

BEFORE THE ALASKA POLICE STANDARDS COUNCIL

In the Matter of:)
)
JOHN J. WALDRON) OAH No. 16-0316-POC
) APSC No. 2015-09
_____)

DECISION

I. Introduction

John Waldron was a police officer with the Unalaska Department of Public Safety (Unalaska DPS). During his employment, he was questioned about his internet usage and his availability for a meeting with his superiors regarding that usage. His answers resulted in him being investigated for dishonesty. Officer Waldron resigned, in lieu of termination, during the course of that investigation.

The Executive Director of the Alaska Police Standards Council requested that Officer Waldron’s police certificate be revoked on the basis that he had resigned, under threat of termination for cause, specifically dishonesty. However, the evidence at hearing did not prove that Officer Waldron was dishonest. Instead, the evidence shows that the Unalaska DPS had reasonable concerns about Officer Waldron’s performance, which were probably more appropriately handled as a routine personnel matter, but its contention that he was dishonest was not well founded. Accordingly, there are no grounds for revocation of his police officer’s certificate.

II. Facts and Procedural History¹

A. Facts

Officer Waldron began his law enforcement career as a Village Public Safety Officer in 1994 in Yakutat. In 2002, he became a police officer in Hoonah and received a certificate from the Police Standards Council (Council). He then began working as a police officer for the Unalaska DPS in 2005. He had a number of certificates from the Council in addition to the basic certificate: an instructional certificate, and an advanced certificate. Officer Waldron also was a member of the Council for eight years.²

¹ This case involves events which occurred in May 2015. Sgt. Shockley is now the Deputy Chief of Unalaska DPS. Deputy Chief Holman is now the Director of Unalaska DPS. Director Sunderland is no longer with Unalaska DPS. For the sake of clarity, all of these individuals are referred to with the rank they held in May 2015.

² Officer Waldron’s testimony.

Beginning in April 2015, Officer Waldron was working the evening shift (4:00 p.m. to midnight). He was injured on the job on April 13, 2015, when his patrol car was rear-ended by another car during whiteout conditions. That injury resulted in him being placed on light duty and he was receiving chiropractic care. At the end of April, he was working on the [A] case, which was the first case he was assigned after coming back to work after light duty. He needed to obtain authorization for a search warrant for Facebook, which was a first for him and required some research. He would have normally given the warrant to Sgt. Shockley, his direct supervisor, who would have returned it to him within a day or two. She was out of town at the time, and he ended up taking the warrant to Deputy Chief Holman for his review.³

Shortly thereafter, on Saturday, May 9, Officer Waldron was assigned to work on a different case, the [B] case, a theft case with complicated evidentiary issues. Officer Waldron was told to prepare a detailed report for presentation to the District Attorney. Sgt. Shockley initially told Officer Waldron that it needed to be completed no later than the end of his shift on Sunday, May 10. Sgt. Shockley emailed various officers, including Officer Waldron, at 3:57 p.m. on May 9. The portion of the email directed to Officer Waldron directed him to complete his report documents and send them to another officer “by Sunday evening.”⁴ Officer Waldron was on duty both Saturday, May 9, and Sunday, May 10. Officer Waldron subsequently contacted Sgt. Bacon, not Sgt. Shockley, for overtime authorization.⁵

Sgt. Shockley thought she had a good working relationship with Officer Waldron. She noticed a decline in his work quality beginning in either late 2013 or 2014, including inattention to detail and difficulty in following instructions.⁶ She felt that Officer Waldron should have had ample time to complete the [B] report without overtime authorization, because the dispatch records showed that he had only left the station for a very short period of time during both the May 9 and May 10 shifts. She questioned his need for overtime, and contacted City of Unalaska’s information systems (IS) department inquiring about Officer Waldron’s internet usage during those shifts.⁷ Personal internet use was not prohibited, provided it did not interfere with work.⁸

³ Officer Waldron’s testimony.

⁴ Officer Waldron’s testimony; Agency Record, p. 27.

⁵ Agency Record, p. 24.

⁶ Sgt. Shockley’s testimony.

⁷ Sgt. Shockley’s testimony.

⁸ Agency Record, p. 26.

The IS department generated internet usage reports that showed Officer Waldron accessed the internet, including accessing ESPN, eBay, YouTube, and vintage car and VW bus sites, on May 9 and 10.⁹ Jacob Whitaker, who is the network administrator for the IS department, generated the internet usage reports. He testified the reports showed multiple “hits” for the various internet sites, but that it was not possible to determine the actual amount of active time that a person spent actually viewing or accessing the various internet sites, because some sites automatically refresh themselves. He also testified that a sports chat site showed fairly consistent use for several hours on May 9. However, he did not know if Officer Waldron initiated that activity or participated in it. The activity could have been caused by Officer Waldron just being logged onto the site, while other people were active on the site. Mr. Whitaker was a credible witness. He was careful to explain the limitations of the information contained in the reports and other internet usage compilations, and what could be inferred from it.¹⁰ Officer Waldron did not dispute the internet usage reports regarding his work computer. Nor did he argue that someone else had accessed or used his computer during the relevant time periods.

Sgt. Shockley spoke to Officer Waldron on May 11. She told him to finish up his work on the [A] case. She also inquired about several items related to his recent work performance. She asked him why he needed overtime to complete the [B] report. His response was that it required detailed information. She asked him about his internet usage over that weekend, where he denied “surfing” the internet, looking at used car information, or watching YouTube videos.¹¹ On May 12, Officer Waldron told Sgt. Shockley that he might have viewed a YouTube video on May 1, as part of an online work-related class that he had been taking. Sgt. Shockley thought this was an after-the-fact attempt to justify his internet use to her.¹² Officer Waldron, however, testified that he thought Sgt. Shockley was asking about his internet usage on May 1 and 2, because she was telling him at the time to finish up his work on the [A] case, which related back to May 1 and 2. Officer Waldron further testified that it was normal for him to log onto the ESPN (fantasy baseball) website when he started his computer.¹³

⁹ Agency Record, pp. 31 – 36.

¹⁰ Jacob Whitaker’s testimony.

¹¹ Sgt. Shockley’s testimony; Agency Record, pp. 24 – 25.

¹² Sgt. Shockley’s testimony; Agency Record, p. 25.

¹³ Officer Waldron’s testimony.

Sgt. Shockley emailed the other sergeants, on May 12 at 6:52, regarding having a joint meeting with Officer Waldron. The email began:

Gentlemen –

It's time. Per [Deputy Chief] Holman, we need to have another group intervention with Waldron, sooner rather than later. Some of the things I think we need to go over are his failure to complete work during shift & consequently milking overtime, and simply not following instructions. As is usual with him, I can't say for sure whether he's actually lying when I ask him about some of these issues, or if he really doesn't understand what's expected of him.¹⁴

The email further suggested that the meeting be at approximately 8:00 p.m. the following day, and that Officer Waldron not be notified about the meeting until approximately 4:00 p.m. The email then recited some of her specific concerns regarding Officer Waldron's ability to complete his work on the [B] case, his request for overtime authorization, his work on the [A] case, and his internet usage.¹⁵

The Unalaska DPS dispatcher phoned Officer Waldron the following day, May 13, his day off, at 4:03 in the afternoon, and told him to come in for a meeting at 6:00 p.m. Officer Waldron asked the dispatcher what the meeting was about. He was asked if he wanted to speak to Sgt. Shockley, and said yes. The dispatcher then told him that Sgt. Shockley was on another line and asked if Officer Waldron wanted the sergeant to call him. Officer Waldron's response was yes. The dispatcher then called Officer Waldron back, after speaking to Sgt. Shockley, and told him that the purpose of the meeting was that the sergeants wanted to talk to him.¹⁶

When the dispatcher first called Officer Waldron, Officer Waldron was dealing with a minor injury suffered by his son, a sprained ankle. Officer Waldron was able to deal with it, and he and his son were back home by the time the dispatcher called back. Then after the dispatch call, he received a disturbing phone call regarding a serious crisis in his family, which caused him to become very upset.¹⁷ His wife came home about 5:30 p.m. He was still on the phone.

