



**Washington State
Department of Transportation**

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January 26, 2016

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Ms. Stacy Trussler
PO Box 66641
Seattle, WA 98166

Dear Ms. Trussler:

This is official notice of your disability separation effective February 15, 2016 from your position as a Washington Management Service (WMS) Band 4, with the Washington State Department of Transportation (WSDOT). This separation is based on your inability to perform the essential functions of your position with or without reasonable accommodation. This action is taken pursuant to Washington Administrative Code (WAC) 357-46-160 and Chapter 25, Reasonable Accommodation, of the Human Resources Desk Manual.

You were hired by WSDOT on November 13, 1995 as an Environmental Specialist 2. Throughout your employment you were reallocated and appointed to various environmental positions. On July 1, 1999 you accepted a promotion to a WMS Band 2 position and from there progressed to other WMS positions up to the Band 4 level. On June 16, 2010 you were appointed as the Director of the Urban Planning Office at a WMS Band 4 level and held that position until you were laid off due to a good faith reorganization effective July 31, 2015. You accepted your formal layoff option to the Mega Projects Environmental Services Director position at a WMS Band 4 level and were appointed to this position effective August 1, 2015.

The following is a chronology of events:

You were approved for FMLA intermittently from December 17, 2012 through April 30, 2013. You submitted FMLA paperwork completed by Dr. Douglas Trigg, Internal Medicine, who documented you had a medical condition which commenced on October 13, 2012 and the probable duration was six (6) to twelve (12) months. However, you indicated your anticipated leave end date was April 30, 2013. Your medical provider documented you were unable to perform high-demanding functions, such as running a meeting and special projects; and documented you experienced excessive fatigue. (**Attachment #1**).

During the time period from October 2012 through February 2014 you had oral and informal reasonable accommodation agreements, including a flexible schedule and telework, with your then supervisor, Brian Smith. Mr. Smith retired February 18, 2014 and you subsequently reported to Amy Scarton, WSDOT Assistant Secretary. From February 2014 through July 2014 you interacted with Ms. Scarton, and Human Resource Consultant, Alvina Mao regarding your

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reasonable accommodation needs; and continued acting in accordance to the informal reasonable accommodation agreements made with Mr. Smith.

In March 2014 you submitted a Reasonable Accommodation Request form (**Attachment #2**) documenting many medical complications resulting from a traumatic brain injury. You requested the following to be able to perform the essential functions of your job: a flexible schedule with self-paced hours and workload; ability to delegate; work from home; call in to meetings; and time off for therapy meetings. You stated you are not able to see materials at a distance and cannot drive when tired.

We received a letter from your medical provider Dr. Kathleen Kinney, O.D., PS, Optometry, dated March 4, 2014 (**Attachment #3**) documenting the complications you were experiencing with your vision since the date your condition began (October 13, 2012). Additionally, Dr. Kinney documented several accommodations WSDOT can make to assist you with your vision limitations.

On April 2, 2014 WSDOT received FMLA paperwork completed by Dr. Kinney (**Attachment #4**). The FMLA paperwork referred to the same condition as documented in the 2012 FMLA paperwork. Dr. Kinney documented you were receiving treatment for a traumatic brain injury; complications with vision; fatigue; you were having trouble with memory, concentration, attention, and thinking; headaches; confusion; and nausea. Dr. Kinney further documented you should not drive, and needed the following accommodations: daily flexible schedule; increased breaks; self-paced work load and hours; time off for therapy; work from home; reduced distractions; shorter meetings; call in to meetings; and avoid travel. Based on this FMLA request you were approved for FMLA from April 1, 2014 through April 1, 2015.

We received FMLA paperwork in July 2014 completed by Shubhada Kode, MD (**Attachment #5**) which documented you experience depression and anxiety and when you experience these flare-ups you are unable to work. Further, Dr. Kode documented the probable duration of the condition to be one year and indicated you believed it would be beneficial for you to work from home as an accommodation.

Heidi Mabbott, HR Consultant, met with you on September 15, 2014 to gather clarifying and updated information regarding your medical conditions and your reasonable accommodation needs to help you perform the essential functions of your position. You communicated to her you had been diagnosed with Fibromyalgia and described some of the associated symptoms. You further stated that attending long meetings was difficult and you would need the following: a hotel room the night before attending a meeting first thing in the morning in Olympia, flexibility such as telecommuting, ergonomic assessment, understanding and acknowledgement, resting breaks, and a heat panel or a heating pad.

