

BEFORE THE ALASKA POLICE STANDARDS COUNCIL

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| In the Matter of |) | |
| |) | |
| E O. K |) | OAH No. 16-0383-POC |
| <hr style="width: 45%; margin-left: 0;"/> |) | Agency No. APSC 2015-11 |

FINAL DECISION

I. Introduction

E K was terminated from his position as an officer of the No Name Police Department (NNPD) because he had surreptitiously recorded his coworkers, and because he had failed to respond to training to remedy concerns about his job performance. The Executive Director of the Alaska Police Standards Council filed an accusation seeking to revoke Mr. K’s Alaska Police Officer Certification based on his termination and various other issues. At an evidentiary hearing, the Executive Director met his burden of showing that revocation is appropriate under the circumstances of this case. Mr. K’s police officer certification is hereby revoked.

II. Factual and procedural history

A. Overview of Mr. K’s pre-NNPD employment experience

After growing up in Town A, Mr. K joined the United States Navy in 2001, then returned to Alaska in 2005 after being honorably discharged.¹ Mr. K then enrolled in the Alaska Law Enforcement Training (“ALET”) Academy as a “self-pay” student, but eventually withdrew amidst significant academic difficulties, described further below. During the next two years, Mr. K worked as a gas station attendant and at a hardware store, with periods of unemployment.²

In June 2007, Mr. K was hired as a public safety technician with the Alaska Wildlife Troopers.³ He held that position until May 2009, when he resigned amidst conflict with his superiors.⁴

Over the next several years, while attempting to obtain employment in law enforcement, Mr. K had several months-long periods of unemployment mixed with six months as a pharmacy technician, two summers in seasonal parking enforcement positions, and ten months in a private security position.⁵ It was also during this time that he briefly enrolled in, then withdrew from, his second law enforcement academy, and then completed a different law enforcement academy the following year. He was eventually hired by the No Name Police Department in October 2012.

¹ Exh. 4 at 2; E K testimony.
² Administrative Record (R.) 154, 161, 168.
³ R. 142.
⁴ R. 121-141; N testimony.
⁵ K testimony; R. 154, 161, 168, 175, 182, 189, 196, 203.

B. Mr. K's law enforcement training before joining the NNP

As noted, while Mr. K successfully completed a law enforcement academy through the University of Alaska Fairbanks Community and Technical College, the UAF LEA was not his first law enforcement academy experience. Rather, Mr. K had twice enrolled in, but then dropped out of, the ALET Academy before eventually entering and completing the UAF LEA.

Mr. K's first foray into the ALET Academy was in 2005, when he was admitted to ALET Academy No. 33 as a self-pay student.⁶ Mr. K had significant difficulties with performance during his time at Academy No. 33—his training file documented “substandard” and “unacceptable” performance, concerns about his “very poor grasp” of academic subjects, and his placement on academic probation on at least seven separate occasions.⁷ Mr. K resigned from the Academy in May 2005, while on academic probation, writing in a memorandum that “with my test scores and daily performance I’m unable to keep up with the rest of ALET #33.”⁸

Five years after dropping out of Academy No. 33, Mr. K was admitted to ALET Academy No. 10-2, again enrolling as a self-pay student. But Mr. K had difficulties from the outset, and ultimately left the Academy after just six days.⁹

Mr. K's problems at Academy No. 10-2 began on its first day, August 1, 2010, when he failed to timely report to duty.¹⁰ When questioned about his tardiness, he offered up various reasons having to do with his luggage, a weather delay, and the airline staff.¹¹ The facts, as would ultimately emerge, were somewhat different. Mr. K had arrived late to his gate, then verbally accosted an airline employee who refused to allow him to board after the doors had closed.¹²

⁶ R. 90-107.

⁷ R. 91-107.

⁸ R. 90, 101. Mr. K has since claimed that he left the Academy after being physically attacked by Academy staff during a training exercise, causing him to lose consciousness. *See* Exh. 2 (a “notice of employee conduct form” submitted by Mr. K to the Dept. of Public Safety in early 2016); E K testimony. At the evidentiary hearing, however, Mr. K suggested that both explanations were true – admitting he left because he was doing poorly, but saying he also left because he had lost trust in his trainers after being assaulted. Mr. K's description of these events was not credible; it is far more likely true than not true that he left Academy No. 33 due to performance issues, and that the described altercation with staff was, at most, somewhat exaggerated. It is troubling, however, that at least **ten years** after the fact, Mr. K contradicted his own contemporaneous, written statement of his reasons for leaving the Academy by belatedly attempting to blame his resignation on alleged mistreatment by Academy staff.

⁹ R. 109; Griffiths testimony; F testimony.

¹⁰ R. 117.

¹¹ G testimony; R. 117-18.

¹² R. 117-118; G testimony. At the hearing, Mr. K stated he had not lied about his late arrival, saying he had missed his flight in Anchorage because his flight out of No Name was delayed for weather. E K testimony.

Academy personnel learned of these events because the employee complained about Mr. K's conduct towards her.¹³

Mr. K was counseled verbally on August 2 and received a written reprimand on August 4 about this incident – including both his underlying conduct and his subsequent deception about those actions.¹⁴ In the August 4 written reprimand, Corporal M G called K's behavior “unacceptable and embarrassing,” and cautioned him to “never again rationalize any future mistakes you may make.”¹⁵

But Mr. K's troubles at the Academy only escalated the next day, following an acute reaction to oleoresin capsicum (“OC”) spray during a training exercise. Academy recruits are sprayed with OC spray in order to understand its effects before they deploy it against others.¹⁶ Mr. K had an acute reaction to the OC spray, requiring medical care due to eye irritation.¹⁷

Mr. K returned to training the following morning wearing sunglasses. When asked why he was wearing sunglasses, Mr. K told Academy staff that the emergency room doctor had told him to do so because of the effect of the pepper spray on his eyes. But when pressed further, Mr. K then said the doctor had actually *not* told him to wear sunglasses.¹⁸

Mr. K's shifting versions of events caused significant concern for Academy Commander Lt. K I and State Trooper Sergeant H N, the Academy's Second in Command.¹⁹ When Sgt. N confronted Mr. K about these events, Mr. K told Sgt. N he did not know why he had made up the story about the doctor's instructions, first saying he had done so because he was “disoriented and confused” by the OC spray incident, but then telling Sgt. N that he “had a hard time keeping the truth straight when dealing with people in positions of authority.”²⁰

¹³ R. 113, 117.

¹⁴ R. 112-113; 117-118.

¹⁵ R. 118.

¹⁶ G testimony.

¹⁷ R. 110, 115.

¹⁸ I testimony; N testimony; R. 110-114.

¹⁹ I testimony; N testimony.

²⁰ R. 111-112; N testimony. In this context, it is noteworthy that Mr. K testified at the hearing that the exposure to pepper spray at ALET No. 10-2 caused him to have “a major allergic reaction with blisters inside of my eyelids.” The emergency room physician's report, however, says nothing about an allergic reaction or blisters, mentioning only irritation and redness, as well as “mild chemosis” in K's right eye. Exh. 1, p. 4. During the hearing, the parties and the ALJ discussed the fact that “chemosis” is a medical term for swelling of the eye (rather than the eyelid).

Sgt. N and Lt. I discussed these events with the Deputy Commissioner of DPS, and determined that Mr. K should be dismissed from the academy “based on the integrity violation.”²¹ In the meantime, however, Mr. K resigned from the academy.²² Mr. K submitted a convoluted written statement of resignation, stating he had “lied about what the doctor said on [wearing] sunglasses,” and apologizing for misleading academy personnel.²³

The same day that Mr. K resigned from the academy, Lt. I submitted an APSC F-4 personnel action form documenting that Mr. K had “resigned prior to being asked to leave.”²⁴ Lt. I answered “no” to the question whether he would consider rehiring Mr. K at any time, and noted that, at the time he resigned, Mr. K had been under investigation for dishonesty.²⁵

In February 2011, seven months after his brief attendance at ALET Academy No. 10-2, Mr. K entered the Law Enforcement Academy at the University of Alaska Fairbanks Community and Technical College (UAF LEA). According to LEA Director F K (no relation to E K), Mr. K had no disciplinary issues at the Academy.²⁶ K successfully completed the UAF LEA in May 2011.²⁷

C. Mr. K’s employment with the No Name Police Department

After graduating from the UAF LEA, Mr. K continued to seek law enforcement positions for more than a year until being hired by the No Name Police Department (“NNPD”) in October

²¹ N testimony; R. 111.

²² N testimony; I testimony; R. 111-116.

²³ R. 109. Mr. K now claims he did not know what he was saying at the time, and that he “was not rational” when he wrote the resignation memorandum. E K testimony. It is certainly the case that the resignation memorandum seems to reflect some level of mental upset; however the entire series of explanations regarding Mr. K’s resignation is somewhat bizarre. First Mr. K said the doctor had told him to wear sunglasses; then he corrected himself, said the doctor had said no such thing, and admitted to having lied about that fact, reducing that admission to writing in his resignation memorandum. R. 109. But at the hearing Mr. K insisted he had not lied and did not seem to understand the significance of his written admission, claiming that he wrote it because he “was not of sound mind,” approximately 18 hours after being pepper-sprayed. Making this entire chain of events more bizarre is that at the hearing, Mr. K produced a November 2010 letter from the Emergency Department physician who had treated him on August 5; in that letter, the physician did in fact suggest that Mr. K might benefit from wearing sunglasses for a few days to protect his eyes. Exh. 1, p. 3. Mr. K later filed a “notice of employee conduct form” with the Department of Public Safety, attaching the physician’s letter and stating that he had been “interrogated” by Academy staff about the sunglasses issue, that he “was disgusted by the whole interrogation,” and that “is why I withdrew myself from the Sitka police academy.” Exh. 1, p. 2.

²⁴ I testimony; R. 108.

²⁵ R. 108; I testimony .

²⁶ E K testimony.

²⁷ E K testimony; R. 189.

