

BEFORE THE WASHINGTON STATE
EXECUTIVE ETHICS BOARD

In the Matter of:

David Atkinson

Respondent.

No. 2019-041

STIPULATED FACTS,
CONCLUSIONS OF LAW AND
AGREED ORDER

THIS STIPULATION is entered into by Respondent, David Atkinson 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 October 24, 2019, the Executive Ethics Board (Board) received a referral from the Department of Labor and Industries (LNI) alleging that David Atkinson, a Safety and Health Specialist 3 (SHS3) with LNI, may have violated the Ethics in Public Service Act by using state resources for private benefit or gain and participated in activities incompatible with public duties.

2. According to LNI, Mr. Atkinson was originally hired on August 1996 as a Customer Service Specialist 2 (CSS2). On February 1, 2004, he was promoted to the position of Safety and Health Specialist 3 (SHS3) which, according to LNI, was the position he held at the time of his termination by LNI on July 1, 2019 for an unrelated issue.

3. According to the LNI referral, following Mr. Atkinson's dismissal, his computer hard drive and cellular phone were wiped clean for reuse. However, Mr. Atkinson's Regional Compliance Manager (RCM), Daniel Pitts (Mr. Pitts), accessed Mr. Atkinson's email vault to determine what safety and health inspections were pending. During that review Mr. Pitts found emails and documents that did not appear to be job related. LNI requested the DOSH¹ Investigation Program Manager, Susan Rue (Ms. Rue), review Mr. Atkinson's email vault.

4. According to Ms. Rue, she found the following items during that review: ²

- Personal correspondence including photographs with family members;
- Personal correspondence about hunting with the employer representative of a company Mr. Atkinson had inspected;
- Home appraisal and loan correspondence with his bank;
- Military/Veteran correspondence;
- Medical appointment scheduling and correspondence with medical insurance;
- Bill paying for cell phone, car insurance, internet provider, Direct TV;
- Personal reservations for trips (National Park);
- Match.com sign up and receiving matches;
- Correspondence with hotel to negotiate rates for Mr. Atkinson's business "Dave Atkinson Consulting;" and
- Correspondence with his attorney's office.

¹ Division of Occupational Safety and Health.

² LNI provided Board staff with 2,311 documents containing what appeared to be emails as well as emails with attachments unrelated to Mr. Atkinson's job at LNI and included photographs and videos that were copied from Mr. Atkinson's email account.

5. In his initial written response to the notification of the allegations by LNI, Mr. Atkinson stated that in paragraph 2 of LNI's referral letter it states, in part, that they received access to his email vault to determine what safety and health inspections were pending. These inspections were all maintained in the WIN³ system which is standalone and the supervisors have complete access. He said all pending work was reviewed on assignment and covered two times with his supervisor, SHS4 Richard Taylor (Mr. Taylor), prior to him being sent home for health reasons. He maintained they were again investigating under false pretenses as they have done in the past.

6. According to Mr. Atkinson, the USAA bills were printed and reviewed for travel and travel reimbursement purposes. Verizon bills were reviewed as requested by work for calls relating to work. Insurance cards are required to be provided by safety inspectors and he used his personal vehicles off and on for years for work purposes. He said he believes he was told by two or three of his previous supervisors he could use the computer for de minimis use.

7. Board staff provided Mr. Pitts with a copy of Mr. Atkinson's initial response to Board staff. In a written response from Mr. Pitts, he said they were not investigating Mr. Atkinson. Mr. Atkinson had already been terminated when the email access request was made by him on July 15, 2019.

8. Mr. Pitts stated that, as with all employees who leave his work unit, emails are reviewed to ensure that they have all the necessary emails for their inspection files and to ensure

³ WISHA Information Network—it is where LNI stores their enforcement data system. It is where all of their inspection files are uploaded, summary of the inspection findings are typed into, citation and notices are created for issuance to employers, tracking system of letters to complainants/referents and various performance reports are created.

there are no outstanding customer emails that have not been responded to prior to the staff member's departure. In Mr. Atkinson's case, he requested access to his emails to review emails for customer service relationships.

