

BEFORE THE WASHINGTON STATE
EXECUTIVE ETHICS BOARD

In the Matter of:

Deitra Garrett

Respondent.

No. 2020-013

STIPULATED FACTS,
CONCLUSIONS OF LAW AND
AGREED ORDER

THIS STIPULATION is entered into by Respondent, Deitra Garrett, 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 March 31, the Board received a complaint alleging that Deitra Garrett (Ms. Garrett), a Work Source Specialist 4 (WSS4) at the WorkSource (WS) Rainier office for the Department of Employment Security (ESD), may have violated the Ethics in Public Service Act by using state resources for private benefit or gain.

2. According to the complainant, over the last two years Ms. Garrett has used state resources to deliver groceries via her second job with Kroger, Fred Meyer and Safeway. According to the complainant, there have been incidents previously that have been addressed, but as the complainant understands, the issues keep taking place.

3. Board staff requested all outside employment requests that Ms. Garrett had submitted while employed with ESD. Board staff were provided with two outside employment forms. One submitted in March 2001 for Home Care for an Elderly Person and one submitted in October 2018 for employment as an Independent Beauty Consultant.

4. In a written response to Board staff, Ms. Garrett stated that she has not committed any violation. She said she has not now or at any time during her employment with the state of Washington, and specifically the ESD, had any outside activities that she received any outside compensation for or participated in any activities incompatible with her responsibilities as a public servant or in her capacity as an Employment Specialist for ESD.

5. Ms. Garrett stated that she has never been employed by Kroger, Fred Meyer or Safeway to deliver groceries or in any other capacity. Ms. Garrett said she has not had any other outside employment in the last two years or any other time during her employment with ESD. Ms. Garrett also said she has never used work time or her work computer for any activities related to grocery delivery of any kind.

6. Ms. Garrett said that in regards to the allegation that: “there have been incidents previously that have been addressed, but as I understand, the issues keep taking place,” Ms. Garrett said she has not been approached, counseled or had any formal (or informal) notice, meeting, conversation or mention of any incident(s) or actions of any kind in relation or regard to the allegations at any time with: her immediate supervisor, administrator, or any other ESD staff or partners in the identified period and beyond while working in her WorkSource Specialist capacity at the WS Rainier Affiliate location.

7. Board staff interviewed Linda Venera (Ms. Venera), the Supervisor for WS Rainer, on the telephone. Ms. Venera stated that she became Ms. Garrett’s supervisor on July 16, 2019.

She said she had never observed Ms. Garrett using state resources for personal use or for an outside business. She said was not even aware Ms. Garrett had an outside business.

8. Ms. Venera said Ms. Garrett always planned leave time. If late, she would call in on the attendance line to let her know if there was a change in the arrival time and what kind of leave she was taking.

9. When Board staff asked if there was any reason for why Ms. Garrett might be visiting websites such as GoDaddy, Facebook, Expedia or Amazon.com,¹ Ms. Venera said she wasn't sure about GoDaddy but said she could be on search engines such as Monster, Yahoo and Facebook looking for employers, job boards or for job searches. She said Ms. Garrett could be navigating online with clients for job searches, going to alot of job boards looking for employment opportunities. Part of her job is giving guidance to clients for job searches. She said the work source specialists are on their computers a lot and do a lot of research for their clients. Ms. Venera said Ms. Garrett is consistent with her delivery of service and keeps in touch after the appointment with the clients. She does a lot of extra work to make sure they have everything they need.

10. When Board staff asked about multiple emails found in an initial review of Ms. Garret's email history that had resumes attached,² Ms. Venera said the clients are required to have a resume available for appointments with work source specialists. She said they usually send them in advance.

¹ During the initial review of Ms. Garrett's internet history, Board staff noted frequent visits to these websites by Ms. Garrett.

² During the initial review of Ms. Garrett's emails, Board staff noted that there were a substantial amount of emails sent to and from Ms. Garrett's email address with resumes attached.

11. Board staff interviewed Abel Hartman (Mr. Hartman), a former coworker of Ms. Garrett at ESD, on the telephone. Mr. Harman was also listed as a witness on the original complaint received by Board staff. Mr. Hartman said he now works at a non-profit that works with Worksource. Mr. Hartman said he would provide Board staff with a written statement.

12. In written response from Mr. Hartman, he said as of May 2020, he left ESD. Mr. Harman said he learned about Ms. Garrett's personal business after reporting her to the union for other reasons regarding misconduct.³

13. He said much of his report submitted to the union in March of 2020, outlined a pattern of disregarding job duties and attendance issues. After reporting this information, he said he was made aware by coworkers that Ms. Garrett was likely conducting personal for-profit business while at work, which may coincide with instances of online shopping on the Fred Meyer website.