2012.²⁸ Over time, concerns arose about Mr. K's performance in numerous areas ranging from firearms proficiency to investigatory strategy to lack of professional judgment.²⁹

1. *Field Training and surreptitious recordings*

In 2015 the department implemented a field training program. Police Chief N J assigned two more experienced NNPD officers, Officers U and L, to act as Mr. K's field training officers.³⁰ Mr. K's field training went poorly – not only did he not *improve* in his scores and reports, he failed to respond appropriately to his field training, and in fact regressed in some areas.³¹

Mr. K, in the meantime, complained to Chief J about his field training officers – including complaints about their attitude towards him generally, and complaints that Officer U was playing games on his work computer.³² Mr. K alleged that Officer L had berated and belittled him at times without cause, that he slept on the job, and that he surfed the internet from his cell phone while on duty.³³

While investigating Mr. K's complaints, Chief J learned that Mr. K had surreptitiously recorded conduct he found objectionable by the field training officers. Additionally, Mr. K had surreptitiously recorded a conversation with NNPD Dispatcher M Y while he was in civilian clothes and off-duty.³⁴ All of these recordings violated NNPD policy, which prohibits covertly recording other department personnel.³⁵

2. *Termination*

Chief J's discovery of the recordings on Mr. K's work computer, and realization of the scope of Mr. K's NNPD policy violations, coincided with Mr. K's marked failure to improve his work performance through the field training process.³⁶ As a result of these events, Chief J terminated Mr. K on June 26, 2015.

In a memorandum he hand-delivered to Mr. K that day, Chief J wrote:

²⁸ R. 85.

²⁹ J testimony; R. 352.

³⁰ J testimony.

³¹ J testimony.

³² J testimony.

³³ E K testimony.

³⁴ J testimony. Mr. K admits to making the recordings, but denies they were made surreptitiously, although he concedes he did not follow the typical procedure for recording conversations. E K testimony. Mr. K's denials about intentionally and surreptitiously recording his colleagues are not credible. *See* R. 356-357.

³⁵ J testimony.

³⁶ J testimony.

There is substantial evidence that you are not responding to training. Because of your breach of the department's policy regarding surreptitious recording and your documented inability to develop the capacities required of a police officer through training, I am terminating your employment effective immediately.³⁷

Mr. K later unsuccessfully grieved his termination through his union, which pursued the matter to arbitration. An arbitration decision issued in May of 2016 found that Chief J had just cause to terminate Mr. K.³⁸

3. *NNPD equipment and ID return*

Mr. K's conflicts with Chief J and NNPD did not end with his termination. Several days after terminating Mr. K, Chief J wrote a memorandum to Mr. K regarding Mr. K's failure to return all of his NNPD-issued equipment.³⁹ When Mr. K continued to refuse to return his equipment, NNPD eventually opened a criminal investigation into the matter.⁴⁰ As that investigation progressed, Mr. K first denied possessing any NNPD property, then later admitted he did have such property, and returned it.⁴¹

After Mr. K's termination, Chief J had asked Dispatcher M Y to be the point of contact for K to return his gear.⁴² When Mr. K returned some equipment to Ms. Y, he told her that his badge and "collar devices" were in a box he gave her.⁴³ But those items were not actually in the box.⁴⁴

Mr. K also told Ms. Y that he did not have a NNPD-issued ID card, and had never been issued one.⁴⁵ Chief J determined that this was not a true statement, and that in fact Mr. K had been issued a new badge and ID in March 2015.⁴⁶ At Chief J's direction, Ms. Y notified Mr. K that NNPD would press criminal charges if the items were not returned.⁴⁷

³⁷ R. 3, 58; J testimony.

³⁸ R. 360.

³⁹ R. 60; J testimony; E K testimony.

⁴⁰ R. 4, 64-65; J testimony.

⁴¹ Y testimony; J testimony. At the evidentiary hearing, Mr. K claimed he had turned in all gear before receiving the letter threatening criminal charges. That denial is not credible in the face of the weight of contrary testimony, and what appears to be Mr. K's general failure to accurately describe the events that occurred and his role in those events.

⁴² Y testimony.

⁴³ E K testimony; Y testimony.

⁴⁴ R. 60; J testimony; Y testimony.

⁴⁵ J testimony; Y testimony.

⁴⁶ J testimony; Y testimony; Hristov testimony; R. 64.

⁴⁷ Y testimony.

Mr. K would later return the badge and wallet along with a portion of an ID card that had been either broken or cut in half – and he told Ms. Y the ID had been issued to him in that manner.⁴⁸

At the May 2016 arbitration hearing, Mr. K indicated that he had no idea how his NNPD ID card had become broken, and suggested that perhaps he had snapped it in half scraping ice from his windshield.⁴⁹ This was one of several implausible and internally inconsistent explanations he then offered at the evidentiary hearing in this matter. In his hearing testimony in this matter, Mr. K first stated that he could not recall whether he had claimed his ID was never issued.⁵⁰ But three and a half minutes later, he admitted having lied about the ID not being issued.⁵¹ Pressed further, Mr. K did not answer additional questions about his turning in half an ID card until reminded of his ice scraping explanation at his arbitration hearing, at which point he then claimed to have broken the ID scraping ice from his windshield.⁵² Mr. K also denied telling Ms. Y that any collar devices were in the box, and generally denied having failed to return any equipment. Like the balance of his testimony on the failure to return NNPD equipment, these denials were not credible.

Ultimately, NNPD determined that Mr. K had returned all of the NNPD-issued equipment in his possession, and closed its criminal investigation.⁵³

4. *F-4 submitted by NNPD*

On July 2, 2015, Chief J submitted an APSC F-4 personnel action form to report Mr. K's termination and the reasons he felt it was necessary.⁵⁴ In an accompanying narrative, Chief J indicated that Mr. K “was terminated because he violated the City of No Name Police Department’s policy against surreptitious recording, and [because he] failed to develop the capacities required of a police officer despite intensive training.”⁵⁵

⁴⁸ J testimony; Y testimony; E K testimony. *See also* Hristov testimony (that it “was not possible” that he was issued a partial ID card at any time, and that issuing a partial ID would violate NNPD policy).

⁴⁹ J testimony.

⁵⁰ E K testimony.

⁵¹ E K testimony.

⁵² E K testimony.

⁵³ J testimony; R. 64-67.

⁵⁴ R. 61-62; J testimony.

⁵⁵ R. 61-62.

Chief J checked the box “No” for the form question of whether he would consider rehiring K at any time, and checked “Yes” on whether he believed K should be decertified by the APSC.⁵⁶ In his accompanying narrative, Chief J described Mr. K’s shifting stories surrounding his failure to return his NNPD-issued ID and equipment, and stated that Mr. K was not eligible for rehire because he “was not forthcoming” during that process.⁵⁷ Lastly, Chief J explained that he recommended decertification because Mr. K “did not successfully complete remedial field training and violated company policy on more than one occasion.”

D. Later-discovered issues with ASPC forms Mr. K submitted between 2004 and 2015

At various times between 2004 and 2015, Mr. K completed Alaska Police Standards Council forms as part of applications for employment or for admission into the ALET Academy.⁵⁸ After receiving the F-4 from No Name following Mr. K’s termination, Executive Director Robert Griffiths reviewed those other forms, and identified several discrepancies.⁵⁹ In Director Griffiths’ view, Mr. K’s various inconsistent representations in APSC paperwork raised further concerns about his trustworthiness and integrity.⁶⁰ The most significant of these, by far, is Mr. K’s failure to disclose – on multiple occasions – his participation in ALET Nos. 33 and 10-2. Also problematic is Mr. K’s deceptive and incomplete documentation of his employment history on F-3 forms.⁶¹

1. Mr. K’s repeated failures to disclose his unsuccessful participation in ALET Academies

A person applying for employment with a police department must fill out the APSC’s F-3 form. The form requires applicants to describe in detail their educational background, with

⁵⁶ R. 62; J testimony.

⁵⁷ R. 61; J testimony.

⁵⁸ R. 144-250; Griffiths testimony.

⁵⁹ Griffiths testimony.

⁶⁰ Griffiths testimony.

⁶¹ The Executive Director also argues that Mr. K was deceptive in identifying his rank at the time of his discharge from the Navy. The Executive Director, however, did not meet his burden of proof on this issue. He argued that Mr. K submitted misleading responses relating to his final military rank. At the time of his discharge from the Navy, Mr. K held the rank of E-3, but he had been “frocked” as an E-4 a few weeks before his discharge. Frocking is not itself a promotion, but authorizes enlisted personnel to be granted the title and to wear the uniform of a higher rank in an acting capacity, in preparation for a full promotion to that rank. At the time of discharge, Mr. K’s rank was still E-3. R. 19-20. Months later, he received paperwork confirming his actual promotion – in both rank and paygrade – to an E-4. E K testimony. Although Mr. K may have been inconsistent in listing his “rank” on F-3 forms, the Executive Director did not prove either that it was inaccurate for K to answer the “rank” question with “E-4,” or that he did so with an intent to deceive.

separate sections of the form devoted to (1) “all high schools attended,” (2) “all colleges and universities attended;” and (3) “all vocational and technical training.”⁶² This third category directs the applicant, in pertinent part to: “List all vocational or technical training. List all law enforcement training. Give the name for each, . . . dates attended, . . . and all other pertinent data.”⁶³ The F-3 forms in the evidentiary record demonstrate a pattern of Mr. K first minimizing his early ALET experiences, and later omitting them altogether.

On two F-3 forms submitted in 2010 and 2011, in response to the requirement that he list all law enforcement training, Mr. K wrote the following: “Spring 2005, 12 weeks law enforcement training in Sitka, Alaska, through South East College as a self pay” – presumably a reference to his unsuccessful attempt to complete ALET No. 33 – and “four days of training with NMFS for JEA program in Kodiak, Spring 2008” – presumably a reference to training related to his employment as a public safety technician with the Alaska Wildlife Troopers.⁶⁴ Certainly, nothing in Mr. K’s answer to these questions provided the reader with notice that he had withdrawn from the earlier ALET No. 33 due to academic performance issues. And there is no reference at all to his second ALET attempt, at Academy No. 10-2, when he resigned while being investigated for dishonesty.

