

BEFORE THE WASHINGTON STATE
EXECUTIVE ETHICS BOARD

In the Matter of:

Michelle Owen,
Respondent.

No. 2017-015

STIPULATED FACTS,
CONCLUSIONS OF LAW AND
AGREED ORDER

THIS STIPULATION is entered into by Respondent, MICHELLE OWEN, 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 April 17, 2017, the Executive Ethics Board (Board) received a complaint from the Department of Health (DOH) alleging that Michelle Owen (Ms. Owen), Secretary Senior with Prevention and Community Health, Office of Nutrition Services (ONS) at the Department of Health (DOH), may have violated the Ethics in Public Service Act by taking time off from work without submitting the proper leave slips.

2. Ms. Owen has worked for DOH for over 15 years. At the time of the alleged violation, she was a Secretary Senior in the Division of Prevention and Community Health, ONS. One of her primary duties was an attendance keeper for the ONS. As an attendance keeper, Ms. Owen would review leave entered by employees and compare to their Positive Time and Attendance (PTA) reports.

3. In February 2016, DOH Internal Auditor, receive an anonymous complaint alleging that Ms. Owen may not be working her full work schedule on a regular basis. On February 11, 2016, the internal Auditor notified DOH Human Resource Department (HR) of the complaint. It was decided that the Internal Audit unit would conduct a preliminary review of the complaint.

4. Internal Audit reviewed Key Card entry logs and Ms. Owen's PTA reports. The PTA reports reflect the actual times an employee arrives and departs from work. Ms. Owen's work schedule was 7:00 am to 3:30 pm with a 30 minute lunch period.

5. Internal Audit reviewed the period of August 2015 through February 2016, covering 111 days worked. The review showed that Ms. Owen arrived late on average 36 minutes for each of the 111 days. Internal Audit provided their report to DOH HR.

6. The internal DOH investigation was assigned to HR Consultant April Yancy (Ms. Yancy). Along with the Key Card logs and PTAs reviewed by Internal Audit, Ms. Yancy obtained additional Key Card access data and PTAs from January 2015 through August 2015 to provide her with one full year of data to review (January 2015 through February 2016).

7. Ms. Yancy also interviewed Marquita Price (Ms. Price) on March 18, 2016. Ms. Price told Ms. Yancy that she is a back-up attendance keeper of ONS and reviews Ms. Owen's PTAs for accuracy.

8. Ms. Price told Ms. Yancy that her cubical is located next to Ms. Owen's and that Ms. Owen had to pass by her cubical to enter and exit the building.

9. Ms. Price told Ms. Yancy that she is aware of Ms. Owen's work schedule of 7:00 am to 3:30 pm but that she does not usually arrive until 7:45 am. Ms. Price further stated that there are times when Ms. Owen would leave at 10 am and not return until after lunch.

10. Ms. Price told Ms. Yancy that, "It is very distracting at work as you don't know where Ms. Owen is and work is not getting done when she is not around."

11. Ms. Price also told Ms. Yancy that Janet Charles (Ms. Charles) was Ms. Owen's previous supervisor and that her office was directly across from Ms. Owen's cubicle. She further stated that Ms. Owen's current supervisor was Chris Halsell (Mr. Halsell), who began in November 2015. Mr. Halsell's office is not located near Ms. Owen's cubicle.

12. Ms. Yancy interviewed Nancy Wallace (Ms. Wallace) on March 31, 2016. Ms. Wallace was the ONS Office Manager from September 1, 2014 through April 15, 2015. For that time period, Ms. Owen reported to Ms. Wallace. Ms. Wallace told Ms. Yancy that for the first three months she was adjusting to state employment and she did not check Ms. Owen's PTAs or notice if she was leaving before the end of her shift.

13. Ms. Wallace told Ms. Yancy that after about three months she noticed days when Ms. Owen was absent from work and the time off was not reflected on her PTA. Ms. Wallace stated that she would ask Ms. Owen about it and Ms. Owen would respond, "Oh yea, I forgot" and would correct her PTA to show the time off.

