

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

In the Matter of)

JEFFREY LEE)
_____)

OAH No. 19-0249-POC
Agency No. 2018-26

NOTICE TRANSMITTING FINAL DECISION

Attached is the Alaska Police Standards Council's decision in this matter, which the council adopted at its March 5, 2020 meeting. Under AS 44.62.520, the council's decision becomes effective 30 days after the attached decision is mailed or otherwise delivered to you, unless the council takes certain actions specified therein to prevent it from becoming effective.¹

A party may request reconsideration of the decision by filing a petition under AS 44.62.540 within 15 days after delivery or mailing of the decision. Send the petition requesting reconsideration to the following address:

Office of Administrative Hearings
550 W. 7th Ave Ste 1940
Anchorage, AK 99501

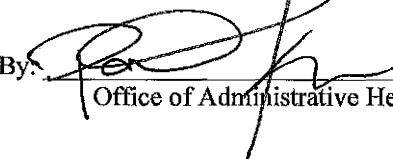
At the same time, send a copy of the petition to the opposing party's legal counsel, or to the opposing party if not represented by counsel.

Judicial review of the council's decision may be obtained by filing an appeal in the Alaska Superior Court in accordance with Alaska Rule of Appellate Procedure 602(a)(2) within 30 days after the decision is mailed or otherwise distributed.

DATED: March 12, 2020.

By: 
Office of Administrative Hearings

Certificate of Service: I certify that on March 12, 2020, a true and correct copy of this document was sent to: Mera Matthews, Attorney (by certified mail) Stephanie Galbraith Moore, AAG (by email) Bob Griffiths, Executive Director (by email); Dep't of Law central email (by email); Lt. Governor (by mail).

By: 
Office of Administrative Hearings

¹ This notice is the formal transmittal of this decision under 2 AAC 64.340(c). It supersedes any prior notice or distribution to the parties.

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CORRECTED DECISION¹

I. Introduction

Jeffrey Lee resigned from his position as a sergeant with the Bethel Police Department (BPD) in May 2018 after nine years employment as a certified Alaska police officer. At the time of his resignation he was the subject of an internal investigation regarding whether he abused his supervisory position on April 6 and 7, 2018 or was subsequently dishonest or evasive during the related investigation.

The BPD Chief of Police filed a report with the Alaska Police Standards Council (APSC or Council) indicating Sgt. Lee was not eligible for rehire as a police officer. After review of the report and learning of BPD's investigations, the Council revoked his police certificate.

Sgt. Lee appealed. The administrative hearing was held October 1-11, 2019.

This decision concludes the Executive Director met his burden of proof to show Sgt. Lee's certification should be revoked due to misconduct occurring April 6-7, 2018 and his dishonesty or evasion in the resulting investigation.

II. Facts²

Sgt. Lee resigned from BPD in May 2018. At the time he resigned, he was under investigation for events occurring April 6 and 7, 2018. He had also been the subject of other disciplinary action within the prior nine months. The Executive Director presented the circumstances of all those disciplinary actions to support the request for decertification. The events occurring between June 2017 and April 2018 are sufficiently temporally and circumstantially related to require extensive discussion. They are, therefore, discussed in detail below.

¹ This decision reflects correction of typographical errors and the modification of language to paragraph 3, page 5 in response to a Proposal for Action filed by Mr. Lee on January 10, 2020.

² These facts were established by a preponderance of evidence by testimony at the hearing or admitted exhibits. Because resolution of the factual issues is necessary for final determination of the case, the findings of fact are addressed in detail.

The Executive Director also presented alleged misconduct by Sgt. Lee occurring prior to June 2017. This misconduct formed the basis for paragraph 9 in the Amended Accusation. The events described in paragraph 9 are temporally and circumstantially removed from those occurring in 2017 and 2018. In addition, they may be readily resolved without extensive discussion. Thus, they are not outlined below but addressed solely within the Discussion section.

1. Sgt. Lee's Employment with BPD and Relationship with Ms. Evans

Jeffrey Lee was hired by BPD in 2008 after graduating as valedictorian at the Fairbanks Police Academy.³ He was an honorably discharged marine corps veteran. Prior to attending the police academy, he had several years' experience as a code enforcement officer in Bethel. He had a commercial coast guard license, firearms and armory proficiency, and an EMT III certification. While employed with BPD he received numerous commendations and citations, including several life-saving awards.⁴

In October or November of 2016 Sgt. Lee began a romantic relationship with Jennelle Evans, a dispatcher at BPD.⁵ BPD did not have a policy prohibiting such relationships. Historically, however, such relationships have often been the source of stress and drama within departments and the Lee/Evans relationship was no exception. One of Ms. Evans' supervisors, Natalie Hayes, was particularly vocal in her criticism. She and Sgt. Lee exchanged pointed words and personal insults both face to face and through gossip with other members of the department.⁶

Ms. Evans had an alcohol problem in 2016.⁷ Officers other than Sgt. Lee reported that she would "blow their phones up" when she was intoxicated. This included repeated unwelcome contacts while they were on duty. On at least two occasions on-duty officers were concerned they would have to arrest her or place her in protective custody for alcohol related disturbances. Ms. Evans's drinking and the conflicts it caused at work and in her relationship with Sgt. Lee were well-known and discussed within the department.⁸

2. The Murphy Report and the Hiring of Chief Waldron

³ He remained employed with BPD until 2012. In 2012, he moved to the Yakutat police department. However, he soon arranged his schedule to work at both agencies until he returned solely to the BPD in 2016.

⁴ Ex. 22; Testimony of J. Lee.

⁵ Testimony of J. Lee.

⁶ Testimony J. Lee, J. Evans, N. Hayes, A. Davis, and J. Corbett.

⁷ Testimony A. Davis, J. Corbett, E. Pavil, and J. Lee.

