ORIGINAL

BEFORE THE WASHINGTON STATE
EXECUTIVE ETHICS BOARD

In the Matter of: STAN WALTHALL, Respondent.	NO. 03-054 STIPULATED FACTS, CONCLUSIONS AND ORDER

I. STIPULATION

THIS STIPULATION is entered into under WAC 292-100-090(1) between the Respondent, STAN WALTHALL, and Board Staff of the WASHINGTON STATE EXECUTIVE ETHICS BOARD (Board) through SUSAN HARRIS, Executive Director. The following stipulated facts, conclusions, 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.

Section 1: PROCEDURAL FACTS

1.1. On May 2, 2003, the Executive Ethics Board received a referral from the State Auditor's Office (SAO) alleging that Stan Walthall, an employee of the State of Washington, Department of Social and Health Services (DSHS), used his state computer to pursue personal interests and non-work-related activities. The Executive Ethics Board reviewed this referral and issued a complaint in December 2003.

1.2. The Board is authorized under RCW 34.05.060 to 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.

1.3. Stan Walthall understands that if Board staff proves any or all of the alleged violations 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).

1.4. Stan Walthall recognizes that the evidence available to the Board staff is such that the Board may conclude Mr. Walthall 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 set forth below.

1.5. Stan Walthall waives the opportunity for a hearing, contingent upon acceptance of this stipulation by the Board, or his acceptance of any modification(s) proposed by the Board, pursuant to the provisions of WAC 292-100-090(2) which provides in part:

> The board has the option of accepting, rejecting, or modifying the proposed stipulation or asking for additional facts to be presented. If the board accepts the stipulation or modifies the stipulation with the agreement of respondent, the board shall enter an order in conformity with the terms of the stipulation. If the board rejects the stipulation or respondent does not agree to the board's proposed modification to the stipulation, the normal process will continue. The proposed stipulation and information obtained during formal settlement discussion shall not be admitted into evidence at a subsequent public hearing.

1.6. If the Board accepts this stipulation, the Board will release and discharge Stan Walthall from all further ethics proceedings under chapter 42.52 RCW for matters arising out of the facts contained in the complaint 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 agreed order. Mr. Walthall 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 and agreed order.

1.7. If this Stipulation is accepted, this Stipulation and Order does not purport to settle any other claims between Stan Walthall and the Washington State Executive Ethics Board, the State of Washington, or other third party, which may be filed in the future.

1.8. If this Stipulation is accepted, this Stipulation and Order is enforceable under RCW 34.05.578 and any other applicable statutes or rules.

1.9. If the Board rejects this stipulation, or if Stan Walthall does not accept the Board's proposed modification(s), if any, Mr. Walthall waives any objection to participation at any subsequent hearing by any Board member to whom this stipulation was presented for approval under WAC 292-100-090(2). Further, Mr. Walthall understands and agrees that this proposed stipulation and information obtained during any formal settlement discussions held between the parties shall not be admitted into evidence at a subsequent public hearing, unless otherwise agreed by the parties.

Section 2: FINDINGS OF FACT

2.1. When the complaint in this matter was filed, and at all times material hereto, DSHS employed Stan Walthall as a Long-term Care Surveyor/Adult Family Home Licensor for Residential Care Services of DSHS. Mr. Walthall was a state employee from April 1988 until he resigned on July 31, 2003. Mr. Walthall has been involved with the United States Coast Guard Auxiliary (USCGA) on a voluntary basis since 1999.

2.2. A review of Mr. Walthall's state computer from February 2001 to February 2003 revealed that Mr. Walthall utilized the computer for personal interests. Mr. Walthall's computer revealed the following documentation:

- 357 Word and spreadsheet documents related to the USCGA;
- Two documents created regarding his personal banking;
- One joke;
- A 28-page letter to a friend;
- 1,800 Internet sites visited that were not related to work, which included accessing more than 70 sites related to Coast guard activities and several sites related to personal matters which involved transactions which required credit card payments; and
- Use of the state printer to print non-work-related material.

2.3. Mr. Walthall also used his state computer to communicate by e-mail with other USCGA members.

2.4. DSHS Administrative Policy 15.15 prohibits agency staff from using state-provided electronic messaging systems and the Internet in a manner prohibited by WAC 292-110-010. The policy further prohibits staff from using the state-provided Internet access to participate in non-business related activities.

2.5. Stan Walthall signed the Employee Annual Review Checklist in September 2002 declaring that he understood that he was responsible to read, be familiar with, and comply with policies and procedures including DSHS Administrative Policy 6.04, Standards of Ethical Conduct for Employees, and DSHS Administrative Policy 15.15, Use of Electronic Messaging Systems.

2.6. Stan Walthall signed the DSHS "Internet Access Request and Agreement" on October `9, 1998. This agreement states: "I have read the DSHS Internet policy and the list of unauthorized Internet activities on this form. I understand that Internet access and services are being provided for me to use in my current position/work assignment only. I agree to comply with all related DSHS and division policies, and specifically this form and Administrative Policy 15.14, Internet Use and Connectivity. ..." The Agreement further notes that failure to comply with the established policies can result in the loss of DSHS-provided Internet access and services, and could lead to disciplinary action.

2.7. DSHS dismissed Stan Walthall on July 4, 2003 and subsequently withdrew the dismissal on July 28, 2003 based on his resignation.

Section 3: CONCLUSIONS OF LAW

3.1. Pursuant to chapter 42.52 RCW, the Executive Ethics Board has jurisdiction over Stan Walthall and over the subject matter of this complaint.

3.2. 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.

3.3. A state officer or employee is prohibited under RCW 42.52.160 from using state property "under the officer's or employee's official control or direction, or in his or her official custody, for the private benefit or gain of the officer, employee or another."

3.4. The Ethics in Public Service Act allows for de minimis personal use of state resources. WAC 292-110-010 states that employees may make occasional but limited personal use of state resources such as electronic messaging systems and the Internet if the use conforms with ethical standards. Those standards include that the use is of little or no cost to the state, brief in duration and frequency, does not disrupt other state employees and does not obligate them to make a personal use of state resources. Mr. Walthall's use of state resources, did not meet the de minimis standard.

3.5. Based on Findings of Fact 2.1 through 2.5, Stan Walthall used state resources in violation of RCW 42.52.160, WAC 292-110-010 and violated agency policy.

3.6. 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 92-120-030 for imposing sanctions and consideration of any mitigating or aggravating factors. It is an aggravating factor that Mr. Walthall committed many of the violations with knowledge that the conduct constituted a violation (WAC 292-120-030(3)(a)). It is a mitigating factor that Mr. Walthall resigned from his state position effective July 31, 2003 (WAC 292-120-030(4)(e)).

Section 4: AGREED ORDER

4.1. Mr. Walthall will also pay a civil penalty in the amount of one thousand dollars ($1,000.00). The civil penalty of $1,000.00 is payable to the state Executive Ethics Board within forty-five (45) days of approval of this Stipulation and Order by the Board.

CERTIFICATION

I, Stan Walthall, hereby certify that I have read this Stipulation and Agreed Order in its entirety. I knowingly and voluntarily waive my right to a hearing in this matter; and I fully understand and voluntary agree to this Stipulation.

Stan Walthall 12/14/05

Stan Walthall Date
Respondent

Stipulated to and presented by:

Susan Harris 12/30/05

Susan Harris 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):

_____

_____

_____

DATED this 13th day of January, 2006.

Trish Akana, Chair

Evelyn Yenson, Vice Chair

Paul Zellinsky, Member

Judith Golberg, Member

Neil Gorrell, Member

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

Stan Walthall, Respondent Date