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**BEFORE THE WASHINGTON STATE
EXECUTIVE ETHICS BOARD**

In the matter of:

[REDACTED]

Respondent.

OAH NO. 01-2019-AGO-00030
EEB NO. 2016-059

FINDINGS OF FACT, CONCLUSIONS
OF LAW, AND FINAL ORDER

I. PROCEDURAL HISTORY

1.1 On July 21, 2016, the Executive Ethics Board (Board) initiated a complaint after an investigation and referral by the State Auditor’s Office (SAO) regarding personal use of the Seattle Colleges procurement card (Pro-card) by [REDACTED].

1.2 On January 19, 2018, the Board found reasonable cause to believe that a violation of the Ethics Act was committed.

1.3 On February 25, 2018, the Executive Ethics Board Staff (Board Staff) and the Respondent filed Stipulated Facts and Conclusions of Law (Stipulation), resolving all issues in the case with the exception of determining the appropriate penalty, if any.

1.4 After due and proper notice, a hearing was held on the appropriate penalty in this matter. The hearing was held at the Board offices at Bristol Court in Olympia, Washington, convening on July 12, 2019. ALJ TJ Martin from the Office of Administrative Hearings conducted the proceedings, and Board Chair Shirley Battan, and members Lisa Marsh,

1 Anna Dudek Ross, and Gerri Davis were present. Also present were Assistant Attorneys General
2 Bruce L. Turcott and Michelle A. Carr, legal advisors to the Board.

3 1.5 Chad C. Standifer, Assistant Attorney General for Board Staff, was present. The
4 Board's Executive Director, Kate Reynolds, and other Board Staff members were present.

5 1.6 Louis Manuta, King County Department of Public Defense, appeared
6 telephonically, representing [REDACTED].

7 1.7 Board Staff filed Board Staff's Penalty Brief.

8 1.8 [REDACTED] filed Respondent's Brief.

9 1.9 The proceedings were recorded and open to the public.

10 1.10 The hearing was adjourned on July 12, 2019.

11 Based on the Stipulation and evidence presented, the Board enters the following Findings
12 of Fact, Conclusions of Law, and Final Order:

13 II. FINDINGS OF FACT

14 2.1 Seattle Colleges is comprised of three campus locations. [REDACTED] worked from
15 the Seattle Central College (SCC) campus. [REDACTED] served as the Director of Distance
16 Learning for SCC since February 1993. For all times pertinent to this investigation, she was
17 employed as the Director of Distance Learning. In February 2015, following the investigation,
18 [REDACTED] was terminated from employment.

19 2.2 The Distance Education Department is comprised of three departments with a
20 Dean and five employees. A Dean was assigned to oversee the Department in 2014. Until then,
21 in her position as Director, [REDACTED] essentially oversaw the Department.

22 2.3 Seattle Colleges uses a central procurement card-processing group that is
23 responsible for issuing credit cards, called "Pro-cards", setting guidelines for use, performing
24 various reviews and audits of credit card activity, processing payments and other administrative
25 functions.

26 2.4 [REDACTED] was issued a Pro-card in December 2008 and signed a cardholder

1 agreement, which includes the following language:

- 2 • I understand I am the only person authorized to use this card and shall use it only
3 for the official business of the Seattle Colleges.
- 4 • I understand that the use of this card for personal purchases may constitute fraud
5 and could be cause for serious disciplinary action.
- 6 • I agree to adhere to the provisions of Chapter 42.52 RCW Ethics in Public
7 Service.
- 8 • I further abide by restrictions related to the Pro-Cards as specified in the General
9 Guidelines for Procurement Cards.

6 2.5 Cards were issued through US Bank. Each month, cardholders were required to
7 review and accept or dispute each transaction made during the statement period. Cardholders
8 logged onto US Bank online to review detailed transaction information. Cardholders reviewed
9 transactions by checking a box next to the transaction. Once the cardholder reviewed the monthly
10 statement details, they provided the reviewed statement and supporting documentation for
11 transactions to their manager or purchase card-approving officer. The officer or manager
12 reviewed the documentation to ensure transactions were for business purpose and were necessary
13 and reasonable. The manager then signed and dated the statement as indication of their approval.
14 The cardholder maintained documentation of the monthly review at their respective location.

