

BEFORE THE WASHINGTON STATE
EXECUTIVE ETHICS BOARD

In the Matter of:

Randy Unger

Respondent.

No. 2018-001

STIPULATED FACTS,
CONCLUSIONS OF LAW AND
AGREED ORDER

THIS STIPULATION is entered into by Respondent, Randy Unger, 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 January 22, 2018, the Executive Ethics Board (Board) received a referral from the Washington Military Department (MIL) alleging that Randy Unger (Mr. Unger), an Enhanced 911 (E911) Operations Program Assistant, Emergency Management Program Specialist 1 (PS1) for the Emergency Management Division (EMD) at the MIL. The referral alleged that Mr. Unger may have violated the Ethics in Public Service Act by using state resources for private benefit or gain and secured special privileges by using his state credit card to make unauthorized charges.

2. Mr. Unger was hired as a PS1 in the EMD of the MIL on April 19, 2016. Mr. Unger remained in that position until he resigned on December 13, 2017. Mr. Unger's work schedule was from 6am to 4:30pm, with Saturday, Sunday and Monday off.

3. On October 3, 2017, Teresa Lewis (Ms. Lewis), an E911 County Assistant Program Manager, filed a written report to the MIL Human Resource Office (HR) alleging misuse of time (hours of actual work) by Mr. Unger and improper use of state resources (Mr. Unger's state computer). She provided a written summary of her observations pertaining to both allegations, and a time-log of Mr. Unger's arrival, lunch, and departing times.

4. Ms. Lewis states in her complaint that for the last year she has observed Mr. Unger almost on a daily basis on the internet on his work computer. She has observed him reading/viewing articles about historical events, current events, disasters, military stuff, news, boat stuff and what looks like governmental meetings and presidential addresses. She said he listened to news reports at a high volume and he has been asked by her and other co-workers to turn down his computer due to it being disruptive to the office. On the date of the submission of the complaint, Ms. Lewis said Mr. Unger was looking at the NFL standings and reading about football. She said she could see football players on his screen. Ms. Lewis said she reported the violations to the Unit Manager Ziggy Dahl (Mr. Dahl) and Deputy State E911 Coordinator Bill Peters (Mr. Peters), who were in her chain of command.

5. Ms. Lewis said since Mr. Unger started working in the State Enhanced 911 Coordination Office (SECO) also known as E911, she and other co-workers observed Mr. Unger taking extremely long lunches and leaving early on a regular basis. Ms. Lewis said she started tracking Mr. Unger's time in the middle of March 2017, with the assistance of some of her co-workers. She provided a copy of that spreadsheet. She said she initially talked to Mr. Dahl and Mr. Peters about Mr. Unger and was informed that Mr. Unger's time was accounted for and it was really not her concern.

6. The MIL investigation of the complaint filed by Ms. Lewis concluded that Mr. Unger falsified his time and attendance records (late arrivals, leaving early, long lunches), misused his state computer for personal emails and to view websites that were not part of his official duties and used his state issued credit card for personal use.

7. According to the MIL case report, they reviewed Mr. Unger's timesheets, EMD building access log, leave requests, and E911 staff observations. The investigator said that each time and effort documentation category covered a different time period. The investigator developed common variables across the categories in order to conduct a trend analysis. Those timeframes were: Timesheets (March 1, 2017 - through September 30, 2017), EMD building access log (May 17, 2017 - October 3, 2017), Leave Requests (March 17, 2017 - September 27, 2017) and E911 Staff Observations (March 4, 2017 – September 29, 2017). The investigator limited the analysis to a timeframe that each category had in common (May 2, 2017 – September 29, 2017). The investigator used five minutes as an acceptable documentation variance between accessing Building 20, Mr. Unger's work place, and timesheet coding. Staff observations of Mr. Unger's arrival were also held to this five-minute variance to ensure consistency.

