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**BEFORE THE WASHINGTON STATE
EXECUTIVE ETHICS BOARD**

In the Matter of:

JOHN PETRUZZELLI,

Respondent.

EEB NO. 08-128

FINDINGS OF FACTS,
CONCLUSIONS OF LAW,
ORDER OF DEFAULT
AND FINAL ORDER

I. PROCEDURAL HISTORY

1.1 On April 10, 2009, the Executive Ethics Board (Board) found reasonable cause to believe that Respondent John Petruzzelli violated the Ethics in Public Service Act while employed with the Department of Labor and Industries (LNI), thus commencing an action for alleged violations of the Ethics Act purported to have been committed in 2008. On May 28, 2009, Mr. Petruzzelli requested an administrative hearing. On September 25, 2009, Administrative Law Judge (ALJ) Cindy Burdue issued a Pre-hearing Order setting the hearing for January 8, 2010.

1.2 On January 12, 2010, ALJ Burdue issued a Pre-hearing Order continuing the hearing date until September 10, 2010. Meanwhile, Mr. Petruzzelli's attorney, Aaron K. Owada, withdrew as counsel effective June 30, 2010. Mr. Petruzzelli was not represented by counsel for the remainder of these proceedings.

1.3 On July 7, 2010, ALJ Burdue wrote a letter to all parties requesting a new hearing date because the Board Investigator could not attend the September 10 hearing.

1 1.4 On December 12, 2010, ALJ Thomas Rack held a pre-hearing conference and
2 issued a Notice of Hearing setting the hearing for May 13, 2011.

3 1.5 On April 20, 2011, the Office of Administrative Hearings received notice that
4 Mr. Petruzzelli had filed a Chapter 13 bankruptcy petition in September 2010.

5 1.6 On April 28, 2011, Board Staff counsel requested that hearing date be stricken
6 to allow time to determine if the Board proceeding was stayed due to Mr. Petruzzelli's
7 bankruptcy.

8 1.7 On April 2, 2013, Board Staff counsel requested that the Office of
9 Administrative Hearings set a status conference, having determined that the Board's action
10 against Mr. Petruzzelli was not stayed under 11 U.S.C. §362(b)(4), which provides that the
11 filing of a bankruptcy petition does not stay the continuation of an action by a governmental
12 unit to enforce that unit's police and regulatory power.

13 1.8 A Notice of Conference was issued for May 14, 2013 at 3:00 pm. The Office
14 of Administrative Hearings sent this notice to Mr. Petruzzelli's bankruptcy attorney, Travis A.
15 Gagnier, and provided call-in instructions. Mr. Gagnier sent letter dated May 8, 2013, stating
16 "I represent John Petruzzelli in the . . . bankruptcy proceeding. I am not his attorney for the
17 state proceeding." He also stated,

18 As I am not representing Mr. Petruzzelli in the state matter, I am not sure
19 if it is appropriate for me to attend the hearing to argue the matter of the
20 bankruptcy stay since that issue cannot be decided except in the bankruptcy court.
21 However, I am not able to attend on May 14, 2013. The hearing should be put
22 back on hold until a determination is made regarding the automatic stay imposed
23 by 11 USC § 362.

24 He copied Mr. Petruzzelli on the letter

25 1.9 On May 14, 2013 at 3:00 pm, ALJ Alice Haenle convened the conference call.
26 AAG Chad Standifer and Executive Director de Leon appeared for Board staff and AAG
Bruce Turcott appeared for the Board. Neither Mr. Petruzzelli, nor any representative on his

1 behalf, attended the telephonic status conference. The call began at 3:00 pm and ended at
2 3:34 pm. Mr. Petruzzelli did not join the conference at any time.

3 1.10 Due to Mr. Petruzzelli's absence from the conference, ALJ Haenle granted the
4 state's motion for default for failure to appear, remanding the case back to the Board for final
5 action. The Office of Administrative Hearings mailed a Default Order on May 15, 2013. The
6 default order included the following language: "NOTICE TO PARTIES WHO FAILED TO
7 APPEAR. Within seven days after service of this default order, the party against whom it was
8 entered may file a written motion requesting that the order be vacated, and stating the grounds
9 relied upon. RCW 34.05.440(3)."

10 1.11 The Office of Administrative hearings received a petition to vacate on May 24,
11 2013. Mr. Petruzzelli did not provide Board Staff counsel with a copy of that petition. Mr.
12 Petruzzelli's petition to vacate the default order was due by May 22, 2013. Therefore, he did
13 not timely file a petition to vacate.

14 1.12 On November 8, 2013, the Board held a hearing on Mr. Petruzzelli's motion to
15 vacate ALJ Haenle's May 15, 2013 Default Order. Mr. Petruzzelli represented himself *pro se*.
16 The Board staff was represented by Assistant Attorney General Chad Standifer.

