

**BEFORE THE ALASKA POLICE STANDARDS COUNCIL**

In the Matter of

WESLEY MCQUILLIN

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OAH No. 15-1086-POC  
Agency No. APSC 2014-30

**FINAL**  
**DECISION**

**I. Introduction**

In July 2014, Respondent Wesley McQuillin was one of three Anchorage Airport Police and Fire Department K-9 officers who, during a training exercise, briefly lost track of, then recovered, an explosives training aid. Officer McQuillin was terminated following an investigation of this incident. At AAPFD's recommendation, the Executive Director of the Alaska Police Standards Council filed an accusation seeking to revoke Officer McQuillin's Alaska Police Officer Certification. While Officer McQuillin's challenge to that action was pending, an arbitrator overturned his discharge, ordering him reinstated. Although AAPFD then rescinded its recommendation to decertify Officer McQuillin, the Executive Director continued to pursue the accusation against him.

After a full hearing and based on a careful review of the evidence, the Executive Director did not meet his burden of showing that revocation is mandatory, nor that it would be appropriate under the circumstances of this case. Indeed, the evidence showed that basic allegations in the Amended Accusation against Officer McQuillin were unproven. The Executive Director's requested revocation of Officer McQuillin's certificate is therefore denied.

**II. Factual and Procedural History**

**A. AAPFD K-9 unit overview**

The Anchorage Airport Police and Fire Department is the law enforcement organization responsible for safety and security at Ted Stevens Anchorage International Airport. Organizationally, AAPFD is part of the Department of Transportation and Public Facilities ("DOT"). Its officers are jointly trained and certified as police officers and fire fighters.

During the time at issue in this case AAPFD included a four-officer canine unit run in cooperation with the Transportation Security Administration (TSA). The AAPFD K-9 officers received specialized training through TSA, used TSA-owned dogs, and were required to be

recertified annually by TSA.<sup>1</sup> The agencies' relationship was formalized through a Statement of Joint Objectives, referred to as "the SOJO."<sup>2</sup>

TSA Field Canine Coordinator David Vasek oversaw the K-9 training activities and the AAPFD K-9 program's compliance with TSA policy and objectives.<sup>3</sup> During the time at issue in this case, and as of the time of the hearing, AAPFD was overseen by Chief Jesse Davis.<sup>4</sup> Chief Davis was not a proponent of AAPFD having a separate K-9 unit, and the K-9 program was formally discontinued shortly after the termination of Officers Trent and McQuillin.<sup>5</sup>

#### **B. McQuillin professional experience**

Officer McQuillin joined AAPFD in 2007 as an Airport Police & Fire Officer ("APFO"). In the years that followed, he was promoted from APFO I to APFO II, and eventually became a Field Training Officer.<sup>6</sup> In 2013, Officer McQuillin applied for and was offered a canine handler position.

During his time at AAPFD - including *after* the incident that was the focus of the hearing in this case - Officer McQuillin consistently received performance evaluations in the "high acceptable" range.<sup>7</sup> His last three evaluations described Officer McQuillin as "a high energy Performer [who] will regularly go out of his way to assist on shift";<sup>8</sup> "a dedicated officer who has demonstrated a good, positive attitude";<sup>9</sup> and "a dedicated, optimistic employee who has a good attitude towards the job and works to provide a positive relationship with co-workers, supervisors and the public."<sup>10</sup> An evaluation issued one month after the incident in this case gave him an overall rating of "high acceptable" and recommended "continued employment and applicable step increase."<sup>11</sup> The August 2014 evaluation noted Officer McQuillin's "strong willingness to assist

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<sup>1</sup> Vasek testimony.

<sup>2</sup> Vasek testimony; McQuillin testimony; Trent testimony. Apparently because the SOJO is considered a confidential federal security document, it is not included in the agency record in this case, and the Executive Director did not submit it as an exhibit, under seal or otherwise.

<sup>3</sup> Vasek testimony.

<sup>4</sup> Chief Davis joined AAPFD in 2008, and became Chief in 2011.

<sup>5</sup> Trent testimony; Vasek testimony; Ex. 2-1, p. 9.

<sup>6</sup> Ex. 2-4.

<sup>7</sup> Ex. 2-4, pp. 1-2 (2014 evaluation), 3-5 (2013 evaluation), 6-9 (2012 evaluation), 9-12 (2011 evaluation), 13-15 (2010 evaluation); 16-17 (2009 evaluation); Burlanire testimony.

<sup>8</sup> Ex. 2-4, p. 2 (Deputy Chief Shulling, 2014).

<sup>9</sup> Ex. 2-4, p. 3 (Gary Delk, 2013); see also Ex. 2-4, p. 4 (Officer McQuillin "can be counted for completion of his duties or assignments with good judgment").

<sup>10</sup> Ex. 2-4, p. 7 (Gary Delk, 2012).

<sup>11</sup> Ex. 2-4, p. 1.

on shift whenever he can," and described him as "eager to learn more to better himself, his team and the department."<sup>12</sup>

Officer McQuillin was similarly highly regarded by fellow officers, who, when asked to provide letters of support after the events described here, described him as "enthusiastic and helpful," "especially competent and trustworthy, and "dedicated";<sup>13</sup> "very professional" and "always available and willing to help";<sup>14</sup> "always an officer who would go above and beyond to help out other officers";<sup>15</sup> "an outstanding example of what the general public expects when they think of public servants";<sup>16</sup> and "professional, kind, always willing to help out [and having] very high moral character."<sup>17</sup>

### **C. The canine program, canine training, and training aids**

#### *1. K9 Unit structure and training overview*

All of the required K-9 training for AAPFD canine handlers is conducted by the TSA.<sup>18</sup> Before he could formally join the K-9 unit, Officer McQuillin was required to complete TSA's ten-week canine handler course at Lackland Air Force Base in Texas.<sup>19</sup> This training program focused on becoming a dog handler; it is not an explosives course.<sup>20</sup> Most of the instruction focused on caring for the dog and performing the responsibilities of a handler, such as interpreting the dog's cues, keeping the dog motivated, et cetera.<sup>21</sup>

Officer McQuillin and his TSA-provided dog, Hunter, completed the program during the summer of 2013. Upon returning to Anchorage, Officer McQuillin and Hunter began working and training with the AAPFD canine team. At the time, the Department had three other canine handlers -William Kemper, Dustin Schmidt, and Herman Trent. The canine officers usually worked in two-person shifts, although the four officers sometimes overlapped for part of the week. As the most junior canine officer, Officer McQuillin was advised to and did follow the lead of Officer Herman Trent, the most senior canine officer.<sup>22</sup>

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<sup>12</sup> Ex. 2-4, p. 2.

<sup>13</sup> Affidavit of Jack McFarland, p. 2.

<sup>14</sup> Affidavit of Tim Lewis, p. 1.

<sup>15</sup> Affidavit of Brent Lowen, p. 1.

<sup>16</sup> Affidavit of Daniel Nowak, p. 2.

<sup>17</sup> Burkshire testimony.

<sup>18</sup> Trent testimony; Davis testimony; McQuillin testimony.

<sup>19</sup> McQuillin testimony; Vasek testimony.

McQuillin testimony; Vasek testimony.

<sup>21</sup> McQuillin testimony.

<sup>22</sup> McQuillin testimony; Davis testimony; Trent testimony; Ex. 2-4, p. 3 (August 2013 evaluation: "Encourage Ofc. McQuillin to seek out assistance from current members of the K-9 program, department policy and procedures

Once officers complete the Lackland program, they still must be certified by TSA, and then recertified annually.<sup>23</sup> The certification involves a weeklong "training mission" overseen by local and visiting TSA trainers. Officer McQuillin completed his training mission in December 2013 and was certified in January 2014, six months before the incident giving rise to this case.

Beyond the formal program at Lackland and the annual TSA certification, explosives-detection canine officers participate in frequent training in order to maintain proficiency. Training is constant, with TSA requiring canine officers to log a certain number of training hours each week.<sup>24</sup>

TSA and other AAPFD K-9 trainings are conducted in a variety of locations and circumstances, including, frequently, training in public areas.<sup>25</sup> Officers are required to train in any area where they might be required to respond in the event of a bomb threat.<sup>26</sup> When training on airport grounds, training may be conducted "anywhere in the airport, night or day."<sup>27</sup> In addition to the airport terminal itself, the AAPFD officers trained at locations including rental car lots, open fields, hotels, parking lots, and on airplanes.<sup>28</sup> TSA Field Canine Coordinator David Vasek explained that officers "have to train in public areas due to the current threats in the world; we have to train realistically." An example of an airport training might involve an aid being hidden in a bag under a seat at a gate, and a handler then being called in to search several gates. Other times, aids are hidden throughout a larger area, for example, an entire terminal.

Trainings require, at a minimum, two officers - one handling the dog, and the other observing both the dog and the handler. The four AAPFD officers conducted trainings in groups of two, three, or four, depending on the circumstances. For the majority of the week, only two K-9 officers were on shift at one time. Accordingly, most training involved two officers - with one officer first running his dog through the scenario while the other one took notes and monitored the area, and the officers then switching roles so the second officer could run his dog through the scenario.<sup>29</sup>

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and his chain of command to ensure successful completion of his K-9 training and his certification as a K-9 handler").

<sup>23</sup> McQuillin testimony; Vasek testimony; Ex. 2-4, p. 3.

<sup>24</sup> McQuillin testimony.

<sup>25</sup> Vasek testimony.

<sup>26</sup> Vasek testimony.

<sup>27</sup> Vasek testimony.

<sup>28</sup> Vasek testimony.

<sup>29</sup> McQuillin testimony.

## 2. *Training aids*

When training explosive-detection dogs, officers use "training aids" containing explosives. These training aids are not "bombs" or "live explosive devices," but they do contain explosive material.<sup>30</sup> Various different types of explosives are used in training. The training aid at issue in this case was "water gel" – a gelatinous ammonium nitrate mixture packaged to approximate the size and shape of a hot dog.<sup>31</sup> Water gel is a "fairly innocuous" training aid.<sup>32</sup> Because it is a "secondary explosive," water gel cannot explode without an initiator, such as a blasting cap.<sup>33</sup> In the absence of an initiator, water gel melts, rather than explodes, if exposed to high heat.<sup>34</sup>

TSA monitors and controls access to the training aids used by K-9 officers. TSA stores the training aids in a secure area within the airport, and canine handlers must check them in and out through a written log.<sup>35</sup>

In July 2014, TSA policy required K-9 handlers to "maintain constant accountability" for the training aid "at all times" to make sure the training aids were not lost or stolen.<sup>36</sup> While TSA policy has since changed to require "eyes on the training aid at all times," this requirement was not in place in July 2014. Rather, K-9 handlers were expected to maintain "visual accountability of the training area."<sup>37</sup>

The actual monitoring of training aids during training is made logistically difficult by the nature of the trainings. When officers are conducting a training within the airport, for example, training aids are hidden throughout an entire gate section or concourse, including in secure hallways, bathrooms, and individual gates.<sup>38</sup> Additionally, if an officer were closely watching the hidden training aid each time, the detection canines would pick up on that visual cue, and start only "working" in a particular area if it is being watched – an outcome that would undermine the effectiveness and purpose of the training itself.<sup>39</sup> But handlers were required to "know where the training aids are" and "maintain accountability that they stay there."<sup>40</sup>

<sup>30</sup> Spinde testimony; Whitehurst testimony.

<sup>31</sup> Whitehurst testimony; Trent testimony; R. 289.

<sup>32</sup> Spinde testimony.

<sup>33</sup> Whitehurst testimony; Trent testimony.

<sup>34</sup> Whitehurst testimony; Trent testimony.

<sup>35</sup> Vasek testimony; McQuillin testimony; Trent testimony.

<sup>36</sup> Vasek testimony.

<sup>37</sup> Vasek testimony.

<sup>38</sup> Trent testimony; Vasek testimony.

<sup>39</sup> McQuillin testimony.

<sup>40</sup> Vasek testimony.

#### **D. Misplaced training aids within canine programs**

Both locally and nationally, canine officers conducting training exercises have, on occasion, misplaced training aids during training exercises.<sup>41</sup> TSA's training aids contain printed instructions for any members of the public who find such aids.<sup>42</sup>

##### *1. Policies and procedures relating to loss of training aids*

Chapter P200 of the AAPFD Policy and Procedures governs the Canine Unit. Section P200 IV.C.F.j of the AAPFD Policy & Procedures provides: "In the event that a training aid is damaged or some/all of the source is lost or destroyed, the handler will write a report and file it to the original case. The handler will notify the Unit Commander and the TSA field representative."<sup>43</sup> However, AAPFD has no written policy specifically addressing the procedures to be followed when a training aid is temporarily misplaced but then quickly recovered.

Section P200 IV.C.F.i directs that "all training aids shall be safely cared for and properly documented in accordance with TSA procedures." The "Statement of Joint Objectives" (SOJO) governing the relationship between AAPFD and TSA is a confidential federal security document and is not included in the evidentiary record in this case. Although Mr. Vasek testified that the SOJO requires handlers to notify the Field Canine Coordinator if a training aid is lost, the exact language of any requirement in that regard was never established in this hearing.<sup>44</sup>

##### *2. Lost training aid incidents*

At the hearing in this matter, various former K-9 officers testified about local incidents in which training aids went missing, including:

- A passenger locating and turning into airport authorities a training aid that had been hidden in an airport bathroom;
- TSA officers picking up a backpack containing a training aid while a K-9 officer was briefly distracted by a passenger's question;
- A custodian locating a training aid in a trash can;
- A TSA K-9 trainer having to use his body to physically block a rental car from being driven away with a training aid; and
- A training aid being partially eaten by a bird.<sup>45</sup>

<sup>41</sup> Vasek testimony; Spinde testimony; Ex. 2-1, pp. 17-18.

<sup>42</sup> McQuillin testimony; Spinde testimony.

<sup>43</sup> R. 56.

<sup>44</sup> See Vasek testimony ("if a training aid is unaccounted for, it requires instant notification to myself"), R. 309 (same); McQuillin testimony ("it doesn't say immediately notify").

<sup>45</sup> McQuillin testimony; Spinde testimony; Vasek testimony; see also, Ex. 2-1, p. 17.

With the exception of the bird eating part of an aid – which was reported because the bird's actions changed the actual volume of the explosive material in the training aid -these incidents of temporary loss were not reported either to AAPFD or the TSA.<sup>46</sup>

### 3. *April 2014 incident*

On April 21, 2014, while training at an airport car rental facility, AAPFD K-9 officers Trent and Schmidt inadvertently lost an explosive training aid for roughly five hours.<sup>47</sup> In that incident, after an AAPFD officer placed a C-4 explosive training aid on the bumper of a vehicle, a rental company employee then mistakenly rented that vehicle to a member of the public, who drove it away before anyone realized the mistake.<sup>48</sup>

Officers Trent and Schmidt did not report this incident to TSA's Field Canine Coordinator Vasek or Chief Davis immediately, but instead reported it only after first driving around looking for the missing aid.<sup>49</sup> Having been unable to locate the missing aid, they notified Mr. Vasek and Chief Davis about thirty minutes after first discovering the loss.

Because the location of the training aid was unknown, AAPFD enlisted the assistance of the Anchorage Police Department, which alerted its officers to be on the lookout for the missing rental car. The FBI and ATP were also notified, as was the employer of the driver who had rented the car. After more than five hours, the missing aid was eventually located and retrieved by AAPFD officers.

At some point, local, state and national news media became aware of this incident. After the training aid was recovered, Chief Davis held an informal press conference at which he stated that neither the driver of the rental car, nor the general public, were ever in danger during the incident. News articles quoted Chief Davis as saying that "the amount of explosives in the vehicle was small and didn't pose a threat to the driver or the public," that "the driver of the rental was never in danger," and that "[w]hen we say 'explosives,' it's not a stick of dynamite[,] it's a very small piece of explosive."<sup>50</sup>

AAPFD did not conduct an administrative investigation of the April 2014 incident, and neither officer involved was disciplined as a result of that incident.<sup>51</sup> All members of the AAPFD K-9 team were aware that no discipline was imposed on either of the two officers involved.<sup>52</sup>

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<sup>46</sup> Spinde testimony; Trent testimony; Ex. 2-1, p. 17.

<sup>47</sup> Davis testimony; Ex. 2-3.

<sup>48</sup> Trent testimony; Vasek testimony.

<sup>49</sup> Trent testimony.

<sup>50</sup> Ex. 2-3, pp. 1, 2.

<sup>51</sup> Davis testimony; Trent testimony.

Following the April incident, Chief Davis issued Officer Trent a non-disciplinary Letter of Instruction requiring him to "develop an approved operating procedure to make sure this does not happen again." Chief Davis further tasked Officer Trent with conveying these procedures to the rest of the K-9 team.

One procedural change that arose was a decision that, during vehicle training, the team should get the keys to all vehicles being used for training. Neither a formal "key" policy nor any other policies related to this issue were reduced to writing.

Another recommended change was for the officers to conduct trainings in groups of three, rather than in pairs, to increase the number of eyes on the training area. However, AAPFD continued to schedule the K-9 officers mostly in two-person shifts, so, as a practical matter, most of the training continued to be done in pairs.<sup>54</sup>

Also following the April 2014 incident, TSA Field Canine Coordinator Vasek conducted a brief, informal training for the K-9 officers, at which they reviewed a powerpoint presentation about explosives training aids generally.<sup>55</sup> The training covered the obligation to report missing aids to the field canine coordinator, but did not specifically identify a need or requirements to notify the coordinator "immediately" in such an instance, and did not specifically address what to do if a training aid were briefly misplaced but then quickly recovered.<sup>56</sup>

#### **E. July 30, 2014 incident**

The incident giving rise to this case was a routine training exercise conducted by Officers Trent, Kemper, and McQuillin on July 30, 2014. As they had done many times before, the officers were using the Department of Transportation (DOT) vehicle storage lot in Anchorage.<sup>57</sup> This is the same lot where the TSA had recently conducted the officers' annual certification training, and the officers understood it to be a secure lot for training purposes.<sup>58</sup>

When they arrived at the DOT lot, Officer Trent went into the office to speak with DOT shop foreman Brian Flaherty about their training plans. The three rows of vehicles they were using for the training were the same rows that had been used in the officers' recent TSA

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<sup>52</sup> Trent testimony; McQuillin testimony.

<sup>53</sup> R. 42.

<sup>54</sup> McQuillin testimony.

<sup>55</sup> Vasek testimony.

<sup>56</sup> McQuillin testimony; Trent testimony. Mr. Vasek did not testify about the content of the training, and the powerpoint presentation is not part of the record.

<sup>57</sup> McQuillin testimony; Flaherty testimony.

<sup>58</sup> McQuillin testimony; Trent testimony; Spindel testimony; R. 40-41, 196, 230-231; Ex. 2-1, p. 6; Ex. 2-9, p. 3.



recertification training.<sup>59</sup> Officer Trent left that meeting with the understanding that the portion of the lot where the officers intended to train was available for training, with Mr. Flaherty holding the keys for those vehicles.<sup>60</sup> Because this was his understanding, Officer Trent did not take vehicle keys from Mr. Flaherty.<sup>61</sup>

The officers set out signs indicating that K-9 training was taking place.<sup>62</sup> Next, the officers placed the two training aids on vehicles. The officers were using two training aids -- cast booster and water gel.<sup>63</sup> Officers Kemper and Trent placed the training aids, placing the cast booster on a vehicle in the middle row, and placing the water gel above the engine compartment of a Ford Expedition in the back row.<sup>64</sup>

TSA policy requires that training aids be covered by some sort of a barrier to prevent scents from mixing, so that the canines continue to most strongly associate their "reward" with the scent of the explosive alone, as opposed to associating it with the scent of the explosive and whatever it had been placed near. During the July 30, 2014 training exercise, the water gel was wrapped in a paper towel, which is a TSA-approved barrier.

As required by TSA protocol, the officers and their canines then waited in their vehicles for thirty minutes to allow the training aids' odors to emanate.

#### *1. Training scenario by Officers McQuillin and Trent*

Through a game of rock-paper-scissors, the officers determined that Officer McQuillin would run the training exercise first.<sup>65</sup> To simulate arriving at a live call, Officer McQuillin drove with Hunter to the area of the lot where the training was, got him out of the car, and began the search.<sup>66</sup> Officer Trent "had the clipboard," which means that he was making the TSA-required notes on what was happening during Hunter's search.<sup>67</sup>

<sup>59</sup> McQuillin testimony.

<sup>60</sup> Trent testimony; R. 41; Ex. 2-1, p. 6. To the extent to which Mr. Flaherty implied in his testimony that he provided other instructions, that testimony was not persuasive, and is not consistent with his earlier statements. *See* Ex. 2-1, p. 6 (Arbitrator finding that Flaherty "did not contradict" Trent testimony that Mr. Flaherty told him the three rows of cars identified were okay to use).

<sup>61</sup> Trent testimony; *see also* Ex. 2-8, p. 3 (Officer McQuillin: "[W]hen we had our annual evaluation and we went to that exact lot with the TSA evaluator and the regional trainer and the [FCC] and they did the walk around of the lot, they didn't collect any keys and, I know, it is a bad example to follow, but I guess there is some sort of false sense of trust in knowing that at least it was a secured lot, we used all the exact same vehicles and they had I want to say at least five aids out there that day").

<sup>62</sup> Trent testimony; McQuillin testimony; Ex. 2-1, pp. 6-7.

<sup>63</sup> R. 246.

<sup>64</sup> R. 245.

Trent testimony; McQuillin testimony.

<sup>66</sup> McQuillin testimony.

<sup>67</sup> McQuillin testimony.

