

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA  
THIRD JUDICIAL DISTRICT AT ANCHORAGE

Steven W. Much,	)	
	)	
Appellant,	)	
vs.	)	Case No. 3AN-14-4466 CI
	)	
Alaska Police Standards Commission,	)	
	)	
Appellee.	)	
_____	)	

**Opinion**

Summary.

In this administrative appeal, Steven W. Much argues the Alaska Police Standards Commission (APSC) should not have revoked his police officer certification. Mr. Much contends first that APSC’s accusation did not give sufficient notice of the conduct at issue and thus deprived him of due process. Mr. Much next asserts the Commission should not have relied on the F-4 form completed by APD upon his separation from that department to revoke his certification. The gravamen of that argument is that APD agreed not to take an action adverse to Mr. Much at the time he voluntarily resigned. On the merits of the conduct which formed the basis of the revocation, Mr. Much argued the facts did not support the Commission’s finding that he lacked good moral character. Finally, Mr. Much asserts that the conduct found by the ALJ did not warrant revocation of his certification.

In its brief, APSC first argues that Mr. Much waived any argument regarding notice and continues that in any event, he received sufficient notice to pass muster on due process grounds. As to use of the F-4, APSC argues it was not relied upon at all and to the extent the form should

not have been submitted with inaccurate information, it has no bearing on the instant case. As to Mr. Much's actions, APSC points to substantial evidence in the record to support a finding of poor moral character. Since that is a determination within APSC's agency expertise, it asks this court to defer to its decision. APSC likewise urges the court to accept revocation as an appropriate response to Mr. Much's actions, arguing it has ample discretion to do so on the record here.

### Facts and Proceedings.

The parties' views of the underlying facts leading to this appeal are not too disparate. There are two incidents that form the bases for APSC's accusation: Mr. Much's attempt, on behalf of his girlfriend C M, to have the Milwaukee, Wisconsin, police department perform a welfare check on the father of Ms. M's daughter T, over whom the parents were engaged in a custody dispute; and (2) Mr. Much's handling of an APD case involving allegations by J J that she was assaulted by her co-worker A B during an office party. The gist of APSC's allegations as to the first incident is that Mr. Much inappropriately used his position as an Anchorage police officer for the benefit of his girlfriend in an effort to induce Milwaukee police to conduct a welfare check, then was not forthcoming about his actions when investigated by APD. The essence of APSC's concerns about the second incident is that Mr. Much led APD to believe he had taken actions in the course of an investigation of Ms. J's complaints, but had not actually done so, and in addition Mr. Much mislead his superiors about what he actually did.

APD investigated both incidents, in the course of which investigators reviewed transcripts of court hearings and dispatch recordings, interviewed pertinent witnesses, performed a forensic

examination of Mr. Much's audio recorder, and reviewed documentary evidence relating to the two incidents. APD itself did not take any disciplinary or other action against Mr. Much. Rather, Mr. Much and APD agreed that he could resign his position with APD, and APD would not use either incident to take any action adverse to Mr. Much. However, APSC's executive director lodged the accusation here based on a review of APD's investigation. After a two-day hearing, at which the ALJ took testimony and reviewed the investigative files from APD, the ALJ determined that APSC had proved by a preponderance of the evidence that Mr. Much lacked the necessary moral character to hold a police certification, and revoked that certification. APSC adopted the result reached by the ALJ. Mr. Much timely appealed. This court has jurisdiction of this administrative appeal.

In the decision at issue, the ALJ thoroughly sets forth the facts found as to each of the described incidents. Decision at 1 - 17. The information garnered by APD during the course of its own thorough investigations is related, including court and dispatch transcripts, interview, documents, and the forensic examination of Mr. Much's audio recorder. Of course the records and interviews developed by APD during those investigations are part of the record here, and formed the essential basis of the accusation that Mr. Much lacked good moral character so should not hold a police officer certification. APD's investigation and the hearing record were reviewed by this court, too. Based upon the evidence, the ALJ found that Mr. Much lacked the moral character required for police officer certification and recommended revocation of that certification, a recommendation that as noted was adopted by APSC.

### Standard of Review.

The standard of review employed in an appeal of an administrative agency's decision often foreshadows the result. *Alaska Police Standards Council v. Parcell*, 348 P.3d 882, 883 (Alaska 2015). Here, this court may not reweigh the evidence and questions of fact are reviewed only to determine whether substantial evidence supports the ALJ's findings. "Where questions of law do not involve agency expertise, the appropriate standard of review is 'substitution of judgment.'" *Id.*, quoting *Alaska Exch. Carriers Ass'n v. Regulatory Comm'n of Alaska*, 202 P.3d 458, 460 (Alaska 2009). Application of an agency's own regulations to the case before it may be reversed only if such application was "arbitrary, unreasonable, or an abuse of discretion." *Griffiths v. Andy's Body Frame, Inc.*, 165 P.3d 619, 623 (Alaska 2007). If "a case requires resolution of policy questions which lie within the agency's area of expertise and are inseparable from the facts underlying the agency's decision," this court is only called upon to determine whether there was a rational basis for the decision below. *Western States Fire Protection Co. v. Municipality of Anchorage*, 146 P.3d 986, 989 (Alaska 2006).

