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**BEFORE THE WASHINGTON STATE
EXECUTIVE ETHICS BOARD**

In the matter of:

JACOB RAINEY,

Respondent.

OAH No. 10-2024-AGO-00068

EEB No. 2023-070

FINDINGS OF FACT,
CONCLUSIONS OF LAW, AND
FINAL ORDER

I. PROCEDURAL HISTORY

1.1 On or about August 11, 2023, the Executive Ethics Board (the Board) received an agency referral from the Employment Security Department (ESD) that former ESD employee Jacob Rainey may have violated the Ethics in Public Service Act (the Act) by using state resources for activities not related to work. Declaration of Justin Cotte (Cotte Decl.) ¶ 3, Ex. 1. The referral alleged that Jacob Rainey shared their screen during a Zoom meeting and an employee observed favorited websites in the browser that did not appear work-related, including “Dragon Ball Z” which is a mobile game. *Id.* Board Staff conducted an investigation pursuant to this referral. Cotte Decl., ¶ 4.

1.2 On September 13, 2024, the Board found reasonable cause to believe Jacob Rainey violated RCW 42.52, as set forth in the Investigative Report and Board Reasonable Cause Determination (Reasonable Cause Determination).

1.3 After due and proper notice, a hearing was held on Board Staff’s Motion for Summary Judgment, convening on March 14, 2025, conducted via Zoom. ALJ TJ Martin from the Office of Administrative Hearings conducted the proceedings, and Board Chair Kelli Hooke,

1 along with members Jan Jutte, Megan Abel, Cam Comfort and David Hankins, were present.
2 Chad Standifer, Sr. Assistant Attorney General and legal advisor to the Board was also present.

3 1.4 Julia Eisentrout, Assistant Attorney General for Board Staff, argued on behalf of
4 Board Staff. The Board's Executive Director, Kate Reynolds, and other Board Staff members
5 were present.

6 1.5 Jacob Rainey did not appear at the hearing. Pursuant to Office of Administrative
7 Hearing policy, the Board provided 20 minutes for Mr. Rainey to appear before it considered the
8 matter.

9 1.6 Board Staff filed the following documents:

- 10 • Board Staff's Motion for Summary Judgment; and
- 11 • Declaration of Justin Cotte in Support of Motion for Summary Judgment,
with attached Exhibits 1-10.

12 1.7 Jacob Rainey did not file a response to Board Staff's Motion for Summary
13 Judgment.

14 1.8 The proceedings were recorded and open to the public.

15 1.9 The hearing adjourned on March 14, 2025.

16 Based on the evidence presented, the Board enters the following Findings of Fact,
17 Conclusions of Law, and Final Order:

18 II. FINDINGS OF FACT

19 2.1 ESD hired Jacob Rainey on January 29, 2016, as an Unemployment Insurance
20 Specialist 2, a non-permanent position. Cotte Decl., ¶ 5. Jacob Rainey moved to a permanent
21 position and eventually became an Employment Security Specialist 2. *Id.* At all times relevant
22 to this complaint, ESD employed Jacob Rainey. *Id.* On September 19, 2024, ESD dismissed
23 Jacob Rainey and they are no longer in state service. *Id.* at Ex. 3.

24 2.2 On August 11, 2023, the Board received an agency referral from ESD that
25 employee Jacob Rainey shared their screen during a meeting conducted via Zoom; another ESD
26 employee noticed favorited websites that did not appear to be work-related. Cotte Decl., ¶ 3,

1 Ex. 1. These sites included a mobile game called “Dragon Ball Z” and Gmail. *Id.* at Ex. 2. Board
2 Staff conducted an investigation pursuant to the referral. Cotte Decl., ¶ 4.

3 2.3 Board Staff took a forensic image of Jacob Rainey’s ESD laptop. Cotte Decl., ¶
4 6. Using Axiom Magnet Software, Board Staff found evidence of personal use, including
5 numerous visits to sites not related to Jacob Rainey’s work for ESD. *Id.* at ¶ 7, Ex. 5. These sites
6 included online retail stores like ymhstudios.com, and the online store for Bert Kreischer (a
7 comedian); evike.com, a retailer for Air Soft guns; and samsung.com, where Jacob Rainey
8 viewed a refrigerator. *Id.* Board Staff also found numerous visits to msn.com to view articles not
9 related to work, logins to Jacob Rainey’s personal Gmail account, and visits to a job posting site,
10 among other websites. *Id.* In addition, Jacob Rainey’s bookmarks included sites not related to
11 ESD work, like nintendo.com, amazon.com, and fitfoodiefinds.com. Cotte Decl., ¶ 8, Ex. 5.

