

BEFORE THE WASHINGTON STATE
EXECUTIVE ETHICS BOARD

In the Matter of:

██████████

Respondent.

No. 2016-068

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 September 21, 2016, the Executive Ethics Board (Board) received a complaint alleging that ██████████ Director of Operations, Washington State Ferries (WSF) 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 allowing his wife to use a ferry pass when he knew she no longer had the privilege to use it. The complaint also alleges that on one occasion when his wife could not find her pass he used his position to intimidate the ticket seller into allowing her to board the ferry without payment in violation of WSF policy. On October 5, 2016, the Board received a second complaint alleging that ██████████ played golf during a workday without submitting the proper leave and that he allowed two of his employees to do the same.

2. Prior to [REDACTED] appointment as the WSF Director of Operations in July of 2015, he was a member of the MMP Union. As a MMP member, [REDACTED], his spouse, and dependent children were entitled to a travel pass allowing free passage on all WSF vessels.

3. When appointed to the Director of Operations position, he became a non-represented employee and his spouse and dependent children were no longer eligible for a travel pass.

4. For the period of January 16 through October 16, 2016, Ms. Faust used her travel pass on 26 occasions. On eight of those occasions, she was traveling with [REDACTED].

5. WFS determined the cost of the 26 trips to be \$548.70. On February 17, 2017, [REDACTED] reimbursed WSF for that amount.

6. [REDACTED], as the Director of Operations, enforces the WSF Travel Pass Policy. The Travel Pass Policy¹ states, in pertinent part:

Non-Represented Administrative Personnel:

Non-represented Administrative personnel **do not** qualify for Dependent, Spouse, or retiree Travel Passes. (Emphasis added)

Violations of Pass Use

All Travel Pass use is monitored and it is the employee's responsibility to ensure their spouse and dependents pass use is in accordance with these policies.

Pass use violation is considered serious and any pass holder who violates the pass policy as outline will be subject to revocation of pass privileges and progressive discipline.

The Director of Operations and Operation Revenue Control reserves the right to collect unpaid fares associated with Travel Pass holder travel.

7. [REDACTED] indicated in his response to Board staff that he had a travel pass for 32 years and his wife had one for 19 years. [REDACTED] indicated that when he was offered the Director of

¹ The WSF Travel Pass Policy was revised in May 2016. The section regarding Non-Represented Administrative Personnel was not changed during this revision.

Operations job HR told him there would not be any changes to his benefits other than the amount of vacation leave he would accrue.

8. [REDACTED] also indicated in his response to Board staff that as soon as it was brought to his attention that his wife could not keep her pass, he forfeited her pass to the Assistant Secretary and paid the total amount due for passage.

9. The complaint also alleges that on August 12, 2016 at approximately 10:56 pm, [REDACTED] used his position as the WSF Director of Operations to intimidate a WSF ticket seller at the Edmonds passenger terminal to allow his spouse and guests to board the ferry without payment.

10. Board staff viewed the video and the seller's log of the transaction. It appears from the video and seller's log that [REDACTED] and WSF employee, Teresa Curico (Ms. Curico), used their employee passes to gain passage onto the ferry at 10:56 pm.

11. The video of the incident shows [REDACTED] on the ferry side of the turnstiles shouting back at Ms. Faust who is standing at the ticket window. It is unknown if he is shouting at [REDACTED] or the ticket seller or what is being said as the video has no sound. Shortly after the exchange, [REDACTED], Ms. Curico and an unidentified female enter through the ADA Gate.

12. From viewing the video, it also appears that [REDACTED], Ms. Curico and the female guest were allowed to gain access onto the ferry through the ADA gate to the left of the normal access point.

13. [REDACTED] indicated in his response to Board staff that he was already through the turnstiles when his wife and friend approached the tollbooth in Edmonds and he did not hear any conversation between the ticket seller and his wife. He further stated that no one shared the discussion with him. Mr. [REDACTED] also indicated that his wife was with another WSF terminal employee, Ms. Curico, and he could not imagine her allowing free passage.

14. Ms. Curico told Board staff that on the night of August 12, 2016 they were out celebrating a friend's birthday party. They were drinking but she did not feel she was under the influence. She could not remember why she, [REDACTED] and a female guest would have gone through the ADA gate to board the ferry.

15. Ms. Curico told Board staff that [REDACTED] would have used her travel pass, stating that [REDACTED] always has it with her. Ms. Curico believed that the other guests had commuter passes that they would have paid for.

16. WSF employee Warren Jackson (Mr. Jackson) was the ticket seller on duty at the Edmonds terminal at the time [REDACTED] and his wife boarded the ferry.

17. Mr. Jackson told Board staff he recalled that [REDACTED] came through his booth first and then went through the turnstile. [REDACTED] came through next. She identified herself as [REDACTED] and told him that she left her travel pass at home. Mr. Jackson told Board staff that he was aware of the WSF Travel Pass Use policy requiring that [REDACTED] pay the full fare but he did not want a confrontation with [REDACTED], so he told her to go through the ADA gate and opened the gate from inside the booth. Mr. Jackson could not recall Ms. Curico or the other female going through the ADA gate with [REDACTED].