It took Hunter forty minutes to find both aids. Forty minutes was a long time for Hunter, who was still a young dog, to be actively engaged in a continuous search. Both Hunter and Officer McQuillin were tired after the mental exertion of running the course. It was also important, from a training perspective, to move Hunter away from the scents of the training aids. Accordingly, when they were done, Officer McQuillin put Hunter into his vehicle and drove it away from the search area and back towards shop foreman Flaherty's building.<sup>68</sup>

However, Officer McQuillin did not alert Officers Trent and Kemper that he was doing this, nor that he intended to take a break before returning to the training area. He would later explain that it had not occurred to him to do so, because of the procedures normally followed when officers trained in pairs. Under those procedures, one officer ran his dog, while the other held "the clipboard" and monitored the area. With Officer Kemper now holding the clipboard and Officer Trent preparing to run his dog, Officer McQuillin considered himself to be "outside the training scenario," rather than as a third set of eyes.<sup>69</sup> However, the officers had not formally discussed their respective roles or responsibilities vis-a-vis the three-person training, leading to a significant breakdown in communication. While Officer McQuillin believed himself to be "out of the training scenario," Officer Trent thought that Officer McQuillin was going to remain in his vehicle in sight of both rows of cars.<sup>70</sup>

After relocating his vehicle, Officer McQuillin got Hunter some water, grabbed a snack, and used the restroom. In the meantime, unaware that Officer McQuillin was not also watching the training area, but also under the misimpression that the entire lot was secure, Officers Trent and Kemper had continued with the training exercise. Officer Kemper now had the clipboard, and Officer Trent began running his dog, Elvis, through the training scenario.

## 2. *DPS employee's removal of the Ford Expedition*

Unbeknownst to any of the three officers, one row of vehicles in the DOT lot was not, in fact, secure. These were pool vehicles for use by Department of Public Safety employees, and their keys were held not by Mr. Flaherty but by DPS Vehicle Coordinator Deanna Humphries.

At some point while the officers were preparing their training scenario and conducting the first exercise, DPS office assistant Laura Spire had arrived at the DOT lot because she needed to use a state vehicle that morning to run some office errands. Shortly before 9:30 a.m., with keys obtained from Ms. Humphries, Ms. Spire came to the DOT lot and picked up a Ford Expedition

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<sup>68</sup>. McQuillin testimony.

<sup>69</sup> R. 224-225.

<sup>70</sup> R. 253.

from the motor pool.<sup>71</sup> The vehicle whose keys Ms. Spire had been given for her errands was the same Ford Expedition on which the K-9 handlers had previously placed the water gel training aid. Ms. Spire did not notice the signs indicating that canine training was occurring, nor did any of the officers notice her. Unaware of any possible problem, Ms. Spire left the DOT lot and began her errands.

### 3. *Discovery of loss and search for missing vehicle*

In the meantime, unaware of this development, Officer Trent was running Elvis through the training scenario. After Elvis found the first aid, he and Officer Trent moved to the back row of cars. It was then that Officer Trent observed that a vehicle - the Expedition on which he had placed the water gel - was now missing. Officer Trent began searching the lot in his patrol car to try to locate the missing vehicle. Meanwhile, Officer Kemper went into the shop to speak with Mr. Flaherty, to attempt to determine how a car could have been taken from the lot.<sup>72</sup>

During all of these events, Officer McQuillin had been moving his vehicle, getting water for his dog, putting his dog into the vehicle, having a snack, and using the restroom. When he exited the restroom, Officer McQuillin found Mr. Flaherty engaged in a discussion with Officer Kemper, who informed him about the missing vehicle.<sup>73</sup>

Officer McQuillin then joined Officer Trent in the search for the Expedition and the missing training aid. The two officers drove their vehicles to different parts of the lot, to see whether the Expedition had been moved to one of the garages on site. While they were searching, they received a text from Officer Kemper, letting them know that Mr. Flaherty had located the vehicle.<sup>74</sup>

### 4. *Communications with Ms. Spire and return of the training aid*

While Officers McQuillin and Trent searched the lot, Mr. Flaherty called DPS vehicle coordinator Deanna Humphries, who identified the employee who had taken the Expedition. At some point, although the record is unclear about when, at least some of the officers had a discussion with Mr. Flaherty about it being safe for Ms. Spire to drive back.<sup>75</sup> It further appears that Officer Trent, the team's explosives ordinance disposal expert, was involved in determining

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<sup>71</sup> Spire testimony; R. 31.

<sup>72</sup> Trent testimony; R. 40.

<sup>73</sup> McQuillin testimony.

<sup>74</sup> R. 40.

<sup>75</sup> R. 40.

that it would be safe for her to do so.<sup>76</sup> Accordingly, Mr. Flaherty directed Ms. Humphries to have Ms. Spire stop her errands and return the vehicle to the lot.

Ms. Spire left in the Expedition shortly before 9:30 a.m.<sup>77</sup> Ms. Humphries first called Ms. Spire at 9:35, but Ms. Spire did not hear the call and did not answer.<sup>78</sup> Ms. Spire returned Ms. Humphries' call at 9:54. Ms. Humphries told her that canine officers were conducting a training and had placed something in the car, and that she needed to return the car immediately. Ms. Spire, who assumed the training aid in question contained narcotics, left her errands and drove back to the DOT lot.

When Ms. Spire returned to the lot, Officer Trent removed the training aid from under the hood of her car, Officer Kemper told her she was "good to go," and she drove off to resume her errands.<sup>79</sup> Officer McQuillin was walking Hunter, and was not present when Ms. Spire returned to the lot.<sup>80</sup> Ms. Spire was back running her errands by 10:17 a.m.<sup>81</sup> After recovering the water gel, the three officers left the DOT lot and relocated to another area for their remaining field training exercises that day.

#### 5. *Lack of notification*

At no point while the aid was missing or after it had been recovered did any of the three officers report the lost training aid to TSA's Field Canine Coordinator Vasek, or to anyone within the AAPFD chain of command. At the time, Officer McQuillin did not believe that the particular circumstances here - where the aid was briefly missing but then recovered - required a report.<sup>82</sup> In his hearing testimony, Officer McQuillin likened the scenario to driving a car that temporarily slides off the road, then recovers and returns to the roadway. Just as an officer would presumably not report a temporary, transient loss of vehicle control, Officer McQuillin did not understand the circumstances here to require a formal report.

<sup>76</sup> McQuillin testimony; R. 40. In the April 2014 incident, the officers had the driver of the rental car stay where he was, rather than continuing to drive the car with the training aid attached. Mr. Trent explained that this was because the training device in that case was affixed to the bumper, creating a stronger likelihood that the item would fall off or get lost on the road. While the aid falling off would not have caused an explosion, it would have made it far more difficult to recover, as the officers were expected to do. Trent testimony.

<sup>77</sup> R. 31.

<sup>78</sup> R. 31; Spire testimony.

<sup>79</sup> Spire testimony; Hahn testimony; Trent testimony.

<sup>80</sup> McQuillin testimony; Trent testimony.

<sup>81</sup> R. 31.

<sup>82</sup> McQuillin testimony.

Officer Trent, likewise, denies knowing that notification was required in this instance, given "the short duration it was missing" and what he perceived to be "the lack of severity of the situation as far as how these [incidents of temporary loss and recovery] were treated in the past."<sup>83</sup>

The Executive Director did not prove by a preponderance of the evidence that the officers had a discussion about reporting the incident or about any reporting requirements.<sup>84</sup> Rather, it is more likely true than not true that Officer McQuillin did not realize a report was required, and that Officer Trent, the senior-most K-9 officer, did not take any actions that changed his perception. As a result, and similarly to other past incidents involving a temporary misplaced aid, the officers did not report the incident to Mr. Vasek or within AAPFD.

#### 6. *Chief Davis and David Vasek learn of incident*

Sometime after returning to work on July 30, Laura Spire mentioned the incident in passing to Alaska State Trooper Captain Randall Hahn, framing it as a humorous anecdote.<sup>85</sup> Captain Hahn, in turn, contacted Chief Davis.<sup>86</sup> When they spoke, Captain Hahn relayed to Chief Davis his understanding that AAPFD K-9 officers had left a training device in a vehicle, allowed the vehicle to leave the lot, and then recovered the training aid.<sup>87</sup> This was the first Chief Davis had heard of this incident.<sup>88</sup> After their discussion, Captain Hahn sent a follow-up email, titled "Timeline this Morning:"

Our OA left in the vehicle a little before 0930 this morning. Our vehicle coordinator was contacted by DOT about ten minutes later and made her first call to the OA. That call wasn't received and another call was placed to her at 0954. She returned to DOT with the vehicle and was cleared and back running her errands by 1017.<sup>89</sup>

Later that afternoon, Chief Davis called Officer Trent to inquire about Captain Hahn's report.<sup>90</sup> In response to Chief Davis's questions, Officer Trent confirmed that the team had lost but then recovered a training aid, and that they had not reported these events to anyone due to the

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<sup>83</sup> Trent testimony.

<sup>84</sup> Trent testimony; McQuillin testimony.

<sup>85</sup> R. 100-101.

<sup>86</sup> R. 30.

<sup>87</sup> Davis testimony; Hahn testimony. Initially, there was some uncertainty on behalf of AST and AAPFD leadership as to whether the officers involved in the incident had been AAPFD officers or officers from another agency. *Id.*

<sup>88</sup> Davis testimony.

<sup>89</sup> R.31.

<sup>90</sup> Davis testimony; R. 28.

short duration of the incident.<sup>91</sup> Chief Davis told Officer Trent that he wanted to meet with all three officers the following morning.

Chief Davis also contacted David Vasek and informed him of the incident.<sup>92</sup> Mr. Vasek found the temporary loss of the training aid "concerning," and felt that he "should have been notified immediately."<sup>93</sup> However, Mr. Vasek did not believe the three AAPFD officers should be terminated, and shared those views with Chief Davis.<sup>94</sup>

#### **F. Post-incident meetings and documentation**

The morning after the incident, Chief Davis met briefly with all three officers.<sup>95</sup> Chief Davis did not specifically ask Officers Kemper or McQuillin any questions about the incident during this meeting, and neither made substantive comments during the meeting.<sup>96</sup> When asked, Officer Trent reiterated his estimate that the aid was missing for about twenty minutes.<sup>97</sup> Neither Officer Kemper nor Officer McQuillin disagreed with this estimate or suggested it was inaccurate.<sup>98</sup> Chief Davis then told the officers he was opening an administrative investigation (AI), and ended the meeting.<sup>99</sup> Chief Davis assigned AAPFD Lieutenant Gary Delk to conduct the investigation.<sup>100</sup>

The same day that they met with Chief Davis, the officers also met with Field Canine Coordinator David Vasek, who had each of them fill out an ATF "Form 5400.5, Report of Theft of Loss – Explosive Material."<sup>101</sup> Officer Trent had previously filled out a Form 5400.5 as part of the April 2014 incident.<sup>102</sup> Officers Kemper and McQuillin had not previously filled out a Form 5400.5, and took guidance from Officer Trent in filling theirs out.<sup>103</sup>

The Form 5400.5 asks where the loss or theft occurred, what exactly was lost or stolen, when the theft or loss was "discovered," and when the theft or loss occurred, if known.<sup>104</sup> Because they filled out the forms together, Officers Trent and McQuillin provided identical

<sup>91</sup> Davis testimony; R. 28.

<sup>92</sup> Davis testimony; Vasek testimony.

<sup>93</sup> Vasek testimony.

<sup>94</sup> Vasek testimony. To the extent to which Chief Davis recalls Mr. Vasek saying otherwise, Mr. Vasek's testimony on this point was more credible.

<sup>95</sup> Davis testimony; McQuillin testimony; Trent testimony; R. 29.

<sup>96</sup> McQuillin testimony; Davis testimony.

<sup>97</sup> Davis testimony.

<sup>98</sup> Officer McQuillin was not present when the aid was discovered missing, nor when it was returned, and believed this to be a reasonable estimate given his limited window of information. McQuillin testimony.

<sup>99</sup> Davis testimony; McQuillin testimony; Trent testimony; R. 29.

<sup>100</sup> R. 26, 45.

<sup>101</sup> Vasek testimony. See R. 36-39.

<sup>102</sup> Trent testimony; McQuillin testimony; Vasek testimony.

<sup>103</sup> McQuillin testimony; Trent testimony.

<sup>104</sup> R. 38.

responses to these questions, identifying the explosive as 1.25 lbs of "Data gel" water gel manufactured by Slurry Explosive Corp, identifying the "discovery" of loss as occurring at "0910" on July 30, 2014, and answering the question about the approximate occurrence of the loss as "0905" on July 30, 2014.<sup>105</sup>

The final section of the form, box no.16, is a 1.5-inch empty box with the header: "16. Other Information Pertinent to the Theft or Loss."<sup>106</sup> Officer Trent wrote "Report attached," and attached a separate page containing a typed two paragraph summary of events.<sup>107</sup> Officer McQuillin typed his response directly onto the form, as follows:

On 7/30/14 the Anchorage Airport police K9 unit conducted a canine vehicle search with 51 cars and 2 CETA aids, located at the State of Alaska vehicle lot. There were three canine teams total and I ran first. After completing an almost 40 minute search, I put my canine in my patrol vehicle parked nearby. Presuming the remaining two teams had control of the training area (we generally train with two teams on a daily basis) I re-located my vehicle closer to a nearby building where there was a restroom inside. I tended to my canine making sure he had water and ate some lunch. I went inside to go to the bathroom. Upon exiting the bathroom I saw one of our handlers talking to a mechanic about locating a vehicle. This is when I was made aware that an aid had left the training area. In attempting to locate the missing aid vehicle, I drove around the large parking lot and adjacent parking lots in my patrol vehicle to no avail. I returned to our staging area and was notified the missing aid vehicle had been located and was en route back to the parking lot.<sup>108</sup>

The officers were not directed to fill out any other reports or forms related to this incident, either by TSA or by AAPFD, and none of them did so.<sup>109</sup>

Lt. Delk and Chief Davis later took issue with the fact that the officers did not reference the incident in their weekly AAPFD K-9 activity logs. Those logs were a time accountability tool created by the AAPFD Deputy Chief to better understand how the K-9 officers spent their time. There was no written policy describing what information should or should not be included, and the K-9 officers varied in the degree of detail they included in their logs. Officer McQuillin's entries were generally broad descriptions of an overall activity, such as "[training in] open area," "[training in] Baggage [claim] at North [terminal]," or "canine sweep of south terminal."<sup>111</sup>

<sup>105</sup> R. 36 (Trent); R. 38 (McQuillin). The record does not include the form filled out by Mr. Kemper, but does appear to contain Mr. Kemper's typed response to Question 16. See R. 41.

<sup>106</sup> R. 39.

<sup>107</sup> R. 40.

<sup>108</sup> R. 39.

<sup>109</sup> McQuillin testimony; Trent testimony.

<sup>110</sup> R. 32-35.

<sup>111</sup> R. 34.

Officer McQuillin explained to Lt. Delk that there had been "an evolving process of what we should or should not even put on those things," and further explained that "it's called a canine activity log, so I try to get as much stuff on there as related to the canine as possible."<sup>112</sup>

Officers completed and turned in the logs at the end of each week, so the log that covered July 30 was completed nearly a full week later, well after the AI had been initiated and the officers had completed the required TSA Form 5400.5.<sup>113</sup> Officer McQuillin's July 30 entry in his K-9 activity log reflected that he had conducted K-9 training in an open area and in vehicles.<sup>114</sup> Given the general scope of entries on Officer McQuillin's daily K-9 log, and the lack of policy guidance stating otherwise, there was nothing improper about Officer McQuillin not referencing this incident on his daily log.

#### **G. Administrative investigation (AI)**

As noted above, Chief Davis assigned the investigation to Lt. Gary Delk.<sup>115</sup> This was Lt. Delk's first time conducting an administrative investigation.<sup>116</sup> Between August 14 and September 18, 2014, Lt. Delk interviewed seven witnesses: Captain Hahn, Ms. Spire, Ms. Humphries, Mr. Vasek, Mr. Flaherty, Officer Trent and Officer McQuillin.<sup>117</sup>

Lt. Delk interviewed Officers Trent and McQuillin last, more than six weeks after starting his investigation. In other interviews conducted by Lt. Delk:

- Mr. Vasek told Lt. Delk about other incidents in which training aids had gone missing, explaining "that this happens in these programs sometimes";<sup>118</sup>
- Mr. Vasek told Lt. Delk that he believed the incident occurred due to a miscommunication between the officers;<sup>119</sup>
- Officer Trent, an AAPFD explosives expert, explained to Lt. Delk that the water gel alone could not have exploded, and that, if exposed to very high heat, it would melt rather than explode;<sup>120</sup>
- Laura Spire expressed great distress about the possibility that the training aid could have exploded, but Lt. Delk did not explain to her that, in fact, the training aid lacked an initiator and so could not have exploded;<sup>121</sup>

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<sup>112</sup> R. 208.

<sup>113</sup> See R. 33, 35.

<sup>114</sup> R. 34, 210.

<sup>115</sup> R. 26, 45.

<sup>116</sup> Delk testimony; Davistestimony.

<sup>117</sup> With the exception of Mr. Vasek, the interviews were recorded, and the interview transcripts included in the final investigation report. R. 93-303.

<sup>118</sup> Vasek testimony.

<sup>119</sup> Delk testimony; Vasek testimony.

<sup>120</sup> R. 289; R. 294.

<sup>121</sup> R. 116, 122-123.



- Captain Hahn told Lt. Delk that he remains "completely supportive" of AAPFD K-9 officers continuing to conduct training exercises in various public locations,<sup>122</sup> and did not want this incident to "to suppress the continued working relationship or continued interactions" between the AST and AAPFD.<sup>123</sup>

Lt. Delk did not interview Officer McQuillin until 49 days after the incident. In his interview, Officer McQuillin:

- Explained that the team had mistakenly believed the DOT lot to be "secure" for purposes of conducting a training;<sup>124</sup>
- Explained that he was used to training in pairs along with Officer Kemper, and that, with three officers present for the July 30 training, he had assumed that Officer Kemper - having "the clipboard" and no leashed dog - was responsible for the training aids once Officer McQuillin had finished the exercise and was taking his dog for a break;<sup>125</sup>
- Acknowledged a breakdown in communications amongst the team members during the training exercise,<sup>127</sup>
- Repeatedly stated he did not know how long the training aid was missing, suggesting it might have been "under twenty minutes, like from gone to back," but also saying it could have been twenty minutes from the time he learned the aid was missing, and admitting that he "couldn't tell you an exact time" when the aid went missing or was located;<sup>127</sup>
- Stated he had not realized at the time that the brief, temporary loss of the aid was required to be reported;<sup>128</sup>
- Stated that, knowing what he had since learned, "we should have certainly notified the Field Canine Coordinator",<sup>129</sup>
- Stated his disagreement with the idea that the officer checking out an explosive training aid is ultimately responsible for the aid for the entire day - a policy he disagreed with because of his belief that the team as a whole bears collective responsibility for the aid;<sup>130</sup> and
- Described additional precautionary measures the team was now taking, two months later, to avoid a similar incident from occurring.<sup>131</sup>

When asked at the hearing about Officer McQuillin's level of cooperation with the investigation, Lt. Delk testified that Officer McQuillin "was cooperative in anything I asked."<sup>132</sup>

<sup>122</sup> R. 96.

<sup>123</sup> R. 108.

<sup>124</sup> R. 181; R. 230-231.

<sup>125</sup> R. 182; R. 184-185.

<sup>126</sup> R. 183.

<sup>127</sup> R. 187; R. 190; R. 214.

<sup>128</sup> R. 194 -196.

<sup>129</sup> R. 195.

<sup>130</sup> R. 201.

<sup>131</sup> R. 196; R. 201.

## H. K-9 officers' job status during the administrative investigation

Lt. Delk completed his investigation report on September 20, nearly two months after the incident. In the intervening time, for the remainder of the summer and well into the fall, Officers McQuillin and Trent continued to work in exactly the same capacity as they previously had done.<sup>133</sup>

The K-9 officers continued to train in pairs as well as groups of three or four.<sup>134</sup> They provided K-9 security services for visiting dignitaries, represented AAPFD at a job fair at Chief Davis's request, and otherwise continued to serve in the same capacity as they had before the incident.<sup>135</sup> As described by Officer McQuillin: "Everything was normal until the day I was fired."<sup>136</sup>

Also during this time, Officer McQuillin received his annual performance evaluation. In that evaluation, dated August 21, 2014, AAPFD Deputy Chief David Shulling gave Officer McQuillin an overall rating of "high acceptable," describing him as showing a "strong willingness to assist on shift whenever he can," and being "eager to learn more to better himself."<sup>137</sup>

### I. Investigation report

Lt. Delk completed his report on September 20, 2014 - just two days after his interview with Officer McQuillin.<sup>138</sup> Lt. Delk sustained each complaint he had been asked to investigate, and also reported that his investigation had shown additional violations as well.<sup>139</sup>

Lt. Delk concluded that the training aid was lost because the three officers failed to follow policies, communicate with one another, and "ensur[e] direct responsibility as oversight of the explosive training aids in which they are all responsible for (sic)."<sup>140</sup>

The original violations sustained by Lt. Delk were as follows: violating various AAPFD and TSA safety rules; violating safety rules under circumstances that created a "substantial risk of serious physical injury" to the driver; violating the SOJO by, *inter alia*, not notifying the Chief

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<sup>132</sup> Delk testimony. Lt. Delk later testified that he personally did not believe Officer McQuillin when he said that he hadn't realized reporting was required under these circumstances. But Officer McQuillin's answers on that issue were consistent throughout the investigation, and his testimony was credible.

<sup>133</sup> Trent testimony; McQuillin testimony. Officer Kemper resigned on August 8, 2014, as part of a prior plan to go back to school. Davis testimony.

<sup>134</sup> McQuillin testimony.

<sup>135</sup> McQuillin testimony; Trent testimony.

<sup>136</sup> McQuillin testimony.

<sup>137</sup> Ex. 2-4, p. 1-2. Officer McQuillin was also noted to "generally accept any supervision given him." Ex. 2-4, p. 2. ("He accepts and appreciates any constructive input that supervisors offer him, and utilizes that input to better himself").