⁸ *Id.*

Andre Achee was the Bethel Police Chief during this time. Sgt. Lee had a good working relationship with Chief Achee.⁹ About the time Sgt. Lee and Ms. Evans began dating, a conflict arose between the Bethel City Manager's Office and Chief Achee regarding the degree of independence he sought from local politics and oversight. The City of Bethel hired former Alaska State Trooper John Murphy to conduct a confidential investigation regarding the working environment at BPD. The Lee/Evans relationship and a perception that Chief Achee favored Sgt. Lee were extensively reported to Mr. Murphy as a source of workplace dissatisfaction. The Murphy report concluded Chief Achee and Sgt. Lee exhibited "a lack of leadership" and "unprofessional behavior" that should be addressed.¹⁰

Chief Achee resigned in lieu of termination soon before the Murphy report was complete in June 2017. Former Alaska State Trooper Burke Waldron was solicited as the new Bethel chief of police. Chief Waldron had experience throughout the state as both an investigating officer and an administrator. This included thirteen years of supervisory experience and oversight of internal affairs/administrative investigations units.¹¹

Chief Waldron was given an oral summary of the Murphy report prior to his hire. He was given a written copy soon after his arrival in Bethel. He also spoke privately with Natalie Hayes to get "her view of things." He determined that Sgt. Lee was the "most prominent" problem at BPD.¹² Ms. Hayes and another Bethel employee spread the word that Chief Waldron would arrive and "clean house."¹³ Within several months, every BPD employee named as a problem in the Murphy report, other than Sgt. Lee, had been terminated by Chief Waldron, although he denied that he had been hired to do so or actively sought to do so.¹⁴

Chief Waldron did not discuss the Murphy findings with any officer of the BPD, including Sgt. Lee, or ask for explanations or rebuttal of any of its contents. Chief Waldron did contact a member of the Bethel personnel department, Laura Cloward, within a few weeks of his hire to determine whether Sgt. Lee could be demoted from his sergeant's position simply based

⁹ Testimony J. Lee and A. Davis.

¹⁰ Ex. AC, p. 1-2. This was a 363-page exhibit but only pages 1 and 2 were admitted subject to a hearsay limitation; Testimony B. Waldron.

¹¹ Testimony of B. Waldron.

¹² *Id.*

¹³ Testimony of J. Lee and J. Corbett.

¹⁴ Testimony of B. Waldron.

on Chief Waldron's personal preference.¹⁵ She responded that he could not do so, and indicated her awareness that he would be "sorry to hear it."¹⁶

3. Allegations Related to Improper Evidence Collection

a. *The September 2017 Failure to Secure a Ruger LCP Handgun*

On September 30, 2017 Sgt. Lee arrested Jarvis Edwards for Driving Under the Influence (DUI) and Misconduct Involving a Weapon in the Fourth Degree (MIW4).¹⁷ A Ruger LCP handgun was taken from Mr. Edwards.¹⁸

BPD protocol required firearms be secured and logged into evidence by placing them in a drop box before the end of shift when possible. If not possible, the firearm was to be kept in a secure area.¹⁹ The sergeants' office at BPD was locked when sergeants were not present. Testimony at the hearing established that correctly or incorrectly, it was common for the sergeant's office to be treated as a "secure area" and firearms left there until they could be formally logged into evidence.²⁰ Sgt. Lee did not create an evidence tag or properly log the Ruger LCP into evidence before he finished his shift.²¹

Instead, the Ruger LCP remained in the sergeants' office for several weeks. Mr. Edwards called BPD in mid-December requesting the firearm be returned to him as it had not been forfeited upon his conviction. Lt. Amy Davis took the call. She emailed Sgt. Lee on December 13, 2017 inquiring about the firearms location.²² Sgt. Lee investigated and found the firearm in the sergeants' office.²³

Sgt. Lee acknowledged he failed to properly collect and store the Ruger LCP.²⁴ He explained that in the press of circumstances, the next time he saw the firearm he mistook it for a personal weapon belonging to Sgt. K. Limani with whom he shared the office.²⁵

¹⁵ Testimony of B. Waldron.

¹⁶ Ex. 1., p. 1.

¹⁷ AS 28.35.030 and AS 11.61.210(a)(1) (Respectively).

¹⁸ Ex. 28. Although there was dispute at the hearing whether Sgt. Lee or the other officer on scene, Ulak, physically took the firearm from Mr. Edward's pocket, there was no dispute Sgt. Lee put it in his patrol car. Sgt. Lee was responsible for maintaining the chain of custody for the firearm.

¹⁹ Testimony of J. Lee and A. Davis.

²⁰ *Id.*

²¹ Testimony of J. Lee.

²² Testimony of A. Davis.

²³ Testimony of J. Lee.

²⁴ Testimony of J. Lee and A. Davis.

²⁵ *Id.*

Sgt. Limani has the same make and model handgun. At one point, several of the BPD officers carried the Ruger LCP as a personal sidearm. Sgt. Limani routinely left his personal Ruger LCP in the sergeants' office. It was regularly seen on the desks, in drawers, and on top of paperwork in addition to tucked in his sweatpants when he was at the station and out of uniform.²⁶ BPD did not have a policy regarding personal weapons at the department nor storage of firearms for work purposes. Sgt. Limani, Officer Corbett, and others indicated during the BPD investigation and at the hearing that the Edward's handgun had been in the office after the September 30, 2017 arrest and before the December 2017 call from Mr. Edwards for its return.

b. The November 2017 Misidentification of an Item as Belonging to a Crime Victim Rather than the Suspect

On November 12, 2017 BPD received report of an assault in front of Alba's Coffee Shop. Sgt. Lee arrived to find the victim, Garrick Knight, unconscious and bleeding from a serious head wound. It appeared Mr. Knight might lose his eye. Several witnesses identified the suspects as Valerie Link and her boyfriend, Joseph Powell.²⁷ Sgt. Lee's body camera shows Mr. Knight lying in a pool of blood. A small Coach change purse lying atop a jacket is near the victim along with a broken chain of the type used to secure a wallet to a belt loop.²⁸ Mr. Knight was known to keep his wallet in his rear pocket in just that manner.²⁹

Officer Joseph Corbett asked Sgt. Lee to give him the change purse. Sgt. Lee did not examine the change purse before he gave it to Officer Corbett. Officer Corbett took the change purse to meet with the suspects. Unknown to Sgt. Lee, Officer Corbett used an identification card from the change purse to confront suspect Valerie Link regarding her denial of being at the scene. Officer Corbett later put the change purse in Sgt. Lee's patrol truck.³⁰ Sgt. Lee went to the hospital where he gave the jacket and a bundle of the victim's belongings to an on-duty hospital attendant.³¹

The next day, November 13, 2017, Sgt. Lee wrote a report describing the change purse as a "wallet." In the report Sgt. Lee indicates he is aware the victim typically carries his wallet attached to a belt loop via a chain, and he saw the chain disconnected from a "wallet" on the

²⁶ Testimony of J. Lee and J. Corbett.

²⁷ Exs. 9 and 28; Testimony of J. Lee and J. Corbett.

²⁸ Ex. AU and AV.

²⁹ Testimony of J. Lee.

³⁰ Testimony of J. Lee and J. Corbett.

