

**BEFORE THE ALASKA POLICE STANDARDS COUNCIL**

In the Matter of )

VALENT L. MAXWELL )

) OAR No. 16-0134-POC

) Agency No. APSC 2015-12

**FINAL DECISION**

**I. Introduction**

Police Officer Valent Maxwell twice left Alaska and accepted a job in Montana, once in 2012 and once in 2013. Neither job worked out for him, and in both cases, he moved back to Alaska and resumed his previous employment.

In both 2013 and 2014 he applied for and received permanent fund dividends. In both years, he was awarded PFDs because he had not been out of state for 90 days in the prior year - the time limit that triggers when more information about an absence is requested on the PFD application. This meant that PFD officials did not know he had moved and did not have the information they needed to determine that he was ineligible. Because he had moved out of state in each of the qualifying years for those two PFDs, however, he was not eligible for, and should not have received, those PFDs.

Based on Officer Maxwell's conduct of applying for and accepting a benefit for which he was not eligible, and certifying that he was an Alaska resident when he was not, the Executive Director of the Alaska Police Standards Council sought to revoke Officer Maxwell's police certificate. In the Executive Director's view, this conduct demonstrated a lack of good moral character.

The Alaska Police Standards Council has discretion to revoke a police officer's certification if it finds that he lacks good moral character. Because the evidence supports a finding that Officer Maxwell has a significant lack of respect for the law, the Council finds that his police certification should be revoked.

## II. Facts

Valent Maxwell became a police officer in 1999. He served as a village public safety officer in Kodiak until 2008, when he went to work as a police officer for the City of Klawock.

Officer Maxwell left Klawock in May 2012 and moved to Fairview, Montana, where he had accepted employment as a police officer, with the expectation of being promoted to chief. He left some belongings in Klawock. The job in Fairview did not work out. After four days of working, Officer Maxwell left Fairview, in part because he did not have housing in Fairview. He later returned to Klawock, and was rehired by the Klawock police department. He was gone from Alaska for 24 days.<sup>1</sup>

The next January, Officer Maxwell applied online for his 2013 permanent fund dividend. In his application, he certified that he had been a resident of Alaska for the entire previous year, 2012. He was awarded a 2013 PFD.<sup>2</sup>

In October 2013, Officer Maxwell again left Klawock and moved to Montana for a police officer job. This time, he moved to Ronan, Montana, where he worked as the Chief of Police. He left some belongings in an apartment owned by the City of Klawock. He was fired from the Ronan job in early January of 2014 because he did not have the skills to serve as police chief.<sup>3</sup> He returned to Klawock in March 2014. He was gone from Alaska for 70 days in 2013, and 59 days in 2014.<sup>4</sup> He was rehired again as a police officer for Klawock. Two days after he returned to Alaska, he filed for his PFD, certifying that he had been an Alaska resident for the entire previous year, 2013. He was awarded the 2014 PFD.<sup>5</sup>

The Alaska Department of Revenue's PFD division learned that Officer Maxwell had moved to Montana in 2012 and then again in 2013. These moves raised questions about his eligibility for the 2013 and 2014 PFDs, and the division began an investigation. Officer Maxwell was questioned by two state troopers regarding his application. He told the troopers he was certain that he had disclosed his absences and that he never intended to "cover up that I was gone."<sup>6</sup>

The Department of Revenue determined that Officer Maxwell's 2013 and 2014 applications were fraudulent, and that he had committed a crime by applying for and accepting the

---

<sup>1</sup> Stendevad testimony; Exhibit 11, Maxwell testimony.

<sup>2</sup> Stendevad testimony.

<sup>3</sup> Maxwell testimony.

<sup>4</sup> Stendevad testimony; Exhibit 11

<sup>5</sup> Stendevad testimony

<sup>6</sup> Admin. Rec. 26; Ryan testimony.

PFDs. The District Attorney charged him with having committed five class C felonies for the criminal offenses of unsworn falsification and theft.<sup>7</sup> Following a trial, however, Officer Maxwell was acquitted on all counts.<sup>8</sup>

While his criminal trial was pending, the Executive Director of the Alaska Police Standards Council investigated Officer Maxwell's conduct. On January 28, 2016, the Executive Director filed an accusation alleging that Officer Maxwell's conduct showed he lacked good moral character. The Executive Director sought revocation of Officer Maxwell's police certificate under 13 AAC 85.010(a)(3).<sup>9</sup> Officer Maxwell filed a notice of defense. A three-day telephonic hearing was held June 1-3, 2016.

### III. Discussion

Officer Maxwell is accused of lacking good moral character. A lack of good moral character is shown by acts or omissions that would raise doubt about a person's honesty, fairness, respect for the rights of others, and respect for the law.<sup>10</sup> The Executive Director does not have to prove a lack of all four elements of character, but must prove that, taken together, the officer lacks good moral character.<sup>11</sup>

In this case, the Executive Director asserts that Officer Maxwell's conduct of twice applying for a PFD, and twice certifying that he had been a resident for the entire qualifying years, after having moved out of state in each of those years, raises substantial doubt about his honesty. In the Director's view, this conduct was criminal, which is a further reason to conclude that Officer Maxwell lacks good moral character. The Director also asserts that his conduct of testifying under oath that he did nothing wrong in applying for those PFDs demonstrates a lack of respect for the law.

On the issue of honesty, we will begin by analyzing two issues that must be addressed to resolve this case - first, that Officer Maxwell was, in fact, ineligible for the 2013 or 2014 PFDs, and then, second, that an ineligible person in Officer Maxwell's situation could reasonably have a

---

<sup>7</sup> Stendevad testimony; Admin. Rec. 17-20, 47-48.

<sup>8</sup> Exhibits 13, 14.

<sup>9</sup> Admin. Rec. S

<sup>10</sup> 13 AAC 85.900(7). This regulation states:

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

<sup>11</sup> *Much v. Alaska Police Stnds. Coun.*, Case No. 3AN-14-4466CI (Alaska Super. Ct. 2016); *In re E.X.*, OAH No. 13-0473-POC at 17-18 (Police Standards Council 2013).

good-faith belief that he was eligible. We will then address whether Officer Maxwell's conduct was dishonest or an innocent mistake. Finally, we will discuss whether his testimony that he believes today that he was eligible for the 2013-14 PFD's raises substantial doubt about his lack of respect for the law.

**A. Was Officer Maxwell eligible for 2013 or 2014 PFDs?**

We begin the analysis by stating a clear, firm, and definite conclusion: Officer Maxwell was not eligible for the 2013 or 2014 PFDs. With some exceptions that do not apply in this case, a person is not eligible for a PFD for a year if, during the qualifying year (the year before the PFD would be issued), the person

- Maintained a primary home in another state;<sup>12</sup> or
- Accepted full-time permanent employment in another state.<sup>13</sup>

As explained below, Officer Maxwell did each of these in 2012 and 2013. In addition, in 2013, Officer Maxwell took an additional act that disqualified him when he

- Obtained a benefit of residency from another state.<sup>14</sup>

Because he took these actions, he was not eligible for the 2013 or 2014 PFDs.

The Executive Director proved that Officer Maxwell accepted full-time permanent employment in Montana in both 2012 and 2013. Officer Maxwell testified under cross-examination that his intent upon taking both jobs was to work at them indefinitely. He did not take either job - with the intent to leave after a short time to return to Alaska. Neither he nor his employers considered the jobs temporary.

Officer Maxwell argues that because he was in probationary status in both jobs, his jobs in Montana could not be considered permanent. He also argues that because he eventually intended to return to Alaska (his hope was to become police chief in Klawock, and he believed these jobs would be a stepping stone to that promotion), his jobs were not permanent. No cases, however, support that view. As the Department of Revenue has observed in a previous PFD case,

while accepting permanent full-time employment with the intent to quit and return to Alaska may be sufficient to retain Alaska residency, it does not make the position in which the individual was employed a temporary one. Absent a showing that a position is temporary in nature, or that the employer has agreed to a temporary term in an otherwise permanent position, employment is "permanent" for purposes of 15 AAC 23.143(d)(4) even if the person who takes the job plans on

---

<sup>12</sup> 15 AAC 23.143(d)(1).

<sup>13</sup> 15 AAC 23.143(d)(4).

<sup>14</sup> 15 AAC 23.143(d)(17).

leaving it after a definite period of time.<sup>15</sup>

Here, Officer Maxwell did not begin the jobs with the intent to *quit* and return within a foreseeable timeline.<sup>16</sup> He accepted the jobs with the intent to make them work for the indefinite future.<sup>17</sup> Because Officer Maxwell took full-time, permanent jobs in another state in 2012 and 2013, he was not eligible for the 2013 or 2014 PFDs.

With regard to the location of his primary home during the time he was working in Montana, given that Officer Maxwell was living in another state in order to work at a permanent job, and had no home in Alaska, it follows that he maintained his primary home in Montana. Indeed, for the chief job in Ronan, living in Ronan was a requirement of the job.<sup>18</sup> Although Officer Maxwell argues that his leaving some belongings in Klawock shows that he had a home in Klawock, in fact, Officer Maxwell admitted that he owned very few possessions.<sup>19</sup> That he left or abandoned some household goods in an apartment that he did not own (or have any legal claim to return to) is fully consistent with the conclusion that his primary home was in Montana, which it was. Having his primary home in Montana for a time during 2012 and 2013 is another clear reason for why Officer Maxwell was not eligible for the 2013 or 2014 PFDs.

The third disqualifier applies only to the 2014 PFD, based on Officer Maxwell's vehicle registration while in Montana in 2013 for the Ronan job. The Montana motor vehicle registration laws specify how nonresidents who are working in Montana must register their vehicles.<sup>20</sup> Nonresidents must pay the same fee as if they were a resident, and then display license plates from both their home state and Montana.<sup>21</sup>

Officer Maxwell, however, did not register his vehicle as a nonresident. Instead, he registered his vehicle under an optional program for residents who own older vehicles.<sup>22</sup> This registration is called "permanent registration."<sup>23</sup> Under this program, the residents pay one fee in the year they register their 11-year-old vehicle, and then do not have to pay fees again for as long as the vehicle remains registered in Montana.<sup>24</sup> A resident could opt to pay yearly fees,

<sup>15</sup> *In re K.R.F.*, OAH No. 09-0249-PFD at 4 (Dep't of Rev. 2009).

