BEFORE THE WASHINGTON STATE
EXECUTIVE ETHICS BOARD

In the Matter Of:	)	
	)	EEB No. 04-017
ARTHUR J. HAYWARD, Jr.	)	OAH No. 2006-EEB-0004
	)	
Respondent.	)	FINDINGS OF FACT, CONCLUSIONS
	)	OF LAW AND FINAL ORDER
	)	
	)	

On April 1, 2004, the Executive Ethics Board (Board) received a complaint dated March 30, 2004 regarding Arthur J. Hayward, Jr. The complaint alleged that Mr. Hayward, a Vocational Rehabilitation Counselor with the Washington State Department of Social and Health Services (DSHS) Division of Vocational Rehabilitation (DVR), violated the Ethics in Public Service Act at RCW 42.52 by (1) purchasing services beyond his authority, (2) authorizing on-the-job-training (OJT) for three DVR clients through a private business in which he was a co-owner, (3) authorizing car repair expenses on a vehicle allegedly owned by a DVR client, when he was the registered owner of the vehicle, and (4) authorizing car repair expenses allegedly for a DVR client, when the vehicle was registered to an individual who resided with Mr. Hayward and who was not a DVR client.

On September 8, 2006, the Board found reasonable cause to believe that a violation of RCW 42.52 occurred. A hearing (adjudicative proceeding) was scheduled. Mr. Hayward requested that an Administrative Law Judge (ALJ) preside pursuant to RCW 42.52.500.

On November 17, 2006, the Board held a hearing at the Board office in Olympia, Washington. Cindy L. Burdue, Administrative Law Judge from the Office of

Administrative Hearings, presided over the hearing. Board members Evelyn Yenson, Judy Golberg, Trish Akana, Neil Gorrell and Kyle Usrey attended the hearing. Board counsel Nancy Krier, Senior Assistant Attorney General, was also present.

Board Staff was represented by Michael S. Tribble, Assistant Attorney General, who was present. The Board's Executive Director Susan Harris was also present, as were other Board staff.

Respondent, Mr. Hayward, did not appear in person. No legal counsel or other representative filed a Notice of Appearance or appeared on his behalf. Mr. Hayward submitted a written response to the Reasonable Cause Determination in an email to Ms. Harris dated October 2, 2006 (attachment to Board Staff Exhibit B-7), in which he also stated he would not appear at the hearing. Respondent confirmed again in an email to Ms. Harris dated October 27, 2006 (also attached to Board Staff Exhibit B-7) that he would not attend the hearing.

The Board was provided copies of documents which were admitted as exhibits (Board Staff Exhibits B-1 through B-7), and the Board Staff's Waiver of Oral Argument. No witnesses testified.

The proceedings were recorded and open to the public.

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

FINDINGS OF FACT

1. During all times material to the allegations in the complaint, Mr. Hayward was a Vocational Rehabilitation Counselor (VRC) Intern/VRC 1 at the DSHS North Seattle office. He resigned from DSHS effective December 5, 2003. His state job duties included locating and coordinating OJT for DVR clients on his assigned caseload.

2. During the time material to the allegations in the complaint, Mr. Hayward was a co-owner of A & E Boat Restoration, LLC (A & E). He had a personal, financial

and beneficial interest in A & E. Mr. Hayward did not disclose his interest in A & E to his employer. Documents to support A & E were found on Mr. Hayward's state computer, including a business plan, letter of understanding (partnership agreement) and an invoice for a DVR client.

3. Between July and October 2003, Mr. Hayward authorized payments of $23,756 to A & E for OJT for three DVR clients on his caseload.

4. Mr. Hayward also authorized purchase of tools, equipment and supplies in the amount of $11,679.58 for one DVR client during the time the client was receiving OJT from A & E. Included in that amount was $652.80 for "consumable" supplies such as tape, solvents and lumber. Consumable supplies used by A & E for the business' interests are not allowable OJT expenses.

5. In July 2003, Mr. Hayward authorized $1,536.42 in car repairs to a vehicle allegedly owned by one of his DVR clients but which was a vehicle actually registered to Mr. Hayward as the owner. Mr. Hayward also authorized car repairs in the amount of $674.13 for a vehicle allegedly owned by one of Mr. Hayward's DVR clients but which was a vehicle actually owned by a person who resided with Mr. Hayward and who was not a DVR client.

6. In October and November 2003, Mr. Hayward denied any ownership interest in A & E to DSHS and Washington State Patrol officials. In November 2003, he admitted he used A & E's Unified Business Identifier (UBI) number to avoid paying approximately $8,000 in sales tax on a boat he had purchased.

CONCLUSIONS OF LAW

1. There is jurisdiction to hear this matter pursuant to RCW 42.52.360(1), which authorizes the Board to enforce RCW 42.52 with respect to employees in the executive branch of state government. The Board has jurisdiction over Mr. Hayward, whose actions at issue occurred while a state employee. The complaint was filed in

accordance with RCW 42.52.410, the Board found reasonable cause pursuant to RCW 42.52.425, and the public hearing was conducted pursuant to RCW 42.52.430 and .500. All the required procedural notices have been given.

2. The allegation that Mr. Hayward made purchases beyond his authority as a VRC does not fall within the Board's jurisdiction.