³¹ Testimony of J. Lee.

ground near the victim.³² He also mentioned the “wallet” to Lt. Amy Davis when they exchanged updates about the victim. On November 21, 2017 Sgt. Lee wrote a complaint to support the criminal charges against Mr. Powell, Valerie Link’s boyfriend. Under oath, he described seeing the “wallet” on the ground near the victim and close to a chain that could secure a wallet to a belt loop.³³ The clear inference from these documents is that Sgt. Lee concluded the wallet belonged to the victim and his assailants had not completed the robbery.

Valerie Link subsequently contacted BPD for the return of her Coach change purse. Lt. Davis, who was responsible for evidence room, did not see it listed on the property and evidence form for the case. She spoke to Officer Corbett, who told her that the item had been collected and described how he showed it to Valerie Link as part of an on-scene interview then put it in Sgt. Lee’s truck.³⁴

Lt. Davis next spoke with Sgt. Lee. At that point, they both realized the “wallet” was missing. It was not in the bundle Sgt. Lee delivered to the hospital for return to the victim. Officer Corbett did not put the change purse with those items. Instead, the change purse was found in the backseat of Sgt. Lee’s patrol truck where emergency equipment was stored.³⁵

Sgt. Lee wrote a supplement to his original report adding two brief sentences to clarify that the “wallet” he saw on the ground near the victim on November 12, 2017, was not the victim’s wallet but Valerie Link’s change purse.³⁶ He did not include information on how the change purse was used by Officer Corbett to interview a suspect or why there had been a delay logging the change purse into evidence.³⁷ That is, Sgt. Lee did not provide details that he originally thought the item belonged to the victim and had been returned to him the night of the crime, but later found out differently.

c. Discipline for the September and November 2017 Evidence Collection Errors

On January 18, 2017 Mr. Lee received a two-day suspension for his failure to properly secure the Ruger LCP and Coach change purse.³⁸ This discipline was consistent with that meted out to other officers who failed to adequately insure the chain of custody for firearms or other

³² *Id.*
³³ Ex. 25 and 26.
³⁴ Testimony of A. Davis.
³⁵ Testimony of J. Lee.
³⁶ Ex. 26, pp. 3-4.
³⁷ *Id.*; Testimony J. Lee and A. Davis.
³⁸ Ex. 27; Ex. E;

items.³⁹ Sgt. Lee was informed that further policy violations could “result in disciplinary action up to and including termination.”⁴⁰

4. The April 2018 Incident Involving Sgt. Lee’s Telephone Calls to an On-duty Officer Regarding Ms. Evans

On April 6, 2018 Sgt. Lee was working the night shift. He received a series of text messages from Ms. Evans about her plans for the evening.⁴¹ The texts made it obvious she would be drinking, probably heavily, with her cousins.⁴² When she called him between 3:00 and 4:00 a.m. her impairment was obvious. He drove by their home during patrol to insure she had not driven their truck to her cousins’ house.⁴³ He mentioned her alcohol consumption to Officer Eric Pavil, who relieved him at shift change.⁴⁴

Officer Pavil was assigned as the day-shift Field Training Officer (FTO) for Recruit Officer Cash on April 7, 2018. Per BPD policy, Officer Pavil and Officer Cash were to conduct all police activities during the shift with one another so that Officer Cash could be trained and evaluated. This included response to DUI investigations.⁴⁵

Sgt. Lee left the BPD station around 7:20 a.m. on April 7, 2018.⁴⁶ At 10:23 a.m. he called Officer Pavil on Officer Pavil’s cell phone regarding Ms. Evans.⁴⁷ From that point until 10:42 a.m. Sgt. Lee and Officer Pavil give different accounts of events as will be discussed in greater detail below. At 10:42 a.m., however, as a result of Sgt. Lee’s call to Officer Pavil, both men were at Ms. Evans’s mother’s home. Officer Pavil’s body camera was activated so the events on scene after 10:42 a.m. are essentially undisputed.⁴⁸

Sgt. Lee was waiting at Ms. Evans’s mother’s home when Officer Pavil arrived at 10:42 a.m. Officer Pavil arrived without Officer Cash. The Lee/Evans’s truck was in the driveway. Sgt. Lee was driving his patrol truck out of uniform with his dog inside.⁴⁹

³⁹ Testimony of J. Corbett, A. Davis, and J. Lee.

⁴⁰ Ex. E, p. 4. [At the hearing, the Executive Director sought to demonstrate that the difference in language between Sgt. Lee’s initial report on the Garrick Knight matter and his supplement indicated he was dishonest in addition to incompetent regarding the evidence collection—an allegation not made at the time.

⁴¹ Ex. 21.

⁴² This decision concludes the emails are classic examples of emotional manipulation by an alcohol abuser.

⁴³ Testimony of J. Lee.

⁴⁴ Testimony of J. Lee. Testimony of E. Pavil.

⁴⁵ Testimony of E. Pavil.

⁴⁶ Testimony of A. Davis and J. Lee.

⁴⁷ Testimony of J. Lee and E. Pavil.

⁴⁸ Ex. 12.

⁴⁹ *Id.* [Sgt. Lee admitted this was a violation of BPD policy, although it does appear the policy was rather laxly enforced.]

Audio on the BPD body camera recording starts several seconds after the video is activated.⁵⁰ Thus, Officer Pavil's first communication with Sgt. Lee in the driveway was not recorded. The audio recording begins as Officer Pavil approaches the house. After receiving permission from her mother to enter, the first words Officer Pavil speaks to Ms. Evans are "Jeff wants his keys back." She replies, "I don't care. It's not a police issue."⁵¹

Officer Pavil immediately turns to exit. He does not ask any questions regarding drinking or driving as would be standard in a DUI investigation. As he walks out, Ms. Evans tells him to deliver a message to Sgt. Lee from her about paying for the damage he has caused her home. Once outside, Officer Pavil walks back toward Sgt. Lee. Sgt. Lee asks a brief, inaudible question to which Officer Pavil responds, "Nope."⁵²

Subsequently, Ms. Evans and Sgt. Lee argue briefly with one another. Neither speak to Officer Pavil except to let him know that he has their permission to depart. Sgt. Lee continues to demand the keys from Ms. Evans. She continues to refuse.⁵³

Officer Pavil did not create a call for service or write a report regarding the incident. A few days later, on April 13, 2018, when he saw Lt. Davis, he told her he had done something that made him uncomfortable and told her what happened. He gave two unrecorded interviews on April 17, 2018.⁵⁴ He provided a recorded interview on April 19, 2018.⁵⁵

During his April 19, 2018 administrative interview, Officer Pavil stated that early in the morning of April 7, 2018 as he and Sgt. Lee conducted shift change, Sgt. Lee told him words to the effect that Ms. Evans had "been on a bender," the night of April 6, 2018. He did not remember the specifics of the conversation.⁵⁶

Sgt. Lee later called him on his personal cell phone. "He asked who I was with and if I was on a call. I told him I was just clearing a call, and I was with Cash. He asked me to drop off Cash and meet him at Jenelle's mother's house on Alder . . . regarding . . . he wanted me to get his truck keys back from Jenelle. So, I dropped Cash at the station."⁵⁷

⁵⁰ This is standard operation.