<sup>16</sup> Maxwell testimony.

<sup>17</sup> *Id.*

<sup>18</sup> *Id.*

<sup>19</sup> *Id.*

<sup>20</sup> Exhibit 12 at 2.

<sup>21</sup> *Id.*

<sup>22</sup> Stendevad testimony; Maxwell testimony.

<sup>23</sup> Exhibit 12.

<sup>24</sup> *Id.* at 6.

however.<sup>25</sup> Permanent registration would be advantageous to a resident who planned to remain in Montana with the vehicle.

Officer Maxwell testified that he opted for permanent registration because he thought it was a program designed to help owners of older vehicles. He did not think it had anything to do with residency.<sup>26</sup> Even if true, however, his opting for *permanent* registration certainly implies an intent to remain in Montana indefinitely. Moreover, without regard to his understanding of the law, he obtained a benefit of Montana residency rather than follow the rules for a nonresident. This provides a third reason he was not eligible for his 2014 PFD.

**B. Could a reasonable person in Officer Maxwell's position have had a good-faith belief that he was eligible when he applied for his 2013 and 2014 PFDs?**

Officer Maxwell applied for PFDs for which he was not eligible, and certified that he was a resident of Alaska when he was not. As a general rule, an honest person would not take a benefit that the person could not rightfully receive.

Honest people, however, can make honest mistakes.<sup>27</sup> An honest person could apply for, and accept, a benefit for which the person was not eligible, if the person believed that he or she was eligible. A person who had doubts about eligibility, but did not inquire or exercise caution to avoid receiving an illegal benefit, would be somewhere in-between the dishonest person who knows he or she is ineligible and the honest, but mistaken, person who believes he or she is eligible. A person who ignored a substantial risk that he or she was ineligible, and engaged in subterfuge or self-deception, would be considered dishonest. Thus, the issue of honesty turns on a person's intent and awareness of the risk that an act might be dishonest.

Because intent and knowledge are often difficult to prove, a decision maker may sometimes infer knowledge or intent if the inference is justified by the facts.<sup>28</sup> If a reasonable person would have known or suspected that he or she was ineligible, then we could presume that Officer Maxwell either knew or suspected he was ineligible. Officer Maxwell *could* then rebut this presumption with actual evidence of an innocent intent, but if he did not, we could infer that his application was dishonest. Inferring knowledge from the act itself could save having to make

---

<sup>25</sup> *id.* at 7.

<sup>26</sup> Maxwell testimony.

<sup>27</sup> *See, e.g., In re Lynch*, OAH No. 14-1644-POC at 10 (Alaska Police Standards Council 2014) (declining to revoke certificate of officer who made a false statement in an affidavit because "[a]n unintentional misstatement should not be the basis for revocation.").

<sup>28</sup> *See, e.g., Adams v. Adams*, 131 P.3d 464, 466 (Alaska 2006) ("actual knowledge can be inferred from circumstantial evidence").

the difficult inquiry into Officer Maxwell's state of mind. On the other hand, if a reasonable person might not have been aware that he or she was ineligible, then the further inquiry is needed.

Here, under Officer Maxwell's circumstances, a reasonable Alaskan might have been confused about eligibility. Many Alaskans leave the state for extended periods of time. Some remain eligible for PFDs. Most Alaskans likely know that a 90-day absence is a critical decision point in PFD eligibility because the application asks about absences of that length (as well as about 180-day absences).<sup>29</sup> We cannot expect, however, all residents to understand the nuances of residency or PFD eligibility and why some absences or actions might disqualify a person when others will not. A person who has not reviewed the PFD regulations might not know that taking a permanent, full-time job in another state disqualified him or her from a PFD. A reasonable person could believe that a job in probationary status, with a high risk of failure, and for which the person kept alive the safety valve of returning to his or her old job in Alaska, would not automatically affect residency or eligibility. When the job did not, in fact, work out, and the person returned to Alaska, he or she might reasonably believe that he or she had always remained an Alaska resident.

The Department of Revenue encourages people who do not know whether they are eligible to apply, so that the department can determine whether eligibility.<sup>30</sup> This is true even though the application requires an applicant to certify that the applicant was, in fact, a resident during the entire qualifying year. Thus, the Department of Revenue does not consider it dishonest for a person who is unsure to apply and certify that the person was a resident.

That is precisely what Officer Maxwell did here. He applied for a PFD, which requires that he certify that he was a resident during the qualifying year. Other than that certification (for an issue that is not readily apparent and for which the Department encourages uncertain people to apply), he answered every question truthfully. The application asked him whether he had been absent for more than 90 days in the qualifying year. He answered that question truthfully in neither year was he gone more than 90 days. Nothing in the application asked him about whether he had taken a job in another state. A reasonable person could conclude that if taking a job was a disqualifier, the application would ask about it. That it did not, might make a person assume that the only issue was length of absence, and an absence less than 90 days is not a disqualifier.

---

<sup>29</sup> In reality, a 90-day absence merely triggers additional questions about issues indicative of eligibility such as job status, car registration, location of primary home, etc.

<sup>30</sup> Stendevad testimony.

Moreover, the issue that the Executive Director believes shows dishonesty most clearly - his certifying that he was a resident for all of the qualifying years 2012 and 2013 is actually one of the murkiest issues of all. For example, the PFD case *In re K.R.F.* (quoted above) shows that *residency* is different issue than PFD *eligibility*. A person may take full-time, permanent employment in another state and still remain a resident of Alaska if the person has a definite intent to quit that job within a defined period of time and return to Alaska, even though ineligible for a PFD.<sup>31</sup> Therefore, signing a PFD application, and certifying *residency* for the entire qualifying year would not necessarily be dishonest unless a person understood the rules for when residency is lost.

To be clear, however, here, Officer Maxwell's testimony showed that he did, in fact, sever his residency in Alaska in 2013 and 2014 because he moved to Montana with the intent to remain domiciled in Montana indefinitely.<sup>32</sup> Although he hoped to return to Alaska someday, during the time he was living in Montana, he was not an Alaska resident. Therefore, his answers to the questions about residency during the qualifying years were incorrect, but, given the complexity of the issue of residency, not necessarily dishonest (unless he actually knew or suspected he had lost his residency).

Turning to the issue of *eligibility*, eligibility is more black-and-white than residency. Although taking a full-time, permanent job in Montana might not cost you your Alaska residency, it definitely costs you your PFD.<sup>33</sup> The application, however, does not ask a person who was not gone for more than 90 days in the qualifying year about employment or primary home. Investigator Stendevad, an investigator with the PFD Division, was asked what Officer Maxwell should have done to disclose his employment and living statuses during his time in Montana. She said that the Department of Revenue instructs people in Officer Maxwell's situation to answer "yes" to the question about being absent for more than 90 days, even though, in Officer Maxwell's case, this was not true.<sup>34</sup> An absence of more than 90 days (but less than 180) would not automatically disqualify an applicant. A "yes" answer to this question, however, will open

---

<sup>31</sup> *In re K.R.F.*, OAH No. 09-0249-PFD at 4 ("accepting permanent full-time employment with the intent to quit and return to Alaska may be sufficient to retain Alaska residency").

<sup>32</sup> Maxwell testimony. His intent to remain is a somewhat close call for the Fairview job because Officer Maxwell testified he had reservations about the town of Fairview. The Executive Director established on cross-examination, however, that Officer Maxwell truly intended in good faith to make the job work. *Id.* This establishes that Montana was his domicile and he was no longer an Alaska resident, in spite of his lingering doubt and concern that the job might not work out.

<sup>33</sup> 15 AAC 23.143(d)(4); *In re K.R.F.*, OAH No. 09-0249-PFD at 4.

<sup>34</sup> Stendevad testimony.



the inquiry into employment and principal home. Had he answered "yes" to the 90-day question, the facts about Officer Maxwell's ineligibility would have been revealed on the application.

Thus, under the Department of Revenue's approach, Officer Maxwell would have had to answer a question untruthfully on an application that he certifies is true and correct. For the purposes of this inquiry into Officer Maxwell's moral character, however, this approach is not viable. We cannot hold Officer Maxwell to account for not saying he was out of state for more than 90 days when he was not. Moreover, no one advised Officer Maxwell that this was how he was to proceed. Therefore, his failure to adopt the Department of Revenue's approach does not give rise to an inference that he was dishonest.

In summary, the facts of this case inevitably raise doubt about Officer Maxwell's honesty. A person who moved to Montana should have suspected he was not eligible for a PFD. This is especially true for a job as police chief, which is an important municipal job, closely connected with actually living in the municipality. These circumstances alone, however, are inconclusive evidence of honesty or dishonesty. Given that his tenure at his Montana jobs was short, that he remained in contact with his former employer, and that the PFD application did not trigger any obvious indication of ineligibility, an honest person in his situation could apply in good faith. Therefore, even though there were significant red flags, in these circumstances, we cannot presume that his act of applying was dishonest.<sup>35</sup> Instead, we must look to evidence of Officer Maxwell's actual state of mind to determine whether his acts of applying for PFDs for which he was not eligible were dishonest. To address that issue, we turn to Officer Maxwell's testimony at the hearing.

**C. Was Officer Maxwell's testimony that he believed himself to be an Alaska resident credible?**

Officer Maxwell testified that he never once thought about the issues of residency or PFD eligibility. He never thought he had established residency in Montana.<sup>36</sup> He explained his logic is that it takes a year to establish residency. For both jobs, he testified he always had doubt the job would be permanent. He believed that a return to Alaska was likely, and never felt that he had severed his Alaska residency. In his view, he "made no attempt to deceive or mislead anyone."<sup>37</sup>

If Officer Maxwell's testimony is truthful, it would establish a plausible explanation for his conduct other than dishonesty. Although many, if not most, people would have some doubt

---

<sup>35</sup> Therefore, we must inquire into whether Officer Maxwell actually knew or suspected that he was ineligible.

