

BEFORE THE WASHINGTON STATE
EXECUTIVE ETHICS BOARD

In the Matter of:

James Harvey

Respondent.

No. 2021-056

STIPULATED FACTS,
CONCLUSIONS OF LAW AND
AGREED ORDER

THIS STIPULATION is entered into by Respondent, James Harvey 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 December 12, 2021, the Executive Ethics Board (Board) received a complaint alleging that James Harvey (Mr. Harvey), a former Social & Health Program Consultant 4 (SHP4) at Rainier School with the Department of Social and Health Services (DSHS), may have violated the Ethics in Public Service Act by using state resources for private benefit or gain.

2. According to DSHS, Mr. Harvey was originally hired by DSHS on September 16, 2011 as a Medical Assistance Program Manager. In December 2011, his position was moved to the Health Care Authority (HCA) as part of a transfer from DSHS to HCA. He resigned from that position on June 2, 2015. Mr. Harvey was rehired by DSHS on January 4, 2016 as a Psychology

Associate (PA) at the DSHS Special Commitment Center. On December 19, 2016, Mr. Harvey transferred to Western State Hospital. On January 10, 2018, Mr. Harvey transferred to Rainier School as a SHP4. Mr. Harvey resigned from DSHS effective January 19, 2022. Mr. Harvey's scheduled shift was Monday through Friday 8 am-4:30 pm.

3. According to the complainant, Mr. Harvey had been using state resources to apply to hundreds of jobs with the state and private sector. The complainant stated that all of these applications are time stamped in NeoGov, the Washington State job application system.

4. According to the complainant, Mr. Harvey would have pages of applications for positions with state agencies including DSHS, the HCA and the Department of Commerce (Commerce). The complainant alleges that Mr. Harvey's NeoGov account will reveal the number of applications he has frivolously submitted to state agencies. He said that Devonee Davis (Ms. Davis), a Technology Specialist and System Administrator for NeoGov at the Washington State Department of Enterprise Services (DES), can access his account to reveal the actual number of applications and dates and times they were submitted.¹ The complainant believes that additional evidence can be found by doing a search of Mr. Harvey's internet history.

5. According to the complainant, considering the time it takes to read through job descriptions, supplemental questions to answer, attachments and other steps in the application process, then multiply it times the hundreds of applications, it is unlikely that Mr. Harvey had time to perform his actual duties at work.

¹ The complainant provided a document listing 25 applications for jobs that Mr. Harvey applied for from June 2016 through December 2021.

6. In a written response to Board staff, Mr. Harvey's attorney, Rodney Moody (Mr. Moody), stated that Mr. Harvey, for reasons completely unrelated to this complaint, tendered his notice of resignation from DSHS on January 18, 2022.

7. Mr. Moody said that without acknowledging whether Mr. Harvey did or did not apply for other state related employment opportunities during periods of employment, he maintains that "...searching and applying for state jobs, including taking an examination or participating in an interview is a permitted use regardless of how many jobs are applied for." Mr. Moody also referred Board staff to Executive Ethics Board Advisory Opinion 03-01, which states, in part:

In addition, a DCP account is part of a public workers employment benefits package. For example the DCP website allows employees to electronically access the DCP's information and services, such as the Department of Personnel's website allows employees to review job postings, submit job applications, study and register for training opportunities, and learn about or request assistance from a variety of programs and services available to state employees (such as disability accommodation assistance, recruitment and diversity program specialists, and the Employee Advisory Service). All of these activities are part of the diverse benefits available to state employees, and are directly related to state employment.

The ability of a state employee to review, apply, and both interview and test for other state related employment opportunities are part of the "diverse benefits" available to state employees and directly related to state employment.

8. After Board staff notified DSHS of the allegations regarding Mr. Harvey, DSHS advised Board staff that they were initiating an investigation into allegations that Mr. Harvey filed an application with the Department of Corrections (DOC) that had a document containing confidential information attached to it.

9. At the conclusion of that investigation, DSHS provided Board staff with a copy of the Investigative Report (IR). According to the IR, on January 18, 2022, Rainier School was notified by Cathi Harris (Ms. Harris), the manager at the DOC Sex Offender Treatment and

Assessment Programs (SOTAP), that there was a possible confidentiality breach involving Mr. Harvey.

10. According to Ms. Harris, at the end of 2021 Mr. Harvey applied for a position as a Corrections Specialist 4 (CS4). During a review of all applicants, the SOTAP Quality Assurance Manager (QA) Corey McNally (Ms. McNally) had discovered what appeared to be a breach in confidentiality. Mr. Harvey had attached a work sample in his interview packet submitted through NeoGov.

11. According to the IR, the work sample consisted of a treatment plan completed in 2016 of a resident at the Special Commitment Center (SCC) on McNeil Island, Washington. The work sample identified the resident by first and last name, status as a one-time sexually violent predator, the SCC resident number, as well as diagnosis, professional care, and treatments being provided.

12. In a written statement to DSHS, Ms. Harris said:

“.....It appears there may have been an attempt to redact the document, however, the resident’s name was clearly printed in white lettering over black boxes in the copy received by my reviewing managers, as well as instances where no redacting appeared to have been attempted.