⁵¹ *Id.*

⁵² *Id.*

⁵³ *Id.*

⁵⁴ Testimony of E. Pavil and A. Davis.

⁵⁵ Ex. AN.

⁵⁶ *Id.*

⁵⁷ *Id.* This was confirmed by BPD computer records showing their call for service ended at 10:21 a.m. Testimony of A. Davis. This is not a time for a standard FTO training break. Testimony of E. Pavil.

In his interview, Officer Pavil told Lt. Davis he met Sgt. Lee at Jenelle’s mother’s house. He went inside to speak with Jennelle. She came out of “some room.” “I asked for the keys. She said it was civil. I turned around, and as I am walking out made a comment about Jeff replacing her doors.”⁵⁸

Officer Pavil expressed his opinion that Sgt. Lee only wanted help to get the truck keys in his April 19, 2018 administrative interview. The first thing Sgt. Lee said during the calls was “I’m at Swanson’s. Can you help me get [my] truck keys back from Jenelle? I said, ‘yes, let me call you back.’” Officer Pavil “knew full well it was a civil issue” from the beginning. Sgt. Lee never suggested a crime had occurred or Ms. Evans was DUI.⁵⁹

Officer Pavil interpreted the call as a personal favor to get the truck keys back so Sgt. Lee could use it during his off-hours. Sgt. Lee did ask him to leave Officer Cash at the station (there would have been no reason to do so if he were investigating a DUI).⁶⁰ Sgt. Pavil stated he felt uncomfortable with the calls and requests from Sgt. Lee. However, Sgt. Lee was his supervisor, and he felt required to do as requested.⁶¹

Chief Waldron put Sgt. Lee on administrative leave after hearing from Officer Pavil and reviewing the body-cam video.⁶² An administrative *Garrity* interview with Sgt. Lee was conducted April 20, 2018.⁶³ In a *Garrity* interview the officer is admonished that the interview is part of an official investigation, and the officer is required to answer all questions, truthfully, honestly, and completely without evasion.⁶⁴ Sgt. Lee, shop steward Officer Corbett, and union representative Jason Roach participated. Lt. Davis conducted the interview. Keith Henborne, Bethel Human Resources, observed via telephone.

In the April 20, 2018 interview, Sgt. Lee stated:

I finished my duty day. I got home. I went inside and changed my clothes. Went to the bathroom. She had gotten up and had driven off in my truck. I thought she was DUI. So, I called Eric on the telephone and asked him if he sees it to pull it over and if she’s DUI . . . I left my house. I saw her go by Nicholson’s which is near my house.

⁵⁸ Ex. AN.

⁵⁹ *Id.*

⁶⁰ *Id.*

⁶¹ *Id.* During the hearing Officer Pavil also testified BPD does not typically assist private citizens in personal civil disputes for return of property, although an officer might do so if nothing else were happening. Any DUI call should have a case opened. He would not have left Officer Cash at the station if he were responding to a crime report. He told Officer Cash that he was “going to help Sgt. Lee with something” as the excuse to leave him behind.

⁶² Ex. H; Testimony of A. Davis and B. Waldron.

⁶³ Ex. AO and AM.

⁶⁴ *Garrity v. New Jersey*, 385 U.S. 443 (U.S. 1987); *In re J.J. W.*, OAH Case No. 16-0216-POC (APSC 2017), Decision at 5.

Eric called me [and asked], “where is she going?” I think she is going to her mom’s.

Eric called me and said, “where are you?” I said, “I’m on Alder.” He approached the truck. I said, “Listen, I think she is DUI.”⁶⁵

During the administrative interview, Sgt. Lee claimed he explicitly told Officer Pavil on the scene that “she is drunk” before Officer Pavil went in the house to contact Ms. Evans. When Officer Pavil returned and basically informed him that Ms. Evans would not relinquish the keys, Sgt. Lee decided that meant Officer Pavil was satisfied she was not DUI. If Officer Pavil was satisfied, then he, Sgt. Lee, was also satisfied so he simply went home.⁶⁶

Sgt. Lee was given notice of termination on May 1, 2018. Sgt. Lee negotiated an agreement with the City of Bethel later in May 2018 that let him resign rather than face disciplinary action. The agreement specifically included a provision that the F-4 form⁶⁷ submitted to the Council would state : 1) he resigned in lieu of termination for “repeated policy violations;” 2) BPD did not recommend decertification; and 3) he was eligible for rehire.⁶⁸ In exchange for those concession, Sgt. Lee relinquished additional procedural and due process rights that included the right to an additional administrative appeal and the right to sue in State court.⁶⁹ The intent behind the negotiation was to permit Sgt. Lee to retain his certification and look for employment as a police officer elsewhere rather than litigate his retention at BPD where in his opinion his departure had clearly been sought since Chief Waldron’s arrival.⁷⁰

However, Chief Waldron did not comply with the terms of the agreement. Instead, after receiving notice of Sgt. Lee’s resignation, he filed an F-4 form with the Council that indicated Sgt. Lee had been under investigation, recommended decertification, and stated Sgt. Lee was not eligible for rehire at BPD.⁷¹ When Chief Waldron’s actions were brought to the attention of the city manager, Patty Burley, he refused to follow her directive and file an amended form to accurately reflect the negotiated agreement.⁷²

⁶⁵ Ex. AO and AM.

⁶⁶ *Id.*

⁶⁷ 13 AAC 85.090(b). The F4 is a personnel report that a police department sends to the council when an officer is no longer employed. The police department is required to disclose why the person is no longer employed.
Id.

⁶⁸ Testimony of Jason Roach and J. Lee.

⁶⁹ By this time numerous irregularities in the BPD internal investigation supervised by Chief Waldron had already been identified.

⁷⁰ Testimony J. Lee and J. Roach.

⁷¹ Ex. 6.

⁷² Testimony of J. Roach; Affidavit accompanying APSC Executive Director’s Subpoena and Record Updated para. 3.

