

1 **BEFORE THE WASHINGTON STATE**
2 **EXECUTIVE ETHICS BOARD**

3 In the Matter of:

EEB Case No. 2018-011

4 [REDACTED]

FINAL ORDER

5 Respondent

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7
8 **I. PROCEDURAL HISTORY**

9 On November 9, 2018, the Executive Ethics Board (Board) found reasonable cause to
10 believe that the Respondent, [REDACTED] violated the Ethics in Public Service
11 Act while employed as an Office Assistant 3, the Department of Corrections (DOC). Notice of
12 the Reasonable Cause Determination and the right to request a hearing was served upon [REDACTED]
13 [REDACTED] by regular mail and certified mail on November 13, 2018. Board staff received [REDACTED]
14 [REDACTED] response to the Reasonable Cause Determination and her request for settlement on
15 January 22, 2019. Board staff and [REDACTED] were unable to reach a settlement agreement due
16 to [REDACTED] lack of response to the Board staff settlement offer. On June 24, 2019, [REDACTED]
17 [REDACTED] case was transferred to AAG Chad Standifer to set the case for hearing.

18 The Office of Administrative Hearings (OAH) mailed proper notice to [REDACTED] on
19 July 18, 2019 for a prehearing conference scheduled for Thursday, August 1, 2019. The notice
20 containing the following instructions:

21 **You must call in to the conference. If you fail to call in, the administrative**
22 **law judge may hold you in default and dismiss your appeal. RCW**
23 **34.05.440(2).**

24 As per the Notice of Prehearing Conference, Administrative Law Judge Dan Gerard convened
25 the prehearing conference on Thursday, August 1, 2019 at 10:00 a.m. The Respondent, [REDACTED].
26 [REDACTED], did not appear. At 10:15 a.m., when no one appeared on behalf of [REDACTED], the

1 Executive Ethics Board Staff, represented by Chad Standifer, Assistant Attorney General,
2 moved for a default order.

3 Administrative Law Judge Dan Gerard granted the Board staff's motion for default for
4 the Respondent [REDACTED] failure to appear for the prehearing conference, under RCW
5 34.05.440(2). The written order confirms that verbal ruling.

6 On Wednesday August 7, 2019, OAH provided [REDACTED] with notice of the OAH's
7 Order of Default by regular and certified mail.

8 Pursuant to RCW 34.05.440 (3), [REDACTED] had seven (7) days to request the Order of
9 Default be vacated. [REDACTED] has not moved to vacate the order entered on August 1, 2019.

10 II. FINDINGS OF FACT

11 1. On February 13, 2018, the Executive Ethics Board (Board) received an
12 anonymous complaint alleging that [REDACTED] Office Assistant 3, at the
13 Olympic Corrections Center (OCC) with the Department of Corrections (DOC), may have
14 violated the Ethics in Public Service Act by taking time off from work without submitting the
15 proper leave slips. On February 16, 2018, the Executive Ethics Board (Board) received a second
16 complaint with similar concerns.

17 2. DOC was notified of the Board's investigation on February 14, 2018. As a part
18 of the DOC notification, Board staff requested any internal investigation regarding issues
19 identified in the complaint, Outlook email/calendar for the past 24 months, and a computer user
20 profile for [REDACTED]. Board staff also requested [REDACTED] current work schedule, time and
21 attendance reports and leave submittals for the past 24 months, Key Watcher data for the past
22 24 months, and the past six months of the sign in/out log for [REDACTED].

23 3. [REDACTED] has been employed by DOC since April 13, 1999 and for all times
24 pertinent to this investigation was an Office Assistant 3, reporting directly to OCC
25 Superintendent Jason Bennett (Mr. Bennett).

1 10. [REDACTED] indicated in her response to Board staff that she is required to report
2 all absences and tardiness directly to Mr. Bennett.

3 11. [REDACTED] indicated in her response that her job allows her to be away from her
4 desk throughout the day without permission and she is accountable for being available as needed.
5 [REDACTED] further indicated in her response that if at any time she was abusing this privilege it
6 would have been reported to Mr. Bennett, and it had not. She further indicated that she had never
7 been told there were concerns or issues

8 12. On November 1, 2017, Mr. Bennett gave [REDACTED] a Memo of Concern for
9 failing to report to work on October 30, 2017. The memo indicates that [REDACTED] sent Mr.
10 Bennett a text message at 8:10 am indicating that she would contact him later in the day to
11 discuss her attendance. Mr. Bennett indicated that he did not receive any additional contact from
12 [REDACTED].

