

**BEFORE THE ALASKA OFFICE OF ADMINISTRATIVE HEARINGS ON REFERRAL  
BY THE MATANUSKA-SUSITNA BOROUGH**

In the Matter of:	)	
	)	
Recommendation for Level 5 Classification	)	
of “Trooper” (A105164),	)	
	)	
JILL SHOWMAN, Owner.	)	SOA OAH No. 21-1777-MUN
<hr style="width: 40%; margin-left: 0;"/>	)	MSB OAH 21-03

**FINDINGS, CONCLUSIONS, AND FINAL ORDER**

**I. Introduction**

This case relates to the classification of the dog Trooper, an adult Labrador Retriever or black lab mix owned by Jill Showman. On July 6, 2021, Animal Care and Regulation Director Christopher Loscar recommended Trooper for Level 5 classification. Ms. Showman was entitled to a hearing on the recommendation, which she did not waive. Because of a conflict in the Matanuska-Susitna Borough Office of Administrative Hearings, the hearing was held on its behalf by an administrative law judge from the Alaska Office of Administrative Hearings.

The hearing took place in Palmer on August 25, 2021. Assistant Borough Attorney Denise Michalski presented Director Loscar’s recommendation. Attorney Neil Ainsworth represented Ms. Showman.

**II. Nature of Level 5 Cases Before the Office of Administrative Hearings**

The jurisdiction of the Borough Office of Administrative Hearings over Level 5 animal classifications is “original jurisdiction” rather than “appellate jurisdiction.”<sup>1</sup> This means that the Borough Attorney must establish the basis for Level 5 classification by evidence presented to the hearing officer. The proceeding is not merely a review of the basis for findings made prior to the hearing.

In many animal cases, the chief animal care regulation officer issues a “decision” or “order” to which an appellate body is required to give deference, overturning it only if it is not supported by substantial evidence.<sup>2</sup> This is not such a case. In this kind of Level 5 proceeding, the chief animal care regulation officer makes only a “recommendation” which he must present in an original proceeding, and the Borough Code contains no provision requiring deference to the recommendation.

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<sup>1</sup> MSB 2.29.020(A) (“appellate jurisdiction” in animal forfeiture cases; “original jurisdiction” in Level 5 cases).  
<sup>2</sup> *E.g.*, MSB 24.30.040(C)(1); 2.29.090(G)(3); 24.26.020(B); *cf.* MSB 2.29.020(A)(2).

The standard of proof for the facts essential to the classification in this type of Level 5 proceeding is proof “by a preponderance of the evidence.”<sup>3</sup> This means that those facts must be shown to be more likely true than not true.<sup>4</sup>

If the facts justifying a Level 5 classification are established, the animal must be so classified. While the Borough Code provides for “discretionary authority to refrain from classifying an animal even if the animal has engaged in the behaviors” justifying the classification,<sup>5</sup> that discretion is vested solely in the chief animal care and regulation officer.<sup>6</sup> The discretion to make exceptions is nowhere granted to the Office of Administrative Hearings, and to the extent that the discretion is reviewable, the review is not assigned to the Office of Administrative Hearings.

The net result of these parameters is that the Director must prove that Trooper engaged in behaviors supporting a Level 5 classification. There is no deference to the Director’s view of whether those behaviors occurred; they must be proven here. However, if they are proven, the Code gives this office no jurisdiction to make a special exception because of extenuating circumstances.

### **III. Findings of Fact**

The following facts were established by a preponderance of the evidence, except as otherwise footnoted.

Trooper is a 55- to 60-pound dog who is about eight years old. Jill Showman has owned him since he was a puppy. Prior to the incident giving rise to this case, he lived with her on a cul-de-sac in Wasilla.

Trooper was placed in Level 4 classification by a notice issued October 16, 2019 and served on Ms. Showman on October 27, 2019. The 2019 classification occurred because

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<sup>3</sup> MSB 2.29.080(C). Because the undersigned and counsel were all uncertain on this point at the hearing, it is important to note that MSB 24.30.040(B)(1)—setting a “clear and convincing” standard—applies only to the subset of Level 5 proceedings conducted by the Animal Care and Regulation Board (a subset which presumably consists of Level 5 proceedings under MSB 24.26.010(A)(5)(c), reviewing a decision of the Director *not* to classify an animal at that level). MSB 24.30.040(B)(1) does not apply to proceedings in the jurisdiction of the Borough Office of Administrative Hearings.

With that said, I am aware that the MSB OAH has applied a clear and convincing proof standard to at least one finding in a Level 5 establishment proceeding under its jurisdiction in the past, without discussion of why it did so. *In re Recommendation of Level 5 Classification of Karma Grace*, No. 20-01 (June 12, 2020). In an abundance of caution, certain alternative findings have been made in footnotes below using the clear and convincing standard, so that if there is a court appeal the case can be fully processed at that level without the need for a remand.

<sup>4</sup> *E.g., Long v. Arnold*, 386 P.3d 1217 (Alaska 2016).

