

BEFORE THE WASHINGTON STATE
EXECUTIVE ETHICS BOARD

In the Matter of:

Heather Dalberg
Respondent.

No. 2017-068

STIPULATED FACTS,
CONCLUSIONS OF LAW AND
AGREED ORDER

THIS STIPULATION is entered into by Respondent, HEATHER DALBERG, 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 December 2, 2017, the Executive Ethics Board (Board) received a complaint referred by Western Washington University (WWU) that documented the results of an internal audit and investigation concerning Heather Dalberg (Ms. Dalberg), Administrative Services Manager with the College of Fine and Performing Arts (CFPA). The complaint alleged several violations of the Ethics in Public Service Act, specifically that Ms. Dalberg received a special privilege when she ordered personal items using the WWU Amazon Prime account, that Ms. Dalberg used state resources in support of her private business (Airbnb) and also used state resources (computer and university-owned camera) for personal use.

2. Ms. Dalberg was hired by WWU in August 2013. She is currently employed as an Administrative Services Manager with the CFPA.

3. The Office of Internal Audit (OIA) conducted the internal review from August 21 through October 2017 and focused on events and transactions that occurred subsequent to Ms. Dalberg's hire date in 2013. Ms. Dalberg was interviewed and cooperated with the investigation and admitted to the violations of WWU policies and ethics laws.

4. Part of Ms. Dalberg's duties involved placing orders for items needed by the CFPA. WWU maintains an Amazon Prime account. The investigation determined there were 42 instances where Ms. Dalberg used the WWU's account to order personal items for herself, family and friends. Most of the items were shipped directly to Ms. Dalberg's residential address, which was listed as one of the default addresses on WWU's account. All of the purchases were made using personal credit cards that were also listed on the WWU's account. WWU pays \$107.61 per year for the Prime membership that gives users unlimited free two-day shipping on all orders.

5. Ms. Dalberg told Board staff that she was not aware at the time that using WWU's Amazon Prime account was a violation since she was using her personal credit cards to make purchases. She said she now clearly understands that it was. During the conversation with Board staff, Ms. Dalberg repeatedly expressed how regretful she was for the violations and that she clearly understands the Ethics in Public Service Act.

6. The investigation also determined that Ms. Dalberg has a rental property listed on Airbnb. During review of her computer files and Outlook data the following instances were found that indicated she had used WWU resources (time and computer) to conduct outside business activities.

- Eighty-eight (88) images related to outside business activities taking up 47.4 MB of space.
- Ten emails related to outside business activities
- Nine documents related to outside business activities taking up 10.3 MB of space.

7. Board staff spoke with Paul Schronen (Mr. Schronen) who conducted the internal audit for WWU. He indicated that during the investigation WWU was testing a digital forensics software package on a trial basis. The new software was used to examine Ms. Dalberg's computer hard drives to determine if she was using her WWU computer to log into her Airbnb account and/or to conduct additional outside business activities. The review using the trial software was completed after the results of their investigation had already been communicated in the exit interview. Because they were somewhat unfamiliar with the new software, the examination results were not provided as part of their final report; however, the result were provided to WWU management for consideration.

8. A search for web related activity from March 2016 to August 2017 using "Airbnb" returned 12,329 instances. Items to consider are:

- Ms. Dalberg periodically booked lodging through Airbnb for Music Department staff.
- The results contain multiple lines for each individual browsing session.
- The results appear to indicate that Ms. Dalberg visited the Airbnb site on an almost daily basis since March 2016.
- Ms. Dalberg's Airbnb listing indicates she joined Airbnb in January 2016.

9. Ms. Dalberg's Airbnb browsing history included:

- Viewing and editing her Airbnb listing: "Private Home Whatcom Lake w/hot tub".
- Viewing her Airbnb account, reviews, dashboard and inbox.
- Online conversations with other Airbnb users and/or potential/past renters.

