

BEFORE THE WASHINGTON STATE
EXECUTIVE ETHICS BOARD

In the Matter of:

Scott Lowder

Respondent.

No. 2022-064

STIPULATED FACTS,
CONCLUSIONS OF LAW AND
AGREED ORDER

THIS STIPULATION is entered into by Respondent, Scott Lowder 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 22, 2022, the Executive Ethics Board (Board) initiated a complaint. Board staff located evidence of personal web browsing by Scott Lowder, an employee with the Department of Corrections (DOC). Evidence suggested that Scott Lowder may have used state resources for private benefit or gain.

2. Board staff located personal web browsing by several DOC usernames, in addition to the respondent, while reviewing records on a specifically assigned computer. Board staff reached out to DOC and inquired as to why other users were using a computer issued to a specific DOC staff member, and DOC looked into it internally.

3. According to DOC, Scott Lowder was hired on January 1, 2005. Scott Lowder's current position with DOC is a Correctional Lieutenant.

4. As part of this investigation, Board staff requested a copy of Scott Lowder's user profile, to review for additional evidence of potential personal usage.

5. Board staff located the following web browsing, for the dates of April 10, 2022 to September 19, 2022 associated with Scott Lowder's username:

- Chrome user login/password credentials saved for: Dishnetwork, Amazon, iCloud, Yahoo, Glock Store, and Paramount Plus.
- Visits to Mediterranean diet websites (evidence of a Mediterranean Diet shopping list being downloaded) (August 21, August 22, September 4, September 5)
- Feelgoodfoodie.net (August 22)
- Rachelgraham (food recipes) (July 25)
- Itsthevibe.com (movie/film website) (July 24, July 31)
- Fivedrinks.com (alcohol recipes) (September 5)
- Furhaven.com (shopping for dog beds) (August 1)
- Visits to CNN.com (April 17, April 18, April 29, May 2, May 29, May 30, June 5, June 12, June 13, June 19, June 20, July 4, July 24, July 25, July 31, August 1, August 7, August 8, August 14, August 15, August 21, August 22, August 29, September 5, September 12)
- CBSsports.com (April 18, August 15)
- Bleacherreport.com (sports website) (July 4)
- Thesportsdrop.com (August 15, September 12)
- Amazon.com visited and order placed (April 17, April 18, July 31, August 22)
- Logins to Yahoo, Dish.com, coinbase.com (April 3, April 10, April 17, April 18, June 19, July 24, August 1, August 15, August 21, September 11)
- Profootballtalk.com (September 4)
- Visits to Dishanywhere.com/recordings (where you can watch saved TV shows from Dish network)

- **July 4 9:30am – 10:09am**
 - **July 24 7:20am – 8:03am**
 - **July 25 10:43am – 11:00am**
 - **July 31, August 7 -- 6:11am – 9:37am**
 - **August 8 8:53am – 11:02am**
 - **August 14 5:29am – 8:58am**
 - **August 21 5:02am – 3:22pm**
 - **August 22 7:25am – 8:24am**
 - **August 28 8:26am – 8:42am**
 - **September 4 5:32am – 9:46am**
 - **September 11 8:08am – 10:30am**
 - **September 18 8:06am – 1:26pm**
- **Visits to Eatingwell.com (July 25, August 21)**
 - **Healthline.com (recipes) (September 4 -5)**
 - **Multiple Facebook visits**
 - **ESPN (August 15)**
 - **Foodnetwork.com (August 15, August 21)**
 - **Forbes.com (September 5)**
 - **Fox.com (September 11, September 18)**
 - **Gamedaynews.com (August 21)**
 - **Glockstore.com (gun sales) (April 18, April 21)**
 - **Livemint.com (financial news) (August 1)**
 - **Paramountplus.com (sign ins to account and TV live streaming) (September 11, September 18)**
 - **Visits to Zillow and Realtor.com (June 12, August 15)**
 - **Multiple YouTube visits (February 27, March 6, March 7, April 3, April 10, May 1, June 12, July 4, August 22, August 29, September 5)**

6. In Scott Lowder's written response to Board staff, they stated, "I can't remember all the internet sites I have looked at since the start of COVID. I can tell you that the internet did not take away from my regular duties as a Shift Commander at the Washington State

Penitentiary. Since COVID it was a common practice to look at the internet to pass time because nothing was going on due to all incarcerated individuals not being able to come out of their cells.”

7. Scott Lowder further stated, “Not trying to make excuses but the internet was a mental and physical way to try and stay somewhat sane during the most troubling times in our lives.”

8. Lastly, Scott Lowder stated, “I have reviewed the Ethics policy, Use of Technology policy, and taken the required online training on ethics.”

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, there are no mitigating factors.

D. STIPULATION AND AGREED ORDER

1. Pursuant to chapter 42.52 RCW, the Executive Ethics Board has jurisdiction over Scott Lowder 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. Scott Lowder 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. Scott Lowder 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. Scott Lowder 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. Scott Lowder 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 Scott Lowder 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 Scott Lowder 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 Scott Lowder 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, Scott Lowder 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. Scott Lowder 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 dollars (\$1,000) on the condition that Scott Lowder 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.

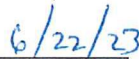
12. The civil penalty in the amount of four thousand dollars (\$4,000) is payable in full to the Washington State Executive Ethics Board within forty-five (45) days after this stipulation is signed and accepted by the Board, or as otherwise agreed to by the parties.

I. CERTIFICATION

I, Scott Lowder, 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.



Scott Lowder
Respondent



Date

Presented by:

K. Reynolds
KATE REYNOLDS
Executive Director

7/14/2023
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 14th day of July 2023.

Approved via Zoom
Jan Jutte, Chair

Approved via Zoom
Kelli Hooke, Vice Chair

Shirley Battan
Shirley Battan, Member

Absent
Earl Key, Member

Approved via Zoom
Megan Abel, Member

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

Scott Lowder
Respondent

Date