

BEFORE THE WASHINGTON STATE
EXECUTIVE ETHICS BOARD

In the Matter of:

Jesse Days

Respondent.

No. 2018-031

STIPULATED FACTS,
CONCLUSIONS OF LAW AND
AGREED ORDER

THIS STIPULATION is entered into by Respondent, Jesse Days, 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 July 28, 2017, the State Auditor's Office (SAO) received a whistleblower complaint alleging Jesse Days (Mr. Days), an IT Specialist 3 (IT3) with Central Washington University (CWU), failed to submit leave for all of his absences from work.
2. On June 22, 2018, The Executive Ethics Board (Board) received an SAO referral alleging Mr. Days may have violated the Ethics in Public Service Act by using state resources for private benefit or gain for failing to submit leave when he was absent from work.
3. According to CWU, Mr. Days was hired by CWU in 1995 as a Grounds Keeper. In 2000, he moved to an IT3 position in Public Affairs (PA) and in 2004 moved to Information Services (IS). On

April 1, 2014, he was promoted to an IT4. In 2017, the IT4 position was phased out and Mr. Days worked as an IT3 in IS until he retired on March 1, 2018.

4. Mr. Days described his shift to the SAO and Board staff as four “nines” Monday through Thursday with a one hour lunch, and a 4-hour shift on Friday. According to Mr. Days, management was very laid back about their schedules and at times allowed them to take a half-hour lunch break and leave work a little bit early.

5. According to CWU, Mr. Days retired as of March 1, 2018. Additionally, his supervisor during the time the alleged violations occurred is no longer with CWU. Therefore, CWU advised they would not be taking any personnel action.

6. According to the SAO investigative report, they reviewed Mr. Days’ leave slips, emails and computer event logs from August 1, 2016 through July 28, 2017. In an email to his new supervisor on May 2, 2017, Chris Timmons (Mr. Timmons), Senior Network Engineer, Mr. Days said he has “been working four 9’s and a 4 for many years” and described his work shift as “6:30 to 4:30 Monday through Thursday and 6:30 to 10:30 on Fridays.” According to the SAO, Mr. Days noted in various emails and calendar appointments that he takes a one-hour lunch every day from 11 am to 12 pm.

7. Board staff reviewed the email from Mr. Days to Mr. Timmons outlining the schedule he works and noted that Mr. Days added, “If I get in a bit early I head out a bit early, but for sure the University gets my 40 dedicated hours per week.”

8. In a written response to Board staff, Mr. Days said that IS employees were afforded the ability to flex their schedules somewhat. He confirmed that his official lunch break was 11 to 12, but many employees including himself, would take a half-hour lunch which he feels calls into question the amount of hours the SAO alleges he owes.

9. Board staff reviewed the SAO spreadsheets, Mr. Days' emails and computer activity, leave slips and time sheets, and determined the following:

- From August 1, 2016 through July 28, 2017, a total of 185 workdays, Mr. Days logged onto his computer an average of 46 minutes late for a total of 143 hours and 33 minutes.
- From August 1, 2016 through July 28, 2017, a total of 185 workdays, Mr. Days logged off his computer an average of 36 minutes early for a total of 112 hours and 10 minutes.
- On Friday, August 26, 2016, Mr. Days had no activity on his computer and failed to put in four hours leave for that shift. Board staff confirmed there were no appointments or emails sent or received that day.
- Friday, March 17, 2017, there was no activity on Mr. Days' computer and he failed to submit four hours leave for that shift. Board staff confirmed there were no appointments or emails sent or received that day.

10. According to the SAO report, Mr. Days said he got to work every day at 6:30 am, sat at his desk without turning his computer on, and used his personal smart phone to look at the University's website to ensure compatibility with his mobile device. When asked why he turned his computer off at 4 pm nearly every day, when he was scheduled to work until 4:30 pm, Mr. Days said he "could be on break, could be going to the bathroom." Mr. Days said when he finished doing everything he needed to do on the computer he turned it off and went on break. The SAO said they found no evidence to support Mr. Days claim that he was using his personal smart phone to browse the University's website, or that this was an appropriate task.

11. When questioned about not taking leave on August 26, 2016 and March 17, 2017, and not having any computer activity, emails or calendar items, Mr. Days said he was probably at a meeting. He

said he was still meeting with developers about the University website. He said he did not keep logs or records of those meetings.

12. When asked by Board staff why he did not turn on his computer when he got to work, Mr. Days explained that most people don't turn on their computers when they first come to work. When Board staff disagreed with that statement, Mr. Days said they were laidback at the University. He said people would come into work and get coffee and visit.

13. The SAO report states that Mr. Days did not keep a log documenting his activities and had not sent or received any emails discussing this practice. Additionally, they spoke with Mr. Days' supervisors, who denied knowledge of the subject testing the website for mobile compliance.

