a response to Board staff that her records show [REDACTED] checked out an Orca Card on January 2 and returned in on June 2, 2015.

12. [REDACTED] told Board staff that he was never told that he needed to return the Orca card and that when he was notified that he needed to return it, he did so.

13. Kathleen Oberman (Ms. Oberman), Human Resource (HR) Manager, indicated in her response to Board staff that she got the identification number for the Orca Card used by [REDACTED] from Mr. Sampson-Babineau. Once she had the unique card number, she contacted King County Metro (KCM) to get a detailed use history showing dates, times, and bus route numbers where the card was used.

14. Ms. Oberman indicated to Board staff that once she had the use log, she compared it to [REDACTED] timesheets, his Outlook calendar, and state vehicle log for the vehicle [REDACTED] checked out to conduct WSDOT business. Mr. Oberman further stated that she asked [REDACTED] if he could identify one business use of the Orca Card and he could not identify one single time he used the card for a business purpose.

15. Ms. Oberman's review of [REDACTED] use of the Orca Card showed that all of Mr. [REDACTED] use of the Orca Card was outside his normal business hours stating, "[t]here was not one occurrence where the Orca Card was used during his normal working hours."

16. Ms. Oberman also indicated in her response to Board staff that because [REDACTED] had the Orca Card from January to June of 2015, and did not return it, even while he was on vacation for over a two-month period (January/February 2015), no one else who needed it for state business had access to it.

17. Ms. Oberman further indicated in her response to Board staff that on more than one occasion the Orca Card was used at Sea-Tac Airport and that it appeared the use coincided with the beginning and end of [REDACTED] vacation. She believes that [REDACTED] used the Orca Card to get to and from the airport for his personal use.

18. Ms. Oberman confirmed that the Orca Card in question had a unique identifying number #10573995, commonly referred to as card # 95.

19. A summary of [REDACTED] personal use of the WSDOT Orca Card is shown below for the period of January 2 through June 2, 2015:

<u>Month of Use</u>	<u>Trips/Work days</u>	<u>Trips/Days off</u>	<u>Cost to WSDOT</u>
January 1-12	8	8	\$38.00
February 10-28	21	12	\$80.75
March 1-31	44	21	\$172.75
April 1-30	50	14	\$167.25
May 1-4	4	6	\$26.50
June 1-2	<u>1</u>	<u>4</u>	<u>\$13.00</u>
TOTALS	139	54	\$498.25

20. [REDACTED] resigned from state service on September 30, 2015. [REDACTED] resignation came prior to the completion of the WSDOT internal investigation of this and one other personnel matter.

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 by using the state Orca Card for his personal use 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. In the matter at hand, it is a mitigating factor that [REDACTED] no longer works for the state.

D. STIPULATION AND AGREED ORDER

1. Pursuant to chapter 42.52 RCW, the Executive Ethics Board has jurisdiction over Al Firouzi 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 seven-hundred fifty dollars (\$750) for the violations associated with RCW 42.52.

12. The civil penalty in the amount of seven-hundred fifty dollars (\$750) 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

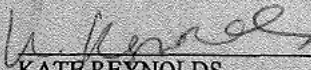
I, [REDACTED], hereby certify that I have read this stipulation in its entirety, that my counsel of record, if any, has fully explained the legal significance and consequence of it. I further certify that I fully understand and agree to all of it, and that it may be presented to the Board without my 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]
Respondent

7/13/2017

Date

Presented by:


KATE REYNOLDS
Executive Director

7/13/17
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

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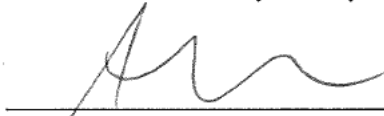
ACCEPTED in its entirety;

REJECTED in its entirety;

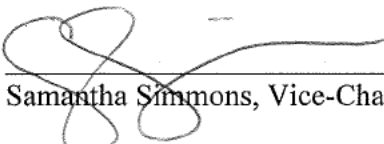
MODIFIED. This stipulation will become the order of the Board if the

Respondent approves* the following modification(s):


DATED this 14th day of July, 2017



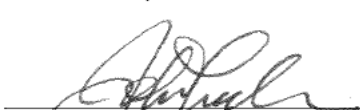
Anna Dudek Ross, Chair




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 _____