14. Mr. Hartman said prior to sending his report, he was unaware of her personal business and did not specifically call attention to it in his original report. What he did report was a series of events that show Ms. Garrett's continued use of state resources for personal business. He said he passed Ms. Garrett's cubicle on the way to the front of the office multiple times a day to help customers in the front lobby. In passing her computer he often witnessed her misuse of resources, albeit unaware of her for-profit business at the time.⁴ There were also multiple noted

³ Mr. Hartman provided Board staff with a copy of the complaint he filed with the union. In that report he referred to specific instances when he observed Ms. Garrett shopping on line, using her work phone to deal with her personal phone with AT&T, insurance company, personal banking and the Fred Meyer website.

⁴ In the telephone interview with Board staff, Mr. Hartman specifically mentioned overhearing Ms. Garrett discussing her bills on her work phone and observing her paying power bills on her work computer.

instances of Ms. Garrett's arriving late to work, taking long lunches and taking long breaks, often because she left the work premises and returned late.

15. Mr. Hartman said he was often forced to wait to take breaks, go to other assigned duties or stay at work past his working hours because Ms. Garrett did not attend to assigned work duties as scheduled, or at all. After learning about her business delivering groceries, Mr. Hartman believes that multiple instances he outlined in his report were regarding that business but reported as attendance issues because attendance was more pertinent to his working situation at the time.

16. Board staff contacted Jonathan Joudrey (Mr. Joudrey), a former coworker, on the telephone. Mr. Joudrey was also listed as a witness on the original complaint received by Board staff. In a written response from Mr. Joudrey, he said Ms. Garrett was part of the front-end services team. He said he took care of coordinating the flow of customers who came in as they were directed to attend an unemployment insurance appointment. He said Ms. Garrett was part of the team that conducted the interview or the session with the customer.

17. Mr. Joudrey said he overheard conversations not related to work with what he believed was Comcast. On other occasions, he overheard conversations not related to work but cannot say what exactly the dates were. He said it was something to do with groceries or something similar. Mr. Joudrey said Ms. Garrett was often late to work and took long breaks.

18. Board staff were provided a copy of an interview of Albert Garza (Mr. Garza), Administrator of WS Auburn that was conducted by Kelly Moore (Ms. Moore), an Equal Opportunity Consultant with ESD. The interview appeared to address Ms. Garrett's outside employment. Board staff contacted Mr. Garza on the telephone to ask about the interview. He said the reason he was asked about an incident with Ms. Garrett was because Ms. Garrett mentioned it

in one of her complaints about him. Mr. Garza agreed to provide Board staff with a written response.

19. In a written response, Mr. Garza said he was at WS Rainier filling in as a temporary administrator from September 2018 through March 2020. During that time at WS Rainier, Michael Crawford (Mr. Crawford), Ms. Garrett's supervisor, needed coaching and assistance in addressing incidents that involved Ms. Garrett.

20. He said that within a few months after his arrival, he was advised by Mr. Crawford and Brenda Suga (Ms. Suga), an Administrative Assistant at ESD, that they overheard Ms. Garrett saying that she was two hours late because of car troubles (due to a dead battery) the night before while delivering groceries. Mr. Garza provided Board staff a copy of an email he sent to Ms. Garret in response to an email received from her regarding this issue.

21. The email provided to Board staff by Mr. Garza was sent to Ms. Garrett on October 23, 2018 by Mr. Garza in response to an email sent to Mr. Crawford by Ms. Garrett on October 22, 2018. Mr. Crawford was cc'd. The subject line was: *Outside Employment Form*. The email states, in part:

Deitra,

Michael is only doing his job by following up with you. Let me be clear, I'm the one that asked Michael to follow up with you. Why did I ask him to follow up with you? Because Michael stated that you came in his office when you arrived (two hours later) and said to him, "you were late because you had car troubles (due to a dead battery) the night before when you were delivering grocery's." The reason Brendalee is a part of this discussion is because she was in the room meeting with Michael when you walked in and stated, "you were late because you had car troubles (due to a dead battery) the night before when you were delivering grocery's."...

.... Neither the agency or I have an issue with you having a second or even a third job. Reality is, it's up to you how many jobs you want to have on your own time. The only time I get involved is when outside employment begins to interfere with the primary job. So based on the above statements from Michael and Brendalee, I

asked Michael to send you an email requesting additional information (clarification) if you had a second outside job delivering groceries because all we had at that time was the Beauty Consultant information. Deitra, here's the bottom line - Did you not say you were late because you had car troubles the night before when you were delivering grocery' s?.....

