

BEFORE THE WASHINGTON STATE
EXECUTIVE ETHICS BOARD

In the Matter of:

Donald Britain
Respondent.

No. 2021-012

STIPULATED FACTS,
CONCLUSIONS OF LAW AND
AGREED ORDER

THIS STIPULATION is entered into by Respondent, DONALD BRITAIN, 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 15, 2021, the Executive Ethics Board (Board) received a complaint alleging that Donald Britain (Mr. Britain), former Case Manager with the Department of Social and Health Services (DSHS), may have violated the Ethics in Public Service Act. The complaint alleged that Mr. Britain was conducting activities that were incompatible with his official duties and that he provided a special privilege to a DSHS client. In addition, the complaint alleges Mr. Britain may have been using his state issued computer and computer resources resulting in a personal benefit and gain.

2. On September 22, 2019, a complaint was made to the DSHS Office of Fraud and Accountability. The complaint alleged that Mr. Britain was engaged in an inappropriate

relationship with a DSHS client, including vacations to Hawaii. In addition, the complainant alleged Mr. Britain was providing the client with unreported monies. On October 2, 2019, DSHS referred the investigation to the Washington State Patrol (WSP)¹.

3. At the time of the alleged violation, Mr. Britain was employed by DSHS as a WorkFirst Program Specialist and had been in that position for approximately 17 years.

4. According to the State of Washington Classified Job Specifications as a WorkFirst Specialist, Mr. Britain provided services to Temporary Assistance to Needy Families (TANF) clients on an ongoing basis to promote and assist clients to achieve economic self-sufficiency. In doing so, Mr. Britain would provide financial eligibility services, develop Individual Responsibility Plans (IRP), review plans, as well as monitor and evaluate client needs, activities and progress. In addition, Mr. Britain would refer his DSHS clients to other agency services and community organizations for assessment or specialized services.

5. Mr. Britain signed a lease contract for an apartment with a WorkFirst DSHS client in which he managed her case. On January 18, 2019, they both signed a lease contract for the period of January 18, 2019 through June 30, 2019. In June 2019 Mr. Britain and the client signed a lease renewal contract for the period of July 1, 2019 through December 2019.

6. Mr. Britain told WSP internal investigators (investigators) that he had known the client through his work at DSHS for approximately a year and a half.

7. Mr. Britain acknowledged to the investigators that he did not inform his supervisor of the living arrangements with his client. Mr. Britain explained that he did not notify his supervisor because he didn't think it would be a permanent living arrangement and because it was

¹ WSP Case Number – EIMS2019000717

not a romantic relationship with his client therefore, he felt that notifying his supervisor was not necessary.

8. In late August 2019, Mr. Britain and his client travelled to Hawaii together. Mr. Britain was asked about this trip by the investigators, Mr. Britain told them that he had told his client about the trip to Hawaii and she asked if she could tag along. Mr. Britain further stated that he did not pay for her trip. He indicated that he had some unused air miles which he used for her air travel and that she stayed with a friend of hers while in Hawaii. He indicated that he stayed with a friend of his and he and the client did not interact during the trip.

9. On August 27, 2019 (days before their trip to Hawaii), Mr. Britain noted in the case file that the client had called and indicated that her EBT (Electronic Benefit Transfer) card had been stolen and that she and her children were leaving town the next day.

10. Mr. Britain started the process for a new EBT card to be issued even though he was aware that the client was not leaving town with her two children but going to Hawaii with him.

11. DSHS policy dictates that a client or Case Manager should call the bank to report the EBT card stolen and then the Case Manager would create a "blue slip" which would start the process of receiving a new EBT card. Mr. Britain failed to call the bank to cancel the reported stolen EBT card as required by procedure.

12. Mr. Britain indicated in his response to the reasonable cause determination that, no DSHS employee followed the policy of calling the bank and they were instructed to have the client call the bank.

13. According to DSHS, procedure would dictate that the only time a client is supposed to receive a new EBT card at the CSO (Community Services Office) is if the client is homeless, indigent and does not have a physical address. In all other cases, the EBT would be mailed.

