

BEFORE THE WASHINGTON STATE
EXECUTIVE ETHICS BOARD

In the Matter of:

██████████

Respondent.

No. 2016-063

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 August 18, 2016, the Executive Ethics Board (Board) received a referral from Tacoma Community College (TCC) alleging that ██████████, Public Safety Officer, may have violated the Ethics in Public Service Act by using state computer resources for his private benefit and gain.

2. ██████████ was first employed by TCC as a Public Safety Officer in October 2007. Mr. ██████████ was in that position for all times pertinent to this investigation and was assigned the swing shift, 3:00 to 11:00 pm, Monday through Friday.

3. In December 2015, TCC became aware that ██████████ might be using his work computer for non-work related personal use, i.e. watching movies, browsing the internet, using email

and that [REDACTED] accessed GoFundMe to solicit funds to change careers using a photo of himself in his TCC Public Safety Officer uniform. On December 15, 2015, TCC conducted an internal investigation into the allegations.

4. On December 15, 2015, Will Howard (Mr. Howard), [REDACTED] supervisor, interviewed [REDACTED] about his constant misuse of his state issued computer. In that interview Mr. [REDACTED] provided the following responses:

- That he was on the internet about 1.5 hours per day.
- That he remembered signing the TCC computer use form in 2008.
- That his understanding of that form was that he should not browse porn or gambling sites.
- That he had visited Facebook, shopping, job search, jokes, and sweepstake sites. He further stated that he would visit Facebook to check on the status of his terminally ill grandchild and his brother's Facebook page, that he would play points on the publishing clearinghouse sweepstakes site which is blackjack, bingo, and slots. He would earn points to increase chance of winning the grand prize.
- That he printed out some flyers that was promoting his personal business adventure of opening a bar. He further stated that he placed ads on his Facebook site for his family and friends to see but he didn't promote his business at work but said that he did print out some flyers.
- That he was wearing the TCC uniform in the picture of him on the flyers. That he put the picture on his Facebook site about a month ago.
- That he would watch movies on his personal computer three to five days a week but only on his breaks, lunches, and when it was slow.
- That he has never intentionally opened a porn site but that he has seen some stuff on Facebook and closed it immediately.
- That he spends a lot of time working on his second job's website while working at TCC indicating that he would check and answer emails related to his second job daily during his breaks.
- That he has opened internet sites and has forgotten to close them which he thinks is why it appears that he was browsing the internet longer than he actually was.

5. On March 17, 2016, Paula Sheldon (Ms. Sheldon), TCC Employment Manager, interviewed Faith Holbrook (Ms. Holbrook), Campus Public Safety Officer, and co-worker of Mr. [REDACTED]

6. Ms. Holbrook told Ms. Sheldon that she had seen [REDACTED] watching movies at work as recently as Monday, March 14th and during the week prior. She stated that [REDACTED] would watch movies a couple of times per week and that once in a while, he would watch them on his personal laptop.

Ms. Holbrook further stated that her desk was in front of [REDACTED] and she could not see what movie he was watching.

7. Ms. Holbrook stated that sometimes she would leave when he was watching a movie and when she came back one to two hours later he would still be watching.

8. Ms. Holbrook told Ms. Sheldon that she saw [REDACTED] use the state printer to print his GoFundMe page. She recalled that he was wearing his uniform and that he was trying to open up a restaurant. She also observed the flyer posted in the work space.

9. On March 17, 2016, Ms. Sheldon, interviewed Tim Wright (Mr. Wright), Campus Public Safety Officer, and co-worker of [REDACTED].

10. Mr. Wright told Ms. Sheldon that he had seen [REDACTED] watching movies four or five nights a week. Mr. Wright stated that [REDACTED] would easily watch a movie in his shift.

11. Mr. Wright told Ms. Sheldon that [REDACTED] showed him some of the movies he rented from the library. Mr. Wright stated that after [REDACTED] was talked to about watching movies by his supervisor, he would bring in his personal computer to watch movies but that he would sometimes still use the state computer.

12. Mr. Wright told Ms. Sheldon that [REDACTED] is required to lock up buildings and write tickets. Mr. Wright told Ms. Sheldon that [REDACTED] does not get around to all of his assigned buildings and they get complaints of doors left unlocked.

13. In November 2008, [REDACTED] signed the TCC Acceptable use of Information Systems and Services.

14. [REDACTED] continued to use TCC's computer resources for his personal benefit and gain after receiving the 2012 reprimand.

15. On August 17, 2016, [REDACTED] received a 10-day suspension without pay for his continued improper use of state computer resources.

16. [REDACTED] no longer works for the state.

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 private benefit 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 these types of violations significantly reduce the public respect and confidence in state government employees and they were continuous in nature. 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 [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 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 Paul Sanchez 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 fifty dollars (\$1,250) associated with the improper use of public resources, RCW 42.52.160.

12. The civil penalty in the amount of one thousand, two hundred fifty dollars (\$1,250) 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.

E. 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]

6/26/18
Date

Respondent

Presented by:

K. Reynolds
KATE REYNOLDS
Executive Director

7/13/18
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

 ✓ 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 13th day of July, 2018




John Ladenburg, Sr., Chair




Shirley Battan, Vice-Chair



Lisa Marsh, Member



Anna Dudek Ross, Member



Gerri Davis, Member

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

[REDACTED], Respondent Date