8. The MIL investigator said from May 2, 2017 through September 29, 2017, there were 45 instances in which Mr. Unger arrived more than five minutes late to work. His timesheets, leave, and irregular work hours do not make up for the lost time. Of the 45 late arrivals, 27 occurred between 6-10 minutes late, nine occurred between 11-15 minutes late, and nine occurred between 16- 32 minutes late. During that same time period, there were 54 instances in which Mr. Unger's timesheet did not accurately reflect his actual hours. There were 30 instances in which E911 staff observed Mr. Unger departing work prior to 4:30 pm.

9. The MIL investigator said there is no documentation to confirm whether this departure correlates to a work-related errand or an actual early departure. The same documentation gap also corresponds to the long-lunch allegation. The E911 Unit does not have a lunchtime tracking mechanism documenting the start time, duration, or location of an employee's lunch period, thus limiting the ability of a non-supervisor to know the exact length of a colleague's lunch.

10. Board staff reviewed the timesheets, swipe card log, Ms. Lewis' spreadsheet and the MIL investigator's spreadsheet. Board staff confirmed the arrival times provided by the MIL and that Mr. Unger did not take leave for the times listed. There were five instances where Mr. Unger sent one email on his day off and two when he sent four emails on his day off. He did not show time worked on his time sheet for those instances.

11. MIL investigator, Sections Manager Timothy Rajcevich (Mr. Rajcevich), told Board staff that there was no written agreement for Mr. Unger to telecommute or for flexing his schedule. There was a general agreement in the unit that they could make up time at the end of the shift and to work with the supervisor to make up a half hour here or there. There is no documentation indicating Mr. Unger notified his supervisor that he was making up time at the end of his shift during the time-period in question.

12. According to the MIL report, when asked about times he would leave early, arrive late or take a long lunch, Mr. Unger said he might take a long lunch to take care of personal business every other week. Arriving late was pretty rare. He said he is usually the first one in the office. He said he tells his supervisor if he is going on an errand. He said he and his supervisor, Unit Manager Adam Wasserman (Mr. Wasserman), have discussed stricter accounting of his time.

13. Mr. Unger told Board staff that he was filling in for the vacant Administrative Assistant (AA3) position as well as doing his own job. He said the AA3 position resulted in him having to visit HR for payroll periodically. Mr. Unger said he delivered administrative paperwork to headquarters after

hours, and worked evenings at home or on the weekends, which he felt more than balanced his late arrivals. He said he did not record the hours he worked late or at home, which he now knows was a mistake. He said he took corrective action prior to Ms. Lewis' complaint, and was doing a better job accounting for his hours after consulting with Mr. Wasserman about the allegations.

14. Board staff were advised by the MIL that Mr. Unger's former Unit Manager Mr. Dahl retired and they don't have his contact information. Board staff were also advised by the MIL that the former Deputy State E911 Coordinator, Mr. Peters, left the MIL. According to the MIL, they did not interview Mr. Peters because he is a personal friend of Mr. Unger. Board staff left several voice mails for Mr. Peters, but as of the date of this order, he has not returned those calls.

15. Board staff spoke to Mr. Wasserman, the E911 Unit Manager that took over supervision of Mr. Unger after Mr. Peters left the agency in April 2017. Mr. Wasserman said that he initially was made aware Mr. Unger was leaving early when employees complained to him. He asked Mr. Peters, who was still supervising Mr. Unger, to speak to him about it.

16. After Mr. Peters left the agency it was brought to his attention by employees that it was still occurring. Mr. Wasserman said he pulled Mr. Unger aside and talked to him about accurate time recording and working his full 10 hours. This conversation occurred prior to them being notified of the investigation. Mr. Wasserman said it was hard to confirm if Mr. Unger was taking long lunches because he could be delivering paperwork to HQ or other duties that would take him from his desk. Mr. Wasserman noticed once that he left early and when questioned, Mr. Unger told him he had delivered paperwork on his way out. Mr. Wasserman said he took his word for it.

17. Mr. Wasserman said in order for an employee to work from home, arrangements had to be made and arrangements were not made for Mr. Unger to work from home. As to coming in late, employees were allowed to work late to make up the time as long as they put their 10 hours in. If they

worked outside of the operation hours of 6am to 6pm, they would have to notify the supervisor. If an employee was consistently late by an hour or more, they would adjust the employee's schedule accordingly.