17 II. FINDINGS OF FACT

18 2.1 At all times relevant, John Petruzzelli was employed as a Safety and Health
19 Compliance Supervisor for the Department of Labor and Industries.

20 2.2 In March 2008, Mr. Petruzzelli was assigned a laptop computer by LNI, Hard
21 Disk Drive Serial # NZOUT782D4PC. Mr. Petruzzelli's computer contained hundreds of
22 sexually explicit/pornographic images in the "petj235" profile in the "Temporary Internet
23 Files" folder.

24 2.3 Mr. Petruzzelli's Internet history revealed that he accessed many non-job
25 related web sites to include:

- 26 a. Seattle.craigslist.org The content of these web pages were
from the website "Craigslist." The Craigslist WebPages located

1 in the "petj235" profile suggest sexual solicitation WebPages
were visited

- 2 b. Kentvalleyhockey.com
3 c. Imdb.com (Internet Movie database)

4 2.4 Internet queries stored in Mr. Petruzzelli's Internet history file that were not
job-related included:

- 5 a. Pierced nipple jewelry
6 b. Vagina prosthesis
7 c. Nipple jewelry
8 d. Faina
9 e. Drop the hanky
f. Drop the hankie
g. Charlie Chan movies
h. Bondage gear
i. Bondage collar with nipple clamps

10 2.5 The e-mail program "America Online" (AOL) was found on Mr. Petruzzelli's
11 computer and contained the folders labeled "dinoice13" (referring to his son) and "petjohn."

12 2.6 Link files found on Mr. Petruzzelli's laptop computer indicate that the original
13 files were located on the shared drive of the agency's computer network system. The names
14 of many of these files indicate that they are associated with hockey.

15 2.7 Between July 1, 2008 and October 15, 2008, Mr. Petruzzelli accessed dozens
16 of web sites containing pornographic images including images of oral sex, bondage,
17 sadomasochism, nipple and other types of body piercings, and scantily clad young females.

18 2.8 Mr. Petruzzelli used his state computer to draft correspondence and
19 communicate via e-mail through his personal e-mail carrier, AOL, regarding his activities as a
20 hockey coach and Athletic Director for a youth hockey club.

21 2.9 Mr. Petruzzelli's computer contained a pornographic streaming video on his
22 "P" drive - a shared drive located on the LNI network.

23 2.10 Mr. Petruzzelli admitted that he removed his state computer from his worksite
24 and took it on a personal trip to Vancouver, British Columbia, where he used the computer to
25 access sexually explicit websites and Craigslist personal ads. During this trip, Mr.
26 Petruzzelli's son also accessed personal social networking websites.

1 2.11 After the Board notified Mr. Petruzzelli of the charges against him, and he
2 requested a hearing, he failed to appear for a telephonic prehearing conference on May 13,
3 2013 at 3:00 pm. Notice of the conference was duly provided to all parties by the Office of
4 Administrative Hearings. ALJ Haenle granted the state's motion for default for failure to
5 appear and remanded the case to the Board for final action.

6 2.12 The Office of Administrative Hearings mailed the Default Order on May 15,
7 2013, giving Mr. Petruzzelli until May 22, 2013 to file a petition to vacate the default. Mr.
8 Petruzzelli did not timely file a petition to vacate—the Office of Administrative hearings
9 received a petition to vacate on May 24, 2013.

10 **III. CONCLUSIONS OF LAW**

11 3.1 RCW 42.52.160(1), Use of persons, money, or property for private gain, states:

12 No state officer or state employee may employ or use any person,
13 money, or property under the officer's or employee's official control or
14 direction, or in his or her official custody, for the private benefit or gain of the
15 officer, employee, or another.

16 3.2 WAC 292-110-010, Use of State Resources, states, in pertinent part:

17 (1) Statement of principles – stewardship. The proper stewardship of
18 state resources, including funds, facilities, tools, property, and employees and
19 their time, is a responsibility that all state officers and employees share.
20 Accordingly, state employees may not use state resources for personal benefit
21 or gain or for the benefit or gain of other individuals or outside organizations.

22 (6) Prohibited uses. The state Constitution, state and federal laws, and
23 the Ethics in Public Service Act strictly prohibit certain private activity and
24 certain uses of state resources. Any use of state resources to support such
25 activity clearly undermines public confidence in state government and reflects
26 negatively on state employees generally. This rule explicitly prohibits at all
times the following private uses of state resources.

 (a) Any use for the purpose of conducting an outside business or private
employment;

 (b) Any use for the purpose of supporting, promoting the interests of, or
soliciting for an outside organization or group, including, but not limited to: A
private business, a nonprofit organization, or a political party (unless provided
for by law or authorized by an agency head or designee);

* * *

1 (e) Any use related to conduct that is prohibited by a federal or state
law or rule, or a state agency policy; and

2 (f) any private use of any state property that has been removed from
state facilities or other official duty stations, even if there is no cost to the state.