Ms. Mabbott met with you on October 30, 2014 as a follow-up to discuss the status of your reasonable accommodation and to discuss the need to receive additional information from your medical providers. You refused to sign the medical release form in order for the agency to

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receive additional information from your medical providers until you could see what information was being asked of your medical providers.

Ms. Mabbott drafted medical questionnaires for your four (4) different medical providers to determine what your medical restrictions were to aid the WSDOT in reasonably accommodating you to perform the essential functions of your position. Ms. Mabbott met with you on December 31, 2014, to review the questionnaires with you and to obtain your signature on the medical release form. You refused to sign a medical release form and stated you would not give permission for WSDOT to consult with your medical providers directly. Ms. Mabbott advised you that without being able to obtain additional information from your medical providers, WSDOT was not able to move forward with your reasonable accommodation request. You stated you needed additional time to review the questionnaires, which Ms. Mabbott agreed to and requested you provide the signed medical release form by close of business January 7, 2015.

As of January 28, 2015, Ms. Mabbott had not received the signed medical release form. Ms. Mabbott issued you a letter (**Attachment #6**) notifying you that WSDOT was unable to continue with the reasonable accommodation process without the signed medical release form so the agency could obtain additional information regarding your medical restrictions. Due to your noncooperation with providing the requested medical information, WSDOT closed your reasonable accommodation case. The letter sent by Ms. Mabbott notified you of your rights to re-engage in the reasonable accommodation process upon receipt of the requested medical information.

On January 29, 2015 you were reassigned to your home for reasons unrelated to your reasonable accommodation and returned to the workplace on June 1, 2015.

On February 9, 2015 WSDOT received the signed medical release form from you and the medical questionnaire completed by one of your medical providers, Dr. Kinney. Dr. Kinney documented your medical condition had a substantially limiting effect upon your ability to perform the following job functions (**Attachment #7**):

- The ability to work a standard 40-hour work week, Monday through Friday, between the hours of 7:00am and 5:00pm.
- The ability to work full-time in an office setting.
- The ability to drive and/or travel to meetings in the greater Puget Sound area and as far south as Olympia.

As documented in Dr. Kinney's medical documentation (see **Attachment #7**), she recommended you work from home whenever you are not needed for meetings in order to have flexible work hours and the ability to have a controlled sensory environment (reduced visual and auditory stimulation), and to delegate lower level tasks to simplify your workload and minimize unnecessary multitasking. Dr. Kinney noted if the specified arrangement could not be provided then she recommended a split-schedule such as allowing you to: start the workday from your home, provided a space at work for resting in a reclined position in the dark, and frequent breaks to rest your eyes and refresh your mental function.

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On June 1, 2015 you returned to work from being administratively reassigned to home and were assigned to work a project (Scenario Planning) for the month of June. Upon your return to work, Joceile Moore, and Jennifer Wagner, Human Resource Consultants, were assigned to assist you through the reasonable accommodation process due to your need for accommodation as identified by the stated medical restrictions in the February 9, 2015 medical documentation from Dr. Kinney.

Ms. Moore and Ms. Wagner contacted you by telephone on June 8, 2015, to make introductions and subsequently met with you in Seattle on June 11, 2015, to discuss your reasonable accommodation request and job assignment.

On June 17, 2015 Ms. Moore and Ms. Wagner began weekly check-in meetings (to occur on Wednesdays at 1:00pm) to address with you what was working and what was not working so adjustments could be made to your reasonable accommodations.

On June 18, 2015 your supervisor Kerri Woehler, sent you a memo documenting the agency's agreement to reasonably accommodate you temporarily while working on the Scenario Planning project. You signed and returned the memo with numerous comments on June 24, 2015. **(Attachment #8)**. WSDOT reasonably accommodated you on this project assignment by allowing you to work a flexible schedule; to pace your workflow; to work from home or your office (whichever location you determined you could be the most effective); be provided copies of meeting materials and/or presentations electronically prior to meetings; to adjust your hours so you could attend weekly therapy sessions; and a weekly check-in to address what is working and what is not working with the project and/or your accommodations.

On June 23, 2015 Ms. Moore and Ms. Wagner had a conference call with you to discuss your concerns regarding what position you would hold in July. Ms. Moore and Ms. Wagner notified you during your next regular Wednesday check-in meeting you would continue working the Scenario Planning project through the month of July.

