

BEFORE THE WASHINGTON STATE
EXECUTIVE ETHICS BOARD

In the Matter of:

Reyes De La Cruz
Respondent.

No. 2022-019

STIPULATED FACTS,
CONCLUSIONS OF LAW AND
AGREED ORDER

THIS STIPULATION is entered into by Respondent, Reyes De La Cruz (Mr. De La Cruz) 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 July 29, 2022, the Executive Ethics Board received a copy of the State Auditor's Office (SAO) Fraud Report regarding a complaint by the Employment Security Department (ESD) alleging that Reyes De La Cruz (Mr. De La Cruz), a former Unemployment Insurance Specialist 4 (UIS4) with ESD, may have violated the Ethics in Public Service Act by using state resources for private benefit or gain.

2. According to the ESD, Mr. De La Cruz was originally hired on October 28, 1996 as a Job Service Specialist 1 (JSS1). On January 16, 1998, he was promoted to probationary JSS2

and in 1999 received an emergency appointment to JSS3. According to ESD the JSS position was reclassified to UIS and Mr. De La Cruz received a temporary appointment to UIS4 on January 1, 2002. Mr. De La Cruz held the position as a UIS4 until he resigned on May 9, 2003. Mr. De La Cruz was rehired to a non-permanent position as a WorkSource Specialist 3 (WS3) on December 16, 2009. That position ended on December 24, 2009. Mr. De La Cruz was re-hired on April 1, 2020 as a non-permanent UIS1 and was subsequently promoted to UIS4, which is the position he held until he was terminated from the ESD on October 1, 2020.

3. According to the SAO, on September 24, 2021, the Department of Justice (DOJ) released an indictment based on the results of the Office of the Inspector General (OIG) and FBI investigations. The indictment said Mr. De La Cruz distributed at least \$360,000 in illegitimate claims and personally benefitted from at least \$130,000 of those claims by:

- Filing illegitimate claims to be disbursed to debit cards, and having the cards mailed to addresses where the Specialist had access to retrieve the cards.
- Accepting bribes in exchange for making false entries on claims for family, friends and acquaintances, many of whom were ineligible for benefits.
- Extorting claimants by threatening to terminate benefit payments if they did not pay him.

4. According to the SAO, Mr. De La Cruz now faces 20 federal charges for the illegitimate claims.

5. According to the SAO, on October 27, 2020, the ESD notified them that between January 1, 2020, and December 31, 2020 there had been a misappropriation of unemployment insurance benefit funds totaling \$315,282 and an additional \$121,503 in questionable payments.

6. According to the SAO, in October 2020 ESD received a tip from Child Support Enforcement (CSE) regarding an illegitimate unemployment insurance claim for a claimant. It was found that \$18,345 had been filed and paid using the claimant's name. ESD said that Mr. De

La Cruz, who was on temporary assignment to help ESD process an influx of claims during the pandemic, processed the claim. The ESD investigation found that Mr. De La Cruz was related to the claimant.

7. According to the SAO, ESD terminated Mr. De La Cruz's employment and initiated an investigation to determine if he used his position to misappropriate additional claims. ESD generated a report from the state's Unemployment Benefit Tax and Benefit System (UTAB) of all claims "touched" by Mr. De La Cruz. Of the 969 claimant accounts touched, totaling \$14,277,070 in payments, ESD flagged \$364,759 of these payments as unusual.

8. According to the SAO, they reviewed the federal indictment and ESD's investigation, including the UTAB accounts for all flagged claimants. They determined that Mr. De La Cruz misappropriated at least \$315,282 between January 1, 2020 and December 31, 2020. They also identified an additional \$121,503 in questionable payments, which they were unable to verify as a misappropriation of funds.

