

BEFORE THE WASHINGTON STATE
EXECUTIVE ETHICS BOARD

In the Matter of:

Sheri Burden

Respondent.

No. 2023-021

STIPULATED FACTS,
CONCLUSIONS OF LAW AND
AGREED ORDER

THIS STIPULATION is entered into by Respondent, Sheri Burden 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 February 27, 2023, the Executive Ethics Board (Board) received a referral from the Employment Security Department (ESD) alleging that Sheri Burden, an Administrative Office Assistant 3 (AA3) in the Leave and Care Division (LCD) of ESD, may have violated the Ethics in Public Service Act by using state resources for private benefit or gain. .

2. According to ESD, Sheri Burden was originally hired on July 16, 2021 as an AA3, which is the position they presently hold. Sheri Burden's work hours are 8 am to 5 pm Monday through Friday.

3. According to the ESD referral, during a random spot check of Sheri Burden's ESD agency cell phone, they found 1,700 text messages. The majority of them were personal in nature. ESD said they also did a data pull of Sheri Burden's internet history on their agency computer and found significant personal use. ESD provided Board staff with a spreadsheet listing Sheri Burden's text messages and the data pull of her internet history.

4. Board staff reviewed the spreadsheet with the text of messages sent from Sheri Burden's cell phone and confirmed the majority appear to be non-work related. Board staff were also provided with copies of photos and videos taken from Sheri Burden's cell phone. Those photos include pictures of documents, what appear to be items in a grocery store, miscellaneous individuals and videos that do not appear to be work related.

5. In a written response to Board staff, Sheri Burden states that they understand that they were wrong in what they were doing. According to Sheri Burden, they have worked in one capacity or another for Washington State over the years with a total of almost 16 years of employment. Sheri Burden said that they have never had a disciplinary action against them and have maintained a high level of integrity and dedication throughout their career.

6. Sheri Burden said they have worked at the Washington State History Museum for 10 years, the University of Washington Tacoma for several years and at ESD. Sheri Burden said they put a high value on serving their community and is proud of what they do for the state.

7. According to Sheri Burden their father passed away about five years ago, and they moved to Lacey from Tacoma a year later to live with and take care of their mother and three grandchildren who they have custody of.

8. When the pandemic hit and with everything shut down for two years Sheri Burden was stuck in the house for those two years. Sheri Burden said they were able to secure a job with Thurston County COVID Response Team and was able to contribute again by helping to run the clinics for vaccinations as an Administrative Assistant. Sheri Burden said these were 10-hour days sometimes and it was difficult to find daycare. Sheri Burden said ultimately they were able to find a position with ESD as an Administrative Assistant and could work from home.

9. According to Sheri Burden, they take care of three grandchildren, their mother and their son, who has medical issues. According to Sheri Burden, they cannot always afford to replace items that are broken so when their personal computer and cell phone broke, they were unable to replace them but was planning to purchase a new one with a tax refund.

10. Sheri Burden said they understand using their work computer and work cell phone for personal conversations and communication was wrong. They admit to shopping online, accessing sites looking at vacations, personal health issues, medical issues for their family, and paying bills online. Sheri Burden admitted to everything and are having a hard time right now trying to figure why they did it.

11. According to Sheri Burden, their current and previous coworkers will tell Board staff that they are a hard worker and get their tasks done quickly and efficiently. Sheri Burden said that using the work computer and cell phone did not distract them from doing their job efficiently. Sheri Burden said they are ashamed and embarrassed about this. They said that they are asking for some understanding and they are taking responsibility for their actions. Sheri Burden said they are proud of the job they do and are sorry.

12. Board staff requested a copy of Sheri Burden's work email history and their work computer from ESD.¹

13. Board staff were provided with Sheri Burden's email history for the period of July 13, 2021 through March 10, 2023. Board staff's review of Sheri Burden's email history found no evidence related to the allegations of Sheri Burden using their work email for personal benefit or gain.

14. Board staff created a forensic image of Sheri Burden's work computer. A review of Sheri Burden's work computer history determined that they were using their work computer for personal use on work and non-work days.

15. Between June 17, 2022 and March 7, 2023, Sheri Burden accessed Facebook.com at least once on approximately 64 different days.

16. Between February 3, 2022 and January 19, 2023, Sheri Burden accessed Intuit TurboTax at least once on approximately eight different days.

17. Between September 29, 2022 and March 3, 2023, Sheri Burden accessed websites searching for apartments at least once on approximately 24 different days.