18. According to the MIL report, their IT conducted a computer forensics scan. The report was provided to Board staff and states: "Keyword searching of the scan data revealed 11 matches for "ESPN", 186 matches for "sports", 1,436 matches for "defense", 35 matches for "YouTube" and an additional 70 matches for "banking". According to the MIL investigator, 28 of the 35 YouTube videos are not related to work. Those subjects included: *Blacksmithing knife making, How to install replace wheel hub bearing Chevy GMC-S-10 S15 4X\$ Part 1, James Bond and The Queen London 2012 Performance (x2), Daniel Tiger's Neighborhood-Katerina Gets Mad and Friends Help Each Other Out Parts 1 & 2, Zocaloans.com and bankofamerica.com*. Board staff was provided with a copy of the IT report and a list of the previously mentioned scan data.

19. The MIL investigator interviewed Mr. Unger about the internet searches. Mr. Unger said that every morning he read the *Defense Early Bird*, a compilation of open source news articles relating to national security and homeland security/emergency management to keep informed about matters that affect the Emergency Management and National Security which were part of his responsibilities. He said that he spent about one-half hour each day reading the *Defense Early Bird*. *This usage equated to approximately 8 hours per month dedicated to this publication. If this trend is extrapolated across the year, the dedicated time approximately equals 96 hours (8 hours x 12 months = 96 hours per year)*.

20. Board staff spoke with the Mr. Rajcevich, who said that reading the *Defense Early Bird* appears to be a leftover habit from Mr. Unger's previous career in the military. It did not apply to his position as a PS1. His position dealt with EMD Homeland Security 911 Centers and not the Department of Defense.

21. When Board staff told him that they were advised by MIL that it was not part of his job description, Mr. Unger said he felt National Security issues were part of Emergency Management. Mr. Unger said after being advised that it was not part of his job by his supervisor, he stopped visiting the site. In Mr. Unger's written response he said, "When hired, my primary project was to develop required changes to update RCWs, WACs, policies and procedures to ensure Enhanced 911 had the necessary authorities to incorporate the latest technologies."

22. Mr. Unger's Position Description includes: under the close supervision of the Deputy SECO Enterprise Operations; serves as the SECO Enterprise program assistant with the E911 Unit of the Emergency Management Division. Uses established procedures to complete assignment in support of the higher-level professional staff of the SECO E911 programs, projects and functions with the EMD to support state agencies, local jurisdictions, tribal governments, federal agencies and the private sector including tasks such as conducting research, fiscal/budget reporting and tracking, grant expenditure reconciliations, invoicing and maintaining databases.

23. According to the MIL report, Mr. Unger said in regards to his other internet use; he would check sports stuff on breaks and lunchtime. As for banking and loans, some of that was checking balances, and occasionally he would pay a pending bill. He said there was one stretch in which they were going through financial difficulties and he had to arrange a loan during working hours. He said he increased his Narrows Bridge toll balance once or twice and that there were some YouTube videos that were work related and likely some that were not. He said the reason he filled out the loan application on his work computer was that he did not have internet access at home.

24. Mr. Unger told Board staff that it did not seem like the time he spent on the websites was that much. He said his definition of de minimis was different from the majority of other employees. He

said he talked to Mr. Wasserman about the complaint and took corrective action by stopping all personal use of his work computer.

25. The MIL investigator reviewed a total of 2,710 sent emails from April 20, 2016 through October 11, 2017. They found 87 emails from Mr. Unger's mil.wa.gov email address that appeared to be personal in nature: 30 for banking and loans, 12 for hobbies including sending meeting minutes for the Train Collectors Association (TCA), 30 non-work-related emails to WMD personnel and 15 including personal photographs. Copies of those emails were provided to Board staff.

