

BEFORE THE WASHINGTON STATE
EXECUTIVE ETHICS BOARD

In the Matter of:

Kayla Slaybaugh
Respondent.

No. 2022-035

STIPULATED FACTS,
CONCLUSIONS OF LAW AND
AGREED ORDER

THIS STIPULATION is entered into by Respondent, Kayla Slaybaugh 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 October 14, 2022, the Executive Ethics Board (Board) received an agency referral alleging that Kayla Slaybaugh (Ms. Slaybaugh), an employee of the Washington State Department of Agriculture (AGR), may have violated the Ethics in Public Service Act. The complaint alleged that Ms. Slaybaugh violated RCW Chapter 42.52, specifically use of state resources for private benefit or gain.

2. According to the complaint, Ms. Slaybaugh used her AGR issued electronic devices for personal use between the dates of July 24, 2021 to February 23, 2022. Additionally, Ms. Slaybaugh allegedly connected one or more of her personal devices to the agency-

administered network and/or network device without approval. The personal usage ultimately caused AGR to be charged \$3,024 in data and overage fees.

3. During that same time-period, Ms. Slaybaugh allegedly also used state-provided internet to stream and/or download non-work-related files; including music, podcasts, and videos. AGR initially became aware of this information when they noted an unusually high usage of data from an agency-issued device in February of 2022, which was later found to belong to Ms. Slaybaugh.

4. According to AGR, Ms. Slaybaugh was hired on November 27, 2012 as a non-permanent Brand Inspector 1. On April 16, 2016, Ms. Slaybaugh was promoted to a Brand Inspector 2. On October 16, 2016, Ms. Slaybaugh's role became permanent and she has remained in that role since.

5. Based on the above allegations, an AGR investigation was initiated and Ms. Slaybaugh was notified of the results, by letter, on August 29, 2022. Samuel Young (Mr. Young), HR Section Manager, was assigned to conduct the investigation into the alleged misconduct. As part of the investigation, a forensic review was conducted of Ms. Slaybaugh's agency issued iPad by Computer Forensics Resources (CFR), a company based in Seattle that specializes in computer forensics work. Ms. Slaybaugh was not given advanced notice of the collection so that she would not have an opportunity to edit any data on the iPad prior to it being secured.

6. CFR conducted a forensic analysis of the iPad utilizing Cellebrite forensic software. Findings revealed that Ms. Slaybaugh connected multiple personal devices to her AGR issued iPad hotspot, including a personal printer, cell phone, laptop, and Apple Watch. The CFR review also showed that Ms. Slaybaugh had configured her agency-issued iPad to her personal

Apple ID account and that between August 2021 and February 2022 she had used over 73GB of data on YouTube alone.

7. AGR has a state plan with Verizon Wireless in which each user plan is allowed usage of up to 5GB of data, per month. When more than 5GB of data is used, the plan is charged a data overage fee of \$8.00 per additional GB.

8. As part of the AGR investigation, they obtained a detailed report from Verizon Wireless on Ms. Slaybaugh's data usage between September 21, 2021 and February 23, 2022. The usage data was cross-referenced with Ms. Slaybaugh's timesheets to reveal when data was being used in correlation with her work schedule. The records showed hundreds of incidents of Ms. Slaybaugh using agency cellular data while "off-duty," which resulted in hundreds of gigabytes of data being used, totaling \$3,024.

9. Below tables are of Ms. Slaybaugh's data usage by month, as well as a sample of the data usage in correlation to her work schedule:

USAGE DATES	Data Usage	Data Overage Fee
July 24 – Aug 23, 2021	31GB	\$88
Aug 24 – Sep 23, 2021	43GB	\$176
Sep 24 – Oct 23, 2021	58GB	\$304
Oct 24 – Nov 23, 2021	72GB	\$432
Nov 24 – Dec 23, 2021	70GB	\$400
Dec 24 – Jan 23, 2022	100GB	\$624
Jan 24 – Feb 23, 2022	145GB	\$1,000
TOTAL:	519GB	\$3,024

	Date	Time	Session Length	Data Used	Cost	
#1	2/5/2022	7:28AM	5:03:37	1.894	\$16.00	
		Timecard:	7:32AM	5:59:45	3.132	\$24.00
		Did not clock in	1:32PM	5:59:45	4.622	\$40.00
			7:31PM	5:59:45	1.844	\$16.00
						Total: \$96
#2	1/31/2022	1:19AM	5:59:45	2.858	\$24.00	
		Timecard:	7:19AM	5:59:45	1.586	\$8.00
		Did not clock in	1:19PM	5:59:45	2.976	\$24.00
			7:18PM	5:59:45	2.341	\$24.00
						Total: \$80
#3	2/9/2022	12:41AM	5:59:45	3.21	\$24.00	
		Timecard:	6:41AM	3:09:51	1.164	\$8.00
		Did not clock in	11:17AM	0:00:42	0.004	\$0.00
			11:18AM	0:01:04	0.006	\$0.00
			11:19AM	5:59:45	2.551	\$24.00
			5:18PM	5:59:45	1.458	\$8.00
			11:18PM	5:59:45	0.423	\$8.00
						Total: \$72
#4	2/4/2022	4:39AM	5:59:45	0.337	\$0.00	
		Timecard:	10:39AM	4:56:43	2.995	\$24.00
		8:00-11:30am	3:43PM	0:35:59	0.001	\$0.00
			4:20PM	0:02:16	0.001	\$0.00
			4:22PM	3:24:40	2.382	\$24.00
			7:47PM	0:39:22	0.001	\$0.00
			8:27PM	0:01:50	0.001	\$0.00
			8:29PM	5:59:45	2.456	\$16.00
						Total: \$64
#5	1/3/2022	4:55AM	5:59:45	1.291	\$8.00	
		Timecard:	10:55AM	1:29:46	0.863	\$8.00
		Did not clock in	12:32PM	0:02:03	0.007	\$0.00
			12:34PM	2:58:09	0.871	\$8.00
			3:32PM	1:59:57	0.004	\$0.00
			5:32PM	0:28:40	0.076	\$0.00
			6:13PM	0:51:58	0.162	\$0.00
			7:06PM	1:00:41	0.001	\$0.00
			8:07PM	0:18:13	0.038	\$0.00
			8:45PM	0:45:20	0.001	\$0.00
			9:30PM	4:47:12	5.312	\$40.00
						Total: \$64

10. The total amount of off-duty data used during the period in question was found to be 559 instances in which 416.06GB of data were used.

