BEFORE THE WASHINGTON STATE 
EXECUTIVE ETHICS BOARD

In the Matter of: Miranda Puksta, 
Respondent

EEB Case No. 2018-011

I. PROCEDURAL HISTORY

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

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

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

As per the Notice of Prehearing Conference, Administrative Law Judge Dan Gerard convened the prehearing conference on Thursday, August 1, 2019 at 10:00 a.m. The Respondent, Ms. Puksta, did not appear. At 10:15 a.m., when no one appeared on behalf of Ms. Puksta, the
Executive Ethics Board Staff, represented by Chad Standifer, Assistant Attorney General, moved for a default order.

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

On Wednesday August 7, 2019, OAH provided Ms. Puksta with notice of the OAH's Order of Default by regular and certified mail.

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

II. FINDINGS OF FACT

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

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

3. Ms. Puksta has been employed by DOC since April 13, 1999 and for all times pertinent to this investigation was an Office Assistant 3, reporting directly to OCC Superintendent Jason Bennett (Mr. Bennett).
4. OCC is a highly secure correctional institution. Entry into the OCC facility requires employees to checkout their assigned keys using the Key Watcher System and return those key prior to leaving the OCC grounds. OCC administrative employees are also required to sign in and out of OCC using the Non-Custody/Manager check-in/out log.

5. Ms. Puksta is classified as a non-scheduled employee with a base schedule of Monday through Friday, 8:00 am to 4:30 pm, with a 30 minute lunch period. Ms. Puksta was allowed to flex her actual work time with the approval of her supervisor Mr. Bennett.

6. Mr. Bennett told Board staff that he would allow Ms. Puksta to flex her schedule as long as he was aware of the change and he approved it. Mr. Bennett indicated that he required her to work 40 hours in a week or submit leave for any time short of the 40 hours.

7. Mr. Bennett told Board staff that he would allow Ms. Puksta to work late on occasion to make up for any shortages of time with his approval. Mr. Bennett further indicated that approval would normally be oral or via text message using his state phone.

8. Board staff reviewed Key Watcher data, leave slips, Non-Custody/Manager check-in/out log, for the period of February 1, 2017 through March 2, 2018. Board staff reviewed each seven-day week, Monday through Sunday, 52 in total, in an effort to show that Ms. Puksta worked the required 40 hours for each week. For that period, Board staff was able to identify 294 hours of time where Ms. Puksta was not conducting work for DOC. On average, over the 52-week period, Ms. Puksta was approximately 5.6 hours short per week.

9. Ms. Puksta indicated in her response to Board staff, (dated July 18, 2018) that she has a set schedule, Monday through Friday, 8:00 am to 4:30 pm. Ms. Puksta further indicated that in the event that she was unable to make her regular scheduled work time she was required to comply with the necessary policy and procedures set by the state of Washington.

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1 Non-Custody/Manager check-in/out log only covers the period of December 2017 through May 2018.
10. Ms. Puksta indicated in her response to Board staff that she is required to report all absences and tardiness directly to Mr. Bennett.

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

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

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

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

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

- That on or about March 29, 2018 and April 12, 2018, Ms. Puksta failed to communicate prior to the start of her work shift that she would not be in as scheduled.
- That on or about March 29, 2018 and April 12, 2018, Ms. Puksta failed to arrive to work as scheduled.
16. On or about May 3, 2018, Ms. Puksta failed to communicate prior to the start of her work shift that she would be not be at work as scheduled and she failed to arrive to work as scheduled.

17. On May 10, 2018, Ms. Puksta was notified of the DOC internal investigation.

18. The DOC internal investigation determined the following:

- On March 29, 2018, Ms. Puksta failed to arrive to work at the start of her work shift starting at 8:00 am. Ms. Puksta told DOC investigators that she had over-slept and confirmed that she did not show up for work on that day. Eight hours of sick leave submitted.

- On April 12, 2018, Ms. Puksta failed to arrive to work for her scheduled work shift at 8:00 am and she failed to report her absence prior to the start of her shift. Ms. Puksta told DOC investigators that she had over-slept and confirmed that she reported for work on that day at 10:50 am. Key watcher data show Ms. Puksta arriving at 10:52 am and departing at 2:52 pm, four hours short of an eight-hour workday. No leave was submitted.

- On May 3, 2018, Ms. Puksta failed to arrive to work for her scheduled work shift at 8:00 am and failed to report her absence prior to the start of her shift. Ms. Puksta told DOC investigators that on the evening before she was notified that she needed to contact her lawyer the next day (May 3) and she did not feel right about contacting her supervisor at that time. Ms. Puksta told DOC investigators that she received a call from Mr. Bennett at about 8:15 am, on May 3, asking her when she would be coming in. Ms. Puksta told Mr. Bennett that she should have notified him the previous evening. Ms. Puksta told DOC investigators that she arrived to work at 10:15 am on May 3, 2018.

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

19. On May 18, 2018, Ms. Puksta 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 Ms. Puksta’s missing time from work and not submitting a leave slip to cover the missed time.
Co-worker #1 further indicated that Ms. Puksta’s time away from work has an effect on their ability to complete their jobs and they never knew if or when she would be at work.

21. Co-worker #2, indicated in their response to Board staff that they would not know if Ms. Puksta was submitting leave slips for the time she was taking off but, Ms. Puksta’s absences did affect her ability to do her job. Co-worker #2 indicated that Ms. Puksta was not coming in to work on a consistent basis, indicating that Ms. Puksta would come in late, leave early or not come in.

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

III. CONCLUSIONS OF LAW

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

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

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.

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.

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

**IV. FINAL ORDER**

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

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

DATED this 13th day of September 2019.

Shirley Battan, Chair

Anna Dudek Ross, Member

Gerri Davis, Vice-Chair

Lisa Marsh, Member

FINAL ORDER
EEB No. 2018-011(Puksta)
APPEAL RIGHTS

RECONSIDERATION OF FINAL ORDER – BOARD

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

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

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

FURTHER APPEAL RIGHTS – SUPERIOR COURT

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

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

A petition for review must set forth:

(1) The name and mailing address of the petitioner;

(2) The name and mailing address of the petitioner’s attorney, if any;

(3) The name and mailing address of the agency whose action is at issue;
(4) Identification of the agency action at issue, together with a duplicate copy, summary, or brief description of the agency action;

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

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

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

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

RCW 34.05.545.

ENFORCEMENT OF FINAL ORDERS

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

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