9. According to Mr. Pitts, from approximately March 4, 2019 to July 15, 2019, when Mr. Atkinson was terminated, Mr. Atkinson was on leave. Mr. Atkinson was the only SHS on his team that was assigned to LNI's Pullman Service Location (PSL). He spent over five years in the PSL office and developed relationships with contractors, employer/employee groups and the general public, so access to emails (and voicemails) were necessary to ensure DOSH/LNI could respond appropriately if any requests are pending.

10. Mr. Pitts states that he has no idea why USAA bills were printed and reviewed for travel and travel reimbursement purposes. These documents would not have been required by LNI or Mr. Atkinson's supervisors who report to him, while he has been the RCM for the past 4.5 years. Mr. Atkinson was required to keep records of his travel for reimbursement purposes but this would have only consisted of dates, times of departure and arrival, location/purpose of trip and mileage of his personally owned vehicle (POV). According to Mr. Pitts, Mr. Atkinson lost the privilege of driving a state vehicle due to a driving incident prior to his arrival as the RCM. LNI has specific policies on travel reimbursement involving a POV, as does the OFM Travel Regulations.

11. According to Mr. Pitts, Mr. Atkinson's private Verizon bills were never requested nor reviewed by him or his supervisors during his time as RCM. Mr. Atkinson, along with all other staff, are specifically instructed to use state issued phones for state related business. Mr. Atkinson was issued a state cell phone and desk phone. Mr. Pitts indicated that information on this had been

covered in at least two staff meetings on September 10, 2015 and October 23, 2018 and provided Board staff with documentation noting Mr. Atkinson was in attendance at those meetings.

12. According to Mr. Pitts, per LNI Policy 8.10, supervisors are required to verify as part of the evaluation process, at least annually, that employees driving POVs on state business have automobile liability coverage. This is to be done prior to them driving. The evaluation period is July 1 to September 30. Mr. Pitt's said that his supervisors only check this coverage record once annually. In his seven years of supervising and managing, his employees (direct or indirect) have never received permission to utilize the state computer to access their coverage information. They either go to their car and bring in their coverage card/paper or pull up the record on their personal phone via the web or app.

13. Mr. Pitts said he is not aware of any supervisor that has granted de minimis use of state resources. Any supervisor's guidance on this topic prior to SHS Corey Mitchum (Mr. Mitchum) and Mr. Taylor being Mr. Atkinson's supervisors, would have been superseded by instructions given by Mr. Pitts. He said he has specifically instructed staff, including Mr. Atkinson, about not using state resources for anything other than state business. During staff meetings he covers LNI policies that address ethics rules, Ethics Board rulings/decisions and use of state resources.

14. Board staff provided Mr. Atkinson's supervisor, Mr. Taylor, with a copy of Mr. Atkinson's initial response to Board staff. In a written response, he stated that Mr. Atkinson's emails were reviewed to ensure all information related to inspections were in the WIN system. He said Mr. Atkinson had provided him inspection information when he was leaving for his medical leave. There were many missing documents and emails that were not in the file(s). He said they are required to keep and include all information and emails in the inspections files. He said during

Mr. Pitts' review of Mr. Atkinson's emails he located documents that were not in the WIN system that should have been included with inspection files.

15. In regards to the USAA bills being printed, Mr. Taylor said this has not been the process during his time as Mr. Atkinson's supervisor. He said he only reviews the travel vouchers which include receipts from the hotels, rental car gas, parking, etc. He said he does not recall any USAA bill ever being submitted for travel and/or review. His insurance bill would not be reimbursable.

16. In regards to Mr. Atkinson's Verizon account, Mr. Taylor said that Mr. Atkinson was provided a work phone. Mr. Taylor said that at no time did he review any of Mr. Atkinson's personal phone bills from Verizon. Mr. Taylor said he has provided direction (written and verbal) that work phones were for work and personal phones were personal. He said he had discussions about not using personal phones for work. Mr. Taylor said he did not have the ability under LNI policy to review Mr. Atkinson's work phone and certainly not his personal phone. That would require a warrant as far as he knew.

17. In regards to Mr. Atkinson's USAA insurance cards, Mr. Taylor said the insurance card is requested for review one time per year. This is to ensure that insurance is valid during periods that a personal car is being used. He confirmed that he looked at Mr. Atkinson's insurance card. He said he went to his vehicle and brought it to him when he was in Spokane.

