

BEFORE THE WASHINGTON STATE
EXECUTIVE ETHICS BOARD

In the Matter of:

Suzanne Havens

Respondent.

No. 2023-006

STIPULATED FACTS,
CONCLUSIONS OF LAW AND
AGREED ORDER

THIS STIPULATION is entered into by Respondent, Suzanne Havens 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 26, 2023, the Executive Ethics Board received a referral from the Department of Agriculture (AGR) alleging that Suzanne Havens, an Office Assistant 2 (OA2) Brand Clerk in the Livestock Identification Program (LIP) in the Animal Services Division (ASD), may have violated the Ethics in Public Service Act by using state resources for private benefit or gain.

2. According to AGR, Suzanne Havens was originally hired as an OA2 (Brand Clerk) on July 16, 2020, which was the position they held at the time of the allegations. Suzanne Havens

work hours were varied based on the time of year. They worked an average of 21 hours per week or 85.5 hours per month.

3. AGR provided Board staff with a copy of an email from Suzanne Havens dated January 28, 2023 in which they stated:

“I received a letter from the Ethics Board. I am leaving my position so there is no need to investigate any violations. The state has effectively made me feel like a criminal, and I am not. I believe 10% coming out of my wage takes me below minimum wage for the state. With gas prices and today’s cost of living, it is no longer feasible for me to continue in this position. Please consider this my two-week notice.”

4. According to the referral from AGR, Suzanne Havens gave a family member access to an agency-issued phone and allowed them to use it as their personal phone between May and September 2022. In May 2022, this family member took the agency phone to California and continued to use it as their personal phone until this issue was discovered and the phone was eventually recovered by the agency.

5. Board staff were provided with a copy of the Investigative Report (IR) done by AGR. According to the IR, in August 2022, the AGR became aware of an unusually high volume of calls being placed from an agency-issued smart phone by Suzanne Havens. The IR states that Suzanne Havens had been issued a smart phone to assist in their duties as a Brand Clerk at the Toppenish Livestock Market in Toppenish, Washington.

6. According to the IR, as a Brand Clerk, Suzanne Havens assists in the sale of cattle and the transfer of ownership when cattle are sold. Suzanne Havens was issued a smart phone to help communicate with her supervisor, Field Supervisor Thomas Groff, on any emergencies that could result in Suzanne Havens missing their shift. Additionally, Suzanne Havens would be expected to use the agency smart phone for any other work-related communication required in their role as a Brand Clerk.

7. According to the IR, in August 2022 the phone service provider, Verizon, provided a phone usage report detailing the activity of Suzanne Havens agency issued smart phone. It was noted that an unusually high number of calls were being placed from their agency smart phone, to the degree that overage fees would be charged. The high call volume began at the end of June 2022 and continued until the end of August 2022.¹

8. According to the IR, following a review of the Verizon report, the LIP Manger Brennan Kimbel reached out to Suzanne Havens' supervisor, Thomas Groff, requesting that they check with Suzanne Havens on their phone usage. Thomas Groff had a discussion with Suzanne Havens in-person on July 22, 2022.

9. Thomas Groff followed up with Suzanne Havens with an email, confirming their discussion. In that email, Thomas Groff wrote, "You admitted and apologized for making the calls and stated that you would stop using your state phone in this manner." Thomas Groff continued, "Please be reminded that your state phone is to be used for state brand calls only, to call brand inspectors, your supervisor, covering supervisors, agency Human Resources, or agency management."

10. According to the IR, upon receipt of this email, Suzanne Havens responded to Thomas Groff stating, "I got a personal phone and will reset the state phone and return it ASAP. Didn't know the rules on the state phone and need to get everyone to quit sending personal stuff, but been busy with family stuff, sorry." Thomas Groff clarified, "We are not asking that you return your state phone. We want you to have the state phone for state work. Please keep it." According

¹ The IR provided an example of Verizon bill showing that the calling plan allowed for 400 minutes but Suzanne Havens used 534 minutes resulting in an additional cost of \$33.50.

to the IR, There was no additional communication between Thomas Groff and Suzanne Havens following these emails.²

11. According to the IR, shortly after these events, additional concerns were brought forward regarding the location of Suzanne Havens' agency issued smart phone. It was noted that calls were being placed from outside the state of Washington. Various locations in California were being registered on the Verizon phone usage report, such as Sacramento, Palm Springs, Los Angeles, and other locations within California. Upon further review of the Verizon report, no calls were being placed from inside the state of Washington beginning on May 12, 2022. These out of state calls began on May 12, 2022 and went on until the phone was returned to the agency in September 2022.³

12. According to the IR, the Information Technology (IT) Department was contacted following the discovery of these out-of-state calls to identify if the phone could be tracked or shut down. However, Suzanne Havens' Apple ID password had been changed. This resulted in the IT Department being unable to track or shut the phone down.

