

AUG 21 2017

GOVERNMENT COMPLIANCE  
& ENFORCEMENT

BEFORE THE WASHINGTON STATE  
EXECUTIVE ETHICS BOARD

In the Matter of:

██████████,

Respondent.

No. 2016-051

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 20, 2016, the Executive Ethics Board (Board) received a complaint alleging that ██████████, Office Assistant at the Department of Corrections (DOC) Washington Correction Center (WCC), may have violated the Ethics in Public Service Act by taking time off from work without submitting the proper leave slips.

2. ██████████ has been employed by DOC for 10 years and for all times pertinent to this investigation was an Office Assistant 3, providing support to WCC Grievance Coordinators located in the grievance office within WCC.

3. WCC is a highly secure correctional institution. Entry into the WCC facility requires employees to checkout their assigned keys using the Key Watcher System and return those keys prior to leaving the WCC grounds.

4. On August 1, 2015, [REDACTED] was on an alternate work schedule of Monday through Friday, 6:00 am through 2:30 pm, with a 30 minute lunch period.

5. Gail Robbins (Ms. Robbins), [REDACTED] supervisor, indicated in her response to Board staff that she would allow [REDACTED] to flex her schedule to accommodate taking time off to care for her pregnant daughter and for [REDACTED] medical appointments for an LNI claimed injury.

6. Ms. Robbins indicated in her response to Board staff that there is no time clock to track [REDACTED]'s time. She would normally be in the office when [REDACTED] arrived and she would just note the time when she arrived.

7. [REDACTED] indicated in a response to Board staff that she would often go out on breaks and she would return her keys back to the Key Watcher Kiosk because it was not necessary for her to have her keys to get into her office when her supervisor was already there. She said that she would also occasionally return her keys to save time later but that she would still be at work.

8. A review of the Key Watcher Logs from February 18, 2016 through July 29, 2016, indicated that Ms. Mann was absent from work on nine days without submitting a leave slip. Of the nine days, there were five days in which Ms. Robbins was also not at work. Based on the information from [REDACTED] and Ms. Robbins, if Ms. Robbins was not at work, [REDACTED] would need to retrieve the keys from the Key Watcher System to get into the office. Those five days were:

- Friday, May 6, 2016
- Friday, June 24, 2016
- Thursday, June 30, 2016
- Tuesday, July 5, 2016
- Friday, July 22, 2016

9. For the period reviewed there are 117 workdays. ██████ took off three holidays (Personal, Memorial, 4th of July) and took 24 days of leave. Of the remaining 90 days, ██████ failed to submit leave for nine, eight-hour workdays leaving 81 days where she was at work. Of those 81 days, on average she left work early or arrived late for 2.9 hours per day.

10. For 47 of the 80 days, Ms. Robbins and ██████ left WCC within the same minute. Of those 47 days, ██████ submitted leave on four days and on two of the four days Ms. Robbins<sup>1</sup> and ██████ submitted leave for the same time and amount. See below:

Date	Arrived	Departed	Leave Type	Time owed
(F) 3/25/16				
██████	5:48 AM	10:04 AM	S/L (2 hrs) 10-12	1h:44m
Robbins	5:35 AM	10:04 AM	none	3h:29m
(M) 5/16/16				
██████	6:17 AM	10:50 AM	A/L (1hr)11-12	2h:27m
Robbins	5:14 AM	10:50 AM	A/L (1hr)11-12	1h:54m
(M) 5/19/16				
██████	7:46 AM	9:28 AM	S/L(3 hrs) 9:30-12:30	3hrs:18m
Robbins	5:45 AM	9:28 AM	none	4hrs:17m
(Th) 6/9/16				
██████	6:35 AM	10:21 AM	S/L (3 hrs) 10:15-1:15	1h:14 m
Robbins	5:29 AM	10:21 AM	S/L (3 hrs) 10:15-1:15	0hrs:08m

11. On March 25, 2016, Ms. Robbins sent ██████ an email that said, "If you leave early today put in a slip, I put one in for two hours. Don't trust Barb." ██████ replied, "ok." Both ██████ and Ms. Robbins departed the facility at 10:04 am and did not return. ██████ submitted two hours of sick leave. Leaving one hour and 44 minutes of work time unaccounted.

<sup>1</sup> Robbins: Time owed based on a straight eight hour work day with no lunch break.

<sup>2</sup> ██████: Time owed based on an eight hour work day with a 30 minute lunch break for times over 5 hours worked. Less than five used eight hours.

12. From the review of the Key Watcher System, emails and the witness log, it appears that for the period of February 18 through July 25, 2016, [REDACTED] received pay for at least 308 hours of time that she was not at work and did not submit the proper leave slips.