On June 24, 2015 you were notified your position as the Director of Urban Planning was "at-risk" for layoff due to a good faith reorganization of the Urban Planning Office.

You applied for FMLA on July 8, 2015 and were approved for 12 months of intermittent FMLA leave **(Attachment #9)**. Your medical provider, Dr. Shubhada Kode, Psychiatry, documented you have a chronic medical condition of depression and anxiety. Dr. Kode indicated during flare-ups you have increased depression and would prevent you from performing the essential functions of your job and require you to be absent from work. Dr. Kode estimated these flare-ups would occur two times per month and require one to two days per episode.

On July 15, 2015 you received formal notice that you were being laid off from your WMS Band 4 position (Urban Planning Director position #0W115) effective July 31, 2015 due to good faith reorganization. In this letter you were offered to be placed into a vacant WMS Band 4 position

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in the Environmental Services Office as the Mega Projects Environmental Services Director, per WSDOT's layoff procedures outlined in Chapter 17 of the Human Resources Desk Manual. You accepted this formal layoff option and were appointed to the position on August 1, 2015.

On July 23, 2015 Ms. Moore and Ms. Wagner met with you in person in Seattle to discuss your new position and current reasonable accommodation needs.

On August 5, 2015 Ms. Moore and Ms. Wagner met with you again in Seattle to discuss any limitations you might have to the essential functions of the Mega Projects Environmental Services Director position. Ms. Moore and Ms. Wagner provided you a copy of the position description and the job analysis provided by the positions supervisor, Joe Witzak and former incumbent of the position, Allison Hanson. Ms. Moore and Ms. Wagner also delivered a letter to you notifying you that you would be reassigned to your home pending the analysis of the essential functions of the Mega Projects Environmental Services Director position and your medical restrictions. Also in attendance at this meeting was your rehabilitation specialist, Ginger Hurt. Ms. Hurt requested that Ms. Moore and Ms. Wagner work with management to complete a cognitive job analysis form for the Mega Projects Environmental Services Director position.

Ms. Moore and Ms. Wagner completed the job analysis form (**Attachment #10**) and sent it back to you and Ms. Hurt on August 11, 2015, in time for your medical appointment (scheduled for August 13, 2015), so your medical provider could review it and determine if you could perform the cognitive demands of the position. On August 18, 2015, (after meeting with your medical provider) you and Ms. Hurt followed up with additional questions regarding the cognitive job analysis. Ms. Moore and Ms. Wagner answered your follow-up questions on August 19, 2015.

On August 26, 2015 the department received a note from your medical provider, Dr. Kinney, dated August 25, 2015 (**Attachment #11**) stating you can perform the essential functions of the Mega Projects Environmental Services Director position with the following reasonable accommodations:

- *Work core hours of 10:00am to 4:00 pm Monday through Thursday. The remainder of hours should be worked virtually*
- *Referral to Division Services for the Blind for evaluation and provision of adaptive equipment specific to her [your] visual diagnosis.*
- *Provide video-conferencing capability from virtual location.*
- *Provision of paper copies of PowerPoint and other visual presentations prior to meetings or trainings.*

Your administrative reassignment to home ended August 26, 2015 and you were notified that you could use paid or unpaid leave as you remain in leave status until a final assessment is made in regard to your reasonable accommodation requests.

On August 26, 2015 Ms. Moore and Ms. Wagner made contact with you and notified you that based on the restrictions identified by your medical provider you are unable to be reasonably

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accommodated in the Mega Projects Environmental Services Director position. I denied your request to work core hours of 10:00am to 4:00 pm Monday through Thursday with the remainder of hours being worked virtually. The Mega Projects Environmental Services Director position is a WMS Band 4 position which is in the highest category of WMS positions. This position requires a minimum of 40 hours per week in the office regularly; no ability to control the overflow of work, pace of work, when most meetings occur, and after hour appointments. This position requires a constant high degree of interaction between several internal and external stakeholders, the need for flexibility, re-scoping priorities, and being responsive during all hours of the day and/or night. This request would greatly disrupt the impromptu workflow needed between you, your peers, contractors, stakeholders, and your staff in order to effectively carry out the essential functions of the job in a timely manner. Approving your request would require other employees to pick up functions when you are not in the office, increase their workload, and also negatively impact productivity on some of the agency's most highly public profile projects. WSDOT cannot lower the performance and production standards of the position. Based on the needs of the business this request is not reasonable.