<sup>138</sup> R. 303.

<sup>139</sup> R. 316-320.

<sup>140</sup> R. 316.

and the Field Canine Coordinator after discovery of the loss; unbecoming conduct, because other agencies were aware of the loss; and neglect of duty, through the lack of communication that led to the loss.<sup>141</sup>

Additionally, Lt. Delk concluded that Officers Trent and McQuillin had violated policies and procedures prohibiting "falsification of any report" and "making a false statement."<sup>142</sup> This conclusion was based on the ATF forms each officer had submitted, and, specifically, on their responses to questions 7a and 7b, which ask when the loss "occurred," and when it was "discovered." Officers Trent and McQuillin both listed the loss as having been "discovered" at 0910, and as having "occurred" at approximately 0905.<sup>143</sup> Concluding that these responses were intended to convey that only five minutes elapsed between the loss of the training aid and its *return*, Lt. Delk then concluded that these answers were false.<sup>144</sup>

Also under the "false report" section of the AI, Lt. Delk took issue with the lack of any mention of the incident on any of the officers' "Daily K9 report" logs.<sup>145</sup>

Officer McQuillin's log entries for July 30 included: "0630-1200 | K9 training | Vehicles, open area,"<sup>146</sup> Officer Kemper's July 30 log included an entry: "0700-1200 | K9 training | DOT vehicles and Open area."<sup>147</sup> Officer Trent's July 30 log included an entry: "0900-1145 | K9 Training | Vehicles (DOT) and open areas."<sup>148</sup> Lt. Delk concluded that the failure to mention the training aid incident constituted "falsification of reports."<sup>149</sup>

#### **J. Pre-determination meeting**

During the investigation, Lt. Delk did not consult with Chief Davis on substantive matters, and Chief Davis did not advise Lt. Delk.<sup>150</sup> When Lt. Delk finished his report, he provided it to Chief Davis.

Chief Davis did not agree with all of the conclusions in Lt. Delk's report. Most notably, he disagreed with Lt. Delk's conclusion that the officers had falsified the TSA form through their responses to questions 7a and b, and instead agreed with Officer McQuillin that Lt. Delk

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<sup>141</sup> R. 316-320.

<sup>142</sup> R. 318-319.

<sup>143</sup> R. 37, 39.

<sup>144</sup> R. 318-319; Delk testimony.

<sup>145</sup> R. 319.

<sup>146</sup> R. 34.

<sup>147</sup> R. 35.

<sup>148</sup> R. 32.

<sup>149</sup> R. 319.

<sup>150</sup> Davis testimony.

misinterpreted that section of the form.<sup>151</sup> Chief Davis agreed that 7a asks when the loss occurred --that is, when the item actually went missing, and that 7b asks when the loss was discovered - that is, when the officer became aware that the item was missing. He did not see the officers' responses on item 7 as an "intentional attempt to cloud the facts" or to suggest the aid was only gone 5-10 minutes.<sup>152</sup>

Chief Davis had his own concerns about Officer McQuillin's responses on the TSA form, but his concerns were about a different section - item 16. That item directs the officer to describe "other information about the loss." Officer McQuillin provided a narrative of where he was when the aid went missing, what he did to look for it, and when/how he learned it had been located and was returning to the training site.<sup>153</sup> Chief Davis was dissatisfied with Officer McQuillin's narrative because it did not specify how long the aid was missing.<sup>154</sup>

After reviewing Lt. Delk's report, Chief Davis arranged a predetermination meeting with Officer McQuillin. At that November 5, 2014, meeting, Chief Davis identified his three concerns as "why was the missing aid not reported?", "how can we prevent this incident from ever occurring again?", and, "how did we end up losing the training aid?"<sup>155</sup>

In terms of the loss itself, Officer McQuillin noted that the team was "working off of misinformation, assuming we had a secure lot of vehicles" when in fact the back row was now occupied by pool vehicles.<sup>156</sup> He noted that they had followed the same protocols that had been followed by the TSA trainers at their annual evaluations in May 2014.<sup>157</sup>

In terms of reporting, Officer McQuillin explained that the failure to report the aid was the result of "the totality of the circumstances at the time." Having never been in a similar situation, as the junior-most member of the team, being unfamiliar with "what the exact protocol was," and because the aid "had been returned so soon," he did not realize at the time that reporting was required.<sup>158</sup> Because the aid was only gone briefly, he explained, "I was under the impression that we had resolved the issue and that it was a non-issue at the time."<sup>159</sup> Officer McQuillin also expressed his present understanding, after the fact, that notification should have been made.<sup>160</sup>

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<sup>151</sup> Davis testimony.

<sup>152</sup> Davis testimony.

<sup>153</sup> R. 39.

<sup>154</sup> Davis testimony.

<sup>155</sup> Ex. 2-8, p. 1.

<sup>156</sup> Ex. 2-8, p. 3.

<sup>157</sup> Ex. 2-8, p. 3.

<sup>158</sup> Ex. 2-8, p. 1.

<sup>159</sup> Ex. 2-8, p. 4.

<sup>160</sup> Ex. 2-8, pp. 1-2.

Noting that "hindsight is 20-20," Officer McQuillin stated unequivocally that "I clearly believe we should have done that."<sup>161</sup>

Chief Davis also queried why Officer McQuillin did not later mention the incident in his weekly K-9 activity log. Officer McQuillin explained that (1) this was not the kind of information that typically goes in that log, and (2) by the time weekly logs were submitted, the team had already completed the official reporting form, the ATP 5400.5.<sup>162</sup>

Officer McQuillin denied that the officers engaged in any sort of conversation about not reporting the incident.<sup>163</sup> He again explained that he had followed the lead of the more senior officer, and had not realized, given "that the aid had not been gone that long," that a report would have been required under these circumstances.<sup>164</sup> He also again, "fully acknowledge[d]" that "it was a foolish decision at that time to not have made notification."<sup>165</sup>

During the predetermination meeting, Chief Davis indicated that he disagreed with the AI's conclusion about the "five-minute window" issue.<sup>166</sup> However, he still expressed concerns about whether Officer McQuillin had understated the time the aid was missing.<sup>167</sup> Officer McQuillin reiterated that his estimate of twenty minutes was an approximation.<sup>168</sup>

#### **K. Termination and decertification recommendation**

On November 21, 2014, Chief Davis terminated Officer McQuillin for "blatant insubordination."<sup>169</sup> The termination letter asserted that Officer McQuillin had:

- Participated in placing training aids on vehicles without obtaining keys, while being aware that officers were supposed to obtain vehicle keys before placing a training aid;
- Negligently allowing the vehicle to leave the lot "with more than a pound of explosives placed on the engine";
- Failed to notify Chief Davis when the training aid was lost despite being "aware" of the requirement to do so;
- "Engaged in a conversation with the other Officers involved in the incident and decided not to report it despite [his] knowledge of [his] responsibility to do so"; and

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<sup>161</sup> Ex. 2-8, p. 5.

<sup>162</sup> Ex. 2-8, p. 4.

<sup>163</sup> Ex. 2-8, pp. 5-6.

<sup>164</sup> Ex. 2-8, p. 6.

<sup>165</sup> Ex. 2-8, p. 6.

<sup>166</sup> Ex. 2-8, p. 12.

<sup>167</sup> Ex. 2-8, pp. 13-15.

<sup>168</sup> Ex. 2-8, pp. 13-15.

<sup>169</sup> R. 232.

- Stated during the AI that the training aid "was out of [the team's] control for 'probably less than 20 minutes,'" when the aid was actually "out of [the team's] control for significantly longer than twenty minutes."<sup>170</sup>

The same day that he terminated Officer McQuillin, Chief Davis prepared an F-4 Personnel Action Form to the APSC, recommending the Council decertify Officer McQuillin.<sup>171</sup> The F-4 form alleged that Officer McQuillin:

- "Was responsible for the loss of an explosives training aid";
- Knew he was "required to immediately report the loss of the explosive aid," but failed to do so;
- "Colluded with other officers to keep the knowledge of the loss of the aid from the department leadership and the TSA";
- "Minimized the severity of the action" on the ATF form; and
- "Was less than cooperative" during the investigation, including "minimiz[ing] the time that the aid went missing."<sup>172</sup>

Although Chief Davis knew Lt. Delk had misunderstood the time entry questions on the ATF form, and that the AI's damning conclusions about those questions were therefore erroneous, Chief Davis provided the AI report to the Council without any clarification. Chief Davis testified that it "never occurred to him" to clarify to the Council that Officer McQuillin had not, in his view, lied on the form about the amount of time the training aid was missing.

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<sup>170</sup> R. 322-323.

<sup>171</sup> R. 9-10.

<sup>172</sup> R. 10

**L. Procedural history of revocation action**

The Executive Director filed an Accusation against Officer McQuillin in July 2015, seeking revocation of Officer McQuillin's police officer certification based on his having been discharged for cause. Officer McQuillin filed a timely notice of defense.

Because the claims against him were based on the same incident that was the subject of an employment grievance, Officer McQuillin requested, and the Executive Director did not oppose, a continuance of the hearing in this matter until the arbitration was resolved. In the meantime, a separate action was filed involving Officer Kemper's certification. The two matters were ordered partially consolidated for hearing, so that a single evidentiary hearing could be held on the facts common to both cases.

After the arbitrator's ruling, Officer McQuillin filed a motion to dismiss, arguing that a revocation based on his discharge from AAPFD would be improper in light of the arbitrator rescinding that discharge. After an Interim Order indicated that the motion to dismiss would be granted unless the Accusation were amended to state some grounds beyond the discharge, the Executive Director filed an Amended Accusation in April 2016. In addition to still seeking revocation based on the "discharge for cause," the Amended Accusation seeks revocation based on an alleged lack of good moral character.

An evidentiary hearing was held over the course of five days in June and July 2016. Testimony was taken from AAPFD Chief Jesse Davis, AAPFD Lt. Gary Delk, AST Capt. Randall Halm, TSA's Field Canine Coordinator David Vasek, Officer McQuillin, former Officer Trent, DPS employee Laura Spire, DOT shop foreman Brian Flaherty, Dr. Frederic Whitehurst, retired AAPFD Chief Laura Burkmire, retired AAPFD officers Martin Spire and Jack McFarland, and current AAPFD officers Jim Lewis, Brandon Lewis, Douglas Holler, Brent Lowen, Daniel Nowak, and Zachary Stone. All exhibits of both parties were admitted by stipulation. Following the submission of post-hearing briefing, the matter was taken under advisement.

**N. Credibility of witnesses**

Officer McQuillin was a particularly thoughtful and credible witness. His manner was direct and forthright, and he sought to carefully distinguish the views he held at the time of the incident from the views he now holds – for example, as to whether it was necessary to report the loss of the training aid. He testified credibly that he accepts responsibility for the poor communication amongst the team members, and for the team not notifying anyone about the

missing aid, but also was credible in explaining that, at the time the incident occurred, he genuinely did not understand the policy to require notification under these circumstances.

Chief Davis was a less credible witness than Officer McQuillin. In his testimony, Chief Davis attempted to minimize statements he had made to the media in April 2014 about the lack of danger posed by misplaced training aids, and to disavow the letter he had signed and sent to the Council the month before the hearing, while simultaneously discussing the importance of trustworthiness. These two separate instances of Chief Davis backtracking from his official statements related to the canine program generally, and to Officer McQuillin specifically, make his testimony in this matter less trustworthy, and so, less credible.<sup>173</sup>

Lt. Delk was also a less credible witness than Officer McQuillin. In both his written report and his testimony, Lt. Delk tended to minimize or exclude potentially exculpatory information, while exaggerating or taking out of context potentially negative information. Examples of this in his written report include Lt. Delk's reliance on the outermost possible time estimates to identify a timeline of events; ignoring Officer McQuillin's statement that the "20 minute" estimate was about 20 minutes from when he learned the aid was missing; failing to include unrefuted statements about water gel not being dangerous; relying on a nonsensical interpretation of the ATF form to conclude that dishonesty was afoot; and otherwise demonstrating a less than impartial approach to the investigation. Within his testimony, the most obvious example of questionable judgment and/or non-credible testimony was Lt. Delk's refusal even now to consider the possibility (endorsed by literally every other witness) that he was misunderstanding the ATF form. More broadly, Lt. Delk often offered questionable characterizations of information obtained in his investigation.<sup>174</sup> The overall impression left is that Lt. Delk is willing to cherry pick facts or information to support a preferred outcome.

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<sup>173</sup> Additionally, Chief Davis testified that David Vasek told him that other employees had or would be fired under similar circumstances. This is the opposite of what Mr. Vasek testified to, and Mr. Vasek's testimony on this point was more credible.

<sup>174</sup> For example, Lt. Delk described Officer Trent as having initially provided time estimates for when the aid went missing and for how, "but then [saying] he doesn't know what time because he doesn't wear a watch." Lt. Delk went on to criticize Officer Trent for "not wearing a watch," in light of the need for police officers to accurately document the time while carrying out various duties. But Officer Trent's actual statement in his interview with Lt. Delk was that he removes his watch *when running his canine through a training exercise*, an explanation entirely lost in Lt. Delk's retelling. Another example is that, in describing his contacts with Dave Vasek, Lt. Delk remarked that Mr. Vasek trained and supervised K-9 officers but was not himself a K-9 handler, and testified with certainty that Mr. Vasek told him he was "not qualified to be a K-9 handler," even though he would have liked to be one. But Mr. Vasek testified he has worked both as a K-9 trainer and a K-9 handler, and described in some detail his experience handling and training K-9s. 6/30/16 hearing testimony at 2:05:04 ("was a canine handler, trainer, and instructor" in the military); 2:05:40 ("I've had responsibility in training and working with hundreds of detector dogs"). As a final example, Lt. Delk repeatedly sought to offer opinion testimony about car engine temperatures to support his



Brian Flaherty gave obviously incorrect testimony about the events of July 30, 2014. He testified with complete confidence that a fourth officer, Officer Schmidt, was present; that Officer Trent was a "bomb guy," not a canine officer; that only two canine officers and two canines were present; and to other related "recollections" that are inconsistent with the undisputed evidence. Mr. Flaherty's recollection of the events is clearly flawed, and his testimony was given considerably less weight as a result.

**O. "Ultimate issue" factual findings**

1. *Cause of the loss.* The training aid was lost because of a lack of clear communication among the three officers, and between the officers and DOT personnel. All three officers should have discussed their respective roles at the start of the exercise, and Officer McQuillin should have communicated clearly and directly to his fellow officers that he was removing himself and Hunter from the training scenario. His failure to do so was negligent, although more understandable in light of the officers' mistaken but not unreasonable belief that the lot was secure. The officers also should have obtained the keys to each vehicle being used in the exercise, although their failure to do so was again understandable in light of their belief that the lot was secure and their belief that all keys were in the custody of a single responsible attendant with whom they had directly communicated.

2. *No threat to public safety.* The presence of the water gel on the vehicle being driven by Ms. Spire did not pose a threat to public safety generally or to her safety in particular, and Lt. Delk's conclusion to the contrary was inaccurate.<sup>175</sup> Likewise, the Amended Accusation's characterization of the water gel as "a live explosive training aid" was incorrect.<sup>176</sup> Water gel is a secondary explosive, and could not have exploded without a blasting cap. Dr. Whitehurst, a retired FBI materials analyst and doctorate-level analytical chemist, testified that water gel is a "secondary explosive" requiring a great deal of sudden energy in order to detonate, and that a car accident would not produce enough shock for this to occur. Indeed, even shooting it with a gun would not make it explode. "In order for them to be dangerous we have to initiate them in some way."<sup>177</sup> In the absence of an initiator, the presence of water gel does not present a danger, let

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conclusions about the supposed dangerousness of having Ms. Spire drive the Explorer with water gel on top of the engine compartment. Lt. Delk's testimony about this topic was well out of step with other witnesses who testified.

<sup>175</sup> It is unfortunate that Lt. Delk did nothing to clarify to Ms. Spire that the explosive gel was not, in fact, dangerous under these circumstances. The failure to convey this information caused Ms. Spire unnecessary distress, which remained visible at the hearing.

<sup>176</sup> Amended Accusation, para. 3.

<sup>177</sup> Whitehurst testimony.

alone the "immediate threat" alleged here.<sup>178</sup> In short, in addition to conflicting with his own prior statements about the training aid that went missing in April 2014, Chief Davis's conclusions about the inherent dangerousness of the training aid were not borne out by the testimony of those with actual technical training in explosives.<sup>179</sup>

3. *Timing.* The allegation in the Amended Accusation that "the training aid was missing for approximately 70 to 75 minutes" is incorrect.<sup>180</sup> Captain Hahn's investigation on the day of the incident is the most reliable source of information about how long the vehicle was gone from the lot. Based on Captain Hahn's summary, as reported to Chief Davis on July 30, 2014, the training aid was gone for less than 50 minutes.<sup>181</sup> But Officer McQuillin was not present when the aid went missing, when it was discovered, or when it was returned, and a senior officer who was present during all of those events estimated the time as about twenty minutes. Officer McQuillin told Lt. Delk and Chief Davis that the aid was gone for approximately twenty minutes, but also told them repeatedly that this was an estimate. While Officer McQuillin likely should have realized that this estimate understated the total time of the loss, the Executive Director did not establish that Officer McQuillin's acceptance of the twenty-minute time frame was intended to deceive. In short, Officer McQuillin's estimate of twenty minutes understated the time that the training aid was missing, but not nearly to the extent alleged by the AI, and not so unreasonably as to implicate his moral character.

4. *Awareness of requirement to report temporary loss and recovery of training aid.* It is more likely true than not true that, at the time the training aid was briefly lost and recovered, Officer McQuillin was unaware that the temporary loss and recovery was required to be reported. While Officer McQuillin probably should have realized that notification was required, his confusion on this subject was understandable given the lack of a clear AAPFD policy on temporary losses; the lack of any training on this specific type of occurrence; the significant history, described by multiple witnesses, of other situations in which aids have briefly been misplaced during training exercises without reporting; and the actions of his more senior officers, particularly Officer Trent.

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<sup>178</sup> Dr. Whitehurst noted that explosive aids are routinely transported by law enforcement agencies across highways and through the mail.

<sup>179</sup> See Ex. 2-3.

<sup>180</sup> See Amended Accusation, para. 3.

<sup>181</sup> See R. 156.

Given the totality of the circumstances, the Executive Director did not prove that Officer McQuillin actually knew that a report was required under these circumstances.

5. *No collusion.* The P-4 form submitted by Chief Davis alleged that Officer McQuillin colluded with other officers to not report the loss of the training aid. Officers McQuillin and Trent credibly testified that there was no such discussion. Their testimony is logically supported by the short duration the aid was gone, the testimony regarding similar prior incidents in which no report was made, and the total absence of discipline following the April incident – all circumstances that undermine the idea that the officers would have any reason to collude. As the arbitrator noted, "[i]t would have made very little sense to collude," given this history.<sup>182</sup> The officers generally, and Officer McQuillin specifically, did not engage in collusion as to whether to report the temporary loss of the training aid.

6. *No falsification.* The officers generally, and Officer McQuillin specifically, did not falsify or otherwise improperly fill out the ATP form. Lt. Delk was incorrect in concluding that the responses at box 7 of the ATP form indicated that the aid was only gone for five minutes. As the form requests, the responses properly reflected estimates of when the loss occurred and when the loss was discovered. Officer McQuillin's response to the ATP form's question 16 ("other information about the loss") provided an appropriate factual summary in response to the question asked.

7. *Taking responsibility.* Chief Davis's conclusion that the officers "minimized" the incident was based on a view that no one ever "accepted responsibility" for the incident.<sup>183</sup> Chief Davis took issue with Officer McQuillin stating, during the AI interview, that he had not felt responsible for the training aid at the time of the incident. After a careful review of the evidence, Officer McQuillin's statements are far more reasonably construed as (1) explaining his mindset at the time of the event vis-a-vis why he took the actions he took, and (2) then also expressing his subsequent, post-event view that, in fact, the whole team was responsible. Officer

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<sup>182</sup> Ex. 2-1, p. 22.

<sup>183</sup> Davis testimony.

McQuillin's statements during the AI and the predetermination meeting about the actions he took on July 30 were an attempt to explain what had led him to take those actions. But Officer McQuillin also repeatedly indicated that, in hindsight, he had been wrong, that everyone was responsible for the training aid, that he should have communicated with his teammates, and that he understands that the team should have reported the incident.

8. *Cooperation during the investigation.* The F4 form submitted by Chief Davis alleged that Officer McQuillin had failed to fully cooperate in the AAPFD's investigation. According to Chief Davis, the sole basis for that conclusion is that Officer McQuillin had, during the predetermination meeting (not the investigation) made a statement that he was "not going to say anything more" about the issue of how long the aid was gone.<sup>184</sup> A full and careful review of the evidence – Officer McQuillin's written statement on the ATP form, his recorded interview with Lt. Delk, and his responses to the questions in the predetermination meeting – demonstrates that Officer McQuillin's response was not a refusal to cooperate, but rather was a reasonable statement that he had already fully explained the nature of his time estimate – specifically, that "it's an approximation" – and that further questioning was not going to change his answers.<sup>185</sup> The allegation that Officer McQuillin failed to cooperate during the investigation is not supported by the evidence in the record.

### III. Discussion

For the reasons discussed below, the Executive Director did not meet his burden of showing that Officer McQuillin's police officer certification should be revoked.

#### A. **The Executive Director did not show that Officer McQuillin lacks good moral character. (Count II)**

Count II of the Amended Accusation asserts that discretionary revocation is appropriate under 13 AAC 85.110(a)(3) because Officer McQuillin "lacks good moral character." The Council has discretion –but is not required – to revoke an officer's certification if the officer does not meet the basic standards set out in 13 AAC 85.010, which include the requirement that the officer possess "good moral character."<sup>186</sup>

Good moral character is defined 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

<sup>184</sup> Davis testimony; Ex. 2-8, p. 15.