13 13. On February 8, 2018, Mr. Bennett gave [REDACTED] another Memo of Concern,
14 which covered a conversation he had with her regarding his expectation of her scheduled start
15 time of 8:00 am. [REDACTED] was coming to work later than he expected. [REDACTED] was also
16 reminded of departure time and proper time keeping, including the submission of leave when
17 she missed work.

18 14. On February 9, 2018, Mr. Bennett gave [REDACTED] another Memo of Concern
19 regarding working late without receiving permission to do so and informing other DOC
20 employees that she had received permission when she had not.

21 15. On April 17, 2018, Mr. Bennett requested an internal investigation to investigate
22 allegations of misconduct. The allegations were:

- 23 • That on or about March 29, 2018 and April 12, 2018, [REDACTED] failed to
24 communicate prior to the start of her work shift that she would not be in as
25 scheduled.
- That on or about March 29, 2018 and April 12, 2018, [REDACTED] failed to
26 arrive to work as scheduled.

1
2 16. On or about May 3, 2018, [REDACTED] failed to communicate prior to the start of
3 her work shift that she would be not be at work as scheduled and she failed to arrive to work as
4 scheduled.

5 17. On May 10, 2018, [REDACTED] was notified of the DOC internal investigation.

6 18. The DOC internal investigation determined the following:

- 7
- 8 • On March 29, 2018, [REDACTED] failed to arrive to work at the start of her
9 work shift starting at 8:00 am. [REDACTED] told DOC investigators that she
10 had over-slept and confirmed that she did not show up for work on that day.
11 Eight hours of sick leave submitted.
 - 12 • On April 12, 2018, [REDACTED] failed to arrive to work for her scheduled
13 work shift at 8:00 am and she failed to report her absence prior to the start of
14 her shift. [REDACTED] told DOC investigators that she had over-slept and
15 confirmed that she reported for work on that day at 10:50 am. Key watcher
16 data show [REDACTED] arriving at 10:52 am and departing at 2:52 pm, four
17 hours short of an eight-hour workday. No leave was submitted.
 - 18 • On May 3, 2018, [REDACTED] failed to arrive to work for her scheduled work
19 shift at 8:00 am and failed to report her absence prior to the start of her shift.
20 [REDACTED] told DOC investigators that on the evening before she was
21 notified that she needed to contact her lawyer the next day (May 3) and she
22 did not feel right about contacting her supervisor at that time. [REDACTED]
23 told DOC investigators that she received a call from Mr. Bennett at about
24 8:15 am, on May 3, asking her when she would be coming in. [REDACTED]
25 told Mr. Bennett that she should have notified him the previous evening. [REDACTED]
26 [REDACTED] told DOC investigators that she arrived to work at 10:15 am on May
3, 2018.

Key Watcher Data indicates that [REDACTED] arrived at OCC at 10:20 am on
May 3, 2018 and departed at 4:21 pm. [REDACTED] submitted 2.5 hours of
leave.

19. On May 18, 2018, [REDACTED] received a written reprimand for the misconduct
outlined above.

20. Co-worker # 1, indicated in their response to Board staff that they are aware of
[REDACTED] missing time from work and not submitting a leave slip to cover the missed time.

1 Co-worker # 1 further indicated that [REDACTED] time away from work has an effect on their
2 ability to complete their jobs and they never knew if or when she would be at work.