12 2.4 Jacob Rainey claimed that the browser on their ESD opened to msn.com, and that
13 is why there were so many visits to that website. Cotte Decl., ¶ 10. However, Board Staff verified
14 that clicking on an article on msn.com and opening a web browser with the homepage of
15 msn.com do not generate the same URL; each article takes the user to a new URL, distinct from
16 msn.com. *Id.*

17 2.5 Jacob Rainey’s normal work hours were Monday through Friday, 8:00 am to 5:00
18 pm, with an hour lunch from 1:00 – 2:00 pm. Cotte Decl., ¶ 5, Ex. 4, p. 1. Board Staff determined
19 that many of the personal website visits occurred during Jacob Rainey’s normal working hours
20 for ESD. Cotte Decl., ¶¶ 5, 13, Exs. 4, 5.

21 2.6 Jacob Rainey also used their ESD email for their personal benefit, to send emails
22 to their spouse. Cotte Decl., ¶ 16, Ex. 10. These included emails about mygoodtogo.com, emails
23 with cover letters and resumes attached for Jacob Rainey and their spouse, and emails with
24 personal tax documents attached, among others. *Id.* Jacob Rainey sent an email with a screenshot
25 that showed an open tab selected on mygoodtogo.com, which was not work-related, and more
26 open tabs next to it that were related to work for ESD. Cotte Decl., ¶ 13, Exs. 7, 8. Jacob Rainey

1 admitted they did send emails and documents to their spouse. Cotte Decl., ¶ 17.

2
3 2.7 Board Staff also determined that Jacob Rainey saved personal documents on their
4 ESD laptop, including cover letters for job applications, bank statements, an invoice for a doctor
5 bill, among other personal documents. Cotte Decl., ¶ 14, Ex. 9.

6 2.8 ESD’s Technology Acceptable Use Policy, Section 11, prohibits “[a]ccessing
7 personal web-based accounts, including e-mail, cloud storage, and calendars from ESD systems
8 for non-work-related purposes.” Cotte Decl., Ex. 6. Board Staff contacted the ESD Security
9 Operations Manager, who noted that ESD staff should not sign into the browser with their
10 personal accounts, as it can pull over undesired content such as favorites, temp files, extensions
11 or add-ons that are disallowed on ESD equipment. Cotte Decl., ¶ 11.

12 III. CONCLUSIONS OF LAW

13 3.1 The Board has jurisdiction to hear this matter pursuant to RCW 42.52.360(1),
14 which authorizes the Board to enforce the Ethics Act with respect to employees in the executive
15 branch of state government. The Board has jurisdiction over Jacob Rainey, even though
16 Jacob Rainey is no longer a state employee. The conduct at issue took place while they worked
17 as a state employee. The complaint was filed in accordance with RCW 42.52.410, the Board
18 found reasonable cause pursuant to RCW 42.52.420, and an adjudicative proceeding was
19 conducted pursuant to RCW 42.52.430 and RCW 42.52.500. All the required procedural notices
20 have been provided.

21 3.2 WAC 10-08-135¹ provides that a motion for summary judgment may be granted
22 and an order issued if the written record shows that there is no genuine issue as to any material
23 fact and that the moving party is entitled to judgment as a matter of law. “A material fact is one
24 upon which the outcome of the litigation depends.” *Hudesman v. Foley*, 73 Wn.2d 880, 886,
25 441 P.2d 532 (1968). Summary judgment is proper if (1) there is no genuine issue of material
26 fact, (2) reasonable persons could reach but one conclusion, and (3) the moving party is entitled

¹ The Board has adopted the model rules of procedures, chapter 10-08 WAC. WAC 292-100-006.

1 to judgment as a matter of law. *Ellis v. City of Seattle*, 142 Wn.2d 450, 458, 13 P.3d 1065 (2000);
2 CR 56(c).

3 The material facts in this matter are not in dispute, rendering summary judgment
4 appropriate. Jacob Rainey does not contest that they used their ESD email to send personal
5 emails to their spouse, nor do they contest that they stored personal documents on their ESD
6 computer. **As discussed below, summary judgment is granted in favor of Board Staff based**
7 **on Jacob Rainey’s violations of the Ethics Act.**

8 3.3 The Ethics Act governs the conduct of state officers and employees. Under
9 RCW 42.52.430(5), Board Staff must establish by a preponderance of the evidence that
10 Jacob Rainey violated the Ethics Act.

11 3.4 RCW 42.52.160(1) provides the following:

12 No state officer or state employee may employ or use any person, money, or
13 property under the officer's or employee's official control or direction, or in his
14 or her official custody, for the private benefit or gain of the officer, employee, or
15 another.

15 3.5 Based on the preponderance of the evidence established in the Findings of Fact,
16 the Board concludes that Jacob Rainey violated RCW 42.52.160(1) by using their ESD computer
17 and email for their own private benefit and/or gain.

18 Jacob Rainey used their ESD computer by visiting websites not related to their work for
19 ESD, stored personal docs on their ESD computer, and used their ESD email to send numerous
20 personal emails.

21 3.6 RCW 42.52.160(4) provides the following:

22 The appropriate ethics boards may adopt rules providing exceptions to this
23 section for occasional use of the state officer or state employee, of de minimis
24 cost and value, if the activity does not result in interference with the proper
25 performance of public duties.

