BEFORE THE WASHINGTON STATE

EXECUTIVE ETHICS BOARD

In the Matter of: WESLEY JANSEN, Respondent.	NO. 99-39 BRIEF ADJUDICATIVE HEARING INITIAL ORDER

I. APPLICABLE PROCEDURAL ISSUES

1. On September 13, 2002, the Executive Ethics Board (Board) found reasonable cause to believe that Mr. Jansen may have violated RCW 42.52.150(4) when he accepted gifts from a state vendor with whom he conducted state business, and RCW 42.52.160(1) when he used a state-owned computer for personal use.

2. On October 15, 2002, the Executive Director provided notice by first class and certified mail that the Board had scheduled this matter for a Brief Adjudicative Hearing on November 8, 2002.

3. On November 8, 2002, Laquita Fields, Board Chair, conducted a Brief Adjudicative Hearing in this matter. The Respondent, Wesley Jansen, failed to appear. Brian Malarky, Executive Director, appeared and presented this matter on behalf of the Board staff. Jean Wilkinson, Assistant Attorney General and Board Counsel, appeared and represented the Board. ~~The only testimony at the hearing was from~~ Mr. Malarky submitted documents into the record, and presented this Initial Order for the Presiding Officer's consideration.

II. FINDINGS OF FACT

1. The University of Washington (University) employed Wesley Jansen as a Plumber/Pipe fitter/Steam fitter on November 1, 1982. On September 17, 1990, he was promoted to the position of Maintenance & Construction Coordinator.

2. Mr. Jansen's principal duties as a Maintenance & Construction Coordinator included planning, scheduling and coordinating asbestos-related projects in support of campus operations, capital projects, and maintenance and alterations projects. This work included inspecting contractor work to monitor quality control and regulatory compliance, overseeing the performance of abatement work performed by contractors, reviewing abatement requests, writing work orders and scheduling projects.

3. On June 5, 2000, Mr. Jansen and the University entered into a voluntary settlement agreement to resolve all matters relating to Mr. Jansen's employment relationship with the University. Under the agreement, Mr. Jansen resigned from the University with a retroactive effective date of February 18, 2000. In addition, the University paid Mr. Jansen $36,876.00 and agreed to notify the Employment Security Department (ESD) that it was not contesting Mr. Jansen's unemployment claim. At the time of his resignation, Mr. Jansen's salary was $4,250.00 per month.

4. The settlement agreement resolved a dispute between the University and Mr. Jansen regarding Mr. Jansen's termination from University employment for conduct revealed in State Auditor's investigation of Whistleblower Case No. 99-148.

5. Sometime in 1999, Mr. Jansen received two out of print books from Mrs. Misko Maynard, CEO and President of Eastwood Environmental, INC (EEI) an asbestos abatement contractor with the University. In interviews with Board staff, Mr. Jansen admitted that he

accepted the books and that he kept them in his University office. The State Auditor' investigation valued the books at between $69.00 and $122.00. In addition, Mr. Jansen occasionally met with Mrs. Maynard for breakfast or lunch and that they would trade off paying for the meals.

6. From April 1999 through June 1999, Mr. Jansen used his University computer to view approximately 16,500 Internet web pages unrelated to his official University duties, most of which were related to sexually explicit sites. Mr. Jansen spent approximately 2 hours per week or 24 hours over the period reviewed visiting these sites.

7. Mr. Jansen admitted to the Board staff that he used a University computer to view Internet sites that were not related to his official duties. However, Mr. Jansen asserted that many of the 16,500 sites listed in the report are the result of going to one adult site and having it automatically open many others that he never actually viewed.

8. In addition, from June 1, 1997 through June 10, 1999, Mr. Jansen sent 470 personal e-mails representing 41% of the e-mails sent during that time period. Mr. Jansen did not dispute this finding when interviewed by Board staff.

III. APPLICABLE LAW

1. RCW 42.52.150(4) states, in relevant part:

> Notwithstanding subsections (2) and (5) of this section, a state officer or state employee of a regulatory agency or of an agency that seeks to acquire goods or services who participates in those regulatory or contractual matters may receive, accept, take, or seek, directly or indirectly, only the following items from a person regulated by the agency or from a person who seeks to provide goods or services to the agency:

2. 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.

IV. CONCLUSIONS OF LAW

1. Pursuant to chapter 42.52 RCW, the Executive Ethics Board has jurisdiction over Wesley Jansen and over the subject matter of this complaint.

2. Pursuant to WAC 292-100-180 the facts in this matter are undisputed, the violations are relatively minor in nature, and the penalty and costs of no greater than five hundred dollars ($500) will be assessed or any violations found.

3. Mr. Jansen accepted gifts from a University contractor with whom he conducted University business, a violation of RCW 42.52.150(4).

4. Mr. Jansen used his University provided computer to spend approximately 2 hours per week over a three month period to view Internet websites that contained adult oriented material that was not appropriate in the University workplace, a violation of RCW 42.52.160(1).

5. Mr. Jansen used his University provided computer to send over 470 personal e-mail messages, a violation of RCW 42.52.160(1).

V. AGGRAVATING & MITIGATING FACTORS

1. In determining the appropriateness of the civil penalty, I reviewed the criteria in WAC 292-120-030. In the case at hand: (1) the violations were continuing in nature (WAC 292-120-030(2)(a)); and, (2) the violation significantly reduced the public respect for, and the confidence in, state government employees (WAC 292-120-030(2)).

2. As a mitigating factor, the University terminated Mr. Jansen's employment in part for conduct that the University found in violation of the Ethics in Public Service Act. (WAC 292-120-030(4))

VI. ORDER

Based on the foregoing Findings of Fact and Conclusions of Law, I, hereby find that Wesley Jansen has violated RCW 42.52.150 and RCW 42.52.160(1), and order him to pay a civil penalty in the amount of two hundred dollars ($200), together with reasonable investigative costs in the amount of three hundred dollars ($300), payment of which shall not reduce the penalty amount owed. The total amount of costs and civil penalty due is $500.00.

DATED this 8th day of November, 2002.

Laquita Fields, Chair

Laquita Fields, Chair

VII. REQUEST FOR REVIEW

In accordance with WAC 292-100-200, the respondent or the Board staff may request a review of this initial order. WAC 292-100-200 provides that:

(1) The board shall conduct a review of the initial order upon the written or oral request of a party if the board receives the request within twenty days after the service of the initial order.

(2) If the parties have not requested review, the board may conduct a review of the initial order upon its own motion and without notice to the parties, but it may not take any action on review less favorable to any party than the original order without giving that party notice and an opportunity to explain that party's view of the matter.

(3) The order on review shall be in writing stating the findings made, and the reasons for the decision, and notice that judicial review is available. The order on review shall be entered within twenty-one days after the date of the initial order or of the request for review, whichever is later.