14. Mr. Britain told investigators that policy is “bent all of the time.”

15. DSHS Internal Investigator Tiffany Chou (Ms. Chou) indicated in a response to Board staff that Mr. Britain authorized the EBT card on August 27, 2019 at 1:43 pm and sent the authorization via Barcode to EBT staff. The client pickup of the card at the Kennewick CSO in person sometime between 1:43 pm and 1:59 pm that same day.

16. On October 29, 2019, the DSHS Policy regarding the issuance of EBT cards was rescinded, allowing DSHS customers the option to receive their replacement EBT cards at the local CSO regardless of the case circumstance. The new policy would allow customers the option to pick up their replacement EBT card in person at the local CSO or by mail. If the customer choose to pick up their replacement card at the local CSO, the case manager will authorize the EBT card and refer the customer to the check in at the lobby kiosk at the CSO during EBT core hours.

17. The client was enrolled at Columbia Basin College (CBC) in a Welding Certification program. DSHS pays for the client’s tuition and supplies. As the client’s case manager, Mr. Britain would create vouchers for tools and supplies.

18. The Support Service Directory (SSD)² provides guidance in providing support services. The Support Service Directory identifies support services as transitional in nature and not an ongoing supplement to the participant’s grant, but are intended to help the client transition off TANF to wages or other income.

19. The SSD has a \$3,000 per program year (July 1 to June 30), limit per participant. The support services are restricted according to the activity of the participant is involved in. The activity categories are:

- Work- related: working, looking for work, work like activities.

² Support Service Directory – Revised July, 2018

- Safety-related: meeting significant or emergency family safety needs such as family violence.
- Other activities: any other activity contained in the IRP.

20. According to the SSD, all services issued, decisions, and justification must be documented in the participant notes.

21. Mr. Britain told investigators that all items he requested vouchers for were not requested by the client but by the program. The investigator provided a list of items that Mr. Britain had issued vouchers. Mr. Britain verified the items and indicated that they were “absolutely necessary.” Mr. Britain further supported his statement by saying the vendor, Oxarc, and the CBC instructor, Chris Mitchell, verified that all of the requested items were essential.

22. The investigators showed Mr. Britain a copy of the DSHS Support Service Directory, which documents suggested cost for different support services, such as education, work, etc. Mr. Britain was asked why he approved more than \$1,500 in work tools when the Support Services Directory allows for only \$750. Mr. Britain replied that he didn’t classify the vouchers as tools, instead he classified them as school supplies.

23. The Support Services Directory assigns a code (15) to items related to “Tools for employment” and (04) for Educational Expenses. A majority of the items shown above were coded as code 15 – Tools for employment.

24. According to the Support Service Directory to be eligible for Code 15 the tools or equipment requested must be required by the employer and must have the employer’s statement of the required tools. Other requirements are that the client must have the tools to accept a bona fide offer of employment, to maintain employment, or that all other employees have the same tool requirement.

25. According to the Support Service Directory Educational Expenses (Code 4) cover all expenses related to training or education. Suggested limits are \$300 per request and that other sources of payment should be looked at first such as Pell grants, SEOG, or Work Based Tuition Assistance. Educational expenses are tuition, books, GED testing, uniforms, tutoring, specialized clothing and tools/kit.

26. In a response to Board staff, Mr. Britain indicated that during the DSHS disciplinary process he pointed out that some of these vouchers were issued under incorrect code 15 and needed to be changed to correct educational code 04 and that as in most cases this error was caused by limited time and being rushed.

27. On May 23, 2019, Mr. Britain removed his client from the Division of Child Support (DCS) non-cooperation status prior to receiving the cooperation status verification from DCS. His client was not in cooperative status with DCS until May 30, 2019.

28. Mr. Britain was asked by the investigators why he removed his client's non-cooperative status. He stated that he did not have the paperwork in front of him and could not recall.