<sup>185</sup> See Ex. 2-8, pp. 13-15 (Responding to Lt. Delk's time estimate "would only be speculation"; difference between various time estimates by different individuals "is why they call it an approximation"; agreeing that "[y]es, it is an approximation and I'm not going to say anything more than that").

<sup>186</sup> 13 AAC 85.110(a)(3).

for the rights of others and for the laws of the state and the United States."<sup>187</sup> For purposes of making this evaluation, the Council may consider "all aspects of a person's character."<sup>188</sup>

Prior decisions by the Council have considered the elements identified in the regulation – honesty, fairness, respect for the rights of others, and respect for the law – collectively.<sup>189</sup> Because the regulation considers "all aspects of a person's character," the Council's task is to reach a reasoned decision based on the totality of the evidence. Here, the Executive Director did not prove a substantial doubt about Officer McQuillin's honesty, fairness, respect for the rights of others or respect for the law, nor does the totality of the evidence support a finding that he lacks good moral character.

The accusation's threshold allegation implicating moral character - that Officer McQuillin falsified a report - is incorrect. Even Chief Davis disavowed the conclusion in the AI report that the Executive Director later relied on to make this claim.<sup>190</sup>

With regard to Officer McQuillin's adoption of the twenty-minute estimate for the time that the aid was missing, the estimate fit roughly with what he knew - when he learned of the incident and when it was concluded – and his statements make clear that twenty minutes was only a guess. While he could have shown better judgment by not speculating if he lacked personal knowledge, the surrounding circumstances do not support a finding that he was intending to deceive anyone by adopting what turned out to be an inaccurate estimate. To the extent Officer McQuillin's adoption of the twenty-minute estimate was an error in judgment, it was not one that raises doubt about his honesty.

Nor does the remaining evidence support the Executive Director's allegation regarding a lack of good moral character. To the extent that the temporary loss of the training aid was required to be reported, Officer McQuillin's failure to report the temporary loss was more likely than not due to a good faith misunderstanding about that requirement under this set of circumstances. Further, while Chief Davis also faulted what he perceives to be Officer McQuillin's failure to "take responsibility" for the events that unfolded, the transcript of Officer McQuillin's investigatory interview shows that he believed the incident occurred because of a

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<sup>187</sup> 13 AAC 85.900(7).

<sup>188</sup> 13 AAC 85.900(7).

<sup>189</sup> See *In re*: ██████████; OAH No. 13-0473-POC, at p. 18 (Alaska Police Standards Council 2013); *In re*: Hazelaar, OAH No. 13-0085-POC, at pp. 15-16 (Alaska Police Standards Council 2014).

<sup>190</sup> Compare Amended Accusation, Para. 4, with Davis testimony.

lack of communication and a lack of understanding, and also that he believes the team is equally responsible for the events.

Chief Davis's conclusion that Officer McQuillin was not forthcoming was based on his statement, during the predetermination meeting, that he had "nothing more to say" about what had happened. A full review of the evidence – Officer McQuillin's written statement on the ATF form, his recorded interview with Lt. Delk, and his responses to the questions in the predetermination meeting – demonstrates that Officer McQuillin's response was not a refusal to cooperate, but was rather a reasonable statement that he had very fully explained his conduct, reasoning and views on the topic at issue, and that further questioning was not going to change his answers.

Both Officer McQuillin's underlying conduct, and the overall evidence of his good moral character, stand in sharp contrast to other cases in which the Council has revoked a certification on the basis of moral character. Such cases have found overall poor moral character amidst conduct such as sexual contact with a crime victim, sexual harassment of fellow officers, accessing corrections resources for family members' benefit, and dishonesty in official reports.<sup>191</sup>

Here, neither Officer McQuillin's conduct during the events of July 30, nor his conduct during the investigation of those events, create substantial doubts about his honesty, fairness, and respect for the rights of others and/or for the law. Further, Officer McQuillin presented considerable testimonial and documentary evidence in favor of his good moral character. Numerous former colleagues and supervisors testified in support of Officer McQuillin, drawing specifically on their experiences working with him as an AAPFD officer, and describing their observations of his positive work ethic, professionalism, calm demeanor, integrity, honesty, and hard work.<sup>192</sup> The totality of the evidence presented does not support a finding that Officer McQuillin lacks good moral character.

For the reasons stated above, the Executive Director did not meet his burden of proving that Officer McQuillin lacks good moral character as defined in the Council's regulations.

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<sup>191</sup> *In re: [REDACTED]*; OAH Case No. 13-0473-POC (APSC 2013); *In re: Much*, OAH Case No. 13-0288-POC (APSC 2013); *In re: Parcell*, APSC Case No. 2007-09 (APSC 2012); *In re: Bowen*, OAH Case No. 10-0327-POC (APSC April 2011).

<sup>192</sup> See, e.g., Burkmire testimony; Spire testimony; J. Lewis testimony; B. Lewis testimony; McFarland testimony; Lowen testimony; Stone testimony.

**B. The Executive Director did not show that revocation is authorized or appropriate under counts involving "discharge for cause." (Counts I and III)**

Counts I and III of the Amended Accusation concern the employment action taken against Officer McQuillin. Count I asserts that discretionary revocation is appropriate under 13 AAC 110(a)(2) because Officer McQuillin was "discharged for cause . . . for conduct that adversely affects his ability and fitness to perform the duties of a police officer and/or was detrimental to the reputation, integrity, or discipline" of AAPFD. Count III asserts that mandatory revocation is required under 13 AAC 85.110(b)(3) because Officer McQuillin was "discharged for cause for conduct" that is detrimental to the integrity of AAPFD, or for conduct that "would cause a reasonable person to have substantial doubt about [his] honesty, fairness, respect for the rights of others, or for the laws of this state or the United States." Because these allegations all necessarily arise out of the employment action taken by AAPFD, they are addressed collectively, below.

1. *Officer McQuillin was discharged for cause for purposes of decertification. (Counts I & III)*

It is beyond dispute that Officer McQuillin was discharged by AAPFD. For reasons articulated in a subsequent personnel action, an arbitrator determined that his termination was improper. Even though his termination was successfully challenged, such a personnel action does not preclude the Council from seeking revocation.

13 AAC 85.110(f) states:

A personnel action or subsequent personnel action regarding a police officer by the police officer's employer, including a decision resulting from an appeal of the employer's action, does not preclude the council from revoking the police officer's basic, intermediate, or advanced certificate under this section.

The Council re-affirms its analysis in *In re Bowen*, OAH 10-0327-POC, that is – "[A] arbitrator has the authority under a collective bargaining agreement to bind [a law enforcement agency] to the arbitrator's decision, but lack any authority to limit the council's disciplinary actions based on information in the council's records."

2. *The Executive Director did not prove that the underlying conduct adversely affected Officer McQuillin's ability and fitness to perform the duties of a police officer. (Count I)*

Even if Officer McQuillin was "discharged", the Executive Director did not meet his burden of proving that the underlying conduct adversely affected Officer McQuillin's "ability and fitness" to perform the duties of a police officer.<sup>193</sup>

<sup>193</sup> 13 AAC 85.110(a)(2) (authorizing discretionary discharge if Council finds the certificate holder "has been discharged . . . some other reason that adversely affects the ability and fitness of the police officer to perform job duties . . .").

- a. Officer McQuillin's ability and fitness to perform his duties were not impacted by this incident.

The evidence did not establish an adverse effect on Officer McQuillin's ability and fitness to perform his duties. Officer McQuillin's conduct was negligent, but not of the quality or character to implicate his ability or fitness as an officer. After the July 30, 2014 incident, Officer McQuillin continued to work in active duty as a K-9 officer for nearly four full months - including participating in almost daily trainings, representing the APFD at a college job fair, participating in security services for visiting dignitaries, and receiving a "high acceptable" evaluation.

TSA did not discipline any of the K-9 officers for the July 2014 incident.<sup>194</sup> The APFD Deputy Chief opposed Officer McQuillin's termination, as did TSA's Field Canine Coordinator David Vasek, speaking to their continued confidence in Officer McQuillin's abilities and fitness to perform his duties.<sup>195</sup> Mr. Vasek - the Field Canine Coordinator responsible for oversight of the canine program and ensuring that officers are properly trained, following TSA protocols, and meeting TSA expectations - testified that he would work with Officer McQuillin again.<sup>196</sup> Numerous character references likewise described their continued confidence in his integrity and work ethic.<sup>197</sup>

The evidence thus does not support the Executive Director's position that the events giving rise to Officer McQuillin's discharge adversely affected his ability and fitness to perform his duties. Thus, the evidence does not support a finding that Officer McQuillin engaged in conduct that adversely affects his ability and fitness to perform his duties.

3. *The Executive Director did not prove that Officer McQuillin's underlying conduct was "detrimental to the reputation, integrity or fitness" of the Anchorage Airport Police & Fire Department. (Counts I and III)*

The Executive Director likewise did not meet his burden of proving, that the underlying conduct was "detrimental to the reputation, integrity, or discipline" of the AAPFD.<sup>198</sup>

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<sup>194</sup> Vasek testimony.

<sup>195</sup> Davis testimony; Vasek testimony.

<sup>196</sup> Vasek testimony.

<sup>197</sup> Spinde testimony; Lowen testimony; Stone testimony; Holler testimony; J. Lewis testimony; B. Lewis testimony.



a. Loss of the training aid

To the extent the Executive Director contends that the loss of the training aid satisfies this criterion, this argument fails. While the loss of the training aid was unfortunate and should not have occurred, it is a fact of training detection canines that, periodically, training aids are misplaced or lost - indeed, the aids themselves contain a sticker telling the public whom to call if an aid is found.<sup>199</sup>

The April 2014 incident at the Avis rental lot -- a much more serious incident in terms of both the length of time that elapsed before the officers first located the missing aid and the length of time the aid was out of the officers' actual control - did not lead to any discipline for any of the officers. Nor was that incident apparently "detrimental" to the agency's reputation, despite considerable publicity at the time it occurred.

The evidence presented did not support a finding that the temporary loss and quick recovery of a training aid is "detrimental to the reputation" of an agency. A finding of detriment is not supported by the record, particularly given the lack of any outside knowledge of the incident beyond the Troopers, and AST's Captain Hahn's expression of continued support for the AAPFD K-9 program.<sup>200</sup>

Officer McQuillin's August 2014 performance evaluation is further evidence that the July training aid incident was not viewed as "detrimental" to the AAPFD. That evaluation, completed weeks after the July incident, rated Officer McQuillin's performance as "high acceptable," recommended his "continued employment and applicable step increase," and otherwise praised Officer McQuillin as a member of the AAPFD.<sup>201</sup> The content of the evaluation undermines the suggestion that the training aid incident was "detrimental" to the integrity, fitness or reputation of the AAPFD.

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<sup>198</sup> See 13 AAC 85.110(a)(2) (permitting discretionary revocation on this ground); 13 AAC 85.110(b)(3) (requiring revocation on same ground).

<sup>199</sup> Vasek testimony; Spinde testimony; Trent testimony.

<sup>200</sup> R. 108 ("I wanted to affirm for him . . . that we are completely 100 percent supportive of future training that involves our vehicles, future training that involves our facilities. We can help with that and to help facilitate that. I don't want this in any way to suppress the continued working relationship or continued interactions specifically with the canine program because I can't stress strongly enough how sensitive I am to the need for those different training environments. I'm very, very well aware of that, and I don't want that to hurt any of that").

<sup>201</sup> Ex. 2-4, pp. 1-2.

b. AI report's overturned findings of dishonesty

Nor did the Executive Director prove that Officer McQuillin's alleged conduct underlying his overturned termination -that is, the *overturned* allegations of dishonesty or collusion -was "detrimental to the integrity or fitness" of the AAPFD. Such a finding could not be sustained given the arbitrator's rejection of the AI and the termination, including the specific rejection of the findings of dishonesty and collusion.

Because the agency's justifications for the discharge were found to be unsustainable and the discharge was therefore overturned, those same discredited justifications cannot be used to support decertification based on "discharge for" the same alleged conduct. Accordingly, decertification under (b)(2) or (a)(3) would be improper.<sup>202</sup>

4. *The Executive Director did not prove that Officer McQuillin's conduct would "cause a reasonable person to have substantial doubt about [his] honesty, fairness, respect for the rights of others, or for the laws of this state or the United States." (Count III)*

Count III of the Amended Accusation also asserts that mandatory revocation is required under 13 AAC 85.110(b)(3) because Officer McQuillin was "discharged for cause for" conduct that "would cause a reasonable person to have substantial doubt about [his] honesty, fairness, respect for the rights of others, or for the laws of this state or the United States."

Even though Officer McQuillin was discharged (for purposes of revocation), revocation is not appropriate under these facts because, as also discussed above, Officer McQuillin's conduct in the underlying events would not "cause a reasonable person to have substantial doubt about [his] honesty, fairness, respect for the rights of others, or for the laws of this state or the United States." Officer McQuillin made a negligent mistake, but not one that should cost him his job or his certification. And he was honest, forthright, and cooperative in the administrative investigation.

Neither during the events in question nor during the investigation that followed did Officer McQuillin engage in the type of conduct that would warrant revocation under 13 AAC

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<sup>202</sup> In addition to the arbitrator rejecting the dishonesty and collusion allegations in the evaluation of the employment case, this decision has likewise found those allegations to be factually unsupported.

85.110(b)(3). For this reason, too, the Executive Director did not meet his burden of showing that revocation is appropriate under Count III of the Amended Accusation.

**IV. Conclusion**

The Executive Director did not meet his burden of showing either that revocation is mandatory, or that it would be appropriate, under these facts. The Executive Director's request for revocation of Officer McQuillin's Police Officer Certification is therefore denied.

Dated this 19 day of December, 2016 at Anchorage, Alaska



Bryce Johnson  
Chair  
Alaska Police Standards Council

Bryce Johnson, Chair of the Alaska Police Standards Council, issues this final decision, pursuant to Alaska Statute 44.62.500. Judicial review of this decision may be obtained by filing an appeal with the Alaska Superior Court in accordance with Alaska Statutes 44.62.560 and Alaska Appellate Rule 602(a)(2) within 30 days of the date of the decision.

The undersigned certifies that this is a true and correct copy of the original and that on this date an exact copy of the foregoing was provided to the following individuals:

M. MATTHEWS · MAIL · EMAIL

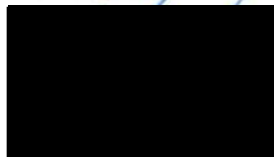
J. NOVAK · EMAIL

R. GRIFFITHS · EMAIL

Signature

Date

12.15.2016



**BEFORE THE ALASKA OFFICE OF ADMINISTRATIVE HEARINGS ON REFERRAL  
FROM THE ALASKA POLICE STANDARDS COUNCIL**

In the Matter of	)	
	)	
WESLEY MCQUILLIN	)	OAH No. 15-1086-POC
_____	)	Agency No. APSC 2014-30

***[Rejected Proposed]* DECISION**

**I. Introduction**

In July 2014, Respondent Wesley McQuillin was one of three Anchorage Airport Police and Fire Department K-9 officers who, during a training exercise, briefly lost track of, then recovered, an explosives training aid. Officer McQuillin was terminated following an investigation of this incident. At AAPFD’s recommendation, the Executive Director of the Alaska Police Standards Council filed an accusation seeking to revoke Officer McQuillin’s Alaska Police Officer Certification. While Officer McQuillin’s challenge to that action was pending, an arbitrator overturned his discharge, ordering him reinstated. Although AAPFD then rescinded its recommendation to decertify Officer McQuillin, the Executive Director continued to pursue the accusation against him.

After a full hearing and based on a careful review of the evidence, the Executive Director did not meet his burden of showing that revocation is mandatory, nor that it would be appropriate under the circumstances of this case. Indeed, the evidence showed that basic allegations in the Amended Accusation against Officer McQuillin were simply wrong, having been based on incomplete and inaccurate information provided by AAPFD. The Executive Director’s requested revocation of Officer McQuillin’s certificate is therefore denied.

**II. Factual and Procedural History**

**A. AAPFD K-9 unit overview**

The Anchorage Airport Police and Fire Department is the law enforcement organization responsible for safety and security at Ted Stevens Anchorage International Airport. Organizationally, AAPFD is part of the Department of Transportation and Public Facilities (“DOT”). Its officers are jointly trained and certified as police officers and fire fighters.

During the time at issue in this case AAPFD included a four-officer canine unit run in cooperation with the Transportation Security Administration (TSA). The AAPFD K-9 officers received specialized training through TSA, used TSA-owned dogs, and were required to be

recertified annually by TSA.<sup>1</sup> The agencies' relationship was formalized through a Statement of Joint Objectives, referred to as "the SOJO."<sup>2</sup>

TSA Field Canine Coordinator David Vasek oversaw the K-9 training activities and the AAPFD K-9 program's compliance with TSA policy and objectives.<sup>3</sup> During the time at issue in this case, and as of the time of the hearing, AAPFD was overseen by Chief Jesse Davis.<sup>4</sup> Chief Davis was not a proponent of AAPFD having a separate K-9 unit, and the K-9 program was formally discontinued shortly after the termination of Officers Trent and McQuillin.<sup>5</sup>

## **B. McQuillin professional experience**

Officer McQuillin joined AAPFD in 2007 as an Airport Police & Fire Officer ("APFO"). In the years that followed, he was promoted from APFO I to APFO II, and eventually became a Field Training Officer.<sup>6</sup> In 2013, Officer McQuillin applied for and was offered a canine handler position.

During his time at AAPFD – including *after* the incident that was the focus of the hearing in this case – Officer McQuillin consistently received performance evaluations in the "high acceptable" range.<sup>7</sup> His last three evaluations described Officer McQuillin as "a high energy performer [who] will regularly go out of his way to assist on shift";<sup>8</sup> "a dedicated officer who has demonstrated a good, positive attitude";<sup>9</sup> and "a dedicated, optimistic employee who has a good attitude towards the job and works to provide a positive relationship with co-workers, supervisors and the public."<sup>10</sup> An evaluation issued one month after the incident in this case gave him an overall rating of "high acceptable" and recommended "continued employment and applicable step increase."<sup>11</sup> The August 2014 evaluation noted Officer McQuillin's "strong willingness to assist

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<sup>1</sup> Vasek testimony.

<sup>2</sup> Vasek testimony; McQuillin testimony; Trent testimony. Apparently because the SOJO is considered a confidential federal security document, it is not included in the agency record in this case, and the Executive Director did not submit it as an exhibit, under seal or otherwise.

<sup>3</sup> Vasek testimony.

<sup>4</sup> Chief Davis joined AAPFD in 2008, and became Chief in 2011.

<sup>5</sup> Trent testimony; Vasek testimony; Ex. 2-1, p. 9.

<sup>6</sup> Ex. 2-4.

<sup>7</sup> Ex. 2-4, pp. 1-2 (2014 evaluation), 3-5 (2013 evaluation), 6-9 (2012 evaluation), 9-12 (2011 evaluation), 13-15 (2010 evaluation); 16-17 (2009 evaluation); Burkmire testimony.

<sup>8</sup> Ex. 2-4, p. 2 (Deputy Chief Shulling, 2014).

<sup>9</sup> Ex. 2-4, p. 3 (Gary Delk, 2013); see also Ex. 2-4, p. 4 (Officer McQuillin "can be counted for completion of his duties or assignments with good judgment").

<sup>10</sup> Ex. 2-4, p. 7 (Gary Delk, 2012).

<sup>11</sup> Ex. 2-4, p. 1.

on shift whenever he can,” and described him as “eager to learn more to better himself, his team and the department.”<sup>12</sup>

Officer McQuillin was similarly highly regarded by fellow officers, who, when asked to provide letters of support after the events described here, described him as “enthusiastic and helpful,” “especially competent and trustworthy,” and “dedicated”;<sup>13</sup> “very professional” and “always available and willing to help”;<sup>14</sup> “always an officer who would go above and beyond to help out other officers”;<sup>15</sup> “an outstanding example of what the general public expects when they think of public servants”;<sup>16</sup> and “professional, kind, always willing to help out [and having] very high moral character.”<sup>17</sup>

### **C. The canine program, canine training, and training aids**

#### *1. K9 Unit structure and training overview*

All of the required K-9 training for AAPFD canine handlers is conducted by the TSA.<sup>18</sup> Before he could formally join the K-9 unit, Officer McQuillin was required to complete TSA’s ten-week canine handler course at Lackland Air Force Base in Texas.<sup>19</sup> This training program focused on becoming a dog handler; it is not an explosives course.<sup>20</sup> Most of the instruction focused on caring for the dog and performing the responsibilities of a handler, such as interpreting the dog’s cues, keeping the dog motivated, et cetera.<sup>21</sup>

Officer McQuillin and his TSA-provided dog, Hunter, completed the program during the summer of 2013. Upon returning to Anchorage, Officer McQuillin and Hunter began working and training with the AAPFD canine team. At the time, the Department had three other canine handlers – William Kemper, Dustin Schmidt, and Herman Trent. The canine officers usually worked in two-person shifts, although the four officers sometimes overlapped for part of the week. As the most junior canine officer, Officer McQuillin was advised to and did follow the lead of Officer Herman Trent, the most senior canine officer.<sup>22</sup>

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<sup>12</sup> Ex. 2-4, p. 2.

<sup>13</sup> Affidavit of Jack McFarland, p. 2.

<sup>14</sup> Affidavit of Jim Lewis, p. 1.

<sup>15</sup> Affidavit of Brent Lowen, p. 1.

<sup>16</sup> Affidavit of Daniel Nowak, p. 2.

<sup>17</sup> Burkmire testimony.

<sup>18</sup> Trent testimony; Davis testimony; McQuillin testimony.

<sup>19</sup> McQuillin testimony; Vasek testimony.

<sup>20</sup> McQuillin testimony; Vasek testimony.

<sup>21</sup> McQuillin testimony.