... Two issues are of concern with this situation. First and foremost, that information containing a resident’s name and status as a one-time sexually violent predator was provided to those not privileged to have that information. The second, as a past employee of the Special Commitment Center myself, the SCC historically has had a policy that resident information was not to be taken from the island without written authorization by the CEO or designee...”

13. According to the IR, Mr. Harvey was unable to be interviewed for the investigation due to him resigning the same day Rainier School became aware of the of the alleged confidentiality breach.²

14. In a written response to Board staff, Mr. Harvey's attorney Rodney Moody (Mr. Moody) stated that Mr. Harvey acknowledges applying for a position as a CS4 in 2021. Mr. Moody said that any attachment of a work sample submitted by Mr. Harvey that contained confidential information was included by mistake. He said Mr. Harvey did not intend to breach confidentiality.

15. Board staff contacted Ms. Davis at DES and requested she provide Mr. Harvey's application history on NeoGov. In a written response to Board staff, Ms. Davis provided Board staff with an Excel worksheet (Worksheet) with a report out of the recruiting system with Mr. Harvey's submitted applications from November 1, 2018 to January 31, 2021.

16. A review of the Worksheet by Board staff revealed that Mr. Harvey submitted approximately 2,716 applications from January 1, 2018 to December 31, 2021.³

17. According to the Worksheet, Mr. Harvey submitted 503 applications during the period of January 3, 2018 through December 28, 2018. Approximately 130 of those applications were submitted during Mr. Harvey's assigned work shift. According to Mr. Harvey's leave records, he took approximately 287 hours (35 days) of leave during 2018.

² In a written response to Board staff, DSHS stated, "The issue was reviewed by the privacy folks as a potential HIPAA breach, and was assessed out as a non-breach based upon the low risk (DOC confirmed deletion of their copies of the document, etc.). As a result, no notification was deemed necessary (either under HIPAA or RCW 42.56.590; also as an aside, SCC is not a HIPAA-covered program within DSHS). The privacy coordinator informed the superintendent at Rainier School, which led to the investigation."

³ DSHS provided Board staff with Mr. Harvey's leave history for 2018 through 2021. Applications submitted by Mr. Harvey while on leave were not counted in the totals for applications submitted during Mr. Harvey's work hours of Monday through Friday 8 am - 4:30 pm. The average working days per year in Washington state after holidays and weekends is 252 days.

18. According to the Worksheet, Mr. Harvey submitted 725 applications during the period of January 1, 2019 through December 31, 2019. Approximately 238 of those applications were submitted during Mr. Harvey's assigned work shift. According to Mr. Harvey's leave records, he took approximately 334 hours (41 days) of leave during 2019. The following are examples of applications submitted during his work shift.

- Wednesday, May 15: Ten applications were submitted.
- Wednesday, October 30: Three applications were submitted.
- Thursday, November 14: Two applications were submitted.

19. According to the Worksheet, Mr. Harvey submitted 581 applications during the period of January 2, 2020 through December 31, 2020. Approximately 270 of those applications were submitted during Mr. Harvey's assigned work shift. According to Mr. Harvey's leave records, he took approximately 765 hours (95 days) of leave during 2020, which included 528 hours (66 days) of LWOP. The following are examples of applications submitted during his work shift.

- Tuesday, July 14: Five applications were submitted.
- Wednesday, July 22: Four applications were submitted.
- Thursday, September 17: Four applications were submitted.
- Thursday, December 10: Six applications submitted.

20. According to the Worksheet, Mr. Harvey submitted 907 applications between January 5, 2021 through December 31, 2021. Approximately 553 of those applications were submitted during Mr. Harvey's assigned work shift. According to Mr. Harvey's leave records, he took a total of approximately 638 hours (79 days) of leave during 2021, which included LWOP from October 18, 2021 through January 18, 2022. The following are examples of applications submitted per shift.

- Friday, June 25: Eleven applications submitted.
- Friday, August 6: Eight applications submitted.
- Wednesday, September 15: Eight applications submitted.

21. Board staff were provided with Mr. Harvey's work email history by DSHS. A review of Mr. Harvey's email history found that Mr. Harvey received approximately 310 emails with job notifications at his work email address between February 22, 2020 and January 12, 2022. Those sites included King County, City of Tacoma, State of Michigan, State of Alaska, State of Colorado, City of Seattle, Snohomish County and Seattle Public Schools.

22. Board staff found approximately 1,211 emails in which Mr. Harvey used his work email address to send, cc, or receive emails from his personal email address during the period of January 17, 2020 and January 12, 2022. A large portion of those emails were in regards to Mr. Harvey's PFML, FMLA, LWOP and medical information related to his status at work. Board staff also found miscellaneous work related emails between Mr. Harvey and DSHS staff in which he cc'd his personal email address.