9. According to the SAO, during their review of Mr. De La Cruz's activity in the UTAB system, they found:

- Instances where Mr. De La Cruz changed a claimant's address and payment method information. Sometimes the same address showed up on various claimant accounts, and many claimants had a debit card or an online bank designated as their payment method, suggesting the possibility payments were diverted or "hijacked." No one reviewed Mr. De La Cruz's changes to confirm they were legitimate.
- Instances where it appeared that Mr. De La Cruz may have processed claims for ineligible claimants, including people who were incarcerated or had no wage history. No one reviewed these claims to verify Mr. De La Cruz's decisions to allow payments.
- An instance of questionable documentation being used to verify claimant identity, including a fake Social Security card. Once the ESD's system verifies an identity, the claim is released and payment is sent.

10. In a written response to the SAO, the ESD said that since the time of the original audit their Office of Special Investigations (OSI) has reviewed their findings. According to ESD, their review determined that in regards to the questionable payment figure of \$121,503, three of the claims totaling \$37,862 were legitimate and should not be classified as questionable, leaving the questionable payment total at \$83,641.

11. Board staff were provided with a copy of Mr. De La Cruz's Plea Agreement (PA) by the USA's office. According to the PA, while employed with ESD as an Intake Agent and UIS from April 2020 until October 2020, Mr. De La Cruz stole public funds intended to be paid as unemployment benefits to workers suffering from the economic effects of the COVID-19 pandemic. According to the PA, Mr. De La Cruz:

- Accepted payment from individuals he knew directly or indirectly in exchange for ensuring that those individuals received pandemic unemployment benefits, even though they were not entitled to benefits;
- Demanded payments from claimants by threatening to reverse the benefits decisions he engineered; and
- Fraudulently used personal identifying information (PII) of other Washington residents to file fraudulent claims without their knowledge or consent, and diverted the benefits to himself.

12. According to the PA, in total, Mr. De La Cruz caused ESD to pay out at least approximately \$360,000 worth of fraudulent claims, of which De La Cruz personally obtained at least \$130,000.

13. According to the PA, in at least 10 instances, in exchange for kickback payments, Mr. De La Cruz used his employee access to ESD's Unemployment Tax and Benefit (UTAB) system to fraudulently cause ESD to approve and pay unemployment benefit claims that were not properly payable to people he knew directly and indirectly.

14. According to the PA, Mr. De La Cruz used his official position to clear and override eligibility, identification, and other issues that would have otherwise prevented

disbursement of benefit payments. In some instances, Mr. De La Cruz and the claimant agreed in advance that Mr. De La Cruz would receive a portion of the benefits after the funds were disbursed.

15. In other instances, Mr. De La Cruz demanded payment after the funds were disbursed. On occasion, if an individual resisted, Mr. De La Cruz threatened to alter the claim so that benefits would no longer be disbursed. These kickback payments ranged from approximately \$500 to \$6,500 and totaled at least \$20,900.

- As a representative example of Mr. De La Cruz's fraud scheme, Mr. De La Cruz entered false statements on UTAB for D.D.'s¹ claim for unemployment benefits based on unsubstantiated self-employment wages. ESD has no record of D.D. receiving wages in the state since 2017, and D.D. has not provided any documentation of legitimate self-employment. As a result of Mr. De La Cruz's conduct, D.D. received backdated benefits payment of approximately \$13,458 on or about August 9, 2020. On or about August, 11, 2020, D.D. paid Mr. De La Cruz approximately \$1,000 and agreed to refer additional individuals to Mr. De La Cruz's kickback scheme. In total, D.D. received approximately \$39,000 in pandemic-related unemployment benefits.
- In at least four instances, Mr. De La Cruz fraudulently used the PII of other persons and his employee access to UTAB to file fraudulent COVID-19 pandemic unemployment benefit claims using their identities. He caused the benefits to be paid to debit cards that were sent to mailboxes Mr. De La Cruz accessed.