15 2.6 Central Procurement is responsible for performing audits of credit cards,
16 monitoring whether credit card statements have been reviewed online by cardholders, and
17 monitoring card activity for inappropriate transactions. Additionally, at random, they run reports
18 from US Bank by commodity code. There are certain commodity codes that employees are
19 restricted from making purchases in. These codes include hotels, bars, financial institutions,
20 jewelry stores and various others. The report is run for all cards for a four to six-month period.
21 The reports are then reviewed for activity in these particular commodity codes.

22 2.7 In January 21, 2015, Miguel Gatmaytan (Mr. Gatmaytan), Purchasing Card
23 Program Specialist, performed such a review. He identified a purchase of show tickets (\$199.98)
24 made on January 18, 2015, at the Luxor Hotel in Las Vegas on the card assigned to [REDACTED].
25 School officials confirmed that [REDACTED] was on a scheduled vacation to Las Vegas from
26 January 20-26, 2015. This discovery led to further review of [REDACTED] card activity.

1 2.8 Mr. Gatmaytan identified several other questionable purchases and alerted school
2 officials including: ██████████ supervisor, Stephanie Delaney (Ms. Delaney), Dean of Extended
3 Learning; Craig Bush (Mr. Bush), Procurement Director; Kurt Buttleman (Mr. Buttleman),
4 Vice Chancellor for Finance and Technology; and Michael Pham (Mr. Pham), Vice President of
5 Administrative Services. Mr. Buttleman contacted the SAO to report the suspected fraudulent
6 activity.

7 2.9 In addition to the purchase of show tickets at the Luxor Hotel, Mr. Gatmaytan's
8 initial review included transactions from July 1, 2014, to January 16, 2015. He discovered a high
9 volume of activity, totaling 444 transactions and approximately \$30,198 worth of purchases.

10 Questionable transactions included:

- 11 • Amazon
- 12 • JCPenney.com
- 13 • Bare Necessities (Women's lingerie, bras, swimwear, etc.)
- 14 • Zulily (Online clothing store)
- 15 • Sephora.com (Cosmetics)
- 16 • Etsy.com
- 17 • Macy's.com
- 18 • Groupon
- 19 • Columbia Sportswear
- 20 • T-Mobile
- 21 • Avon Online

22 2.10 Although the school did not know the full extent of the misappropriation at the
23 time, Human Resources Director Kathryn Woodley (Ms. Woodley) met with ██████████ and her
24 spouse, at ██████████'s request, on January 29, 2015, to discuss some of the initial audit findings.

25 2.11 Ms. Woodley provided written documentation of that meeting to school officials.
26 Ms. Woodley indicated that ██████████ admitted to using the school Pro-card for personal
purchases. During the meeting, ██████████ asked her if she knew the amount she had charged to
the card. Ms. Woodley told her that the audit was ongoing, but seemed to be in the neighborhood
of \$25,000. ██████████ spouse offered that they might be able to repay the college if that was
all that was owed. Ms. Woodley advised them that the amount was only an estimate and the
review was ongoing.

1 2.12 During the meeting [REDACTED] told Ms. Woodley that she did not know why she
2 had used the card for personal purchases, but seemed to indicate that the spending was linked to
3 depression that she has been treated for in the past. [REDACTED] mentioned a serious auto accident
4 that she had been in during 2014 as contributing to her increased depression and resulting
5 spending.

6 2.13 On January 30, 2015 [REDACTED] attended a scheduled audit meeting with
7 Ms. Woodley as well as Mr. Pham and Ms. Delaney. Her union representative, Nancy Kennedy
8 (Ms. Kennedy), was also present [REDACTED] was presented with her credit card transactions
9 dating back to July 2014 (approximately 6 months) which totaled approximately \$30,000.
10 [REDACTED] was advised that according to their initial review, more than \$25,000 worth of the
11 purchases in that six-month period were for personal use. [REDACTED] did not deny many of her
12 purchases were personal and she provided some receipts for her personal purchases.