But even more troubling is that, beginning later in 2011, and continuing through 2015, Mr. K simply stopped listing the ALET Academies on F-3 forms at all. In F-3s submitted in September 2011, February 2012, twice in June 2012, March 2013, June 2013, February 2014, May 2014, and February 2016 – all of which were signed under penalty of perjury – Mr. K never listed his pre-UAF LEA law enforcement academy participation in response to the question directing him to “list all law enforcement training.”⁶⁵

⁶² R. 147, 154, 168, 175, 182, 189, 196, 203, 210, 217, 225, 232, 239.

⁶³ *Id.*

⁶⁴ R. 159, 166.

⁶⁵ R. 174 (September 2011: answering only “APSC certification”) 180 (February 2012: answering “Data Master, CPR+, AED, Boater safety,” and listing the CTC LEA under “all colleges and universities attended”); R. 187 (June 2012: same); R. 194 (June 2012: same); R. 201 (March 2013: same); R. 208 (June 2013: same); R. 215 (February 2014: listing “Nationwide SAR Initiative (NSI) training; Evidence Collection A-Z, Data Master, CPR+, AED, Boater Safety,” and listing the CTC LEA under “all colleges and universities attended”); R. 222 (May 2014: no response to question requiring “all law enforcement training,” and listing the CTC LEA under “all colleges and universities attended”); R. 230 (February 2016: same). Mr. K also consistently answered “no” to question no. 26 on his F-3 forms, which asks, “Are there any incidents in your life not mentioned herein which may reflect upon your suitability to perform the duties which you may be assigned or which might require further explanation?” *See, e.g.*, R. 177, 184, 191, 198, 205, 234, 241, 249.

Importantly, Mr. K also failed to disclose his prior unsuccessful ALET Academy attempts on his January 2014 application to the APSC for police officer certification.⁶⁶ He submitted the application, on the APSC’s F-7 form, after he had been working for NNPd for over a year. Mr. K left the section of the form requiring him to list “criminal justice training” completely blank, omitting any mention of his ALET Academy experiences. He disclosed his successful participation in the UAF LEA program, however, in the section entitled “academic instruction.”⁶⁷ It was based on this F-7 form, signed under penalty of perjury by Mr. K, that the APSC’s previous Executive Director approved Mr. K’s police officer certification.⁶⁸

2. *Discrepancies in employment history*

Mr. Griffiths’ post-No Name review of Mr. K’s F-3s also revealed significant gaps and inconsistencies in his listed employment history. The F-3 form requires a ten-year employment inventory, with question no. 16 directing the applicant: “Employment: Beginning with your most recent job, list your work history for the past TEN (10) years, including part-time, temporary or seasonal employment, and all periods of unemployment.”⁶⁹

A retrospective review of Mr. K’s F-3s reveals that he did not consistently describe his employment history, and, significantly, began to minimize periods of underemployment and unemployment in his later submissions. For example, on F-3s in May and December 2010, Mr. K indicated that he worked part-time as a gas station attendant from May 2005 through May 2006.⁷⁰ The next ten F-3s in the evidentiary record omit this position.⁷¹

Most of the F-3s Mr. K submitted reflect that he worked at a hardware store in 2006 and 2007. But Mr. K then omitted that position from F-3s in September 2011, February 2014, and March 2016.⁷²

Most of Mr. K’s early F-3s disclose periods of unemployment from May through August 2009, and again from February through May 2010, bookending a brief period as a pharmacy

⁶⁶ R. 252-253.

⁶⁷ R. 252.

⁶⁸ Griffiths testimony.

⁶⁹ R. 154, 161, 168, 175, 182, 189, 196, 203, 210, 217, 225, 232, 239.

⁷⁰ R. 154, 161.

⁷¹ R. 168, 175, 182, 189, 196, 203, 210, 217, 225, 232, 239.

⁷² Compare R. 175, 217, 239, with R. 154, 161, 168, 182, 189, 196, 203, 210, 225, 232.

technician. But beginning in February 2012, Mr. K omitted all three of these entries from at least nine F-3s – all signed under penalty of perjury.⁷³

Lastly, on at least one F-3, submitted in March 2016, Mr. K failed to disclose his two-year employment as a public safety technician with the Alaska Wildlife Troopers.⁷⁴ When asked at the hearing about this omission, Mr. K responded that he had omitted the job because he felt it was not truly law enforcement employment.⁷⁵ This explanation rings hollow, since the F-3 specifically requires an accounting of *all* employment (and all periods of unemployment) in the past ten years.

But Mr. K’s failure to disclose his employment by the Alaska Wildlife Troopers also relates to another area of concern revealed by the post-No Name review of his F-3s. In addition to requiring a complete ten-year employment inventory, the F-3 also inquires that the applicant disclose whether he or she has ever been terminated, or has ever resigned in lieu of discharge.⁷⁶

Mr. K resigned from his position with the Alaska Wildlife Troopers.⁷⁷ He variously claims that he did so to pursue other interests, because it was not a good job, because the job did not pay very well, and because he did not get along with his supervisor.⁷⁸ But his resignation also occurred within days of receiving – and refusing to sign – a performance evaluation rating his overall performance as “unacceptable,” and describing numerous examples of dishonest conduct.⁷⁹

Notably, in at least one F-3, Mr. K acknowledged that he left his position with the Alaska Wildlife Troopers in lieu of being terminated. On an F-3 submitted in May 2010, Mr. K checked “yes” in response to the question: “Have you ever resigned (*quit*) after being informed your

⁷³ Compare R. 154, 161, 168, 175, with R. 182, 189, 196, 203, 210, 217, 225, 232, 239.

⁷⁴ R. 239.

⁷⁵ E K testimony.

⁷⁶ R. 154, 161, 168, 175, 182, 189, 196, 203, 210, 225, 232, 239.

⁷⁷ E K testimony; N testimony.

⁷⁸ E K testimony.

⁷⁹ N testimony; R. 121-125. At the evidentiary hearing, Mr. K’s former Wildlife Troopers supervisor, Lt. F N, described an incident where he determined that Mr. K had made up a pretext about needing to board a boat in Town A, so that he could take an on-duty trip from Town B to Town A to have lunch with his mother. Then, in an apparent effort to deflect attention away from this misconduct, Mr. K made up a story about complaints he had heard from federal employees regarding Lt. N. Lt. N considered this to be the most serious instance of Mr. K being dishonest as an employee of the Wildlife Troopers. He also described incidents in which he felt Mr. K was less than forthcoming about his usage of leave, several times going home “sick” after being reprimanded by superiors for poor performance issues. N testimony.

employer intended to discharge (*terminate*) you for any reason[?]"⁸⁰ In the space provided for explanation, Mr. K wrote: "I received one write up for a poor choice, 5/2009, for boarding a boat in Town A. My supervisors found all other ways to find wrong [illegible] my service. For that reason I was not happy and resigned."⁸¹

But in subsequent F-3s, Mr. K denied having ever left that – or any – job in lieu of termination. On multiple F-3s, he checked "no" – under penalty of perjury – in response to the same question he had previously answered affirmatively – under penalty of perjury – in May 2010, and, variously indicated that his reason for leaving the position with the Alaska Wildlife Troopers was to pursue "other interests," or because he "wanted to become a police officer."⁸²

3. *Mr. K's statements on F-3s submitted after termination by NNP*

Mr. K submitted several F-3s to potential employers after he was terminated by the No Name Police Department. As described above, following his termination Mr. K was involved in a dispute with NNP about his failure to return NNP-issued equipment.⁸³ During this dispute, NNP opened a criminal investigation into that matter.⁸⁴ Yet on F-3s submitted in February 2016 and March 2016, Mr. K answered "no" to the question, "[w]ere you ever a subject of a criminal investigation, issued a summons, detained, or arrested by a law enforcement agency?"⁸⁵

On both of these F-3s, Mr. K also acknowledged having been terminated by an employer, but described the circumstances as follows: "I left my duty recorder on at work, recorded a Co-worker who was out of control with anger. I left the recorder on for my safety. its [*sic*] against department policy[;] the matter is in Arbitration."⁸⁶

E. Procedural history

On July 2, 2015, NNP Chief J submitted the F-4 recommending that the Council revoke Mr. K's police officer certification.⁸⁷ On March 10, 2016, the Executive Director issued the

⁸⁰ R. 154.

⁸¹ *Id.*

⁸² R. 161, 168, 175, 179, 189, 196, 203.

⁸³ J testimony; R. 60.

⁸⁴ J testimony; R. 64-67.

⁸⁵ R. 240, 248.

⁸⁶ R. 232, 239.

⁸⁷ R. 61.

Accusation in this case.⁸⁸ The Accusation contains four separate counts seeking revocation of Mr. K’s police certification:

Count I seeks discretionary revocation under 13 AAC 85.110(a)(1), based on the allegation that “Respondent engaged in a pattern of conduct intended to minimize the impact of past unfavorable acts by falsifying or omitting information required to be provided on an application for certification, and in supporting documents.”⁸⁹

Count II seeks discretionary revocation under 13 AAC 85.010(a)(3), based on the allegation that Mr. K “lacks good moral character.”⁹⁰

Count III seeks mandatory revocation under 13 AAC 85.110(b)(3), based on the allegation that “Respondent was discharged from employment as a police officer 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.”⁹¹

Count IV seeks mandatory revocation under 13 AAC 85.110(b)(3), based on the allegation that “Respondent was discharged from employment as a police officer for cause for conduct that was detrimental to the integrity of the police department where he worked.”⁹²

Mr. K responded with a Notice of Defense, requesting this hearing.⁹³ The hearing was held on August 30 and 31, 2016. Mr. K represented himself. The Executive Director was represented by Assistant Attorney General John Novak. Testimony was taken from Mr. K, NNPD Chief J, APSC Executive Director Griffiths, Alaska State Trooper (AST) Lt. K I, AST Sgt. H N, Sitka Police Dept. Lt. (former AST Corp.) M F, AST Trooper Ben Mank, UAF LEA Director F K, NNPD Dispatcher M Y, former NNPD employee Jessica Hristov, and AST Lt. Q N.⁹⁴

III. Discussion

A. The Executive Director met his burden of showing that revocation is appropriate under Count I

⁸⁸ R. 3-12.