14. In a written response to the SAO and Board staff, Mr. Days said no one kept logs of their daily activities and felt that the SAO was making him responsible for someone else's faulty memory. He went on to say that supervision was minimal at best. His supervisors were network engineers that had limited web experience. Upon moving to IS, his position description was largely invalid after being the Director of Web Services. He said he was afforded the ability to prioritize his work and did that. He said mobile compliance was a huge part of that work.

15. In a written response to the SAO and Board staff, Mr. Days said mobile compliance was an appropriate task as Director of Web Services and then as a web analyst. When assigned to PA they had University smart devices to check for mobile compliance. When he was assigned to IS, those devices remained in PA and he was relegated to using his personal device.

16. In an interview with Mr. Days, he advised Board staff that when he left PA, although he was no longer the Director of Web Services, he still kept working on the website. He said this was not in writing or an official assignment but it was still his responsibility. He said he remembered receiving a

call from the Chief Information Officer, Andreas Bowman (Mr. Bowman), about issues he was having with the website.

17. When Board staff asked if anyone else was working on the website during this time, Mr. Days identified Terri Covey (Ms. Covey) as an IT2 that he previously supervised and who later became a coworker when his position as director was phased out.

18. Mr. Days confirmed with Board staff that when he left PA, he no longer had an assigned cell phone and started using his personal cell phone to access the website. When asked if Ms. Covey used her personal cell phone to work on the website, Mr. Days said he did not know. Board staff asked Mr. Days if the SAO had been given access to his personal cell phone and he said no. He went on to say that the cell phone no longer worked and had been replaced.

19. In a written statement from a coworker (CW), CW stated that they worked with Mr. Days for roughly 6-7 years. Over those years, he technically worked 4 9's and a 4, meaning 9 hours four days a week, and 4 hours on Friday. He was supposed to work from 6:30 am to 4:30 pm, with one-hour lunch. Everyone else came in about 8:00 am, except for Marisa Christian (Ms. Christian), who got to work at 6:30 am. When CW's schedule had to flex, absolutely every time, they would see Mr. Days arrive to work about 7:30 am and one time at 7:40 am. He always left at 3:55 pm and never actually worked a 6:30 to 4:30 schedule. CW observed this year after year. CW said Mr. Days never worked 4 hours on Fridays. He worked 2 ½ hours on Fridays. He took very long lunches. He claimed that travel to and from work during lunch did not count as his lunch break.

20. CW said Mr. Days did not know how to do web work, that he would have no reason to get on any phone at all to check out websites, and this also wouldn't be something done every day, for years. People who actually did web work would do that, but they did not. In Networks and Operations they were restricted from doing anything work related while away from work.

21. Board staff were provided several possible witnesses by CW. Board staff was only able to speak to Jon Belford (Mr. Belford), who identified himself as an IT Specialist in PA, Web Services. In regards to the CWU website, Mr. Belford said his main duties included development and maintenance of the databases and front end of the site. He said he handled the bulk of all requests and development.

22. When asked about Mr. Days' statement that he used his personal smart phone to look at the University's website to ensure compatibility with his mobile device, Mr. Belford said during the time frame in question, there were no major mobile developments or changes in code on the CWU website that would require more than a couple of days of testing. He said he was not able to check his email records on when Mr. Days officially no longer worked for Web Services, but his position change was effective at some point between 2016 and 2017. At that point, it was no longer his job duty to test anything on the website.

23. Board staff spoke to Ms. Christian who said she was a Fiscal Specialist at CWU. She said she did not work with Mr. Days at IS but while working with him at PA, he was always on time to work, left at the end of his shift and didn't take extended lunch breaks. She said he was a heavy smoker and left to smoke a lot. She said she heard there were people monitoring his smoke breaks.

24. According to the SAO report, they interviewed Greg Harvill (Mr. Harvill), who was Mr. Days' supervisor during the investigative period of July 2016 through April 2017. Mr. Harvill stated that when Mr. Days was reporting to him, his mother was going through an extremely difficult health period and has since died. His hours coming and going were less than predictable. Mr. Harvill said he could count on Mr. Days accounting for his time. He said he has been a public service manager for over 25 years and knows all of the tricks and all of the BS that employees can pull. He said Mr. Days was reliable. He didn't try to cheat him. Mr. Harvill said he had the utmost confidence that while Mr. Days was reporting to him he held him accountable for an 8-hour day. He said one aspect to IT positions is they

are unscheduled positions, so if an employee needs to work 10 hours to get a job done then it is at the supervisor's discretion to allow them to work less the next day. He accounted for a 40-hour workweek and Mr. Harvill said he held him accountable to it because that is his job.

25. The SAO report states that they asked Mr. Harvill if he had any comment about Mr. Days' claim that he browsed the mobile website for an hour each morning to test for mobile compliance. Mr. Harvill said he never spoke with him directly about it and couldn't speak to that. He said they never discussed it, but he was responsible for the website. It was a pretty common practice for IT folks to check systems.