<sup>22</sup> McQuillin testimony; Davis testimony; Trent testimony; Ex. 2-4, p. 3 (August 2013 evaluation: “I encourage Ofc. McQuillin to seek out assistance from current members of the K-9 program, department policy and procedures

Once officers complete the Lackland program, they still must be certified by TSA, and then recertified annually.<sup>23</sup> The certification involves a weeklong “training mission” overseen by local and visiting TSA trainers. Officer McQuillin completed his training mission in December 2013 and was certified in January 2014, six months before the incident giving rise to this case.

Beyond the formal program at Lackland and the annual TSA certification, explosives-detection canine officers participate in frequent training in order to maintain proficiency. Training is constant, with TSA requiring canine officers to log a certain number of training hours each week.<sup>24</sup>

TSA and other AAPFD K-9 trainings are conducted in a variety of locations and circumstances, including, frequently, training in public areas.<sup>25</sup> Officers are required to train in any area where they might be required to respond in the event of a bomb threat.<sup>26</sup> When training on airport grounds, training may be conducted “anywhere in the airport, night or day.”<sup>27</sup> In addition to the airport terminal itself, the AAPFD officers trained at locations including rental car lots, open fields, hotels, parking lots, and on airplanes.<sup>28</sup> TSA Field Canine Coordinator David Vasek explained that officers “have to train in public areas due to the current threats in the world; we have to train realistically.” An example of an airport training might involve an aid being hidden in a bag under a seat at a gate, and a handler then being called in to search several gates. Other times, aids are hidden throughout a larger area, for example, an entire terminal.

Trainings require, at a minimum, two officers – one handling the dog, and the other observing both the dog and the handler. The four AAPFD officers conducted trainings in groups of two, three, or four, depending on the circumstances. For the majority of the week, only two K-9 officers were on shift at one time. Accordingly, most training involved two officers – with one officer first running his dog through the scenario while the other one took notes and monitored the area, and the officers then switching roles so the second officer could run his dog through the scenario.<sup>29</sup>

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and his chain of command to ensure successful completion of his K-9 training and his certification as a K-9 handler”).

<sup>23</sup> McQuillin testimony; Vasek testimony; Ex. 2-4, p. 3.

<sup>24</sup> McQuillin testimony.

<sup>25</sup> Vasek testimony.

<sup>26</sup> Vasek testimony.

<sup>27</sup> Vasek testimony.

<sup>28</sup> Vasek testimony.

<sup>29</sup> McQuillin testimony.

## 2. *Training aids*

When training explosive-detection dogs, officers use “training aids” containing explosives. These training aids are not “bombs” or “live explosive devices,” but they do contain explosive material.<sup>30</sup> Various different types of explosives are used in training. The training aid at issue in this case was “water gel” – a gelatinous ammonium nitrate mixture packaged to approximately the size and shape of a hot dog.<sup>31</sup> Water gel is a “fairly innocuous” training aid.<sup>32</sup> Because it is a “secondary explosive,” water gel cannot explode without an initiator, such as a blasting cap.<sup>33</sup> In the absence of an initiator, water gel melts, rather than explodes, if exposed to high heat.<sup>34</sup>

TSA monitors and controls access to the training aids used by K-9 officers. TSA stores the training aids in a secure area within the airport, and canine handlers must check them in and out through a written log.<sup>35</sup>

In July 2014, TSA policy required K-9 handlers to “maintain constant accountability” for the training aid “at all times” to make sure the training aids were not lost or stolen.<sup>36</sup> While TSA policy has since changed to require “eyes on the training aid at all times,” this requirement was not in place in July 2014. Rather, K-9 handlers were expected to maintain “visual accountability of the training area.”<sup>37</sup>

The actual monitoring of training aids during training is made logistically difficult by the nature of the trainings. When officers are conducting a training within the airport, for example, training aids are hidden throughout an entire gate section or concourse, including in secure hallways, bathrooms, and individual gates.<sup>38</sup> Additionally, if an officer were closely watching the hidden training aid each time, the detection canines would pick up on that visual cue, and start only “working” in a particular area if it is being watched – an outcome that would undermine the effectiveness and purpose of the training itself.<sup>39</sup> But handlers were required to “know where the training aids are” and “maintain accountability that they stay there.”<sup>40</sup>

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<sup>30</sup> Spinde testimony; Whitehurst testimony.

<sup>31</sup> Whitehurst testimony; Trent testimony; R. 289.

<sup>32</sup> Spinde testimony.

<sup>33</sup> Whitehurst testimony; Trent testimony.

<sup>34</sup> Whitehurst testimony; Trent testimony.

<sup>35</sup> Vasek testimony; McQuillin testimony; Trent testimony.

<sup>36</sup> Vasek testimony.

<sup>37</sup> Vasek testimony.

<sup>38</sup> Trent testimony; Vasek testimony.

<sup>39</sup> McQuillin testimony.

<sup>40</sup> Vasek testimony.



#### **D. Misplaced training aids within canine programs**

Both locally and nationally, canine officers conducting training exercises have, on occasion, misplaced training aids during training exercises.<sup>41</sup> TSA's training aids contain printed instructions for any members of the public who find such aids.<sup>42</sup>

##### *1. Policies and procedures relating to loss of training aids*

Chapter P200 of the AAPFD Policy and Procedures governs the Canine Unit. Section P200 IV.C.F.j of the AAPFD Policy & Procedures provides: "In the event that a training aid is damaged or some/all of the source is lost or destroyed, the handler will write a report and file it to the original case. The handler will notify the Unit Commander and the TSA field representative."<sup>43</sup> However, AAPFD has no written policy specifically addressing the procedures to be followed when a training aid is temporarily misplaced but then quickly recovered.

Section P200 IV.C.F.i directs that "all training aids shall be safely cared for and properly documented in accordance with TSA procedures." The "Statement of Joint Objectives" (SOJO) governing the relationship between AAPFD and TSA is a confidential federal security document and is not included in the evidentiary record in this case. Although Mr. Vasek testified that the SOJO requires handlers to notify the Field Canine Coordinator if a training aid is lost, the exact language of any requirement in that regard was never established in this hearing.<sup>44</sup>

##### *2. Lost training aid incidents*

At the hearing in this matter, various former K-9 officers testified about local incidents in which training aids went missing, including:

- A passenger locating and turning into airport authorities a training aid that had been hidden in an airport bathroom;
- TSA officers picking up a backpack containing a training aid while a K-9 officer was briefly distracted by a passenger's question;
- A custodian locating a training aid in a trash can;
- A TSA K-9 trainer having to use his body to physically block a rental car from being driven away with a training aid; and
- A training aid being partially eaten by a bird.<sup>45</sup>

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<sup>41</sup> Vasek testimony; Spinde testimony; Ex. 2-1, pp. 17-18.

<sup>42</sup> McQuillin testimony; Spinde testimony.

<sup>43</sup> R. 56.

<sup>44</sup> See Vasek testimony ("if a training aid is unaccounted for, it requires instant notification to myself"), R. 309 (same); McQuillin testimony ("it doesn't say immediately notify").

<sup>45</sup> McQuillin testimony; Spinde testimony; Vasek testimony; see also, Ex. 2-1, p. 17.

With the exception of the bird eating part of an aid – which was reported because the bird’s actions changed the actual volume of the explosive material in the training aid – these incidents of temporary loss were not reported either to AAPFD or the TSA.<sup>46</sup>

### 3. *April 2014 incident*

On April 21, 2014, while training at an airport car rental facility, AAPFD K-9 officers Trent and Schmidt inadvertently lost an explosive training aid for roughly five hours.<sup>47</sup> In that incident, after an AAPFD officer placed a C-4 explosive training aid on the bumper of a vehicle, a rental company employee then mistakenly rented that vehicle to a member of the public, who drove it away before anyone realized the mistake.<sup>48</sup>

Officers Trent and Schmidt did not report this incident to TSA’s Field Canine Coordinator Vasek or Chief Davis immediately, but instead reported it only after first driving around looking for the missing aid.<sup>49</sup> Having been unable to locate the missing aid, they notified Mr. Vasek and Chief Davis about thirty minutes after first discovering the loss.

Because the location of the training aid was unknown, AAPFD enlisted the assistance of the Anchorage Police Department, which alerted its officers to be on the lookout for the missing rental car. The FBI and ATF were also notified, as was the employer of the driver who had rented the car. After more than five hours, the missing aid was eventually located and retrieved by AAPFD officers.

At some point, local, state and national news media became aware of this incident. After the training aid was recovered, Chief Davis held an informal press conference at which he stated that neither the driver of the rental car, nor the general public, were ever in danger during the incident. News articles quoted Chief Davis as saying that “the amount of explosives in the vehicle was small and didn’t pose a threat to the driver or the public,” that “the driver of the rental was never in danger,” and that “[w]hen we say 'explosives,' it's not a stick of dynamite[:]; it's a very small piece of explosive.”<sup>50</sup>

AAPFD did not conduct an administrative investigation of the April 2014 incident, and neither officer involved was disciplined as a result of that incident.<sup>51</sup> All members of the AAPFD K-9 team were aware that no discipline was imposed on either of the two officers involved.<sup>52</sup>

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<sup>46</sup> Spinde testimony; Trent testimony; Ex. 2-1, p. 17.

<sup>47</sup> Davis testimony; Ex. 2-3.

<sup>48</sup> Trent testimony; Vasek testimony.

<sup>49</sup> Trent testimony.

<sup>50</sup> Ex. 2-3, pp. 1, 2.

<sup>51</sup> Davis testimony; Trent testimony.

Following the April incident, Chief Davis issued Officer Trent a non-disciplinary Letter of Instruction requiring him to “develop an approved operating procedure to make sure this does not happen again.”<sup>53</sup> Chief Davis further tasked Officer Trent with conveying these procedures to the rest of the K-9 team.

One procedural change that arose was a decision that, during vehicle training, the team should get the keys to all vehicles being used for training. Neither a formal “key” policy nor any other policies related to this issue were reduced to writing.

Another recommended change was for the officers to conduct trainings in groups of three, rather than in pairs, to increase the number of eyes on the training area. However, AAPFD continued to schedule the K-9 officers mostly in two-person shifts, so, as a practical matter, most of the training continued to be done in pairs.<sup>54</sup>

Also following the April 2014 incident, TSA Field Canine Coordinator Vasek conducted a brief, informal training for the K-9 officers, at which they reviewed a powerpoint presentation about explosives training aids generally.<sup>55</sup> The training covered the obligation to report missing aids to the field canine coordinator, but did not specifically identify a need or requirements to notify the coordinator “immediately” in such an instance, and did not specifically address what to do if a training aid were briefly misplaced but then quickly recovered.<sup>56</sup>

#### **E. July 30, 2014 incident**

The incident giving rise to this case was a routine training exercise conducted by Officers Trent, Kemper, and McQuillin on July 30, 2014. As they had done many times before, the officers were using the Department of Transportation (DOT) vehicle storage lot in Anchorage.<sup>57</sup> This is the same lot where the TSA had recently conducted the officers’ annual certification training, and the officers understood it to be a secure lot for training purposes.<sup>58</sup>

When they arrived at the DOT lot, Officer Trent went into the office to speak with DOT shop foreman Brian Flaherty about their training plans. The three rows of vehicles they were using for the training were the same rows that had been used in the officers’ recent TSA

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<sup>52</sup> Trent testimony; McQuillin testimony.

<sup>53</sup> R. 42.

<sup>54</sup> McQuillin testimony.

<sup>55</sup> Vasek testimony.

<sup>56</sup> McQuillin testimony; Trent testimony. Mr. Vasek did not testify about the content of the training, and the powerpoint presentation is not part of the record.

<sup>57</sup> McQuillin testimony; Flaherty testimony.

<sup>58</sup> McQuillin testimony; Trent testimony; Spinde testimony; R. 40- 41, 196, 230-231; Ex. 2-1, p. 6; Ex. 2-9, p. 3.

recertification training.<sup>59</sup> Officer Trent left that meeting with the understanding that the portion of the lot where the officers intended to train was available for training, with Mr. Flaherty holding the keys for those vehicles.<sup>60</sup> Because this was his understanding, Officer Trent did not take vehicle keys from Mr. Flaherty.<sup>61</sup>

The officers set out signs indicating that K-9 training was taking place.<sup>62</sup> Next, the officers placed the two training aids on vehicles. The officers were using two training aids – cast booster and water gel.<sup>63</sup> Officers Kemper and Trent placed the training aids, placing the cast booster on a vehicle in the middle row, and placing the water gel above the engine compartment of a Ford Expedition in the back row.<sup>64</sup>

TSA policy requires that training aids be covered by some sort of a barrier to prevent scents from mixing, so that the canines continue to most strongly associate their “reward” with the scent of the explosive alone, as opposed to associating it with the scent of the explosive and whatever it had been placed near. During the July 30, 2014 training exercise, the water gel was wrapped in a paper towel, which is a TSA-approved barrier.

As required by TSA protocol, the officers and their canines then waited in their vehicles for thirty minutes to allow the training aids’ odors to emanate.

*1. Training scenario by Officers McQuillin and Trent*

Through a game of rock-paper-scissors, the officers determined that Officer McQuillin would run the training exercise first.<sup>65</sup> To simulate arriving at a live call, Officer McQuillin drove with Hunter to the area of the lot where the training was, got him out of the car, and began the search.<sup>66</sup> Officer Trent “had the clipboard,” which means that he was making the TSA-required notes on what was happening during Hunter’s search.<sup>67</sup>

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<sup>59</sup> McQuillin testimony.

<sup>60</sup> Trent testimony; R. 41; Ex. 2-1, p. 6. To the extent to which Mr. Flaherty implied in his testimony that he provided other instructions, that testimony was not persuasive, and is not consistent with his earlier statements. *See* Ex. 2-1, p. 6 (Arbitrator finding that Flaherty “did not contradict” Trent testimony that Mr. Flaherty told him the three rows of cars identified were okay to use).

<sup>61</sup> Trent testimony; *see also* Ex. 2-8, p. 3 (Officer McQuillin: “[W]hen we had our annual evaluation and we went to that exact lot with the TSA evaluator and the regional trainer and the [FCC] and they did the walk around of the lot, they didn’t collect any keys and, I know, it is a bad example to follow, but I guess there is some sort of false sense of trust in knowing that at least it was a secured lot, we used all the exact same vehicles and they had I want to say at least five aids out there that day”).

<sup>62</sup> Trent testimony; McQuillin testimony; Ex. 2-1, pp. 6-7.

<sup>63</sup> R. 246.

<sup>64</sup> R. 245.

<sup>65</sup> Trent testimony; McQuillin testimony.

<sup>66</sup> McQuillin testimony.

<sup>67</sup> McQuillin testimony.

It took Hunter forty minutes to find both aids. Forty minutes was a long time for Hunter, who was still a young dog, to be actively engaged in a continuous search. Both Hunter and Officer McQuillin were tired after the mental exertion of running the course. It was also important, from a training perspective, to move Hunter away from the scents of the training aids. Accordingly, when they were done, Officer McQuillin put Hunter into his vehicle and drove it away from the search area and back towards shop foreman Flaherty's building.<sup>68</sup>

However, Officer McQuillin did not alert Officers Trent and Kemper that he was doing this, nor that he intended to take a break before returning to the training area. He would later explain that it had not occurred to him to do so, because of the procedures normally followed when officers trained in pairs. Under those procedures, one officer ran his dog, while the other held "the clipboard" and monitored the area. With Officer Kemper now holding the clipboard and Officer Trent preparing to run his dog, Officer McQuillin considered himself to be "outside the training scenario," rather than as a third set of eyes.<sup>69</sup> However, the officers had not formally discussed their respective roles or responsibilities vis-à-vis the three-person training, leading to a significant breakdown in communication. While Officer McQuillin believed himself to be "out of the training scenario," Officer Trent thought that Officer McQuillin was going to remain in his vehicle in sight of both rows of cars.<sup>70</sup>

After relocating his vehicle, Officer McQuillin got Hunter some water, grabbed a snack, and used the restroom. In the meantime, unaware that Officer McQuillin was not also watching the training area, but also under the misimpression that the entire lot was secure, Officers Trent and Kemper had continued with the training exercise. Officer Kemper now had the clipboard, and Officer Trent began running his dog, Elvis, through the training scenario.

## 2. *DPS employee's removal of the Ford Expedition*

Unbeknownst to any of the three officers, one row of vehicles in the DOT lot was not, in fact, secure. These were pool vehicles for use by Department of Public Safety employees, and their keys were held not by Mr. Flaherty but by DPS Vehicle Coordinator Deanna Humphries.

At some point while the officers were preparing their training scenario and conducting the first exercise, DPS office assistant Laura Spire had arrived at the DOT lot because she needed to use a state vehicle that morning to run some office errands. Shortly before 9:30 a.m., with keys obtained from Ms. Humphries, Ms. Spire came to the DOT lot and picked up a Ford Expedition

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<sup>68</sup> McQuillin testimony.

<sup>69</sup> R. 224-225.

<sup>70</sup> R. 253.

from the motor pool.<sup>71</sup> The vehicle whose keys Ms. Spire had been given for her errands was the same Ford Expedition on which the K-9 handlers had previously placed the water gel training aid. Ms. Spire did not notice the signs indicating that canine training was occurring, nor did any of the officers notice her. Unaware of any possible problem, Ms. Spire left the DOT lot and began her errands.

### 3. *Discovery of loss and search for missing vehicle*

In the meantime, unaware of this development, Officer Trent was running Elvis through the training scenario. After Elvis found the first aid, he and Officer Trent moved to the back row of cars. It was then that Officer Trent observed that a vehicle – the Expedition on which he had placed the water gel – was now missing. Officer Trent began searching the lot in his patrol car to try to locate the missing vehicle. Meanwhile, Officer Kemper went into the shop to speak with Mr. Flaherty, to attempt to determine how a car could have been taken from the lot.<sup>72</sup>

During all of these events, Officer McQuillin had been moving his vehicle, getting water for his dog, putting his dog into the vehicle, having a snack, and using the restroom. When he exited the restroom, Officer McQuillin found Mr. Flaherty engaged in a discussion with Officer Kemper, who informed him about the missing vehicle.<sup>73</sup>

Officer McQuillin then joined Officer Trent in the search for the Expedition and the missing training aid. The two officers drove their vehicles to different parts of the lot, to see whether the Expedition had been moved to one of the garages on site. While they were searching, they received a text from Officer Kemper, letting them know that Mr. Flaherty had located the vehicle.<sup>74</sup>

### 4. *Communications with Ms. Spire and return of the training aid*

While Officers McQuillin and Trent searched the lot, Mr. Flaherty called DPS vehicle coordinator Deanna Humphries, who identified the employee who had taken the Expedition. At some point, although the record is unclear about when, at least some of the officers had a discussion with Mr. Flaherty about it being safe for Ms. Spire to drive back.<sup>75</sup> It further appears that Officer Trent, the team's explosives ordinance disposal expert, was involved in determining

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<sup>71</sup> Spire testimony; R. 31.

<sup>72</sup> Trent testimony; R. 40.

<sup>73</sup> McQuillin testimony.

<sup>74</sup> R. 40.

<sup>75</sup> R. 40.

that it would be safe for her to do so.<sup>76</sup> Accordingly, Mr. Flaherty directed Ms. Humphries to have Ms. Spire stop her errands and return the vehicle to the lot.

Ms. Spire left in the Expedition shortly before 9:30 a.m.<sup>77</sup> Ms. Humphries first called Ms. Spire at 9:35, but Ms. Spire did not hear the call and did not answer.<sup>78</sup> Ms. Spire returned Ms. Humphries' call at 9:54. Ms. Humphries told her that canine officers were conducting a training and had placed something in the car, and that she needed to return the car immediately. Ms. Spire, who assumed the training aid in question contained narcotics, left her errands and drove back to the DOT lot.

When Ms. Spire returned to the lot, Officer Trent removed the training aid from under the hood of her car, Officer Kemper told her she was "good to go," and she drove off to resume her errands.<sup>79</sup> Officer McQuillin was walking Hunter, and was not present when Ms. Spire returned to the lot.<sup>80</sup> Ms. Spire was back running her errands by 10:17 a.m.<sup>81</sup> After recovering the water gel, the three officers left the DOT lot and relocated to another area for their remaining field training exercises that day.

#### 5. *Lack of notification*

At no point while the aid was missing or after it had been recovered did any of the three officers report the lost training aid to TSA's Field Canine Coordinator Vasek, or to anyone within the AAPFD chain of command. At the time, Officer McQuillin did not believe that the particular circumstances here –where the aid was briefly missing but then recovered – required a report.<sup>82</sup> In his hearing testimony, Officer McQuillin likened the scenario to driving a car that temporary slides off the road, then recovers and returns to the roadway. Just as an officer would presumably not report a temporary, transient loss of vehicle control, Officer McQuillin did not understand the circumstances here to require a formal report.

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<sup>76</sup> McQuillin testimony; R. 40. In the April 2014 incident, the officers had the driver of the rental car stay where he was, rather than continuing to drive the car with the training aid attached. Mr. Trent explained that this was because the training device in that case was affixed to the bumper, creating a stronger likelihood that the item would fall off or get lost on the road. While the aid falling off would not have caused an explosion, it would have made it far more difficult to recover, as the officers were expected to do. Trent testimony.

<sup>77</sup> R. 31.

<sup>78</sup> R. 31; Spire testimony.

<sup>79</sup> Spire testimony; Hahn testimony; Trent testimony.

<sup>80</sup> McQuillin testimony; Trent testimony.

<sup>81</sup> R. 31.

<sup>82</sup> McQuillin testimony.

Officer Trent, likewise, denies knowing that notification was required in this instance, given “the short duration it was missing” and what he perceived to be “the lack of severity of the situation as far as how these [incidents of temporary loss and recovery] were treated in the past.”<sup>83</sup>

The Executive Director did not prove by a preponderance of the evidence that the officers had a discussion about reporting the incident or about any reporting requirements.<sup>84</sup> Rather, it is more likely true than not true that Officer McQuillin did not realize a report was required, and that Officer Trent, the senior-most K-9 officer, did not take any actions that changed his perception. As a result, and similarly to other past incidents involving a temporary misplaced aid, the officers did not report the incident to Mr. Vasek or within AAPFD.