3 21. Co-worker #2, indicated in their response to Board staff that they would not know
4 if [REDACTED] was submitting leave slips for the time she was taking off but, [REDACTED]
5 absences did affect her ability to do her job. Co-worker #2 indicated that [REDACTED] was not
6 coming in to work on a consistent basis, indicating that [REDACTED] would come in late, leave
7 early or not come in.
8

9 22. On November 30, 2018, Board staff received an email from Mr. Bennett
10 indicating that he could account for 69 hours of time where [REDACTED] was away from work for
11 training or attending meetings that would not have shown up in the Key Watcher report. The
12 69 hours of time for training were removed from the 294 hours initially calculated reducing the
13 time owed to 225 hours or 4.3 hours per week over the 52-week period.
14

15 III. CONCLUSIONS OF LAW

16 1. The Board has jurisdiction to hear this matter pursuant to RCW 42.52.360(1),
17 which authorizes the Board to enforce the Ethics in Public Service Act, chapter 42.52 RCW,
18 with respect to employees in the executive branch of state government. The Board has
19 jurisdiction over [REDACTED], whose actions occurred while she was a state employee.

20 2. RCW 42.52.160(1) – Use of persons, money, or property for private gain, in
21 pertinent part:

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

25 WAC 292-110-010 Use of state resources, states in part:

1 (3) **Permitted personal use of state resources.** This subsection applies to any
2 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
3 only if each of the following conditions are met:

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

16 [REDACTED] as an Office Assistant 3, with the Department of Corrections (DOC) used state time
17 for her private benefit or gain by failing to submit the proper leave request in violation of RCW
18 42.52.160. [REDACTED] activities do not meet the exceptions for the use of state resources as
19 permitted in WAC 292-110-010.

20 IV. FINAL ORDER

21 1. Based upon the foregoing Findings of Fact and Conclusions of Law, it is hereby
22 ordered that [REDACTED] is assessed a total monetary civil penalty of three thousand dollars
23 (\$3,000) based on her violations of RCW 42.52.160.

24 2. The total amount of three thousand dollars (\$3,000) is payable in full within 90
25 days of the effective date of this order.

26 DATED this 13th day of September 2019.



Shirley Battan, Chair



Anna Dudek Ross, Member



Gerri Davis, Vice-Chair



Lisa Marsh, Member

1 **APPEAL RIGHTS**

2 **RECONSIDERATION OF FINAL ORDER – BOARD**

3 Any party may ask the Executive Ethics Board to reconsider a Final Order. The request
4 must be in writing and must include the specific grounds or reasons for the request. The request
5 must be delivered to Board office within 10 days after the postmark date of this order.

6 The Board is deemed to have denied the request for reconsideration if, within 20 days
7 from the date the request is filed, the Board does not either dispose of the petition or serve the
8 parties with written notice specifying the date by which it will act on the petition.
9 RCW 34.05.470.

10 The Respondent is not required to ask the Board to reconsider the Final Order before
11 seeking judicial review by a superior court. RCW 34.05.470.

12 **FURTHER APPEAL RIGHTS – SUPERIOR COURT**

13 A Final Order issued by the Executive Ethics Board is subject to judicial review under
14 the Administrative Procedure Act, chapter 34.05 RCW. See RCW 42.52.440. The procedures
15 are provided in RCW 34.05.510 - .598.

16 The petition for judicial review must be filed with the superior court and served on the
17 Board and any other parties within 30 days of the date that the Board serves this Final Order on
18 the parties. RCW 34.05.542(2). Service is defined in RCW 34.05.542(4) as the date of mailing
19 or personal service.

20 A petition for review must set forth:

- 21 (1) The name and mailing address of the petitioner;
22 (2) The name and mailing address of the petitioner’s attorney, if any;
23 (3) The name and mailing address of the agency whose action is at issue;
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1 (4) Identification of the agency action at issue, together with a duplicate copy, summary,
2 or brief description of the agency action;

3 (5) Identification of persons who were parties in any adjudicative proceedings that led to
4 the agency action;

5 (6) Facts to demonstrate that the petitioner is entitled to obtain judicial review;

6 (7) The petitioner's reasons for believing that relief should be granted; and

7 (8) A request for relief, specifying the type and extent of relief requested.
8 RCW 34.05.545.

9 **ENFORCEMENT OF FINAL ORDERS**

10 If there is no timely request for reconsideration, this is the Final Order of the Board. The
11 Respondent is legally obligated to pay any penalty assessed.

12 The Board will seek to enforce a Final Order in superior court and recover legal costs
13 and attorney's fees if the penalty remains unpaid and no petition for judicial review has been
14 timely filed under chapter 34.05 RCW. This action will be taken without further order by the
15 Board.