III. Procedural Background

The Council's Executive Director filed a formal accusation against Sgt. Lee in February 2019.⁷³ It was amended on September 4, 2019. The accusation sought his decertification for both mandatory and discretionary reasons under 13 AAA 85.110(a) and (b) as well lack of good moral character under 13 AAC 85.010. The accusation recounted Sgt. Lee's failure to properly document the Ruger LCP and Coach change purse. It alleged that his conduct on April 6 and 7, 2018 constituted an abuse of power and that he was evasive and dishonest in the administrative investigation related to that misconduct.

In addition to describing the recent and discreet actions outlined above, the amended accusation also contained a catchall paragraph, paragraph 9, that described other instances of prior alleged misconduct for which Sgt. Lee had not been disciplined. Paragraph 9 essentially sets out additional basis for the Executive Director's argument Sgt. Lee Lacks good moral character and his conduct is detrimental to the reputation, integrity, and discipline of BPD. It recounts that "many Bethel Police Department employees believe that Respondent is dishonest" and then lays out specific instances in support of that conclusion.⁷⁴

The Executive Director submitted three counts of violation of certification standards based on the facts contained in the Amended Accusation. The counts alleged that Sgt. Lee's police certificate should be:

Count I. Revoked discretionarily because he resigned in lieu of termination from employment as a police officer for inefficiency, incompetence, or some other reason that adversely affects his ability and fitness to perform his job duties or that is detrimental to the reputation, integrity, or discipline of BPD pursuant to 13 AAC 85.110(a)(2);⁷⁵

Count II. Revoked discretionarily because Sgt. Lee's lacks the good moral character necessary to be a police officer pursuant to 13 AAC 85.010;⁷⁶ and

Count III. Mandatorily revoked because Sgt. Lee resigned in lieu of termination from employment as a police officer for conduct that would cause a reasonable person to have substantial doubt about Sgt. Lee's honesty, fairness, and respect for the rights of others or the laws, or that was detrimental to the integrity of BPD pursuant to 13 AAC 85.110(b)(3);⁷⁷

⁷³ OAH Case Referral Notice dated March 21, 2019.

⁷⁴ Amended Accusation ¶ 9.

⁷⁵ Amended Accusation ¶ 11; 13 AAC 85.110(a)(2).

⁷⁶ Amended Accusation ¶ 12; 13 AAC 85.110(a)(3); 13 AAC 85.010.

⁷⁷ Amended Accusation ¶ 13; 13 AAC 85.110(b)(3).

Sgt. Lee filed a notice of defense and requested a hearing.⁷⁸ The hearing was held October 1- 11, 2019. Sgt. Lee was represented by Mera Matthews of Gilmore & Cashion. The Executive Director was represented by Assistant Attorney General Stephanie Galbraith-Moore. Testimony was taken from multiple witnesses, including police officers Jean Achee, Robert Baty, Joseph Corbett, Amy Davis, Rosalie Gordon, Jerry Herrod, Eric Pavil, Michael Shawgo, Scott Kvittern, and Burke Waldron; dispatchers Natalie Hayes and Jenelle Evans; union representative Jason Roach; former prosecutor June Stein; and the appellant, Jeffrey Lee.

IV. Discussion

1. *The Statutory and Analytical Framework.*

The Alaska Police Standards Council (APSC) issues certificates to individuals who have completed the required training and possess the necessary qualifications to be a police officer.⁷⁹ Whenever an officer is terminated from employment or resigns in lieu of termination, a report known as an F-4, must be issued to the Council. The Council may revoke an officer's certification based on the contents of that report.⁸⁰ The test is whether the Council finds that the police officer no longer possesses the qualifications established in 13 AAC 85.110.⁸¹

The revocation, also known as decertification, can be due to mandatory or discretionary reasons. The Council has adopted regulations establishing grounds for mandatory⁸² and discretionary revocation.⁸³ The Council may also in its discretion revoke an officer's certificate if the officer is not "of good moral character."⁸⁴ In its regulations the Council has defined good moral character as:

⁷⁸ OAH Case Referral Notice dated March 21, 2019.

⁷⁹ AS 18.65.240.

⁸⁰ *Id.*

⁸¹ AS 18.65.240(c); 13 AAC 85.110(s)

⁸² 13 AAC 85.110(b)(3). "The council *will* revoke a basic, intermediate, or advanced certificate upon a finding that the holder of the certificate has been discharged, or resigned under threat of discharge, from employment as a police officer in this state or any other state or territory for conduct that would cause a reasonable person to have substantial doubt about an individual's honesty, fairness, and respect for the rights of others and for the laws of this state and the United States or that is detrimental to the integrity of the police department where the police officer worked."

⁸³ 13 AAC 85.110(a)(2) "The council *may* revoke a basic, intermediate, or advanced certificate upon a finding that the holder of the certificate has been discharged, or resigned under threat of discharge, from employment as a police officer in this state or any other state or territory for inefficiency, incompetence, or some other reason that adversely affects the ability and fitness of the police officer to perform job duties or that is detrimental to the reputation, integrity, or discipline of the police department where the police officer worked

⁸⁴ 13 AC 85.110(a)(3) The council *may* revoke a basic, intermediate, or advanced certificate upon a finding that the holder of the certificate does not meet the standards in 13 AAC 85.010(a) or (b). 13 AAC 85.010(a)(3) establishes a requirement for "good moral character." 13 AAC 85.010(b)

the absence of acts or conduct that would cause a reasonable person to have substantial doubts about an individual's honesty, fairness, and respect for the rights of others and for the laws of this state and the United States; for purposes of this standard, a determination of lack of “good moral character” may be based upon all aspects of a person's character.⁸⁵

Prior decisions by the OAH have considered the elements identified in the regulation – honesty, fairness, respect for the rights of others, and respect for the law – “collectively.”⁸⁶ 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.⁸⁷

At the hearing, the Executive Director has the burden of proof by a preponderance of the evidence.⁸⁸ The regulations treat a resignation under threat of discharge as the equivalent of termination for cause.⁸⁹ The language of 13 AAC 85.110(a) (discretionary action) and (b) (mandatory action), are substantially identical.⁹⁰ They provide alternative avenues to give the Executive Director, and thus the Council, options for determining which regulations should apply in particular fact situations.⁹¹

The accusation in this case sought both mandatory and discretionary revocation. Mandatory revocation may only take place if Sgt. Lee resigned in lieu of termination and the underlying conduct would cause a reasonable person to have substantial doubt about Sgt. Lee's honesty, fairness, and respect for the rights of others or the laws, or was detrimental to the integrity of the police department. Discretionary revocation may be appropriate if Sgt. Lee demonstrated a lack of good moral character or engaged in conduct that was inefficient, incompetent, or otherwise adversely affected his ability and fitness to perform his job duties or that was detrimental to the reputation, integrity, or discipline of the police department.

