

BEFORE THE WASHINGTON STATE
EXECUTIVE ETHICS BOARD

In the Matter of:

Richard Lember
Respondent.

No. 2023-079

STIPULATED FACTS,
CONCLUSIONS OF LAW AND
AGREED ORDER

THIS STIPULATION is entered into by Respondent, Richard Lember 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 September 29, 2023, the Executive Ethics Board (Board) received an agency referral alleging that Richard Lember, an employee of the Washington State Employment Security Department (ESD), may have violated the Ethics in Public Service Act. The complaint alleged that Richard Lember violated RCW Chapter 42.52, by using state resources for non-work related activities.

2. According to the agency referral, Richard Lember allegedly used their ESD computer for personal use, including downloading documents and accessing websites that were not work related.

3. According to ESD, Richard Lember was hired on June 1, 2011, and is currently in the role of a WorkSource Virtual Specialist 4.

4. As part of this investigation, Board staff obtained a copy of Richard Lember's ESD computer internet searches, a copy of files saved to their USB drive attached to their ESD computer, and a copy of a forensic extraction report of Richard Lember's ESD computer.¹

5. Upon review of the provided internet activity log, Board staff noted several visits to personal websites between the dates of *May 2021 to May 2023*, including:

Sites	Count	Category
etosoftware.us/	2773	Job Search
zillow.com/	2200	Real Estate
yahoo.com/	1233	Internet Portal
amazon.com/	1172	Shopping
google.com/	957	Internet Portal
foxnews.com/	729	News & Media
microsoftonline.com/	638	Business & Economy

¹ ESD Outsourced to INTRA VAIA Risk Management Group, who conducted a thorough forensic review of Richard Lember's ESD computer and state issued cellphone.

bing.com/	635	Internet Portal
netflix.com/	354	Entertainment & Art
bestbuy.com/	321	Shopping
youtube.com/	142	Entertainment & Art
timeanddate.com/	123	Reference & Research
xfinity.com/	117	Service Provider
questdiagnostics.com/	76	Health & Medicine
wsecu.org/	65	Financial Services
msn.com/	60	Internet Portal
smartsheet.com/	51	Reference & Research
spscc.edu/	49	Educational Institution
providence.org/	47	Health & Medicine
ameritrade.com/	44	Financial Services
experian.com/	44	Financial Services
regence.com/	42	Health & Medicine
youroyals.com/	41	Entertainment & Art
foxbusiness.com/	37	News & Media
zoom.us/	37	Video Conferencing
oberd.com/	35	Health & Medicine
xerxessecure.com/	32	Business and Economy
advancedmd.com/	31	Health & Medicine
chase.com/	31	Financial Services
hmebillpay.com/	28	Financial Services
outlook.com/	28	Email
discover.com/	18	Financial Services
homedepot.com/	18	Home & Garden
intuit.com/	18	Financial Services
costco.com/	16	Shopping
equifax.com/	16	Financial Services
onetonline.org/	16	Job Search
resume-resource.com/	15	Job Search
annualcreditreport.com/	14	Financial Services
bdainc.com/	14	Reference & Research
bdainc.com/	14	Reference & Research
careeronestop.org/	14	Job Search
howtopronounce.com/	14	Reference & Research
calendarwiz.com/	13	Reference & Research
dartsearch.net/	13	Computer & Internet Information
icims.com/	12	Reference & Research

otta.com/	11	Job Search
indeed.com/	10	Job Search
adobeoobe.com/	9	Computer & Internet Information
greatwesternsupply.net/	9	Business & Economy
transunion.com/	9	Credit Scores
batestech.edu/	8	Educational Institution
weather.com/	8	Weather Information
asap-promotions.com/	7	Promotions
levels.fyi/	7	Job Search
mysynchrony.com/	7	Financial Services
myvisualiq.net/	7	Computer & Internet Information
avalonhealthcare.com/	6	Health & Medicine
compactpowerrents.com/	6	Home & Garden
gopherhawk.com/	6	Home & Garden
outbrain.com/	6	advertising Tool
parkopedia.com/	6	Travel
pronouncenames.com/	6	Internet Tool
sendgrid.net/	6	Business and Economy
ultipro.com/	6	Business and Economy
vsp.com/	6	Financial Services
b2clogin.com/	5	Computer & Internet Information
commodities-unlimited.com/	5	Home & Garden
creditkarma.com/	5	Financial Services
eventactions.com/	5	Society
homeadvisor.com/	5	Business and Economy
homebotapp.com/	5	Business and Economy
housecoast.com/	5	Home & Garden
housecoast.com/	5	Home & Garden
lemayinc.com/	5	Business and Economy
linkedin.com/	5	Social Networking
lowes.com/	5	Home & Garden
miles.rocks/	5	Business and Economy
redballoon.work/	5	Job Search
sendwishonline.com/	5	Computer & Internet Information
autumncreekranch-wa.com/	4	Recreation & Hobbies
babynamespedia.com/	4	Reference & Research
darpits.com/	4	Business and Economy
definitions.net/	4	Reference & Research
definitive.com/	4	Computer & Internet Information
facebook.com/	4	Social Networking
getfreecoupons.com/	4	Computer & Internet Information