⁸⁹ R. 10.

⁹⁰ *Id.*

⁹¹ *Id.*

⁹² R. 10-11.

⁹³ R. 17.

⁹⁴ The record was held open until September 26, 2016 so that the parties could submit briefs on whether the record should be held confidential under AS 39.25.080, pursuant to Mr. K’s request. In his post-hearing brief, the Executive Director stated that he “consents to the Office of Administrative Hearings continuing to treat the administrative record as a confidential pleading absent future application by either party to this case or some third party, in light of the ... record containing confidential information, including personally identifying information.” Post-hearing brief at 2. Accordingly, the record of this matter will be maintained as a confidential file.

In Count I of the Accusation, the Executive Director seeks revocation based on a “pattern of misrepresentations” on Mr. K’s application for certification. The Executive Director argues in his post-hearing brief that he met his burden of showing that discretionary revocation is appropriate under this Count, in light of Mr. K’s numerous factual omissions and false representations in the various F-3 forms he filled out when applying for police jobs over a period of about 11 years, as described above.⁹⁵ As a general matter, the Executive Director established that Mr. K engaged in “a pattern of conduct” of failing to accurately disclose his employment history, his periods of unemployment, his two failed attempts at the ALET Academy, and his resignation when faced with termination from his Alaska Wildlife Trooper position. Mr. K’s explanations at the evidentiary hearing for these omissions and false representations were not credible.

Thus, based on the evidence presented at the hearing, the Executive Director established that Mr. K made false statements, both by commission and omission, in the F-3 forms he submitted for admission to the Sitka and University of Alaska law enforcement training academies, the F-3 forms he submitted to his application to the No Name, Wasilla, and Haines police department, and his F-7 application for certification. Mr. K engaged in a pattern of misrepresentations on both his F-3 and F-7 forms. In light on his dishonesty, discretionary revocation is appropriate under Count I.

B. The Executive Director met his burden of showing that revocation is appropriate under Count II

Count II of the Accusation asserts that discretionary revocation is appropriate under 13 AAC 85.110(a)(3) because Mr. K “lacks good moral character.” The Council has discretion – but is not required – to revoke an officer’s certification if the officer does not meet the basic standards set out in 13 AAC 85.010. One of those standards is the requirement that the officer possess “good moral character.”⁹⁶

⁹⁵ In addition, the Executive Director met his burden of proving other untruthful acts and omissions, including Mr. K’s statements to Academy staff at ALET No. 10-2, his deceptive conduct regarding the return of his equipment after discharge from employment at NNPD, and his revised explanation 10 years after the fact for resigning from ALET No. 33. The Executive Director argues that Mr. K’s untruthfulness raises concerns regarding the *Brady/Giglio* line of authority that mandate revocation of his certification. These are legitimate concerns that certainly would seriously impair Mr. K’s ability to work as a police officer in the future.

⁹⁶ 13 AAC 85.110(a)(3).

Good moral character is defined as “the absence of acts or conduct that would cause a reasonable person to have substantial doubts about an individual’s honesty, fairness, and respect for the rights of others and for the laws of the state and the United States.”⁹⁷ For purposes of making this evaluation, the APSC may consider “all aspects of a person’s character.”⁹⁸

Prior decisions by the APSC have considered the elements identified in the regulation – honesty, fairness, respect for the rights of others, and respect for the law – “collectively.”⁹⁹ The Executive Director is not required to prove doubt about each of the elements, but must prove substantial doubt about at least one. Additionally, because the regulation considers “all aspects of a person’s character,” the APSC’s task is to reach a reasoned decision based on the totality of the evidence. Here, the Executive Director proved a substantial doubt about Mr. K’s honesty, fairness, and respect for the rights of others and respect for the law; the totality of the evidence supports a finding that he lacks good moral character.

It is easy to confuse a lack of good moral character with a judgment that an officer is a bad person. Mr. K is not a bad person. He clearly was committed to giving his best effort to trying to be a good police officer. He may actually have persuaded himself, prior to this hearing, that he was not being dishonest when he repeatedly omitted required information from his F-3 forms and his F-7 form; when he changed his explanation regarding the physician’s advice about wearing sunglasses in 2010; when he changed his explanation for his exit from ALET No. 33 ten years after the fact; or when he engaged in erratic and deceptive conduct surrounding the return of his NNPd equipment, leading to the opening of a criminal investigation against him.

Good moral character, however, includes the ability to understand what honesty means, and to be honest with oneself about what the truth really is. In this case, the evidentiary record is replete with acts and omissions by Mr. K that would cause a reasonable person to have substantial doubts about his honesty, fairness, and respect for the rights of others and for the law. Accordingly, the Executive Director met his burden of proving that grounds exist, under Count II of the Accusation, for the APSC to exercise its discretion to revoke Mr. K’s police officer certification.

⁹⁷ 13 AAC 85.900(7).

⁹⁸ 13 AAC 85.900(7).

⁹⁹ See *In re E X*, OAH No. 13-0473-POC, at p. 18 (Alaska Police Standards Council 2013); *In re Hazelaar*, OAH No. 13-0085-POC, at pp. 15-16 (Alaska Police Standards Council 2014).

C. The Executive Director did not meet his burden of showing that revocation is mandated under Count III

Count III alleges that Mr. K was “*discharged from employment* as a police officer 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,”¹⁰⁰ and that revocation is therefore mandated under 13 AAC 85.110(b)(3). The flaw in the Executive Director’s case here is that Mr. K was discharged from his employment with NNPD only for surreptitiously recording his coworkers and failing to respond to training. Mr. K’s dishonest actions in connection with his employment at NNPD took place after he was discharged, when he engaged in the dispute regarding the return of his agency equipment.

The Executive Director would argue that by surreptitiously recording his coworkers, in violation of NNPD policy, Mr. K showed a lack of “respect for the rights of others,” i.e., his fellow NNPD employees. APSC finds, however, that these acts, in and of themselves, do not rise to the level of causing a reasonable person to have “substantial doubt” about Mr. K’s honesty, his integrity, or his respect for the rights of his fellow NNPD employees, or for the law. The Executive Director, therefore, did not meet his burden of establishing that the APSC is mandated to revoke Mr. K’s police certification under 13 AAC 85.110(b)(3).

D. The Executive Director met his burden of showing that revocation is mandated under Count IV

Count IV of the Accusation – which alleges that revocation is mandatory because Mr. K was discharged from employment at NNPD “for conduct that was detrimental to the integrity of” NNPD – presents the closest call in this case. The question here is whether Mr. K was in fact discharged “for conduct that was detrimental to the integrity” of NNPD.

Again, Mr. K was discharged only for surreptitiously recording his coworkers, and for failing to respond to training. The latter basis for discharge really amounts to a finding that Mr. K simply didn’t make the grade as a NNPD officer – such an allegation does not raise any concerns regarding the integrity of NNPD. If it did, then any discharge for performance deficits would require revocation of an officer’s police certification.

But the other ground on which Mr. K was terminated – the surreptitious recording of fellow employees – was conduct that could undermine the integrity of a police agency. NNPD

¹⁰⁰ R. 10 (Accusation, p. 8 (emphasis added)).

Chief J testified that Mr. K's conduct in recording his fellow employees – a clear violation of NNPD policy – was detrimental to NNPD's integrity. Integrity, in this context, can mean honesty and moral uprightness, and can also mean the state of being whole and undivided. A police agency is a quasi-military organization;¹⁰¹ within that context, police officers must be able to rely upon and trust one another in order to perform their duties effectively and safely. Mr. K's surreptitious recording of other NNPD officers and employees can reasonably be assessed as having the effect of undermining the necessary mutual reliance and trust within the ranks of his fellow officers. Viewed from this perspective, his surreptitious recording of his colleagues was detrimental to the integrity of NNPD. The Executive Director, therefore, met his burden of establishing that revocation of Mr. K's police officer certification is mandated under 13 AAC 85.110(b)(3).

IV. Conclusion

The Executive Director met his burden of showing that discretionary revocation of Mr. K's police certificate is appropriate under both 13 AAC 85.110(a)(1) and 13 AAC 85.010(a)(3), and that mandatory revocation is required under 13 AAC 85.110(b)(3). The Executive Director's request for revocation of Mr. K's certificate is therefore granted.

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.]

¹⁰¹ Mr. K described a police agency in this manner during his testimony in the evidentiary hearing.

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

| | | |
|--|---|-------------------------|
| In the Matter of |) | |
| |) | |
| E N. K |) | OAH No. 16-0383-POC |
| <hr style="width:45%; margin-left:0"/> |) | Agency No. APSC 2015-11 |

[REJECTED PROPOSED] DECISION

I. Introduction

E K was terminated from his position as an officer of the No Name Police Department (NNPD) because he had surreptitiously recorded his coworkers, and because he had failed to respond to training to remedy concerns about his job performance. The Executive Director of the Alaska Police Standards Council filed an accusation seeking to revoke Mr. K’s Alaska Police Officer Certification based on his termination and various other issues. At an evidentiary hearing, the Executive Director met his burden of showing that revocation is appropriate under the circumstances of this case. Mr. K’s police officer certification is hereby revoked.