29. Mr. Britain indicated in a response to the Reasonable Cause Determination that in his written response related to the DSHS disciplinary process he explained that he recalled that he did verify, by phone with a Support Enforcement Officer (SEO) that his client had become compliant with DCS prior to May 30, 2019 and that it would take up to two weeks for the official DCS notification to be completed. This would have caused his client's grants to be reduced unnecessarily on June 1, 2019, and that when the paper notification arrived, his client would get the full retro grant anyway.

30. On March 25, 2021 Board staff contacted Jeff Madsen (Mr. Madsen), Computer Forensics Investigations Manager with DSHS, to request a copy of Mr. Britain's work computer hard drive. Mr. Madsen informed Board staff via email that he had an incomplete copy of Mr. Britain's work computer hard drive. He explained there were issues with the copying process and was only able to obtain 117 GB of the hard drive. Mr. Madsen explained he was able to obtain enough of the image to process but that it was still technically incomplete. Mr. Madsen indicated that along with the incomplete copy of the hard drive he had obtained a copy of Mr. Britain's "H" drive, located on the DSHS server.

31. Board staff received a copy of the hard drive and "H" drive via a secure transfer site on March 26, 2021.

32. Board staff's analysis revealed the following evidence related to allegations identified in the complaint. See details below:

H- Drive - (storage location on the DSHS Server)

Board staff's review of the "H" drive revealed four word documents related to "the client" college course work. See below:

- **Ethos Logos Pathos** – the paper identifies the client as the author, written to CBC Professor Montoya, English 101, dated 5 May 2019. The metadata indicates the document was created by A.B. on 5/8/19 at 8:05 am, last modified by Mr. Britain on his DSHS computer on 5/8/19 at 10:49 am, total editing time was 167 minutes.
- **Legalization and Decriminalization of Marijuana (Final copy)** - the paper identifies the client as the author, written to CBC Professor Montoya, English 101, dated 20 May 2019. The metadata indicates the document was created on 6/6/19 at 11:31 am, last modified on 6/6/19 at 11:31 am.
- **Legalization and Decriminalization of Marijuana (Final copy (002))** – the paper identifies the client as the author, written to CBC Professor Montoya, English 101, dated 20 May 2019. The metadata indicates the document was created on 6/6/19 at 2:57 pm, last modified on 6/6/19 at 4:29 pm. No author or creator is identified.

- **Marijuana annotated** – the paper identifies the client as the author, written to CBC Professor Montoya, English 101, dated 20 May 2019. The metadata indicates the document was created on 6/6/19 at 2:25 pm, last modified on 6/6/19 at 2:25 pm. No author or creator is identified

33. Mr. Britain indicated in his response to the Reasonable Cause Determination that he recalled that he reviewed his client’s English class paper during his break or lunchtime and he thought that it was allowable as de minimis use.

34. Board staff’s review of the “H” drive revealed one word document related to a “letter to the Editor” as the Mayor of Kennewick in support of state Senate candidate Sharon Brown. The document is titled, “Letter to the editor for Don Britain.” The documents metadata indicates that the last author was Don Britain (DSHS), last modification time/date as 10/19/2018 at 12:54 pm.

35. Mr. Britain indicated in his response to the Reasonable Cause Determination that that this document was apparently worked on during his lunch three years ago and he thought that it was allowable as de minimis use.

36. Board staff’s review of the “H” drive for the period September 15, 2016 to October 10, 2019 revealed 169 personal documents (108 PDF’s, 58 Word, and 5 Excel documents) related to his outside employment as the Mayor of Kennewick, a divorce, his condo in Hawaii, and more.

37. Mr. Britain indicated in his response to the Reasonable Cause Determination that some of the documents were five years old and if he worked on them it was done during his breaks and lunch period and he thought that it was allowable as de minimis use.