<sup>36</sup> Maxwell testimony.

<sup>37</sup> *Id.*

about eligibility after moving to another state some portion of the public would not. If Officer Maxwell truly believed that he was still eligible, then his act of applying for a PFD after he moved back was not dishonest.

The Executive Director has acknowledged the importance of Officer Maxwell's credibility. At closing argument, the Executive Director highlighted three issues that, in his view, demonstrated that Officer Maxwell's testimony was not credible:

- the testimony of witnesses who considered Officer Maxwell to not be truthful;
- the incorrect statements made by Officer Maxwell in his May 27 interview;
- Officer Maxwell's testimony that he believes today that he was eligible for the 2013 and 2014 PFDs.

These three issues are discussed below.

**1. Is the opinion evidence of witnesses regarding Officer Maxwell's character a reason to disregard his testimony?**

The Executive Director first asks for a finding that Officer Maxwell is not credible based on the opinion offered by two witnesses that Officer Maxwell did not have a character for truthfulness.<sup>38</sup> Both of these witnesses, however, believed that Officer Maxwell's PFD application was wrongful, and they base their opinions on his honesty at least in part on that issue. If the Council were to base its decision on their opinion, it would effectively concede the ultimate issue to two witnesses, rather than the Council. Moreover, because so many factors can influence a person's opinion, and because people often make mistakes when judging others, this line of argument is not persuasive. Furthermore, the Council's regulations require that the Council base its decision on a police officer's moral character on *acts or conduct*, not opinion.<sup>39</sup> Therefore, the opinion testimony will not be a basis for this decision.

**2. Are Officer Maxwell's statements in his May 27 interview a reason to disregard his testimony?**

The record contains a summary of Officer Maxwell's May 27, 2015, interview with Trooper Ryan. The Executive Director argues that Officer Maxwell made statements in that interview that were not true. The Director highlights the following:

---

<sup>38</sup> Ryan testimony; Stendevad testimony.

<sup>39</sup> 13 AAC 85.900(7). ("good moral character" means the absence of acts or conduct that would cause a reasonable person to have substantial doubts about an individual's honesty, fairness, and respect for the rights of others and for the laws of this state and the United States").

- The statement with regard to Fairview that “[i]t ended up being more of a vacation,”<sup>40</sup> Because Officer Maxwell had a job, which he hoped would turn into a chief position and last for a considerable period time, this statement is untrue - the time in Fairview was not a vacation.
- The statement that "I'm not familiar with how the PFD works."<sup>41</sup> The Executive Director points out that Officer Maxwell had to have knowledge of how the PFD works, given that he had to qualify for the PFD when he first moved to Alaska, and then maintain eligibility each subsequent year.
- The statement that "I crash[ed] through those PFD applications at the last minute."<sup>42</sup> The timeline, however, shows that Officer Maxwell applied for his 2013 PFD on January 1. He applied for his 2014 PFD on March 3rd, two days after he returned to Alaska, and 28 days before the deadline.

None of these instances of untruthfulness, however, is significant. This interview was a surprise to Officer Maxwell. He was not under oath. This was not an internal affairs investigation or questioning of him by an officer in his chain of command. He did not know the subject in advance of the interview or have time to get his thoughts in order. He did not consult with counsel. Although being deliberately untruthful or deceptive in this interview would have indicated a character for dishonesty, that he may have made minor misstatements or misremembered things in this sudden and stressful informal interview would not be a reason to doubt his credibility when he is testifying under oath.

The examples highlighted by the Executive Director are explainable. They are not lies or deceptions - they are more like exaggerations or the result of poor word choice. With regard to his statement about the Fairview trip, saying that it ended up being more of a vacation simply communicates that his absence was temporary. The characterization of how it ended is a metaphor ("more *like* a vacation"); not a statement intended to be taken as fact. With regard to his familiarity with the PFD, although he knows enough to apply, he is not an expert in PFD regulations. Residency for purposes of a PFD is different than it is for other applications, so his statement about not being familiar is reasonably accurate with regard to some nuances of PFD law. With regard to his crashing through his PFD applications, he explained that he meant he did them quickly as the last item on his daily "to-do list," not that he did them shortly before the due

---

<sup>40</sup> Admin. Rec. at 26

<sup>41</sup> *Id.*

<sup>42</sup> *Id.*

date.<sup>43</sup> His recollection that he was sure he disclosed his absence on the application -which he repeated several times -was incorrect. Yet, having a bad memory for a particular event is not the same as being dishonest (and dishonesty about this fact would serve no purpose, given that the investigators had copies of his applications). In sum, given the circumstances of this interview, the substance of his answers does not raise doubt about his credibility.

The concern with the May 27 interview, however, is not whether it has minor misstatements. The concern is whether it is consistent with Officer Maxwell's testimony at the hearing. At the hearing, he testified he never gave residency a thought. As discussed earlier, this is plausible and, if true, could be consistent with an innocent application. His answers at the May 27 interview, however, might be carefully planned defenses for his act of application. If so, the answers might be inconsistent with his testimony that residency issues never entered his mind. It might also show that he was a sharp operator, who engages in subterfuge and deception, and therefore, as the Council explained in *Much*, is subject to not being trusted as a police officer.<sup>44</sup>

The recording of the interview makes clear, however, that Officer Maxwell is not a sharp operator. The interviewers raised the issues, and identified the factors of PFD eligibility. These factors were not the subject of Officer Maxwell's preformed thoughts. He presents as an uncertain and stressed individual who was trying to give truthful answers. Therefore, the May 27 interview does not provide a basis for doubting the credibility of his testimony that his application was made with a good faith belief that he was eligible.<sup>45</sup> We turn next to the final, and most troubling aspect of this record – his testimony that he would do the same again.

**3. Is Officer Maxwell's testimony that he believes today that he was eligible for the 2013 and 2014 PFDs a reason to disregard his testimony that he believed he was eligible at the time of application?**

Officer Maxwell testified at the hearing that he continues to believe today that his 2013 and 2014 PFD applications were filled out honestly and correctly. He specifically stated that he still believes that he was an Alaska resident for the entire qualifying years for both of these applications:

---

<sup>43</sup> Maxwell testimony.

<sup>44</sup> *In re Much*, OAH No. 13-0288-POC (Alaska Police Standards Council 2013), *aff'd on other grounds*, *Much v. Alaska Police Stnds. Coun.*, Case No. 3AN-14-4466CI (Alaska Super. Ct. 2016); available at [http://aws.state.ak.us/officeofadminhearings/Documents/POC/POC\\_130288.pdf](http://aws.state.ak.us/officeofadminhearings/Documents/POC/POC_130288.pdf).

<sup>45</sup> One aspect of the interview that might raise some question about Officer Maxwell's credibility is that he said he remembered the question on the application that asked about being a resident of Alaska for the entire year. That answer might not be consistent with his hearing testimony that he never thought about residency because remembering the question necessarily means he gave residency some thought. At most, however, this is inconclusive. Although he remembered the question, we do not know how much thought he gave to the issue. Therefore, his testimony at the hearing could be truthful.

Q. When at the end of the application for the 2014 PFD where it states that I certify that I was an Alaska resident for all of 2013, what did you believe in regard to whether or not you believe the statement to be true?

A. I believe that statement was true then and I believe it is true now.<sup>46</sup>

He gave the same answer with regard to his 2013 PFD application. He also said that he believed at the time, and he believes now, that he had never claimed residency in another state in either qualifying year.

Later, on cross-examination, Officer Maxwell was asked whether he would fill out his 2013 and 2014 applications the same if he had the opportunity to fill them out again knowing what he knows now about the law. He responded, "I would say absolutely yes. I would ...would ... do the same thing..."<sup>47</sup>

This testimony is revealing. Given all that he has been through, Officer Maxwell should be aware that by moving his primary residence to Montana, with the intent to remain in Montana for an indefinite period of time, he lost his Alaska residency. Even if Officer Maxwell is still unsure of the law, he should know that several experts with training in residency matters have concluded that he was no longer an Alaska resident when he moved to Montana. In these circumstances, he should be hesitant to certify that he was an Alaska resident for the entire year in 2012 and 2013. Yet, he is not.

Even more troubling is that Officer Maxwell would apparently fill out his application exactly as he did before, without informing the PFD division of his absence or his move. He now knows that because his absences were for less than 90 days, the application itself does not call for disclosure of pertinent facts about his moves or his employment. He knows that the absence of these questions is what allowed him to fill out the application truthfully (other than the residency issue) and never trigger further inquiry from the PFD division. Further, he heard Investigator Stendevad say that the PFD Division would counsel him to answer that he was absent for more than 90 days, so that the pertinent questions would be posed to him. Yet, he would fill out the application the same way, without providing additional disclosures to the PFD Division that would make his ineligibility clear. Officer Maxwell should know that he has an obligation to provide more information, rather than do the same thing again and just accept a benefit to which he is not entitled.

---

<sup>46</sup> Maxwell testimony.

<sup>47</sup> *Id.*

The Executive Director argued during closing arguments that if Officer Maxwell's testimony is true - if he actually would apply for a PFD even though he moved with the intent to live indefinitely as a resident of another state - then he is lacking in respect for the law. If he is willing to apply for a PFD knowing that the application does not require disclosure of pertinent facts, then he is willing to mislead the state into giving him a check for money for which he either knows he does not qualify or at a minimum is aware that he may not qualify.

The Executive Director's argument is well taken. Officer Maxwell's testimony raises substantial doubt about Officer Maxwell's respect for the law.

Officer Maxwell argued at the hearing that in saying he would do the same thing again, he was relying on Judge Menendez's remarks when acquitting him at his criminal trial. He understood Judge Menendez to say that he (Officer Maxwell) never lost his Alaska residency.