II. Factual and procedural history

A. Overview of Mr. K’s pre-NNPD employment experience

After growing up in Town A, Mr. K joined the United States Navy in 2001, then returned to Alaska in 2005 after being honorably discharged.¹⁰² Mr. K then enrolled in the Alaska Law Enforcement Training (“ALET”) Academy as a “self-pay” student, but eventually withdrew amidst significant academic difficulties, described further below. During the next two years, Mr. K worked as a gas station attendant and at a hardware store, with periods of unemployment.¹⁰³

In June 2007, Mr. K was hired as a public safety technician with the Alaska Wildlife Troopers.¹⁰⁴ He held that position until May 2009, when he resigned amidst conflict with his superiors.¹⁰⁵

Over the next several years, while attempting to obtain employment in law enforcement, Mr. K had several months-long periods of unemployment mixed with six months as a pharmacy

¹⁰² Exh. 4 at 2; E K testimony.
¹⁰³ Administrative Record (R.) 154, 161, 168.
¹⁰⁴ R. 142.
¹⁰⁵ R. 121-141; N testimony.

technician, two summers in seasonal parking enforcement positions, and ten months in a private security position.¹⁰⁶ It was also during this time that he briefly enrolled in, then withdrew from, his second law enforcement academy, and then completed a different law enforcement academy the following year. He was eventually hired by the No Name Police Department in October 2012.

B. Mr. K’s law enforcement training before joining the NNPD

As noted, while Mr. K successfully completed a law enforcement academy through the University of Alaska Fairbanks Community and Technical College, the UAF LEA was not his first law enforcement academy experience. Rather, Mr. K had twice enrolled in, but then dropped out of, the ALET Academy before eventually entering and completing the UAF LEA.

Mr. K’s first foray into the ALET Academy was in 2005, when he was admitted to ALET Academy No. 33 as a self-pay student.¹⁰⁷ Mr. K had significant difficulties with performance during his time at Academy No. 33—his training file documented “substandard” and “unacceptable” performance, concerns about his “very poor grasp” of academic subjects, and his placement on academic probation on at least seven separate occasions.¹⁰⁸ Mr. K resigned from the Academy in May 2005, while on academic probation, writing in a memorandum that “with my test scores and daily performance I’m unable to keep up with the rest of ALET #33.”¹⁰⁹

Five years after dropping out of Academy No. 33, Mr. K was admitted to ALET Academy No. 10-2, again enrolling as a self-pay student. But Mr. K had difficulties from the outset, and ultimately left the Academy after just six days.¹¹⁰

Mr. K’s problems at Academy No. 10-2 began on its first day, August 1, 2010, when he failed to timely report to duty.¹¹¹ When questioned about his tardiness, he offered up various

¹⁰⁶ K testimony; R. 154, 161, 168, 175, 182, 189, 196, 203.

¹⁰⁷ R. 90-107.

¹⁰⁸ R. 91-107.

¹⁰⁹ R. 90, 101. Mr. K has since claimed that he left the Academy after being physically attacked by Academy staff during a training exercise, causing him to lose consciousness. *See* Exh. 2 (a “notice of employee conduct form” submitted by Mr. K to the Dept. of Public Safety in early 2016); E K testimony. At the evidentiary hearing, however, Mr. K suggested that both explanations were true – admitting he left because he was doing poorly, but saying he also left because he had lost trust in his trainers after being assaulted. Mr. K’s description of these events was not credible; it is far more likely true than not true that he left Academy No. 33 due to performance issues, and that the described altercation with staff was, at most, somewhat exaggerated. It is troubling, however, that at least **ten years** after the fact, Mr. K contradicted his own contemporaneous, written statement of his reasons for leaving the Academy by belatedly attempting to blame his resignation on alleged mistreatment by Academy staff.

¹¹⁰ R. 109; Griffiths testimony; F testimony.

¹¹¹ R. 117.

reasons having to do with his luggage, a weather delay, and the airline staff.¹¹² The facts, as would ultimately emerge, were somewhat different. Mr. K had arrived late to his gate, then verbally accosted an airline employee who refused to allow him to board after the doors had closed.¹¹³ Academy personnel learned of these events because the employee complained about Mr. K's conduct towards her.¹¹⁴

Mr. K was counseled verbally on August 2 and received a written reprimand on August 4 about this incident – including both his underlying conduct and his subsequent deception about those actions.¹¹⁵ In the August 4 written reprimand, Corporal M G called K's behavior “unacceptable and embarrassing,” and cautioned him to “never again rationalize any future mistakes you may make.”¹¹⁶

But Mr. K's troubles at the Academy only escalated the next day, following an acute reaction to oleoresin capsicum (“OC”) spray during a training exercise. Academy recruits are sprayed with OC spray in order to understand its effects before they deploy it against others.¹¹⁷ Mr. K had an acute reaction to the OC spray, requiring medical care due to eye irritation.¹¹⁸

Mr. K returned to training the following morning wearing sunglasses. When asked why he was wearing sunglasses, Mr. K told Academy staff that the emergency room doctor had told him to do so because of the effect of the pepper spray on his eyes. But when pressed further, Mr. K then said the doctor had actually *not* told him to wear sunglasses.¹¹⁹

Mr. K's shifting versions of events caused significant concern for Academy Commander Lt. K I and State Trooper Sergeant H N, the Academy's Second in Command.¹²⁰ When Sgt. N confronted Mr. K about these events, Mr. K told Sgt. N he did not know why he had made up the story about the doctor's instructions, first saying he had done so because he was “disoriented and

¹¹² G testimony; R. 117-18.

¹¹³ R. 117-118; G testimony. At the hearing, Mr. K stated he had not lied about his late arrival, saying he had missed his flight in Anchorage because his flight out of No Name was delayed for weather. E K testimony.

¹¹⁴ R. 113, 117.

¹¹⁵ R. 112-113; 117-118.

¹¹⁶ R. 118.

¹¹⁷ G testimony.

¹¹⁸ R. 110, 115.

¹¹⁹ I testimony; N testimony; R. 110-114.

¹²⁰ I testimony; N testimony.

confused” by the OC spray incident, but then telling Sgt. N that he “had a hard time keeping the truth straight when dealing with people in positions of authority.”¹²¹

Sgt. N and Lt. I discussed these events with the Deputy Commissioner of DPS, and determined that Mr. K should be dismissed from the academy “based on the integrity violation.”¹²² In the meantime, however, Mr. K resigned from the academy.¹²³ Mr. K submitted a convoluted written statement of resignation, stating he had “lied about what the doctor said on [wearing] sunglasses,” and apologizing for misleading academy personnel.¹²⁴

The same day that Mr. K resigned from the academy, Lt. I submitted an APSC F-4 personnel action form documenting that Mr. K had “resigned prior to being asked to leave.”¹²⁵ Lt. I answered “no” to the question whether he would consider rehiring Mr. K at any time, and noted that, at the time he resigned, Mr. K had been under investigation for dishonesty.¹²⁶

In February 2011, seven months after his brief attendance at ALET Academy No. 10-2, Mr. K entered the Law Enforcement Academy at the University of Alaska Fairbanks Community and Technical College (UAF LEA). According to LEA Director F K (no relation to E K), Mr. K

¹²¹ R. 111-112; B testimony. In this context, it is noteworthy that Mr. K testified at the hearing that the exposure to pepper spray at ALET No. 10-2 caused him to have “a major allergic reaction with blisters inside of my eyelids.” The emergency room physician’s report, however, says nothing about an allergic reaction or blisters, mentioning only irritation and redness, as well as “mild chemosis” in K’s right eye. Exh. 1, p. 4. During the hearing, the parties and the ALJ discussed the fact that “chemosis” is a medical term for swelling of the eye (rather than the eyelid).

¹²² N testimony; R. 111.

¹²³ N testimony; I testimony; R. 111-116.

¹²⁴ R. 109. Mr. K now claims he did not know what he was saying at the time, and that he “was not rational” when he wrote the resignation memorandum. E K testimony. It is certainly the case that the resignation memorandum seems to reflect some level of mental upset; however the entire series of explanations regarding Mr. K’s resignation is somewhat bizarre. First Mr. K said the doctor had told him to wear sunglasses; then he corrected himself, said the doctor had said no such thing, and admitted to having lied about that fact, reducing that admission to writing in his resignation memorandum. R. 109. But at the hearing Mr. K insisted he had not lied and did not seem to understand the significance of his written admission, claiming that he wrote it because he “was not of sound mind,” approximately 18 hours after being pepper-sprayed. Making this entire chain of events more bizarre is that at the hearing, Mr. K produced a November 2010 letter from the Emergency Department physician who had treated him on August 5; in that letter, the physician did in fact suggest that Mr. K might benefit from wearing sunglasses for a few days to protect his eyes. Exh. 1, p. 3. Mr. K later filed a “notice of employee conduct form” with the Department of Public Safety, attaching the physician’s letter and stating that he had been “interrogated” by Academy staff about the sunglasses issue, that he “was disgusted by the whole interrogation,” and that “is why I withdrew myself from the Sitka police academy.” Exh. 1, p. 2.

¹²⁵ I testimony; R. 108.

¹²⁶ R. 108; I testimony .

had no disciplinary issues at the Academy.¹²⁷ K successfully completed the UAF LEA in May 2011.¹²⁸

C. Mr. K's employment with the No Name Police Department

After graduating from the UAF LEA, Mr. K continued to seek law enforcement positions for more than a year until being hired by the No Name Police Department (“NNPD”) in October 2012.¹²⁹ Over time, concerns arose about Mr. K's performance in numerous areas ranging from firearms proficiency to investigatory strategy to lack of professional judgment.¹³⁰

1. Field Training and surreptitious recordings

In 2015 the department implemented a field training program. Police Chief N J assigned two more experienced NNPD officers, Officers U and L, to act as Mr. K's field training officers.¹³¹ Mr. K's field training went poorly – not only did he not *improve* in his scores and reports, he failed to respond appropriately to his field training, and in fact regressed in some areas.¹³²

Mr. K, in the meantime, complained to Chief J about his field training officers – including complaints about their attitude towards him generally, and complaints that Officer U was playing games on his work computer.¹³³ Mr. K alleged that Officer L had berated and belittled him at times without cause, that he slept on the job, and that he surfed the internet from his cell phone while on duty.¹³⁴

While investigating Mr. K's complaints, Chief J learned that Mr. K had surreptitiously recorded conduct he found objectionable by the field training officers. Additionally, Mr. K had surreptitiously recorded a conversation with NNPD Dispatcher M Y while he was in civilian

¹²⁷ E K testimony.