⁸⁵ 13 AAC 85.900(7).

⁸⁶ See *In re E.O.K.*, OAH Case No. 16-0383-POC (APSC 2016); *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).

⁸⁷ *In re E.O.K.*, *infra*.

⁸⁸ AS 44.62.460(e)(1).

⁸⁹ 13 AAC 85.100.

⁹⁰ See *In re Mattingly*, OAH No. 15-1088-POC, at 10 (APSC 2016); *In re Gutierrez*, OAH No. 14-1718-POC (APSC 2015). These were revocation, not denial, cases, but the same language is used for both.

⁹¹ *Mattingly*, at 10.

The phrase “in lieu of termination” as used in the regulations has import.⁹² In this case the only disciplinary allegation pending against Sgt. Lee in May 2018 and thus for which he potentially faced termination were the events of April 6-7, 2018 and the administrative investigation regarding them.⁹³

2. *Impropriety in the BPD Internal Investigation Would Not Affect the Decision in This Case.*

Sgt. Lee strenuously argued the BPD internal investigations were marred by bad faith and violations of his procedural due process rights. He argued actions by Chief Waldron and BPD during the OAH Administrative process further demonstrated bias and prejudiced his rights to a fair hearing. However, disciplinary actions by the Council are separate from disciplinary actions taken by police departments.⁹⁴ Nor was the Council a party to the agreement between Sgt. Lee and the City of Bethel. It was not bound by their negotiations regarding Sgt. Lee’s certification. Thus, any errors committed by BPD during its internal process do not impact the Council or ALJ’s decision making process.⁹⁵

That having been said, testimony of witnesses from BPD explaining their conduct and reasoning during the administrative investigations of Sgt. Lee was relevant to determinations of their overall credibility.

⁹² See, *In re E.O.K.*, OAH Case No. 16-0383-POC (APSC 2016), Decision at 16.

⁹³ Ex. B, p. 2. The April 6-7, 2017 event is specified as “the incident that lead to this notice.”

⁹⁴ See, 13 AAC 85.110(f); See also *Alaska Police Standards Council v. Parcell*, 348 P3d 882, 883 (Alaska 2015).

⁹⁵ It may well be that the Executive Director determines the F-4 should be amended to indicate whether its contents have been the subject of negotiation to avoid similar future issues. It must be noted that a comparable problem with F-4 submission lead to litigation in *Much v. Alaska Police Standards Council*, 2018 WL 1779323, 2018 IER Cases, 127, 225 (Alaska April 18, 2018).

3. *The Accusations Against Sgt. Lee Fell Within Three Categories:*

1. *Misconduct Alleged to Have Occurred Prior to June 2017*⁹⁶;
2. *Misconduct Related to His Collection of Evidence in September and November 2017*⁹⁷; and
3. *Misconduct Related to the Events of April 6-7, 2018 and the Subsequent Administrative Investigation*⁹⁸

i. *Alleged Misconduct Prior to June 2017 Does Not Establish a Basis for Discretionary Revocation of Mr. Lee's Police Certification.*

The September 4, 2019 amended accusation included paragraph 9 which addressed a series of events prior to Burke Waldron becoming Bethel police chief in June 2017. These allegations were a basis for Count II seeking discretionary revocation pursuant to 13 AAC 85.110(a)(3) due to an alleged “lack of good moral character.”⁹⁹ They may also relate to the discretionary request in Count I because Paragraph 9 also alleges the conduct is detrimental to the reputation, integrity and discipline of BPD.

The specific allegations in Paragraph 9 were that Sgt. Lee displayed unfitness for his position as police officer and lacked good moral character because 1) he urged another officer to change a police record; 2) he failed to respond appropriately to a serious call for service by “staying with his girlfriend in dispatch instead of providing back-up to an officer responding to a shots-fired call;” and 3) he contributed to a hostile work environment by name-calling a police dispatcher, making inappropriate enquires regarding other officers’ personal lives,¹⁰⁰ and making a false accusations that his confidential police file had been mishandled and reviewed.

The Executive Director also introduced testimony of former prosecutor June Stein to supplement the specific allegations in paragraph 9. The purpose of this testimony was to “rebut” the contents of a filing by Sgt. Lee’s counsel claiming he had not previously been accused of dishonesty.

⁹⁶ Amended Accusation dated September 4, 2019, ¶ 9.

⁹⁷ *Id.* at ¶ 3 and 4.

⁹⁸ *Id.* at ¶ 5-7.

⁹⁹ 13 AAC 85.900(7). (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.”)

¹⁰⁰ The testimony on this point and Sgt. Lee’s vacation plans was practically non-existent and will not be discussed.

The Executive Director failed to meet his burden of proof to demonstrate that the allegations in paragraph 9, singly or collectively, demonstrate a lack of good moral character or unfitness for employment as a police officer.

First, the Executive Director produced no evidence that Sgt. Lee urged another officer to change a police report or failed to respond to a call for back-up during a shots-fired call because he stayed in dispatch with his girlfriend. Lt. Davis did not testify she was directed to alter a police report; she merely testified Mr. Lee on one occasion in 2011 during her field training told her that he thought the description in her report was incorrect.¹⁰¹

Likewise, Officer Scott Kvitern, the witness called to establish the claim Sgt. Lee failed to respond to a dangerous call because he was flirting with Ms. Evans, testified he had no idea whether Ms. Evans was working the night in question. His recollection was that there was a call of shots fired. He could not recall whether the report was shots fired at someone or only discharged. He could recall that no one was hurt, and no arrest was made. He testified Sgt. Lee was normally very reliable as a back-up officer. He did not know the reason Sgt. Lee did not respond on the one occasion or whether he was engaged in other work which prevented him from doing so.¹⁰² Officer Kvitern was clearly disappointed in Sgt. Lee's failure that evening, but his testimony did not establish that Sgt. Lee neglected his duties due to personal reasons.

Second, the assertion that Sgt. Lee did not respond to as many calls or write as many reports as other officers was belied by the statistical evidence.¹⁰³

Third, the allegation that Sgt. Lee called his co-worker an unacceptable slur does not rise to the level of deficient morale character or lack of fitness to justify decertification. Sgt. Lee did describe a female co-worker, Natalie Hayes, as a "bitch" to another officer. He did so after Ms. Hayes criticized his morals and personal relationships to other BPD employees and encouraged his girlfriend to end their relationship.¹⁰⁴ Ms. Hayes, however, believed he was capable of sufficiently mature conversation and reflection that she spoke to directly to him about his conduct.¹⁰⁵ He apologized as a result.¹⁰⁶ Given the totality of circumstances surrounding the

¹⁰¹ Testimony of A. Davis.