### Discussion.

#### Notice was sufficient to meet due process requirements.

Mr. Much did not raise any argument about a lack of notice in proceedings below. APSC makes a compelling argument that Mr. Much waived any claim that he received insufficient notice from the accusation and proceedings below to inform himself of the issues to be addressed. *Pasco v. Dep't of Motor Vehicles*, 45 P.3d 325, 328-29 (Alaska 2002). Thus, the court need not address any contention that Mr. Much was not sufficiently apprised of the conduct

alleged to make him unsuitable for police certification.

Even if the court was called upon to address the issue on the merits, Mr. Much's argument would fail. Good moral character is specifically defined in regulations adopted by APSC as:

the absence of acts or conduct that would cause a reasonable person to have substantial doubts about an individual's honesty, fairness, and respect for the rights of others and for the laws of this state and the United States; for purposes of this standard, a determination of lack of "good moral character" may be based upon a consideration of all aspects of a person's character.

13 AAC § 85.900(7). Adoption by APSC of a definition for "moral character," which the legislature specifically designated as a required trait for qualification as a police officer, AS 18.65.240(a)(2), falls squarely within agency's expertise and authority. *Parcell, supra*. Mr. Much had sufficient notice from the accusation that his "moral character," as defined in the foregoing regulation, was questioned, and honesty is specifically included as a component of moral character. APSC cites to specific provisions of the Administrative Procedure Act (APA), AS 44.62.360, which govern the requirements of an accusation. Here, as urged by APSC, the accusation met the requirements of the APA. The accusation was sufficient under the APA and does not give rise to a due process violation.

Mr. Much's due process argument attempts to implicate the rationale expressed by the ALJ for finding substandard moral character based on *In re Bowen*, OAH No. 10-0327-POC (APSC 2011). That is, the ALJ here decided that APSC had to show substantial doubt about each of the four character traits listed in 13 AAC 85.110(a)(3) to establish Mr. Much was not of good "moral character." Mr. Much's argument is that he was ill-prepared to contest allegations

related to each of the four “moral character” factors identified by the ALJ here, as outlined in *Bowen*. Apparently Mr. Much contends that because the accusation did not break down the individual considerations addressed by the ALJ, he was deprived of due process. The argument that the accusation alleging poor moral character was deficient for failing to identify each trait listed in the definition cannot be adopted by this court. It strikes this court that by application of the *Bowen* approach, the ALJ here actually provided a greater level of protection to Mr. Much than ought to have been considered. That is to say, APSC’s argument that failing to achieve any one of the identified characteristics would support a finding that an individual officer lacked moral character is persuasive, *cf. Territory of Alaska v. Five Gallons of of Alcohol*, 10 Alaska 1, 10 (D. Alaska Terr. 1940), and it was not necessary to demonstrate Much lacked each of the four factors listed in the regulation, *i.e.*, (honesty, fairness, respect for others, and respect for the law, in order to have grounds for decertification.

Mr. Much is correct that it was a misapplication of law to employ the test from *Bowen*. However, with respect to the finding that his moral character was substandard, any error was harmless. This is because the ALJ's use of the test from *Bowen* actually resulted in a proceeding more favorable to Mr. Much's position, and more protective of his rights, than application of a proper rule. APSC alleged as grounds for discretionary revocation of Mr. Much’s certificate that he “lacks good moral character and is dishonest.” Accusation at 4. It was enough, and substantial evidence supports, a determination that Mr. Much was, at least, dishonest and in addition showed a lack of respect for others. *See* APSC brief at 21-2.

Under these circumstances, remanding the case for application of the correct rule of law

would serve no useful purpose because the record adequately supports the key finding that Mr. Much at minimum lacked honesty in the performance of his duties, which of itself is sufficient to find he lacked the requisite moral character to serve the Anchorage community as a police officer. Specifically, there was substantial evidence that Mr. Much was dishonest in his dealings with APD as well as Ms. J and T's father.

Since the agency's determination that such conduct amounted to moral character below that required of a police officer, *Parcell*, the remaining issue is whether the misconduct by Mr. Much supported revocation of his police officer certification. That decision must be upheld if it is not arbitrary, unreasonable, or an abuse of discretion. *Pacifica Marine, Inc. v. Solomon Gold, Inc.*, 356 P.3d 780, 793 (Alaska 2015); *Griffiths, supra*. Here the statute specifically grants discretion to revoke police certification if the individual officer's moral character is substandard. True, APSC is not required to do so but this court cannot reverse such a decision simply because it might have reached a different conclusion. *Parcell, supra*. At bottom, it was not unreasonable for APSC to determine Mr. Much's moral character was below that necessary to truly and faithfully serve the community in which he would be policing the lawfulness of others.

Conclusion.

The findings and action by APSC revoking the police certification of Steven Much under AS 18.65.220 is AFFIRMED.

Dated this 19<sup>th</sup> day of January, 2016.

By: Signed  
Superior Court Judge Charles W. Ray, Jr.

[This document has been modified to conform to the technical standards for publication.]