

BEFORE THE WASHINGTON STATE
EXECUTIVE ETHICS BOARD

In the Matter of:

Xuetao Huang
Respondent.

No. 2023-001

STIPULATED FACTS,
CONCLUSIONS OF LAW AND
AGREED ORDER

THIS STIPULATION is entered into by Respondent, Xuetao Huang 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 January 6, 2023, the Executive Ethics Board received an agency referral from the Employment Security Department (ESD) alleging that Xuetao Huang, an Economic Analyst 3 (EA3) 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, Xuetao Huang was hired on January 4, 2021 as an EA3, which is the position they presently hold. Xuetao Huang's assigned work hours are Monday – Friday 8:30 am until 5:30 pm. Xuetao Huang's position is 100% telework.

3. According to the complaint, Xuetao Huang is using their work computer to access unauthorized websites and is using state resources far beyond de minimis use, i.e. foreign bank accounts, travel sites, during work hours in addition to late evenings and weekends. According to the ESD, Xuetao Huang accessed an unauthorized foreign bank account, which alerted the security team. Further investigation and internet usage reports were obtained and extensive inappropriate use was discovered.

4. In a written response to Board staff, Xuetao Huang said they seldom used their work computer for personal use. They said they tried to download a foreign banking application once, but stopped after receiving a warning from IT ESD. Xuetao Huang said they never used or logged into foreign bank accounts before or after this incident.

5. According to Xuetao Huang, they used their work computer to make travel plans, but it was not during their work hours and only a happened a couple of times around the holidays or weekends. Xuetao Huang said they work late evenings, sometimes weekends, as does many of the coworkers on their team.

6. Xuetao Huang said that sometimes when they work overtime, they feel tired and use their work computer to do other things such as reading the news, checking emails and volunteering with an ethnic radio station, Chinese Radio Seattle.

7. According to Xuetao Huang, they also used their work computer for some personal/family issues like planning for a wedding in September 2022, because their personal laptop was broken. Xuetao Huang said that it was a mistake and stopped doing so after purchasing a new personal laptop in November 2022.

8. Xuetao Huang said that this is the first time they have worked for state government and many of the rules are new to them. According to Xuetao Huang, they never used state

resources for personal gain. Xuetao Huang said they mixed the use of work and personal laptops and said this would not happen again.

9. Board staff requested a copy of Xuetao Huang's work email history and an image of their work computer from ESD.¹

10. Board staff were provided with Xuetao Huang's email history for the period of January 3, 2021 through January 17, 2023. A review of Xuetao Huang's email history found that between January 3, 2021 and April 14, 2022, Xuetao Huang sent or received 36 emails at their work email address from their personal Gmail address. All of the emails appeared to be related to their recent employment with ESD and appeared to be work related. Board staff found no evidence related to the allegations that Xuetao Huang was using their work email for personal use.

11. Board staff were also provided with a forensic image of Xuetao Huang's work computer. A review of the work computer found the following.

12. Between August 18, 2022 and November 29, 2022, Xuetao Huang accessed Amazon.com at least once on 18 different workdays. Xuetao Huang appeared to be accessing their personal Amazon account to shop and purchase different items. Those items included laptops, baby monitoring systems, books, tote bags and items from the Amazon Music store.

13. On November 22, 23, and 29, 2022, Xuetao Huang accessed shopping sites via Google.com, Reddit.com, Bestbuy.com, and HP.com shopping for laptops.

¹ Board staff processed the computer hard drive for Xuetao Huang on a Forensic Recovery of Evidence Device (FRED) using the Magnet Axion Digital Investigation Platform to acquire and analyze the computer hard drive and work email history.

14. On July 29, 30 and 31, 2022, Xuetao Huang accessed several travel sites including Priceline.com to arrange accommodations for a trip to Quilcene, Washington on August 7, 2022 through August 11, 2022.

15. Between October 27, 2022 and January 5, 2023, Xuetao Huang used search engines such as Google.com, Expedia.com and Travelweekly.com to access websites to make travel plans for trips from Seattle to Las Vegas, at least once, on 23 different workdays. Those websites included: Las Vegas hotel deals, Seattle to Las Vegas Flights, \$34 Cheap Flights to Las Vegas NV in 2022, Grand Canyon Road Trip: five Itineraries from Las Vegas, Allianz travel insurance, MGM Grand Las Vegas, Select Room/Luxor Hotel& Casino, Select Room, New Year's Eve in Vegas 2022–2023/Vegas.com and Eiffel Tower Viewing Deck-Las Vegas-Tickets Vegas.com.

16. On October 27 and 28, 2022, Xuetao Huang accessed Priceline.com to arrange for two adults and one child to fly to Hawaii from Seattle on Monday, December 27, 2022 and returning January 3, 2023.

17. Although Xuetao Huang has already admitted to using their work computer for personal use, Board staff provided Xuetao Huang with the search results of their computer history to give them the opportunity to explain how they were job related.

18. In a written response to Board staff, Xuetao Huang said that they admit they used their work laptop for some personal purposes before they purchased their personal laptop, but stopped doing so after they bought and started using their new laptop. Xuetao Huang said that the activities Board staff pointed out are mostly for personal use except for a few cases.

19. Xuetao Huang said that they checked the price for baby monitoring system on Amazon because they were was planning to spend the money in their Navia account before the annual deadline. Since Navia is a state staff benefit, they would say it is remotely related to work.

In regards to books they were checking out on Amazon, those searches would be for learning material for their work, as they haven't bought any other books during that period.

20. In regards to the property searches, Xuetao Huang said that this is related to their other work as an administrative assistant at an ethnic radio station. Xuetao Huang said that they work for this minority organization outside of the hours of their state job and they have reported this second job to their supervisor and manager. The radio station was looking for office space after the pandemic, so they did some searches for commercial properties. Xuetao Huang is not saying this is related to their state job, but just wanted to let Board staff know the reasons for those searches.

21. According to Xuetao Huang, since these activities occurred some time ago they cannot remember the exact dates and times they accessed those websites. Xuetao Huang said that they do have a habit of not closing webpages before they restart the computer so it is possible that the total visits to those websites may not be as high as it appears.

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:

- (1) 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.

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 Xuetao Huang 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. Xuetao Huang 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. Xuetao Huang 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. Xuetao Huang 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. Xuetao Huang 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 Xuetao Huang 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 Xuetao Huang 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 Xuetao Huang 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, Xuetao Huang 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. Xuetao Huang agrees to pay a civil penalty in the amount of two thousand five hundred dollars (\$2,500) 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 Xuetao Huang 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 one thousand two hundred and fifty dollars (\$1,250) 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, Xuetao Huang, 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.



Xuetao Huang
Respondent

8/16/2023

Date

Presented by:



KATE REYNOLDS
Executive Director

9/8/2023

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 8th day of September 2023.

Jan M Jutte
Jan Jutte, Chair

Approved via Zoom
Kelli Hooke, Vice Chair

Approved via Zoom
Shirley Battan, Member

Received
Megan Abel, Member

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

Xuetao Huang, Respondent Date