

BEFORE THE WASHINGTON STATE
EXECUTIVE ETHICS BOARD

In the Matter of:

██████████

Respondent.

No. 2018-006

STIPULATED FACTS,
CONCLUSIONS OF LAW AND
AGREED ORDER

THIS STIPULATION is entered into by Respondent, ██████████ 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 complaint from the Department of Corrections (DOC) alleging that ██████████, a Pharmacist 2 in the Health Services/Centralized Pharmacy (HSP) at the Maple Lane Corrections Center (Maple Lane), may have violated the Ethics in Public Service Act by using state resources for private benefit or gain.

2. ██████████ was hired by the DOC on February 6, 2012 as a Probationary Pharmacist 2 at the Washington State Penitentiary. On May 1, 2013, he transferred to the Washington Corrections Center as a Pharmacist 2 and on September 16, 2014, he was appointed to Maple Lane as a Pharmacist 2 and

was in that position for all times pertinent to this investigation. [REDACTED] work hours are Monday through Friday, 8 am to 4:30 pm.

3. According to the complaint filed by Ronna Cole (Ms. Cole), Health Care Administrator and Appointing Authority with the DOC Health Care Division, the DOC has centralized its pharmacy functions into one location at Maple Lane. This site is responsible for receiving, packaging, and distributing all medications to the 17,000 offenders statewide. [REDACTED], as a pharmacist, has access to state issued computers and is allowed to conduct DOC business on internet sites such as ordering medications and referencing medical contradictions for medications.

4. Ms. Cole states that [REDACTED] disclosed outside employment to the DOC, as required by DOC policy, at Walmart where he is also a pharmacist. Ms. Cole states that [REDACTED] Supervisor, Michael Varon (Mr. Varon), alerted the Pharmacy Director and her of potential misuse of state resources. As he understood it, [REDACTED] was purchasing a home and looking at real estate while on work time. The first time this was uncovered, Board staff was told Mr. Varon documented and sent a formal letter of counseling on the misuse of state resources to [REDACTED]. However, Board staff requested a copy of the letter of counseling and were advised by the DOC that there was never any formal letter in the past for misuse of state resources, just discussions.

5. Ms. Cole said the second time it occurred, it was brought through the chain of command to her attention. Ms. Cole states that the DOC believes [REDACTED] has been performing Walmart pharmacy business on his state issued computer. Ms. Cole states that DOC Cyber Security Unit (CSU) has confirmed that [REDACTED] spent extensive time on the internet including Walmart.com and found emails

he received from employees at Walmart asking for pharmacy direction and staffing direction. She said that currently the investigation covers October 2, 2017 through December 5, 2017.¹

6. Mr. Cole states that the allegations are as follows:

- [REDACTED], using logon alias ejarbu, accessed non-work related Internet sites for personal use, including, but not limited to: Walmart.com, zillow.com, redfin.com, intuit.com, bankofamerica.com, jcpenny.com, twitter.com, facebook.com, jcpcard.com, liveperson.net, wellsfgodealerservices.com, pinterest.com, autotrader.com, media-amazon.com, and verizonwireless.com.
- [REDACTED], using logon alias ejarbu, utilized the internet for the purpose of banking, shopping, and/or purchasing items over the Internet on sites such as bankofamerica.com, jcpenny.com, and autotrader.com.
- [REDACTED], using logon alias ejarbu, utilized the internet to perform work for an outside employer other than the DOC, including Walmart.

7. According to the complaint, an investigation was opened on [REDACTED] on December 29, 2017. The investigator was Health Services Division Project Manager, Kathy Reninger (Ms. Reninger).

8. According to Ms. Reninger, she conducted an interview with [REDACTED] on March 2, 2018. During the interview, [REDACTED] was asked to describe the contents and intent of DOC policy on Acceptable Use of Technology to someone who is new to the DOC. [REDACTED] stated: *De minimis use-*

¹ Due to [REDACTED]'s use of multiple computers and the Personal History Information on those computers, at the request of the DOC, Board staff agreed to use the time frame of their investigation and information provided in the DOC CSU Forensic Investigation of [REDACTED]

use Technology infrequently, not allowed to use it to conduct business outside of DOC. No soliciting of donations, no engaging in political activities and does not impede productivity.

9. According to Ms. Reninger, when shown the report of his internet usage, [REDACTED] stated that he had accessed Wal-Mart, Bank of America, Intuit, Zillow, Autotrader, Verizon and Amazon. He said accessing these sites were related to his divorce and finding a place to live.

10. Board staff were provided a copy of the CSU report. Included in the report were Excel spreadsheets for [REDACTED]'s use of the internet for the time period of October 2, 2017 through December 5, 2017.

11. Board staff contacted David Harper (Mr. Harper), the Chief Digital Forensics Investigator at the CSU, in regards to the spreadsheets. Mr. Harper told Board staff that he was given 10 sites the DOC investigator wanted to know about. Those were: Walmart, Bank of America, Intuit, Zillow, Autotrader, Verizon, Pinterest, Facebook, Amazon and Twitter. He took the results and performed a hand calculation on each site by counting the number of hits per session and the total time account for each session. The times were added up for the 10 sites as well as the times for the rest of the traffic. He then counted the number of actual days of activity and divided that by the total minutes to get the minutes per day on average amounts. Those averages were 55.8 minutes per day October 2017, 126.2 minutes per day November 2017, and 88.3 minutes per day December 2017.