13. According to the IR, on August 22, 2022 Brennan Kimbel notified Suzanne Havens that AGR was opening an investigation. Brennan Kimbel directed Suzanne Havens to hand over their agency phone as evidence for the investigation. However, Suzanne Havens was unable to provide the phone and stated they did not have it.

14. According to the IR, Brennan Kimbel provided an email synopsis of what took place that day. They stated, "I went over to Toppenish Livestock Market today August 22, at noon. I asked Suzanne to come outside so I could talk to her. I asked her if she had her state cell phone

² Board staff were provided with copies of the emails.

³ Board staff were provided with a copy of the Verizon Data Report.

and she said she did not. I asked where it was and who had it. She said that a family member had it and he was in rehab. I asked what state that was in and she said California. She said that they just got out of rehab and for some reason could not send her the phone. She said their phones got mixed up at the airport and she got their phone and they [have] her state phone. She said that they are out of rehab now and that they were supposed to be putting the phone in the mail today. I asked her if she could please send me the phone when she receives it to the address on our return labels and send me an email when it is on the way. She said she would. She said that she told Tom that she was working on getting it back but did not specify to him where it was or who had it.”

15. According to the IR, at the conclusion of this interaction, Suzanne Havens stated that they would have their family member send the phone back immediately. Brennan Kimbel informed Suzanne Havens that the Apple ID password had been changed, and to provide that information once they obtained it from their family member.

16. According to the IR, an interview was conducted with Suzanne Havens’ supervisor, Thomas Groff, on September 9, 2022. According to the IR, at the beginning of the interview Thomas Groff was asked to provide any information they had regarding Suzanne Havens misuse of their state provided smart phone. Thomas Groff provided the following statement.

“I got a call from Brennan stating that Suzie had overage charges on her phone, and she was looking into why. We do not normally get overage charges on our phones. I have never had an overage charge on my own phone, and I use it a lot. During the call, Brennan instructed me to speak with her about her phone use. Her calls were late in the evening and out-of-state from what Brennan told me. This was on July 21st. I spoke to Suzie in-person on the 22nd about her phone use. I asked her if she had been using her phone for personal use. She admitted yes. I instructed her there are overage charges on her phone and she is not supposed to be using it for personal use. She apologized and said she would not use it for personal use again. The conversation ended at that point. I sent an email update after this to Brennan and followed up with Suzie via email as well.”

17. According to the IR, Thomas Groff was asked what the expectations were for the use of Suzanne Havens phone in relation to their job duties. Thomas Groff stated, "She works with many Brand Inspectors. She is expected to use it for work." Thomas Groff continued, "Her phone is mainly for making phone calls if emergencies come up. She is expected to be using her phone very seldom." Thomas Groff mentioned that Suzanne Havens work schedule is "already set up," so they do not need to make calls to set appointments. Thomas Groff added that Suzanne Havens is aware of these expectations and took the ethics training when they were hired.

18. According to the IR, Thomas Groff said they were not aware of Suzanne Havens potentially misusing their phone prior to their conversation with Brennan Kimbel on July 21, 2022. Additionally, Thomas Groff did not have any communication with Suzanne Havens about their phone use outside of the discussion that took place on July 22, 2022 and the email follow-up that they sent to them.

19. According to the IR, during the interview, Thomas Groff was asked about their ability to reach Suzanne Havens over the last couple of months. Thomas Groff said, "I normally just email her, so I have everything we discussed in an email. She has an iPad for email use." Thomas Groff added, "Very rarely do I reach out to her on the phone or email. She has very set days and I do not need to contact her very often." Thomas Groff could not remember the last time he had contacted Suzanne Havens via phone. Thomas Groff said that, "It has probably been several months since I have attempted to call her... which is normal."