Ms. Moore and Ms. Wagner notified you in the August 26th meeting that the agency would continue to engage in the reasonable accommodation process with you and identify if there are any reassignment options.

Ms. Moore met with you again on September 3, 2015 and notified you that Ms. Wagner accepted a position outside of WSDOT and would no longer be a contact through your reasonable accommodation process, and that she would also be transitioning out of the coordination of your reasonable accommodation as her agreement with WSDOT was ending. Ms. Moore notified you that Amber Erdahl, WSDOT Labor Relations Manager, would be assuming the role of coordinating your reasonable accommodation and she would be sending you the Reasonable Accommodation Reassignment form to complete. Ms. Moore explained to you the purpose of this form was to help the agency determine if there were any positions you could be reassigned to where you could perform the essential functions of the job with or without accommodation at your desired level and within your geographical preferences. Further, Ms. Moore reiterated the reasons why the agency is not able to reasonably accommodate you in the Mega Projects Environmental Services Director position.

As a follow-up, Ms. Moore sent you and Ms. Hurt the Reasonable Accommodation Reassignment form after meeting with you on September 3, 2015 and again notified you that Ms. Erdahl would take over coordinating your reasonable accommodation process.

You returned the Reasonable Accommodation Reassignment form to Ms. Erdahl on September 4, 2015 and indicated you were not willing to work below a WMS Band 4 level position (**Attachment #12**). Ms. Erdahl used the information provided on the form with your resume and initiated the search to determine if there were any vacant positions to reassign you to in accordance with the Reasonable Accommodation Chapter 25 of the Human Resources Desk Manual.

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On September 24, 2015 you sent Ms. Erdahl an email stating in part:

"The department has interpreted my doctor's recommendations too literally... While the idea is to hold 'core office hours', it does NOT mean that outside of these hours I could not be physically present. I discussed with my doctor the needs to be physically present on an as-needed basis. This includes going to construction sites, public meetings, other meetings, etc. The idea is 'CORE' hours, and everything else I adjust and respond as needed. Clearly I understand that flexibility is required for projects under construction."

In response to your September 27th email, Ms. Erdahl contacted you to set up a time for Todd Dowler, Labor Relations and Operations Manager and her to meet with you to discuss the new information you provided in your email about the description of your medical provider's restrictions.

Mr. Dowler and Ms. Erdahl met with you and Ms. Hurt on October 13, 2015. During this meeting you clarified that your medical provider's note (by Dr. Kinney dated August 25, 2015) specifically stated the word "should" and not "shall". You stated it was your interpretation and understanding that your medical provider was using the term to say that you "should" have these accommodations, but not that you absolutely had to have the accommodations in order to perform the essential functions of your position. In this meeting you and Ms. Hurt both stated that the only reasonable accommodation that you needed in the workplace was the ability to self-pace your work and take breaks when you need to take a break from the mental stimulation. Ms. Erdahl and Mr. Dowler told you they interpreted your medical provider's documented accommodations on the August 25, 2015 note as requirements necessary in order for you to perform the essential functions of your position. The parties agreed there were differing interpretations of Dr. Kinney's note, especially with regard to the use of the word "should". Ms. Erdahl stated that she would need to seek clarifying information from your medical provider on the use of the word "should" if you were to return to work without Dr. Kinney's stated accommodations. In the meeting you were amenable to Ms. Erdahl seeking clarifying information from your medical provider to determine your updated medical restrictions, if any, and to determine your medical provider's intent behind the word "should." You specifically requested to review the medical questionnaire drafted by Ms. Erdahl prior to it being sent to Dr. Kinney.

Ms. Erdahl sent the draft medical questionnaire to you for your review on October 21, 2015 and requested to have it completed and returned no later than close of business on November 6, 2015.

On November 3, 2015 you responded to Ms. Erdahl by email and stated in part: *"It is very clear that you are inappropriately interpreting my doctor's recommendations... I believe there is no reasonable purpose to have my doctor describe the difference between 'should' and 'shall'."* You further state in your email *"I am surprised that you are seeking information whether I can work in an environment with unscheduled demands and a fast paced unpredictable work flow the majority of time. My physician has already addressed this issue*

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when she approved the job description of the Environmental Services Director. Ginger and I met with my doctor and discussed the job requirements in great detail."

Additionally you added, "I am confused by the questions regarding self-pacing for cognitive fatigue. I am not requesting an accommodation for this."