12. It should also be noted that [REDACTED] denied ever visiting Pinterest, Twitter and Facebook pages. According to Mr. Harper, upon further review of the web activity log spreadsheet, it appears that most of the activity/pages came up while the user was accessing other sites such as Zillow.com. Which means it could be active web links, scrolling or refreshing ads on the Zillow.com page that the user was visiting at the time that caused the traffic they saw.

13. Mr. Harper said that it possible that while the user may not have typed Facebook.com, Twitter.com or Pinterest.com in the web browser itself, it was recorded while actively surfing other non-work related sites such as Zillow.com.

14. According to Mr. Reninger, after being showed emails that had been printed from his Outlook account that were related to house hunting, applying for a mortgage, signing loan papers, and business related to his pending divorce, ██████ admitted that he had used his Outlook account to conduct this business. When asked if this would be considered “de minimis” use, ██████ stated that he was going through a divorce and he had to find a place to live. He was adamant that his work product did not suffer in any way from October to December, the timeframe of the investigation. ██████ stated that he was having a difficult time in his life and he needed to engage in these activities.

15. The DOC provided Board staff with copies of emails printed from ██████ Outlook account. According to the investigative report, the emails consisted of the following:

- Items related to ██████'s pending divorce-27 emails containing 100 pages of attachments;
- Applying for a mortgage and signing loan papers – 60 emails containing 356 pages of attachments;
- House hunting/real estate – 48 emails containing 117 pages of attachments; and
- Wal-Mart employment – 10 emails containing 21 pages of attachments.

16. Board staff reviewed the emails and confirmed the following:

- There were 27 emails related to ██████ divorce from October 2, 2017 through December 7, 2017. They included attachments regarding parenting plans, settlement agreements and an Agreement for Legal Representation.

- There were a total of 60 emails from October 9, 2017 through December 4, 2017, related to home loans. They included attachments regarding tax returns, home inspections, transfer of title and pay stubs. Two of the emails were regarding the purchase of a Verizon phone.
- There were a total of 48 emails related to house hunting/real estate from October 12, 2017 through December 4, 2017. Those emails included attachments regarding homes for sale and rent.
- There were a total of nine emails related to Wal-Mart employment from October 20, 2017 through November 16, 2017. Those emails were regarding scheduling for [REDACTED] and pay for working at Walmart. The emails included attachments regarding [REDACTED] pay and scheduling.

17. In an interview with Board staff, [REDACTED] confirmed that he received emails from his manager at Walmart about his work schedule. He said he worked weekends at Walmart and wasn't using state resources to better himself. He said he didn't believe he was working for Walmart when he received the emails. He admitted going to the Walmart website to get copies of his pay stubs and to check his schedule. His visits to the Bank of America and Wells Fargo sites were to get bank statements for his home loans. He said he had a credit account with Amazon and that was the reason for going to their site. [REDACTED] said that all of the house hunting online and emails to his attorney and real estate agent were the result of him going through a very difficult time in his life. He said when he was at work, they were at work.

B. CONCLUSIONS OF LAW

1. 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.

2. Based on the evidence reviewed [REDACTED] used state time and resources for his private benefit or gain in violation of RCW 42.52.160. [REDACTED] activities do not meet the exceptions for the use of state resources as permitted in WAC 292-110-010.

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 and they were continuous in nature. In the matter at hand, it is a mitigating factor that as a result of the DOC investigation, [REDACTED] received a four-step reduction in pay for four months from range 71G step M to range 71G step I.

D. STIPULATION AND AGREED ORDER

1. Pursuant to chapter 42.52 RCW, the Executive Ethics Board has jurisdiction over [REDACTED]

[REDACTED] 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. [REDACTED] 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. [REDACTED] 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. [REDACTED] 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 [REDACTED] 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. [REDACTED] 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 [REDACTED] 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 [REDACTED] 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 [REDACTED] 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, [REDACTED] 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, [REDACTED] 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. [REDACTED] agrees to pay a civil penalty in the amount of three-thousand five-hundred dollars (\$3,500) associated with violations of RCW 42.52. The Board agrees to suspend one-thousand dollars (\$1,000) on the condition that [REDACTED] 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 civil penalty in the amount of two-thousand five-hundred dollars (\$2,500) 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, [REDACTED], 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.

[REDACTED]

2/25/19

Date

Respondent

Presented by:

K. Reynolds

KATE REYNOLDS

Executive Director

3/27/19

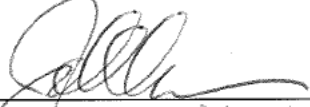
Date

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 10th day of May, 2019




John Ladenburg, Sr., Chair ~~Member~~




Shirley Battan, Vice-Chair



Lisa Marsh, Member



Anna Dudek Ross, Member



Gerri Davis, Member ~~Member~~ *Vice Chair*

* I, [REDACTED], accept/do not accept (circle one) the proposed modification(s).

[REDACTED], Respondent _____ Date