¹²⁸ E K testimony; R. 189.

¹²⁹ R. 85.

¹³⁰ J testimony; R. 352.

¹³¹ J testimony.

¹³² J testimony.

¹³³ J testimony.

¹³⁴ E K testimony.

clothes and off-duty.¹³⁵ All of these recordings violated NNPD policy, which prohibits covertly recording other department personnel.¹³⁶

2. *Termination*

Chief J's discovery of the recordings on Mr. K's work computer, and realization of the scope of Mr. K's NNPD policy violations, coincided with Mr. K's marked failure to improve his work performance through the field training process.¹³⁷ As a result of these events, Chief J terminated Mr. K on June 26, 2015.

In a memorandum he hand-delivered to Mr. K that day, Chief J wrote:

There is substantial evidence that you are not responding to training. Because of your breach of the department's policy regarding surreptitious recording and your documented inability to develop the capacities required of a police officer through training, I am terminating your employment effective immediately.¹³⁸

Mr. K later unsuccessfully grieved his termination through his union, which pursued the matter to arbitration. An arbitration decision issued in May of 2016 found that Chief J had just cause to terminate Mr. K.¹³⁹

3. *NNPD equipment and ID return*

Mr. K's conflicts with Chief J and NNPD did not end with his termination. Several days after terminating Mr. K, Chief J wrote a memorandum to Mr. K regarding Mr. K's failure to return all of his NNPD-issued equipment.¹⁴⁰ When Mr. K continued to refuse to return his equipment, NNPD eventually opened a criminal investigation into the matter.¹⁴¹ As that investigation progressed, Mr. K first denied possessing any NNPD property, then later admitted he did have such property, and returned it.¹⁴²

¹³⁵ J testimony. Mr. K admits to making the recordings, but denies they were made surreptitiously, although he concedes he did not follow the typical procedure for recording conversations. E K testimony. As the arbitrator likewise found, Mr. K's denials about intentionally and surreptitiously recording his colleagues are not credible. *See* R. 356-357.

¹³⁶ J testimony.

¹³⁷ J testimony.

¹³⁸ R. 3, 58; J testimony.

¹³⁹ R. 360.

¹⁴⁰ R. 60; J testimony; E K testimony.

¹⁴¹ R. 4, 64-65; J testimony.

¹⁴² Y testimony; J testimony. At the evidentiary hearing, Mr. K claimed he had turned in all gear before receiving the letter threatening criminal charges. That denial is not credible in the face of the weight of contrary testimony, and what appears to be Mr. K's general failure to accurately describe the events that occurred and his role in those events.

After Mr. K's termination, Chief J had asked Dispatcher M Y to be the point of contact for K to return his gear.¹⁴³ When Mr. K returned some equipment to Ms. Y, he told her that his badge and "collar devices" were in a box he gave her.¹⁴⁴ But those items were not actually in the box.¹⁴⁵

Mr. K also told Ms. Y that he did not have a NNPD-issued ID card, and had never been issued one.¹⁴⁶ Chief J determined that this was not a true statement, and that in fact Mr. K had been issued a new badge and ID in March 2015.¹⁴⁷ At Chief J's direction, Ms. Y notified Mr. K that NNPD would press criminal charges if the items were not returned.¹⁴⁸

Mr. K would later return the badge and wallet along with a portion of an ID card that had been either broken or cut in half – and he told Ms. Y the ID had been issued to him in that manner.¹⁴⁹

At the May 2016 arbitration hearing, Mr. K indicated that he had no idea how his NNPD ID card had become broken, and suggested that perhaps he had snapped it in half scraping ice from his windshield.¹⁵⁰ This was one of several implausible and internally inconsistent explanations he then offered at the evidentiary hearing in this matter. In his hearing testimony in this matter, Mr. K first stated that he could not recall whether he had claimed his ID was never issued.¹⁵¹ But three and a half minutes later, he admitted having lied about the ID not being issued.¹⁵² Pressed further, Mr. K did not answer additional questions about his turning in half an ID card until reminded of his ice scraping explanation at his arbitration hearing, at which point he then claimed to have broken the ID scraping ice from his windshield.¹⁵³ Mr. K also denied telling Ms. Y that any collar devices were in the box, and generally denied having failed to return any equipment. Like the balance of his testimony on the failure to return NNPD equipment, these denials were not credible.

¹⁴³ Y testimony.

¹⁴⁴ E K testimony; Y testimony.

¹⁴⁵ R. 60; J testimony; Y testimony.

¹⁴⁶ J testimony; Y testimony.

¹⁴⁷ J testimony; Y testimony; Hristov testimony; R. 64.

¹⁴⁸ Y testimony.

¹⁴⁹ J testimony; Y testimony; E K testimony. *See also* Hristov testimony (that it "was not possible" that he was issued a partial ID card at any time, and that issuing a partial ID would violate NNPD policy).

¹⁵⁰ J testimony.

¹⁵¹ E K testimony.

¹⁵² E K testimony.

¹⁵³ E K testimony.

Ultimately, NNPd determined that Mr. K had returned all of the NNPd-issued equipment in his possession, and closed its criminal investigation.¹⁵⁴

4. *F-4 submitted by NNPd*

On July 2, 2015, Chief J submitted an APSC F-4 personnel action form to report Mr. K's termination and the reasons he felt it was necessary.¹⁵⁵ In an accompanying narrative, Chief J indicated that Mr. K "was terminated because he violated the City of No Name Police Department's policy against surreptitious recording, and [because he] failed to develop the capacities required of a police officer despite intensive training."¹⁵⁶

Chief J checked the box "No" for the form question of whether he would consider rehiring K at any time, and checked "Yes" on whether he believed K should be decertified by the APSC.¹⁵⁷ In his accompanying narrative, Chief J described Mr. K's shifting stories surrounding his failure to return his NNPd-issued ID and equipment, and stated that Mr. K was not eligible for rehire because he "was not forthcoming" during that process.¹⁵⁸ Lastly, Chief J explained that he recommended decertification because Mr. K "did not successfully complete remedial field training and violated company policy on more than one occasion."

D. Later-discovered issues with ASPC forms Mr. K submitted between 2004 and 2015

At various times between 2004 and 2015, Mr. K completed Alaska Police Standards Council forms as part of applications for employment or for admission into the ALET Academy.¹⁵⁹ After receiving the F-4 from No Name following Mr. K's termination, Executive Director Robert Griffiths reviewed those other forms, and identified several discrepancies.¹⁶⁰ In Director Griffiths' view, Mr. K's various inconsistent representations in APSC paperwork raised further concerns about his trustworthiness and integrity.¹⁶¹ The most significant of these, by far, is Mr. K's failure to disclose – on multiple occasions – his participation in ALET Nos. 33 and 10-

¹⁵⁴ J testimony; R. 64-67.

¹⁵⁵ R. 61-62; J testimony.

¹⁵⁶ R. 61-62.

¹⁵⁷ R. 62; J testimony.

¹⁵⁸ R. 61; J testimony.

¹⁵⁹ R. 144-250; Griffiths testimony.

¹⁶⁰ Griffiths testimony.

¹⁶¹ Griffiths testimony.

2. Also problematic is Mr. K's deceptive and incomplete documentation of his employment history on F-3 forms.¹⁶²

1. Mr. K's repeated failures to disclose his unsuccessful participation in ALET Academies

A person applying for employment with a police department must fill out the APSC's F-3 form. The form requires applicants to describe in detail their educational background, with separate sections of the form devoted to (1) "all high schools attended," (2) "all colleges and universities attended;" and (3) "all vocational and technical training."¹⁶³ This third category directs the applicant, in pertinent part to: "List all vocational or technical training. List all law enforcement training. Give the name for each, . . . dates attended, . . . and all other pertinent data."¹⁶⁴ The F-3 forms in the evidentiary record demonstrate a pattern of Mr. K first minimizing his early ALET experiences, and later omitting them altogether.

On two F-3 forms submitted in 2010 and 2011, in response to the requirement that he list all law enforcement training, Mr. K wrote the following: "Spring 2005, 12 weeks law enforcement training in Sitka, Alaska, through South East College as a self pay" – presumably a reference to his unsuccessful attempt to complete ALET No. 33 – and "four days of training with NMFS for JEA program in Kodiak, Spring 2008" – presumably a reference to training related to his employment as a public safety technician with the Alaska Wildlife Troopers.¹⁶⁵ Certainly, nothing in Mr. K's answer to these questions provided the reader with notice that he had withdrawn from the earlier ALET No. 33 due to academic performance issues. And there is no reference at all to his second ALET attempt, at Academy No. 10-2, when he resigned while being investigated for dishonesty.

¹⁶² The Executive Director also argues that Mr. K was deceptive in identifying his rank at the time of his discharge from the Navy. The Executive Director, however, did not meet his burden of proof on this issue. He argued that Mr. K submitted misleading responses relating to his final military rank. At the time of his discharge from the Navy, Mr. K held the rank of E-3, but he had been "frocked" as an E-4 a few weeks before his discharge. Frocking is not itself a promotion, but authorizes enlisted personnel to be granted the title and to wear the uniform of a higher rank in an acting capacity, in preparation for a full promotion to that rank. At the time of discharge, Mr. K's rank was still E-3. R. 19-20. Months later, he received paperwork confirming his actual promotion – in both rank and paygrade – to an E-4. E K testimony. Although Mr. K may have been inconsistent in listing his "rank" on F-3 forms, the Executive Director did not prove either that it was inaccurate for K to answer the "rank" question with "E-4," or that he did so with an intent to deceive.

¹⁶³ R. 147, 154, 168, 175, 182, 189, 196, 203, 210, 217, 225, 232, 239.

¹⁶⁴ *Id.*

¹⁶⁵ R. 159, 166.