18. Mr. Taylor said since his employment with LNI, he has shared the information that LNI does not have a de minimis use policy. This has been shared with all staff by Mr. Pitts and he has talked about the Ethics Board and previous people that have had issues.

19. Board staff reviewed the 2,300 documents provided by LNI and Mr. Atkinson's email history. The documents provided by LNI dated back to 2011 and the email history to 2006.

It appears that Mr. Atkinson's personal use of his state email address dates back as far as 2011. Board staff limited their search of Mr. Atkinson's use of his state email address March 2015 through July 2019, which would be within the Board's five-year jurisdiction.

20. Board staff located seven emails to and from Mr. Atkinson's state email address and Match.com from between April 2012 and August 2013. Board staff also identified approximately 50 emails to and from Mr. Atkinson's state email address and a contractor that Mr. Atkinson regulated occurring between October 2012 and October 2014. Although some of those emails were personal in nature, and it was mentioned several times that they meet for lunch and once that they go shoot (both are hunters), there was no indication these meetings ever occurred or that these meetings would have been paid for by the contractor.

21. Board staff identified approximately 550 emails that appeared non-job related for the period of March 2015 to July 2019. Those emails included emails with attachments regarding Mr. Atkinson's rewards club memberships as seen below:

- Approximately 58 emails received from Choice Privileges.com;
- Approximately 34 emails received from IHG Rewards Club;
- Approximately 38 emails received from Southwest Airlines Rapid Rewards; and
- Approximately 36 emails received from Marriott Hotels/Bonvoy.

22. Board staff also found an email dated November 4, 2016, from Impressguest.com to David Atkinson with subject line: *Corporate Rate Agreement* with attachments listed as *Dave Atkinson Consulting.pdf*.⁴ The email stated, in part:

⁴ According to LNI, Mr. Atkinson has a Request for Approval of Outside Employment for the Army Reserve dated May 20, 1998 on file, but does not have one for Dave Atkinson Consulting.

Hi Dave! I have attached the Corporate Rate Agreement to this email. Please filit out and return it to me at your earliest convenience so I can get it all set up for you.Quality Inn Valley Suites www.choicehotels.com.

23. The email also included an attached letter that stated in part, *“This will confirm that the Quality Inn Valley Suites has established a preferred corporate rate for **Dave Atkinson Consulting**. Effective November 4, 2016 through November 4, 2017 our hotel will honor a rate of \$82.00 per night for Standard Room based on Double Occupancy. **Last Room Availability applies. Event Weekend Rates apply...**”⁵*

24. Board staff also identified approximately 110 emails sent to Mr. Atkinson’s work email address from the following organizations:

- Veterans Health.com
- TeamTonyRobbins.com
- Timelife.com
- Fedex.com
- TeamRubiconusa.org
- Yahoo-inc.com
- Quadcitiesnissan.motosnap.com
- acl@aclib.org (Library notice of overdue books)

25. Board staff also located emails received from the following financial institutions:

- WSECU - five emails sent and received, four regarding changing the beneficiary.
- P1FCU⁶ - 12 emails, six of the emails were in August 2017 and were between Mr. Atkinson and the P1FCU loan officer, regarding Mr. Atkinson’s application for an auto loan.
- First Command Bank - one email.
- Chase Bank - one email.

⁵ Board staff located one billing statement for Dave Atkins Consulting dated August 8, 2017 for his account with choicehotels.com.

⁶ Federal Credit Union

26. Board staff located 55 emails that Mr. Atkinson received at his work email address from USAA, the majority of which were billing statements, documents and ID cards that needed to be printed.

27. On August 6, 2016 and August 9, 2016, Mr. Atkinson received emails from USAA Customer Service with the subject line: *Your USAA Auto Claim*. The emails provided documentation and information about USAA opening an auto claim for Mr. Atkinson. On August 11, 2016 Mr. Atkinson received an email from sca-appraisal.com, which stated, in part: “*USAA Claim: 002.....this is your link to SCA Claims website.*” The email states in part: “*....Dear Vehicle Owner, We are SCA Appraisal Company and have been assigned by USAA to inspect and photograph the damage to your vehicle...*” The email goes on to provide information on how to set up appointments, contact information and vehicle information.