25 WAC 292-110-010(3) provides, in relevant portion, that:
26

1 **Permitted personal use of state resources.** This subsection applies to any
2 use of state resources not included in subsection (2) of this section.

3 (a) A state officer or employee's use of state resources is de minimis only if
4 each of the following conditions are met:

- 5 (i) There is little or no cost to the state;
- 6 (ii) Any use is brief;
- 7 (iii) Any use occurs infrequently;
- 8 (iv) The use does not interfere with the performance of any state
9 officer's or employee's official duties;
- 10 (v) The use does not compromise the security or integrity of state
11 property, information systems, or software;
- 12 (vi) The use is not for the purpose of conducting an outside business,
13 in furtherance of private employment, or to realize a private financial
14 gain;
15 and
- 16 (vii) The use is not for supporting, promoting the interests of, or
17 soliciting for an outside organization or group.

18 Jacob Rainey's personal use of their ESD computer and email was not "brief" or
19 "infrequent." The volume of personal website visits, personal bookmarks, personal documents
20 stored on their ESD computer, and personal emails sent far exceeds these standards for
21 acceptable personal de minimis use. The evidence establishes that Jacob Rainey repeatedly and
22 continuously used their ESD computer and email for their personal gain or benefit.

23 3.7 Under RCW 42.52.480, the Board may impose a civil penalty of up to \$5,000 per
24 violation or three times the economic value of anything received or sought in violation of the
25 Ethics Act, whichever is greater. The Board concludes that a \$2000 penalty is appropriate.

26 3.8 In determining the appropriate sanction, the Board reviewed the nature of the
violation, as well as the aggravating circumstances and mitigating factors set forth in
WAC 292-120-030. Jacob Rainey's violations were continuing in nature and tend to
significantly reduce public respect for or in state government or state government officers or
employees. WAC 292-120-030(2)(a) and (e). No mitigating factors are present.

1 **IV. FINAL ORDER**

2 4.1 Based upon the foregoing Findings of Fact and Conclusions of Law, it is hereby
3 ordered that Jacob Rainey is assessed monetary civil penalty of \$2,000 based on their violations
4 of RCW 42.52.160(1).

5 4.2 The total amount of \$2,000 is payable in full within 90 days of the effective date
6 of this order.

7
8 DATED this 24th day of March 2025.

9 WASHINGTON STATE EXECUTIVE ETHICS BOARD

10
11 *Kelli Hooke*
12 _____
13 Kelli Hooke, Chair

14
15 **APPEAL RIGHTS**

16 **RECONSIDERATION OF FINAL ORDER – BOARD**

17 Any party may ask the Executive Ethics Board to reconsider a Final Order. The request
18 must be in writing and must include the specific grounds or reasons for the request. The request
19 must be delivered to Board office within 10 days after the postmark date of this order.

20 The Board is deemed to have denied the request for reconsideration if, within 20 days
21 from the date the request is filed, the Board does not either dispose of the petition or serve the
22 parties with written notice specifying the date by which it will act on the petition.
23 RCW 34.05.470.

24 The Respondent is not required to ask the Board to reconsider the Final Order before
25 seeking judicial review by a superior court. RCW 34.05.470.
26

1 **FURTHER APPEAL RIGHTS – SUPERIOR COURT**

2 A Final Order issued by the Executive Ethics Board is subject to judicial review under
3 the Administrative Procedure Act, chapter 34.05 RCW. See RCW 42.52.440. The procedures
4 are provided in RCW 34.05.510 - .598.

5 The petition for judicial review must be filed with the superior court and served on the
6 Board and any other parties within 30 days of the date that the Board serves this Final Order on
7 the parties. RCW 34.05.542(2).

8 A petition for review must set forth:

- 9 (1) The name and mailing address of the petitioner;
10 (2) The name and mailing address of the petitioner’s attorney, if any;
11 (3) The name and mailing address of the agency whose action is at issue;
12 (4) Identification of the agency action at issue, together with a duplicate copy, summary,
13 or brief description of the agency action;
14 (5) Identification of persons who were parties in any adjudicative proceedings that led to
15 the agency action;
16 (6) Facts to demonstrate that the petitioner is entitled to obtain judicial review;
17 (7) The petitioner’s reasons for believing that relief should be granted; and
18 (8) A request for relief, specifying the type and extent of relief requested.
19 RCW 34.05.546.

20 **ENFORCEMENT OF FINAL ORDERS**

21 If there is no timely request for reconsideration, this is the Final Order of the Board. The
22 Respondent is legally obligated to pay any penalty assessed.

23 The Board will seek to enforce a Final Order in superior court and recover legal costs
24 and attorney’s fees if the penalty remains unpaid and no petition for judicial review has been
25 timely filed under chapter 34.05 RCW. This action will be taken without further order by the
26 Board.