

BEFORE THE WASHINGTON STATE
EXECUTIVE ETHICS BOARD

In the Matter of:

Jonathan Holmes

Respondent.

No. 2012-43

STIPULATED FACTS,
CONCLUSIONS AND ORDER

I. STIPULATION

THIS STIPULATION is entered into under WAC 292-100-090(1) between the Respondent, JONATHAN HOLMES, and Board Staff of the WASHINGTON STATE EXECUTIVE ETHICS BOARD (Board) through MELANIE DeLEON, 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 November 9, 2012, the Executive Ethics Board (Board) initiated a complaint alleging that Jonathan Holmes, Public Assistance Coordinator for the Emergency Management Division (EMD) of the Washington Military Department (WMD) may have violated the Ethics in Public Service Act by using state resources for personal gain. The Board found reasonable cause on November 11, 2012.

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. Jonathan Holmes 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. Jonathan Holmes recognizes that the evidence available to the Board staff is such that the Board may conclude he 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. Jonathan Holmes 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 the respondent, the board shall enter an order in conformity with the terms of the stipulation. If the board rejects the stipulation or the respondent does not agree to the board's proposed modifications to the stipulation, the normal process will continue. The proposed stipulation and information obtained during formal settlement discussions 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 Jonathan Holmes 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. Jonathan Holmes 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 Jonathan Holmes 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 Jonathan Holmes does not accept the Board's proposed modification(s), if any, this matter will be scheduled for an administrative hearing in front of the Board and Jonathan Holmes waives any objection to participation by any Board member at any subsequent hearing to whom this stipulation was presented for approval under WAC 292-100-090(2). Further, Jonathan Holmes 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. Mr. Holmes was a Public Assistance Coordinator with the Emergency Management Department for the WMD for all times pertinent to this investigation.

2.2. In the spring of 2010, the WMD network servers were becoming overloaded. In May of 2010, WMD's IT department conducted an audit of the server to determine the cause of the problem. WMD discovered that the servers contained a large amount of stored files, many of which were non-work related. It appeared that EMD personnel were the main violators.

2.3. EMD Assistant Director Tim Clark sent an email to all EMD personnel on August 20, 2010, advising all EMD personnel to remove all personal, non-work related files from their computer by August 25, 2010. Mr. Holmes was included in the email.

2.4. Mr. Holmes indicated that it was his understanding that employees needed to go through their folders and remove unneeded and non-work related items from their computer.

2.5. In January 2011, the network server was still having operational difficulties due to large files still being stored on it. On January 13, 2011, IT conducted a second audit of the network servers. During this audit, EMD management requested IT to obtain screen shots of inappropriate non-work related information stored on their workstations and network servers.

2.6. On March 27, 2012, Board staff received the requested documents from the Military Department. A review of the files from the January 19, 2011, workstation audit revealed over 40 documents to support the allegation that Mr. Holmes violated RCW 42.52.160, when he used his state issued computer for his personal benefit. Some examples of his misuse include:

Documents:

- You might be a socialist if... – word doc. (4/7/10)
- Little League Roster, Excel Spread Sheet (7 sheets of data)(7/22/09)
- Valic Annuity Account Statement for Sharon Holmes – PDF (4/20/10)
- Valic Annuity Account Distribution form (blank) – PDF (4/15/10)
- Fax cover sheet, HRC Manor Care, Ref 401K, Sharon Holmes – PDF (4/19/10)
- 2009 Federal Tax Return – PDF (4/14/10)
- 2009 Federal Tax Return form 1040-V Payment Voucher – PDF (4/14/10)
- Reinvestment Checklist – word doc. (12/10/09)
- Job Application to Pierce County [job 4432] – word doc. (9/23/10)
- Resume for job [job 4432] – word doc. (9/23/10)
- Cover Letter for Pierce County [job 4432] – word doc. (9/23/10)
- MyBook- personal budget – Excel Spread Sheet (4/27/10)
- The plan that we outlined for Alex (son) – word doc. (1/26/10)

- Alexander C, school document – word doc. (1/21/10)
- Barbeque – Excel Spread Sheet (1/20/11)
- Gifts list – Excel Spread Sheet (1/20/11) \
- Manor Health Care Services – word doc. (2/5/09)

Internet Favorites:

- Apply for jobs with Pierce County Online.
- Citrus Brine Turkey
- Jury Service
- Look up a Contractor, Electrician, plumber...
- MSN.com
- MyNorthwest.com
- Personal statements and application letters...
- RIGHTNETWORK
- Tacoma school of arts
- TriCare MAMC External web page.

Section 3: CONCLUSIONS OF LAW

3.1. Pursuant to chapter 42.52 RCW, the Executive Ethics Board has jurisdiction over Jonathan Holmes 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. The Ethics in Public Service Act, Chapter 42.52 RCW, prohibits state employees from using state resources for their benefit. RCW 42.52.160(1) states:

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.

3.4. Based on Findings of Fact 2.1 through 2.6, Jonathan Holmes used state resources for his personal benefit.

3.5. 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.

Section 4: AGGRAVATING AND MITIGATING FACTORS

In determining the appropriateness of the civil penalty, the Board reviewed the criteria in WAC 292-120-030.

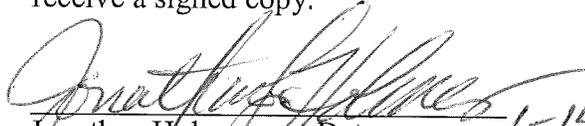
Section 5: AGREED ORDER

5.1 For the violation RCW 42.52.160, Jonathan Holmes will pay a civil penalty in the amount of, two thousand, five hundred dollars (\$2,500.00). The Board agrees to suspend (\$1000.00) on the condition that Jonathan Holmes 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.

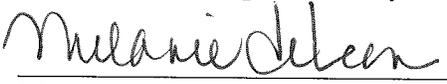
5.2 The civil penalty of \$1,500 is payable in full, to the State Executive Ethics Board within 45 days after this stipulation is accepted by the Board, or as otherwise agreed to by the parties.

II. CERTIFICATION

I, Jonathan Holmes , hereby certify that I have read this Stipulation and Agreed Order in its entirety; that my counsel of record, if any, has fully explained the legal significance and consequence of it; 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 and Agreed Order, I understand that I will receive a signed copy.


Jonathan Holmes Date 1-14-13
Respondent

Stipulated to and presented by:


Melanie deLeon Date 1-22-13
Executive Director