6. *Chief Davis and David Vasek learn of incident*

Sometime after returning to work on July 30, Laura Spire mentioned the incident in passing to Alaska State Trooper Captain Randall Hahn, framing it as a humorous anecdote.<sup>85</sup> Captain Hahn, in turn, contacted Chief Davis.<sup>86</sup> When they spoke, Captain Hahn relayed to Chief Davis his understanding that AAPFD K-9 officers had left a training device in a vehicle, allowed the vehicle to leave the lot, and then recovered the training aid.<sup>87</sup> This was the first Chief Davis had heard of this incident.<sup>88</sup> After their discussion, Captain Hahn sent a follow-up email, titled “Timeline this Morning:”

Our OA left in the vehicle a little before 0930 this morning. Our vehicle coordinator was contacted by DOT about ten minutes later and made her first call to the OA. That call wasn't received and another call was placed to her at 0954. She returned to DOT with the vehicle and was cleared and back running her errands by 1017.<sup>89</sup>

Later that afternoon, Chief Davis called Officer Trent to inquire about Captain Hahn's report.<sup>90</sup> In response to Chief Davis's questions, Officer Trent confirmed that the team had lost but then recovered a training aid, and that they had not reported these events to anyone due to the

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<sup>83</sup> Trent testimony.

<sup>84</sup> Trent testimony; McQuillin testimony.

<sup>85</sup> R. 100-101.

<sup>86</sup> R. 30.

<sup>87</sup> Davis testimony; Hahn testimony. Initially, there was some uncertainty on behalf of AST and AAPFD leadership as to whether the officers involved in the incident had been AAPFD officers or officers from another agency. *Id.*

<sup>88</sup> Davis testimony.

<sup>89</sup> R.31.

<sup>90</sup> Davis testimony; R. 28.



short duration of the incident.<sup>91</sup> Chief Davis told Officer Trent that he wanted to meet with all three officers the following morning.

Chief Davis also contacted David Vasek and informed him of the incident.<sup>92</sup> Mr. Vasek found the temporary loss of the training aid “concerning,” and felt that he “should have been notified immediately.”<sup>93</sup> However, Mr. Vasek did not believe the three AAPFD officers should be terminated, and shared those views with Chief Davis.<sup>94</sup>

#### **F. Post-incident meetings and documentation**

The morning after the incident, Chief Davis met briefly with all three officers.<sup>95</sup> Chief Davis did not specifically ask Officers Kemper or McQuillin any questions about the incident during this meeting, and neither made substantive comments during the meeting.<sup>96</sup> When asked, Officer Trent reiterated his estimate that the aid was missing for about twenty minutes.<sup>97</sup> Neither Officer Kemper nor Officer McQuillin disagreed with this estimate or suggested it was inaccurate.<sup>98</sup> Chief Davis then told the officers he was opening an administrative investigation (AI), and ended the meeting.<sup>99</sup> Chief Davis assigned AAPFD Lieutenant Gary Delk to conduct the investigation.<sup>100</sup>

The same day that they met with Chief Davis, the officers also met with Field Canine Coordinator David Vasek, who had each of them fill out an ATF “Form 5400.5, Report of Theft of Loss – Explosive Material.”<sup>101</sup> Officer Trent had previously filled out a Form 5400.5 as part of the April 2014 incident.<sup>102</sup> Officers Kemper and McQuillin had not previously filled out a Form 5400.5, and took guidance from Officer Trent in filling theirs out.<sup>103</sup>

The Form 5400.5 asks where the loss or theft occurred, what exactly was lost or stolen, when the theft or loss was “discovered,” and when the theft or loss occurred, if known.<sup>104</sup>

Because they filled out the forms together, Officers Trent and McQuillin provided identical

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<sup>91</sup> Davis testimony; R. 28.

<sup>92</sup> Davis testimony; Vasek testimony.

<sup>93</sup> Vasek testimony.

<sup>94</sup> Vasek testimony. To the extent to which Chief Davis recalls Mr. Vasek saying otherwise, Mr. Vasek’s testimony on this point was more credible.

<sup>95</sup> Davis testimony; McQuillin testimony; Trent testimony; R. 29.

<sup>96</sup> McQuillin testimony; Davis testimony.

<sup>97</sup> Davis testimony.

<sup>98</sup> Officer McQuillin was not present when the aid was discovered missing, nor when it was returned, and believed this to be a reasonable estimate given his limited window of information. McQuillin testimony.

<sup>99</sup> Davis testimony; McQuillin testimony; Trent testimony; R. 29.

<sup>100</sup> R. 26, 45.

<sup>101</sup> Vasek testimony. See R. 36-39.

<sup>102</sup> Trent testimony; McQuillin testimony; Vasek testimony.

<sup>103</sup> McQuillin testimony; Trent testimony.

<sup>104</sup> R. 38.

responses to these questions, identifying the explosive as 1.25 lbs of “Data gel” water gel manufactured by Slurry Explosive Corp, identifying the “discovery” of loss as occurring at “0910” on July 30, 2014, and answering the question about the approximate occurrence of the loss as “0905” on July 30, 2014.<sup>105</sup>

The final section of the form, box no. 16, is a 1.5-inch empty box with the header: “16. Other Information Pertinent to the Theft or Loss.”<sup>106</sup> Officer Trent wrote “Report attached,” and attached a separate page containing a typed two paragraph summary of events.<sup>107</sup> Officer McQuillin typed his response directly onto the form, as follows:

On 7/30/14 the Anchorage Airport police K9 unit conducted a canine vehicle search with 51 cars and 2 CETA aids, located at the State of Alaska vehicle lot. There were three canine teams total and I ran first. After completing an almost 40 minute search, I put my canine in my patrol vehicle parked nearby. Presuming the remaining two teams had control of the training area (we generally train with two teams on a daily basis) I re-located my vehicle closer to a nearby building where there was a restroom inside. I tended to my canine making sure he had water and ate some lunch. I went inside to go to the bathroom. Upon exiting the bathroom I saw one of our handlers talking to a mechanic about locating a vehicle. This is when I was made aware that an aid had left the training area. In attempting to locate the missing aid vehicle, I drove around the large parking lot and adjacent parking lots in my patrol vehicle to no avail. I returned to our staging area and was notified the missing aid vehicle had been located and was en route back to the parking lot.<sup>108</sup>

The officers were not directed to fill out any other reports or forms related to this incident, either by TSA or by AAPFD, and none of them did so.<sup>109</sup>

Lt. Delk and Chief Davis later took issue with the fact that the officers did not reference the incident in their weekly AAPFD K-9 activity logs. Those logs were a time accountability tool created by the AAPFD Deputy Chief to better understand how the K-9 officers spent their time. There was no written policy describing what information should or should not be included, and the K-9 officers varied in the degree of detail they included in their logs.<sup>110</sup> Officer McQuillin’s entries were generally broad descriptions of an overall activity, such as “[training in] open area,” “[training in] Baggage [claim] at North [terminal],” or “canine sweep of south terminal.”<sup>111</sup>

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<sup>105</sup> R. 36 (Trent); R. 38 (McQuillin). The record does not include the form filled out by Mr. Kemper, but does appear to contain Mr. Kemper’s typed response to Question 16. *See* R. 41.

<sup>106</sup> R. 39.

<sup>107</sup> R. 40.

<sup>108</sup> R. 39.

<sup>109</sup> McQuillin testimony; Trent testimony.

<sup>110</sup> R. 32-35.

<sup>111</sup> R. 34.

Officer McQuillin explained to Lt. Delk that there had been “an evolving process of what we should or should not even put on those things,” and further explained that “it’s called a canine activity log, so I try to get as much stuff on there as related to the canine as possible.”<sup>112</sup>

Officers completed and turned in the logs at the end of each week, so the log that covered July 30 was completed nearly a full week later, well after the AI had been initiated and the officers had completed the required TSA Form 5400.5.<sup>113</sup> Officer McQuillin’s July 30 entry in his K-9 activity log reflected that he had conducted K-9 training in an open area and in vehicles.<sup>114</sup> Given the general scope of entries on Officer McQuillin’s daily K-9 log, and the lack of policy guidance stating otherwise, there was nothing improper about Officer McQuillin not referencing this incident on his daily log.

### **G. Administrative investigation (AI)**

As noted above, Chief Davis assigned the investigation to Lt. Gary Delk.<sup>115</sup> This was Lt. Delk’s first time conducting an administrative investigation.<sup>116</sup> Between August 14 and September 18, 2014, Lt. Delk interviewed seven witnesses: Captain Hahn, Ms. Spire, Ms. Humphries, Mr. Vasek, Mr. Flaherty, Officer Trent and Officer McQuillin.<sup>117</sup>

Lt. Delk interviewed Officers Trent and McQuillin last, more than six weeks after starting his investigation. In other interviews conducted by Lt. Delk:

- Mr. Vasek told Lt. Delk about other incidents in which training aids had gone missing, explaining “that this happens in these programs sometimes”;<sup>118</sup>
- Mr. Vasek told Lt. Delk that he believed the incident occurred due to a miscommunication between the officers;<sup>119</sup>
- Officer Trent, an AAPFD explosives expert, explained to Lt. Delk that the water gel alone could not have exploded, and that, if exposed to very high heat, it would melt rather than explode;<sup>120</sup>
- Laura Spire expressed great distress about the possibility that the training aid could have exploded, but Lt. Delk did not explain to her that, in fact, the training aid lacked an initiator and so could not have exploded;<sup>121</sup>

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<sup>112</sup> R. 208.

<sup>113</sup> See R. 33, 35.

<sup>114</sup> R. 34, 210.

<sup>115</sup> R. 26, 45.

<sup>116</sup> Delk testimony; Davis testimony.

<sup>117</sup> With the exception of Mr. Vasek, the interviews were recorded, and the interview transcripts included in the final investigation report. R. 93-303.

<sup>118</sup> Vasek testimony.

<sup>119</sup> Delk testimony; Vasek testimony.

<sup>120</sup> R. 289; R. 294.

<sup>121</sup> R. 116, 122-123.

- Captain Hahn told Lt. Delk that he remains “completely supportive” of AAPFD K-9 officers continuing to conduct training exercises in various public locations,<sup>122</sup> and did not want this incident to “to suppress the continued working relationship or continued interactions” between the AST and AAPFD.<sup>123</sup>

Lt. Delk did not interview Officer McQuillin until 49 days after the incident. In his interview, Officer McQuillin:

- Explained that the team had mistakenly believed the DOT lot to be “secure” for purposes of conducting a training;<sup>124</sup>
- Explained that he was used to training in pairs along with Officer Kemper, and that, with three officers present for the July 30 training, he had assumed that Officer Kemper – having “the clipboard” and no leashed dog – was responsible for the training aids once Officer McQuillin had finished the exercise and was taking his dog for a break;<sup>125</sup>
- Acknowledged a breakdown in communications amongst the team members during the training exercise;<sup>126</sup>
- Repeatedly stated he did not know how long the training aid was missing, suggesting it might have been “under twenty minutes, like from gone to back,” but also saying it could have been twenty minutes from the time he learned the aid was missing, and admitting that he “couldn’t tell you an exact time” when the aid went missing or was located;<sup>127</sup>
- Stated he had not realized at the time that the brief, temporary loss of the aid was required to be reported;<sup>128</sup>
- Stated that, knowing what he had since learned, “we should have certainly notified the Field Canine Coordinator”;<sup>129</sup>
- Stated his disagreement with the idea that the officer checking out an explosive training aid is ultimately responsible for the aid for the entire day – a policy he disagreed with because of his belief that the team as a whole bears collective responsibility for the aid;<sup>130</sup> and
- Described additional precautionary measures the team was now taking, two months later, to avoid a similar incident from occurring.<sup>131</sup>

When asked at the hearing about Officer McQuillin’s level of cooperation with the investigation, Lt. Delk testified that Officer McQuillin “was cooperative in anything I asked.”<sup>132</sup>

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<sup>122</sup> R. 96.  
<sup>123</sup> R. 108.  
<sup>124</sup> R. 181; R. 230-231.  
<sup>125</sup> R. 182; R. 184-185.  
<sup>126</sup> R. 183.  
<sup>127</sup> R. 187; R. 190; R. 214.  
<sup>128</sup> R. 194 -196.  
<sup>129</sup> R. 195.  
<sup>130</sup> R. 201.  
<sup>131</sup> R. 196; R. 201.

## H. K-9 officers' job status during the administrative investigation

Lt. Delk completed his investigation report on September 20, nearly two months after the incident. In the intervening time, for the remainder of the summer and well into the fall, Officers McQuillin and Trent continued to work in exactly the same capacity as they previously had done.<sup>133</sup>

The K-9 officers continued to train in pairs as well as groups of three or four.<sup>134</sup> They provided K-9 security services for visiting dignitaries, represented AAPFD at a job fair at Chief Davis's request, and otherwise continued to serve in the same capacity as they had before the incident.<sup>135</sup> As described by Officer McQuillin: "Everything was normal until the day I was fired."<sup>136</sup>

Also during this time, Officer McQuillin received his annual performance evaluation. In that evaluation, dated August 21, 2014, AAPFD Deputy Chief David Shulling gave Officer McQuillin an overall rating of "high acceptable," describing him as showing a "strong willingness to assist on shift whenever he can," and being "eager to learn more to better himself."<sup>137</sup>

## I. Investigation report

Lt. Delk completed his report on September 20, 2014 – just two days after his interview with Officer McQuillin.<sup>138</sup> Lt. Delk sustained each complaint he had been asked to investigate, and also reported that his investigation had shown additional violations as well.<sup>139</sup>

Lt. Delk concluded that the training aid was lost because the three officers failed to follow policies, communicate with one another, and "ensur[e] direct responsibility as oversight of the explosive training aids in which they are all responsible for (sic)."<sup>140</sup>

The original violations sustained by Lt. Delk were as follows: violating various AAPFD and TSA safety rules; violating safety rules under circumstances that created a "substantial risk of serious physical injury" to the driver; violating the SOJO by, *inter alia*, not notifying the Chief

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<sup>132</sup> Delk testimony. Lt. Delk later testified that he personally did not believe Officer McQuillin when he said that he hadn't realized reporting was required under these circumstances. But Officer McQuillin's answers on that issue were consistent throughout the investigation, and his testimony was credible.

<sup>133</sup> Trent testimony; McQuillin testimony. Officer Kemper resigned on August 8, 2014, as part of a prior plan to go back to school. Davis testimony.

<sup>134</sup> McQuillin testimony.

<sup>135</sup> McQuillin testimony; Trent testimony.

<sup>136</sup> McQuillin testimony.

<sup>137</sup> Ex. 2-4, p. 1-2. Officer McQuillin was also noted to "generally accept any supervision given him." Ex. 2-4, p. 2. ("He accepts and appreciates any constructive input that supervisors offer him, and utilizes that input to better himself").

<sup>138</sup> R. 303.

<sup>139</sup> R. 316-320.

<sup>140</sup> R. 316.

and the Field Canine Coordinator after discovery of the loss; unbecoming conduct, because other agencies were aware of the loss; and neglect of duty, through the lack of communication that led to the loss.<sup>141</sup>

Additionally, Lt. Delk concluded that Officers Trent and McQuillin had violated policies and procedures prohibiting “falsification of any report” and “making a false statement.”<sup>142</sup> This conclusion was based on the ATF forms each officer had submitted, and, specifically, on their responses to questions 7a and 7b, which ask when the loss “occurred,” and when it was “discovered.” Officers Trent and McQuillin both listed the loss as having been “discovered” at 0910, and as having “occurred” at approximately 0905.<sup>143</sup> Concluding that these responses were intended to convey that only five minutes elapsed between the loss of the training aid and its *return*, Lt. Delk then concluded that these answers were false.<sup>144</sup>

Also under the “false report” section of the AI, Lt. Delk took issue with the lack of any mention of the incident on any of the officers’ “Daily K9 report” logs.<sup>145</sup>

Officer McQuillin’s log entries for July 30 included: “0630-1200 | K9 training | Vehicles, open area.”<sup>146</sup> Officer Kemper’s July 30 log included an entry: “0700-1200 | K9 training | DOT vehicles and Open area.”<sup>147</sup> Officer Trent’s July 30 log included an entry: “0900-1145 | K9 training | Vehicles (DOT) and open areas.”<sup>148</sup> Lt. Delk concluded that the failure to mention the training aid incident constituted “falsification of reports.”<sup>149</sup>

## **J. Pre-determination meeting**

During the investigation, Lt. Delk did not consult with Chief Davis on substantive matters, and Chief Davis did not advise Lt. Delk.<sup>150</sup> When Lt. Delk finished his report, he provided it to Chief Davis.

Chief Davis did not agree with all of the conclusions in Lt. Delk’s report. Most notably, he disagreed with Lt. Delk’s conclusion that the officers had falsified the TSA form through their responses to questions 7a and b, and instead agreed with Officer McQuillin that Lt. Delk

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<sup>141</sup> R. 316-320.

<sup>142</sup> R. 318-319.

<sup>143</sup> R. 37, 39.

<sup>144</sup> R. 318-319; Delk testimony.

<sup>145</sup> R. 319.

<sup>146</sup> R. 34.

<sup>147</sup> R. 35.

<sup>148</sup> R. 32.

<sup>149</sup> R. 319.

<sup>150</sup> Davis testimony.

misinterpreted that section of the form.<sup>151</sup> Chief Davis agreed that 7a asks when the loss occurred – that is, when the item actually went missing, and that 7b asks when the loss was discovered – that is, when the officer became aware that the item was missing. He did not see the officers’ responses on item 7 as an “intentional attempt to cloud the facts” or to suggest the aid was only gone 5-10 minutes.<sup>152</sup>

Chief Davis had his own concerns about Officer McQuillin’s responses on the TSA form, but his concerns were about a different section – item 16. That item directs the officer to describe “other information about the loss.” Officer McQuillin provided a narrative of where he was when the aid went missing, what he did to look for it, and when/how he learned it had been located and was returning to the training site.<sup>153</sup> Chief Davis was dissatisfied with Officer McQuillin’s narrative because it did not specify how long the aid was missing.<sup>154</sup>

After reviewing Lt. Delk’s report, Chief Davis arranged a predetermination meeting with Officer McQuillin. At that November 5, 2014, meeting, Chief Davis identified his three concerns as “why was the missing aid not reported?”, “how can we prevent this incident from ever occurring again?”, and, “how did we end up losing the training aid?”<sup>155</sup>

In terms of the loss itself, Officer McQuillin noted that the team was “working off of misinformation, assuming we had a secure lot of vehicles” when in fact the back row was now occupied by pool vehicles.<sup>156</sup> He noted that they had followed the same protocols that had been followed by the TSA trainers at their annual evaluations in May 2014.<sup>157</sup>

In terms of reporting, Officer McQuillin explained that the failure to report the aid was the result of “the totality of the circumstances at the time.” Having never been in a similar situation, as the junior-most member of the team, being unfamiliar with “what the exact protocol was,” and because the aid “had been returned so soon,” he did not realize at the time that reporting was required.<sup>158</sup> Because the aid was only gone briefly, he explained, “I was under the impression that we had resolved the issue and that it was a non-issue at the time.”<sup>159</sup> Officer McQuillin also expressed his present understanding, after the fact, that notification should have been made.<sup>160</sup>

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<sup>151</sup> Davis testimony.

<sup>152</sup> Davis testimony.

<sup>153</sup> R. 39.

<sup>154</sup> Davis testimony.

<sup>155</sup> Ex. 2-8, p. 1.

<sup>156</sup> Ex. 2-8, p. 3.

<sup>157</sup> Ex. 2-8, p. 3.

<sup>158</sup> Ex. 2-8, p. 1.

<sup>159</sup> Ex. 2-8, p. 4.

<sup>160</sup> Ex. 2-8, pp. 1-2.

Noting that “hindsight is 20-20,” Officer McQuillin stated unequivocally that “I clearly believe we should have done that.”<sup>161</sup>

Chief Davis also queried why Officer McQuillin did not later mention the incident in his weekly K-9 activity log. Officer McQuillin explained that (1) this was not the kind of information that typically goes in that log, and (2) by the time weekly logs were submitted, the team had already completed the official reporting form, the ATF 5400.5.<sup>162</sup>

Officer McQuillin denied that the officers engaged in any sort of conversation about not reporting the incident.<sup>163</sup> He again explained that he had followed the lead of the more senior officer, and had not realized, given “that the aid had not been gone that long,” that a report would have been required under these circumstances.<sup>164</sup> He also again “fully acknowledge[d]” that “it was a foolish decision at that time to not have made notification.”<sup>165</sup>

During the predetermination meeting, Chief Davis indicated that he disagreed with the AI’s conclusion about the “five-minute window” issue.<sup>166</sup> However, he still expressed concerns about whether Officer McQuillin had understated the time the aid was missing.<sup>167</sup> Officer McQuillin reiterated that his estimate of twenty minutes was an approximation.<sup>168</sup>

#### **K. Termination and decertification recommendation**

On November 21, 2014, Chief Davis terminated Officer McQuillin for “blatant insubordination.”<sup>169</sup> The termination letter asserted that Officer McQuillin had:

- Participated in placing training aids on vehicles without obtaining keys, while being aware that officers were supposed to obtain vehicle keys before placing a training aid;
- Negligently allowing the vehicle to leave the lot “with more than a pound of explosives placed on the engine”;
- Failed to notify Chief Davis when the training aid was lost despite being “aware” of the requirement to do so;
- “Engaged in a conversation with the other Officers involved in the incident and decided not to report it despite [his] knowledge of [his] responsibility to do so”; and

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<sup>161</sup> Ex. 2-8, p. 5.

<sup>162</sup> Ex. 2-8, p. 4.

<sup>163</sup> Ex. 2-8, pp. 5-6.