13 2.14 Ms. Woodley's documentation of the meeting indicates that [REDACTED] could not
14 explain why she had used the card for personal use. Some of the items she recalled purchasing,
15 others she did not. [REDACTED] told them that not all of the items she purchased were for personal
16 use; some were for use by the department. She again inquired about the possibility of making
17 restitution. She also acknowledged that the personal purchases had been occurring for many
18 years, not just since July 2014.

19 2.15 Ms. Woodley also noted that during the meeting, [REDACTED] did not seem very
20 coherent. She was crying and apologizing for her actions. When told by Mr. Pham there was the
21 potential for criminal charges, [REDACTED] "completely broke down and began sobbing
22 uncontrollably." The meeting adjourned shortly after.

23 2.16 On February 4, 2015, following a Loudermill hearing, [REDACTED] was dismissed
24 from employment effective February 5, 2015.

25 2.17 As the situation continued to emerge and school officials began to better
26 understand the scope of the fraudulent purchases, the investigation was turned over to the SAO.

1 Seattle Colleges facilitated the investigation by providing much of the supporting
2 documentation.

3 2.18 The initial review by the SAO determined several things:

- 4 • The SAO review period of ██████ activity was from 2009-2015, when US
- 5 Bank credit card statements were available.
- 6 • From July 2009 through January 2015, there were 1,651 transactions totaling
- 7 \$163,675 on the cards issued to ██████
- 8 • After review of card activity and supporting documentation the SAO separated
- 9 ██████ transactions into categories (legitimate, misappropriated,
- 10 questionable)

Legitimate	\$ 66,793
Misappropriated	\$ 50,712
Questionable	\$ 46,169

11 2.19 After review of ██████'s transactions, the top five vendors were selected to
12 subpoena for supporting documentation.

- 13 • Amazon: \$29,791.32
- 14 • Apple: \$9,890.05
- 15 • Staples: \$5,742.28
- 16 • Office Depot: \$4,636.21
- 17 • Verizon: \$3,740.75

18 2.20 For purposes of this investigation, Board staff examined ██████ Pro-card
19 transactions for 2013 and 2014 as well as the period of January 1-21, 2015, after which
20 ██████ card access was turned off.

21 2.21 In January 2015, ██████ used her Pro-card to make 81 transactions. Of these,
22 only one transaction was deemed legitimate. Sixty-seven (67) transactions were identified as
23 misappropriated, and thirteen (13) were identified as questionable.

Type of Transaction	Number of Transactions	Cost
Misappropriated	67	\$ 3,515.57
Questionable	13	\$ 765.01
Legitimate	1	\$ 151.13

24 2.22 ██████'s January 2015 transactions included some of the following purchases:
25
26

- **Amazon:** Forty-Five (45) transactions totaling \$1,498.34. Items included clothing and shoes, jewelry, makeup and skincare products, exercise products and housewares.
- **Etsy.com:** Five transactions totaling \$215.83 for handmade and vintage items.
- **Zulily:** Three transactions totaling \$618.83 for clothing.
- **Luxor Show tickets** (Las Vegas): totaling \$199.98.

2.23 In 2014 [REDACTED] used her Pro-card for 1,193 transactions totaling \$50,336. Of the 1,193 transactions, 754 transactions were identified as transactions involving misappropriation and 323 transactions were identified as questionable.

Type of Transaction	Number of Transactions	Cost
Misappropriated	754	\$32,349.12
Questionable	323	\$ 8,147.27
Legitimate	116	\$12,271.66

2.24 The majority of [REDACTED]'s 2014 misappropriated transactions were purchases made through Amazon, 445 personal transactions totaling \$19,415. Purchases included:

- Numerous pieces of jewelry and men's and women's watches (10) totaling over \$1,900.
- Twenty-six (26) pair of men's and women's running shoes/casual shoes/slippers, totaling over \$2,100 (several pairs were returned to Amazon).
- Exercise related items (Fitbit and accessories, clothing, workout equipment, vitamins, supplements etc.).
- ASUS Gaming Laptop \$1,960.04.
- Apple iMac desktop computer \$1,679.49.
- Ricoh Digital Camera \$264.95.
- Seattle Seahawks Commemorative Helmet \$249.99.
- Portable Air Conditioner Unit \$249.99.
- Numerous handbags, purses, men's and women's wallets.
- Household items and toiletries (laundry detergent, medicines, vitamins, beauty/skincare products).