Per Chapter 25 (Reasonable Accommodation) of the WSDOT HR Desk Manual, a determination can be made to seek additional medical documentation to assist in determining functional limitations for an employee if the current information is not sufficient. It is reasonable for the agency to seek clarifying information from your medical provider in order to effectively determine if and/or what reasonable accommodations you may need based on:

- The agency having medical documentation for the last three years consistently requesting the same needs for accommodation
- The difference of interpretations between you and the agency regarding the August 25, 2015 doctor's note
- Your most recent notification that the reasonable accommodation requests in the August 25, 2015 medical note are not required and suddenly you are able to return to work with no restrictions

Without your cooperation to provide updated medical documentation the agency needs to rely on the most recent medical documentation on file, which is the August 25, 2015 medical note. Based on the agency's interpretation of the medical note, we are not able to accommodate your stated request of *"Work core hours of 10:00am to 4:00 pm Monday through Thursday. The remainder of hours should be worked virtually."* Dr. Kinney specifically stated in her note you can perform the essential functions of the Mega Projects Environmental Services Director position *with* this stated accommodation. Therefore, I conclude without this accommodation you are not able to perform the essential functions of this position.

Ms. Erdahl exhausted the reasonable accommodation reassignment search. All vacant funded positions within your requested salary ranges and geographical availability have been reviewed, but there were none available that meet your skill sets and/or you could be reasonably accommodated in.

Based on the essential functions of your position and your work schedule limitations due to your medical condition, the agency is unable to provide further reasonable accommodations for you. Therefore, per WAC 354-46-165 and the Reasonable Accommodation Chapter 25 of the Human Resources Desk Manual, the agency is separating you from your employment as a WMS Band 4 Mega Projects Environmental Services Director effective February 15, 2016.

Separations due to disability are not disciplinary actions. Pursuant to WAC 357-46-170, you have the right to apply for reemployment as provided in WAC 357-19-475. To apply for reemployment under WAC 357-19-475, you must complete and submit an application for reemployment to WSDOT's Recruitment Unit, meet the competencies and requirements of the class and/or position that you are applying for, and submit to the agency a statement from a

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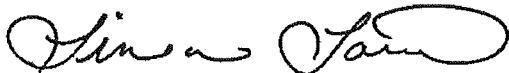
licensed health care provider affirming your fitness to return to work. Per WAC 357-46-095 you are eligible to have your name placed in the General Government Transition Pool if you submit a written request for reemployment in accordance with WAC 357-46-090 through 105 and have met the reemployment requirements of WAC 357-19-475. These WAC's require in part that you submit a request for reemployment within two (2) years of this disability separation and that you submit a statement from a licensed healthcare provider affirming your fitness to return to work and specifying any work restrictions due to a physical, sensory, or mental disability.

Information has also been provided to you about benefits for which you may be eligible through employee insurance plans, social security, worker's compensation, veteran's benefits, public assistance, disability retirement, vocational rehabilitation and such other related programs (Attachment #13). If you wish further counseling or would like any additional information concerning the options discussed in this letter, please contact Labor Relations Manager, Amber Erdahl, at (360) 705-7949.

You may appeal your disability separation from WSDOT in accordance with the Reasonable Accommodation, Chapter 25, of the HR Desk Manual and WAC 357-52-010.

It is my sincere hope that your health conditions improve and if it is your desire to do so, you are able to return to gainful employment.

Sincerely,



Linea K. Laird, P.E., Chief Engineer
Assistant Secretary of Engineering and Regional Operations

cc: Medical File
Assistant Attorney General
WSDOT Labor Relations
Personnel File

Attachments:

- Attachment #1: December 2012 FMLA form
- Attachment #2: March 2014 Reasonable Accommodation Request Form
- Attachment #3: March 4, 2014 Letter from Dr. Kathleen Kinney
- Attachment #4: April 2014 FMLA form
- Attachment #5: July 2014 FMLA form
- Attachment #6: January 28, 2015 letter from Heidi Mabbott
- Attachment #7: February 9, 2015 medical documentation by Dr. Kathleen Kinney
- Attachment #8: June 18, 2015 signed memorandum
- Attachment #9: July 2015 FMLA form

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Attachment #10: Comprehensive Job Analysis form
Attachment #11: August 25, 2015 medical note by Dr. Kathleen Kinney
Attachment #12: Reasonable Accommodation Reassignment form
Attachment #13: Benefit information