<sup>164</sup> Ex. 2-8, p. 6.

<sup>165</sup> Ex. 2-8, p. 6.

<sup>166</sup> Ex. 2-8, p. 12.

<sup>167</sup> Ex. 2-8, pp. 13-15.

<sup>168</sup> Ex. 2-8, pp. 13-15.

<sup>169</sup> R. 232.



- Stated during the AI that the training aid “was out of [the team’s] control for ‘probably less than 20 minutes,’” when the aid was actually “out of [the team’s] control for significantly longer than twenty minutes.”<sup>170</sup>

The same day that he terminated Officer McQuillin, Chief Davis prepared an F-4 Personnel Action Form to the APSC, recommending the Council decertify Officer McQuillin.<sup>171</sup>

The F-4 form alleged that Officer McQuillin:

- “Was responsible for the loss of an explosives training aid”;
- Knew he was “required to immediately report the loss of the explosive aid,” but failed to do so;
- “Colluded with other officers to keep the knowledge of the loss of the aid from the department leadership and the TSA”;
- “Minimized the severity of the action” on the ATF form; and
- “Was less than cooperative” during the investigation, including “minimiz[ing] the time that the aid went missing.”<sup>172</sup>

Although Chief Davis knew Lt. Delk had misunderstood the time entry questions on the ATF form, and that the AI’s damning conclusions about those questions were therefore erroneous, Chief Davis provided the AI report to the Council without any clarification. Chief Davis testified that it “never occurred to him” to clarify to the Council that Officer McQuillin had not, in his view, lied on the form about the amount of time the training aid was missing.

#### **L. Grievance and arbitration award**

Officer McQuillin grieved his termination through his union, and the matter eventually went to arbitration. A four-day arbitration hearing was held in October and November 2015. On February 19, 2016, Arbitrator Howell Lankford issued a decision strongly in favor of Officer McQuillin, finding that AAPFD lacked grounds to dismiss Officer McQuillin, and ordering him reinstated.

The arbitrator concluded that Officer McQuillin should have remained on scene in the parking lot as part of a three-person training team in order to provide an additional set of eyes on the training aid. The arbitrator found that this failure was mitigated, but not excused, by a belief that all car keys were under the control of Mr. Flaherty. The arbitrator concluded that the appropriate disciplinary sanction for Officer McQuillin’s negligence was a one-week suspension.

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<sup>170</sup> R. 322-323.

<sup>171</sup> R. 9-10.

<sup>172</sup> R. 10.

But the arbitrator rejected claims that Officer McQuillin colluded with other officers,<sup>173</sup> acted dishonestly, or otherwise committed the “blatant insubordination” alleged by the termination letter.<sup>174</sup>

In addition to ordering that Officer McQuillin be reinstated with full back pay and benefits, the arbitrator also directed the agency to “take all appropriate steps to withdraw its proposal that the Police Standards Council revoke [Officer McQuillin’s] police certificate or, in the alternative, move to have that certificate reinstated.”<sup>175</sup>

Chief Davis initially forwarded the arbitrator’s award to the Council with a disapproving email.<sup>176</sup> In May 2016, Chief Davis sent a second letter retreating from the earlier email in favor of “convey[ing] more thoroughly the position of the Ted Stevens Anchorage International Airport Police and Fire Department.”<sup>177</sup> The May 2016 letter takes the position that:

The [arbitration] hearing and resulting decision covered all of the material allegations the agency relied upon to support the discharge of [Officer] McQuillin. The fact finding and legal analysis of those allegations, and the weighing of all of the evidence taken on those Issues, was within the jurisdiction of the arbitrator and those findings are relevant to future proceedings by the APSC.<sup>178</sup>

The letter noted that the arbitrator had concluded that Officer McQuillin had been negligent in not staying on scene to help monitor the training area, but that the AI’s other allegations were not substantiated. The letter noted in particular the arbitrator’s conclusion “that the agency did not perform a fair and impartial investigation,” and his “reject[ion of] various parts of the investigation that could call into question Officer McQuillin’s moral character.” Finally, the letter stated: “For purposes of any future proceedings involving this matter, Officer McQuillin has been ordered reinstated so he should not be considered a discharged employee.”<sup>179</sup>

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<sup>173</sup> Ex. 2-1, p. 22 (“The officers were wrong, as far as this record shows, in their conclusion that their duty to report the loss was eliminated by the brief period the location of the training device was unknown and the fact that it came back safely. But the other local examples (set out . . . above) of training devices briefly lost and safely recovered—sometimes by Department officers and sometimes by TSA officers or trainers—without a subsequent report shows that the misconception was not theirs alone but was broadly shared. In order to sustain an allegation of collusion, the burden of proof is on the agency to show that the officers knew their behavior was forbidden and reached an agreement to cover up for one another by not reporting it, and the Department did not carry that burden”).

<sup>174</sup> Ex. 2-1, p. 24.

<sup>175</sup> Ex. 2-1, p. 26.

<sup>176</sup> Davis testimony. That email is not in evidence in this case.

<sup>177</sup> Ex. 2-2. Chief Davis testified that he did not write this letter, that he understands it to have been written by someone “in the Governor’s office,” and that he signed it “under protest.” The letter does not reflect that it was signed “under protest.”

<sup>178</sup> Ex. 2-2, p. 1.

<sup>179</sup> Ex. 2-2, p. 2.

**M. Procedural history of revocation action**

The Executive Director filed an Accusation against Officer McQuillin in July 2015, seeking revocation of Officer McQuillin’s police officer certification based on his having been discharged for cause. Officer McQuillin filed a timely notice of defense.

Because the claims against him were based on the same incident that was the subject of an employment grievance, Officer McQuillin requested, and the Executive Director did not oppose, a continuance of the hearing in this matter until the arbitration was resolved. In the meantime, a separate action was filed involving Officer Kemper’s certification. The two matters were ordered partially consolidated for hearing, so that a single evidentiary hearing could be held on the facts common to both cases.

After the arbitrator’s ruling, Officer McQuillin filed a motion to dismiss, arguing that a revocation based on his discharge from AAPFD would be improper in light of the arbitrator rescinding that discharge. After an Interim Order indicated that the motion to dismiss would be granted unless the Accusation were amended to state some grounds beyond the discharge, the Executive Director filed an Amended Accusation in April 2016. In addition to still seeking revocation based on the “discharge for cause,” the Amended Accusation seeks revocation based on an alleged lack of good moral character.

An evidentiary hearing was held over the course of five days in June and July 2016. Testimony was taken from AAPFD Chief Jesse Davis, AAPFD Lt. Gary Delk, AST Capt. Randall Hahn, TSA’s Field Canine Coordinator David Vasek, Officer McQuillin, former Officer Trent, DPS employee Laura Spire, DOT shop foreman Brian Flaherty, Dr. Frederic Whitehurst, retired AAPFD Chief Laura Burkmire, retired AAPFD officers Martin Spire and Jack McFarland, and current AAPFD officers Jim Lewis, Brandon Lewis, Douglas Holler, Brent Lowen, Daniel Nowak, and Zachary Stone. All exhibits of both parties were admitted by stipulation. Following the submission of post-hearing briefing, the matter was taken under advisement.

**N. Credibility of witnesses**

Officer McQuillin was a particularly thoughtful and credible witness. His manner was direct and forthright, and he sought to carefully distinguish the views he held at the time of the incident from the views he now holds – for example, as to whether it was necessary to report the loss of the training aid. He testified credibly that he accepts responsibility for the poor communication amongst the team members, and for the team not notifying anyone about the

missing aid, but also was credible in explaining that, at the time the incident occurred, he genuinely did not understand the policy to require notification under these circumstances.

Chief Davis was a less credible witness than Officer McQuillin. In his testimony, Chief Davis attempted to minimize statements he had made to the media in April 2014 about the lack of danger posed by misplaced training aids, and to disavow the letter he had signed and sent to the Council the month before the hearing, while simultaneously discussing the importance of trustworthiness. These two separate instances of Chief Davis backtracking from his official statements related to the canine program generally, and to Officer McQuillin specifically, make his testimony in this matter less trustworthy, and so, less credible.<sup>180</sup>

Lt. Delk was also a less credible witness than Officer McQuillin. In both his written report and his testimony, Lt. Delk tended to minimize or exclude potentially exculpatory information, while exaggerating or taking out of context potentially negative information. Examples of this in his written report include Lt. Delk's reliance on the outermost possible time estimates to identify a timeline of events; ignoring Officer McQuillin's statement that the "20 minute" estimate was about 20 minutes from when he learned the aid was missing; failing to include unrefuted statements about water gel not being dangerous; relying on a nonsensical interpretation of the ATF form to conclude that dishonesty was afoot; and otherwise demonstrating a less than impartial approach to the investigation. Within his testimony, the most obvious example of questionable judgment and/or non-credible testimony was Lt. Delk's refusal even now to consider the possibility (endorsed by literally every other witness) that he was misunderstanding the ATF form. More broadly, Lt. Delk often offered questionable characterizations of information obtained in his investigation.<sup>181</sup> The overall impression left is that Lt. Delk is willing to cherry pick facts or information to support a preferred outcome.

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<sup>180</sup> Additionally, Chief Davis testified that David Vasek told him that other employees had or would be fired under similar circumstances. This is the opposite of what Mr. Vasek testified to, and Mr. Vasek's testimony on this point was more credible.

<sup>181</sup> For example, Lt. Delk described Officer Trent as having initially provided time estimates for when the aid went missing and for how, "but then [saying] he doesn't know what time because he doesn't wear a watch." Lt. Delk went on to criticize Officer Trent for "not wearing a watch," in light of the need for police officers to accurately document the time while carrying out various duties. But Officer Trent's actual statement in his interview with Lt. Delk was that he removes his watch *when running his canine through a training exercise*, an explanation entirely lost in Lt. Delk's retelling. Another example is that, in describing his contacts with Dave Vasek, Lt. Delk remarked that Mr. Vasek trained and supervised K-9 officers but was not himself a K-9 handler, and testified with certainty that Mr. Vasek told him he was "not qualified to be a K-9 handler," even though he would have liked to be one. But Mr. Vasek testified he has worked both as a K-9 trainer and a K-9 handler, and described in some detail his experience handling and training K-9s. 6/30/16 hearing testimony at 2:05:04 ("I was a canine handler, trainer, and instructor" in the military); 2:05:40 ("I've had responsibility in training and working with hundreds of detector dogs"). As a final example, Lt. Delk repeatedly sought to offer opinion testimony about car engine temperatures to support his

Brian Flaherty gave obviously incorrect testimony about the events of July 30, 2014. He testified with complete confidence that a fourth officer, Officer Schmidt, was present; that Officer Trent was a “bomb guy,” not a canine officer; that only two canine officers and two canines were present; and to other related “recollections” that are inconsistent with the undisputed evidence. Mr. Flaherty’s recollection of the events is clearly flawed, and his testimony was given considerably less weight as a result.

**O. “Ultimate issue” factual findings**

1. *Cause of the loss.* The training aid was lost because of a lack of clear communication among the three officers, and between the officers and DOT personnel. All three officers should have discussed their respective roles at the start of the exercise, and Officer McQuillin should have communicated clearly and directly to his fellow officers that he was removing himself and Hunter from the training scenario. His failure to do so was negligent, although more understandable in light of the officers’ mistaken but not unreasonable belief that the lot was secure. The officers also should have obtained the keys to each vehicle being used in the exercise, although their failure to do so was again understandable in light of their belief that the lot was secure and their belief that all keys were in the custody of a single responsible attendant with whom they had directly communicated.

2. *No threat to public safety.* The presence of the water gel on the vehicle being driven by Ms. Spire did not pose a threat to public safety generally or to her safety in particular, and Lt. Delk’s conclusion to the contrary was inaccurate.<sup>182</sup> Likewise, the Amended Accusation’s characterization of the water gel as “a live explosive training aid” was incorrect.<sup>183</sup> Water gel is a secondary explosive, and could not have exploded without a blasting cap. Dr. Whitehurst, a retired FBI materials analyst and doctorate-level analytical chemist, testified that water gel is a “secondary explosive” requiring a great deal of sudden energy in order to detonate, and that a car accident would not produce enough shock for this to occur. Indeed, even shooting it with a gun would not make it explode. “In order for them to be dangerous we have to initiate them in some way.”<sup>184</sup> In the absence of an initiator, the presence of water gel does not present a danger, let

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conclusions about the supposed dangerousness of having Ms. Spire drive the Explorer with water gel on top of the engine compartment. Lt. Delk’s testimony about this topic was well out of step with other witnesses who testified.

<sup>182</sup> It is unfortunate that Lt. Delk did nothing to clarify to Ms. Spire that the explosive gel was not, in fact, dangerous under these circumstances. The failure to convey this information caused Ms. Spire unnecessary distress, which remained visible at the hearing.

<sup>183</sup> Amended Accusation, para. 3.

<sup>184</sup> Whitehurst testimony.

alone the “immediate threat” alleged here.<sup>185</sup> In short, in addition to conflicting with his own prior statements about the training aid that went missing in April 2014, Chief Davis’s conclusions about the inherent dangerousness of the training aid were not borne out by the testimony of those with actual technical training in explosives.<sup>186</sup>

3. *Timing.* The allegation in the Amended Accusation that “the training aid was missing for approximately 70 to 75 minutes” is incorrect.<sup>187</sup> Captain Hahn’s investigation on the day of the incident is the most reliable source of information about how long the vehicle was gone from the lot. Based on Captain Hahn’s summary, as reported to Chief Davis on July 30, 2014, the training aid was gone for less than 50 minutes.<sup>188</sup> But Officer McQuillin was not present when the aid went missing, when it was discovered, or when it was returned, and a senior officer who was present during all of those events estimated the time as about twenty minutes. Officer McQuillin told Lt. Delk and Chief Davis that the aid was gone for approximately twenty minutes, but also told them repeatedly that this was an estimate. While Officer McQuillin likely should have realized that this estimate understated the total time of the loss, the Executive Director did not establish that Officer McQuillin’s acceptance of the twenty-minute time frame was intended to deceive. In short, Officer McQuillin’s estimate of twenty minutes understated the time that the training aid was missing, but not nearly to the extent alleged by the AI, and not so unreasonably as to implicate his moral character.

4. *Awareness of requirement to report temporary loss and recovery of training aid.* It is more likely true than not true that, at the time the training aid was briefly lost and recovered, Officer McQuillin was unaware that the temporary loss and recovery was required to be reported. While Officer McQuillin probably should have realized that notification was required, his confusion on this subject was understandable given the lack of a clear AAPFD policy on temporary losses; the lack of any training on this specific type of occurrence; the significant history, described by multiple witnesses, of other situations in which aids have briefly been misplaced during training exercises without reporting; and the actions of his more senior officers, particularly Officer Trent. Considering this same question in Officer McQuillin’s employment case, the arbitrator reached the same conclusion:

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<sup>185</sup> Dr. Whitehurst noted that explosive aids are routinely transported by law enforcement agencies across highways and through the mail.

<sup>186</sup> See Ex. 2-3.

<sup>187</sup> See Amended Accusation, para. 3.

<sup>188</sup> See R. 156.

The officers were wrong, as far as this record shows, in their conclusion that their duty to report the loss was eliminated by the brief period the location of the training aid was unknown and the fact that it came back safely. But the other local examples (set out [above]) of training devices briefly lost and safety recovered – sometimes by Department officers and sometimes by TSA officers or trainers – without a subsequent report shows that the misconception was not theirs alone but was broadly shared.<sup>189</sup>

Given the totality of the circumstances, the Executive Director did not prove that Officer McQuillin actually knew that a report was required under these circumstances.

5. *No collusion.* The F-4 form submitted by Chief Davis alleged that Officer McQuillin colluded with other officers to not report the loss of the training aid. Officers McQuillin and Trent credibly testified that there was no such discussion. Their testimony is logically supported by the short duration the aid was gone, the testimony regarding similar prior incidents in which no report was made, and the total absence of discipline following the April incident – all circumstances that undermine the idea that the officers would have any reason to collude. As the arbitrator noted, “[i]t would have made very little sense to collude,” given this history.<sup>190</sup> The officers generally, and Officer McQuillin specifically, did not engage in collusion as to whether to report the temporary loss of the training aid.

6. *No falsification.* The officers generally, and Officer McQuillin specifically, did not falsify or otherwise improperly fill out the ATF form. Lt. Delk was incorrect in concluding that the responses at box 7 of the ATF form indicated that the aid was only gone for five minutes. As the form requests, the responses properly reflected estimates of when the loss occurred and when the loss was discovered. Officer McQuillin’s response to the ATF form’s question 16 (“other information about the loss”) provided an appropriate factual summary in response to the question asked.

7. *“Taking responsibility.”* Chief Davis’s conclusion that the officers “minimized” the incident was based on a view that no one ever “accepted responsibility” for the incident.<sup>191</sup> Chief Davis took issue with Officer McQuillin stating, during the AI interview, that he had not felt responsible for the training aid at the time of the incident. After a careful review of the evidence, Officer McQuillin’s statements are far more reasonably construed as (1) explaining his mindset at the time of the event vis-à-vis why he took the actions he took, and (2) then also expressing his subsequent, post-event view that, in fact, the whole team was responsible. Officer

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<sup>189</sup> Ex. 2-1, p. 22.

<sup>190</sup> Ex. 2-1, p. 22.

<sup>191</sup> Davis testimony.

McQuillin’s statements during the AI and the predetermination meeting about the actions he took on July 30 were an attempt to explain what had led him to take those actions. But Officer McQuillin also repeatedly indicated that, in hindsight, he had been wrong, that everyone was responsible for the training aid, that he should have communicated with his teammates, and that he understands that the team should have reported the incident.

8. *Cooperation during the investigation.* The F4 form submitted by Chief Davis alleged that Officer McQuillin had failed to fully cooperate in the AAPFD’s investigation. According to Chief Davis, the sole basis for that conclusion is that Officer McQuillin had, during the predetermination meeting (not the investigation) made a statement that he was “not going to say anything more” about the issue of how long the aid was gone.<sup>192</sup> A full and careful review of the evidence – Officer McQuillin’s written statement on the ATF form, his recorded interview with Lt. Delk, and his responses to the questions in the predetermination meeting – demonstrates that Officer McQuillin’s response was not a refusal to cooperate, but rather was a reasonable statement that he had already fully explained the nature of his time estimate – specifically, that “it’s an approximation” – and that further questioning was not going to change his answers.<sup>193</sup> The allegation that Officer McQuillin failed to cooperate during the investigation is not supported by the evidence in the record.

### **III. Discussion**

For the reasons discussed below, the Executive Director did not meet his burden of showing that Officer McQuillin’s police officer certification should be revoked.

#### **A. The Executive Director did not show that Officer McQuillin lacks good moral character. (Count II)**

Count II of the Amended Accusation asserts that discretionary revocation is appropriate under 13 AAC 85.110(a)(3) because Officer McQuillin “lacks good moral character.” The Council has discretion – but is not required – to revoke an officer’s certification if the officer does not meet the basic standards set out in 13 AAC 85.010, which include the requirement that the officer possess “good moral character.”<sup>194</sup>

Good moral character is defined 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

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<sup>192</sup> Davis testimony; Ex. 2-8, p. 15.

<sup>193</sup> See Ex. 2-8, pp. 13-15 (Responding to Lt. Delk’s time estimate “would only be speculation”; difference between various time estimates by different individuals “is why they call it an approximation”; agreeing that “[y]es, it is an approximation and I’m not going to say anything more than that”).

<sup>194</sup> 13 AAC 85.110(a)(3).



for the rights of others and for the laws of the state and the United States.”<sup>195</sup> For purposes of making this evaluation, the Council may consider “all aspects of a person’s character.”<sup>196</sup>

Prior decisions by the Council have considered the elements identified in the regulation – honesty, fairness, respect for the rights of others, and respect for the law – collectively.<sup>197</sup> Because the regulation considers “all aspects of a person’s character,” the Council’s task is to reach a reasoned decision based on the totality of the evidence. Here, the Executive Director did not prove a substantial doubt about Officer McQuillin’s honesty, fairness, respect for the rights of others or respect for the law, nor does the totality of the evidence support a finding that he lacks good moral character.

The accusation’s threshold allegation implicating moral character – that Officer McQuillin falsified a report – is incorrect. Even Chief Davis disavowed the conclusion in the AI report that the Executive Director later relied on to make this claim.<sup>198</sup>

With regard to Officer McQuillin’s adoption of the twenty-minute estimate for the time that the aid was missing, the estimate fit roughly with what he knew—when he learned of the incident and when it was concluded – and his statements make clear that twenty minutes was only a guess. While he could have shown better judgment by not speculating if he lacked personal knowledge, the surrounding circumstances do not support a finding that he was intending to deceive anyone by adopting what turned out to be an inaccurate estimate. To the extent Officer McQuillin’s adoption of the twenty-minute estimate was an error in judgment, it was not one that raises doubt about his honesty.

Nor does the remaining evidence support the Executive Director’s allegation regarding a lack of good moral character. To the extent that the temporary loss of the training aid was required to be reported, Officer McQuillin’s failure to report the temporary loss was more likely than not due to a good faith misunderstanding about that requirement under this set of circumstances. Further, while Chief Davis also faulted what he perceives to be Officer McQuillin’s failure to “take responsibility” for the events that unfolded, the transcript of Officer McQuillin’s investigatory interview shows that he believed the incident occurred because of a

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<sup>195</sup> 13 AAC 85.900(7).

<sup>196</sup> 13 AAC 85.900(7).

<sup>197</sup> See *In re: E X*, OAH No. 13-0473-POC, at p. 18 (Alaska Police Standards Council 2013); *In re: Hazelaar*, OAH No. 13-0085-POC, at pp. 15-16 (Alaska Police Standards Council 2014).

<sup>198</sup> Compare Amended Accusation, Para. 4, with Davis testimony.

lack of communication and a lack of understanding, and also that he believes the team is equally responsible for the events.