26. Board staff contacted Mr. Harvill who stated that the first thing he expects employees to do was to log in on their computer when they came to work. He said it doesn't make sense to arrive at work and work on your personal cell phone. He said it was his understanding that Mr. Days was checking the academic website CANVAS from his personal phone while at home during the day and at night. He said Mr. Days' job was to transfer obsolete academic files to CANVAS, which was a new system for professors to track students online and was different from the PA website. He said he always verified that Mr. Days put in a 40-hour workweek before he signed his timesheet.

27. Mr. Harvill later re-contacted Board staff and stated that it is entirely possible and realistic that Mr. Days' was coming to work and working on his personal cell phone. He said he would see him at his workstation working on his cell phone. When asked why he changed his statement, Mr. Harvill said he was "caught flat footed by the questions by Board staff and had no time to reflect." He said his statements to the SAO were in regards to their questions about time management. Mr. Harvill said he was terminated without cause by CWU and could not speak for what Mr. Days did after he left.

28. In an interview with the SAO, Mr. Timmons said he did not come in until 8:30 am, at which time Mr. Days was already at work. He said he never received a complaint about the subject's

work hours, so did not see a reason to come in earlier to see if he was there. When told what Mr. Days said about browsing the mobile website with his cell phone for an hour at the beginning of his shift before turning on his computer. Mr. Timmons said, "I have never heard of that, that's certainly not an arrangement he had with me."

29. According to the SAO, Mr. Timmons said in April 2017, when he was assigned as the subject's supervisor, he asked the subject for a list of his current projects and job duties. The SAO provided a copy of that list to Board staff. Nowhere in the document does Mr. Days mention testing the University's website for mobile compliance.

30. According to the SAO, they asked Mr. Timmons if he thought it was possible Mr. Days had been doing as he said, and using his smart phone to check the website for mobile compliance. He responded, "It doesn't pass the sniff test, it doesn't seem realistic to me."

31. Board staff contacted Mr. Timmons who confirmed that Mr. Days was not issued an agency telephone or a laptop computer. Mr. Timmons confirmed that his statement given to the SAO is accurate.

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, Mr. Days used state time for his private benefit or gain in violation of RCW 42.52.160. Mr. Days' activities do not meet the exceptions for the use of state resources as permitted in WAC 292-110-010. 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 Mr. Days used state time for private gain.

D. STIPULATION AND AGREED ORDER

1. Pursuant to chapter 42.52 RCW, the Executive Ethics Board has jurisdiction over Jesse Days 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. Jesse Days 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. Jesse Days 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. Jesse Days 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 Jesse Days 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. Jesse Days 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 Jesse Days 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 Jesse Days 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 Jesse Days 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, Jesse Days 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, Jesse Days understands and agrees that this stipulation as well as information

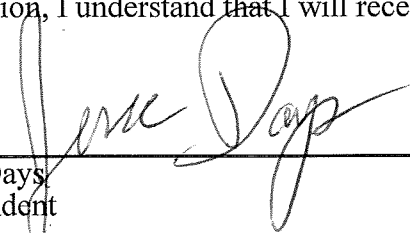
obtained during any settlement discussions between the parties shall not be admitted into evidence during the administrative hearing, unless otherwise agreed by the parties.

11. Jesse Days agrees to pay a civil penalty in the amount of one-thousand, five-hundred dollars (\$1,500) associated with violations of RCW 42.52.

12. The civil penalty in the amount of one-thousand, five-hundred dollars (\$1,500) 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, Jesse Days, 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.



Jesse Days
Respondent

4/3/19
Date

Presented by:



KATE REYNOLDS
Executive Director

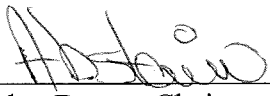
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Date

III. ORDER

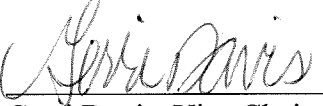
Having reviewed the proposed stipulation, WE, THE STATE OF WASHINGTON EXECUTIVE ETHICS BOARD, pursuant to WAC-292-100-090, HEREBY ORDER that the Stipulation is

✓ 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):

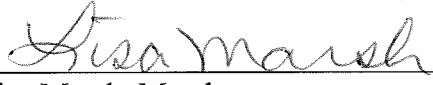
DATED this 12th day of July, 2019.



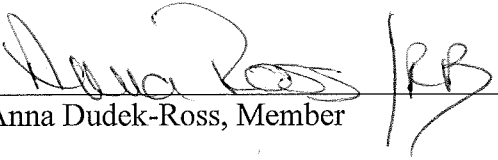
Shirley Battan, Chair



Gerri Davis, Vice Chair



Lisa Marsh, Member



Anna Dudek-Ross, Member

* I, Jesse Days, accept/do not accept (circle one) the proposed modification(s).

Jesse Days, Respondent Date