¹⁰² Testimony of S. Kvitern.

¹⁰³ Ex. 29.

¹⁰⁴ Testimony of J. Lee. In her own testimony, Ms. Hayes admitted she did those things because she had strong moral feelings about men who cheat on their wives.

¹⁰⁵ Testimony of N. Hayes.

¹⁰⁶ Testimony of J. Lee.

BPD work environment, a reasonable person would not form a substantial doubt regarding Sgt. Lee's good moral character based on the interaction described.¹⁰⁷

Fourth, while the Executive Director alleged that a statement by Sgt. Lee that he believed someone improperly accessed certain employment records was evidence of Sgt. Lee's dishonesty, it appears BPD did in fact mishandle a portion of Sgt. Lee's confidential file. Lt. Davis testified she heard gossip that Sgt. Lee accused her of accessing his confidential file. She confronted him. Sgt. Lee told her he did not suspect she had done so. He believed it was possible Natalie Hayes or another dispatcher accessed a portion of his confidential employment file based on information they relayed to Ms. Evans. He investigated and found materials, which should have been in his confidential file, had mistakenly been placed in his regular personnel file. Other than correcting that problem, he told Lt. Davis he felt had little recourse since the information had already been made public.¹⁰⁸ Sgt. Lee's genuine personal belief is not an indication of dishonesty.

Fifth, the fact that a representative from the Bethel District Attorney's Office on one occasion several years in advance of Sgt. Lee's resignation advised him to take greater care with details in his testimony and written reports does not indicate either specific or general dishonesty by Sgt. Lee. Nor does the prosecutorial decision to decline to expend significant resources fighting a notoriously aggressive criminal defense attorney. Ms. Stein's testimony did not confirm the characterization of events advocated by the Executive Director.¹⁰⁹ Contrary to the Executive Director's assertions, Ms. Stein specifically testified she did not believe Sgt. Lee committed perjury. She did believe there were discrepancies in his testimony that could be leveraged by capable defense counsel. She advised Sgt. Lee to be more careful and relayed that she would closely scrutinize his future cases to insure he was.¹¹⁰

¹⁰⁷ Evidence at the hearing clearly established many of the employees at BPD were dissatisfied with their working conditions and disliked their co-workers. It was not uncommon for BPD employees to refer to one another in unflattering and vulgar terms. Several current BPD officers admitted they, too, described work colleagues using the word "bitch" or other profanities. Testimony of A. Davis, and E. Corbett.

¹⁰⁸ Testimony of A. Davis.

¹⁰⁹ It is improbable that the City of Bethel or BPD interpreted Ms. Stein's comments at the time as an accusation of dishonesty. Had it been so interpreted, it would reasonably follow that an administrative investigation would have been done at the time and Sgt. Lee would not have been rehired in 2016.

¹¹⁰ Testimony of J. Stein. [It is important prosecutors be able to educate officers and improve performance. The investigatory portion and the adversarial portion of the criminal justice system serve very different functions, however. Thus, care should be used so that challenges to an officer's reporting accuracy by aggressive criminal defense attorneys or the filing of motions seeking suppression or dismissal are not permitted to substitute for the professional standards set by regulation.]

Thus, overall, the Executive Director failed to produce sufficient evidence to establish generalized dishonesty or incompetence as alleged in paragraph 9 of the Amended Accusation. The acts, whether singly or in concert, do not rise to a level that would cause a reasonable person to have “substantial doubt” about Sgt. Lee’s honesty, integrity, or respect for the rights of his fellow BPD employees, or for the law. The Executive Director, therefore, did not meet his burden of establishing that the APSC should revoke Sgt. Lee’s police certification under the discretionary standards in 13 AAC 85.110(a)(2) or (3) based on the allegations in paragraph 9. Moreover, even if the purpose of the allegations in paragraph 9 was simply to lend further support for revocation based on other bad acts, the evidence here adds very little to the overall conclusion of Sgt. Lee’s good moral character.

ii. Misconduct Related to Sgt. Lee’s Collection of Evidence in September and November 2017 Does Not Establish a Basis for Discretionary Revocation of Sgt. Lee’s Police Certification.

Sgt. Lee did not resign in lieu of termination as discipline for his collection of evidence in September or November 2017.¹¹¹ He received a two-day suspension for those matters on January 18, 2018.¹¹² Those events may, therefore, only form the basis for discretionary revocation under 13 AAC 85.110(a)(2) for “for inefficiency, incompetence, or some other reason that adversely affects [the officer’s] ability and fitness to perform his job duties or that is detrimental to the reputation, integrity, or discipline” of the police department.

Sgt. Lee’s failure to log the Coach change purse appears to have been the result of a simple factual mistake on his part. In the brief time, he saw the item before it was taken by Officer Corbett, he assumed it belonged to Garrick Knight, the victim. He wrote his initial report and complaint based on that assumption. He wrote subsequent reports to correct that mistake.¹¹³

The Executive Director argued the reports indicated Sgt. Lee was dishonest in his description of events. This is a matter of interpretation. The records read as a whole do not reveal a conflict or dishonesty. Sgt. Lee consistently reported he believed the “wallet” he observed near Mr. Knight’s body belonged to Mr. Knight. His initial report said so. His oral statement to Lt. Davis less than 48 hours after the crime did so; at the hearing Lt. Davis testified that even in hindsight she did not doubt that when Sgt. Lee spoke to her about “the wallet,” he

¹¹¹ The Ruger LLCP seized during J. Edwards arrest for DUI and MIW4 and the Coach coin purse found near Garrick Knight.

¹¹² Ex. E.

¹¹³ Ex. 25 and 26; Testimony J. Lee.

meant the Coach change purse and believed it belonged to the victim.¹¹⁴ His sworn statement in support of the contemporaneous complaint and warrant said the same.