2.25 In addition to Amazon [REDACTED] made a number of personal purchases including:

- **Apple:** Four MacBook Air laptops were purchased in July, September and October totaling \$5,205.64. The items were shipped to [REDACTED] personal address. The IT Department was not involved in the purchases, and the items could not be located during a fixed asset inventory.
- **Office Depot and Staples:** [REDACTED] purchased gifts cards (Visa, MasterCard, Starbucks and various restaurants etc.) totaling \$1,927.21. Gift card purchase are strictly prohibited per college policy and OFM.
- **Zulily:** Ten separate clothing purchases totaling \$2,393.57.

- **Columbia Sportswear:** Three separate purchases during November and December 2014 for jackets, gloves and hats costing \$747.45.

2.26 In 201 [REDACTED] used the school issued Pro-card for 297 transactions totaling \$27,886. The SAO investigation determined ninety-six (96) transactions were misappropriations totaling \$5,150.58. Seventy-three (73) transactions were determined to be questionable totaling \$9,203.96.

Type of Transaction	Number of Transactions	Cost
Misappropriated	96	\$ 5,180.58
Questionable	73	\$ 9,203.96
Legitimate	128	\$13,502.20

2.27 The majority of [REDACTED]'s 2013 misappropriated transactions were made through Amazon, and included:

- Beauty, make-up and skin care products \$465.90
- Sling Media Slingbox (remote streaming device for TV) \$326.31
- Slender Tone Flex Pro Arms training system/Flex Belt ab belt \$293.05
- Mattress topper, mattress pad covers, sheets, pillowcases \$238.67
- Epson Photo scanner \$211.28
- Beats wireless bluetooth speaker \$199.95
- Bonavita 1800 Coffee maker \$164.24
- Adult costumes and costume accessories (Grecian Goddess, Julius Caesar, Sweet Daddy Beaujolais, Discolicious adult costume/wig) \$137.87
- Women's Doc Marten Boots \$113.87.

2.28 Other vendors with whom [REDACTED] made fraudulent transactions in 2013 included:

- **Staples:** Gift cards to various merchants totaling \$350.00
- **Cheap Moving Boxes:** \$327.17
- **USPS:** Postal Shipping costs for items shipped to family in Vallejo, CA \$116.45

2.29 In reviewing [REDACTED]'s transactions from 2009-2015 Board staff determined that the majority of transactions (\$41,045) occurred between 2013 and January 2015.

Year	Number of Transactions	Cost
2015 (January)	67	\$ 3,515.57
2014	754	\$32,349.12
2013	96	\$ 5,180.58

2.30 In February 2017, Board staff spoke briefly with [REDACTED] said she could not explain why she began making the personal purchases using the Pro-card. She

1 mentioned her car accident in 2014, and spoke of the depression she went into because of her
2 injuries. During the conversation, ██████ asked, “do you believe in karma?” She indicated
3 that she is unable to find employment because of the incident. She said she lost her house because
4 of financial difficulties that followed.

5 2.31 Following the conversation with ██████ Board Staff learned that the King
6 County Prosecutors Office had filed theft charges in March 2017.

7 2.32 ██████ pled guilty to theft in the 1st degree in King County Superior Court on
8 February 5, 2018. As a result of ██████ plea she received 40 days confinement with 30 days
9 converted to community service. In addition, ██████ was ordered to pay \$50,712.90 in
10 restitution back to Seattle Colleges.

11 2.33 Board staff requested a penalty of \$1,000 for each violation, totaling \$3,000.
12 Board staff asserts that this penalty is appropriate in light of the criminal prosecution and
13 resulting sentence imposed on ██████.

14 2.34 ██████ contends that “the total monetary value of the theft would likely have
15 been far less had Seattle Central College employees done their due diligence” and blames other
16 employees’ failures to adequately review ██████’s credit card statements for allowing the
17 theft to continue unabated for so many years.

