

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

3 In the Matter of:

EEB Case No. 2018-012

4 [REDACTED]

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 ([REDACTED]), violated the Ethics in Public  
11 Service Act while employed as a Program Specialist 3, with Aging and Long-Term Support  
12 Administration/Residential Care Service (ALTSA/RCS), Department of Social and Health  
13 Services (DSHS). Notice of the Reasonable Cause Determination and the right to request a  
14 hearing was served upon [REDACTED] by regular mail and certified mail on November 13,  
15 2018. Board staff received [REDACTED]'s response to the Reasonable Cause Determination  
16 and her request to have a hearing on December 4, 2018. On January 2, 2019, [REDACTED]  
17 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 January 31, 2019 for a prehearing conference scheduled for Friday, February 22, 2019. The  
20 notice 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 TJ Martin convened  
25 the prehearing conference on Friday, February 22, 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 TJ Martin 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 February 27, 2019, OAH provided [REDACTED] with notice of the  
7 OAH's 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  
9 of Default be vacated. [REDACTED] has not moved to vacate the order entered on February  
10 22, 2019.

## 11 II. FINDINGS OF FACT

12 1. On February 20, 2018, the Executive Ethics Board (Board) received a complaint  
13 alleging that [REDACTED], Program Specialist 3, with Aging and Long-Term  
14 Support Administration/Residential Care Service (AL TSA/RCS), Department of Social and  
15 Health Services (DSHS), may have violated the Ethics in Public Service Act by taking time off  
16 from work without submitting the proper leave slips.

17 2. In July 2017, the State Auditor's Office (SAO) notified DSHS that they had  
18 received a whistleblower complaint against DSHS employee Valerie Smith (Ms. Smith) and  
19 would be conducting an investigation into an allegation of an improper governmental action  
20 regarding excessive and inappropriate internet and email usage. During the course of the SAO's  
21 investigation of Ms. Smith, it was found that [REDACTED] initiated or was engaged in these  
22 inappropriate emails.

23 3. The SAO investigation concluded that between July 25, 2016 and June 13, 2017,  
24 [REDACTED] sent 172 emails from her work email address that were not business related.

1 Additionally, the email [REDACTED] sent contained derogatory, unprofessional, and  
2 disrespectful content regarding co-workers, management, and vulnerable adults.

3 4. Because of the SAO's findings, DSHS initiated an internal investigation into [REDACTED]  
4 [REDACTED] use of the state email system. [REDACTED] was placed on an alternate work  
5 assignment on August 18, 2017 while the internal investigation was completed.

6 5. During the period of the alternate work assignment, [REDACTED] reported to  
7 Jaclyn Ford (Ms. Ford), Unit Supervisor. Ms. Ford reported to Shelia Bower (Ms. Bower), Unit  
8 Manager. The alternate work assignment notification letter notified [REDACTED] in part, of  
9 the following:

- 10 • Her scheduled work shift would be Monday through Friday, 8:00 am  
11 through 5:00 pm.
- 12 • [REDACTED] was advised that she must contact Ms. Ford for  
13 authorization prior to taking any type of leave and for personal illness and  
14 if there was an emergency requiring her to take time off, she was to contact  
15 Ms. Ford as soon as possible.
- 16 • During the time of her alternate assignment, her user ID for computer  
17 access would be disabled.

18 6. On November 14, 2017 and February 9, 2018, [REDACTED] was not at work  
19 and did not seek prior approval. Because of these two absences, Ms. Bower requested a review  
20 of [REDACTED] badge entry data to compare with [REDACTED] daily time card activity.

21 7. Ms. Bower's review covered the period of August 16, 2017 through February 15,  
22 2018. The review identified 14 days where there was no badge entries by [REDACTED] into  
23 her office building, Blake East. See dates below:  
24  
25  
26

Date:	Date:
Thursday, August 31, 2017	Monday, October 16, 2017
Tuesday, September 5, 2017	Friday, October, 27, 2017
Thursday, September 14, 2017	Wednesday, November 22, 2017
Wednesday, September 20, 2017	Tuesday, December 5, 2017
Thursday, September, 21, 2017	Tuesday, December 26, 2017
Friday, September 29, 2017	Friday, January 19, 2018
Monday, October 2, 2017	Wednesday, January31, 2018

8. Ms. Bower indicated in her response to Board staff that [REDACTED] is a smoker, which means she would have to leave the building and return after each smoke break creating door entry data and also that employees need to use the badges to enter restrooms. Ms. Bowers indicated that on the days without badge data it would be unlikely that [REDACTED] would not have exited the building to smoke or that she did not use the restroom.

9. Ms. Bower also checked into the possibility that [REDACTED] may have obtained a visitor badge for any of the days where there was no badge entry data. Her review revealed that [REDACTED] was not issued a visitor badge for any of the days where there was no badge entry data for [REDACTED] badge.

10. During the course of the internal investigation, it was discovered that [REDACTED]. [REDACTED] had outside employment with the Multicultural Child and Family Hope Center (MCFHC). MCFHC is a non-profit human service organization that does business with DSHS.