26. Mr. Unger told Board staff that he was the secretary for the TCA and he could not send emails with multiple addresses from his home computer or copy and paste. He said he thought his emails were de minimis, but after speaking with Mr. Wasserman, he realized he was wrong. The TCA website identifies themselves as a non-profit corporation that focuses on the hobby of collecting and operating toy trains.

27. Board staff reviewed Mr. Unger's sent emails from April 10, 2016 through October 11, 2017, and confirmed that Mr. Unger sent six emails regarding the TCA; five of the emails were mass mailings, three had attachments regarding the TCA business and one was mailed from Mr. Unger's agency email to his personal email address.

28. Board staff was provided a copy of Letter of Counseling (LOC) from Mr. Peters dated March 31, 2017. The LOC states that on February 21, 2017, Mr. Peters was notified by the WMD Finance Office that his state issued US Bank Corporate Travel Card had been suspended due to non-payment of the balance and that there were several non-travel related purchases. The LOC states that Mr. Unger admitted he made non-travel expenditures with the card, and that he was unable to pay the balance owed upon the receipt of the credit card statement. According to the LOC, Mr. Unger has since paid the balance of the credit card bill.

29. Board staff was advised by Mr. Rajcevich that Mr. Unger's card could be used for authorized travel over 50 miles from his assigned work place at Camp Murray, Washington.

30. A review of Mr. Unger's credit card statement by Board staff revealed that from October 25, 2016 through January 24, 2017, Mr. Unger made a total of 47 charges on his US Bank card. Forty-five of those charges were to businesses that were under the 50-mile range required. Forty of those charges were to local restaurants and pubs in the Lakewood, Gig Harbor and DuPont area. The remaining five were to an Arco gas station in Lakewood for a total of \$1,064.64. According to the Account Summary, the balance owed on the card on January 25, 2017, was \$589.21.

31. Board staff received a copy of the corporate card agreement signed by Mr. Unger on October 4, 2016. Mr. Unger agreed not to use the card for personal purchases and that he would submit a travel voucher covering any amounts charged to the card and attach a copy of each card transaction to the travel voucher, and that he would pay all charges in full promptly upon receipt of the statement.

32. Mr. Unger told Board staff that using the corporate credit card was a bad decision on his part. He said he was having financial trouble at the time. He knew he was not supposed to be using the card. He confirmed that he paid the bill in full.

B. CONCLUSIONS OF LAW

1. 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.

2. The Ethics in Public Service Act, Chapter 42.52 RCW, prohibits state employees from Use of persons, money or property for private gain. RCW 42.52.160 states:

No state officer or state employee may employ or use any person, money, or property under the officers or employees official control or direction, or in his or her official custody, for the private benefit or gain of the officer, employee or another.

3. Based on the evidence reviewed, Mr. Unger received special privileges by using his state issued credit card for personal use in violation of RCW 42.52.070 and used state time and resources for his private benefit or gain in violation of RCW 42.52.160. Mr. Unger's activities do not meet the exceptions for the use of state resources as permitted in 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 an aggravating factor these types of violations significantly reduce the public respect and confidence in state government employees and they were continuous in nature. In the matter at hand, it is a mitigating factor that, Mr. Unger paid back his state credit card in full and 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 Randy Unger 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. Randy Unger 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. Randy Unger further agrees that the evidence available to the Board is such that the Board may conclude he 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. Randy Unger 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 Randy Unger 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. Randy Unger 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 Randy Unger 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 Randy Unger 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 Randy Unger 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, Randy Unger 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, Randy Unger 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. Randy Unger agrees to pay a civil penalty in the amount of three-thousand dollars (\$3,000) associated with violations of RCW 42.52.

12. The civil penalty in the amount of three-thousand (\$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, Randy Unger, 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.

CASE 2018-001

Randy Unger 11/1/2018
RANDY UNGER Date
Respondent

Presented by:

K. Reynolds 11/8/18
KATE REYNOLDS Date
Executive Director

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 9th day of November, 2018



John Ladenburg, Sr., Chair



Shirley Battan, Vice-Chair



Lisa Marsh, Member



Anna Dudek Ross, Member



Gerri Davis, Member

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

Randy Unger, Respondent Date