18. Mr. Jackson told Board staff that [REDACTED] did not say anything directly to him, but he went through the turnstiles and waited for [REDACTED] to get through the gate.

19. Mr. Jackson told Board staff that the group had been drinking and they were being loud; hooting and hollering, and as [REDACTED] went through, he told him to watch out for the group behind him. Mr. Jackson stated that at no time did [REDACTED] tell him to allow his wife and the others through without payment.

Washington State Ferries Travel Pass Policy (Revised May 2016) states, in pertinent part:
Pass Use at Non-Reservation Terminals

All travel passes require the Travel Pass be provided to the seller at the time of travel.

Travel Passes must be presented to the seller separate from any other forms of identification. The seller must be able to view the front and back of the Travel Pass.

Any pass holder who is not able to provide their Travel Pass at the time of travel must pay applicable full fare.

20. The second complaint received on October 5, 2016, alleged that on August 31, 2016, Mr. [REDACTED] and two of his direct reports, Jay Mooney (Mr. Mooney) and Beth Stowell (Ms. Stowell), took the day off to play golf without submitting the proper leave.

21. The Bob Magee Memorial Golf Tournament, is sponsored by the Seattle/Pacific Northwest Area Chapter of the Council of American Master Mariners benefitting the Youth Maritime Training Activities, a non-profit organization that helps introduce young people to the maritime industry.

22. [REDACTED] indicated in a response to Board staff that the Bob Magee Memorial Golf Tournament is an event sponsored by the Council of American Master Mariners with sponsors from many companies and training institutions used by the WSF. The event provides an opportunity for WSF management to network with school representatives to learn about new educational requirements and internship possibilities. In addition to the educational groups attending, many of the Seattle based maritime organizations attend providing an opportunity to discuss recruitment issues.

23. [REDACTED] indicated in his response to Board staff that he made the decision to attend the event with two of his top managers as an off-site work event to network with other maritime educational providers and major Seattle based maritime companies.

24. Elizabeth Kosa (Ms. Kosa), Chief of Staff to the Assistant Secretary of the WSF, indicated in her response to Board staff that [REDACTED] has the authority to approve attendance of his personnel at off-site functions and if there was no cost to the state he would not be required to inform her or the Assistant Secretary Lynn Griffith (retired) (Ms. Griffith). Ms. Kosa indicated that [REDACTED] should have

informed her or Ms. Griffith of his location for the day and who would be covering for him in case there was a situation requiring [REDACTED] attention.

25. Ms. Kosa indicated in her response to Board staff that had she been informed by [REDACTED] of the golf tournament, she would have advised against it, as there are negative perceptions associated with playing golf during the work day. Ms. Kosa further indicated that she would have suggested that [REDACTED] take the day off to attend.

26. Ms. Kosa also indicated in her response to Board staff that [REDACTED] did not inform her that he and two of his top managers would be out of the office playing golf and she was unaware if Mr. [REDACTED] had discussed this with Ms. Griffith.

27. [REDACTED] indicated in his response that he had mentioned the golf event to Ms. Griffith but he did not specially ask her for permission.

B. CONCLUSIONS OF LAW

1. The Ethics in Public Service Act, Chapter 42.52 RCW, prohibits state employees from conducting activities incompatible with their public duty (conflict of interest). RCW 42.52.020 states:

No state officer or state employee may have an interest, financial or otherwise, direct or indirect, or engage in a business or transaction or professional activity, or incur an obligation of any nature, that is in conflict with the proper discharge of the state officer's or state employee's official duties.

2. The Ethics in Public Service Act, Chapter 42.52 RCW, prohibits state employees from securing special privileges. RCW 42.52.070 states:

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

3. Based on the stipulated facts, [REDACTED] allowing his wife to continue using the ferry pass after she was no longer eligible to use is in conflict with the proper discharge of his official duties in

violation of RCW 42.52.020. Additionally, [REDACTED] used his position as the Director of Ferry Operations in order to secure special privileges for his wife. These activities are in violation of RCW 42.52.070.

4. 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.

5. Based on the stipulated facts above, [REDACTED] used state resources for a private benefit in violation of RCW 42.52.160.

6. 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, they were continuous in nature, [REDACTED] was in a management position and directly responsible for holding employees accountable for ferry pass usage. In the matter at hand, it is a mitigating factor that [REDACTED] paid WSDOT for all of the free ferry trips received by his wife.

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 [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 six thousand dollars (\$6,000) associated with violations of RCW 42.52. The Board agrees to suspend two thousand dollars (\$2,000) on the condition that [REDACTED] complies with all terms and conditions of this Stipulation and Order and commits no further violations of RCW 42.52 for a period of two years from the date this agreement is executed.

12. The non-suspended portion of the civil penalty in the amount of four thousand dollars (\$4,000) 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]

1/5/18
Date

Respondent

Presented by:

L. Reynolds

KATE REYNOLDS
Executive Director

1/12/18
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 12th day of January, 2018



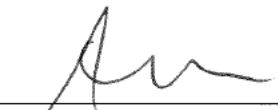
John Ladenburg, Sr., Chair




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 _____