¹⁴ Agency Record, p. 37.

¹⁵ Agency Record, pp. 37 – 38.

¹⁶ The dispatch recordings are contained in the record.

¹⁷ Officer Waldron's testimony. As discussed with Officer Waldron and both attorneys in a separate recording, which is marked confidential and is not part of the public record in this case, the personal crisis was highly confidential, and did not bear upon the allegations in this case.

When he got off the phone, she told him that she had made a chiropractic appointment for him that evening at 6:15.¹⁸

Nevertheless, Officer Waldron showed up for his 6:00 p.m. meeting with the sergeants. They were all in a group. He testified that he told Sgt. Shockley that he had been trying to get in touch with her. He told the sergeants about his medical appointment and offered to cancel it. He was told to go to his appointment and come back.¹⁹ The sergeants each checked their messages and found no attempt from Officer Waldron to contact them.²⁰

Officer Waldron went to his appointment. He then came back and met with the sergeants. After that meeting, Sgt. Shockley spoke to Deputy Chief Holman. Her concerns, which she reiterated at hearing, were that Officer Waldron had been untruthful as follows:

- She believed that he had lied to her when she asked him about his internet usage.
- She believed that he lied on May 13 when he said that he had been trying to get in touch with the sergeants.
- She believed that he lied on May 13 when he said that he had a doctor's appointment, or that he had made the doctor's appointment after he was notified of the May 13 meeting.²¹

On May 15, the City of Unalaska Human Resources office verified with Officer Waldron's chiropractor's office that he had a 6:15 p.m. chiropractic appointment on May 13, which was made for him by his wife at approximately 5:15 that evening.²²

Deputy Chief Holman then initiated an internal investigation regarding whether Officer Waldron had violated the Unalaska DPS's policy on truthfulness. He assigned Sgt. Bacon to interview Officer Waldron. Sgt. Bacon interviewed Officer Waldron the evening of May 20. This was a *Garrity* interview. In a *Garrity* interview, the officer is admonished that the interview is part of an official investigation, and the officer is ordered to answer all questions truthfully, completely, and without evasion. Officer Waldron had a union representative present with him at the interview.

¹⁸ Ms. Waldron's testimony. Officer Waldron was still receiving chiropractic treatment three times weekly for his April work-related injury. He had asked his wife to make that appointment with the expectation that she would do so that morning, but she had lost track of time and did not make it for him until she was getting off work.

¹⁹ Officer Waldron's testimony.

²⁰ Sgt. Shockley's testimony.

²¹ Sgt. Shockley's testimony; Agency Record, pp. 24 – 26.

²² Agency Record, p. 23.

During the interview, Sgt. Bacon asked Officer Waldron about his internet usage and his statements to Sgt. Shockley regarding his internet usage. Officer Waldron's interview statement was that he thought Sgt. Shockley was asking about his May 1 and 2 internet usage, and not about his May 9 and 10 usage. The context he provided was that Sgt. Shockley was asking him about the [A] case, which dated back to May 1 and 2. There was also discussion about Officer Waldron's internet use specifically pertaining to a fantasy baseball sports site on May 9 and 10. Officer Waldron's initial statement was that he may have accessed the site to show a fellow employee: "I believed John Warden came back and asked me about my baseball thing. I think I opened that up."²³

The recording of the interview shows that it was not the model of clarity. At times, Sgt. Bacon spoke over Officer Waldron, telling Officer Waldron what happened. It was occasionally argumentative. Sgt. Bacon appeared frustrated at several points when questioning Officer Waldron. In addition, Sgt. Bacon assumed in his follow-up questioning that Officer Waldron had definitively stated that he had opened the fantasy baseball site for his fellow employee. Officer Waldron also was a bit confused. For example, he thought he had called the dispatcher back on May 13, after the dispatcher's initial call regarding the May 13 meeting, when in fact, the dispatcher had called him back. He also did not provide concise and clear answers to questions. Regardless, on the internet usage issue, Officer Waldron consistently maintained that he thought Sgt. Shockley was asking about May 1 and 2, rather than May 9 and 10.²⁴

The interview recording also shows that when Officer Waldron was first called by the dispatcher, and said that he would like Sgt. Shockley to call him, he was dealing with his son's injury. That had been taken care of by the time the dispatcher made the second call. Officer Waldron also stated that he did not have, and did not know about, his doctor's appointment at the time of conversation with the dispatcher, because his wife had not made the appointment at that time. He further stated that he did not know about the appointment until his wife came home and told him about it as he was leaving for his meeting. Sgt. Bacon was frustrated and talking over Officer Waldron at this point.²⁵ Sgt. Bacon assumed that when Officer Waldron told the

²³ See Recording of May 20, 2015 interview at 9:30 – 9:45.

²⁴ See Recording of May 20, 2015 interview.

²⁵ See Recording of May 20, 2015 interview at 19– 25.

dispatcher that he would like Sgt. Shockley to call him, that he wanted to talk to her about the not yet scheduled doctor's appointment.²⁶

Sgt. Bacon created a detailed report, which was provided to Deputy Chief Holman. In it he concluded Officer Waldron had been untruthful as follows:

- That he had lied to Sgt. Shockley when she asked about his May 9 and 10 internet usage.
- That he had lied on May 13, immediately prior to the scheduled meeting, when he told the sergeants that he had been trying to get hold of them.
- That he lied during his interview on May 20 regarding his doctor's appointment: "Officer Waldron when asked about attempting to contact the sergeants about his doctor's appointment was unable to say how he had tried to contact anyone other than to say he had tried . . ." since he did not even know about the doctor's appointment at the time he was communicating with dispatch.
- That he lied during his interview on May 20, when he told Sgt. Bacon that he had opened up the fantasy baseball website in response to an inquiry from Mr. Warden, because Mr. Warden was off duty on May 9 and 10.²⁷

Sgt. Bacon's testimony was consistent with his report on the investigation. He also recounted that he had known Officer Waldron since 2005, that they had been neighbors in the past, that he has supervised Officer Waldron, and noticed some performance issues in the last couple years before Officer Waldron left the department, and that he still considered Officer Waldron to be a friend. Sgt. Bacon was an overall credible witness.