3. Under RCW 42.52.430(5), a violation must be established by a preponderance of the evidence.

4. The Board concludes that a preponderance of the evidence establishes that Mr. Hayward violated RCW 42.52.030 (financial interests in transactions), which provides in pertinent part:

> (1) No state officer or state employee, except as provided in subsection (2) of this section, may be beneficially interested, directly or indirectly, in a contract, sale, lease, purchase, or grant that may be made by, through, or is under the supervision of the officer or employee, in whole or in part, or accept, directly or indirectly, any compensation, gratuity, or reward from any other person beneficially interested in the contract, sale, lease, purchase, or grant.
> (2) No state officer or state employee may participate in a transaction involving the state in his or her official capacity with a person of which the officer or employee is an officer, agent, employee, or member, or in which the officer or employee owns a beneficial interest...

Mr. Hayward violated the statute by entering into agreements with A & E to provide OJT to three of his DVR clients, and in authorizing payments in the amount of $23,756 to compensate A & E for OJT training.

5. The Board concludes that a preponderance of the evidence establishes that Mr. Hayward violated RCW 42.52.070 (special privileges) which provides:

> Except as required to perform duties within the scope of employment, no state officer or state employee may use his or her position to secure special privileges or exemptions for himself or herself, or his or her spouse, child, parents, or other persons.

Mr. Hayward violated the statute by authorizing a DVR client to purchase $11,679.58 worth of tools for A & E, including $652.80 for "consumables" for A & E; by using A & E's UBI number to avoid paying approximately $8,000 in sales tax; and, in expending a

total of $2,210.55 in state funds for repairs of vehicles not owned by DVR clients.

6. The Board concludes that a preponderance of the evidence establishes that Mr. Hayward violated RCW 42.52.160 (use of persons, money or property for private gain) which provides in pertinent part:

> (1) No state officer or state employee may employ or use any person, money, or 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.

Mr. Hayward violated the statute by expending a total of $2,210.55 in state funds for repairs of vehicles not owned by DVR clients but which were in fact and owned by him and his housemate.

7. Under RCW 42.52.480, the Board may impose a civil penalty of up to $5,000 per violation or three times the economic value of any thing received or sought in violation of RCW 42.52, whichever is greater. The Board may also impose the cost of investigating the complaint.

8. In calculating the amount of the penalty for the several violations of the State Ethics Act by Mr. Hayward, the Board is taking into full consideration the record in this case, and the Findings of Fact and Conclusions of Law. Those include findings establishing Mr. Hayward's failure to disclose to his state agency employer his personal and financial interest in a private business to which he was directing clients on his DSHS caseload; the payments with state funds he authorized for which he and his private business benefited; the purchases that were made from state funds for which he and his private business benefited; the car repairs made with state funds for which the state did not benefit but which benefited him and his housemate; his denial to state investigators of his ownership interest in his private business; and his use of the private business' UBI number to avoid paying sales taxes. In calculating the amount of the penalty, the Board is taking into account the $2,210.55 in state funds expended for non-state purposes for the car repairs, and is trebling that amount to address the other unauthorized activities.

ORDER

Based on the foregoing Findings of Fact and Conclusions of Law, it is hereby ordered that Mr. Hayward pay a penalty in the amount of $6,630.00. Payment is due within 30 days of the date of this order.

DATED this 9th day of February, 2007.

WASHINGTON STATE EXECUTIVE ETHICS BOARD

Evelyn Yenson, Chair

Judy Golberg, Vice Chair

Trish Akana, Member

Neil Gorrell, Member

Kyle Usrey, Member

APPEAL RIGHTS

RECONSIDERATION OF FINAL ORDER – BOARD

a. Any party may ask the Executive Ethics Board to reconsider a **Final Order**. The request must be in writing and must include the specific grounds or reasons for the request.

b. The request must be delivered to Board office within **10 days** after the postmark date of this order.

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

d. The Respondent is not required to ask the Board to reconsider the **Final Order** before seeking judicial review by a superior court. (RCW 34.05.470).

FURTHER APPEAL RIGHTS – SUPERIOR COURT

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

b. The petition for judicial review must be filed with the superior court and served on the Board and any other parties within **30 days** of the date that the Board serves this **Final Order** on the parties. (RCW 34.05.542(2)). A petition for review must set forth:

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

   RCW 34.05.545.

c. Service is defined in RCW 34.05.010(19) as the date of mailing or personal service.

ENFORCEMENT OF FINAL ORDERS

a. If there is no timely request for review or reconsideration, this Initial Order becomes a **Final Order**. The Respondent is legally obligated to pay any penalty assessed.
b. The Board will seek to enforce a **Final Order** in superior court and recover legal costs and attorney's fees if the penalty remains unpaid and no petition for judicial review has been timely filed under chapter 34.05 RCW. This action will be taken without further order by the Board.

CERTIFICATION OF MAILING

This certifies that a copy of the above Final Order was served upon the parties by depositing a copy of same in the United States mail, postage prepaid, addressed to the following:

Arthur Hayward
1410 West Casino C-21
Everett, WA 98204

Michael Tribble
Assistant Attorney General
P O Box 40100
Olympia, WA 98504-0100

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Cindy Burdue
Administrative Law Judge
Office of Administrative Hearings
2420 Bristol Ct. SW, Third Flr.
P O Box 42489
Olympia, WA 98504-2489

State of Washington)
) ss.
County of Thurston)

I certify that I have this day served a copy of this document upon all parties in this proceeding, as listed, by mailing a copy thereof, properly addressed and postage prepaid, to each party to the proceeding or his or her attorney or agent.

Olympia, Washington, this 14th day of February, 2007.

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