3 3.3 Pursuant to chapter 42.52 RCW, the Executive Ethics Board has jurisdiction
4 over John Petruzzelli and the subject matter of this complaint. The Board is authorized to
5 impose sanctions for violations of the Ethics Act pursuant to RCW 42.52.360.

6 3.4 A state officer or employee is prohibited under RCW 42.52.160 and the
7 Board's rules from using state property "under the officer's or employee's official control or
8 direction, or in his or her official custody, for the private benefit or gain of the officer,
9 employee or another."

10 3.5 Mr. Petruzzelli violated RCW 42.52.160 and WAC 292-110-010 when he
11 extensively used his state computer to access hundreds of graphic images containing adult-
12 oriented material, downloaded a pornographic video on his state computer, made non-work
13 related internet queries, allowed a minor family member to use the state computer, accessed
14 personal e-mails from his personal AOL account regarding non-work related issues, and
15 drafted and sent correspondence and documents regarding an outside business and personal
16 activities.

17 3.6 Mr. Petruzzelli is in default for failure to appear for the Prehearing Conference
18 of May 13, 2013. RCW 34.05.440(2). Petitions to vacate a default order must be filed,
19 meaning received by the Board, no later than seven days from the date the default order is
20 mailed. RCW 34.05.440(3) and 34.05.010(6). Mr. Petruzzelli's petition to vacate the default
21 order was untimely.

22 IV. AGGRAVATING AND MITIGATING FACTORS

23 In determining the appropriateness of the civil penalty, the criteria in WAC 292-120-
24 030 must be reviewed. In the case at hand, aggravating factors include: (1) the violations
25 were continuing in nature (WAC 292-120-030(2)(a)) and (2) the violations significantly
26 reduced the public respect for, and confidence in, state government employees (WAC 292-

1 120-030(2)). It is also an aggravating factor that Mr. Petruzzelli had significant supervisory
2 responsibility. No mitigating factors were identified by the Board.

3 **V. ORDER OF DEFAULT AND FINAL ORDER**

4 5.1 Based on the foregoing Findings of Fact and Conclusions of Law, the Board
5 hereby DENIES Mr. Petruzzelli's motion to vacate ALJ Haenle's May 15, 2013 Default Order
6 and ORDERS that Mr. Petruzzelli is in default for failing to appear at the May 14, 2013
7 Prehearing Conference.

8 5.2 Mr. Petruzzelli filed a Chapter 13 bankruptcy petition that is currently pending
9 in United States Bankruptcy Court, Western District of Washington, Case Number 10-20990.
10 While the Board has the discretionary authority to assess a civil penalty based upon Mr.
11 Petruzzelli's violations of the Ethics Act, the Board determined that it will likely
12 not be able to collect such a penalty due to certain provisions of the federal Bankruptcy Code.
13 The Board is therefore not ordering that a civil penalty be paid in this matter.

14 DATED this 2nd day of December 2013.

15 WASHINGTON STATE EXECUTIVE ETHICS BOARD

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19 Lisa Marsh, Presiding Officer and Chair
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1 **APPEAL RIGHTS**

2 **RECONSIDERATION OF FINAL ORDER – BOARD**

3 Any party may ask the Executive Ethics Board to reconsider a Final Order. The
4 request must be in writing and must include the specific grounds or reasons for the request.
5 The request must be delivered to Board office within 20 days after the postmark date of this
6 order.

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

10 (RCW 34.05.470).

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

13 **FURTHER APPEAL RIGHTS – SUPERIOR COURT**

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

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

- 20 (1) The name and mailing address of the petitioner;
- 21 (2) The name and mailing address of the petitioner's attorney, if any;
- 22 (3) The name and mailing address of the agency whose action is at issue;
- 23 (4) Identification of the agency action at issue, together with a duplicate copy,
24 summary, or brief description of the agency action;
- 25 (5) Identification of persons who were parties in any adjudicative proceedings that
26 led to the agency action;

1 (6) Facts to demonstrate that the petitioner is entitled to obtain judicial review;

2 (7) The petitioner's reasons for believing that relief should be granted; and

3 (8) A request for relief, specifying the type and extent of relief requested.

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

5 **ENFORCEMENT OF FINAL ORDERS**

6 If there is no timely request for reconsideration, this is the Final Order of the Board.

7 The Respondent is legally obligated to pay any penalty assessed.

8 The Board will seek to enforce a Final Order in superior court and recover legal costs
9 and attorney's fees if the penalty remains unpaid and no petition for judicial review has been
10 timely filed under chapter 34.05 RCW. This action will be taken without further order by the
11 Board.