Whether Officer Maxwell's argument is persuasive will depend to some extent on Judge Menendez's statements. If Officer Maxwell could reasonably rely on the judge's comments to form his opinion, then it could provide an explanation for Officer Maxwell's statement that he would do the same again.

A recording of Judge Menendez's comments is in the record. In acquitting Officer Maxwell of the criminal charges of theft and unsworn falsification, Judge Menendez made comments that could be interpreted to go to the issues of residency and eligibility.<sup>48</sup> For example, Judge Menendez commented on Officer Maxwell's short tenure in Montana, his desire to return and eventually become chief of police in Klawock, and his leaving belongings in Klawock.<sup>49</sup> Judge Menendez also minimized the significance of the state's evidence that Officer Maxwell licensed his vehicle in Montana, and his statement to the City of Ronan that he wanted to be closer to relatives before retirement.<sup>50</sup> These comments could provide some justification for Officer Maxwell's continued confusion about whether he was eligible for the 2013 and 2014 PFDs.

To be clear, however, Judge Menendez's statements do not dispel the doubt raised by Officer Maxwell's testimony. Judge Menendez did not say that Officer Maxwell actually remained a resident or that he was eligible for the 2013 or 2014 PFDs. Indeed, Judge Menendez stressed several times that the acquittal was based on the state's failure to prove beyond a reasonable doubt that Officer Maxwell had intended to mislead a public servant or deprive the state of its

---

<sup>48</sup> Exhibit 14.

<sup>49</sup> *Id.*

<sup>50</sup> *Id.*

property.<sup>51</sup> Judge Menendez specifically commented that the state retained the ability to proceed in a civil (noncriminal) action against Officer Maxwell.<sup>52</sup> A person with police training should understand that the criminal charge did not turn on his residency or eligibility for the PFD. The verdict in this criminal case was not a finding that he was eligible for the 2013 or 2014 PFDs. Officer Maxwell's lack of respect for the law remains.

What is troubling is Officer Maxwell's continued belief in an inaccurate interpretation of the law in his testimony that he would do the same thing again. That testimony suggests trickery because he knows now that the application does not disclose his absences. Officer Maxwell's deficient answer raises substantial doubt that about his respect for the law. The Alaska Supreme Court has made clear that a pattern of conduct is not required – one instance of dishonest or disrespectful conduct may meet the threshold. *Alaska Police Standards Council v. Parcell*, 348 P.3d 992, 888 (Alaska 2015).

The facts of this case, when taken as a whole, lead to a substantial doubt about Officer Maxwell's honesty and respect for the law, which justify revocation of his police certificate. Although honesty and respect for the law are two different elements of good moral character, the Council's previous cases explain that the elements are to be considered collectively, not individually. *See e.g., In re E.X.*, OAH No. 13-0473-POC at 16 (“[T]he requirement of substantial doubts applies to the subordinate clause – “about an individual’s honesty, fairness, and respect for the rights of others and for the laws of this state and the United States” – in its entirety, not to each individual elements in the clause.”).

Contrary to *In re Lynch*, OAH NO. 14-1644-POC, where the council recognized that a false statement in an affidavit was “a poorly chosen litigation strategy, not dishonestly,” the evidence presented regarding Officer Maxwell's conduct demonstrates a fundamental lack of understanding of the law, and more importantly, a lack of respect for the law.

<sup>51</sup> *Id.*

<sup>52</sup> *Id.*

**III. Conclusion**

The Executive Director's requested revocation of Officer Maxwell's certificate is granted. Officer Maxwell's conduct shows a severe lack of respect for the law, which raises substantial doubts regarding his good moral character.

Dated this 14 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. HEIZERB . EMAIL  
J. NOVAK; R. GRIFFITHS . EMAIL  
Signature: [Redacted] Date: 12/16/2016



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

In the Matter of	)	
	)	
VALENT L. MAXWELL	)	OAH No. 16-0134-POC
<hr style="width:40%; margin-left:0"/>	)	Agency No. APSC 2015-12

***[Rejected Proposed]* DECISION**

**I. Introduction**

Police Officer Valent Maxwell twice left Alaska and accepted a job in Montana, once in 2012 and once in 2013. Neither job worked out for him, and in both cases, he moved back to Alaska and resumed his previous employment.

In both 2013 and 2014, he applied for and received permanent fund dividends. In both years, he was awarded PFDs because he had not been out of state for 90 days in the prior year—the time limit that triggers when more information about an absence is requested on the PFD application. This meant that PFD officials did not know he had moved and did not have the information they needed to determine that he was ineligible. Because he had moved out of state in each of the qualifying years for those two PFDs, however, he was not eligible for, and should not have received, those PFDs.

Based on Officer Maxwell’s conduct of applying for and accepting a benefit for which he was not eligible, and certifying that he was an Alaska resident when he was not, the Executive Director of the Alaska Police Standards Council sought to revoke Officer Maxwell’s police certificate. In the Executive Director’s view, this conduct demonstrated a lack of good moral character.

Because the PFD application did not request additional information, however, and because applicants who do are unsure of their eligibility are encouraged to apply, the Executive Director was unable to show that Officer Maxwell’s conduct was dishonest. Officer Maxwell testified that he believed that he was eligible, which would make his application an honest mistake, rather than a dishonest act. Thus, although his act raises some doubt about his character, the doubt is not substantial enough to conclude that he lacks good moral character. The Executive Director’s requested revocation of Officer Maxwell’s certificate is denied.

## II. Facts

Valent Maxwell became a police officer in 1999. He served as a village public safety officer in Kodiak until 2008, when he went to work as a police officer for the City of Klawock.

Officer Maxwell left Klawock in May 2012 and moved to Fairview, Montana, where he had accepted employment as a police officer, with the expectation of being promoted to chief. He left some belongings in Klawock. The job in Fairview did not work out. After four days of working, Officer Maxwell left Fairview, in part because he did not have housing in Fairview. He later returned to Klawock, and was rehired by the Klawock police department. He was gone from Alaska for 24 days.<sup>1</sup>

The next January, Officer Maxwell applied online for his 2013 permanent fund dividend. In his application, he certified that he had been a resident of Alaska for the entire previous year, 2012. He was awarded a 2013 PFD.<sup>2</sup>

In October 2013, Officer Maxwell again left Klawock and moved to Montana for a police officer job. This time, he moved to Ronan, Montana, where he worked as the Chief of Police. He left some belongings in an apartment owned by the City of Klawock. He was fired from the Ronan job in early January of 2014 because he did not have the skills to serve as police chief.<sup>3</sup> He returned to Klawock in March 2014. He was gone from Alaska for 70 days in 2013, and 59 days in 2014.<sup>4</sup> He was rehired again as a police officer for Klawock. Two days after he returned to Alaska, he filed for his PFD, certifying that he had been an Alaska resident for the entire previous year, 2013. He was awarded the 2014 PFD.<sup>5</sup>

The Alaska Department of Revenue's PFD division learned that Officer Maxwell had moved to Montana in 2012 and then again in 2013. These moves raised questions about his eligibility for the 2013 and 2014 PFDs, and the division began an investigation. Officer Maxwell was questioned by two state troopers regarding his application. He told the troopers he was certain that he had disclosed his absences and that he never intended to "cover up that I was gone."<sup>6</sup>

The Department of Revenue determined that Officer Maxwell's 2013 and 2014 applications were fraudulent, and that he had committed a crime by applying for and accepting the

---

<sup>1</sup> Stendevad testimony; Exhibit 11, Maxwell testimony.

<sup>2</sup> Stendevad testimony.

<sup>3</sup> Maxwell testimony.

<sup>4</sup> Stendevad testimony; Exhibit 11.

<sup>5</sup> Stendevad testimony.

<sup>6</sup> Admin. Rec. 26; Ryan testimony.

PFDs. The District Attorney charged him with having committed five class C felonies for the criminal offenses of unsworn falsification and theft.<sup>7</sup> Following a trial, however, Officer Maxwell was acquitted on all counts.<sup>8</sup>

While his criminal trial was pending, the Executive Director of the Alaska Police Standards Council investigated Officer Maxwell's conduct. On January 28, 2016, the Executive Director filed an accusation alleging that Officer Maxwell's conduct showed he lacked good moral character. The Executive Director sought revocation of Officer Maxwell's police certificate under 13 AAC 85.010(a)(3).<sup>9</sup> Officer Maxwell filed a notice of defense. A three-day telephonic hearing was held June 1-3, 2016.

### **III. Discussion**

Officer Maxwell is accused of lacking good moral character. A lack of good moral character is shown by acts or omissions that would raise doubt about a person's honesty, fairness, respect for the rights of others, and respect for the law.<sup>10</sup> The Executive Director does not have to prove a lack of all four elements of character, but must prove that, taken together, the officer lacks good moral character.<sup>11</sup>

In this case, the Executive Director asserts that Officer Maxwell's conduct of twice applying for a PFD, and twice certifying that he had been a resident for the entire qualifying years, after having moved out of state in each of those years, raises substantial doubt about his honesty. In the Director's view, this conduct was criminal, which is a further reason to conclude that Officer Maxwell lacks good moral character. The Director also asserts that his conduct of testifying under oath that he did nothing wrong in applying for those PFDs demonstrates a lack of respect for the law.

On the issue of honesty, I will begin by analyzing two issues that must be addressed to resolve this case—first, that Officer Maxwell was, in fact, ineligible for the 2013 or 2014 PFDs, and then, second, that an ineligible person in Officer Maxwell's situation could reasonably have a

---

<sup>7</sup> Stendevad testimony; Admin. Rec. 17-20, 47-48.

<sup>8</sup> Exhibits 13, 14.

