

BEFORE THE WASHINGTON STATE
EXECUTIVE ETHICS BOARD

In the Matter of:

Jessica Payne

Respondent.

No. 2023-039

STIPULATED FACTS,
CONCLUSIONS OF LAW AND
AGREED ORDER

THIS STIPULATION is entered into by Respondent, Jessica Payne 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 April 3, 2023, the Executive Ethics Board (Board) received a complaint alleging that Jessica Payne, an employee of the Washington Health Care Authority (HCA), may have violated the Ethics in Public Service Act. The complaint alleged that Jessica Payne violated Chapter 42.52 RCW by using state resources for non-work related activities.

2. According to the complaint, Jessica Payne used a state electric vehicle charging station without proper permit or authority, on more than one occasion, to charge their personal vehicle.

3. According to HCA, Jessica Payne was hired on March 1, 2022, as a Communications Consultant 5. Jessica Payne's primary duties are to manage HCA's social media tools, plan and implement social media campaigns, and train agency staff.

4. The complainant, whom is a Washington State Patrol Trooper, reported to Board staff that they've witnessed Jessica Payne utilizing state electric vehicle charging stations on three different occasions. The most recent incident occurred on April 2, 2023, in which the Trooper located Jessica Payne's vehicle parked overnight at the Department of Enterprise Services (DES) motorpool parking lot. The DES charging station is posted with a sign that reads, "4 hour limit, use of these stations requires 1. An employee assignment in this lot, 2. An active chargepoint account."

5. The Trooper was familiar with the vehicle, confirmed to be Jessica Payne's by the WA state license plate, based on two prior incidents they had with Jessica Payne. In the first incident, while working at the Governor's Mansion, the Trooper observed Jessica Payne leaving their personal vehicle (confirmed by license plate) charging at a station located on the Capital Campus parking lot. The vehicle was noted as having no proper permit affixed. Seeing as it was 5pm and Jessica Payne left their vehicle charged and walked towards downtown Olympia, the Trooper contacted them and had a conversation. The Trooper asked Jessica Payne if they worked for the Governor's office and/or had a permit. Jessica admitted to working for HCA and using the charging station due to their charging setup at home being presently inoperable. The Trooper further informed Jessica Payne that the use of the charging station required proper permits and was only for charging while engaged in work at the Capitol Campus, not for personal charging.

6. The Trooper further advised that two weeks after that incident, they again located Jessica Payne's vehicle parked for overnight charging at the Governor's Mansion lot station. During that incident, the Trooper left a printout with "RCW Theft of Services in the Third Degree" attached to Jessica Payne's windshield.

7. **RCW 43.01.250 Electric Vehicles – State purchase of power at state office locations** clearly states, "Authorizes the purchase of power at state expense to recharge privately and publicly owned plug-in electrical vehicles at state office locations where the vehicles are used for state business, are commute vehicles, or where the vehicles are at the state location for the purpose of conducting business with the state."

8. According to Washington State Department of Enterprise Services Policy 'Parking on the State Capitol Campus', section **7B** reads:

Unless authorized by the managing entity:

- *Privately-owned vehicle charging is limited to four hours per day*
- *Vehicles must be relocated when charging is complete*
- *Overnight charging of vehicles is limited to state-owned vehicles*
- *Vehicles must be connected to the charging station*
- *Purchase of a valid parking permit for the parking stall usage is required*

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 Jessica Payne 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. Jessica Payne 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. Jessica Payne 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. Jessica Payne 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. Jessica Payne 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 Jessica Payne 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 Jessica Payne 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 Jessica Payne 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, Jessica Payne 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. Jessica Payne agrees to pay a civil penalty in the amount of two thousand dollars (\$2,000) associated with violations of RCW 42.52. The Board agrees to suspend seven hundred fifty dollars (\$750) on the condition that Jessica Payne 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 one thousand two hundred 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, Jessica Payne, 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.

 2/6/2024

Jessica Payne Date
Respondent

Presented by:

KATE REYNOLDS 2/7/2024
Executive Director 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 March 2024.


Jan Jutte, Chair

Approved Verbally
Kelli Hooke, Vice Chair

Approved Virtually
Megan Abel, Member


Cam Comfort, Member

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

| Jessica Payne, Respondent | Date |
|---------------------------|------|
|---------------------------|------|