The next morning, May 21, Officer Waldron telephoned Deputy Chief Holman and asked to have a meeting with him and Director Sunderland. In that conversation, he stated that "there was one section that I wasn't honest with but it's something that's very personal and I think I needed to talk to you about it."²⁸ Deputy Chief Holman believed that Officer Waldron was admitting that he had lied during his May 20 interview.²⁹ Officer Waldron met with Deputy Chief Holman and Director Sunderland at lunch, along with his union representative. He informed them about his serious family crisis, which was very sensitive. It did not involve the allegations against him, but he thought it might have affected the way he came across in the

²⁶ See Recording of May 20, 2015 interview at 23 – 25.

²⁷ Agency Record, pp. 16 – 21.

²⁸ The recording of the May 21 telephone call is contained in the record. Officer Waldron also provided an informal transcript of that conversation, which is in the case file.

²⁹ Deputy Chief Holman's testimony; Agency Record, p. 14.

previous evening's interview. Officer Waldron was visibly affected during that lunch meeting and cried.³⁰ Officer Waldron was then given the option of resigning or being terminated. Officer Waldron resigned.³¹ Unalaska DPS reported Officer Waldron's resignation to the Council as a resignation in lieu of termination, while under investigation for wrongdoing.³²

Officer Waldron appeared in person, where he was continuously observed for the three-day hearing held in this case. His physical demeanor was one where he did not avoid eye contact, or appear hesitant when answering questions. He had, however, difficulty answering questions directly or succinctly. His answers were not evasive, but were instead circuitous. He was not defiant or angry, but did become notably emotional at several times during the questioning, especially when he spoke about his family's serious crisis, even though this hearing occurred over a year later. Overall, he was a credible witness.

Sgt. Shockley's career with the Unalaska DPS began in 1998. She has both a basic and advanced certificate from the Council. She left the Unalaska DPS for a 20-month period, but returned to it in 2006. She began working with Officer Waldron upon her return in 2006. She was Officer Waldron's direct supervisor in April and May 2015. She had generally had a good working relationship with him, but noticed a decline in his work quality beginning in either late 2013 or 2014, including an inattention to detail and difficulty in following instructions.³³ Sgt. Shockley was a credible witness.

B. Procedural History

The Executive Director for the Police Standards Council (Council) filed an accusation, requesting that Officer Waldron's police officer's certification be revoked. The factual allegations contained in the accusation were that Officer Waldron had been dishonest about his internet usage, had been dishonest when telling his immediate supervisors that he had been trying to get hold of them, and had further been dishonest during his investigative interview about his looking up a fantasy baseball internet site for another employee, and about his attempts to contact the sergeants regarding his doctor's appointment. Based upon the factual allegations, the Executive Director requested that the Council revoke Officer Waldron's police officer's certificate on three separate grounds:

³⁰ Deputy Chief Holman's testimony; Officer Waldron's testimony.

³¹ Deputy Chief Holman's testimony; Officer Waldron's testimony; Agency Record, pp. 40.

³² Agency Record, p. 13.

³³ Sgt. Shockley's testimony.

- (1) Discretionary revocation under 13 AAC 85.110(a)(2) for resigning under threat of discharge for cause for conduct detrimental to the reputation, integrity or discipline of the Unalaska DPS.
- (2) Discretionary revocation under 13 AAC 85.110(a)(3) due to Officer Waldron's failure to meet the standards contained in 13 AAC 85.010(a) or (b), specifically not having good moral character.
- (3) Mandatory revocation under 13 AAC 85.110(b)(3), due to Officer Waldron's resigning under threat of discharge for conduct that would cause a "reasonable person to have substantial doubt about an individual's honesty, fairness, and respect for the rights of others and for the laws of this state and the United States" or that was detrimental to the Unalaska DPS.

Officer Waldron's hearing was held on September 26 - 28, 2016.

III. Discussion

The Executive Director has the burden of proof by a preponderance of the evidence.³⁴ As made clear in the accusation, the parties dispute whether Officer Waldron was truthful with regard to four matters. Because resolution of the factual issues is necessary to the final resolution of this case, each of these are addressed in turn.

A. Factual Issues

1. Did Officer Waldron lie to Sgt. Shockley about his internet usage on May 9 and 10?

As discussed above, although Officer Waldron did not answer questions directly, he was credible overall. Sgt. Shockley maintained that she asked Officer Waldron about his internet usage on May 9 and 10 and that he denied internet usage on those dates. It is important to note that personal internet use was not prohibited, but that it could not interfere with work. Officer Waldron, on the other hand, maintains that he thought Sgt. Shockley was asking about his internet usage on May 1 and 2. His association of the question about internet usage with the [A] case was reasonable because she asked both about the [A] case and his internet use. Given that he had worked on the [A] case on the weekend of May 1 and 2, he assumed she meant May 1 and 2, not May 9 and 10.

³⁴ AS 44.62.460(e)(1).

Both Officer Waldron and Sgt. Shockley point to Officer Waldron telling her about his viewing a YouTube video on May 1, as part of a work-related class, as corroboration for their particular positions. However, given the context, if Officer Waldron knew that Sgt. Shockley was concerned about his internet use on May 9 and 10, it would not make sense for him to point out viewing a YouTube video on May 1. It would make sense for him to justify his YouTube video access on May 1, only if he thought that Sgt. Shockley was concerned about his internet use on May 1 and 2. In addition, Officer Waldron tends to answer questions circuitously, and Sgt. Shockley had difficulty communicating with Officer Waldron, as shown by her email to her fellow sergeants on May 12, where she stated, “As is usual with him, I can’t say for sure whether he’s actually lying when I ask him about some of these issues, or if he really doesn’t understand what’s expected of him.”³⁵ It is therefore more likely true than not true that Officer Waldron thought he was answering Sgt. Shockley about his internet use on May 1 and 2, and not May 9 and 10. The Executive Director has therefore failed to establish that Officer Waldron lied to Sgt. Shockley about his May 9 and 10 internet use.

2. Did Officer Waldron lie about trying to contact the sergeants immediately prior to the May 13 meeting?

The undisputed facts show that the Unalaska DPS dispatcher phoned Officer Waldron on May 13, his day off, at 4:03 in the afternoon, and told him to come in for a meeting at 6:00 p.m. Officer Waldron asked the dispatcher what the meeting was about. He was asked if he wanted to speak to Sgt. Shockley, and said yes. The dispatcher then told him that Sgt. Shockley was on another line and asked if Officer Waldron wanted the sergeant to call him. Officer Waldron’s response was yes. The dispatcher then called Officer Waldron back, after speaking to Sgt. Shockley, and told him that the purpose of the meeting was that the sergeants wanted to talk to him.³⁶

Officer Waldron showed up for the meeting. The sergeants were all together. He said he had been trying to get in touch with “you.” He testified he meant Sgt. Shockley. He was credible. It is a reasonable construction of the facts that he was not speaking to all the sergeants when he said he was trying to get in touch with “you” but was rather speaking directly to Sgt. Shockley. His first discussion with the dispatcher, where he responded to the dispatcher that he would like Sgt. Shockley to call him back, can reasonably be construed as an attempt to get in

³⁵ Agency Record, p. 37.

³⁶ The dispatch recordings are contained in the record.

touch with Sgt. Shockley. The Executive Director has therefore failed to meet the burden of proof on this point.

3. Did Officer Waldron lie during his investigative interview about his accessing a fantasy baseball internet site for a fellow employee?

