

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

3 In the Matter of:

EEB Case No. 2020-011

4 Jodi Russell,

FINAL ORDER

5 Respondent
6

7 **I. PROCEDURAL HISTORY**

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9 On July 10, 2020, the Executive Ethics Board (Board) found reasonable cause to
10 believe that the Respondent, Jodi Russell (Ms. Russell) violated the Ethics in Public Service
11 Act while employed as an Office Assistant 3 (OA3) with the Department of Health (DOH).
12 Notice of the Reasonable Cause Determination and the right to request a hearing was served
13 upon Ms. Russell by regular mail and certified mail on July 13, 2020. Ms. Russell failed to
14 respond to the Reasonable Cause Determination within 30 days as required by WAC 292-100-
15 060(2).

16 The Board entered an Order of Default on January 8, 2021. On January 11, 2021, Board
17 staff provided Ms. Russell with notice of the Board's Order of Default by regular and certified
18 mail.

19 Pursuant to WAC 292-100-060(4) Ms. Russell was allowed 10 days to request vacation
20 of the Order of Default. Ms. Russell has not moved to vacate the order entered on January 8,
21 2021.

22 **II. FINDINGS OF FACT**

23 1. According to the DOH investigation (DOHI), from January 16, 2019 through
24 May 30, 2019, Ms. Russell submitted timesheets that inaccurately reported the number of
25 hours she actually worked during each pay period. The DOH also alleges that Ms. Russell
26 may also have used her agency provided laptop computer for personal use. The

1 investigation was conducted by Glen Patrick (Mr. Patrick), Deputy Director of the Office of
2 Environmental Public Health Sciences, Division of Environmental Public Health.

3 2. According to the DOH, Ms. Russell was hired by DOH on October 15, 2007
4 as a non-permanent Office Assistant 2 (OA2). On September 5, 2008, Ms. Russell's position
5 was reallocated to a Data Compiler 1 (DC1). Ms. Russell remained in that position as an
6 under-filled non-permanent OA2. On October 16, 2008, Ms. Russell was appointed to a
7 probationary appointment in the position as a DC1. Ms. Russell's probationary period was
8 extended on April 1, 2009. Ms. Russell successfully completed her probationary period as a
9 DC1 on October 15, 2009. Ms. Russell's position was reallocated to an OA3 on July 1, 2019
10 when the DC job class was abolished. She remained in that position until her resignation on
11 August 15, 2019.

12 3. According to the DOH, Ms. Russell's position receives and enters laboratory
13 data into a data management system. Eighty-five percent of position time is focused on sample
14 data entry, ten percent on mail sorting and sample management and five percent on other
15 duties as assigned. Ms. Russell's work schedule was Monday thru Thursday, 9:30 am to 4:00
16 pm with a half hour lunch from 12:30 pm to 1:00 pm.

17 4. According to the DOHI, the amount of data entered was used to estimate
18 the number of work hours by Ms. Russell during the investigation period of January 16,
19 2019 through May 30, 2019.¹ Electronic data-entry documentation from entry of water
20 sample bacteria test results into the DOH drinking water data system (Sentry) were
21 reviewed. The DOHI states that the number of laboratory test results entered by a person
22 as well as the time each test result was entered will show the number of hours worked.

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25 ¹ DOH advised Board staff that the reason for time-frame used was that January 16, 2019 was when Ms.
26 Russell was issued written expectations about hours of work. Ms. Russell's supervisor reported the concern at the
end of April 2019. In order to set the scope of the investigation, May 30, 2019 was identified.

1 This was used to identify the time the first and last test data was entered into Sentry, as
2 well as daily and hourly data entry counts and times.

3 5. According to the DOHI, approved leave hours and timesheet reported
4 work hours from the DOH Leave Accounting system were compared with Sentry test
5 entry data and the DOH IT system log-in data.² The reviewed period included 66
6 scheduled days of work, excluding approved leave days.