38. Mr. Britain was terminated from his employment with DSHS for violations of DSHS policy on October 28, 2019.

B. CONCLUSIONS OF LAW

1. The Ethics in Public Service Act, Chapter 42.52 RCW, prohibits state employees conducting activities incompatible with their official duties (Conflict of Interest). RCW 42.52.020 states:

No state officer or state employee may have an interest, financial or otherwise, direct or indirect, or engage in a business or transaction or professional activity, or incur an obligation of any nature, that is in conflict with the proper discharge of the state officer's or state employee's official duties.

2. Based on the stipulated facts above, Mr. Britain conducted activities that were incompatible with his official duties in violation of RCW 42.52.020.

3. The Ethics in Public Service Act, Chapter 42.52 RCW, prohibits state employees from securing Special Privileges. RCW 42.52.070 – Special privilege states:

Except as required to perform duties within the scope of employment, no state officer or state employee may use his or her position to secure special privileges or exemptions for himself or herself, or his or her spouse, child, parents, or other persons.

4. Based on the stipulated facts above, Mr. Britain used his position to secure a special privilege in violation of RCW 42.52.070.

5. The Ethics in Public Service Act, Chapter 42.52 RCW, prohibits state employees from using state resources for their benefit. RCW 42.52.160(1) states:

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

6. Based on the stipulated facts above, Mr. Britain used state resources for a personal benefit in violation of RCW 42.52.160.

7. The Ethics in Public Service Act, Chapter 42.52 RCW, prohibits state employees from using state resources for the purpose of assisting a campaign for election of a person to an office or for the promotion of or opposition to a ballot proposition. RCW 42.52.180(1) states:

RCW 42.52.180 – Use of public resources for political campaigns:

No state officer or state employee may use or authorize the use of facilities of an agency, directly or indirectly, for the purpose of assisting a campaign for election of a person to an office or for the promotion of or opposition to a ballot proposition. Knowing acquiescence by a person with authority to direct, control, or influence the actions of a state officer or state employee using public resources in violation of this section constitutes a violation of this section. Facilities of an agency include, but are not limited to the use of stationary, postage, machines and equipment, use of state employees of the agency during working hours, vehicles, office space, and publications of the agency and clientele lists of the persons served by the agency.

8. Based on the stipulated facts above, Mr. Britain used state resources to support a candidate for a political office in violation of 42.52.180.

9. 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, the violation was continuing in nature.

D. STIPULATION AND AGREED ORDER

1. Pursuant to chapter 42.52 RCW, the Executive Ethics Board has jurisdiction over Donald Britain 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. Donald Britain 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. Donald Britain 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. Donald Britain 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 Donald Britain 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. Donald Britain 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 Donald Britain 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 Donald Britain 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.

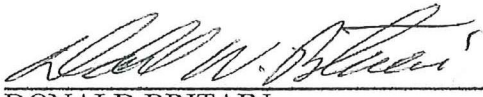
10. If the Board rejects this stipulation, or if Donald Britain does not accept the Board's proposed modification(s), if any, this matter will be scheduled for an administrative hearing before the Board. If an administrative hearing is scheduled before the Board, Donald Britain waives any objection to participation by any Board member at the hearing to whom this stipulation was presented for approval under WAC 292-100-090(2). Further, Donald Britain 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. Donald Britain agrees to pay a civil penalty in the amount of five-thousand dollars (\$5,000) associated with violations of RCW 42.52.

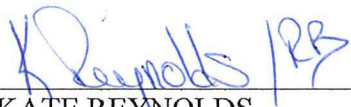
12. The civil penalty in the amount of five-thousand dollars (\$5,000) is payable in full to the Washington State Executive Ethics Board within forty-five (45) days after this stipulation is signed and accepted by the Board, or as otherwise agreed to by the parties.

I. CERTIFICATION

I, Donald Britain, 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.

 5/25/22
DONALD BRITAIN Date
Respondent

Presented by:

 RB
KATE REYNOLDS Date
Executive Director

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 8th day of July , 2022

Approved Vitealey

Shirley Battan, Chair

Absent

Jan Jutte, Vice-Chair

Approved Vitealey

Gerri Davis, Member

Approved Vitealey

Earl Key, Member

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

Donald Britain, Respondent

Date