18 2.35 ██████r argues that because she is required to pay back the amount of
19 “misappropriated”¹ funds, “any additional penalty would be an excessive, undue punishment.”

20 2.36 ██████ also contends that no penalty should be imposed as she has already
21 been significantly penalized, including the termination of her marriage, criminal penalties,
22 deterioration of her health, and difficulties finding full-time employment at the level of her
23 former position. Further, ██████ argues that because she is no longer a public employee, a
24 penalty would not serve as a deterrent to future bad behavior.

25
26 ¹ ██████ was not required to pay back any portion of the “questionable” transactions.

III. CONCLUSIONS OF LAW

1
2 3.1 The Board has jurisdiction to hear this matter pursuant to RCW 42.52.360(1),
3 which authorizes the Board to enforce the Ethics Act with respect to employees in the executive
4 branch of state government. The Board has jurisdiction over [REDACTED], whose actions
5 occurred while she was a state employee. The complaint was filed in accordance with
6 RCW 42.52.410, the Board found reasonable cause pursuant to RCW 42.52.420, and an
7 adjudicative proceeding was conducted pursuant to RCW 42.52.430, .500. All the required
8 procedural notices have been provided.

9 3.2 The Ethics Act governs the conduct of state officers and employees. Under
10 RCW 42.52.430(5), a violation must be established by a preponderance of the evidence.

11 3.3 RCW 42.52.020 provides that no state employee:

12 [M]ay have an interest, financial or otherwise, direct or indirect, or engage in a
13 business or transaction or professional activity, or incur an obligation of any
14 nature, that is in conflict with the proper discharge of the state officer's or state
15 employee's official duties.

16 3.4 RCW 42.52.070 states:

17 Except as required to perform duties within the scope of employment, no state
18 officer or state employee may use his or her position to secure special privileges
19 or exemptions for himself or herself, or his or her spouse, child, parents, or other
20 persons.

21 3.5 RCW 42.52.160(1) states:

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

26 3.6 Based on the above stated stipulated Findings of Fact, the Board concludes that
[REDACTED], by a preponderance of the evidence, violated RCW 42.52.020 by acting in a manner
incompatible with her public duties. The Board also concludes that [REDACTED] violated
RCW 42.52.070 by using her position to secure a special privilege for herself in violation of

1 RCW 42.52.070. Finally, the Board concludes that [REDACTED] violates RCW 42.52.160 by using
2 state resources for her personal benefit.

3 3.7 Under RCW 42.52.480, the Board may impose a civil penalty of up to \$5,000 per
4 violation or three times the economic value of anything received or sought in violation of the
5 Ethics Act, whichever is greater. The Board concludes that a \$50,712 penalty is appropriate, as
6 follows: \$16,904 for [REDACTED]'s violation of RCW 42.52.020; \$16,904 for [REDACTED]
7 violation of RCW 42.52.070; and \$16,904 for [REDACTED] violation of RCW 42.52.160. The
8 factors discussed below support this penalty.

9 3.8 In determining the appropriate sanction, the Board may review the nature of the
10 violation, as well as the aggravating circumstances and mitigating factors set forth in
11 WAC 292-120-030. The Board may consider the monetary cost of the violation, including the
12 cost of the violation to the state and the value of anything received or sought in the violation. *Id.*
13 Here, the cost to the state for the illegal purchases made by [REDACTED] was substantial. [REDACTED]
14 purchased thousands of dollars of merchandise for herself and others over the course of several
15 years. Her violations were: continuing in nature; motivated by financial gain; involved criminal
16 conduct; tended to significantly reduce public respect for or in state government or state
17 government officers or employees; and involved personal gain or special privilege to the
18 violator. WAC 292-120-030(2)(a),(b),(c), (e), and (f). It is an aggravating factor that [REDACTED],
19 as the Director of Distance Learning for Seattle Central College, had significant official,
20 management, and supervisory responsibility. WAC 292-120-030(3)(d).