<sup>9</sup> Admin. Rec. 5

<sup>10</sup> 13 AAC 85.900(7). This regulation states:

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

<sup>11</sup> *Much v. Alaska Police Stnds. Coun.*, Case No. 3AN-14-4466CI (Alaska Super. Ct. 2016); *In re E.X.*, OAH No. 13-0473-POC at 17-18 (Police Standards Council 2013).

good-faith belief that he was eligible. I will then address whether Officer Maxwell's conduct was dishonest or an innocent mistake. Finally, I will discuss whether his testimony that he believes today that he was eligible for the 2013-14 PFDs raises substantial doubt about his lack of respect for the law.

**A. Was Officer Maxwell eligible for 2013 or 2014 PFDs?**

We begin the analysis by stating a clear, firm, and definite conclusion: Officer Maxwell was not eligible for the 2013 or 2014 PFDs. With some exceptions that do not apply in this case, a person is not eligible for a PFD for a year if, during the qualifying year (the year before the PFD would be issued), the person

- Maintained a primary home in another state;<sup>12</sup> or
- Accepted full-time permanent employment in another state.<sup>13</sup>

As explained below, Officer Maxwell did each of these in 2012 and 2013. In addition, in 2013, Officer Maxwell took an additional act that disqualified him when he

- Obtained a benefit of residency from another state.<sup>14</sup>

Because he took these actions, he was not eligible for the 2013 or 2014 PFDs.

The Executive Director proved that Officer Maxwell accepted full-time permanent employment in Montana in both 2012 and 2013. Officer Maxwell testified under cross-examination that his intent upon taking both jobs was to work at them indefinitely. He did not take either job with the intent to leave after a short time to return to Alaska. Neither he nor his employers considered the jobs temporary.

Officer Maxwell argues that because he was in probationary status in both jobs, his jobs in Montana could not be considered permanent. He also argues that because he eventually intended to return to Alaska (his hope was to become police chief in Klawock, and he believed these jobs would be a stepping stone to that promotion), his jobs were not permanent. No cases, however, support that view. As the Department of Revenue has observed in a previous PFD case,

while accepting permanent full-time employment with the intent to quit and return to Alaska may be sufficient to retain Alaska residency, it does not make the position in which the individual was employed a temporary one. Absent a showing that a position is temporary in nature, or that the employer has agreed to a temporary term in an otherwise permanent position, employment is "permanent" for purposes of 15 AAC 23.143(d)(4)

---

<sup>12</sup> 15 AAC 23.143(d)(1).

<sup>13</sup> 15 AAC 23.143(d)(4).

<sup>14</sup> 15 AAC 23.143(d)(17).

even if the person who takes the job plans on leaving it after a definite period of time.<sup>15</sup>

Here, Officer Maxwell did not begin the jobs with the intent to quit and return within a foreseeable timeline.<sup>16</sup> He accepted the jobs with the intent to make them work for the indefinite future.<sup>17</sup> Because Officer Maxwell took full-time, permanent jobs in another state in 2012 and 2013, he was not eligible for the 2013 or 2014 PFDs.

With regard to the location of his primary home during the time he was working in Montana, given that Officer Maxwell was living in another state in order to work at a permanent job, and had no home in Alaska, it follows that he maintained his primary home in Montana. Indeed, for the chief job in Ronan, living in Ronan was a requirement of the job.<sup>18</sup> Although Officer Maxwell argues that his leaving some belongings in Klawock shows that he had a home in Klawock, in fact, Officer Maxwell admitted that he owned very few possessions.<sup>19</sup> That he left or abandoned some household goods in an apartment that he did not own (or have any legal claim to return to) is fully consistent with the conclusion that his primary home was in Montana, which it was. Having his primary home in Montana for a time during 2012 and 2013 is another clear reason for why Officer Maxwell was not eligible for the 2013 or 2014 PFDs.

The third disqualifier applies only to the 2014 PFD, based on Officer Maxwell's vehicle registration while in Montana in 2013 for the Ronan job. The Montana motor vehicle registration laws specify how nonresidents who are working in Montana must register their vehicles.<sup>20</sup> Nonresidents must pay the same fee as if they were a resident, and then display license plates from both their home state and Montana.<sup>21</sup>

Officer Maxwell, however, did not register his vehicle as a nonresident. Instead, he registered his vehicle under an optional program for residents who own older vehicles.<sup>22</sup> This registration is called "permanent registration."<sup>23</sup> Under this program, the residents pay one fee in the year they register their 11-year-old vehicle, and then do not have to pay fees again for as long as the vehicle remains registered in Montana.<sup>24</sup> A resident could opt to pay yearly fees,

---

<sup>15</sup> *In re K.R.F.*, OAH No. 09-0249-PFD at 4 (Dep't of Rev. 2009).

<sup>16</sup> Maxwell testimony.

<sup>17</sup> *Id.*

<sup>18</sup> *Id.*

<sup>19</sup> *Id.*

<sup>20</sup> Exhibit 12 at 2.

<sup>21</sup> *Id.*

<sup>22</sup> Stendevad testimony; Maxwell testimony.

<sup>23</sup> Exhibit 12.

<sup>24</sup> *Id.* at 6.

however.<sup>25</sup> Permanent registration would be advantageous to a resident who planned to remain in Montana with the vehicle.

Officer Maxwell testified that he opted for permanent registration because he thought it was a program designed to help owners of older vehicles. He did not think it had anything to do with residency.<sup>26</sup> Even if true, however, his opting for *permanent* registration certainly implies an intent to remain in Montana indefinitely. Moreover, without regard to his understanding of the law, he obtained a benefit of Montana residency rather than follow the rules for a nonresident. This provides a third reason he was not eligible for his 2014 PFD.

**B. Could a reasonable person in Officer Maxwell’s position have had a good-faith belief that he was eligible when he applied for his 2013 and 2014 PFDs?**

Officer Maxwell applied for PFDs for which he was not eligible, and certified that he was a resident of Alaska when he was not. As a general rule, an honest person would not take a benefit that the person could not rightfully receive.

Honest people, however, can make honest mistakes.<sup>27</sup> An honest person could apply for, and accept, a benefit for which the person was not eligible, if the person believed that he or she was eligible. A person who had doubts about eligibility, but did not inquire or exercise caution to avoid receiving an illegal benefit, would be somewhere in-between the dishonest person who knows he or she is ineligible and the honest, but mistaken, person who believes he or she is eligible. A person who ignored a substantial risk that he or she was ineligible, and engaged in subterfuge or self-deception, would be considered dishonest. Thus, the issue of honesty turns on a person’s intent and awareness of the risk that an act might be dishonest.

Because intent and knowledge are often difficult to prove, a decisionmaker may sometimes infer knowledge or intent if the inference is justified by the facts.<sup>28</sup> If a reasonable person would have known or suspected that he or she was ineligible, then we could presume that Officer Maxwell either knew or suspected he was ineligible. Officer Maxwell could then rebut this presumption with actual evidence of an innocent intent, but if he did not, we could infer that his application was dishonest. Inferring knowledge from the act itself could save having to make

---

<sup>25</sup> *Id.* at 7.

<sup>26</sup> Maxwell testimony.

<sup>27</sup> *See, e.g., In re Lynch*, OAH No. 14-1644-POC at 10 (Alaska Police Standards Council 2014) (declining to revoke certificate of officer who made a false statement in an affidavit because “[a]n unintentional misstatement should not be the basis for revocation.”).

<sup>28</sup> *See, e.g., Adams v. Adams*, 131 P.3d 464, 466 (Alaska 2006) (“actual knowledge can be inferred from circumstantial evidence”).

the difficult inquiry into Officer Maxwell's state of mind. On the other hand, if a reasonable person might not have been aware that he or she was ineligible, then the further inquiry is needed.

Here, under Officer Maxwell's circumstances, a reasonable Alaskan might have been confused about eligibility. Many Alaskans leave the state for extended periods of time. Some remain eligible for PFDs. Most Alaskans likely know that a 90-day absence is a critical decision point in PFD eligibility because the application asks about absences of that length (as well as about 180-day absences).<sup>29</sup> We cannot expect, however, all residents to understand the nuances of residency or PFD eligibility and why some absences or actions might disqualify a person when others will not. A person who has not reviewed the PFD regulations might not know that taking a permanent, full-time job in another state disqualified him or her from a PFD. A reasonable person could believe that a job in probationary status, with a high risk of failure, and for which the person kept alive the safety valve of returning to his or her old job in Alaska, would not automatically affect residency or eligibility. When the job did not, in fact, work out, and the person returned to Alaska, he or she might reasonably believe that he or she had always remained an Alaska resident.

The Department of Revenue encourages people who does not know whether they are eligible to apply, so that the department can determine whether eligibility.<sup>30</sup> This is true even though the application requires an applicant to certify that the applicant was, in fact, a resident during the entire qualifying year. Thus, the Department of Revenue does not consider it dishonest for a person who is unsure to apply and certify that the person was a resident.

That is precisely what Officer Maxwell did here. He applied for a PFD, which requires that he certify that he was a resident during the qualifying year. Other than that certification (for an issue that is not readily apparent and for which the Department encourages uncertain people to apply), he answered every question truthfully. The application asked him whether he had been absent for more than 90 days in the qualifying year. He answered that question truthfully—in neither year was he gone more than 90 days. Nothing in the application asked him about whether he had taken a job in another state. A reasonable person could conclude that if taking a job was a disqualifier, the application would ask about it. That it did not, might make a person assume that the only issue was length of absence, and an absence less than 90 days is not a disqualifier.

---

<sup>29</sup> In reality, a 90-day absence merely triggers additional questions about issues indicative of eligibility, such as job status, car registration, location of primary home, etc.

<sup>30</sup> Stendevad testimony.

Moreover, the issue that the Executive Director believes shows dishonesty most clearly—his certifying that he was a resident for all of the qualifying years 2012 and 2013—is actually one of the murkiest issues of all. For example, the PFD case *In re K.R.F.* (quoted above) shows that *residency* is different issue than PFD *eligibility*. A person may take full-time, permanent employment in another state and still remain a *resident* of Alaska if the person has a definite intent to quit that job within a defined period of time and return to Alaska, even though ineligible for a PFD.<sup>31</sup> Therefore, signing a PFD application, and certifying *residency* for the entire qualifying year would not necessarily be dishonest unless a person understood the rules for when residency is lost.

