

BEFORE THE WASHINGTON STATE
EXECUTIVE ETHICS BOARD

In the Matter of:

Vickie Kuchan

Respondent.

No. 2016-079

STIPULATED FACTS,
CONCLUSIONS OF LAW AND
AGREED ORDER

THIS STIPULATION is entered into by Respondent, VICKIE KUCHAN, 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 October 21, 2016, the Executive Ethics Board (Board) received a referral from the Employment Security Department (ESD) alleging that Vickie Kuchan (Ms. Kuchan), Work Source Specialist 3 at ESD, may have violated the Ethics in Public Service Act by using state computer resources for her private benefit and gain.

2. Ms. Kuchan was first employed by ESD in December 1983. For all times pertinent to this complaint Ms. Kuchan was a Worksource Specialist3.

3. On August 24, 2016, Ms. Kuchan was notified by email of the closure of her request for reasonable accommodation because all of the requests had been granted. The email stated that if she

ever required further reasonable accommodations that she should contact the Reasonable Accommodation Unit(RAU).

4. On October 5, 2016, Ms. Kuchan contacted the RAU and spoke to Stephanie Sanderson (Ms. Sanderson). Ms. Kuchan requested additional accommodations including listening to music at work and bringing her dog to work. At that time, Ms. Kuchan informed Ms. Sanderson that she had headphones and had been listening to music from YouTube for the last couple of weeks. Ms. Sanderson advised Ms. Kuchan that it would be a violation of ESD policy and state ethics laws for her to listen to music using her state computer and that was not acceptable.

5. Because of Ms. Kuchan’s admission to streaming music videos from YouTube on her state computer, ESD Human Resource Department (HR) conducted a review of Ms. Kuchan’s internet activity on her state issued computer for the period of September 5 through October 6, 2016. Based on that review, ESD found that Ms. Kuchan was using her state computer to stream music from YouTube and Google Video.

6. On October 24, 2016, Board staff received Ms. Kuchan’s hard drive from ESD.

7. Board staff reviewed the internet history found on Ms. Kuchan’s computer for the period of July 1 through October 4, 2016. A summary of what was found is shown below:

Month	Possible work days	Days visited	Number of visit	Time/Minutes	Examples of sites visited for a non-work related reason.
July	21	12	20	346	Peninsula Daily News Lecacy.com/obituaries nytimes.com ew.com/entertainment news vitals.com Olympic Medical.com haraldnet.com painconsultantspllc.com disabilitycoop.com

					people magazine.com seahawks.com nflpa.com
August	23	12	27	433	Peninsula Daily News Newmobility.com nbcnews.com directv.com dish.com bellinghamharold.com disabilityscoop.com Buzzhut.com hersecretskin.com pewtrust.com king5news.com chinchillachronicles.com thestranger.com youtube.com
September	22	16	27	489	youtube.com independent.com Peninsula Daily News.com washingtonpost.com disabilityscoop.com fivethirtyeight.com opensocietyfoundations.org olympicmedical.org justice.gov mccallsquilting.com
October	4	2	8	50	Google search youtube.com Peninsula Daily News
TOTALS	70	42	82	1,318	

8. Board staff's review of Ms. Kuchan's internet history for her access to YouTube videos provided the examples shown below. These examples indicate that the video was accessed but do not show that the video was watched in its entirety.

Youtube Title	Date/Time Accessed	Duration of video (m:s)
Willy Wonka	8/29/16 at 2:02 pm	3:55
Blazing Saddle	8/29/16 at 2:04 pm	12:10
Toyota 4- runner maintenance.	9/21/16 at 7:55 am	20:34
Best 20 X Factor Auditions of all time (HD)	9/21/16 at 2:54 pm	43:34
Youtube Popular Music playlist	9/23/16 at 12:09 pm	Unknown
Youtube Music playlist	9/23/16 at 1:38 pm	Unknown
Youtube Music playlist	9/27/16 at 10:03 am	Unknown
Youtube music playlist (top Country Music)	9/28/16 at 8:38 am	Unknown
Youtube music playlist country music	9/28/16 at 1:54 pm	Unknown
Youtube Music playlist	10/3/16 at 1:12 pm	Unknown
Youtube Music playlist	10/3/16 at 2:34 pm	Unknown
Top 20 X Factor auditions of all time	10/4/16 at 2:43 pm	43:34
Top 10 X factor auditions 2016	10/4/16 at 3:27 pm	19:30
X Factor Emotional & Inspiring Auditions	10/5/16 at 7:39 am	24:01

9. Ms. Kuchan told the ESD internal investigator that she initially thought listening to music using her state computer could be added to her reasonable accommodation request and that she was not intentionally violating policies or ethics laws.

10. On October 28, 2016, Ms. Kuchan was formally reprimanded by ESD for her inappropriate use of her state issued computer.

11. On June 30, 2017, Ms. Kuchan retired from state service.

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, Ms. Kuchan 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. In the matter at hand, it is a mitigating factor that Ms. Kuchan self-reported the violation to her agency as a part of reasonable accommodation negotiations, any violation was unintentional, when she was informed of the violation she immediately stopped, and Ms. Kuchan received a verbal reprimand from her agency.

D. STIPULATION AND AGREED ORDER

1. Pursuant to chapter 42.52 RCW, the Executive Ethics Board has jurisdiction over Vickie Kuchan 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. Vickie Kuchan 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. Vickie Kuchan 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. Vickie Kuchan waives the opportunity for a hearing, contingent upon acceptance of this stipulation by the Board, or her 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 Vickie Kuchan 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. Vickie Kuchan 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 Vickie Kuchan 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 Vickie Kuchan 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 Vickie Kuchan 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, Vickie Kuchan 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, Vickie Kuchan 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. Vickie Kuchan agrees to pay a civil penalty in the amount of one-thousand dollars (\$1,000) associated with the improper use of public resources, RCW 42.52.160.

12. The civil penalty in the amount of one-thousand dollars (\$1,000) 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.

CERTIFICATION

I, Vickie Kuchan, 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

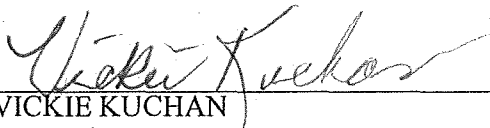
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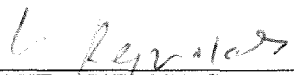
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knowingly and voluntarily waive my right to a hearing in this matter and if the Board accepts the stipulation, I understand that I will receive a signed copy.

 4/10/18
VICKIE KUCHAN Date
Respondent

Presented by:

 4/12/18
KATE REYNOLDS Date
Executive Director

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 11th day of May, 2018



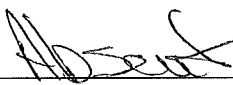
John Ladenburg Sr., Chair




Shirley Battan, Vice-Chair



Lisa Marsh, Member



Anna Dudek-Ross, Member



Gerri Davis, Member

* I, Vickie Kuchan, accept/do not accept (circle one) the proposed modification(s).

Vickie Kuchan, Respondent Date