21 3.9 In a criminal case brought based on her conduct, [REDACTED] pled guilty to theft
22 in the 1st degree, serving 10 days confinement and 30 days community service, and was ordered
23 to pay \$50,712.90 in restitution back to Seattle Colleges. The Board considered [REDACTED]
24 prior corrective action and recovery of damages to the state as mitigating factors under WAC
25 292-120-030(4)(a) and (b) in this case when it decided not to penalize a greater amount.

1 3.10 Based on the factors discussed above, and the overall egregious nature of the
2 violations in this matter, the Board does not find that waiving the imposition of a penalty as
3 requested by [REDACTED] would be appropriate.

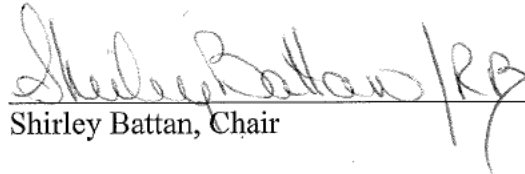
4 **IV. FINAL ORDER**

5 4.1 Based upon the foregoing Findings of Fact and Conclusions of Law, it is hereby
6 ordered that Queenie Baker is assessed a total monetary civil penalty of \$50,712 based on her
7 violations of RCW 42.52.020, RCW 42.52.070 and RCW 42.52.160. The Board suspends
8 \$45,641 on the condition that if [REDACTED] ever returns to state employment she commits no
9 further violations of RCW 42.52 for a period of two years from the date of employment.

10 4.2 The total amount of \$5,071 is payable in full within 90 days of the effective date
11 of this order.

12
13 DATED this 28th day of August 2019.

14 WASHINGTON STATE EXECUTIVE ETHICS BOARD

15 
16 _____
17 Shirley Battan, Chair

1 **APPEAL RIGHTS**

2 **RECONSIDERATION OF FINAL ORDER – BOARD**

3 Any party may ask the Executive Ethics Board to reconsider a Final Order. The request
4 must be in writing and must include the specific grounds or reasons for the request. The request
5 must be delivered to Board office within 10 days after the postmark date of this order.

6 The Board is deemed to have denied the request for reconsideration if, within 20 days
7 from the date the request is filed, the Board does not either dispose of the petition or serve the
8 parties with written notice specifying the date by which it will act on the petition.
9 RCW 34.05.470.

10 The Respondent is not required to ask the Board to reconsider the Final Order before
11 seeking judicial review by a superior court. RCW 34.05.470.

12 **FURTHER APPEAL RIGHTS – SUPERIOR COURT**

13 A Final Order issued by the Executive Ethics Board is subject to judicial review under
14 the Administrative Procedure Act, chapter 34.05 RCW. See RCW 42.52.440. The procedures
15 are provided in RCW 34.05.510 - .598.

16 The petition for judicial review must be filed with the superior court and served on the
17 Board and any other parties within 30 days of the date that the Board serves this Final Order on
18 the parties. RCW 34.05.542(2). Service is defined in RCW 34.05.542(4) as the date of mailing
19 or personal service.

20 A petition for review must set forth:

- 21 (1) The name and mailing address of the petitioner;
22 (2) The name and mailing address of the petitioner’s attorney, if any;
23 (3) The name and mailing address of the agency whose action is at issue;
24 (4) Identification of the agency action at issue, together with a duplicate copy, summary,
25 or brief description of the agency action;

- 1 (5) Identification of persons who were parties in any adjudicative proceedings that led to
2 the agency action;
- 3 (6) Facts to demonstrate that the petitioner is entitled to obtain judicial review;
- 4 (7) The petitioner's reasons for believing that relief should be granted; and
- 5 (8) A request for relief, specifying the type and extent of relief requested.
6 RCW 34.05.546.

7 **ENFORCEMENT OF FINAL ORDERS**

8 If there is no timely request for reconsideration, this is the Final Order of the Board. The
9 Respondent is legally obligated to pay any penalty assessed.

10 The Board will seek to enforce a Final Order in superior court and recover legal costs
11 and attorney's fees if the penalty remains unpaid and no petition for judicial review has been
12 timely filed under chapter 34.05 RCW. This action will be taken without further order by the
13 Board.