To be clear, however, here, Officer Maxwell’s testimony showed that he did, in fact, sever his residency in Alaska in 2013 and 2014 because he moved to Montana with the intent to remain domiciled in Montana indefinitely.<sup>32</sup> Although he hoped to return to Alaska someday, during the time he was living in Montana, he was not an Alaska resident. Therefore, his answers to the questions about residency during the qualifying years were incorrect, but, given the complexity of the issue of *residency*, not necessarily dishonest (unless he actually knew or suspected he had lost his residency).

Turning to the issue of *eligibility*, eligibility is more black-and-white than residency. Although taking a full-time, permanent job in Montana might not cost you your Alaska residency, it definitely costs you your PFD.<sup>33</sup> The application, however, does not ask a person who was not gone for more than 90 days in the qualifying year about employment or primary home. Investigator Stendevad, an investigator with the PFD Division, was asked what Officer Maxwell should have done to disclose his employment and living statuses during his time in Montana. She said that the Department of Revenue instructs people in Officer Maxwell’s situation to answer “yes” to the question about being absent for more than 90 days, even though, in Officer Maxwell’s case, this was not true.<sup>34</sup> An absence of more than 90 days (but less than 180) would not automatically disqualify an applicant. A “yes” answer to this question, however, will open

---

<sup>31</sup> *In re K.R.F.*, OAH No. 09-0249-PFD at 4 (“accepting permanent full-time employment with the intent to quit and return to Alaska may be sufficient to retain Alaska residency”).

<sup>32</sup> Maxwell testimony. His intent to remain is a somewhat close call for the Fairview job because Officer Maxwell testified he had reservations about the town of Fairview. The Executive Director established on cross-examination, however, that Officer Maxwell truly intended in good faith to make the job work. *Id.* This establishes that Montana was his domicile and he was no longer an Alaska resident, in spite of his lingering doubt and concern that the job might not work out.

<sup>33</sup> 15 AAC 23.143(d)(4); *In re K.R.F.*, OAH No. 09-0249-PFD at 4.

<sup>34</sup> Stendevad testimony.



the inquiry into employment and principal home. Had he answered “yes” to the 90-day question, the facts about Officer Maxwell’s ineligibility would have been revealed on the application.

Thus, under the Department of Revenue’s approach, Officer Maxwell would have had to answer a question untruthfully on an application that he certifies is true and correct. For the purposes of this inquiry into Officer Maxwell’s moral character, however, this approach is not viable. We cannot hold Officer Maxwell to account for not saying he was out of state for more than 90 days when he was not. Moreover, no one advised Officer Maxwell that this was how he was to proceed. Therefore, his failure to adopt the Department of Revenue’s approach does not give rise to an inference that he was dishonest.

In summary, the facts of this case inevitably raise doubt about Officer Maxwell’s honesty. A person who moved to Montana should have suspected he was not eligible for a PFD. This is especially true for a job as police chief, which is an important municipal job, closely connected with actually living in the municipality. These circumstances alone, however, are inconclusive evidence of honesty or dishonesty. Given that his tenure at his Montanan jobs was short, that he remained in contact with his former employer, and that the PFD application did not trigger any obvious indication of ineligibility, an honest person in his situation could apply in good faith. Therefore, even though there were significant red flags, in these circumstances, we cannot presume that his act of applying was dishonest.<sup>35</sup> Instead, we must look to evidence of Officer Maxwell’s actual state of mind to determine whether his acts of applying for PFDs for which he was not eligible were dishonest. To address that issue, we turn to Officer Maxwell’s testimony at the hearing.

**C. Was Officer Maxwell’s testimony that he believed himself to be an Alaska resident credible?**

Officer Maxwell testified that he never once thought about the issues of residency or PFD eligibility. He never thought he had established residency in Montana.<sup>36</sup> He explained his logic is that it takes a year to establish residency. For both jobs, he testified he always had doubt the job would be permanent. He believed that a return to Alaska was likely, and never felt that he had severed his Alaska residency. In his view, he “made no attempt to deceive or mislead anyone.”<sup>37</sup>

If Officer Maxwell’s testimony is truthful, it would establish a plausible explanation for his conduct other than dishonesty. Although many, if not most, people would have some doubt

---

<sup>35</sup> Therefore, we must inquire into whether Officer Maxwell actually knew or suspected that he was ineligible.

<sup>36</sup> Maxwell testimony.

<sup>37</sup> *Id.*

about eligibility after moving to another state, some portion of the public would not. If Officer Maxwell truly believed that he was still eligible, then his act of applying for a PFD after he moved back was not dishonest.

The Executive Director has acknowledged the importance of Officer Maxwell's credibility. At closing argument, the Executive Director highlighted three issues that, in his view, demonstrated that Officer Maxwell's testimony was not credible:

- the testimony of witnesses who considered Officer Maxwell to not be truthful;
- the incorrect statements made by Officer Maxwell in his May 27 interview;
- Officer Maxwell's testimony that he believes today that he was eligible for the 2013 and 2014 PFDs.

These three issues are discussed below.

**1. Is the opinion evidence of witnesses regarding Officer Maxwell's character a reason to disregard his testimony?**

The Executive Director first asks for a finding that Officer Maxwell is not credible based on the opinion offered by two witnesses that Officer Maxwell did not have a character for truthfulness.<sup>38</sup> Both of these witnesses, however, believed that Officer Maxwell's PFD application was wrongful, and they base their opinions on his honesty at least in part on that issue. If the Council were to base its decision on their opinion, it would effectively concede the ultimate issue to two witnesses, rather than the Council. Moreover, because so many factors can influence a person's opinion, and because people often make mistakes when judging others, this line of argument is not persuasive. Furthermore, the Council's regulations require that the Council base its decision on a police officer's moral character on *acts or conduct*, not opinion.<sup>39</sup> Therefore, the opinion testimony will not be a basis for this decision.

**2. Are Officer Maxwell's statements in his May 27 interview a reason to disregard his testimony?**

The record contains a summary of Officer Maxwell's May 27, 2015, interview with Trooper Ryan. The Executive Director argues that Officer Maxwell made statements in that interview that were not true. The Director highlights the following:

---

<sup>38</sup> Ryan testimony; Stendevad testimony.

<sup>39</sup> 13 AAC 85.900(7). ("good moral character" means the absence of acts or conduct that would cause a reasonable person to have substantial doubts about an individual's honesty, fairness, and respect for the rights of others and for the laws of this state and the United States").

- The statement with regard to Fairview that “[i]t ended up being more of a vacation.”<sup>40</sup> Because Officer Maxwell had a job, which he hoped would turn into a chief position and last for a considerable period time, this statement is untrue—the time in Fairview was not a vacation.
- The statement that “I’m not familiar with how the PFD works.”<sup>41</sup> The Executive Director points out that Officer Maxwell had to have knowledge of how the PFD works, given that he had to qualify for the PFD when he first moved to Alaska, and then maintain eligibility each subsequent year.
- The statement that “I crash[ed] through those PFD applications at the last minute.”<sup>42</sup> The timeline, however, shows that Officer Maxwell applied for his 2013 PFD on January 1. He applied for his 2014 PFD on March 3<sup>rd</sup>, two days after he returned to Alaska, and 28 days before the deadline.

None of these instances of untruthfulness, however, is significant. This interview was a surprise to Officer Maxwell. He was not under oath. This was not an internal affairs investigation or questioning of him by an officer in his chain of command. He did not know the subject in advance of the interview or have time to get his thoughts in order. He did not consult with counsel. Although being deliberately untruthful or deceptive in this interview would have indicated a character for dishonesty, that he may have made minor misstatements or misremembered things in this sudden and stressful informal interview would not be a reason to doubt his credibility when he is testifying under oath.

The examples highlighted by the Executive Director are explainable. They are not lies or deceptions—they are more like exaggerations or the result of poor word choice. With regard to his statement about the Fairview trip, saying that it ended up being more of a vacation simply communicates that his absence was temporary. The characterization of how it ended is a metaphor (“more *like* a vacation”), not a statement intended to be taken as fact. With regard to his familiarity with the PFD, although he knows enough to apply, he is not an expert in PFD regulations. Residency for purposes of a PFD is different than it is for other applications, so his statement about not being familiar is reasonably accurate with regard to some nuances of PFD law. With regard to his crashing through his PFD applications, he explained that he meant he did them quickly as the last item on his daily “to-do list,” not that he did them shortly before the due

---

<sup>40</sup> Admin. Rec. at 26

<sup>41</sup> *Id.*

<sup>42</sup> *Id.*

date.<sup>43</sup> His recollection that he was sure he disclosed his absence on the application—which he repeated several times—was incorrect. Yet, having a bad memory for a particular event is not the same as being dishonest (and dishonesty about this fact would serve no purpose, given that the investigators had copies of his applications). In sum, given the circumstances of this interview, the substance of his answers does not raise doubt about his credibility.

My concern with the May 27 interview, however, is not whether it has minor misstatements. My concern is whether it is consistent with Officer Maxwell’s testimony at the hearing. At the hearing, he testified he never gave residency a thought. As discussed earlier, this is plausible and, if true, could be consistent with an innocent application. His answers at the May 27 interview, however, might be carefully planned defenses for his act of application. If so, the answers might be inconsistent with his testimony that residency issues never entered his mind. It might also show that he was a sharp operator, who engages in subterfuge and deception, and therefore, as the Council explained in *Much*, is subject to not being trusted as a police officer.<sup>44</sup>

The recording of the interview makes clear, however, that Officer Maxwell is not a sharp operator. The interviewers raised the issues, and identified the factors of PFD eligibility. These factors were not the subject of Officer Maxwell’s preformed thoughts. He presents as an uncertain and stressed individual who was trying to give truthful answers. Therefore, the May 27 interview does not provide a basis for doubting the credibility of his testimony that his application was made with a good faith belief that he was eligible.<sup>45</sup> We turn next to the final, and most troubling aspect of this record—his testimony that he would do the same again.