Please advise. If it's no, then no need to complete the form. If by chance you are working another job delivering groceries. Complete the form and send to Michael so we can sign it and move it forward. What's more, all of this could have been avoided if the documents were completed prior to starting a second job..... (sic)

22. In a written response from Ms. Moore, she said that Ms. Garrett filed a discrimination complaint against Mr. Garza on September 19, 2019, and their office conducted an investigation into her allegations. In the documentation Ms. Garrett provided, she included an email string where Mr. Garza asked her to complete an outside employment form. She said that Mr. Garza had concerns about her outside employment. Ms. Garrett provided many examples of times she felt Mr. Garza did not communicate with her respectfully, where she felt their relationship was strained, and where she felt that Mr. Garza was questioning her accountability and treating her differently than other staff.

23. Ms. Moore said when they talked to Mr. Garza they shared that Ms. Garrett felt he was questioning her accountability and treating her differently than other staff. Mr. Garza explained their interaction regarding the outside employment form and shared that Ms. Garrett refused to complete it even though she mentioned that she was late to work because of her car breaking down while she was working a second job.

24. In a review of Ms. Garrett's email history, Board staff located three emails sent and received at Ms. Garrett's work email address. The emails were regarding an insurance claim, were dated November 18, 2019 and the subject line was *Allstate*. The emails contained attachments that were titled, *Allstate Motor Club-Tow Incident October 30, 2019*, and were

in regards to Ms. Garrett experiencing car trouble which required her vehicle to be towed for repairs.

25. Board staff also located an email sent from Ms. Garrett's work email address at ESD to Instacart, help@instacart.com.⁵ The email cc'd Ms. Garrett's personal email address. The subject was: *TAX INFORMATION FOR WORKER* and dated March 12, 2020. The email also listed, along with personal contact information, Ms. Garrett's ESD work email address as a way that she could be reached. The email stated the following:

Dear Instacart:

*I worked as a contracted **Personal Shopper** for Instacart in Seattle, Washington from February 2018 to October 2018. I am writing to request a copy of a **1099 or W2 form** to file my taxes for the **Tax Year 2018**. I never received any written notice, invoice or actual **1099 FORM** from Instacart and need this info to complete my taxes. I am no longer able to access the **INSTACART** app platform to obtain any of my information or records. This is my **SECOND REQUEST** for this information. If you require more info, or have questions regarding this matter I can be reached at the number and email address provided below. Thank you.*

Deitra Garrett
10415 55th Ave S
Seattle, WA 98178
(206) 399-0016 Cell
(206) 725-3644 Messages
bluesson@q.com Email (personal)
dgarrett@esd.wa.gov Email

26. Board staff contacted Ms. Garrett about the email sent to Instacart. In a written response, she said she was not employed by Instacart. She said she was an Independent Contractor Personal Shopper as an individual home business owner. She said that like her Mary Kay business, it is associated with the company "Mary Kay" however she said she does not work for Mary Kay. She said she is an Independent Beauty Consultant Business Owner. She said that as with Instacart,

⁵ According to their website, Instacart is an American company that operates a grocery delivery and pick-up service in the United States and Canada with headquarters in San Francisco.

it is a contract business. Ms. Garrett said she received her account payments direct deposit from a third party entity representing Instacart. She said she did not consider this outside employment and therefore wasn't required to complete an outside employment form.

27. Ms. Garrett said she was registered with the company February 2018 through October 2018. She said this involved minimal activity in assignments, evenings and weekends, on her own time and scheduled around her family and other activities outside of her regular work schedule with WorkSource. She said she accompanied another personal shopper within this time-period to train and learn more about the business to see if it would be a good fit for her, however she suffered an on-the-job injury which left her disabled and ended all further activity toward being a Personal Shopper with Instacart. Ms. Garrett said she provided assistance to customers who had interest in the company or needed help with the online application process.

28. Ms. Garrett said she requested the records from Instacart, as stated in the email, because she didn't have a record of her actual number of shops and income for tax purposes. Ms. Garrett said that since she had already been assisting customers from the site she accessed it to find contact information to reach out to their business office to obtain her information. Ms. Garrett said she didn't consider this one email as being a big deal.

29. Using the search word "Instacart" on Ms. Garret's internet history⁶ under the user name esd1\ldgarrett, Board staff found that Ms. Garrett visited the instacartshoppers or

⁶ As a result of the state shutdown, ESD was unable to obtain Ms. Garrett's laptop computer. They were able to obtain information using a script to filter out the specific network username (for Ms. Garrett) and timeframe (ESD was able to go back to February 2018) from their agency's firewall logs which contain all employees' internet activity. According to ESD, the script has to go through every entry in the logs and just pulled out the relevant entries by name and date.

instacartemail.com websites on 21 different days from February 2018⁷ to December 2018 and one day in May 2020.

