

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

E O. K, )  
 )  
 Appellant, )  
 )  
 vs. )  
 )  
 DEPARTMENT OF PUBLIC SAFETY, APSC, )  
 )  
 Appellee. ) Case No. 3HO-17-00000 CI  
\_\_\_\_\_)

**DECISION**

Appellant E K filed the *Appellant’s Opening Brief* on April 2, 2018. Appellee, the Department of Public Safety, filed the *Brief of Appellee* on June 7, 2018. No reply brief was filed and neither party made a motion for oral arguments. The case is ripe for decision.

On April 17, 2018, the Alaska Police Standards Council (“APSC”) revoked Mr. K’s police certification, finding revocation appropriate on three counts. First, APSC found discretionary revocation appropriate for falsifying or omitting information required on an application for certification or in supporting documents (“Count I”).<sup>1</sup> Second, APSC found discretionary revocation appropriate for not meeting the standards of good moral character (“Count II”).<sup>2</sup> Finally, APSC found mandatory revocation appropriate for discharge from employment as a police officer for conduct detrimental to the integrity of the police department where the officer worked (“Count IV”).<sup>3</sup>

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<sup>1</sup> 13 AAC 85.110(a)(1).

<sup>2</sup> 13 AAC 85.110(a)(3). *See also* 13 AAC 85.010(a)(3).

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

In reviewing an agency appeal, the Court determines whether there was an abuse of discretion.<sup>4</sup> An abuse of discretion occurs if the agency's findings are not supported either by the weight of the evidence or by substantial evidence in light of the whole record.<sup>5</sup> The Court considers each of the agency's grounds for revocation in turn under this standard.

First, the APSC found that discretionary revocation was appropriate based on a pattern of misrepresentation on Mr. K's application for certification.<sup>6</sup> The evidence in the record indicates that there were discrepancies in "Law Enforcement Training" listed by K in his F-3 Personal History Statements, particularly in the initial listing and subsequent non-listing of his ALET training in 2005 and 2010.<sup>7</sup> Additionally, in his 2014 "Application for Certification," Mr. K lists nothing in the "Criminal Justice Training" section.<sup>8</sup> In addition to these omissions, there is evidence that Mr. K made positive statements that were untrue. In May 2010, Mr. K marked "Yes" to the question, "Have you ever resigned (quit) after being informed your employer intended to discharge (terminate) you for any reason?"<sup>9</sup> Yet, a few months later in December 2010, his answer to this question was "No."<sup>10</sup> In his January 2014 "Application for Certification," Mr. K likewise stated that he had never been "discharged, asked to resign, or involuntarily terminated from employment."<sup>11</sup>

Mr. K argues that the standard F-3 form was revised over the 11-year history in question. While it is true that APSC has revised its standard F-3 form over the years, the substance, particularly in regards to the requirement to list employment history and law enforcement training, has remained unchanged. More importantly, regardless of the changes to the F-3 form,

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<sup>4</sup> Alaska Stat. § 44.62.570(b).

<sup>5</sup> Alaska Stat. § 44.62.570(c).

<sup>6</sup> Exc. at 000554-55.

<sup>7</sup> *Id.* at 000160-000266.

<sup>8</sup> *Id.* at 000268.

<sup>9</sup> *Id.* at 000170.

<sup>10</sup> *Id.* at 000177.

<sup>11</sup> *Id.* at 000268.

the content of the Personal History Statements signed by Mr. K remains incomplete or misleading. Mr. K also argues that it is not clear from the F-3 forms provided that he was applying to any particular agency for any particular position. Regardless, on nearly every form<sup>12</sup> Mr. K signed a statement, certifying the truth and accuracy of his statement.<sup>13</sup> He did the same on the “Application for Certification.”<sup>14</sup> Based on these factors in light of the whole record, there is substantial evidence that Mr. K falsified or omitted information required on an application for certification or in supporting documents. Accordingly, the APSC findings on Count I are not an abuse of discretion.