28. Board staff found the following emails that were sent from the following companies to Mr. Atkinson’s work email address:

- Verizon: April 2015 to June 2019, 27 emails regarding billing notification and confirmation of payment received notices. The last email regarding billing was June 2019.
- Avista utilities: 22 emails regarding billing and confirmation of payment received. The last email was dated April 2019 and was in regards to Mr. Atkinson’s payment being processed for Avista Utilities,
- Cable One: 22 emails including, confirmation of payments received and newsletters.
- Direct TV: four emails including confirmation of payment received and notification of the service being disconnect April 2016.

29. Board staff located two emails regarding the sale of a boat by Mr. Atkinson on June 7, 2015 and June 8, 2015 from David Atkinson to Tim Norris with the subject line, *FW: Boat Tim what do you think*, with three pictures of a powerboat attached.

30. Board staff found in excess of 100 emails sent and received from Mr. Atkinson's state email address from what appears to be four family members, including his wife. Many of those emails had attachments including, approximately 35 photographs of campers, boats, family pictures, hunting pictures and military pictures. The emails also included discussions, plans and inventories for hunting trips, family social events, and hiking trips.

31. Board staff requested a telephone interview with Mr. Atkinson but he declined, stating he was taking pain medication from a knee surgery. At Mr. Atkinson's request, Board staff emailed him a list of the emails and documents found by Board staff and requested an explanation regarding his use of his state email address.

32. In a written response to Board staff, Mr. Atkinson confirmed that the four people he was receiving and sending emails to were relatives. He said in regards to the pictures, he had no knowledge of them. He said the Quality Inn Hotel was the location he stayed at for work and Dave Atkinson Consulting never existed. He said he had "little knowledge" of the billings statements, that he did not know anything about the financial information regarding P1FCU and WSECU and that the USAA insurance was used for vehicles for work.

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.

WAC 292-110-010 Use of state resources states, prior to April 1, 2016, in part:

(2) The following are permitted uses:

- (a) Use of state resources that is reasonably related to the conduct of official state duties, or which is otherwise allowed by statute.
- (b) An agency head or designee may authorize a use of state resources that is related to an official state purpose, but not directly related to an individual employee's official duty.
- (c) An agency may authorize a specific use that promotes organizational effectiveness or enhances the job-related skills of a state officer or state employee.
- (d) A state officer or employee may make an occasional but limited personal use of state resources 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 officer's or employee's official duties; and
 - (v) The use does not compromise the security or integrity of state property information, or software.

WAC 292-110-010 Use of state resources, after April 2016, states, in part:

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- (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.

2. Based on the evidence reviewed, Mr. Atkinson used state resources for personal benefit in violation of RCW 42.52.160. Mr. Atkinson's activities do not meet the exceptions for the use of state resources as permitted in WAC 292-110-010.

3. 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.

D. STIPULATION AND AGREED ORDER

1. Pursuant to chapter 42.52 RCW, the Executive Ethics Board has jurisdiction over David Atkinson 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. David Atkinson 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. David Atkinson 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. David Atkinson 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 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. David Atkinson 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 David Atkinson 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 David Atkinson 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 David Atkinson 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, 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, David Atkinson 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. David Atkinson agrees to pay a civil penalty in the amount of three-thousand-five-hundred dollars (\$3,500) associated with violations of RCW 42.52.

12. The civil penalty in the amount of three-thousand-five-hundred dollars (\$3,500) 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.

I. CERTIFICATION

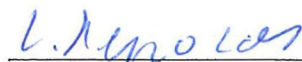
I, David Atkinson, hereby certify that I have read this stipulation in its entirety, that my counsel of record, if any, has fully explained the legal significance and consequence of it. I further certify that I fully understand and agree to all of it, and that it may be presented to the Board without 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.



David Atkinson
Respondent

10/25/20
Date

Presented by:



KATE REYNOLDS
Executive Director

7/11/2020
Date

II. 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 11th day of September 2020.

Approved via Virtual Meeting
Shirley Battan, Chair

Approved
Gerri Davis, Vice Chair

Approved via Virtual Meeting
Lisa Marsh, Member

Approved via Virtual Meeting
Anna Dudek-Ross, Member

Approved via Virtual Meeting
Jan Jutte, Member

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

David Atkinson, Respondent

Date