11. Ms. Bower asked [REDACTED] for her hours worked at MCFHC. According to Ms. Bower, [REDACTED] refused to provide them to her.

12. Ms. Bower indicated in her response to Board staff that she called MCFHC and was told that [REDACTED] started working for them on January 19, 2017 and that she would normally work two eight hour shifts per week, usually a Friday and one other day, mostly during the evening. Ms. Bower further indicated in her response that she requested copies of [REDACTED] [REDACTED]'s time records but after several attempts over several months, she never received them.

1 13. Board staff obtained [REDACTED] work computer hard drive and Outlook  
2 emails for the period November 23, 2015 through February 20, 2018. Ms. Chapman's last sent  
3 email was on August 18, 2017.

4 14. Board staff used Magnet Forensics' Axiom software to analyze [REDACTED]  
5 computer hard drive and Outlook emails. As a result of that analysis Board staff found the  
6 following information that would indicate that [REDACTED] was using state resources in  
7 support of her outside employment with MCFHC:

8 Internet:

Date/Time	Site Name	Page Title	Notes
9 1/13/17@ 3:48 pm	MCFHC.org	Employee forms/ 10 Employment application	[REDACTED] started working for MCFHC on 1/19/17
11 6/13/17@ 11:40 am	MCFHC.org	What our children deserve	

12  
13 Emails:

14 Board staff found 15 emails sent/received at [REDACTED] state Outlook email account. Most  
15 of the emails contained attachments related to MCFHC. Several of the emails contained DSHS  
16 documents [REDACTED] filled out as a MCFHC employee.

17 15. In addition to the internet and emails, Board staff found two PDF documents  
18 identified as MCFHC Payroll Time sheets. Both documents were signed by [REDACTED] One  
19 of the time sheets was for the pay period of May 8 through May 21, 2017, indicating that she  
20 worked on Sundays, Wednesdays, Fridays, and Saturdays. The other time sheet indicated a pay  
21 period of January 30 through February 12, 2017, working on one Sunday and one Saturday for  
22 four hours each day.

23 16. [REDACTED] was terminated for employment with DSHS as a result of the SAO  
24 and DSHS internal investigation of improper use of the state email system on March 15, 2018.

25 17. At the time [REDACTED] was terminated, DSHS suspended the internal  
26 investigation into the allegation that she had not submitted leave for time she took off from work.

1 18. Ms. Bower indicated in a response to Board staff that [REDACTED] was never  
2 directed by the agency to submit leave for the time she was not at work because she was  
3 terminated prior to the completion of their investigation.

### 4 III. CONCLUSIONS OF LAW

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

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

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

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

15 (3) **Permitted personal use of state resources.** This subsection applies to any  
16 use of state resources not included in subsection (2) of this section.

16 (a) A state officer or employee's use of state resources is de minimis  
17 only if each of the following conditions are met:

- 17 (i) There is little or no cost to the state;
- 18 (ii) Any use is brief;
- 19 (iii) Any use occurs infrequently;
- 20 (iv) The use does not interfere with the performance of any state  
21 officer's or employee's official duties;
- 22 (v) The use does not compromise the security or integrity of state  
23 property, information systems, or software;
- 24 (vi) The use is not for the purpose of conducting an outside  
25 business, in furtherance of private employment, or to realize a  
26 private financial gain; and
- (vii) The use is not for supporting, promoting the interests of, or  
soliciting for an outside organization or group.

23 [REDACTED] as a Program Specialist 3, with Aging and Long-Term Support  
24 Administration/Residential Care Service (AL TSA/RCS) used state time for her private benefit  
25 or gain by failing to submit the proper leave request forms and in support of her outside  
26

1 employment in violation of RCW 42.52.160. [REDACTED] activities do not meet the  
2 exceptions for the use of state resources as permitted in WAC 292-110-010.

3 **IV. FINAL ORDER**

4 1. Based upon the foregoing Findings of Fact and Conclusions of Law, it is hereby  
5 ordered that [REDACTED] is assessed a total monetary civil penalty of three thousand dollars  
6 (\$3,000) based on her violations of RCW 42.52.160).

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


9 DATED this 10<sup>th</sup> day of May 2019.

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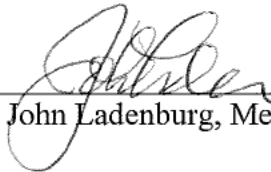
13 Shirley Battan, Chair

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13 Lisa Marsh, Member

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15 Gerri Davis, Vice-Chair

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16 John Ladenburg, Member

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17 

18 Anna Dudek Ross, Member

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2 **APPEAL RIGHTS**

3 **RECONSIDERATION OF FINAL ORDER – BOARD**

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

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

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

13 **FURTHER APPEAL RIGHTS – SUPERIOR COURT**

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

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

21 A petition for review must set forth:

- 22 (1) The name and mailing address of the petitioner;  
23 (2) The name and mailing address of the petitioner’s attorney, if any;  
24 (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.