In regards to Count II, the APSC found discretionary revocation appropriate because Mr. K lacked a good moral character. In his *Appellant Brief*, Mr. K argues that he was a good officer, his scores proved merit, and that he faced workplace bullying. While these factors may reflect positively on Mr. K and the circumstances of his discharge, they do not address the specific grounds for revocation of his certification. The Court finds that in light of the whole record, there is substantial evidence that Mr. K lacks the good moral character required of a police officer. Specifically, there is evidence that, in 2010, Mr. K lied about the reasons he appeared late for training<sup>15</sup> and lied about medical instructions he received regarding treatment for his eyes after being pepper sprayed.<sup>16</sup> In addition, after being terminated from the No Name Police Department, there is substantial evidence that Mr. K lied about the condition and status of his ID badge.<sup>17</sup> Honesty is an important element of good moral character. Based on the evidence in the

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<sup>12</sup> K correctly notes that one of the F-3 forms is neither signed by him nor notarized. *See* Exc. at 000266. The Court does not consider this form.

<sup>13</sup> *See, e.g.*, Exc. at 000258.

<sup>14</sup> Exc. at 000268.

<sup>15</sup> *Id.* at 000131-34.

<sup>16</sup> *Id.* at 000125-32.

<sup>17</sup> *Id.* at 000080-83; *See also*, Testimony of M Y, 16-0383-POC HRG1 082916 K pt 2.

record, the Court finds that the APSC did not abuse its discretion in finding revocation appropriate under Count II.

In regards to the final ground for revocation (“Count IV”), the APSC found that mandatory revocation was appropriate because K was discharged from the No Name Police Department for conduct “detrimental to the integrity” of the police department.<sup>18</sup> The APSC notes that K was discharged for surreptitiously recording his coworkers. The decision states, “Integrity, in this context, can mean honesty and moral uprightness, and can also mean the state of being whole and undivided.”<sup>19</sup> Under this “whole and undivided” definition, actions which “undermine the necessary mutual reliance and trust” become “detrimental to the integrity” of a police station.<sup>20</sup>

While a dictionary may define the word “integrity” as having the dual meanings of “honesty” and “wholeness” (or “cohesion”), the “cohesion” meaning is not appropriate in this context. Before listing that “conduct “detrimental to the integrity” of the department is grounds for revocation, section (b)(3) first addresses the officer’s reputation for “honesty, fairness, and respect for the rights of others,” which provides important context.<sup>21</sup> Someone who is not honest or fair is detrimental to the integrity of the department because he reflects poorly on the trustworthiness of the entire department. In comparison, a reputation for honesty is only tangentially related to a department’s internal cohesion. This “honesty” understanding of integrity is also supported by Alaska case law. In *State v. Pub. Safety Employees Ass’n*, the Court found that Section (b)(3) strongly suggests it is the policy of the State of Alaska “not to employ dishonest officers” but that the particular section is does not extend to officers engaged in sexual

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<sup>18</sup> Exc. at 000557.

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

<sup>20</sup> *Id.*

<sup>21</sup> 13 AAC 85.110(b)(3).

misconduct.<sup>22</sup> In other words, the Court declined to extend the definition of “integrity” beyond the “honesty” definition. Additionally, the Court specifically linked the “integrity of the police department” with the officer’s “honesty” and “respect for the law.”<sup>23</sup>

A “detrimental to wholeness/cohesion” ground for revocation may fit better under Section (a)(2), which allows discretionary revocation for discharge from conduct detrimental to the *discipline* of the police department.<sup>24</sup> Under Section (b)(3), however, it is an abuse of discretion to find mandatory revocation appropriate based on a definition of “integrity” that relates to internal cohesion. In this context, the “honesty” definition of “integrity” is most applicable. Here, K’s surreptitious recording of his coworkers is not substantial evidence that his conduct was detrimental to the integrity of the police department.

For the foregoing reasons, the decision of the Alaska Police Standards Council to revoke K’s certification as a police officer is **AFFIRMED** as to Counts I and II, and **REVERSED** as to Count IV.

Dated at Kenai, Alaska, this 25th day of July, 2018.

*Signed*  
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CHARLES T. HUGUELET  
SUPERIOR COURT JUDGE

[This document has been modified to conform to the technical standards for publication. Names may have been changed to protect privacy.]

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<sup>22</sup> *State v. Pub. Safety Employees Ass'n*, 323 P.3d 670, 680 (Alaska 2014).

<sup>23</sup> *Id.* at 681.

<sup>24</sup> 13 AAC 85.110(a)(2).