But even more troubling is that, beginning later in 2011, and continuing through 2015, Mr. K simply stopped listing the ALET Academies on F-3 forms at all. In F-3s submitted in September 2011, February 2012, twice in June 2012, March 2013, June 2013, February 2014, May 2014, and February 2016 – all of which were signed under penalty of perjury – Mr. K never listed his pre-UAF LEA law enforcement academy participation in response to the question directing him to “list all law enforcement training.”¹⁶⁶

Importantly, Mr. K also failed to disclose his prior unsuccessful ALET Academy attempts on his January 2014 application to the APSC for police officer certification.¹⁶⁷ He submitted the application, on the APSC’s F-7 form, after he had been working for NNPd for over a year. Mr. K left the section of the form requiring him to list “criminal justice training” completely blank, omitting any mention of his ALET Academy experiences. He disclosed his successful participation in the UAF LEA program, however, in the section entitled “academic instruction.”¹⁶⁸ It was based on this F-7 form, signed under penalty of perjury by Mr. K, that the APSC’s previous Executive Director approved Mr. K’s police officer certification.¹⁶⁹

2. *Discrepancies in employment history*

Mr. Griffiths’ post-No Name review of Mr. K’s F-3s also revealed significant gaps and inconsistencies in his listed employment history. The F-3 form requires a ten-year employment inventory, with question no. 16 directing the applicant: “Employment: Beginning with your most recent job, list your work history for the past TEN (10) years, including part-time, temporary or seasonal employment, and all periods of unemployment.”¹⁷⁰

A retrospective review of Mr. K’s F-3s reveals that he did not consistently describe his employment history, and, significantly, began to minimize periods of underemployment and

¹⁶⁶ R. 174 (September 2011: answering only “APSC certification”) 180 (February 2012: answering “Data Master, CPR+, AED, Boater safety,” and listing the CTC LEA under “all colleges and universities attended”); R. 187 (June 2012: same); R. 194 (June 2012: same); R. 201 (March 2013: same); R. 208 (June 2013: same); R. 215 (February 2014: listing “Nationwide SAR Initiative (NSI) training; Evidence Collection A-Z, Data Master, CPR+, AED, Boater Safety,” and listing the CTC LEA under “all colleges and universities attended”); R. 222 (May 2014: no response to question requiring “all law enforcement training,” and listing the CTC LEA under “all colleges and universities attended”); R. 230 (February 2016: same). Mr. K also consistently answered “no” to question no. 26 on his F-3 forms, which asks, “Are there any incidents in your life not mentioned herein which may reflect upon your suitability to perform the duties which you may be assigned or which might require further explanation?” *See, e.g.*, R. 177, 184, 191, 198, 205, 234, 241, 249.

¹⁶⁷ R. 252-253.

¹⁶⁸ R. 252.

¹⁶⁹ Griffiths testimony.

¹⁷⁰ R. 154, 161, 168, 175, 182, 189, 196, 203, 210, 217, 225, 232, 239.

unemployment in his later submissions. For example, on F-3s in May and December 2010, Mr. K indicated that he worked part-time as a gas station attendant from May 2005 through May 2006.¹⁷¹ The next ten F-3s in the evidentiary record omit this position.¹⁷²

Most of the F-3s Mr. K submitted reflect that he worked at a hardware store in 2006 and 2007. But Mr. K then omitted that position from F-3s in September 2011, February 2014, and March 2016.¹⁷³

Most of Mr. K's early F-3s disclose periods of unemployment from May through August 2009, and again from February through May 2010, bookending a brief period as a pharmacy technician. But beginning in February 2012, Mr. K omitted all three of these entries from at least nine F-3s – all signed under penalty of perjury.¹⁷⁴

Lastly, on at least one F-3, submitted in March 2016, Mr. K failed to disclose his two-year employment as a public safety technician with the Alaska Wildlife Troopers.¹⁷⁵ When asked at the hearing about this omission, Mr. K responded that he had omitted the job because he felt it was not truly law enforcement employment.¹⁷⁶ This explanation rings hollow, since the F-3 specifically requires an accounting of *all* employment (and all periods of unemployment) in the past ten years.

But Mr. K's failure to disclose his employment by the Alaska Wildlife Troopers also relates to another area of concern revealed by the post-No Name review of his F-3s. In addition to requiring a complete ten-year employment inventory, the F-3 also inquires that the applicant disclose whether he or she has ever been terminated, or has ever resigned in lieu of discharge.¹⁷⁷

Mr. K resigned from his position with the Alaska Wildlife Troopers.¹⁷⁸ He variously claims that he did so to pursue other interests, because it was not a good job, because the job did not pay very well, and because he did not get along with his supervisor.¹⁷⁹ But his resignation also occurred within days of receiving – and refusing to sign – a performance evaluation rating

¹⁷¹ R. 154, 161.

¹⁷² R. 168, 175, 182, 189, 196, 203, 210, 217, 225, 232, 239.

¹⁷³ Compare R. 175, 217, 239, with R. 154, 161, 168, 182, 189, 196, 203, 210, 225, 232.

¹⁷⁴ Compare R. 154, 161, 168, 175, with R. 182, 189, 196, 203, 210, 217, 225, 232, 239.

¹⁷⁵ R. 239.

¹⁷⁶ E K testimony.

¹⁷⁷ R. 154, 161, 168, 175, 182, 189, 196, 203, 210, 225, 232, 239.

¹⁷⁸ E K testimony; N testimony.

¹⁷⁹ E K testimony.

his overall performance as “unacceptable,” and describing numerous examples of dishonest conduct.¹⁸⁰

Notably, in at least one F-3, Mr. K acknowledged that he left his position with the Alaska Wildlife Troopers in lieu of being terminated. On an F-3 submitted in May 2010, Mr. K checked “yes” in response to the question: “Have you ever resigned (*quit*) after being informed your employer intended to discharge (*terminate*) you for any reason[?]”¹⁸¹ In the space provided for explanation, Mr. K wrote: “I received one write up for a poor choice, 5/2009, for boarding a boat in Town A. My supervisors found all other ways to find wrong [illegible] my service. For that reason I was not happy and resigned.”¹⁸²

But in subsequent F-3s, Mr. K denied having ever left that – or any – job in lieu of termination. On multiple F-3s, he checked “no” – under penalty of perjury – in response to the same question he had previously answered affirmatively – under penalty of perjury – in May 2010, and, variously indicated that his reason for leaving the position with the Alaska Wildlife Troopers was to pursue “other interests,” or because he “wanted to become a police officer.”¹⁸³

3. *Mr. K’s statements on F-3s submitted after termination by NNPD*

Mr. K submitted several F-3s to potential employers after he was terminated by the No Name Police Department. As described above, following his termination Mr. K was involved in a dispute with NNPD about his failure to return NNPD-issued equipment.¹⁸⁴ During this dispute, NNPD opened a criminal investigation into that matter.¹⁸⁵ Yet on F-3s submitted in February 2016 and March 2016, Mr. K answered “no” to the question, “[w]ere you ever a subject of a criminal investigation, issued a summons, detained, or arrested by a law enforcement agency?”¹⁸⁶

¹⁸⁰ N testimony; R. 121-125. At the evidentiary hearing, Mr. K’s former Wildlife Troopers supervisor, Lt. F N, described an incident where he determined that Mr. K had made up a pretext about needing to board a boat in Town A, so that he could take an on-duty trip from Town B to Town A to have lunch with his mother. Then, in an apparent effort to deflect attention away from this misconduct, Mr. LK made up a story about complaints he had heard from federal employees regarding Lt. N. Lt. N considered this to be the most serious instance of Mr. K being dishonest as an employee of the Wildlife Troopers. He also described incidents in which he felt Mr. K was less than forthcoming about his usage of leave, several times going home “sick” after being reprimanded by superiors for poor performance issues. N testimony.

¹⁸¹ R. 154.

¹⁸² *Id.*

¹⁸³ R. 161, 168, 175, 179, 189, 196, 203.

¹⁸⁴ J testimony; R. 60.

¹⁸⁵ J testimony; R. 64-67.

¹⁸⁶ R. 240, 248.

On both of these F-3s, Mr. K also acknowledged having been terminated by an employer, but described the circumstances as follows: “I left my duty recorder on at work, recorded a Co-worker who was out of control with anger. I left the recorder on for my safety. its [sic] against department policy[;] the matter is in Arbitration.”¹⁸⁷

E. Procedural history

On July 2, 2015, NNPD Chief J submitted the F-4 recommending that the Council revoke Mr. K’s police officer certification.¹⁸⁸ On March 10, 2016, the Executive Director issued the Accusation in this case.¹⁸⁹ The Accusation contains four separate counts seeking revocation of Mr. K’s police certification:

Count I seeks discretionary revocation under 13 AAC 85.110(a)(1), based on the allegation that “Respondent engaged in a pattern of conduct intended to minimize the impact of past unfavorable acts by falsifying or omitting information required to be provided on an application for certification, and in supporting documents.”¹⁹⁰

Count II seeks discretionary revocation under 13 AAC 85.010(a)(3), based on the allegation that Mr. K “lacks good moral character.”¹⁹¹

Count III seeks mandatory revocation under 13 AAC 85.110(b)(3), based on the allegation that “Respondent was discharged from employment as a police officer 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.”¹⁹²

Count IV seeks mandatory revocation under 13 AAC 85.110(b)(3), based on the allegation that “Respondent was discharged from employment as a police officer for cause for conduct that was detrimental to the integrity of the police department where he worked.”¹⁹³

Mr. K responded with a Notice of Defense, requesting this hearing.¹⁹⁴ The hearing was held on August 30 and 31, 2016. Mr. K represented himself. The Executive Director was represented by Assistant Attorney General John Novak. Testimony was taken from Mr. K, NNPD Chief J, APSC Executive Director Griffiths, Alaska State Trooper (AST) Lt. K I, AST Sgt. H N, Sitka Police Dept. Lt. (former AST Corp.) M F, AST Trooper Ben Mank, UAF LEA

¹⁸⁷ R. 232, 239.

¹⁸⁸ R. 61.

¹⁸⁹ R. 3-12.

¹⁹⁰ R. 10.

¹⁹¹ *Id.*

¹⁹² *Id.*

¹⁹³ R. 10-11.

¹⁹⁴ R. 17.