itsmycareer.com/	4	Job Search
live.com/	4	Email
luminexcorp.com/	4	Health & Medicine
mitchell1crm.com/	4	Recreation & Hobbies
mynextmove.org/	4	Job Search
ownerautosite.com/	4	Business and Economy
pfp.org/	4	Society
rtings.com/	4	Computer & Internet Information
tdameritrade.com/	4	Financial Services
tiktok.com/	4	Social Networking
careerbuilder.com/	3	Job Search
centurycommunities.com/	3	Real Estate
counselear.com/	3	Computer & Internet Information
coursera.org/	3	Training & Tools
foxweather.com/	3	News & Media
gcfglobal.org/	3	Computer & Internet Information
glassdoor.com/	3	Job Search
healthplans.com/	3	Health & Medicine
joblist.com/	3	Job Search
jobs2careers.com/	3	Job Search
lensa.com/	3	Job Search
livecareer.com/	3	Job Search
pinterest.com/	3	Social Networking
proxyvote.com/	3	Financial Services
pse.com/	3	Business and Economy
resume-now.com/	3	Job Search
samsung.com/	3	Business and Economy
sense-lang.org/	3	Training & Tools
shop-trk.com/	3	Parked Domains
ups.com/	3	Business and Economy
wa211.org/	3	Society
wikipedia.org/	3	Reference & Research
adnxs.com/	2	Web Advertisement
adnxs.com/	2	Web Advertisement
alatest.com/	2	Shopping
bankofamerica.com/	2	Financial Services
boredpanda.com/	2	Entertainment & Art
builtinseattle.com/	2	Computer & Internet Information
calculator.academy/	2	Stock Advise & Tools
capitaloneshopping/	2	Shopping
capterra.com/	2	Computer & Internet Information

careerinfonet.org/	2	Job Search
coolworks.com/	2	Job Search
dice.com/	2	Job Search
dig.engineering/	2	Computer & Internet Information
discoverhealthinfo.com/	2	Computer & Internet Information
fandango.com/	2	Entertainment & Art
firstam.com/	2	Financial Services
freewordcloudgenerator.com/	2	Computer & Internet Information
gettinghired.com/	2	Job Search
gravitics.com/	2	Business and Economy
hirer.com/	2	Job Search
ihireconstruction.com/	2	Job Search
insurancequotes.com/	2	Financial Services
jobhero.com/	2	Job Search
karman-sd.com/	2	Business and Economy
klclick1.com/	2	Computer & Internet Information
list-manage.com/	2	Business and Economy
names.org/	2	Entertainment & Art
pronouncehippo.com/	2	Reference & Research
salesforce.com/	2	Business and Economy
simplyhired.com/	2	Job Search
snapworx.com/	2	Computer & Internet Information
spsccathletics.com/	2	Sports
strombergschickens.com/	2	Shopping
strombergschickens.com/	2	Shopping
sync.aniview.com/	2	Web Advertisement
traplineproducts.com/	2	Society
trendingpoliticsnews.com/	2	News & Media
tvcomparison.com/	2	Society
wayfair.com/	2	Shopping
wilburellis.com/	2	Business and Economy
wilburellisagribusiness.com/	2	Business and Economy
yimg.com/	2	Internet Portals
youglish.com/	2	Training & Tools
abiattachments.com/	1	Society
aboveboard.com/	1	Job Search
abt.com/	1	Shopping
afternic.com/	1	Web Hosting
agkn.com/	1	Web Advertisement
aplitrak.com/	1	Job Search
articulate.com/	1	Training & Tools

6. Upon review of the provided list of files saved from the computer to a USB device, Board staff noted several files which would indicate personal use including:

- **Bank Transactions 2022 and 2023**
- **Barbara Earnings Record**

- **Barbara my Social Security – Benefit Calculator Estimates 5.7.23**
- **Quest Diagnostics Bill 5843710743**
- **Samsung 75inch tv return receipts 4.21.23**
- **Tracking Vacuum returned 4.18.23**

7. Upon review of the provided forensics report, Board staff noted several items of interest, including:

Files and documents downloaded from personal websites, including:

WSECU Bank records
 Amazon tracking information
 Yahoo mail photo attachments and personal tax documents
 Ameritrade financial statements
 Chase Bank statements
 Medical payment receipts
 TurboTax documents
 Nordstroms card statements

Personal Email and other online account credentials saved, including:

Personal Gmail accounts
 Personal Yahoo account
 Dogsnaturallymagazine.com
 Southwest Airlines
 Fandango Movies

8. As part of this investigation, Richard Lember was notified of the allegations and above noted personal activity. In Richard Lember’s written response to Board staff, they stated “I sincerely apologize for my actions. There were no malicious, or inappropriate websites visited or viewed.” Richard Lember further stated, “I did my USB to download my paystubs, evaluations received, excel worksheet and went to a handful of non-work sites. Since this issue occurred I have been on self-imposed probation to ensure full compliance.”

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 Richard Lember 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. Richard Lember 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. Richard Lember 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. Richard Lember 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. Richard Lember 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 Richard Lember 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 Richard Lember 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 Richard Lember 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, Richard Lember 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, Richard Lember 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. Richard Lember 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 dollars (\$2,000) on the condition that Richard Lember 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 three thousand dollars (\$3,000) 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, Richard Lember, 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.

Richard J. Lember 11/19/2024
Richard Lember Date
Respondent

Presented by:

K. Reynolds 1/10/2025
KATE REYNOLDS Date
Executive Director

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):

Penalty of \$5,000 with \$1,000 suspended

DATED this 10th day of January 2025.

Kelli Hooke
Kelli Hooke, Chair

Megan Abel
Megan Abel, Vice Chair

Jan M Jutte
Jan Jutte, Member

Cam Comfort
Cam Comfort, Member

David Hankins
David Hankins, Member

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

Richard J. Lember 1/10/25
Richard Lember, Respondent Date