Chief Davis's conclusion that Officer McQuillin was not forthcoming was based on his statement, during the predetermination meeting, that he had "nothing more to say" about what had happened. A full review of the evidence – Officer McQuillin's written statement on the ATF form, his recorded interview with Lt. Delk, and his responses to the questions in the predetermination meeting – demonstrates that Officer McQuillin's response was not a refusal to cooperate, but was rather a reasonable statement that he had very fully explained his conduct, reasoning and views on the topic at issue, and that further questioning was not going to change his answers.

Both Officer McQuillin's underlying conduct, and the overall evidence of his good moral character, stand in sharp contrast to other cases in which the Council has revoked a certification on the basis of moral character. Such cases have found overall poor moral character amidst conduct such as sexual contact with a crime victim, sexual harassment of fellow officers, accessing corrections resources for family members' benefit, and dishonesty in official reports.<sup>199</sup>

Here, neither Officer McQuillin's conduct during the events of July 30, nor his conduct during the investigation of those events, create substantial doubts about his honesty, fairness, and respect for the rights of others and/or for the law. Further, Officer McQuillin presented considerable testimonial and documentary evidence in favor of his good moral character. Numerous former colleagues and supervisors testified in support of Officer McQuillin, drawing specifically on their experiences working with him as an AAPFD officer, and describing their observations of his positive work ethic, professionalism, calm demeanor, integrity, honesty, and hard work.<sup>200</sup> The totality of the evidence presented does not support a finding that Officer McQuillin lacks good moral character, and in fact supports quite the opposite conclusion.

For the reasons stated above, the Executive Director did not meet his burden of proving that Officer McQuillin lacks good moral character as defined in the Council's regulations.

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<sup>199</sup> *In re: E X*, OAH Case No. 13-0473-POC (APSC 2013); *In re: Much*, OAH Case No. 13-0288-POC (APSC 2013); *In re: Parcell*, APSC Case No. 2007-09 (APSC 2012); *In re: Bowen*, OAH Case No. 10-0327-POC (APSC April 2011).

<sup>200</sup> See, e.g., Burkmire testimony; Spire testimony; J. Lewis testimony; B. Lewis testimony; McFarland testimony; Lowen testimony; Stone testimony.

**B. The Executive Director did not show that revocation is authorized or appropriate under counts involving “discharge for cause.” (Counts I and III)**

Counts I and III of the Amended Accusation concern the employment action taken against Officer McQuillin. Count I asserts that discretionary revocation is appropriate under 13 AAC 85.110(a)(2) because Officer McQuillin was “discharged for cause . . . for conduct that adversely affects his ability and fitness to perform the duties of a police officer and/or was detrimental to the reputation, integrity, or discipline” of AAPFD. Count III asserts that mandatory revocation is required under 13 AAC 85.110(b)(3) because Officer McQuillin was “discharged for cause for conduct” that is detrimental to the integrity of AAPFD, or for conduct that “would cause a reasonable person to have substantial doubt about [his] honesty, fairness, respect for the rights of others, or for the laws of this state or the United States.” Because these allegations all necessarily arise out of the employment action taken by AAPFD, they are addressed collectively, below.

*1. Officer McQuillin was not discharged for cause. (Counts I & III)*

An essential element of Counts I and III against Officer McQuillin is that he was “discharged . . . for cause.” But the Amended Accusation ignores entirely the arbitrator’s decision revoking Officer McQuillin’s discharge. Because the arbitrator’s decision revoked the discharge at issue, the Council cannot revoke Officer McQuillin’s certification based upon that discharge.

*a. The Alaska Supreme Court’s decision in *Parcell* does not address the appropriateness of a discharge-based revocation after that discharge has been overturned.*

The Executive Director takes the position that the arbitration award does not affect the proceedings in this matter, contending that a discharge that has been finally adjudicated as illegal and invalid is nonetheless a discharge that requires disciplinary action by the APSC. In support of this argument, the Executive Director relies on an Alaska Supreme Court decision in a prior APSC case, *In re Parcell*.<sup>201</sup>

But the Executive Director misconstrues *Parcell* and its applicability here. In *Parcell*, the Council revoked the certification on two grounds – one under 13 AAC 85.110(b)(3) related to the employment action, and another under 13 AAC 85.110(a)(3) based on a finding that Mr. Parcell lacked good moral character. The Superior Court reversed on both grounds.<sup>202</sup> On appeal to the Supreme Court, the Council waived its appeal on the employment issue, and instead appealed

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<sup>201</sup> *Alaska Police Standards Council v. Parcell*, 348 P.3d 882, 887, fn. 27 (Alaska 2015).

<sup>202</sup> *Parcell v. Alaska Police Standards Council*, Juneau Superior Court Case No., 1JU-12-728CI, September 30, 2013 Order Reversing Revocation of Police Certificate; rev’d on other grounds.

only the issue of the moral character finding.<sup>203</sup> The Supreme Court’s decision, in turn, upheld revocation on *that* ground – expressly noting that the Council had declined to pursue an appeal of the employment-related revocation, and that it was therefore not addressing that issue in its decision.<sup>204</sup>

In other words, separate and apart from the circumstances of Mr. Parcell’s employment case, the Council made a discretionary determination under 13 AAC 85.110(a)(3) that he lacked the moral fitness to hold a certification.<sup>205</sup> It is *that* revocation – under 13 AAC 85.110(a)(3) – that the Alaska Supreme Court upheld.<sup>206</sup> The revocation of Mr. Parcell’s certificate based on the issue of good moral character did not depend on the employment action taken against him. The Executive Director’s claims asserted in this case under 13 AAC 85.110(a)(2) and 13 AAC 85.110(b)(3), on the other hand, both expressly require a finding that Officer McQuillin was “discharged for cause.” *Parcell* expressly did not address the issue here, and the only Alaska court to have considered the issue concluded that an arbitrator’s reversal of a termination precludes a revocation that is based on the overturned termination.<sup>207</sup>

- b. *Bowen’s* analysis of this issue is not legally supportable and should be revisited.

The arbitration award has the legal effect of undoing Officer McQuillin’s discharge, a legal fact that precludes a revocation based on “discharge for cause.” The Council’s prior examination of this issue is legally unsupportable and should be overturned. In *In re: Bowen*, OAH No. 10-0327-POC, the Council upheld a revocation under the “discharge for cause” regulation, despite the termination having been reversed by an arbitrator. *Bowen*, which has previously been partially overturned on other grounds, relied on 13 AAC 85.110(f), which provides that a personnel action or subsequent personnel action, “including a decision resulting from an appeal” of the underlying employment action, “does not preclude the council from revoking the police officer’s basic, intermediate, or advanced certificate under this section.”<sup>208</sup>

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<sup>203</sup> *Alaska Police Standards Council v. Parcell*, 348 P.3d 882, 887, fn. 27 (Alaska 2015); Ex. B, pp. 11-12.

<sup>204</sup> *Parcell*, 348 P.3d at 887, fn 27 (“[T]he Council limited its appeal to discretionary revocation [under 13 AAC 85.110(a)(3)]. We therefore do not address the court’s decision on mandatory revocation under 13 AAC 85.110(b)(3)”).

<sup>205</sup> *Alaska Police Standards Council v. Parcell*, 348 P.3d at 886-889.

<sup>206</sup> *Alaska Police Standards Council v. Parcell*, 348 P.3d at 886-889.

<sup>207</sup> *Parcell v. Alaska Police Standards Council*, Juneau Superior Court Case No. 1JU-12-728CI, September 30, 2013 Order Reversing Revocation of Police Certificate; rev’d on other grounds.

<sup>208</sup> *Bowen*, OAH No. 10-0327-POC, at 11.

The Executive Director relies on the same regulation as allowing a discharge-based revocation here.<sup>209</sup>

In concluding that this regulation supports a “discharge for cause” revocation even where the discharge in question has been overturned, *Bowen* takes an interpretive leap that is unsupported by the regulatory language. While .110(f) says that a personnel action does not preclude the council from revoking “under this section,” the “section” in question includes *all* discretionary and mandatory grounds for revocation, most of which do not require an adverse employment action as an essential element. Thus, .110(f) is not at all in conflict with holding that certain grounds under .110 – those specifically requiring a finding of discharge for cause – do, in fact, require a discharge for cause.

The flaw in *Bowen*’s reasoning is underscored by its suggestion that an employee ordered reinstated after arbitration is in a legally similar position to a convicted criminal whose conviction is later set aside. The case *Bowen* then cites to support this proposition illustrates the critical distinctions between those two situations, and compels a conclusion contrary to that in *Bowen*. That case, *State v. Platt*, concerned a Board of Nursing license denial based on regulations allowing denial of certification to a person who “has been convicted of a crime substantially related to the qualifications, functions, or duties” of the license sought.

In *Platt*, the Board of Nursing denied a license based on an applicant’s criminal conviction that had since been “set aside.” The Alaska Supreme Court upheld the Board’s denial, but the legal reasoning it employed highlights the distinction between a *set aside* conviction and an *overturned* termination:

Although setting aside a conviction limits the consequences of the conviction itself, it does not change the fact that an individual was previously found guilty of committing a crime. . . . [W]here a conviction is set aside it “does not mean that the crime, and the events surrounding the crime, never occurred.” Setting aside a conviction does not expunge the conviction from the individual’s criminal record, which means that “[b]oth the conviction and the judgment setting it aside consequently remain in the public record.” *Thus, although the set aside indicates that the defendant has made a ‘substantial showing of rehabilitation,’ it does not erase the fact of conviction.*<sup>210</sup>

The *Platt* decision was based on the implications of setting aside a conviction – specifically, that such a decision reflects subsequent rehabilitation but “does not erase the fact of the conviction.” But the same analysis does *not* apply to an employee whose termination has

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<sup>209</sup> Post-hearing brief, p. 2.

<sup>210</sup> *State, Div. of Corps., Bus. & Prof’l Licensing, Alaska Bd. of Nursing v. Platt*, 169 P.3d 595, 599 (Alaska 2007) (emphasis added).

been *overturned as wrongful* through arbitration, because the arbitration does “erase the fact of” the wrongful termination.<sup>211</sup> Such an employee is more fairly analogized to a defendant whose criminal conviction is *overturned* on appeal. Unlike with the set-aside conviction, an overturned conviction is “erased.” Likewise, the arbitration award erases the termination, finding it legally unjustified under the employment agreement, and so undoing it. *Bowen’s* conclusion to the contrary was legally incorrect.

- c. Because the arbitration award effectively “unwound” the fact of Officer McQuillin’s discharge, the Council cannot and should not treat him as a discharged employee.

The arbitrator’s decision reversed AAPFD’s discharge decision – ordering Officer McQuillin reinstated with full back pay and benefits. As a result, the termination has effectively been undone, with Officer McQuillin ordered returned to his prior position as if it had never occurred. Indeed, AAPFD now expressly takes the position that Officer McQuillin “should not be considered a discharged employee.”<sup>212</sup>

In light of the arbitrator’s award, the Council cannot revoke Officer McQuillin's certificate based on his having been “terminated for cause.” Not only has the termination been legally determined to have been *without* “cause,” the effect of the arbitration award is to “unring the bell” of the termination.

Certainly, under 13 AAC 85.110(f), and as *Parcell* held, an arbitration award does not serve as a complete bar to all possible revocation actions by the Council. But, as to the specific grounds on which the Executive Director seeks revocation in Counts I and III, the arbitrator’s award, which has the effect of undoing the termination, precludes revocation. Charges based on 13 AAC 85.110(a)(2) and 13 AAC 35.110(b)(3), for which “termination for cause” is an essential element, cannot be sustained.<sup>213</sup> Accordingly, Counts I and III fail.

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<sup>211</sup> See Ex. 2-2 (AAPFD letter to Council, clarifying that “for purposes of any future proceedings involving this matter, Officer McQuillin has been ordered reinstated and should not be considered a discharged employee”).

<sup>212</sup> Ex. 2-2.

<sup>213</sup> See *Greywolf*, 151 P.3d at 1241 (“a complete failure of proof concerning an essential element of the nonmoving party’s case necessarily renders all other facts immaterial”).

2. *The Executive Director did not prove that the underlying conduct adversely affected Officer McQuillin’s ability and fitness to perform the duties of a police officer. (Count I)*

Even if Officer McQuillin could be considered “discharged for cause,” which he cannot, the Executive Director did not meet his burden of proving that the underlying conduct adversely affected Officer McQuillin’s “ability and fitness” to perform the duties of a police officer.<sup>214</sup>

- a. The Executive Director did not prove that this incident implicates “Brady” concerns.

At the hearing, counsel for the Executive Director argued that the facts of this case implicate Officer McQuillin’s ability to serve as a police officer due to potential “Brady/Giglio” concerns.<sup>215</sup> But the Executive Director did not prove such concerns, nor otherwise prove an adverse effect on Officer McQuillin’s ability and fitness to perform his duties.

In argument, counsel for the Executive Director suggested that the negative views of Officer McQuillin’s honesty held by Chief Davis or Lt. Delk – and even the discredited/overtaken AI report – are “Brady/Giglio” material that would be disclosable in criminal cases involving Officer McQuillin. But the arguments of counsel are not evidence, and the Executive Director did not meet his burden of demonstrating that Officer McQuillin would be considered a “Brady officer.”

The evidence did not establish that Officer McQuillin was dishonest during the investigation. To the contrary, both the arbitration award and this decision found that Officer McQuillin was forthright and honest during the investigation.

The Executive Director then relies on a circular argument that Chief Davis’s or Lt. Delk’s negative view of Officer McQuillin’s honesty – no matter how ill-founded that view – renders him a “Brady officer,” which in turn impacts his ability to perform the functions of a police officer, which in turn supports revocation. But the evidence in the record does not establish that the personally-held beliefs of Chief Davis and Lt. Delk have actual *Brady* implications.<sup>216</sup> Moreover, accepting this line of argument would potentially turn any workplace disagreement

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<sup>214</sup> 13 AAC 85.110(a)(2) (authorizing discretionary discharge if Council finds the certificate holder “has been discharged . . . for cause for . . . some other reason that adversely affects the ability and fitness of the police officer to perform job duties . . .”).

<sup>215</sup> *Brady v. Maryland* and *Giglio v. United States* are two United States Supreme Court decisions requiring prosecutors to disclose to defense counsel exculpatory or impeachment evidence. *Brady v. Maryland*, 373 U.S. 83 (1963); *Giglio v. United States*, 405 U.S. 150 (1972).

<sup>216</sup> Chief Davis was not asked about *Brady* issues during his testimony, and the arbitration award describes his prior testimony as expressly disavowing any *Brady* concerns. See Ex. 2-1, p. 22 (“The Chief specifically testified on cross that the dismissal letter did not allege dishonesty and that there was no *Brady* issue in the discharge”).

into a *Brady* matter, and open the door for revocation based on the opinions of others, rather than on an officer's actual conduct.

Here, of course, to the extent *Brady* issues are being raised under Counts I and III, *Brady* is a non-issue because those counts fail on the threshold finding that Officer McQuillin was not "discharged for cause." But the Executive Director also did not prove an actual *Brady* concern, and this issue therefore would not inform the revocation decision in any event.

b. Officer McQuillin's ability and fitness to perform his duties were not impacted by this incident.

Nor did the evidence otherwise establish an adverse effect on Officer McQuillin's ability and fitness to perform his duties. Officer McQuillin's conduct was negligent, but not of the quality or character to implicate his ability or fitness as an officer. After the July 30, 2014 incident, Officer McQuillin continued to work in active duty as a K-9 officer for nearly four full months –including participating in almost daily trainings, representing the APFD at a college job fair, participating in security services for visiting dignitaries, and receiving a "high acceptable" evaluation.

TSA did not discipline any of the K-9 officers for the July 2014 incident.<sup>217</sup> The APFD Deputy Chief opposed Officer McQuillin's termination, as did TSA's Field Canine Coordinator David Vasek, speaking to their continued confidence in Officer McQuillin's abilities and fitness to perform his duties.<sup>218</sup> Mr. Vasek – the Field Canine Coordinator responsible for oversight of the canine program and ensuring that officers are properly trained, following TSA protocols, and meeting TSA expectations – testified that he would work with Officer McQuillin again.<sup>219</sup> Numerous character references likewise described their continued confidence in his integrity and work ethic.<sup>220</sup>

The evidence thus does not support the Executive Director's position that the events giving rise to Officer McQuillin's discharge adversely affected his ability and fitness to perform his duties. Thus, even if it were otherwise appropriate to consider revocation under 13 AAC 85.110(a)(2), the evidence does not support a finding that Officer McQuillin engaged in conduct that adversely affects his ability and fitness to perform his duties.

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<sup>217</sup> Vasek testimony.

<sup>218</sup> Davis testimony; Vasek testimony.

<sup>219</sup> Vasek testimony.

<sup>220</sup> Spinde testimony; Lowen testimony; Stone testimony; Holler testimony; J. Lewis testimony; B. Lewis testimony.



3. *The Executive Director did not prove that Officer McQuillin’s underlying conduct was “detrimental to the reputation, integrity or fitness” of the Anchorage Airport Police & Fire Department . (Counts I and III)*

The Executive Director likewise did not meet his burden of proving, even if Officer McQuillin could be considered to have been “discharged for cause,” that the underlying conduct was “detrimental to the reputation, integrity, or discipline” of the AAPFD.<sup>221</sup>

- a. Loss of the training aid

To the extent the Executive Director contends that the loss of the training aid satisfies this criterion, this argument fails. While the loss of the training aid was unfortunate and should not have occurred, it is a fact of training detection canines that, periodically, training aids are misplaced or lost – indeed, the aids themselves contain a sticker telling the public whom to call if an aid is found.<sup>222</sup>

The April 2014 incident at the Avis rental lot – a much more serious incident in terms of both the length of time that elapsed before the officers first located the missing aid and the length of time the aid was out of the officers’ actual control – did not lead to any discipline for any of the officers. Nor was that incident apparently “detrimental” to the agency’s reputation, despite considerable publicity at the time it occurred.

The evidence presented did not support a finding that the temporary loss and quick recovery of a training aid is “detrimental to the reputation” of an agency. A finding of detriment is not supported by the record, particularly given the lack of any outside knowledge of the incident beyond the Troopers, and AST’s Captain Hahn’s expression of continued support for the AAPFD K-9 program.<sup>223</sup>

Officer McQuillin’s August 2014 performance evaluation is further evidence that the July training aid incident was not viewed as “detrimental” to the AAPFD. That evaluation, completed weeks after the July incident, rated Officer McQuillin’s performance as “high acceptable,” recommended his “continued employment and applicable step increase,” and otherwise praised Officer McQuillin as a member of the AAPFD.<sup>224</sup> The content of the evaluation undermines the

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<sup>221</sup> See 13 AAC 85.110(a)(2) (permitting discretionary revocation on this ground); 13 AAC 85.110(b)(3) (requiring revocation on same ground).

<sup>222</sup> Vasek testimony; Spinde testimony; Trent testimony.

<sup>223</sup> R. 108 (“I wanted to affirm for him . . . that we are completely 100 percent supportive of future training that involves our vehicles, future training that involves our facilities. We can help with that and to help facilitate that. I don’t want this in any way to suppress the continued working relationship or continued interactions specifically with the canine program because I can’t stress strongly enough how sensitive I am to the need for those different training environments. I’m very, very well aware of that, and I don’t want that to hurt any of that”).

<sup>224</sup> Ex. 2-4, pp. 1-2.

suggestion that the training aid incident was “detrimental” to the integrity, fitness or reputation of the AAPFD.

b. AI report’s overturned findings of dishonesty

Nor did the Executive Director prove that Officer McQuillin’s alleged conduct underlying his overturned termination – that is, the *overturned* allegations of dishonesty or collusion – was “detrimental to the integrity or fitness” of the AAPFD. Such a finding could not be sustained given the arbitrator’s rejection of the AI and the termination, including the specific rejection of the findings of dishonesty and collusion.

Because the agency’s justifications for the discharge were found to be unsustainable and the discharge was therefore overturned, those same discredited justifications cannot be used to support decertification based on “discharge for” the same alleged conduct. Accordingly, decertification under (b)(2) or (a)(3) would be improper.<sup>225</sup>

4. *The Executive Director did not prove that Officer McQuillin’s conduct would “cause a reasonable person to have substantial doubt about [his] honesty, fairness, respect for the rights of others, or for the laws of this state or the United States.” (Count III)*

Count III of the Amended Accusation also asserts that mandatory revocation is required under 13 AAC 85.110(b)(3) because Officer McQuillin was “discharged for cause for” conduct that “would cause a reasonable person to have substantial doubt about [his] honesty, fairness, respect for the rights of others, or for the laws of this state or the United States.”

As discussed above, the Counsel cannot revoke Officer McQuillin’s certificate under Count III for the threshold reason that he has not been “discharged for cause.” Even if that threshold issue did not bar Count III, revocation would still not be warranted under these facts because, as also discussed above, Officer McQuillin’s conduct in the underlying events would not “cause a reasonable person to have substantial doubt about [his] honesty, fairness, respect for the rights of others, or for the laws of this state or the United States.” Officer McQuillin made a negligent mistake, but not one that should cost him his job or his certification. And he was honest, forthright, and cooperative in the administrative investigation.

Neither during the events in question nor during the investigation that followed did Officer McQuillin engage in the type of conduct that would warrant revocation under 13 AAC

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<sup>225</sup> In addition to the arbitrator rejecting the dishonesty and collusion allegations in the evaluation of the employment case, this decision has likewise found those allegations to be factually unsupported.

85.110(b)(3). For this reason, too, the Executive Director did not meet his burden of showing that revocation is appropriate under Count III of the Amended Accusation.

**IV. Conclusion**

The Executive Director did not meet his burden of showing either that revocation is mandatory, or that it would be appropriate, under these facts. The Executive Director's request for revocation of Officer McQuillin's Police Officer Certification is therefore denied.

DATED: September 1, 2016.

By: Signed  
Cheryl Mandala  
Administrative Law Judge

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