10. It was determined during the investigation that Ms. Dalberg had removed a WWU owned digital camera from campus for personal use. Located on Ms. Dalberg's computer were 1,430 pictures and 84 videos of a personal nature that appeared to have been taken with the university-owned camera. Photos and videos included personal trips to a beach in Mexico and skiing trips to Mt. Baker.

11. Ms. Dalberg told Board staff that when she first began working for the CFPA, she used her personal camera to document many of the music department events. CFPA then purchased their own digital camera that was the same as hers. Ms. Dalberg told Board staff that she often "blended" the parts

such as batteries or flash cards between her personal camera and the WWU owned camera. Ms. Dalberg said she now realizes she should not have been using WWU property for personal use.

12. The investigation determined Ms. Dalberg also used her state computer to store 1,321 personal photos and 125 personal videos. Ms. Dalberg again expressed remorse about her actions and stated she clearly understands this is an ethics violation to use WWU owned property in this manner.

13. The OIA investigative report also cited some concerns about continued violations of the Ethics in Public Service Act by Ms. Dalberg. After she took WWU's Upholding Ethics in the Workplace STAR training on 8/16/17, OIA recovered 105 images from the university-owned digital camera that were taken of the solar eclipse on 8/21/17. Additionally, when she asked her to produce the WWU owned digital camera during testing on 9/5/17, Ms. Dalberg indicated the camera was still at her residence. Ms. Dalberg also used WWU's Amazon Prime account on two occasions (8/26 and 8/27) after receiving ethics training on 8/16/17, to ship personal items to her residence.

14. The OIA investigative report noted that the Workplace STAR training covers RCW 42.52.070 and RCW 42.52.160 both in the PowerPoint presentation used in class and in the Ethics in Public Service handout provided to participants. It was noted that the first example provided in the training course is of an ethical violation using University video equipment for personal use.

15. The investigation also identified a number of internal controls within the CFPA that needed improvement to ensure better oversight.

16. Following the investigation, Ms. Dalberg received additional one-on-one training with the Ethics Officer. The training included all aspects of RCW42.52/WAC 292-110-010 and included the Executive Ethics Board online ethics quiz.

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, 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. 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.

4. Based on the stipulated facts above, Ms. Dalberg used state resources for a private benefit in violation of RCW 42.52.160. Ms. Dalberg also secured a special privilege for herself through her personal use of WWU's Amazon Prime account.

5. 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. It is a mitigating factor that Ms. Dalberg received a letter of reprimand from WWU.

D. STIPULATION AND AGREED ORDER

1. Pursuant to chapter 42.52 RCW, the Executive Ethics Board has jurisdiction over Heather Dalberg 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. Heather Dalberg 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. Heather Dalberg 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. Heather Dalberg 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 Heather Dalberg 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. Heather Dalberg 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 Heather Dalberg 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 Heather Dalberg 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 Heather Dalberg 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, Heather Dalberg 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, Heather Dalberg 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. Heather Dalberg agrees to pay a civil penalty in the amount of four thousand dollars (\$4,000) associated with the improper use of public resources, RCW 42.52.160. The Board agrees to suspend two thousand dollars (\$2,000) on the condition that Heather Dalberg 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 two thousand dollars (\$2,000) 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, Heather Dalberg, 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.


HEATHER DALBERG
Respondent

1/22/2018
Date

Presented by:


KATE REYNOLDS
Executive Director

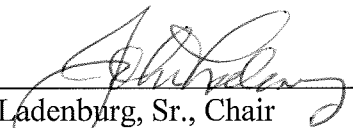
2/12/18
Date

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 11th day of May, 2018



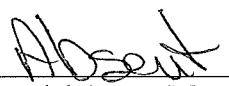
John Ladenburg, Sr., Chair



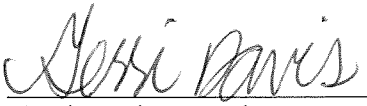
Shirley Battan, Vice-Chair



Lisa Marsh, Member



Anna Dudek Ross, Member



Gerri Davis, Member

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

Heather Dalberg, Respondent Date