Director F K, NNPDispatcher M Y, former NNP employee Jessica Hristov, and AST Lt. Q N.¹⁹⁵

III. Discussion

A. The Executive Director met his burden of showing that revocation is appropriate under Count I

In Count I of the Accusation, the Executive Director seeks revocation based on a “pattern of misrepresentations” on Mr. K’s application for certification. The Executive Director argues in his post-hearing brief that he met his burden of showing that discretionary revocation is appropriate under this Count, in light of Mr. K’s numerous factual omissions and false representations in the various F-3 forms he filled out when applying for police jobs over a period of about 11 years, as described above.¹⁹⁶ As a general matter, the Executive Director did establish that Mr. K engaged in “a pattern of conduct” of failing to accurately disclose his employment history, his periods of unemployment, his two failed attempts at the ALET Academy, and his resignation when faced with termination from his Alaska Wildlife Trooper position. Mr. K’s explanations at the evidentiary hearing for these omissions and false representations were not credible.

Count I, however, is based on 13 AAC 85.110(a)(1), which requires a showing of falsification or omission of required facts **on an application for certification**. The Executive Director submitted no evidence establishing that Mr. K’s numerous F-3 forms were submitted in support of his application to the APSC for certification. Therefore, the Executive Director’s focus on the F-3 forms in connection with Count I of the Accusation is misplaced.

¹⁹⁵ The record was held open until September 26, 2016 so that the parties could submit briefs on whether the record should be held confidential under AS 39.25.080, pursuant to Mr. K’s request. In his post-hearing brief, the Executive Director stated that he “consents to the Office of Administrative Hearings continuing to treat the administrative record as a confidential pleading absent future application by either party to this case or some third party, in light of the ... record containing confidential information, including personally identifying information.” Post-hearing brief at 2. Accordingly, the record of this matter will be maintained as a confidential file.

¹⁹⁶ In addition, the Executive Director met his burden of proving other untruthful acts and omissions, including Mr. K’s statements to Academy staff at ALET No. 10-2, his deceptive conduct regarding the return of his equipment after discharge from employment at NNP, and his revised explanation 10 years after the fact for resigning from ALET No. 33. The Executive Director argues that Mr. K’s untruthfulness raises concerns regarding the *Brady/Giglio* line of authority that mandate revocation of his certification. These are legitimate concerns that certainly would seriously impair Mr. K’s ability to work as a police officer in the future. However, none of the counts of the Accusation encompass such concerns.

The Executive Director, however, did establish that Mr. K falsified or omitted information required to be provided on his application for certification to the APSC, which was submitted in January 2014. Mr. K omitted from the F-7 application form the critically important information that he had attended and failed to complete ALET Academies Nos. 33 and 10-2. Mr. K's police officer certification – the certification at issue in this matter – was granted based on this application. Had he properly disclosed his failed attempts at the two ALET Academies, it is highly likely that the APSC's previous Executive Director would have made further inquiries regarding the circumstances surrounding those failures. One can only speculate as to whether Mr. K's certification would nonetheless have been granted if the previous Executive Director had learned that he had resigned from ALET Academy No. 10-2 in lieu of being asked to leave based on the Academy staff's conclusion that he had been dishonest in his interactions with them.

Regardless of whether his certification would still have been granted if he had made the proper disclosures, Mr. K failed to provide any credible explanation for his omission of this important information from his F-7 application form. At the evidentiary hearing, he could only acknowledge that he had left that section of the form blank on many of his APSC forms, while denying that he had done so in order to achieve a particular, desired result. He denied making “an intentional decision” to omit the information, testifying that he “simply missed it,” but it “was done with no intention.”¹⁹⁷ This self-serving explanation simply lacks credibility. Mr. K's omission on his certification application of his unsuccessful prior attendance at the two ALET Academies provides proper grounds for the APSC to exercise its discretion to revoke his police officer certification.

B. The Executive Director met his burden of showing that revocation is appropriate under Count II

Count II of the Accusation asserts that discretionary revocation is appropriate under 13 AAC 85.110(a)(3) because Mr. K “lacks good moral character.” The Council has discretion – but is not required – to revoke an officer's certification if the officer does not meet the basic standards set out in 13 AAC 85.010. One of those standards is the requirement that the officer possess “good moral character.”¹⁹⁸

¹⁹⁷ E K testimony, 8/31/16 at 04:14:01 (speaking to omission of information regarding the ALET Academies from F-3 forms; Mr. K never provided any explanation for his omissions from his F-7 form).

¹⁹⁸ 13 AAC 85.110(a)(3).

Good moral character is defined as “the absence of acts or conduct that would cause a reasonable person to have substantial doubts about an individual’s honesty, fairness, and respect for the rights of others and for the laws of the state and the United States.”¹⁹⁹ For purposes of making this evaluation, the APSC may consider “all aspects of a person’s character.”²⁰⁰

Prior decisions by the APSC have considered the elements identified in the regulation – honesty, fairness, respect for the rights of others, and respect for the law – “collectively.”²⁰¹ The Executive Director is not required to prove doubt about each of the elements, but must prove substantial doubt about at least one. Additionally, because the regulation considers “all aspects of a person’s character,” the APSC’s task is to reach a reasoned decision based on the totality of the evidence. Here, the Executive Director proved a substantial doubt about Mr. K’s honesty, fairness, and respect for the rights of others and respect for the law; the totality of the evidence supports a finding that he lacks good moral character.

It is easy to confuse a lack of good moral character with a judgment that an officer is a bad person. Mr. K is not a bad person. He clearly was committed to giving his best effort to trying to be a good police officer. He may actually have persuaded himself, prior to this hearing, that he was not being dishonest when he repeatedly omitted required information from his F-3 forms and his F-7 form; when he changed his explanation regarding the physician’s advice about wearing sunglasses in 2010; when he changed his explanation for his exit from ALET No. 33 ten years after the fact; or when he engaged in erratic and deceptive conduct surrounding the return of his NNPd equipment, leading to the opening of a criminal investigation against him.

Good moral character, however, includes the ability to understand what honesty means, and to be honest with oneself about what the truth really is. In this case, the evidentiary record is replete with acts and omissions by Mr. K that would cause a reasonable person to have substantial doubts about his honesty, fairness, and respect for the rights of others and for the law. Accordingly, the Executive Director met his burden of proving that grounds exist, under Count II of the Accusation, for the APSC to exercise its discretion to revoke Mr. K’s police officer certification.

¹⁹⁹ 13 AAC 85.900(7).

²⁰⁰ 13 AAC 85.900(7).

²⁰¹ See *In re E X*, OAH No. 13-0473-POC, at p. 18 (Alaska Police Standards Council 2013); *In re Hazelaar*, OAH No. 13-0085-POC, at pp. 15-16 (Alaska Police Standards Council 2014).

C. The Executive Director did not meet his burden of showing that revocation is mandated under Count III

Count III alleges that Mr. K was “*discharged from employment* as a police officer 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,”²⁰² and that revocation is therefore mandated under 13 AAC 85.110(b)(3). The flaw in the Executive Director’s case here is that Mr. K was discharged from his employment with NNPD only for surreptitiously recording his coworkers and failing to respond to training. Mr. K’s dishonest actions in connection with his employment at NNPD took place after he was discharged, when he engaged in the dispute regarding the return of his agency equipment.

The Executive Director would argue that by surreptitiously recording his coworkers, in violation of NNPD policy, Mr. K showed a lack of “respect for the rights of others,” i.e., his fellow NNPD employees. I find, however, that these acts, in and of themselves, do not rise to the level of causing a reasonable person to have “substantial doubt” about Mr. K’s honesty, his integrity, or his respect for the rights of his fellow NNPD employees, or for the law. The Executive Director, therefore, did not meet his burden of establishing that the APSC is mandated to revoke Mr. K’s police certification under 13 AAC 85.110(b)(3).

D. The Executive Director met his burden of showing that revocation is mandated under Count IV

Count IV of the Accusation – which alleges that revocation is mandatory because Mr. K was discharged from employment at NNPD “for conduct that was detrimental to the integrity of” NNPD – presents the closest call in this case. The question here is whether Mr. K was in fact discharged “for conduct that was detrimental to the integrity” of NNPD.

Again, Mr. K was discharged only for surreptitiously recording his coworkers, and for failing to respond to training. The latter basis for discharge really amounts to a finding that Mr. K simply didn’t make the grade as a NNPD officer – such an allegation does not raise any concerns regarding the integrity of NNPD. If it did, then any discharge for performance deficits would require revocation of an officer’s police certification.

But the other ground on which Mr. K was terminated – the surreptitious recording of fellow employees – was conduct that could undermine the integrity of a police agency. NNPD

²⁰² R. 10 (Accusation, p. 8 (emphasis added)).

Chief J testified that Mr. K's conduct in recording his fellow employees – a clear violation of NNPD policy – was detrimental to NNPD's integrity. Integrity, in this context, can mean honesty and moral uprightness, and can also mean the state of being whole and undivided. A police agency is a quasi-military organization;²⁰³ within that context, police officers must be able to rely upon and trust one another in order to perform their duties effectively and safely. Mr. K's surreptitious recording of other NNPD officers and employees can reasonably be assessed as having the effect of undermining the necessary mutual reliance and trust within the ranks of his fellow officers. Viewed from this perspective, his surreptitious recording of his colleagues was detrimental to the integrity of NNPD. The Executive Director, therefore, met his burden of establishing that revocation of Mr. K's police officer certification is mandated under 13 AAC 85.110(b)(3).

IV. Conclusion

The Executive Director met his burden of showing that discretionary revocation of Mr. K's police certificate is appropriate under both 13 AAC 85.110(a)(1) and 13 AAC 85.010(a)(3), and that mandatory revocation is required under 13 AAC 85.110(b)(3). The Executive Director's request for revocation of Mr. K's certificate is therefore granted.

DATED: December 12, 2016.

By: Signed _____
Andrew M. Lebo
Administrative Law Judge

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

²⁰³ Mr. K described a police agency in this manner during his testimony in the evidentiary hearing.