7 6. Listed below is the average times for first/last test entries during the
8 investigative time period:

- 9 • January 2019 10:56 am/4:15 pm
- 10 • February 2019 11:54 am/3:38 pm
- 11 • March 2019 10:08 am/3:09 pm
- 12 • April 2019 10:24 am/2:30 pm
- 13 • May 2019 10:23 am/3:00 pm

14 7. During the reviewed time-period, tests were entered after 4:00 pm on 21 of
15 66 days.

16 8. Board staff were provided a copy of a Memo of Expectations dated January 16,
17 2019 from Trace Warner (Mr. Warner), Manager of the Office of Drinking Water, to Ms.
18 Russell. The letter states in pertinent part:

19 *....This memo serves as clarification regarding the expectations of you in your position
20 as a Data Compiler with the Office of Drinking Water, Water Quality Section.
21 Specifically, I want to clarify actions that have led to a situation where the department
22 must compensate you for unapproved overtime. Your position is part time and
23 considered to be overtime eligible. When you elected to work on New Year's Day 2019,
24 without prior approval, our agency became obligated to pay you overtime. Had you
25 requested a change to your work schedule, I would have informed you that you cannot
26 work on a holiday as your position is overtime eligible...My expectations are:*

- *You will adhere to your most current work schedule agreement on file dated August 16, 2017*
- *Your work schedule is Monday-Thursday 9:30 am - 4:00 pm.*
- *Do not alter your work schedule without prior approval from your supervisor.*
- *Do not work past 4:00 pm, evenings, weekends, or holidays.*

² The data used was provided to Board staff.

- *Make sure not to exceed your 60% time of 24 hours per week.*

9. According to the DOHI, during the investigation time-period, Ms. Russell submitted Positive Time and Accounting (PTA) forms for a total of 389 claimed work hours, which excluded approved leave and meal time. The total number of data entry hours recorded by the drinking water database, between the first and last entered tests on scheduled workdays, was 296 hours. This includes half-hour lunch breaks and hours worked outside Ms. Russell's approved work schedule. Subtracting half-hour lunch breaks when no data were entered (14.5 total hours) on scheduled workday's results in 281.5 total hours of work. From this assessment, no data entry was performed for approximately 107 hours (28%) of Ms. Russell's PTA reported work hours.

10. According to the DOHI, the estimates do not take into consideration issues of performance or productivity. To account for this, daily DOH IT network login time-stamp data were also reviewed. Data for some days correlated within minutes of initial and ending data entry time stamps; other days they did not. From discussions with IT staff, data for some days reflect the IT network going into sleep mode due to staff not logging out at the end of their workday. Therefore, this data was not used to estimate worktime as it is not a consistently reliable indicator of when work was performed.

11. From the analysis of data entry data, work schedule and timesheet information, it appears that Ms. Russell did not perform her primary function of entering drinking water data during approximately 107 hours of paid work time between January 16, 2019 and May 30, 2019.³

12. According to the DOHI, the following documentation was provided by Mr. Warner of specific instances when Ms. Russell claimed work hours on her PTA, but no work was performed and no leave was requested.⁴

³ The data files and spreadsheets were provided to Board staff by Mr. Patrick.

⁴ Copies of the documents and emails were provided to Board staff.

- Email from Kerry Herd (Mr. Herd), DC2, to Mr. Warner dated March 4, 2019. Subject: "Jodi is out for the day EOM⁵." No leave was requested or approved for this time. First test entered at 9:41 am and last test entered at 11:50 am. Timesheet was submitted for 6 hours of work from 9:30 am to 4:00 pm.
- Email from Marian Ibanez (Ms. Ibanez), DC3, to Mr. Warner dated March 18, 2019 at 10:18 am. Subject: "Jodi Mobile Working" The email stated that "[s]aid she will update her calendar when she will be working." Forty-seven tests were entered between 9:30 and 10:30 am. No other records entered that day. Six hours reported on PTA with a start time of 9:30 am and end time of 4:00 pm.
- Email from Derrick Dennis (Mr. Dennis), Water Quality and Data Management Section Manager, to Mr. Warner dated May 9, 2019. Email indicated that "Jodi arrived today at 10:33 am." First test entered at 10:47 am and last test entered at 1:19 pm. Timesheet was submitted for 4.5 hours of work from 9:30 am - 2:00 pm. Leave was only approved for 2:00 pm-3:30 pm.