The factual allegation is that Officer Waldron lied about accessing the internet for the benefit of a fellow employee, when he could not have done so because that employee was not on duty at that time. This is again a matter of interpretation. After a series of questions relating specifically to internet usage on May 9 and 10, Officer Waldron said “I believe John Warden came back and asked me about my baseball thing. I think I opened that up.”³⁷ The terms “believe” and “think” are not definitive statements. Officer Waldron did not deny that he had accessed the internet. His statements of belief do not establish an actual act of dishonesty. Accordingly, the Executive Director has failed to meet the burden of proof on this point.

4. Did Officer Waldron lie during his investigative interview about having a doctor’s appointment?

This allegation is derived from a discussion between Officer Waldron and Sgt. Bacon during the May 20 investigative interview. Sgt. Bacon clearly believed that Officer Waldron was trying to relate his statement on May 13 about attempting to contact the sergeants to the doctor’s appointment. The interview recording shows, however, that when Officer Waldron was called by the dispatcher, and said that he would like Sgt. Shockley to call him, he was dealing with his son’s injury. After a review of the interview recording, Officer Waldron’s testimony, and Ms. Waldron’s testimony about making the appointment, Sgt. Bacon’s assumption was unwarranted. Officer Waldron’s statement that he had been trying to get hold of “you” (meaning Sgt. Shockley) was because he wanted to know the purpose of the meeting (and perhaps to relay that he was dealing with an injured child, although that was not made clear). He never said that he was trying to contact them for the purpose of telling them about his appointment. At worst, there was a miscommunication, which was compounded by Officer Waldron’s communication style and Sgt. Bacon’s inferences. Accordingly, the Executive Director has failed to meet the burden of proof on this point.

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³⁷ See Recording of May 20, 2015 interview at 9:30 – 9:45.

B. Grounds for Revocation

1. Count I – Discretionary revocation under 13 AAC 85.110(a)(2).

In order to revoke Officer Waldron’s certification under 13 AAC 85.110(a)(2), the Executive Director must establish, by a preponderance of the evidence, that Officer Waldron has been discharged or resigned under threat of discharge, from employment as a police officer in this state . . . for cause for inefficiency, incompetence, or some other reason that adversely affects the ability and fitness of the police officer to perform job duties or that is detrimental to the reputation, integrity, or discipline of the police department where the police officer worked.³⁸

It is undisputed that Officer Waldron was offered the option of resigning or being terminated while he was being investigated for dishonesty. A review of the evidence as recited above shows that the Executive Director did not demonstrate that Officer Waldron was dishonest. What it shows is that Officer Waldron’s immediate supervisor, Sgt. Shockley, and another sergeant, Sgt. Bacon, thought that his work performance had declined, and that Sgt. Shockley was frustrated with Officer Waldron. The evidence shows that Officer Waldron’s supervisors interpreted events in the worst possible light to Officer Waldron regarding matters that are easily explained as communication difficulties.

For example, the Deputy Chief assumed that when Officer Waldron called him May 21 and told him that he wanted a meeting because “there was one section that I wasn’t honest with but it’s something that’s very personal and I think I needed to talk to you about it,” that Officer Waldron was admitting that he lied during that interview.³⁹ The evidence actually shows that Officer Waldron was not admitting to lying. He meant that he had not disclosed certain events in his personal life for privacy reasons, and those events might have had some bearing on how he came across in that interview. Officer Waldron’s use of the phrase “I wasn’t honest” was an example of a poor word choice on his part. It was not an admission of dishonesty. Yet, in that same May 21 meeting, and based in part on the incorrect assumption that Officer Waldron had admitted to lying the day before in the May 20 interview, Officer Waldron was given the choice of being fired or resigning. On these facts, the pending termination was not because of an event or fact pattern that was related to dishonesty or otherwise detrimental to the reputation of the Unalaska DPS. As a result, discretionary revocation is not warranted.

³⁸ 13 AAC 85.110(a)(2).

³⁹ The recording of the May 21 conversation is contained in the record. Officer Waldron also provided an informal transcript of that conversation, which is in the case file.

2. Count II – Discretionary Revocation under 13 AAC 85.110(a)(3).

In order to revoke Officer Waldron’s certification under 13 AAC 85.110(a)(3), the Executive Director must establish, by a preponderance of the evidence, that Officer Waldron “does not meet the standards in 13 AAC 85.010(a) or (b).”⁴⁰ The Executive Director more specifically alleged that Officer Waldron failed to meet the standard of good moral character.⁴¹ Good moral character is defined by regulation as “the absence of acts or conduct that would cause a reasonable person to have substantial doubts about an individual’s honesty, fairness, and respect for the rights of others and for the laws of this state and the United States . . .”⁴²

The Executive Director’s basis for asserting that Officer Waldron failed to possess the requisite good moral character was his dishonesty. As discussed in detail above, the Executive Director failed to establish that Officer Waldron was dishonest. As a result, discretionary revocation for a lack of good moral character is not warranted.

3. Count III – Mandatory Revocation under 13 AAC 85.110(b)(3).

In order to revoke Officer Waldron’s certification under 13 AAC 85.110(b)(3), the Executive Director must establish, by a preponderance of the evidence, that Officer Waldron has been discharged or resigned under threat of discharge, from employment as a police officer in this state . . . for cause for conduct that would cause a reasonable person to have substantial doubt about an individual’s honesty, fairness, and respect for the rights of others and for the laws of this state and the United States or that is detrimental to the integrity of the police department where the police officer worked.⁴³

As discussed above, the facts do not show dishonesty on Officer Waldron’s part. As shown in the discussion on Count I, discretionary revocation for acts of dishonesty, the Council makes its own factual findings and independently reviews the evidence. Because the Executive Director has not established that Officer Waldron was dishonest, as alleged in the accusation, a reasonable person would not have substantial doubts about Officer Waldron’s honesty, or that his conduct detrimentally impacted the integrity of the Unalaska DPS. As a result, mandatory revocation of Officer Waldron’s certification is not warranted.

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⁴⁰ 13 AAC 85.110(a)(3).

⁴¹ See March 16, 2016 *Accusation*, Count II, Agency Record, pp. 4 – 5.

⁴² 13 AAC 85.900(7).

⁴³ 13 AAC 85.110(b)(3).

IV. Conclusion

The Executive Director had the burden of proof in this case. However, the Executive Director did not prove the allegations that Officer Waldron was dishonest. Instead, what the evidence shows is that the Unalaska DPS had concerns about Officer Waldron's performance, which were probably more appropriately handled as a routine personnel matter. Consequently, Officer Waldron's police officer's certificate is not revoked.

DATED this 17th day of April, 2017.

By: Signed
Bryce A. Johnson
Chair, Alaska Police Standards Council

Judicial review of this decision may be obtained by filing an appeal in the Alaska Superior Court in accordance with Alaska R. App. P. 602(a)(2) within 30 days after the date of this decision.