13. For the period of February 18 through July 29, 2016, Board staff was unable to find any information that would show that [REDACTED] was at work or that she submitted any form of leave for the entire day on nine different occasions. See table below for the details:

<u>Date</u>	<u>Notes : DNR – Did Not Remove keys from Key Watcher</u>
Tuesday, February 23, 2016	DNR, no emails sent.
Monday, March 14, 2016	DNR, no emails sent.
Wednesday, May 4, 2016	DNR, no emails sent.
Friday, May 6, 2016	DNR, no emails sent.
Friday, May 20, 2016	DNR, Witness did not see, no emails sent, Robbins also DNR
Friday, June 24, 2016	DNR, Witness did not see, no emails sent, Robbins also DNR
Thursday, June 30	DNR, Witness did not see, no emails sent, Robbins also DNR
Tuesday, July 5, 2016	DNR, Witness did not see, no emails sent, Robbins also DNR
Friday, July 22, 2016	DNR, Witness did not see, no emails sent, Robbins also DNR

14. [REDACTED] indicated in her response that she could not recall a specific day but that if she took time off she would submit a leave slip, make it up during the week, or come in on the weekend to make up the time she took off.

15. There was no electronic or documentary evidence found to support [REDACTED] statement that she would make up time by coming to work earlier, staying late, or working on the weekends.

16. Co-worker #1 indicated in their response to Board staff that they believe [REDACTED] and Ms. Robbins are gone a lot, mostly in the afternoon. Co-worker# 1 further indicated that they believed that both [REDACTED] and Ms. Robbins came in to work around 5:00 am and that [REDACTED] and Ms. Robbins has told them that they would come in on the weekends to make up the time.

17. Co-worker #1 indicated in their response to Board staff that they felt that Ms. [REDACTED] absence from work was affecting their ability to do their job.

18. [REDACTED] stated in her response that she would sometimes arrive at the facility between 4:00 am and 5:30 am. The Key Watcher System data indicated that for the period of February 18 through to July 25, 2016, [REDACTED] never removed her keys from the Key Watcher System earlier than 4:49 am and only removed her keys 12 times before 5:30 am. On all twelve of the days she came in before 5:30 am, she left early and did not work eight hours for the day. There were no entries in the Key Watcher System that would show that [REDACTED] or Ms. Robbins worked on the weekend.

19. Co-worker #2 indicated in a response to Board staff that they would often see Ms. [REDACTED] and Ms. Robbins leaving together near lunchtime and they would not return.

20. Co-worker #2 indicated in their response that because of the close proximity to the workspace of [REDACTED] and Ms. Robbins they were often asked if they knew their whereabouts. [REDACTED] and Ms. Robbins have told them that they come in early and go home early. Co-worker #2 further indicated that they do not know when [REDACTED] and Ms. Robbins arrive but that they would have to be coming in to work at 2:00 or 3:00 am to put in their required 8-hour day because they are leaving at about 11:00 am each day.

## **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, prior to April 2016, 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.

WAC 292-110-010 Use of state resources, after April 2016, states, in part:

.....  
**(3) Permitted personal use of state resources.** This subsection applies to any use of state resources not included in subsection (2) of this section.

- (a) A state officer or employee's use of state resources is de minimis 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 state officer's or employee's official duties;
  - (v) The use does not compromise the security or integrity of state property, information systems, or software;
  - (vi) The use is not for the purpose of conducting an outside business, in furtherance of private employment, or to realize a private financial gain; and
  - (vii) The use is not for supporting, promoting the interests of, or soliciting for an outside organization or group.

3. Based on the stipulated facts above, [REDACTED] used state resources for a personal benefit for herself or others 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 and the violations were continuous in nature.

### 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 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.

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 four-thousand dollars (\$4,000). The Board agrees to suspend one thousand dollars (\$1,000) on the condition that [REDACTED]





**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

✓

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 8<sup>th</sup> day of September 2017



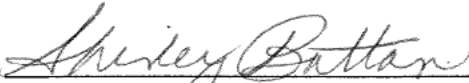
Anna Dudek Ross, Chair



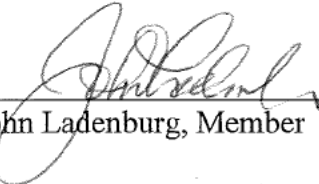
Samantha Simmons, Vice-Chair



Lisa Marsh, Member



Shirley Battan, Member



John Ladenburg, Member

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

[REDACTED], Respondent \_\_\_\_\_ Date