13. According to the DOHI, to evaluate whether Ms. Russell used her agency laptop computer for personal purposes, her computer was confiscated and a review was completed by agency IT staff including web URLs on the computer. No non-work related URLs were discovered.⁶

14. According to the DOHI in an interview with Mr. Warner, he described Ms. Russell's position as being narrowly focused and dedicated to the entry of coliform water quality test results in the DOH drinking water database. He discussed how the volume of work fluctuates and test results are received via mail 2X per day (morning and afternoon) and how the team of data entry staff rotate getting and sorting test results received in the mail. He also talked about how staff typically are entering drinking water test result data into the database within 15 minutes of arrival at work.

⁵ Board staff were advised that EOM was used by DOH personnel to indicate End of Message.

⁶ Board staff obtained an image of Ms. Russell's laptop computer. A review of Ms. Russell's hard drive found no evidence of Ms. Russel using her agency laptop for personal use.

1 15. Regarding expected productivity, Mr. Warner talked about how Ms. Russell
2 had avoided conversations related to productivity. He reported that she had resisted
3 establishing an hourly data entry target. He also discussed his goal of four hours of data
4 entry productivity each day, but feels he is not getting it, based on the drinking water
5 database that time-stamps each data entry. According to Mr. Warner, that beyond breaks
6 and lunch, and maybe half an hour per day to perform data quality checks, Ms. Russell
7 has no other duties other than entering coliform sample results. She is also expected to
8 attend staff meetings, but they happen very seldom. When asked if staff are aware of the
9 requirement to report worktime accurately, Mr. Warner stated that they are. He said that
10 when staff sign their PTA, they attest that the information is true and accurate.

11 16. Mr. Warner was asked about data entry staff work schedules and work schedule
12 practices in his unit. He said that two data entry staff work M-F, 8 am to 5 pm. Ms.
13 Russell's schedule is M-Th, 9:30 am to 4 pm. Mr. Warner said that staff have been
14 informed of their work schedules verbally and in writing. Ms. Russell's work schedule
15 was also noted under the Accountability in the Competencies section of her PDP signed
16 on December 26, 2018, He said a work schedule agreement is also on file for Ms.
17 Russell.⁷

18 17. Mr. Warner said that other staff follow their work schedules, but Ms.
19 Russell does not, despite repeated verbal and written reminders. Mr. Warner indicated
20 agency policy requires and staff are told that vacation leave and teleworking needs to be
21 pre-approved. He commented that Ms. Russell did not follow this, but submitted leave
22 requests at the end of the pay period for some leave previously taken. Sometimes, "[s]he
23 has put *mobile working* on her calendar without prior approval then later removes it from
24 her calendar after she's been gone, so it's hard to track." Mr. Warner described how he

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26 ⁷ A Copy of Mr. Russell's PDP and Work Schedule Agreement was provided to Board staff.

1 checks the data entry log during times when Ms. Russell was teleworking only to see she
2 entered very few records, yet claimed a full day of work. Mr. Warner noted that not once
3 has Ms. Russell submitted a leave request for prior approval despite being told to do so.

4 18. According to the DOHI, in an interview with Mr. Russell's coworker Ms.
5 Ibanez, she indicated she begins her day by logging in and immediately checking her
6 calendar and email to see if anything came in that needs immediate attention. Then
7 she gets and sorts mailed laboratory test results, including the coliform test results. Ms.
8 Ibanez stated that Ms. Russell never gets or sorts the mail since she arrives after the mail
9 has already been sorted. When asked if she was aware of the requirement to report work
10 time accurately, she responded by saying "[y]es, the form (PTA) says to report actual
11 work hours." She also described a recent meeting with the office timekeeper to review
12 how to complete the PTA.

13 19. According to the DOHI, Ms. Russell resigned from her position with DOH
14 effective close of business on August 15, 2019 and did not participate in the investigatory
15 interview scheduled for August 19, 2019. A letter was sent to Ms. Russell's last reported
16 address in Lacey, WA on August 13, 2019, notifying her that she could voluntarily
17 participate in the scheduled interview. Ms. Russell did not respond to this invitation.⁸

18 III. CONCLUSIONS OF LAW

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

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26 ⁸ Board staff mailed Ms. Russell a letter to her home address notifying her of the allegations and
requesting a response and left voicemail on her personal telephone number. As of the date of this order, she has
not responded.