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

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II. Facts and Procedural History⁴⁴

A. Facts

Officer Waldron began his law enforcement career as a Village Public Safety Officer in 1994 in Yakutat. In 2002, he became a police officer in Hoonah and received a certificate from the Police Standards Council (Council). He then began working as a police officer for the Unalaska DPS in 2005. He had a number of certificates from the Council in addition to the basic

⁴⁴ This case involves events which occurred in May 2015. Sgt. Shockley is now the Deputy Chief of Unalaska DPS. Deputy Chief Holman is now the Director of Unalaska DPS. Director Sunderland is no longer with Unalaska DPS. For the sake of clarity, all of these individuals are referred to with the rank they held in May 2015.

certificate: an instructional certificate, and an advanced certificate. Officer Waldron also was a member of the Council for eight years.⁴⁵

Beginning in April 2015, Officer Waldron was working the evening shift (4:00 p.m. to midnight). He was injured on the job on April 13, 2015, when his patrol car was rear-ended by another car during whiteout conditions. That injury resulted in him being placed on light duty and he was receiving chiropractic care. At the end of April, he was working on the [A] case, which was the first case he was assigned after coming back to work after light duty. He needed to obtain authorization for a search warrant for Facebook, which was a first for him and required some research. He would have normally given the warrant to Sgt. Shockley, his direct supervisor, who would have returned it to him within a day or two. She was out of town at the time, and he ended up taking the warrant to Deputy Chief Holman for his review.⁴⁶

Shortly thereafter, on Saturday, May 9, Officer Waldron was assigned to work on a different case, the [B] case, a theft case with complicated evidentiary issues. Officer Waldron was told to prepare a detailed report for presentation to the District Attorney. Sgt. Shockley initially told Officer Waldron that it needed to be completed no later than the end of his shift on Sunday, May 10. Sgt. Shockley emailed various officers, including Officer Waldron, at 3:57 p.m. on May 9. The portion of the email directed to Officer Waldron directed him to complete his report documents and send them to another officer “by Sunday evening.”⁴⁷ Officer Waldron was on duty both Saturday, May 9, and Sunday, May 10. Officer Waldron subsequently contacted Sgt. Bacon, not Sgt. Shockley, for overtime authorization.⁴⁸

Sgt. Shockley thought she had a good working relationship with Officer Waldron. She noticed a decline in his work quality beginning in either late 2013 or 2014, including inattention to detail and difficulty in following instructions.⁴⁹ She felt that Officer Waldron should have had ample time to complete the [B] report without overtime authorization, because the dispatch records showed that he had only left the station for a very short period of time during both the May 9 and May 10 shifts. She questioned his need for overtime, and contacted City of Unalaska’s information systems (IS) department inquiring about Officer Waldron’s internet

⁴⁵ Officer Waldron’s testimony.

⁴⁶ Officer Waldron’s testimony.

⁴⁷ Officer Waldron’s testimony; Agency Record, p. 27.

⁴⁸ Agency Record, p. 24.

⁴⁹ Sgt. Shockley’s testimony.

usage during those shifts.⁵⁰ Personal internet use was not prohibited, provided it did not interfere with work.⁵¹

The IS department generated internet usage reports that showed Officer Waldron accessed the internet, including accessing ESPN, eBay, YouTube, and vintage car and VW bus sites, on May 9 and 10.⁵² Jacob Whitaker, who is the network administrator for the IS department, generated the internet usage reports. He testified the reports showed multiple “hits” for the various internet sites, but that it was not possible to determine the actual amount of active time that a person spent actually viewing or accessing the various internet sites, because some sites automatically refresh themselves. He also testified that a sports chat site showed fairly consistent use for several hours on May 9. However, he did not know if Officer Waldron initiated that activity or participated in it. The activity could have been caused by Officer Waldron just being logged onto the site, while other people were active on the site. Mr. Whitaker was a credible witness. He was careful to explain the limitations of the information contained in the reports and other internet usage compilations, and what could be inferred from it.⁵³ Officer Waldron did not dispute the internet usage reports regarding his work computer. Nor did he argue that someone else had accessed or used his computer during the relevant time periods.

Sgt. Shockley spoke to Officer Waldron on May 11. She told him to finish up his work on the [A] case. She also inquired about several items related to his recent work performance. She asked him why he needed overtime to complete the [B] report. His response was that it required detailed information. She asked him about his internet usage over that weekend, where he denied “surfing” the internet, looking at used car information, or watching YouTube videos.⁵⁴ On May 12, Officer Waldron told Sgt. Shockley that he might have viewed a YouTube video on May 1, as part of an online work-related class that he had been taking. Sgt. Shockley thought this was an after-the-fact attempt to justify his internet use to her.⁵⁵ Officer Waldron, however, testified that he thought Sgt. Shockley was asking about his internet usage on May 1 and 2, because she was telling him at the time to finish up his work on the [A] case, which related back

⁵⁰ Sgt. Shockley’s testimony.

⁵¹ Agency Record, p. 26.

⁵² Agency Record, pp. 31 – 36.

⁵³ Jacob Whitaker’s testimony.

⁵⁴ Sgt. Shockley’s testimony; Agency Record, pp. 24 – 25.

⁵⁵ Sgt. Shockley’s testimony; Agency Record, p. 25.

to May 1 and 2. Officer Waldron further testified that it was normal for him to log onto the ESPN (fantasy baseball) website when he started his computer.⁵⁶

Sgt. Shockley emailed the other sergeants, on May 12 at 6:52, regarding having a joint meeting with Officer Waldron. The email began:

Gentlemen –

It's time. Per [Deputy Chief] Holman, we need to have another group intervention with Waldron, sooner rather than later. Some of the things I think we need to go over are his failure to complete work during shift & consequently milking overtime, and simply not following instructions. As is usual with him, I can't say for sure whether he's actually lying when I ask him about some of these issues, or if he really doesn't understand what's expected of him.⁵⁷

The email further suggested that the meeting be at approximately 8:00 p.m. the following day, and that Officer Waldron not be notified about the meeting until approximately 4:00 p.m. The email then recited some of her specific concerns regarding Officer Waldron's ability to complete his work on the [B] case, his request for overtime authorization, his work on the [A] case, and his internet usage.⁵⁸

The Unalaska DPS dispatcher phoned Officer Waldron the following day, May 13, his day off, at 4:03 in the afternoon, and told him to come in for a meeting at 6:00 p.m. Officer Waldron asked the dispatcher what the meeting was about. He was asked if he wanted to speak to Sgt. Shockley, and said yes. The dispatcher then told him that Sgt. Shockley was on another line and asked if Officer Waldron wanted the sergeant to call him. Officer Waldron's response was yes. The dispatcher then called Officer Waldron back, after speaking to Sgt. Shockley, and told him that the purpose of the meeting was that the sergeants wanted to talk to him.⁵⁹

When the dispatcher first called Officer Waldron, Officer Waldron was dealing with a minor injury suffered by his son, a sprained ankle. Officer Waldron was able to deal with it, and he and his son were back home by the time the dispatcher called back. Then after the dispatch call, he received a disturbing phone call regarding a serious crisis in his family, which caused him to become very upset.⁶⁰ His wife came home about 5:30 p.m. He was still on the phone.

⁵⁶ Officer Waldron's testimony.

⁵⁷ Agency Record, p. 37.

⁵⁸ Agency Record, pp. 37 – 38.

⁵⁹ The dispatch recordings are contained in the record.

⁶⁰ Officer Waldron's testimony. As discussed with Officer Waldron and both attorneys in a separate recording, which is marked confidential and is not part of the public record in this case, the personal crisis was highly confidential, and did not bear upon the allegations in this case.