**3. Is Officer Maxwell’s testimony that he believes today that he was eligible for the 2013 and 2014 PFDs a reason to disregard his testimony that he believed he was eligible at the time of application?**

Officer Maxwell testified at the hearing that he continues to believe today that his 2013 and 2014 PFD applications were filled out honestly and correctly. He specifically stated that he still believes that he was an Alaska resident for the entire qualifying years for both of these applications:

---

<sup>43</sup> Maxwell testimony.

<sup>44</sup> *In re Much*, OAH No. 13-0288-POC (Alaska Police Standards Council 2013), *aff’d on other grounds*, *Much v. Alaska Police Stnds. Coun.*, Case No. 3AN-14-4466CI (Alaska Super. Ct. 2016); available at <http://aws.state.ak.us/officeofadminhearings/Documents/POC/POC130288.pdf>.

<sup>45</sup> One aspect of the interview that might raise some question about Officer Maxwell’s credibility is that he said he remembered the question on the application that asked about being a resident of Alaska for the entire year. That answer might not be consistent with his hearing testimony that he never thought about residency because remembering the question necessarily means he gave residency some thought. At most, however, this is inconclusive. Although he remembered the question, we do not know how much thought he gave to the issue. Therefore, his testimony at the hearing could be truthful.

Q. When at the end of the application for the 2014 PFD where it states that I certify that I was an Alaska resident for all of 2013, what did you believe in regard to whether or not you believe the statement to be true?

A. I believe that statement was true then and I believe it is true now.<sup>46</sup>

He gave the same answer with regard to his 2013 PFD application. He also said that he believed at the time, and he believes now, that he had never claimed residency in another state in either qualifying year.

Later, on cross-examination, Officer Maxwell was asked whether he would fill out his 2013 and 2014 applications the same if he had the opportunity to fill them out again knowing what he knows now about the law. He responded, “I would say absolutely yes. I would . . . would . . . do the same thing.”<sup>47</sup>

This testimony is revealing. Given all that he has been through, Officer Maxwell should be aware that by moving his primary residence to Montana, with the intent to remain in Montana for an indefinite period of time, he lost his Alaska residency. Even if Officer Maxwell is still unsure of the law, he should know that several experts with training in residency matters have concluded that he was no longer an Alaska resident when he moved to Montana. In these circumstance, he should be hesitant to certify that he was an Alaska resident for the entire year in 2012 and 2013. Yet, he is not.

Even more troubling is that Officer Maxwell would apparently fill out his application exactly as he did before, without informing the PFD division of his absence or his move. He now knows that because his absences were for less than 90 days, the application itself does not call for disclosure of pertinent facts about his moves or his employment. He knows that the absence of these questions is what allowed him to fill out the application truthfully (other than the residency issue) and never trigger further inquiry from the PFD division. Further, he heard Investigator Stendevad say that the PFD Division would counsel him to answer that he was absent for more than 90 days, so that the pertinent questions would be posed to him. Yet, he would fill out the application the same way, without providing additional disclosures to the PFD Division that would make his ineligibility clear. Officer Maxwell should know that he has an obligation to provide more information, rather than do the same thing again and just accept a benefit to which he is not entitled.

---

<sup>46</sup> Maxwell testimony.

<sup>47</sup> *Id.*

The Executive Director argued during closing arguments that if Officer Maxwell's testimony is true—if he actually would apply for a PFD even though he moved with the intent to live indefinitely as a resident of another state—then he is lacking in respect for the law. If he is willing to apply for a PFD knowing that the application does not require disclosure of pertinent facts, then he is willing to mislead the state into giving him a check for money for which he either knows he does not qualify or at a minimum is aware that he may not qualify.

The Executive Director's argument is well taken. Officer Maxwell's testimony raises doubt about Officer Maxwell's respect for the law.

Officer Maxwell argued at the hearing, however, that in saying he would do the same thing again, he was relying on Judge Menendez's remarks when acquitting him at his criminal trial. He understood Judge Menendez to say that he (Officer Maxwell) never lost his Alaska residency.

Whether Officer Maxwell's argument is persuasive will depend to some extent on Judge Menendez's statements. If Officer Maxwell could reasonably rely on the judge's comments to form his opinion, then it could provide an explanation for Officer Maxwell's statement that he would do the same again.

A recording of Judge Menendez's comments is in the record. In acquitting Officer Maxwell of the criminal charges of theft and unsworn falsification, Judge Menendez made comments that could be interpreted to go to the issues of residency and eligibility.<sup>48</sup> For example, Judge Menendez commented on Officer Maxwell's short tenure in Montana, his desire to return and eventually become chief of police in Klawock, and his leaving belongings in Klawock.<sup>49</sup> Judge Menendez also minimized the significance of the state's evidence that Officer Maxwell licensed his vehicle in Montana, and his statement to the City of Ronan that he wanted to be closer to relatives before retirement.<sup>50</sup> These comments could provide some justification for Officer Maxwell's continued confusion about whether he was eligible for the 2013 and 2014 PFDs.

To be clear, Judge Menendez's statement do not dispel all of the doubt raised by Officer Maxwell's testimony. Judge Menendez did not say that Officer Maxwell actually remained a resident or that he was eligible for the 2013 or 2014 PFDs. Indeed, Judge Menendez stressed several times that the acquittal was based on the state's failure to prove beyond a reasonable

---

<sup>48</sup> Exhibit 14.

<sup>49</sup> *Id.*

<sup>50</sup> *Id.*

doubt that Officer Maxwell had intended to mislead a public servant or deprive the state of its property.<sup>51</sup> Judge Menendez specifically commented that the state retained the ability to proceed in a civil (noncriminal) action against Officer Maxwell.<sup>52</sup> A person with police training should understand that the criminal charge did not turn on his residency or eligibility for the PFD. The verdict in this criminal case was not a finding that he was eligible for the 2013 or 2014 PFDs. Therefore, some doubt about Officer Maxwell’s respect for the law remains.

Yet, this doubt does not reach the threshold of *substantial* doubt. Although careful review of Judge Menendez’s statement reveals that the judge was not declaring Officer Maxwell eligible or a resident, we must remember that Officer Maxwell heard the comments only once, in the courtroom, at the time that he was being acquitted of a criminal charge. That he did not fully comprehend Judge Menendez’s meaning, and saw it as more of an exoneration than it was, is understandable. His reliance on Judge Menendez does not erase the doubt we have about Officer Maxwell’s respect for the law, but it does lessen it.<sup>53</sup>

More troubling than Officer Maxwell’s continued belief in an inaccurate interpretation of the law is his testimony that he would do the same thing again. That testimony suggests trickery because he knows now that the application does not disclose his absences. The nature of the question that was put to Officer Maxwell, however, affects how much we can rely on the answer. The question that led to the “same again” testimony was a hypothetical question about what he would do if he had the opportunity to do something over again. The question asks about something that could never occur. Officer Maxwell’s answer is speculation and difficult to put into context because it could never come true. Moreover, he did not say that he would engage in trickery and he did not say that he would not disclose additional information. He just said that he would do the same thing again. What he had in mind is not clear.

This is not to say the question was poorly framed—it was an excellent question. Officer Maxwell’s deficient answer raises doubt that about his respect for the law. Standing alone, however, this answer to a hypothetical question is not a sufficient basis to revoke his certificate.<sup>54</sup>

---

<sup>51</sup> *Id.*

<sup>52</sup> *Id.*

<sup>53</sup> In addition, in a previous case, the Council declined to give weight to a respondent’s hearing testimony that he continued to believe that an incorrect interpretation of the law was valid, finding the testimony “to be a poorly chosen litigation strategy, not dishonesty.” *In re Lynch*, OAH No. 14-1644-POC at 13 (Alaska Police Standards Council 2015).

<sup>54</sup> Note that the Alaska Supreme Court has made clear that a pattern of conduct is not required—one instance of dishonest or disrespectful conduct could meet that threshold. *Alaska Police Standards Council v. Parcell*, 348 P.3d 882, 888 (Alaska 2015). The issue here, however, is that this one statement is too thin a reed upon which to base a conclusion that Officer Maxwell does not have respect for the law.

The only remaining inquiry is whether the totality of the circumstances is sufficient to find substantial doubt about Officer Maxwell's moral character. To that inquiry we turn next.

**D. Does the totality of the evidence in this case warrant a conclusion that Officer Maxwell lacks good moral character?**

Before analyzing the totality of the evidence in the record, we must first explain a ruling at the hearing that limited the evidence that could be offered for the Council to consider. At the hearing, the Executive Director tried to ask law enforcement officers about their opinion of Officer Maxwell's honesty. Officer Maxwell objected. The Executive Director explained that one purpose of this opinion evidence was to pursue a theory under two U.S. Supreme Court cases, called *Brady* and *Giglio*.<sup>55</sup> Under this line of cases, in a criminal prosecution, a prosecutor must turn over exculpatory evidence to defense counsel. This includes evidence that a police officer who is testifying against the defendant is dishonest.

In the Executive Director's view, under these cases, Maxwell could no longer perform the duties of a police officer if other law enforcement officers *considered* him dishonest. In the Director's view, these opinions would have to be disclosed, which would lead to Officer Maxwell being impeached at any criminal trial where he would be a witness. Essentially, based on other officer's opinions, Officer Maxwell would now always be an ineffective witness, which means he could not effectively serve as a police officer. Therefore, the Executive Director argued, another officer's opinion evidence regarding Mr. Maxwell's honesty was admissible in this hearing.