18. On November 24, 2022 and January 24, 2024, Sheri Burden accessed rental-center storage.com searching for West Coast Self Storage Rental Center

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

19. Between September 8, 2022 and March 3, 2023, Sheri Burden accessed Amazon.com to shop at least once on approximately 83 different days.² Evidence indicates that Sheri Burden was shopping on workdays and non-work days. Evidence also indicates that Sheri Burden was purchasing items while on their work computer. Items searched for and purchased included:

- Kitchen-Touch-Free-Automatic-Touchless-Bathroom
- Utopia-Kitchen-Round-Tablecloth-White
- EnHomee Pink Dresser for Bedroom with 7 Drawers and 2 Shelves, Pink Dresser for Girls Bedroom
- Kauai Hawaiian Ground Coffee, Coconut Caramel Crunch Flavor
- Girls size 16 stretch pants
- Amazon Essentials Girls' Uniform Slim Fit Cardigan Sweater,
- Pack-Pullover-Sweatshirt-Sweater-Athletic
- Pack king size down alternative pillows
- Christmas-Envelopes-Holidays-Gingerbread
- Kids Watch 3D Cartoon Toddler Wrist Digital Watch Waterproof
- Xbox Game Pass Ultimate: 1 Month Membership

20. Between September 19, 2022 and February 28, 2023, Sheri Burden accessed YouTube.com at least once on approximately 30 different days. YouTube searches included:

- Speaker Knockerz - Flexin & Finessin (Official Video)
- Woman Greets Red-Headed Stranger in Her Driveway With Long Scream #Shorts
- Lizzo - Tempo (feat. Missy Elliott) [Official Video]
- M.C. Hammer - U Can't Touch This
- Santana - Smooth ft. Rob Thomas (Official Video)
- "Larry the Cable Guy" Says "Git-R-Done!" and Watch NASA TV
- We Are Family (Power Remix)
- How To Download Music From YouTube To Computer

21. Between September 18, 2022 and January 9, 2023, Sheri Burden accessed travel websites at least once on approximately 11 different days. Those searches included:

² Seventeen of those days were in December 2022.

- Quality Inn Seaside - Google hotel
- Alaska Cruises | Alaska Cruise 2022 | AlaskaTravel.co
- Riverside Cabin 2 - (Brand New Construction)
- Quail Creek Cabin at Rogue Cliffside Cabin
- Amtrak - Reservations - Passenger Information
- Secret Bars of Paris, Revealed

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

23. In a written response to Board staff, Sheri Burden said that most of these were not work related. As said in their initial response to the allegations, they did not have access to another computer at the time and could not afford another computer. They did purchase one with their tax refund as planned.

24. Sheri Burden said they filed their taxes on their work computer and purchased items for Christmas for their children. They did search for a new storage site and a bigger apartment for their family, checked Facebook and looked for a dream vacation.

25. Sheri Burden said YouTube was mostly work related. They provided music for all staff presentations. Sheri Burden said they might have gotten distracted with another video that popped up while searching for music options. The only one they could see that was not work related was "Woman greets stranger with red hair in driveway with scream." They said Larry the Cable Guy could have been a meme they were trying to get for work, but they are not 100% sure about that one.

26. Sheri Burden said they were also was working a lot and was on the computer doing tasks for work sometimes when they should not have been. They checked other non-work items while they were working during the weekends. They have not been doing that at all now. Sheri Burden said they have more help now with their admin team in Leave and Care and they are in

contact with their supervisor about their hours and work schedule. Sheri Burden said they do not work during weekends any longer or any other hours without permission.

27. Sheri Burden said they understand they are at fault and are ready for the consequences. Sheri Burden said that they love working for the state and have done so for almost 20 years. They have never had any issues with their work performance and sincerely apologize for what occurred.

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 Sheri Burden 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. Sheri Burden 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. Sheri Burden 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. Sheri Burden 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. Sheri Burden 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 Sheri Burden 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 Sheri Burden 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 Sheri Burden 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, Sheri Burden 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. Sheri Burden 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 two-thousand-five-hundred dollars (\$2,500) on the condition that Sheri Burden 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 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, Sheri Burden, 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.

Sheri Burden

10/13/2023

Sheri Burden
Respondent

Date

Presented by:

K. Reynolds
KATE REYNOLDS
Executive Director

11/7/2023
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 17th day of November 2023.

Jan M Jutte
Jan Jutte, Chair

Approved Kelli Hooke
Kelli Hooke, Vice Chair

Shirley Battan
Shirley Battan, Member

Recessed
Megan Abel, Member

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

Sheri Burden,
Respondent

Date