BEFORE THE WASHINGTON STATE
EXECUTIVE ETHICS BOARD

In the Matter of:
Joanie Linder,
Respondent

EBB Case No. 2016-075

FINAL ORDER

I. PROCEDURAL HISTORY

On November 17, 2017, the Executive Ethics Board (Board) found reasonable cause to believe that the Respondent, Joanie Linder (Ms. Linder), violated the Ethics in Public Service Act while employed as the Training and Testing Coordinator at the Employment Security Department (ESD). Notice of the Reasonable Cause Determination and the right to request a hearing was served upon Ms. Linder by regular mail and certified mail on November 17, 2017. Board staff and Ms. Linder were unable to come to a settlement agreement and on August 29, 2018 Ms. Linder’s case was transferred to AAG Chad Standifer to set the case for hearing.

The Office of Administrative Hearings (OAH) mailed proper notice to Ms. Linder on September 18, 2018, for a prehearing conference scheduled for Monday, October 1, 2018. The notice containing the following instructions:

You must call in to the conference. If you fail to call in, the administrative law judge may hold you in default and dismiss your appeal. RCW 34.05.440(2).

As per the Notice of Prehearing Conference, Administrative Law Judge TJ Martin convened the prehearing conference on Monday, October 1, 2018 at 9:00 a.m. The Respondent, Joanie Linder, did not appear. At 9:15 a.m., when no one appeared on behalf of Ms. Linder, the Executive Ethics Board Staff, represented by Chad Standifer, Assistant Attorney General, moved for a default order.
Administrative Law Judge TJ Martin granted the Board staff's motion for default for the Respondent Joanie Linder's failure to appear for the prehearing conference, under RCW 34.05.440(2). The written order confirms that verbal ruling.

On Friday October 5, 2018, OAH provided Ms. Linder with notice of the OAH’s Order of Default by regular and certified mail.

Pursuant to RCW 34.05.440 (3), Ms. Linder had seven (7) days to request the Order of Default be vacated. Ms. Linder has not moved to vacate the order entered on October 5, 2018.

II. FINDINGS OF FACT

1. Employment Security Department (ESD) alleged that Joanie Linder (Ms. Linder) may have violated the Ethics in Public Service Act when she accepted a post-state employment positon with Monster Government Solutions, LLC (Monster). Monster was the contracted vendor providing software services for the new ESD WorkSource Integrated Technology System Project (WIT project). Ms. Linder worked under the contract providing training and support. The referral acknowledged that Ms. Linder was not involved with negotiations for the contract with Monster, but questioned whether she may have had any influence in the administration of the contract.

2. In December 2014, Monster signed a software license contract with ESD for the Integrated WorkSource Technology System (WIT). As the contracted vendor, Monster would provide and maintain a new technology system for ESD/WorkSource that would assist job seekers and employers with career and education counseling, training and job referral, job search assistance, and job development.

3. Ms. Linder had been employed by ESD since February 2008. In January 2015, she was hired in a non-permanent position as a Training and Testing Coordinator and was part of the ESD project team assigned to work with Monster on the WIT project.
4. Training of ESD staff prior to the “go-live” date for the WIT system began in early 2015. Ms. Linder’s Position Description Form (PDF) indicates that she was responsible for working with the contracted vendor staff, the ESD project team and key stakeholders to manage activities required to successfully execute staff user acceptance testing and train ESD staff to use and integrate the new technology/system to customers across the Workforce system.

Additional duties listed in her PDF included:

- Represent training needs across the project, including risks, issues, business processes and communication necessary to implement successful training.
- Work with the contracted vendor, responsible for all staff training deliverables including a Training Plan, materials, electronic tutorials, online help and associated job sites.
- Coordinate training events for all staff and partners including user acceptance testers. Coordination includes logistics of the LMS registration process.
- Work in partnership with contracted vendor staff, ESD project team and stakeholders to identify, monitor and report organizational readiness related to staff training.

5. Ms. Linder’s supervisor Jan Oswald (Ms. Oswald) told Board staff that as a member of the ESD project team, Ms. Linder coordinated the training program and training needs of ESD staff with Monster. Essentially acting as a conduit between ESD and Monster for training purposes.

6. Ms. Lindseth, the ESD Project Manager, told Board staff that Ms. Linder was front line staff on the project and as it developed, she was active in tracking the performance of the system. As the training lead, she needed to understand the Monster system well enough to explain the system to ESD employees.

7. Ms. Oswald said Monster had embedded employees working with the project team on the WIT project. In June 2016, shortly after the system went live, one of these embedded Monster employees quit resulting in the vacancy. Ms. Oswald said prior to applying for the position Ms. Linder discussed the position with her. Ms. Oswald said she did not see a potential ethics violation because Ms. Linder had nothing to do with negotiating the contract. She encouraged her to apply for the position.
Ms. Lindseth told Board staff that Ms. Linder was a well-qualified and conscientious employee. Ms. Linder sought guidance on the post-employment issue because she wanted to leave in good standing should she want to return to the agency.