11. Additionally, Ms. Slaybaugh's data usage was compared to the usage of two other AGR employees that held similar positions to hers. It was found that during that same time-period,

neither of those employees exceeded the agency 5GB maximum allowance of their cellular data plan.

12. A further review of Ms. Slaybaugh's prior data usage showed that before July of 2021, Ms. Slaybaugh was also averaging less than 5GB per month.

13. AGR conducted an interview with Ms. Slaybaugh on June 28, 2022. When Ms. Slaybaugh was questioned about the high usage on her iPad between July 24, 2021 and February 23, 2022, she indicated that she had moved during that time-period to a new residence that did not have internet service. Ms. Slaybaugh further indicated that her iPad and agency hotspot were her only internet source for performing work at home.

14. Initially, Ms. Slaybaugh only admitted to personal usage of "streaming music and podcasts." Later, she admitted to also streaming things on YouTube for "background noise." Ms. Slaybaugh additionally stated that the usage was "sometimes personal" and that "not every usage was work related."

15. During the interview, Ms. Slaybaugh was instructed to review AGR agency policy POL-IT-600 – Maintaining the Information Technology Security Program. After reviewing the policy, Ms. Slaybaugh admitted that she did not believe she had followed it well.

16. At the conclusion of the AGR investigation, Ms. Slaybaugh was provided a formal disciplinary letter on October 10, 2022. Board staff obtained a copy of the letter. It noted that Ms. Slaybaugh has had "sufficient notice and forewarning" that this conduct is unacceptable and could lead to disciplinary action. They noted three AGR policies in place: Establishing and Maintaining Standards of Ethical Conduct (POL-HR-212), Maintaining the Information Technology Security Program (POL-IT-600), and Using Electronic Messaging System and the Internet (POL-IT-604). It was further noted that on August 27, 2020, Ms. Slaybaugh was provided with a written

expectation by her supervisor which read, "Know and understand the policies and procedures of the program. Be able to educate your staff on these policies and procedures." Additionally, it was noted that Ms. Slaybaugh's personnel file indicated that she has previously taken the following classes: WA State Ethics in State Government (August 28, 2021), Ethics Law (March 24, 2020), and WA State IT Security Awareness Training Certification (May 9, 2018).

17. As part of Ms. Slaybaugh's formal discipline, the state imposed a 90 day 10% reduction in pay. AGR HR further informed Board staff that it was "not really intended to be a full or partial reimbursement of money lost. Rather, it was an independent disciplinary action for violations of agency policy."

18. Board staff inquired as to what the total amount of money withheld from Ms. Slaybaugh would end up being, after the 90-day reduction. Mr. Young stated, "The actual dollar amount is going to be a little unknown until the 90 days are over because Ms. Slaybaugh is an hourly employee. So, her hourly rate has been reduced from \$23.66/hour to \$21.46/hour. Her schedule per week varies from 25 to 40+ hours, so we're not really going to know until we see how many hours she works. If the employee worked a full-time workload, the penalty would total \$1,465. However, it is likely going to be less than that if the employee works any weeks less than 40 hours."

19. They further advised that Ms. Slaybaugh has not reimbursed the state for the overage charges her actions created and the disciplinary action was not in lieu of any actions the Ethics Board might take in addition to that.

20. Board staff provided Ms. Slaybaugh an opportunity to provide a formal response. In an email to Board staff, she stated that she has already received a pay reduction and would like

to be done with this and move on. She also mentioned that she may resign instead of going thru another investigation.

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. 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 Ms. Slaybaugh's hourly rate was reduced for a 90-day period.

D. STIPULATION AND AGREED ORDER

1. Pursuant to chapter 42.52 RCW, the Executive Ethics Board has jurisdiction over Kayla Slaybaugh 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. Kayla Slaybaugh 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. Kayla Slaybaugh 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. Kayla Slaybaugh 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. Kayla Slaybaugh 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 Kayla Slaybaugh 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 Kayla Slaybaugh 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 Kayla Slaybaugh 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, Kayla Slaybaugh 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. Kayla Slaybaugh agrees to pay a civil penalty in the amount of five-thousand dollars (\$5,000) associated with violations of RCW 42.52. The Board agrees to suspend one-thousand-two-hundred and fifty dollars (\$1,250) on the condition that Kayla Slaybaugh 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 three-thousand-seven-hundred and fifty dollars (\$3,750) 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, Kayla Slaybaugh, 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*.



Kayla Slaybaugh
Respondent

3/16/23
Date

Presented by:



KATE REYNOLDS
Executive Director

5/12/2023
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 May 2023.

Approved Viterberg
Jan Jutte, Chair

Approved Viterberg
Kelli Hooke, Vice Chair

Approved Viterberg
Shirley Battan, Member

Approved Viterberg
Earl Key, Member

Approved Viterberg
Megan Abel, Member

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

Kayla Slaybaugh, Respondent

Date