

BEFORE THE WASHINGTON STATE  
EXECUTIVE ETHICS BOARD

In the Matter of:

Valerie Smith,  
Respondent.

No. 2017-017

STIPULATED FACTS,  
CONCLUSIONS OF LAW AND  
AGREED ORDER

THIS STIPULATION is entered into by Respondent, VALERIE SMITH, 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 June 19, 2017, the Executive Ethics Board (Board) initiated an investigation received from an anonymous complaint alleging that Valerie Smith (Ms. Smith), Program Specialist 3 at the Department of Social and Health Services (DSHS), may have violated the Ethics in Public Service Act by using state computer resources for her private benefit and gain.

2. Ms. Smith has worked for DSHS since September 2014. For all times pertinent to this investigation Ms. Smith was a Program Specialist 3, in the Complaint Resolution Unit (CRU).

3. On August 18, 2017, Board staff was notified by the SAO that their office had initiated a whistleblower investigation involving the same respondent with similar allegations. The SAO investigator indicated that the SAO whistleblower investigation was near completion.

4. On August 20, 2017, Board staff asked the SAO for all documents, the computer hard drive and Outlook emails files they used in their investigation. On August 24, 2017, Board staff received a copy of Ms. Smith's work computer hard drive, Outlook emails files, and Excel documents detailing Ms. Smith's internet use produced by the SAO.

5. The SAO investigator examined Ms. Smith's Google Chrome visits for the period of April 21 through July 12, 2017. The SAO's examination identified more than 93.5 hours of personal internet browsing activity by Ms. Smith.

6. The SAO's examination revealed that seven of the ten weeks reviewed had more than 300 minutes of internet activity. Four of the seven weeks reviewed had over 600 minutes of personal use.

7. Board staff's examination of Ms. Smith's internet activity revealed that she was using two different internet browsers, Google Chrome and Internet Explorer. Most of her personal internet activity was through Chrome as identified by the SAO.

8. In addition to Ms. Smith's personal internet history, Board staff found 290 Word documents that were not work related. Most of the documents related to the University of Phoenix (UOPX) and non-state job resumes and cover letters.

9. Board staff reviewed Ms. Smith's emails from her state Outlook email account. For the period of May 2, 2016 through June 1, 2017, Board staff reviewed 8,920 emails sent/received by Ms. Smith. Of those 8,920 emails, Board staff discovered 1,823 emails sent by Ms. Smith that were personal and not work related. Of those 1,823 emails, 1,320 were sent to one person, "Kayla" and 137 personal emails were sent to Randy Smith.

10. Ms. Smith indicated in her response to Board staff that she has used her computer outside of her normal work functions and that a lot of her personal use occurred during times of boredom when there was little to no work. Ms. Smith further indicated that work has always been a priority and that she is one of the highest performers in her work group.

11. Ms. Smith indicated in her response to Board staff that she was a tutor for a friend that was attending the University of Phoenix and that she would help by reviewing and correcting assignments. Ms. Smith further indicated that on a couple of occasions she completed the assignments for that person.

12. Ms. Smith also indicated in her response that she used her Gmail account on her work computer. Ms. Smith further stated that she browsed internet sites that were personal and not work related but that she would often leave the sites open when she was not actively viewing the site.

13. Ms. Smith indicated in her response to Board staff that she would often bring her personal laptop and/or tablet in to work but out of pure laziness, she would not use them.

14. Ms. Smith resigned from State Service on October 19, 2017.

## **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. Smith 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. It is a mitigating factor that Ms. Smith 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 Valerie Smith 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. Valerie Smith 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. Valerie Smith 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. Valerie Smith 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 Valerie Smith 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. Valerie Smith 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 Valerie Smith 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.

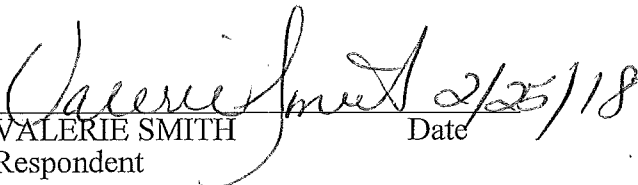
10. If the Board rejects this stipulation, or if Valerie Smith does not accept the Board's proposed modification(s), if any, this matter will be scheduled for an administrative hearing before the Board. If an administrative hearing is scheduled before the Board, Valerie Smith waives any objection to participation by any Board member at the hearing to whom this stipulation was presented for approval under WAC 292-100-090(2). Further, Valerie Smith 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. Valerie Smith agrees to pay a civil penalty in the amount of three thousand dollars (\$3,000).

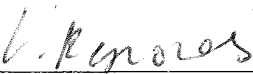
12. The civil penalty in the amount of three-thousand dollars (\$3,000) is payable in full to the Washington State Executive Ethics Board within forty-five (45) days after this stipulation is signed and accepted by the Board, or as otherwise agreed to by the parties.

## II. CERTIFICATION

I, Valerie Smith, 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.

  
VALERIE SMITH      Date  
Respondent

Presented by:

      3/1/18  
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

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ACCEPTED in its entirety;

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REJECTED in its entirety;

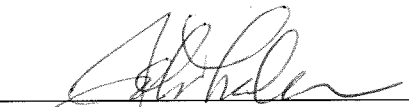
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MODIFIED. This stipulation will become the order of the Board if the

Respondent approves\* the following modification(s):

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\_\_\_\_\_  
\_\_\_\_\_

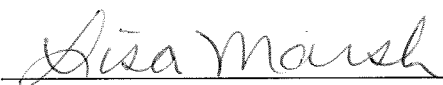
DATED this 11<sup>th</sup> day of May 2018



John Ladenburg, Chair



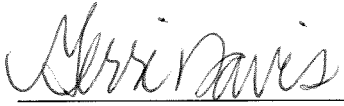
Shirley Battan, Vice-Chair



Lisa Marsh, Member



Anna Dudek Ross, Member



Gerri Davis, Member

\* I, Valerie Smith, accept/do not accept (circle one) the proposed modification(s).

\_\_\_\_\_  
Valerie Smith, Respondent                      Date