14. Ms. Yancy interviewed Ms. Charles on April 5, 2016. Ms. Charles supervised Ms. Owen between April 16, 2015 and November 2015. Ms. Charles told Ms. Yancy that her office was directly across from Ms. Owen's cubicle and that her workday started at 8:30 am. Ms. Charles told Ms. Yancy that she traveled a lot and wasn't around to see if Ms. Owen was leaving early or taking long lunches.

15. Ms. Charles told Ms. Yancy that she has received complaints from other administrative staff that Ms. Owen was not around during her toll-free line coverage shifts and that the staff cannot count on Ms. Owen to be at work on time.

16. Ms. Yancy interviewed Chris Halsell (Mr. Halsell) on April 7, 2016. Mr. Halsell had been Ms. Owen's supervisor since November 2015. Mr. Halsell confirmed that Ms. Owen's work schedule was 7:00 am to 3:30 pm with a 30 minute lunch period.

17. Mr. Halsell told Ms. Yancy that his office is not located near Ms. Owen's cubicle. Mr. Halsell stated that he would try to take walks through the office and sometimes Ms. Owen would be at her desk and other times she would not.

18. Mr. Halsell told Ms. Yancy that he had been warned when he became Ms. Owen's supervisor that people were frustrated because she was never around. Mr. Halsell admitted that he should have been paying more attention to her attendance and should have started documenting sooner.

19. Mr. Halsell told Ms. Yancy that starting on February 1, 2016 he started tracking Ms. Owen's leave against her PTAs and was coaching her by having her update her work calendar to indicate when she was out of the office so others could see. Mr. Halsell further stated that as of February 1, 2016, Ms. Owen was to text him if she was not coming in to work.

20. Mr. Halsell told Ms. Yancy that starting on February 1, 2016 he started tracking Ms. Owen's leave against her PTAs and was coaching her by having her update her work calendar to indicate when she was out of the office so others could see. Mr. Halsell further stated that as of February 1, 2016, Ms. Owen was to text him if she was not coming in to work.

21. Ms. Yancy interviewed Ms. Owen on May 9, 2016. Ms. Owen confirmed her work schedule is 7:00 am to 3:30 pm with a 30 minute lunch period and it has been that for the past five years.

22. Every PTA that Ms. Owen submitted for the period of January 5, 2015 through February 15, 2016 shows an arrival time of 7:00 am and a departure time as 3:30 pm. Ms. Yancy showed Ms. Owen a spreadsheet with Key Card Entry data that shows for that period of January 5, 2015 through February 15, 2016, Ms. Owen arrived in the building on average at 7:48 am, 48 minutes late.

23. The time period examined covers 221 working days. The data shows that on 204 days of the 221 days, Ms. Owen arrived late for a total of 9,599 minutes or almost 20 eight-hour workdays.

24. Ms. Yancy asked Ms. Owen how many times in a typical week she would leave work early. Ms. Owen replied she could not recall but if she did leave early, it was only 10 or 15 minutes.

25. Ms. Yancy provided Ms. Owen with a spreadsheet that identified 17 days where Ms. Owen was not at work for the period of January 5 through February 15, 2016. Ms. Owen responded that she was unable to recall if she was at work or not but that she always turns in leave slips for the days she takes off. Ms. Owen further stated there were days she would follow someone else into the building (tailgating) and there were some days she did not send any emails.

26. On two different occasions in this time period, Mr. Halsell had to send an email to Ms. Owen to remind her to submit leave for days that she had taken off and did not report it on her PTA.

27. Ms. Owen told Ms. Yancy that she needed to look into those days and would respond back to her in a written statement.

28. Ms. Owen provide a written statement to Ms. Yancy on May 17, 2016. The written statement indicated that there was no justifiable excuse for arriving late, that she had gotten lax and it would not happen again. She also stated that she has reviewed the spreadsheet that showed she was not at work and did not submit leave for 17 days and she understands the importance of ensuring that her supervisor is informed and grants her permission to take leave and that leave slips need to be submitted and approved. She also understands that her PTA needs to accurately reflect the time she was working.