Although some limited opinion evidence was allowed for impeachment and credibility purposes, for the following reasons, the Executive Director was not permitted to solicit opinion evidence for the purpose of making an argument about Officer Maxwell's fitness to serve under the *Brady* and *Giglio* theory:

1. The Executive Director's theory under *Brady* and *Giglio* is that another law enforcement's officer *belief* or *opinion* about Officer Maxwell's honesty would trigger a need to alert defense counsel about this infirmity in any case in which Officer Maxwell was a testifying witness. Yet, even if the Executive Director is correctly interpreting *Brady* and *Giglio*, this reasoning would mean that Officer Maxwell would be deprived a valuable interest (his certificate) based on a belief that may be unfounded or based on issues unknown to Officer Maxwell. To allow the Executive Director to pursue this theory would violate fundamental fairness and Officer

---

<sup>55</sup> Argument of Executive Director (citing *Brady v. Maryland*, 295 U.S. 78, (1935); *Giglio v. United States*, 405 U.S. 150 (1972)).



Maxwell's due process rights because Office Maxwell would not be able to defend against an unfounded opinion.<sup>56</sup>

2. The Executive Director's theory would usurp the Council's prerogative to make the decision in this case, and give it to the investigating officers. The Executive Director's approach would make revocation a *fait accompli* based on the testifying officer's opinions, without regard to the Council's determination. Here the Council must make the determination, based on whether the bad acts alleged in the Accusation justify revocation. Because the Executive Director's theory would bypass the Council's decisionmaking, evidence of other officer's opinions related solely to that theory is not admissible.
3. Officer Maxwell has a right to be made aware of the charges against him. Here, he has been charged with two specific bad acts: filing two applications for PFDs for which he was not eligible. Under the Executive Director's *Brady* and *Giglio* theory, however, even if Officer Maxwell defends himself, and shows that his acts were not wrongful, the Council must revoke Officer Maxwell's certificate based on the bad opinions held by other officers. This theory is a different theory of revocation than the one presented to Officer Maxwell in the Accusation. Allowing the Executive Director to pursue this theory would therefore violate Officer Maxwell's due process rights because he was not put on notice that his certificate would be revoked under this theory.

---

<sup>56</sup> The exclusion of this opinion evidence does not mean that *Brady* and *Giglio* are irrelevant. The Council has acknowledged that its decisions regarding honesty would have to be disclosed to defense counsel, which makes revocation a very likely outcome if the Council finds substantial doubt about a police officer's honesty. *In re Hazelaar*, OAH No. 13-0085-POC at Executive Director's Proposal for Action at 3 (incorporated into the Council's decision by Order Adopting the Executive Director's Proposal for Action and the Recommended Decision as Revised by this Order, and Revoking Cpl. Hazelaar's Police Certificate (Police Standards Council 2014)), available at <http://aws.state.ak.us/officeofadminhearings/Documents/POC/POC130085%20Superior%20Court%20appeal%20opening.pdf> (*aff'd Hazelaar v. Alaska Police Stnds Coun.*, Case No. 1JU-14-883CI (Alaska Superior Ct., April 6, 2016)). The Council has also recognized that an internal investigation that found dishonesty would trigger the need to disclose. *Id.* (citing *Mike v. Ryan*, 711 F.3d 998 (9<sup>th</sup> Cir. 2013)). For other circumstances, however, the Council has advised that the obligation to disclose will depend on the circumstances and that in uncertain cases, prosecutors may disclose to the judge in lieu of defense counsel. *In re Much*, OAH No. 13-0288-POC at 29 n.184 (Police Standards Council 2013), *aff'd on other grounds, Much v. Alaska Police Stnds. Coun.*, Case No. 3AN-14-4466CI (Alaska Super. Ct. 2016); available at <http://aws.state.ak.us/officeofadminhearings/Documents/POC/POC130288.pdf>. One Alaska Superior Court decision has rejected the Executive Director's theory that the obligation to disclose extends to unsubstantiated opinions. *Parcell v. Alaska Police Standards Council*, Case No. 1JU-12-728CI (Alaska Superior Court, Sept. 30, 2013), *rev'd on other grounds, Alaska Police Standards Council v. Parcell*, 348 P.3d 882, 888 (Alaska 2015).

4. The Council has previously advised that “‘Good moral character’ must be defined carefully to avoid opening the door for selective and arbitrary enforcement. . . . The Executive Director must prove actual bad acts or omissions, and prove that the acts or omissions raise substantial doubts about the collective criteria of honesty, fairness, respect for the rights of others, and respect for the law.”<sup>57</sup> The Executive Director’s approach to *Brady* and *Giglio* in this hearing, however, would open the door for selective and arbitrary enforcement, and allow revocation of certificates for opinions held by others rather than for bad acts.
5. Finally, no evidence regarding how prosecutors apply *Brady* and *Giglio* is needed because the Council’s previous decisions acknowledge these cases, and acknowledged that if the Council determines that it has doubt about a police officer’s honesty, then *Brady* and *Giglio* certainly provide strong grounds for revocation.<sup>58</sup> This means that the issue of *Brady* and *Giglio* is a matter of law, established by the Council’s own cases. It is not a question of fact. Therefore, the testimony offered by the Executive Director is not necessary, and was properly excluded from this hearing.

We now turn to the issue of whether the facts in this case, taken as a whole, lead to substantial doubt about Officer Maxwell’s honesty and respect for law, and, if so, whether that doubt would justify revocation of Officer Maxwell’s police certificate. Although honesty and respect for law are two different elements of good moral character, the Council’s cases explain that the elements can be considered collectively, not just as individual components.<sup>59</sup>

Unlike other cases of multiple instances that give rise to doubts, however, combining his conduct and his testimony together is still not sufficient to raise substantial doubt about Officer Maxwell’s moral character. In a somewhat similar case, *In re Lynch*, the Council declined to revoke a certificate when an officer signed an affidavit that contained a false statement, and then testified in his defense that he continued to believe his false statement was true (when it was not).<sup>60</sup> In making this decision, the Council determined that the statement in the affidavit was an

---

<sup>57</sup> *In re E.X.*, OAH No. 13-0473-POC at 17 (Alaska Police Standards Council 2013), available at <http://aws.state.ak.us/officeofadminhearings/Documents/POC/POC130473.pdf>.

<sup>58</sup> *Id.*; *In re Much*, OAH No. 13-0288-POC at 29 n.184 (Police Standards Council 2013) (*aff’d Much v. Alaska Police Smds. Coun.*, Case No. 3AN-14-4466CI (Alaska Super. Ct. 2016)); available at <http://aws.state.ak.us/officeofadminhearings/Documents/POC/POC130288.pdf>.

<sup>59</sup> *In re E.X.*, OAH No. 13-0473-POC at 16 (“[T]he requirement of substantial doubts applies to the subordinate clause—“about an individual’s honesty, fairness, and respect for the rights of others and for the laws of this state and the United States”—in its entirety, not to each individual element in the clause.”).

<sup>60</sup> *In re Lynch*, OAH No. 14-1644-POC.

honest mistake (the officer had not written the multi-page affidavit himself, and reasonably failed to spot the inaccuracy), not a deliberate attempt to deceive.<sup>61</sup> It noted that signing the affidavit was not part of the officer's official duties. The Council considered the affidavit and the testimony as related conduct, and based its decision in part on the fact that the accusation was limited to one instance of alleged dishonest conduct. In addition, the Council found the respondent's hearing testimony that he still believed the false statement in the affidavit was "a poorly chosen litigation strategy, not dishonesty."<sup>62</sup>

Here, Officer Maxwell's conduct of applying for a PFD was more remote from his police duties than was the affidavit at issue in *Lynch*. The lack of nexus to police work means that we look for evidence of dishonesty in the alleged bad act. Here the circumstantial evidence gives rise to some doubt, but we have no evidence of intent or deception, which prevents us from forming substantial doubt.<sup>63</sup>

With regard to the *Lynch* concern about relying on only one bad act, the same is true here because the facts regarding the Fairview job are much different from the facts regarding the Ronan job. Officer Maxwell was in Fairview for only a few days, the job never jelled, he never had housing, and he stayed in near-daily contact with his former Chief in Klawock. Although a sophisticated applicant would know that even this hiatus disqualified him from both residency and eligibility for a PFD, most Alaskans, including Officer Maxwell, would not. Thus, the facts regarding his Fairview application do not raise doubt about his honesty. Therefore, this decision about his honesty is essentially based on one bad act—his 2014 application after his job in Ronan (which has been thoroughly analyzed above). Treating his testimony about this act and the act itself as related conduct (as the Council did in *Lynch*), we have only one issue upon which to base the decision. In this respect, considering the evidence as a whole does not advance the Executive Director's case.

Moreover, in this decision, considerable weight has been given to Officer Maxwell's continued adherence to a false position in his hearing testimony, and his avowal that he would do

---

<sup>61</sup> *Id.*

<sup>62</sup> *Id.* at 13.

<sup>63</sup> This does not imply that nexus to police work is an element of, or even important in, determining good moral character. The point is that if the alleged bad act was related to police work, it would be more likely that the bad act would affect other regulations or additional aspects of moral character. In that regard, in questioning Trooper Ryan, the Trooper who interviewed Officer Maxwell, the Executive Director brought out other specific instances of conduct (for purposes of impeachment of Officer Maxwell) that, if proven, might reflect on his honesty and respect for the law, as well as competence. These issues were not proven, however, and were not introduced for purposes of proof of the allegations in this Accusation. Therefore, these issues will not be discussed in this decision.

the same again. Given the issues with this testimony, however (the reliance on the superior court's comments and the fact the testimony was a response to a hypothetical question), even with maximum weight given to the testimony, considering Officer Maxwell's conduct as a whole does not provide a sufficient basis for revocation.

Therefore, based solely on the issues alleged in the Accusation, and the lack of proof that Officer Maxwell was aware of the risk that he was ineligible for a PFD at the time of his 2013 and 2014 applications, the Executive Director has not proved that Officer Maxwell lacks sufficient moral character to retain his police certificate.

#### **IV. Conclusion**

The Executive Director has not proved that Officer Valent Maxwell lacks good moral character. The Executive Director's requested revocation of Officer Maxwell's certificate is denied.

DATED this 25<sup>th</sup> of July, 2016.

By: Signed \_\_\_\_\_  
Stephen C. Slotnick  
Administrative Law Judge

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