<sup>5</sup> MSB 24.26.020(A).

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

Trooper bit an adult man earlier the same month, causing minor injury. Under the classification order, Trooper was required to be confined to the owner's home or a secure enclosure, except when on a leash no longer than six feet controlled by a responsible adult.<sup>7</sup>

On June 29, 2021, Ms. Showman met a person from her homeowner's association in her driveway, and the two of them discussed business for a few minutes. Ms. Showman apparently did not close the door all the way, and Trooper got out of Ms. Showman's house.

At the time Trooper escaped, a neighbor family across the street were in their yard or adjacent porch, including two five-year-olds, a two-year-old, a mother who will be referred to as K.B., a grandmother, and a smaller dog. Trooper and the smaller dog interacted briefly without hostility. The neighbor got her children and dog onto her porch.

In the meantime, Ms. Showman was trying to secure Trooper. The situation was chaotic. Trooper would not come to her. He was barking and was in the neighbor's yard. Ms. Showman went to get a collar and leash but still could not catch him. She ran to get her car keys, because she knew Trooper liked car rides and might be coaxed to her car—it was a trick that had worked when he had gotten loose before.

Before the car trick could be tried, K.B. (who is highly experienced with dogs, including large ones) tried to coax Trooper to come to her while he was in her yard. Trooper showed his hackles and bit her. The bite made a number of tooth punctures, but was sufficiently minor that, in the heat of the moment, K.B. did not immediately realize she had been bitten. She realized it when the grandmother pointed out blood running down her leg. K.B. took defensive action (swinging a barbell at Trooper, without making contact) and he ran off.<sup>8</sup>

A question has been raised as to whether Trooper was the dog that caused the injury to K.B. I find that overwhelming evidence supports that a bite occurred and that Trooper did inflict the bite. No evidence suggests that any other dog did so.

I make no finding that Trooper is an inherently vicious dog or a dog who could not be kept safely if carefully managed. The evidence indicates that Trooper is untrained, nervous, excitable, and prone to feeling threatened.

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<sup>7</sup> R. 8-9. The facts in this paragraph were established by clear and convincing evidence.

<sup>8</sup> The facts that Trooper, while unrestrained, bit K.B. and caused injury were established by clear and convincing evidence.

So far as evidence has been presented, Ms. Showman has been apologetic about Trooper's escape into her neighbor's property. She has been cooperative with the animal control process that followed, including delivering Trooper for quarantine.

#### **IV. Conclusions and Order**

1. Trooper was classified as an animal in Level 4 in 2019 for committing conduct listed under MSB 24.26.010(A)(4). Jill Showman received notice of the classification in 2019.

2. Under MSB 24.26.010(A)(5), "Level 5 classification is established if any of the following occur: . . . (c) an animal classified as Level 3 or Level 4 . . . for the second time commits any behavior described in subsection (A)(3) or (4) of this section, after the owner receives notice of the Level 3 or 4 classification."

3. Among the behaviors listed under subsection (A)(4) of MSB 24.26.010 is: "an unrestrained animal inflicts an aggressive bite . . . to any human."

4. Among the behaviors listed under subsection (A)(4) of MSB 24.26.010 is: "an unrestrained animal . . . causes physical injury to any human."

5. On June 29, 2021, both by inflicting an aggressive bite to a human and by causing physical injury to a human, Trooper for the second time committed a behavior described in subsection (A)(3) or (4) of MSB 24.26.010.

6. The chief animal care and regulation officer has not exercised discretion to classify or recommend classification of Trooper in a level other than Level 5.

7. Based on the facts found above, the application to classify Trooper as a Level 5 animal under MSB 24.20.010 must be, and hereby is, GRANTED. Trooper shall be classified as Level 5 for purposes of MSB 24.26.040(B)(4), and shall be euthanized upon expiration of the appeal period set forth below if no appeal is filed.

8. Ms. Showman's right to adopt an animal from the animal care and regulation shelter will *not* be suspended or restricted under MSB 24.26.040(B)(4).

9. In accordance with MSB 24.26.040(B)(4)(a), Ms. Showman will not be responsible for any fees, costs, or expenses incurred for the impoundment of Trooper beyond the date of any signed release waiver surrendering Trooper to the borough.

DATED September 3, 2021.

By: Signed  
Christopher Kennedy  
Administrative Law Judge

## **APPEAL NOTICE**

NOTICE IS HEREBY GIVEN that on September 3, 2021 Administrative Law Judge Christopher Kennedy, sitting as a hearing officer for the Matanuska-Susitna Borough, rendered the foregoing written Findings, Conclusions and Final Order in the referenced administrative proceeding.

The said Findings, Conclusions and Final Order may be appealed to the Superior Court for the State of Alaska, within 30 days of the date of distribution of the present filing, pursuant to MSB Code Section 24.30.050 and the Alaska Rules Of Appellate Procedure, Part VI, Rules 601-612.

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