29. Ms. Owen also indicated in her written response of May 27, 2016, that she feels she was targeted unfairly as many people are very lax in her work environment.

30. DOH's internal investigation revealed that Ms. Owen had violated DOH ethics policies and that she knowingly falsified her PTA forms to reflect hours that she did not work. As a result, Ms. Owen was suspended without pay for a two-week period effective August 8 through August 21, 2016.

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. WAC 292-110-010 Use of state resources states, prior to April 2016, in part:

.....

(2) The following are permitted uses:

- (a) Use of state resources that is reasonably related to the conduct of official state duties, or which is otherwise allowed by statute.
- (b) An agency head or designee may authorize a use of state resources that is related to an official state purpose, but not directly related to an individual employee's official duty.
- (c) An agency may authorize a specific use that promotes organizational effectiveness or enhances the job-related skills of a state officer or state employee.
- (d) A state officer or employee may make an occasional but limited personal use of state resources only if each of the following conditions are met:
 - (i) There is little or no cost to the state;
 - (ii) Any use is brief;
 - (iii) Any use occurs infrequently;
 - (iv) The use does not interfere with the performance of any officer's or employee's official duties; and
 - (v) The use does not compromise the security or integrity of state property, information, or software.

WAC 292-110-010 Use of state resources, after April 2016, states, in part:

.....

(3) Permitted personal use of state resources. This subsection applies to any use of state resources not included in subsection (2) of this section.

(a) A state officer or employee's use of state resources is de minimis only if each of the following conditions are met:

- (i) There is little or no cost to the state;
- (ii) Any use is brief;
- (iii) Any use occurs infrequently;
- (iv) The use does not interfere with the performance of any state officer's or employee's official duties;
- (v) The use does not compromise the security or integrity of state property, information systems, or software;
- (vi) The use is not for the purpose of conducting an outside business, in furtherance of private employment, or to realize a private financial gain; and
- (vii) The use is not for supporting, promoting the interests of, or soliciting for an outside organization or group.

3. Based on the stipulated facts above, Ms. Owen used state resources for a personal benefit for herself or others in violation of RCW 42.52.160 and WAC 292-110-010.

4. 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 aggravating factors that these types of violations significantly reduce the public respect and confidence in state government employees and the violations were continuous in nature. In the matter at hand, it is mitigating factor that Ms. Owen was suspended by her agency without pay for a two-week period.

D. STIPULATION AND AGREED ORDER

1. Pursuant to chapter 42.52 RCW, the Executive Ethics Board has jurisdiction over Michelle Owen 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. Michelle Owen 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. Michelle Owen 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. Michelle Owen 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 Michelle Owen 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. Michelle Owen 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 Michelle Owen and the Washington State Executive Ethics Board, the State of Washington, or other third party, which may be filed in the future.

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 Michelle Owen 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, Michelle Owen 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, Michelle Owen 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. Michelle Owen agrees to pay a civil penalty in the amount of three-thousand five-hundred dollars (\$3,500). The Board agrees to suspend one thousand dollars (\$1,000) on the condition that Michelle Owen complies with all terms and conditions of this stipulation and commits no further violations of chapter 42.52 RCW for a period of two years from the date this stipulation is signed and accepted by the Board.

12. The civil penalty in the amount of two-thousand five-hundred dollars 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, Michelle Owen, 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.

 2-2-18
MICHELLE OWEN Date
Respondent

Presented by:

 2/12/18
KATE REYNOLDS Date
Executive Director

III. 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):

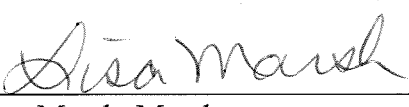
DATED this 11th day of May 2018



John Ladenburg, Chair



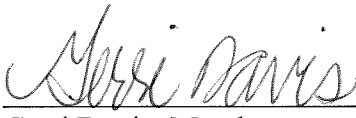
Shirley Battan, Vice-Chair



Lisa Marsh, Member



Anna Dudek Ross, Member



Gerri Davis, Member

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

Michelle Owen, Respondent Date