16. According to the PA, even after ESD terminated Mr. De La Cruz, on October 1, 2020, and he no longer had employee access to UTAB, between February and March 2021, Mr. De La Cruz impersonated T.D. on recorded phone calls with bank and ESD personnel, using T.D.'s PII to fraudulently obtain additional benefits. During this same time period, Mr. De La Cruz also attempted to obtain additional benefits under A.D.'s identity by impersonating

¹ Initials only were used in the Plea Agreement for the claimants.

A.D. in handwritten correspondence to ESD. In total, Mr. De La Cruz obtained approximately \$113,000 in fraudulent benefits that he diverted directly to himself.

17. According to the PA, as an example of the charge of Bribery, Mr. De La Cruz agreed that E.R. would pay Mr. De La Cruz a portion of the pandemic unemployment benefits E.R. received in exchange for Mr. De La Cruz ensuring the payments were disbursed. Although E.R. did not qualify for pandemic unemployment benefits, Mr. De La Cruz used his official position to improperly clear nearly 70 issues in UTAB to allow the benefits to be disbursed.

18. According to the PA, on or about August 14, 2020, as a result of Mr. De La Cruz's conduct, E.R. received a backdated benefits payment of approximately \$15,183, and on or about that same day, E.R. paid Mr. De La Cruz \$3,500 in cash. In total, E.R. received approximately \$18,750 in pandemic-related unemployment benefits. According to the PA, in so doing Mr. De La Cruz, an agent of a state government agency that received federal assistance in excess of \$10,000 per year, acting corruptly and with intent to be influenced or rewarded in connection with a transaction with a value in excess of \$5,000, solicited and demanded for his benefit a thing of value from another person in connection with the transaction.

19. As an example of Aggravated Identity Theft, the PA stated that on or about July 31, 2020, Mr. De La Cruz knowingly used, without lawful authority, the name, date of birth, and Social Security Number of an individual with the initials R.S. to file a fraudulent COVID-19 pandemic unemployment benefit claim.

20. According to the plea agreement provided by the USA, Mr. De La Cruz was to be sentenced on September 16, 2022 to no more than 75 months in prison and make restitution to ESD in the amount of \$360,000.

21. Board staff confirmed that on September 16, 2022, Mr. De La Cruz was sentenced to five years in federal prison with an additional three years of supervised release for a “fraud and kickback scheme” that stole at least \$360,000 in pandemic-related jobless benefits from ESD. Mr. De La Cruz was also ordered to pay restitution to the state in the amount of \$360,000.

B. CONCLUSIONS OF LAW

1. The Ethics in Public Service Act, Chapter 42.52 RCW, prohibits state employees from using their position as a state employee to secure special privileges for themselves or other persons, RCW 42.52.070, states:

.....

(1) 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.

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, it is a mitigating factor that Mr. De La Cruz was terminated from his position with ESD, has agreed to pay restitution to the state in the amount of \$360,000, and is presently serving five years in federal prison with an additional three years of supervised release.

D. STIPULATION AND AGREED ORDER

1. Pursuant to chapter 42.52 RCW, the Executive Ethics Board has jurisdiction over Reyes De La Cruz 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. Reyes De La Cruz 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. Reyes De La Cruz 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. Reyes De La Cruz 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. Reyes De La Cruz 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 Reyes De La Cruz 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 Reyes De La Cruz 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 Reyes De La Cruz 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, Reyes De La Cruz 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. Reyes De La Cruz agrees to pay a civil penalty in the amount of fifteen thousand dollars (\$15,000) associated with violations of RCW 42.52.

12. The civil penalty in the amount of fifteen thousand dollars (\$15,000) 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, Reyes De La Cruz, 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.



Reyes De La Cruz
Respondent

9-6-2024
Date

Presented by:

K. Reynolds
KATE REYNOLDS
Executive Director

10/22/24
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 8th day of November 2024.

Approved Virtually
Kelli Hooke, Chair

Revised
Megal Abel, Vice Chair

Jan M Jutte
Jan Jutte, Member

Approved Virtually
Cameron Comfort, Member

David Hankins
David Hankins, Member