20. According to the IR, an audio-recorded interview was conducted with Suzanne Havens on September 20, 2022. At the beginning of her interview, Suzanne Havens was asked to provide what they knew about the unusually high volume of calls originating from their agency issued smart phone. Suzanne Havens provided the following statement:

"I took my family member over to go to rehab. I took them to fly out from SeaTac. And in the car, phones got mixed up. It was late at night I had to take them. They made the appointment that day. We hopped in the car. We drove over. It was late. I was tired. I waited there until they flew out just because I was nervous. Somehow, they ended up with my phone. I ended up with their phone....

...when I figured it out, I was like, 'I need to get that phone back.' Well, when they go into rehab, they take all of their stuff. So you can't really, and they don't really let...they have to okay me being on that and stuff, which they did and I was asking them to get it back and then it would fall through the cracks and then I'd be like, 'I need the phone back.' I have a ton of texts saying, 'I need to get that phone back. Send me the phone back.' Well, they were doing their meetings and stuff on that phone while they were there, and then I finally got it back. They are finally out in a halfway house, whatever you call it, a sober living house and stuff, and they finally mailed it back. Then they didn't have the money to send it back and stuff. And I was like, 'I'll send you the money to send it back. Just send it back.' So, I finally got it back and I mailed it back to Brennan, because I don't really need it or really want two phones. I can barely keep track of the one that I got that I pay for..."[sic]

21. According to the IR, Suzanne Havens said the mix up on the phones at the airport occurred in either May or June of 2022. Suzanne Havens said they were unsure where in California their family member's rehab occurred because they move frequently to different sober living homes.

22. According to the IR, Suzanne Havens said that their family member was using their agency smart phone mainly for Zoom meetings related to rehabilitation. However later in the interview, Suzanne Havens was asked again what their family member was using the phone for, to which they provided another response, "[j]ust calling people, using it like it was their phone." Additionally, Suzanne Havens said that her family member used the phone for Uber rides, stating, "I noticed...there were a lot of Ubers."

23. According to the IR, Suzanne Havens said that they had been texting their agency issued smart phone from their personal phone to inform their family member that they needed the phone returned. Suzanne Haven said their family member would respond, "Yea mom I got it" and "I will send it back." However, the phone would not be returned. Suzanne Havens said there were

several reasons why the phone was not returned. Suzanne Havens said that their family member would either not have the money to return the phone, they did not have money for their own phone, or their rehabilitation manager would forget to mail it back.

24. Suzanne Havens was asked about their discussion with Thomas Groff, on July 23, 2022, regarding the personal use of their phone and if they had the phone at the time. Thomas Groff spoke to them. Suzanne Havens said that they wanted to send the smart phone back and by then they knew where it was. Suzanne Havens said they were kind of embarrassed.

25. According to the IR, Suzanne Havens confirmed that Thomas Groff was not aware that their family member had possession of the agency smart phone. However, when asked if Thomas Groff talked to them in-person or over email on July 23, 2022, Suzanne Havens stated, "Maybe he called me. He might have called me." Suzanne Havens was asked if Thomas Groff called on their personal phone on this occasion. Suzanne Havens stated, "I think it was just email...And I know my family member would be like 'Tom called you. You need to call him.'"

26. According to the IR, Suzanne Havens was asked why they did not tell Thomas Groff about their family member having possession of their agency smart phone. Suzanne Havens replied, "When I figured it out, I was embarrassed and thought 'I'll just get it back.'" Suzanne Havens said they just wanted to return it and say 'I don't need a phone.' "Suzanne Havens said, "I should have probably let him know right away."

27. According to the IR, Suzanne Havens was asked if they knew what the expectations were in being provided an agency smart phone. Suzanne Havens replied, "Didn't really. Should have known. Didn't really read through it. Did not know it was only for office. I didn't know that. I didn't read it."

28. According to the IR, Suzanne Havens was asked if they knew what the agency smart phone was intended to be used for in relation to their job duties. Suzanne Havens stated, "Well, when Tom talked to me, it was only for people through work, to do stuff through work, which I'd never read that stuff. I assumed I was working three days a week, no big deal. That's why I'd never checked my [phone]."