Ms. Lindseth said shortly before Ms. Linder left to take the position, she accompanied her to a meeting with Human Resources Director, Ron Marshall to discuss the issue. Ms. Lindseth said that Mr. Marshall advised that there could potentially be an issue given Ms. Linder’s participation in the contract. Ms. Lindseth believed that at the meeting, Mr. Marshall advised her that he would forward a referral to Executive Ethics Board for review. She recalled Mr. Marshall might have briefly talked about the potential for a civil penalty if a violation was found.

Mr. Marshall told Board staff he discussed the Monster job with Ms. Linder prior to her leaving ESD. The issue was not that Ms. Linder had negotiated any part of the contract but that she worked extensively under it and would be fulfilling similar duties for Monster. He recalled the meeting was after she had already applied for the position, and shortly before she left to begin the job. He said he did not have time to seek advice on the situation from the Ethics Board prior to her leaving. He did advise her that he would make a referral to the Ethics Board.

In her response to Board staff, Ms. Linder told Board staff that at no time did she have any role in the negotiation or administration of the contract with Monster. She, along with numerous other ESD employees, provided stakeholder input throughout the course of the project but she did not supervise, control, make discretionary decisions or otherwise control Monster in their performance of or any outcomes to the WIT contract.

Ms. Linder confirmed that prior to applying for the vacant position she discussed it with the division leadership including both Ms. Oswald and Ms. Lindseth. She said both saw
no post-state employment issues given her position as a Training Coordinator and both encouraged her to apply.

13. On October 4, Ms. Linder sent the following email to the project team:

"Good afternoon team. I send you this email as notification that I am resigning from the Employment Security Department to accept a position with Monster Government Solutions. I will continue to work on the Worksource Integrated Technology project in a different capacity. My workstation will be the Maple Park location. My last official day of work with ESD will be October 14th, but I will be out of the office on annual leave the 13th and 14th. I am working on a transition plan with our division’s leadership. I will still be very involved with the Training 12s, the ETO Support Center, Refresher trainings, Weekly All User WebEx, RESEA conversations, etc."

III. CONCLUSIONS OF LAW

1. The Board has jurisdiction to hear this matter pursuant to RCW 42.52.360(1), which authorizes the Board to enforce the Ethics in Public Service Act, chapter 42.52 RCW, with respect to employees in the executive branch of state government. The Board has jurisdiction over Joanie Linder, whose actions occurred while he was a state employee.

2. RCW 42.52.080(5) – Employment after public service states, in pertinent part:

No former state officer or state employee may at any time subsequent to his or her state employment assist another person, whether or not for compensation, in any transaction involving the state in which the former state officer or state employee at any time participated during state employment. This subsection shall not be construed to prohibit any state employee or officer of a state employee organization from rendering assistance to state officers or state employees in the course of employee organization business.

RCW 42.52.010(13) defines “participate” as:

Participate means to participate in state action or a proceeding personally and substantially as a state officer or state employee, through approval, disapproval, decision, recommendation the rendering of advice, investigation, or otherwise but does not include preparation, consideration or enactment of legislation or the performance of legislative duties.
Ms. Linder, as the Training and Testing Coordinator, participated in the contract with Monster as a state employee and took post state employment position with Monster working under the same contract in violation of RCW 42.52.080.

IV. FINAL ORDER

1. Based upon the foregoing Findings of Fact and Conclusions of Law, it is hereby ordered that Joanie Linder is assessed a total monetary civil penalty of two thousand dollars ($2,000) based on her violations of RCW 42.52.080(5).

2. The total amount of two thousand dollars ($2,000) is payable in full within 90 days of the effective date of this order.

DATED this 9th day of November 2018.

John Ladenburg, Chair

Shirley Battan, Vice-Chair

Lisa Marsh, Member

Gerri Davis, Member

Anna Dudek Ross, Member
APPEAL RIGHTS

RECONSIDERATION OF FINAL ORDER – BOARD

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

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

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

FURTHER APPEAL RIGHTS – SUPERIOR COURT

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

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

A petition for review must set forth:

(1) The name and mailing address of the petitioner;

(2) The name and mailing address of the petitioner’s attorney, if any;

(3) The name and mailing address of the agency whose action is at issue;
(4) Identification of the agency action at issue, together with a duplicate copy, summary, or brief description of the agency action;
(5) Identification of persons who were parties in any adjudicative proceedings that led to the agency action;
(6) Facts to demonstrate that the petitioner is entitled to obtain judicial review;
(7) The petitioner’s reasons for believing that relief should be granted; and
(8) A request for relief, specifying the type and extent of relief requested.

RCW 34.05.545.

ENFORCEMENT OF FINAL ORDERS

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

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