When he got off the phone, she told him that she had made a chiropractic appointment for him that evening at 6:15.⁶¹

Nevertheless, Officer Waldron showed up for his 6:00 p.m. meeting with the sergeants. They were all in a group. He testified that he told Sgt. Shockley that he had been trying to get in touch with her. He told the sergeants about his medical appointment and offered to cancel it. He was told to go to his appointment and come back.⁶² The sergeants each checked their messages and found no attempt from Officer Waldron to contact them.⁶³

Officer Waldron went to his appointment. He then came back and met with the sergeants. After that meeting, Sgt. Shockley spoke to Deputy Chief Holman. Her concerns, which she reiterated at hearing, were that Officer Waldron had been untruthful as follows:

- She believed that he had lied to her when she asked him about his internet usage.
- She believed that he lied on May 13 when he said that he had been trying to get in touch with the sergeants.
- She believed that he lied on May 13 when he said that he had a doctor's appointment, or that he had made the doctor's appointment after he was notified of the May 13 meeting.⁶⁴

On May 15, the City of Unalaska Human Resources office verified with Officer Waldron's chiropractor's office that he had a 6:15 p.m. chiropractic appointment on May 13, which was made for him by his wife at approximately 5:15 that evening.⁶⁵

Deputy Chief Holman then initiated an internal investigation regarding whether Officer Waldron had violated the Unalaska DPS's policy on truthfulness. He assigned Sgt. Bacon to interview Officer Waldron. Sgt. Bacon interviewed Officer Waldron the evening of May 20. This was a *Garrity* interview. In a *Garrity* interview, the officer is admonished that the interview is part of an official investigation, and the officer is ordered to answer all questions truthfully, completely, and without evasion. Officer Waldron had a union representative present with him at the interview.

⁶¹ Ms. Waldron's testimony. Officer Waldron was still receiving chiropractic treatment three times weekly for his April work-related injury. He had asked his wife to make that appointment with the expectation that she would do so that morning, but she had lost track of time and did not make it for him until she was getting off work.

⁶² Officer Waldron's testimony.

⁶³ Sgt. Shockley's testimony.

⁶⁴ Sgt. Shockley's testimony; Agency Record, pp. 24 – 26.

⁶⁵ Agency Record, p. 23.

During the interview, Sgt. Bacon asked Officer Waldron about his internet usage and his statements to Sgt. Shockley regarding his internet usage. Officer Waldron's interview statement was that he thought Sgt. Shockley was asking about his May 1 and 2 internet usage, and not about his May 9 and 10 usage. The context he provided was that Sgt. Shockley was asking him about the [A] case, which dated back to May 1 and 2. There was also discussion about Officer Waldron's internet use specifically pertaining to a fantasy baseball sports site on May 9 and 10. Officer Waldron's initial statement was that he may have accessed the site to show a fellow employee: "I believed John Warden came back and asked me about my baseball thing. I think I opened that up."⁶⁶

The recording of the interview shows that it was not the model of clarity. At times, Sgt. Bacon spoke over Officer Waldron, telling Officer Waldron what happened. It was occasionally argumentative. Sgt. Bacon appeared frustrated at several points when questioning Officer Waldron. In addition, Sgt. Bacon assumed in his follow-up questioning that Officer Waldron had definitively stated that he had opened the fantasy baseball site for his fellow employee. Officer Waldron also was a bit confused. For example, he thought he had called the dispatcher back on May 13, after the dispatcher's initial call regarding the May 13 meeting, when in fact, the dispatcher had called him back. He also did not provide concise and clear answers to questions. Regardless, on the internet usage issue, Officer Waldron consistently maintained that he thought Sgt. Shockley was asking about May 1 and 2, rather than May 9 and 10.⁶⁷

The interview recording also shows that when Officer Waldron was first called by the dispatcher, and said that he would like Sgt. Shockley to call him, he was dealing with his son's injury. That had been taken care of by the time the dispatcher made the second call. Officer Waldron also stated that he did not have, and did not know about, his doctor's appointment at the time of conversation with the dispatcher, because his wife had not made the appointment at that time. He further stated that he did not know about the appointment until his wife came home and told him about it as he was leaving for his meeting. Sgt. Bacon was frustrated and talking over Officer Waldron at this point.⁶⁸ Sgt. Bacon assumed that when Officer Waldron told the

⁶⁶ See Recording of May 20, 2015 interview at 9:30 – 9:45.

⁶⁷ See Recording of May 20, 2015 interview.

⁶⁸ See Recording of May 20, 2015 interview at 19– 25.

dispatcher that he would like Sgt. Shockley to call him, that he wanted to talk to her about the not yet scheduled doctor's appointment.⁶⁹

Sgt. Bacon created a detailed report, which was provided to Deputy Chief Holman. In it he concluded Officer Waldron had been untruthful as follows:

- That he had lied to Sgt. Shockley when she asked about his May 9 and 10 internet usage.
- That he had lied on May 13, immediately prior to the scheduled meeting, when he told the sergeants that he had been trying to get hold of them.
- That he lied during his interview on May 20 regarding his doctor's appointment: "Officer Waldron when asked about attempting to contact the sergeants about his doctor's appointment was unable to say how he had tried to contact anyone other than to say he had tried . . ." since he did not even know about the doctor's appointment at the time he was communicating with dispatch.
- That he lied during his interview on May 20, when he told Sgt. Bacon that he had opened up the fantasy baseball website in response to an inquiry from Mr. Warden, because Mr. Warden was off duty on May 9 and 10.⁷⁰

Sgt. Bacon's testimony was consistent with his report on the investigation. He also recounted that he had known Officer Waldron since 2005, that they had been neighbors in the past, that he has supervised Officer Waldron, and noticed some performance issues in the last couple years before Officer Waldron left the department, and that he still considered Officer Waldron to be a friend. Sgt. Bacon was an overall credible witness.

The next morning, May 21, Officer Waldron telephoned Deputy Chief Holman and asked to have a meeting with him and Director Sunderland. In that conversation, he stated that "there was one section that I wasn't honest with but it's something that's very personal and I think I needed to talk to you about it."⁷¹ Deputy Chief Holman believed that Officer Waldron was admitting that he had lied during his May 20 interview.⁷² Officer Waldron met with Deputy Chief Holman and Director Sunderland at lunch, along with his union representative. He informed them about his serious family crisis, which was very sensitive. It did not involve the allegations against him, but he thought it might have affected the way he came across in the

⁶⁹ See Recording of May 20, 2015 interview at 23 – 25.

⁷⁰ Agency Record, pp. 16 – 21.

⁷¹ The recording of the May 21 telephone call is contained in the record. Officer Waldron also provided an informal transcript of that conversation, which is in the case file.

⁷² Deputy Chief Holman's testimony; Agency Record, p. 14.

previous evening's interview. Officer Waldron was visibly affected during that lunch meeting and cried.⁷³ Officer Waldron was then given the option of resigning or being terminated. Officer Waldron resigned.⁷⁴ Unalaska DPS reported Officer Waldron's resignation to the Council as a resignation in lieu of termination, while under investigation for wrongdoing.⁷⁵

Officer Waldron appeared in person, where he was continuously observed for the three-day hearing held in this case. His physical demeanor was one where he did not avoid eye contact, or appear hesitant when answering questions. He had, however, difficulty answering questions directly or succinctly. His answers were not evasive, but were instead circuitous. He was not defiant or angry, but did become notably emotional at several times during the questioning, especially when he spoke about his family's serious crisis, even though this hearing occurred over a year later. Overall, he was a credible witness.

