

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

3 In the Matter of:

EEB Case No. 2018-011

4 Miranda Puksta,

FINAL ORDER

5 Respondent
6

7
8 **I. PROCEDURAL HISTORY**

9 On November 9, 2018, the Executive Ethics Board (Board) found reasonable cause to
10 believe that the Respondent, Miranda Puksta (Ms. Puksta), 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 Ms.
13 Puksta by regular mail and certified mail on November 13, 2018. Board staff received Mr.
14 Puksta's response to the Reasonable Cause Determination and her request for settlement on
15 January 22, 2019. Board staff and Ms. Puksta were unable to reach a settlement agreement due
16 to Ms. Puksta's lack of response to the Board staff settlement offer. On June 24, 2019, Ms.
17 Puksta's case was transferred to AAG Chad Standifer to set the case for hearing.

18 The Office of Administrative Hearings (OAH) mailed proper notice to Ms. Puksta 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, Ms.
26 Puksta, did not appear. At 10:15 a.m., when no one appeared on behalf of Ms. Puksta, 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 Miranda Puksta's 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 Ms. Puksta with notice of the OAH's
7 Order of Default by regular and certified mail.

8 Pursuant to RCW 34.05.440 (3), Ms. Puksta had seven (7) days to request the Order of
9 Default be vacated. Ms. Puksta 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 Miranda Puksta (Ms. Puksta), 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 Ms. Puksta. Board staff also requested Ms. Puksta's 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 Ms. Puksta.

23 3. Ms. Puksta 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 4. OCC is a highly secure correctional institution. Entry into the OCC facility
2 requires employees to checkout their assigned keys using the Key Watcher System and return
3 those key prior to leaving the OCC grounds. OCC administrative employees are also required
4 to sign in and out of OCC using the Non-Custody/Manager check-in/out log¹.

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

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

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

14 8. Board staff reviewed Key Watcher data, leave slips, Non-Custody/Manager
15 check-in/out log, for the period of February 1, 2017 through March 2, 2018. Board staff reviewed
16 each seven-day week, Monday through Sunday, 52 in total, in an effort to show that Ms. Puksta
17 worked the required 40 hours for each week. For that period, Board staff was able to identify
18 294 hours of time where Ms. Puksta was not conducting work for DOC. On average, over the
19 52-week period, Ms. Puksta was approximately 5.6 hours short per week.

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

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

3 11. Ms. Puksta 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 Ms. Puksta 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 Ms. Puksta a Memo of Concern for
9 failing to report to work on October 30, 2017. The memo indicates that Ms. Puksta 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 Ms. Puksta.

13 13. On February 8, 2018, Mr. Bennett gave Ms. Puksta 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. Ms. Puksta was coming to work later than he expected. Ms. Puksta 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 Ms. Puksta 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, Ms. Puksta failed to
24 communicate prior to the start of her work shift that she would not be in as
 scheduled.
- 25 • That on or about March 29, 2018 and April 12, 2018, Ms. Puksta failed to
26 arrive to work as scheduled.

1
2 16. On or about May 3, 2018, Ms. Puksta 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, Ms. Puksta was notified of the DOC internal investigation.

6 18. The DOC internal investigation determined the following:

- 7
- 8 • On March 29, 2018, Ms. Puksta failed to arrive to work at the start of her
9 work shift starting at 8:00 am. Ms. Puksta 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, Ms. Puksta 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. Ms. Puksta 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 Ms. Puksta 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, Ms. Puksta 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 Ms. Puksta 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. Ms. Puksta
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. Ms. Puksta
25 told Mr. Bennett that she should have notified him the previous evening. Ms.
26 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.

1 Co-worker # 1 further indicated that Ms. Puksta's 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 Ms. Puksta was submitting leave slips for the time she was taking off but, Ms. Puksta's
5 absences did affect her ability to do her job. Co-worker #2 indicated that Ms. Puksta was not
6 coming in to work on a consistent basis, indicating that Ms. Puksta 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 Ms. Puksta 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.
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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 Miranda Puksta, 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:

(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
4 officer's or employee's official duties;

(v) The use does not compromise the security or integrity of state
5 property, information systems, or software;

(vi) The use is not for the purpose of conducting an outside
6 business, in furtherance of private employment, or to realize a
7 private financial gain; and

(vii) The use is not for supporting, promoting the interests of, or
8 soliciting for an outside organization or group.

9 Ms. Puksta as an Office Assistant 3, with the Department of Corrections (DOC) used state time
10 for her private benefit or gain by failing to submit the proper leave request in violation of RCW
11 42.52.160. Ms. Puksta's activities do not meet the exceptions for the use of state resources as
12 permitted in WAC 292-110-010.

13 IV. FINAL ORDER

14 1. Based upon the foregoing Findings of Fact and Conclusions of Law, it is hereby
15 ordered that Maranda Puksta is assessed a total monetary civil penalty of three thousand dollars
16 (\$3,000) based on her violations of RCW 42.52.160.

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

19 DATED this 13th day of September 2019.

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22 Shirley Battan, Chair

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22 Anna Dudek Ross, Member

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24 Gerri Davis, Vice-Chair

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24 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;

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.