1 Based on the evidence reviewed, Ms. Russell has used state resources (time) for her private
2 benefit or gain in violation of RCW 42.52.160. Ms. Russell's activities do not meet the
3 exceptions for the use of state resources as permitted in WAC 292-110-010.

4 2. RCW 42.52.160(1) – Use of persons, money, or property for private gain, states:

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

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

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

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

- 11 (i) There is little or no cost to the state;
12 (ii) Any use is brief;
13 (iii) Any use occurs infrequently;
14 (iv) The use does not interfere with the performance of any state officer's
or employee's official duties;
15 (v) The use does not compromise the security or integrity of state
property, information systems, or software;
16 (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
17 (vii) The use is not for supporting, promoting the interests of, or soliciting
for an outside organization or group.

18 3. The Board is authorized to impose sanctions for violations to the Ethics Act
pursuant to RCW 42.52.360.

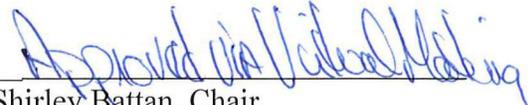
19 4. In determining the appropriateness of the civil penalty, the criteria in WAC 292-
20 120-030 have been reviewed.

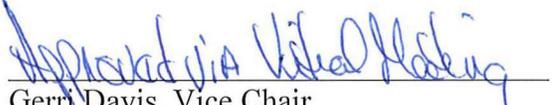
21 **IV. FINAL ORDER**

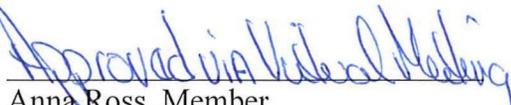
22 Based on the foregoing:

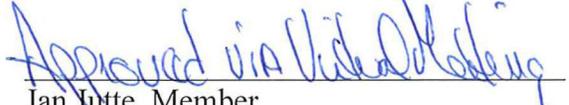
23 IT IS HEREBY ORDERED Respondent Jodi Russell is liable for and shall pay a civil
24 penalty of three-thousand dollars (\$3,000). The payment shall be made to the Executive Ethics
25 Board within forty-five (45) days of this Order.
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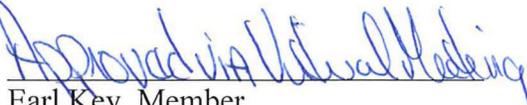
1 DATED this 12th day of March 2021.

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3 Shirley Battan, Chair


Gerrit Davis, Vice Chair

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5 Anna Ross, Member


Jan Jutte, Member

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7 Earl Key, Member

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10 **APPEAL RIGHTS**

11 **RECONSIDERATION OF FINAL ORDER – BOARD**

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

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

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

21 **FURTHER APPEAL RIGHTS – SUPERIOR COURT**

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

25 The petition for judicial review must be filed with the superior court and served on the
26 Board and any other parties within 30 days of the date that the Board serves this Final Order on

1 the parties. RCW 34.05.542(2). Service is defined in RCW 34.05.542(4) as the date of mailing
2 or personal service.

3 A petition for review must set forth:

- 4 (1) The name and mailing address of the petitioner;
- 5 (2) The name and mailing address of the petitioner's attorney, if any;
- 6 (3) The name and mailing address of the agency whose action is at issue;
- 7 (4) Identification of the agency action at issue, together with a duplicate copy,
8 summary, or brief description of the agency action;
- 9 (5) Identification of persons who were parties in any adjudicative proceedings that led
10 to the agency action;
- 11 (6) Facts to demonstrate that the petitioner is entitled to obtain judicial review;
- 12 (7) The petitioner's reasons for believing that relief should be granted; and
- 13 (8) A request for relief, specifying the type and extent of relief requested.
14 RCW 34.05.545.

15 **ENFORCEMENT OF FINAL ORDERS**

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

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