Sgt. Shockley's career with the Unalaska DPS began in 1998. She has both a basic and advanced certificate from the Council. She left the Unalaska DPS for a 20-month period, but returned to it in 2006. She began working with Officer Waldron upon her return in 2006. She was Officer Waldron's direct supervisor in April and May 2015. She had generally had a good working relationship with him, but noticed a decline in his work quality beginning in either late 2013 or 2014, including an inattention to detail and difficulty in following instructions.⁷⁶ Sgt. Shockley was a credible witness.

B. Procedural History

The Executive Director for the Police Standards Council (Council) filed an accusation, requesting that Officer Waldron's police officer's certification be revoked. The factual allegations contained in the accusation were that Officer Waldron had been dishonest about his internet usage, had been dishonest when telling his immediate supervisors that he had been trying to get hold of them, and had further been dishonest during his investigative interview about his looking up a fantasy baseball internet site for another employee, and about his attempts to contact the sergeants regarding his doctor's appointment. Based upon the factual allegations, the Executive Director requested that the Council revoke Officer Waldron's police officer's certificate on three separate grounds:

⁷³ Deputy Chief Holman's testimony; Officer Waldron's testimony.

⁷⁴ Deputy Chief Holman's testimony; Officer Waldron's testimony; Agency Record, pp. 40.

⁷⁵ Agency Record, p. 13.

⁷⁶ Sgt. Shockley's testimony.

- (1) Discretionary revocation under 13 AAC 85.110(a)(2) for resigning under threat of discharge for cause for conduct detrimental to the reputation, integrity or discipline of the Unalaska DPS.
- (2) Discretionary revocation under 13 AAC 85.110(a)(3) due to Officer Waldron's failure to meet the standards contained in 13 AAC 85.010(a) or (b), specifically not having good moral character.
- (3) Mandatory revocation under 13 AAC 85.110(b)(3), due to Officer Waldron's resigning under threat of discharge for conduct that would cause a "reasonable person to have substantial doubt about an individual's honesty, fairness, and respect for the rights of others and for the laws of this state and the United States" or that was detrimental to the Unalaska DPS.

Officer Waldron's hearing was held on September 26 - 28, 2016.

III. Discussion

The Executive Director has the burden of proof by a preponderance of the evidence.⁷⁷ As made clear in the accusation, the parties dispute whether Officer Waldron was truthful with regard to four matters. Because resolution of the factual issues is necessary to the final resolution of this case, each of these are addressed in turn.

A. Factual Issues

1. Did Officer Waldron lie to Sgt. Shockley about his internet usage on May 9 and 10?

As discussed above, although Officer Waldron did not answer questions directly, he was credible overall. Sgt. Shockley maintained that she asked Officer Waldron about his internet usage on May 9 and 10 and that he denied internet usage on those dates. It is important to note that personal internet use was not prohibited, but that it could not interfere with work. Officer Waldron, on the other hand, maintains that he thought Sgt. Shockley was asking about his internet usage on May 1 and 2. His association of the question about internet usage with the [A] case was reasonable because she asked both about the [A] case and his internet use. Given that he had worked on the [A] case on the weekend of May 1 and 2, he assumed she meant May 1 and 2, not May 9 and 10.

⁷⁷ AS 44.62.460(e)(1).

Both Officer Waldron and Sgt. Shockley point to Officer Waldron telling her about his viewing a YouTube video on May 1, as part of a work-related class, as corroboration for their particular positions. However, given the context, if Officer Waldron knew that Sgt. Shockley was concerned about his internet use on May 9 and 10, it would not make sense for him to point out viewing a YouTube video on May 1. It would make sense for him to justify his YouTube video access on May 1, only if he thought that Sgt. Shockley was concerned about his internet use on May 1 and 2. In addition, Officer Waldron tends to answer questions circuitously, and Sgt. Shockley had difficulty communicating with Officer Waldron, as shown by her email to her fellow sergeants on May 12, where she stated, “As is usual with him, I can’t say for sure whether he’s actually lying when I ask him about some of these issues, or if he really doesn’t understand what’s expected of him.”⁷⁸ It is therefore more likely true than not true that Officer Waldron thought he was answering Sgt. Shockley about his internet use on May 1 and 2, and not May 9 and 10. The Executive Director has therefore failed to establish that Officer Waldron lied to Sgt. Shockley about his May 9 and 10 internet use.

2. Did Officer Waldron lie about trying to contact the sergeants immediately prior to the May 13 meeting?

The undisputed facts show that the Unalaska DPS dispatcher phoned Officer Waldron on May 13, his day off, at 4:03 in the afternoon, and told him to come in for a meeting at 6:00 p.m. Officer Waldron asked the dispatcher what the meeting was about. He was asked if he wanted to speak to Sgt. Shockley, and said yes. The dispatcher then told him that Sgt. Shockley was on another line and asked if Officer Waldron wanted the sergeant to call him. Officer Waldron’s response was yes. The dispatcher then called Officer Waldron back, after speaking to Sgt. Shockley, and told him that the purpose of the meeting was that the sergeants wanted to talk to him.⁷⁹

Officer Waldron showed up for the meeting. The sergeants were all together. He said he had been trying to get in touch with “you.” He testified he meant Sgt. Shockley. He was credible. It is a reasonable construction of the facts that he was not speaking to all the sergeants when he said he was trying to get in touch with “you” but was rather speaking directly to Sgt. Shockley. His first discussion with the dispatcher, where he responded to the dispatcher that he would like Sgt. Shockley to call him back, can reasonably be construed as an attempt to get in

⁷⁸ Agency Record, p. 37.

⁷⁹ The dispatch recordings are contained in the record.

touch with Sgt. Shockley. The Executive Director has therefore failed to meet the burden of proof on this point.

3. Did Officer Waldron lie during his investigative interview about his accessing a fantasy baseball internet site for a fellow employee?

The factual allegation is that Officer Waldron lied about accessing the internet for the benefit of a fellow employee, when he could not have done so because that employee was not on duty at that time. This is again a matter of interpretation. After a series of questions relating specifically to internet usage on May 9 and 10, Officer Waldron said “I believe John Warden came back and asked me about my baseball thing. I think I opened that up.”⁸⁰ The terms “believe” and “think” are not definitive statements. Officer Waldron did not deny that he had accessed the internet. His statements of belief do not establish an actual act of dishonesty. Accordingly, the Executive Director has failed to meet the burden of proof on this point.