29. In a written response to Board staff, Suzanne Havens said:

"My family member is an addict and was living with my husband and I for a while (they were clean at this time, thank God). I really didn't use my state issued phone and left it at home a lot. I guess they used it sometimes without my knowledge. I then took them to Sea-Tac to fly down to treatment in California and they ended up with my phone because it was in the car. I tried my best to get it back, but it took little bit of time and they were using it to do meetings. I asked them to stop, but they didn't right away."

30. Board staff were provided with Suzanne Havens cell phone.⁴ A review of the cell phone history by Board staff found approximately 278 Google searches between June 24, 2022 and August 27, 2022:

- California Unemployment Office
- Amazon Jobs
- How long does it take to lose suboxone tolerance
- Nathan Young Los Angeles Ca Treatment Center protest
- La Clinica Medica de 24 Hours
- KFC
- Dispensary Near Me
- 1224 S Corning Street Walgreens
- Wound Healing Process Tooth Extraction Site after 3 Days (There were multiple Searches for treatments for tooth extraction including dry socket, bleeding etc.)
- Fast Food Near Me
- McDonald's Near Me
- Papa Johns
- How long does it take to get Health Insurance as an Amazon Employee after you apply for it
- California Unemployment Office

⁴ Board staff processed the cell phone on a Forensic Recovery of Evidence Device (FRED) using the Magnet Axiom Digital Investigation Platform to acquire and analyze the cell phone history.

31. There were multiple visits to Facbook.com and Facebook Messenger and nine Zoom Meetings between June 24, 2022 and August 17, 2022.

- Saved personal photographs including:
- Multiple photographs of urine sample cups both full and empty.
- Multiple photographs of unknown males. (Some could be of the same person with different haircuts)
- Multiple photographs of a male's Washington Driver's License.
- Multiple photographs of Blue Cross Blue Shield Medical Card.

32. Board staff contacted AGR and requested the total overage fees that occurred as a result of the misuse of Suzanne Havens smart phone. According to AGR, there were no overage fees. It was the amount of data being used that triggered AGR investigation.

33. Board staff were provided with a copy of a letter dated January 18, 2023 addressed to Suzanne Havens from Jodi Jones, Operation Director for the AGR Animal Services Division. The subject of the letter was "Disciplinary Temporary Reduction in Pay. The letter states in pertinent part:

...You are being disciplined for the misuse of an agency-issued electronic device. At some point no later than May 2022, you allowed your family member, who is not an agency employee, to have access to unlock your agency-issued iPhone. Between May and September 2022, your agency-issued iPhone was in the possession of this family member, who took your agency phone to California and used it as their personal phone on numerous occasions. At no point did you notify the agency that you no longer had possession of your phone, even when your supervisor asked you on July 22, 2022 about some unusual usage that had been observed on the phone bill. Instead, you implicitly allowed your family member to continue receiving a private benefit from this public resource at a cost to the agency, including paying overage fees on the phone plan. Your actions additionally caused a breach in the agency's network security, which upon discovery, required a response from our IT department to protect the integrity of agency data..."

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, it is a mitigating factor that Suzanne Havens received a 10% reduction in pay as a result of the AGR investigation.

D. STIPULATION AND AGREED ORDER

1. Pursuant to chapter 42.52 RCW, the Executive Ethics Board has jurisdiction over Suzanne Havens 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. Suzanne Havens 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. Suzanne Havens 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. Suzanne Havens 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. Suzanne

Havens 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 Suzanne Havens 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 Suzanne Havens 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 Suzanne Havens 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, Suzanne Havens 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. Suzanne Havens agrees to pay a civil penalty in the amount of two-thousand-five-hundred dollars (\$2,500) associated with violations of RCW 42.52.

12. The civil penalty in the amount two-thousand-five-hundred dollars (\$2,500) 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, Suzanne Havens, 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.

Suzanne Havens

Suzanne Havens
Respondent

6-6-2023

Date

Presented by:

K. Reynolds

KATE REYNOLDS
Executive Director

7/17/2023

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

Absent
Earl Key, Member

Shirley Battan
Shirley Battan, Member

Approved via Zoom
Megan Abel, Member

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

Suzanne Havens, Respondent Date