23. Board staff found approximately 182 emails in Mr. Harvey's work email history regarding employment in which Mr. Harvey either sent or received emails from his personal email address in response to employment opportunities, including the following examples:

- Eight emails sent from Mr. Harvey's work email address to Yukon Kuskokwim Health Corp (YKHC), cc'ing his personal email address between September 14, 2020 and September 15 2020.⁴ The emails were in regards to an interview for a position as an Executive Director and included discussions about Mr. Harvey's spouse.
- Nine emails sent from Mr. Harvey's work email address to employment@courts.wa, cc'ing his personal email address between July 10, 2020 and September 7, 2021. The emails were in regards to applications for employment.
- Two emails sent to and from Mr. Harvey's work email address from alaska.edu on February 10 and 11, 2021, regarding an interview for a position as an

⁴ According to their website, the Yukon-Kuskokwim Health Corporation, administers a health care delivery system for over 50 rural communities in the Yukon-Kuskokwim Delta in southwest Alaska.

Academic Affairs Compliance Specialist. Mr. Harvey's personal email address was cc'd.

- Nine emails sent to and from Mr. Harvey's work email address between October 13, 2021 and October 20, 2021 to the Department of Corrections (DOC) regarding Psychologist Associate Opportunities. Two of the emails were sent from his personal email address and cc'd his work email address. Seven of the emails cc'd his personal email address.

24. Board staff found approximately 189 emails sent from, or received by, Mr.

Harvey's work email address from the same gmail address between January 17, 2020 through January 3, 2022. Several of those emails identified the gmail address as Mr. Harvey's spouse (HL). The majority of the emails were cc'ing HL along with Mr. Harvey's personal email address and were related to Mr. Harvey's various leave requests, medical issues, associated documents and issues related to those leave requests. The 189 emails also included:

- Five emails regarding daycare for Mr. Harvey's daughter.
- An email sent on February 6, 2020 with subject line: 2021 Jeep Gladiator Mojave and more Chicago Auto Show Goods! The email included pictures of vehicles at the show.
- Five emails sent from April 6, 2020 through April 17, 2020 with the subject line: Bob Ferguson Attorney General of Washington (AGO) and were in regards to a complaint filed by Mr. Harvey with the AGO about a loan.
- An email was sent on August 25, 2020 with the subject line: Home Designs w/ Measurements and included an attachment with pictures of a home and floorplan.

25. A review of Mr. Harvey's internet history on his work computer by Board staff found no evidence that Mr. Harvey was using his work computer to submit applications. Although there were resumes and documents related to applications found on emails as attachments, Board staff did not find any saved documents or documents that were created on Mr. Harvey's work computer that appeared to be related to his applications for employment. This would indicate that Mr. Harvey was using a personal device to research and submit applications while at work.

B. CONCLUSIONS OF LAW

1. The Ethics in Public Service Act, Chapter 42.52 RCW, prohibits state employees from disclosing confidential information. RCW 42.52.050, states in pertinent parts, the following:

.....

(2) No state officer or state employee may make a disclosure of confidential information gained by reason of the officer's or employee's official position or otherwise use the information for his or her personal gain or benefit or the gain or benefit of another, unless the disclosure has been authorized by statute or by the terms of a contract involving (a) the state officer's or state employee's agency and (b) the person or persons who have authority to waive the confidentiality of the information.

(3) No state officer or state employee may disclose confidential information to any person not entitled or authorized to receive the information.

RCW 42.52.050(5) defines "confidential information" as:

(a) specific information, rather than generalized knowledge, that is not available to the general public on request or (b) information made confidential by law.

2. 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.

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. In the matter at hand, there are no mitigating factors.

D. STIPULATION AND AGREED ORDER

1. Pursuant to chapter 42.52 RCW, the Executive Ethics Board has jurisdiction over James Harvey 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. James Harvey 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. James Harvey 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. James Harvey 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. James Harvey 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 James Harvey 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 James Harvey 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 James Harvey does not accept the Board's proposed modification(s), if any, this matter will be scheduled for an administrative hearing before

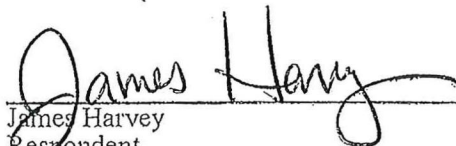
the Board. If an administrative hearing is scheduled before the Board, waives any objection to participation by any Board member at the hearing to whom this stipulation was presented for approval under WAC 292-100-090(2). Further, James Harvey understands and agrees that this stipulation as well as information obtained during any settlement discussions between the parties shall not be admitted into evidence during the administrative hearing, unless otherwise agreed by the parties.

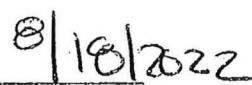
11. James Harvey agrees to pay a civil penalty in the amount of three-thousand-two-hundred fifty dollars (\$3,250) associated with violations of RCW 42.52.

12. The civil penalty in the amount of three-thousand-two-hundred fifty dollars (\$3,250) 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, James Harvey, 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.


James Harvey
Respondent


Date

Presented by:


KATE REYNOLDS
Executive Director


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 9th day of September 2022.

Approved Virtually
Shirley Battan, Chair

Approved Virtually
Jan Jutte, Vice Chair

Absent
Gerri Davis, Member

Approved Virtually
Earl Key, Member

Approved Virtually
Kelli Hooke, Member

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

James Harvey, Respondent Date