4. Did Officer Waldron lie during his investigative interview about having a doctor’s appointment?

This allegation is derived from a discussion between Officer Waldron and Sgt. Bacon during the May 20 investigative interview. Sgt. Bacon clearly believed that Officer Waldron was trying to relate his statement on May 13 about attempting to contact the sergeants to the doctor’s appointment. The interview recording shows, however, that when Officer Waldron was called by the dispatcher, and said that he would like Sgt. Shockley to call him, he was dealing with his son’s injury. After a review of the interview recording, Officer Waldron’s testimony, and Ms. Waldron’s testimony about making the appointment, Sgt. Bacon’s assumption was unwarranted. Officer Waldron’s statement that he had been trying to get hold of “you” (meaning Sgt. Shockley) was because he wanted to know the purpose of the meeting (and perhaps to relay that he was dealing with an injured child, although that was not made clear). He never said that he was trying to contact them for the purpose of telling them about his appointment. At worst, there was a miscommunication, which was compounded by Officer Waldron’s communication style and Sgt. Bacon’s inferences. Accordingly, the Executive Director has failed to meet the burden of proof on this point.

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⁸⁰ See Recording of May 20, 2015 interview at 9:30 – 9:45.

B. Grounds for Revocation

1. Count I – Discretionary revocation under 13 AAC 85.110(a)(2).

In order to revoke Officer Waldron’s certification under 13 AAC 85.110(a)(2), the Executive Director must establish, by a preponderance of the evidence, that Officer Waldron has been discharged or resigned under threat of discharge, from employment as a police officer in this state . . . for cause for inefficiency, incompetence, or some other reason that adversely affects the ability and fitness of the police officer to perform job duties or that is detrimental to the reputation, integrity, or discipline of the police department where the police officer worked.⁸¹

It is undisputed that Officer Waldron was offered the option of resigning or being terminated while he was being investigated for dishonesty. A review of the evidence as recited above shows that the Executive Director did not demonstrate that Officer Waldron was dishonest. What it shows is that Officer Waldron’s immediate supervisor, Sgt. Shockley, and another sergeant, Sgt. Bacon, thought that his work performance had declined, and that Sgt. Shockley was frustrated with Officer Waldron. The evidence shows that Officer Waldron’s supervisors interpreted events in the worst possible light to Officer Waldron regarding matters that are easily explained as communication difficulties.

For example, the Deputy Chief assumed that when Officer Waldron called him May 21 and told him that he wanted a meeting because “there was one section that I wasn’t honest with but it’s something that’s very personal and I think I needed to talk to you about it,” that Officer Waldron was admitting that he lied during that interview.⁸² The evidence actually shows that Officer Waldron was not admitting to lying. He meant that he had not disclosed certain events in his personal life for privacy reasons, and those events might have had some bearing on how he came across in that interview. Officer Waldron’s use of the phrase “I wasn’t honest” was an example of a poor word choice on his part. It was not an admission of dishonesty. Yet, in that same May 21 meeting, and based in part on the incorrect assumption that Officer Waldron had admitted to lying the day before in the May 20 interview, Officer Waldron was given the choice of being fired or resigning. On these facts, the pending termination was not because of an event or fact pattern that was related to dishonesty or otherwise detrimental to the reputation of the Unalaska DPS.

⁸¹ 13 AAC 85.110(a)(2).

⁸² The recording of the May 21 conversation is contained in the record. Officer Waldron also provided an informal transcript of that conversation, which is in the case file.

The Executive Director therefore failed to establish that Officer Waldron resigned under threat of discharge for “cause.” While there is evidence that shows that Officer Waldron’s work performance was not satisfactory, it did not rise to the level of justifying a discharge action for dishonesty. The Executive Director has argued that it is not necessary to revisit the factual issue of whether the police department had “cause.” However, to do otherwise would result in this Council putting its stamp of approval on “causes” that are unfounded, or pretextual, or perhaps even motivated by invidious or retaliatory reasons. This Council has repeatedly examined the facts of a case, and made its own findings, before deciding whether revocation is warranted. It does not base its decisions solely upon the findings of the former officer’s employer.⁸³ Further, minutes from Executive Director’s 2012 testimony in front of the legislature provide that the

APSC is opposed to . . . having to follow the recommendation of a decision made in a separate employment hearing. . . A strength of the council is that it is autonomous. Currently, APSC is required to take a termination recommendation into account, but is not required to follow it.⁸⁴

Based upon an independent review of the facts, the Executive Director has failed to establish the requisite underlying cause, specifically dishonesty. As a result, discretionary revocation is not warranted.

2. Count II – Discretionary Revocation under 13 AAC 85.110(a)(3).

In order to revoke Officer Waldron’s certification under 13 AAC 85.110(a)(3), the Executive Director must establish, by a preponderance of the evidence, that Officer Waldron “does not meet the standards in 13 AAC 85.010(a) or (b).”⁸⁵ The Executive Director more specifically alleged that Officer Waldron failed to meet the standard of good moral character.⁸⁶ Good moral character is defined by regulation as “the absence of acts or conduct that would cause a reasonable person to have substantial doubts about an individual’s honesty, fairness, and respect for the rights of others and for the laws of this state and the United States . . .”⁸⁷

The Executive Director’s basis for asserting that Officer Waldron failed to possess the requisite good moral character was his dishonesty. As discussed in detail above, the Executive

⁸³ See, e.g., *In the Matter of Ryan Mattingley*, OAH No. 15-1088-POC, p. 10 (APSC 2016).

⁸⁴ Minutes of the Senate State Affairs Standing Committee, March 1, 2012, pp. 7 – 8. (*See Respondent’s Post-Hearing Brief Regarding the Application of 13 AAC 85.110(b)(3), Ex. 2, pp. 7 – 8.*)

⁸⁵ 13 AAC 85.110(a)(3).

⁸⁶ See March 16, 2016 *Accusation*, Count II, Agency Record, pp. 4 – 5.

⁸⁷ 13 AAC 85.900(7).

Director failed to establish that Officer Waldron was dishonest. As a result, discretionary revocation for a lack of good moral character is not warranted.

3. Count III – Mandatory Revocation under 13 AAC 85.110(b)(3).

In order to revoke Officer Waldron’s certification under 13 AAC 85.110(b)(3), the Executive Director must establish, by a preponderance of the evidence, that Officer Waldron has been discharged or resigned under threat of discharge, from employment as a police officer in this state . . . for cause for conduct that would cause a reasonable person to have substantial doubt about an individual’s honesty, fairness, and respect for the rights of others and for the laws of this state and the United States or that is detrimental to the integrity of the police department where the police officer worked.⁸⁸

As discussed above, the facts do not show dishonesty on Officer Waldron’s part. As shown in the discussion on Count I, discretionary revocation for acts of dishonesty, the Council makes its own factual findings and independently reviews the evidence in determining whether an individual police department established the necessary “cause.” Because the Executive Director has not established that Officer Waldron was dishonest, as alleged in the accusation, it has failed to establish the requisite “cause for conduct” that would result in a reasonable person having substantial doubts about Officer Waldron’s honesty, or that detrimentally impacted the integrity of the Unalaska DPS. As a result, mandatory revocation of Officer Waldron’s certification is not warranted.

IV. Conclusion

The Executive Director had the burden of proof in this case. However, the Executive Director did not prove the allegations that Officer Waldron was dishonest. Instead, what the evidence shows is that the Unalaska DPS had concerns about Officer Waldron’s performance, which were probably more appropriately handled as a routine personnel matter. Consequently, Officer Waldron’s police officer’s certificate is not revoked.

Dated this 4th day of November, 2016.

By: Signed _____
Lawrence A. Pederson
Administrative Law Judge

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

⁸⁸ 13 AAC 85.110(b)(3).