30. A further review of Ms. Garrett's internet history under her user name esd1\dgarrett found the following information.

31. On May 1, 2018, Ms. Garrett accessed seattleconcerts.eventtickets.com.

32. Between June 2018 and March 2020, Ms. Garrett accessed ATT websites, including www.att.com, myattlog.att.com, www.att.com/support and resolve.att.com on 16 different days:

- June 14, 2018
- August 22, 2020
- September 18, 2018
- October 10, 19, 22 and 24, 2018
- December 10 and 28, 2018
- September 4, 2019
- September 5, 2010
- December 24, 2019
- January 3 and 9, 2020
- February 11, 2020
- March 27, 2020

33. Between March 8, 2018 and October 15, 2018, Ms. Garrett accessed billpay@key.com on 14 different days.

34. Between May 23, 2018 and January 9, 2020 Ms. Garrett accessed Seattle utility websites including seattle.gov/light/paymybill and seattle.gov/util/MyServices/MyAccount a total of nine different days:

- May 23, 2019
- July 9, 2018
- July 26, 2018
- August 20, 2018
- September 25, 2018
- October 10 and 24, 2018
- December 8 and 9, 2019.

⁷ Ms. Garrett visited the website on five different days in May 2018.

35. Board staff contacted Ms. Garrett and asked why she would be visiting the previously mentioned websites on her work computer and during her workday.

36. In a written response to Board staff, Ms. Garrett said that in regards to Instacart, COVID-19 has affected the current market, the previous labor market 2018 had been reflective of an increase in more unique job opportunities with flexibility for part-time work, business ownership, entrepreneurial opportunities for diverse populations in low-moderate incomes to find employment. She said one of those was the growing home delivery, online home business, telework roles in markets inclusive of Amazon, Walmart, Safeway, and other various grocery chains and independent start-up companies like Instacart which was fairly new to the Seattle area. She said she learned of the company and site from a colleague who works in community and social services. She said she began seeing some of the advertisements on television and she visited the site during business hours to learn more information about the company and how it all works.

37. In regards to the other websites, Ms. Garrett said customers on occasion have needs for documentation of utilities such as water/sewer/garbage or electric bills, phone service as proof of residency for unemployment insurance benefits or other community programs and services, healthcare, private insurance, mortgage refinancing, mortgage insurance, training benefit applications; BFET, Axtel Free Phone, etc. in which she utilized the Seattle.gov/utility site to assist customers; the same applies to AT&T.com, Xfinity or other possible phone carriers. The other sites are considered employer sites that are work related to either employment verification, employer contact info, or job seeker information for referral/application to positions at a local Toyota dealership/service center locations or Seattle Center associated website for employment purposes.

38. Board staff contacted Ms. Venera and advised her of the websites Ms. Garrett was visiting, the frequency that she was visiting the websites, the email Ms. Garrett sent to Instacart and Ms. Garrett's response. In an emailed response, Ms. Venera stated "Thank you for our conversation, based on my review of the information there is no work related reason for her to be on these sites."

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, in part:

.....

(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, Ms. Garrett used state resources for personal benefit in violation of RCW 42.52.160. Ms. Garrett'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 Deitra Garrett 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. Deitra Garrett 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. Deitra Garrett further agrees that the evidence available to the Board is such that the Board may conclude they 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. Deitra Garrett waives the opportunity for a hearing, contingent upon acceptance of this stipulation by the Board, or their 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. Deitra Garrett 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 Deitra Garrett 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 Deitra Garrett 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 Deitra Garrett 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, Deitra Garrett 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. Deitra Garrett agrees to pay a civil penalty in the amount of three thousand dollars (\$3,000) associated with violations of RCW 42.52. The Board agrees to suspend five hundred dollars (\$500) on the condition that Deitra Garrett complies with all terms and conditions of this Stipulation and Order and commits no further violations of RCW 42.52 for a period of two years from the date this agreement is executed.

12. The civil penalty in the amount of two-thousand-five-hundred dollars (\$2,500) 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, Deitra Garrett, 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.

Deitra A Garrett January 22 2021
Deitra Garrett Date
Respondent

Presented by:

K. Reynolds
KATE REYNOLDS
Executive Director

3/12/2021
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 12th day of March 2021.

Approved via Virtual Meeting
Shirley Battan, Chair

Approved via Virtual Meeting
Gerr Davis, Vice Chair

Approved via Virtual Meeting
Earl Key, Member

Approved via Virtual Meeting
Anna Dudek-Ross, Member

Approved via Virtual Meeting
Jan Jutte, Member

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

Deitra Garrett, Respondent Date