Sgt. Lee was wrong. He was mistaken as to the nature of the item. However, Lt. Davis' attempt to read the supplemental materials filed after Sgt. Lee was informed of the error as dishonest relies on a strained interpretation of events and grammar. At worst, there was a miscommunication compounded by Lt. Davis' decision to interpret the information in the light least favorable to Officer Lee. A reasonable person would not have a substantial doubt of Sgt. Lee's honesty, fairness or respect for others or the law based on this error.¹¹⁵

The failure to carefully collect and log the Ruger LCP handgun was more troubling. However, it appears that during the relevant time frame BPD had problems properly tracking seized firearms and documenting evidence in general. Testimony at the hearing established that Sgt. Lee was only one of several officers who were disciplined for similar collection problems involving firearms, evidence related to sexual assaults, and other serious crimes.¹¹⁶ In addition, BPD's failure to have safety protocols in place for personal weapons and general weapons storage significantly contributed to the error in this case.¹¹⁷

Sgt. Lee was disciplined for his failure to properly submit the firearm to evidence. This error does not establish a pattern of incompetency or conduct otherwise detrimental to the reputation of BPD. Given the overall context in which this error occurred a reasonable person would have concerns about the BPD system existing in 2016 but that concern would not be isolated to Sgt. Lee. As a result, discretionary revocation is not warranted. Here, too, the evidence adds little to the overall analysis as to whether Sgt. Lee's certificate should be revoked.

iii. *Misconduct Related to Sgt. Lee's Actions on April 6-7, 2018 and in the Subsequent Administrative Investigation Does Form the Basis for Mandatory and Discretionary Revocation of His Police Certification*

a. Sgt. Lee Lacked Credibility

Sgt. Lee did face potential termination for the events of April 6-7, 2018 and the subsequent investigation. There was no legitimate dispute that he resigned in lieu of

¹¹⁴ Testimony of A. Davis.

¹¹⁵ Nor did the Executive Director establish a pattern of such mistakes that would lead to a finding of general incompetency. A reasonable person would support some form of discipline but decertification is not warranted.

¹¹⁶ Testimony of J. Lee, A. Davis, and J. Corbett.

¹¹⁷ Testimony at the hearing demonstrated BPD instituted new evidence collection protocols and improved overall standards regarding chain of custody after December 2017.

termination.¹¹⁸ Therefore, he is subject to either discretionary revocation (Count 1) or mandatory revocation (Count III) if the facts show his pending termination was due to a cause described in the regulations as warranting decertification. The Executive Director sought to decertify Sgt. Lee for dishonesty regarding the events of April 6 and 7, 2018, not incompetence or inefficiency. Dishonesty is a listed cause in the regulations warranting revocation under all three counts in the Amended Accusation.

The question for resolution, therefore, is whether Sgt. Lee was dishonest in either 1) his claim the calls to Officer Pavil were to report a DUI rather than request a favor for assistance in the return of his truck keys or 2) during the subsequent administrative investigation. Dishonesty on either of those questions would adversely demonstrate an inability and lack of fitness to perform his job duties or that would be detrimental to the reputation, integrity, or discipline of BPD. Dishonesty would indicate misuse of authority, lack of overall integrity, and lack of good moral character.

Police officers occupy positions of “great public trust and high public visibility” and the government has a “significant interest in preserving public confidence in its police force.”¹¹⁹ Minor acts of dishonesty may support decertification.¹²⁰ A single instance of misconduct can be sufficient to support decertification.¹²¹ When the dishonesty results in misuse of office, the misconduct is especially egregious.¹²²

Thus, what happened on April 6 and 7, 2018 is determinative of the question regarding Sgt. Lee’s certification. That matter is resolved by weighing the testimony of only two witnesses: Eric Pavil and Jeffrey Lee. Having had the opportunity to listen to both witnesses, compare their testimony to the audio and video evidence, and evaluate their relative sincerity, this decision concludes Eric Pavil was a significantly more credible witness.

Both Officer Pavil and Sgt. Lee’s recorded administrative investigation interviews were part of the record.¹²³ They each provided additional testimony at the hearing.

At the hearing Officer Pavil’s testimony essentially recounted the same information he relayed during his administrative interview. He again testified that Sgt. Lee told him at shift

¹¹⁸ Ex. B, p. 2. The April 6-7, 2017 event is specified as “the incident that lead to this notice.”

¹¹⁹ *In re Gutierrez*, OAH Case No. 14-1718-POC (APSC 2014) citing *Gilbert v. Homer*, 520 U.S. 924 (1997).

¹²⁰ *Id.* at 889.

¹²¹ *Parcell*, 348 P.3d at 888.

¹²² *In re Much*, OAH Case No. 13-0288-POC (APSC 2014) *affirmed Much v. Alaska Police Standards Council, infra.*

¹²³ Ex. AM, AN, and AO.

change near 7:00 a.m. that Ms. Evans had been drinking the night of April 6, 2017. Sgt. Lee subsequently called him at 10:23 a.m. on his cell phone for assistance obtaining his truck keys. Sgt. Lee asked him to leave Officer Cash behind, and he did so. Sgt. Lee never asked him to stop Ms. Evans or said he suspected she was DUI.¹²⁴ Officer Pavil testified at the hearing just as he had in his administrative interview: Sgt. Lee only sought retrieval of the truck keys.¹²⁵

Sgt. Lee's description of the telephone calls differed from Officer Pavil in all fundamental regards. He denied he ever asked Officer Pavil to leave Officer Cash at the station. He was primarily concerned with the danger Ms. Evans might present as DUI, not return of his truck keys.¹²⁶ Thus, there was conflict between Sgt. Lee's testimony with Officer Pavil.

His testimony at the hearing also differed from his statements during the administrative process. During his initial administrative interview, Sgt. Lee stated he told Officer Pavil that Ms. Evans was DUI in their first telephone call at 10:23 a.m. He stated he specifically told Officer Pavil to stop the truck if he saw it. He also specifically told Officer Pavil before he entered the house on Alder Street, that Ms. Evans was "drunk."¹²⁷ He did not, however, directly maintain these details in his testimony at the hearing. Thus, there was conflict between Sgt. Lee's testimony at the hearing and the contents of his administrative reviews.

Sgt. Lee significantly changed and amplified his version of events at the hearing, emphasizing the conflict between his hearing testimony and his statements during the administrative investigation. In his April 20, 2017 administrative interview, Sgt. Lee merely told Lt. Davis he went home after work, went to the bathroom, and then Ms. Evans left in his truck.¹²⁸ In contrast, at the hearing he testified that he did not go straight home from work the morning of April 7, 2019. Instead, he drove out to a private shooting range where he spent time preparing for upcoming firearms certification.¹²⁹

He arrived home around 9:45 a.m. After he arrived home, he saw Ms. Evans "passed out." He could smell the odor of stale alcohol around her. She was snoring as she does after she has been drinking heavily. He started to make repairs around the house. He was not quiet. She awoke as a result. They spoke briefly during which time he observed she had blood-shot watery

¹²⁴ Ex. AN.
¹²⁵ Testimony of E. Pavil.
¹²⁶ Testimony of J. Lee.
¹²⁷ Ex. AM and AO.
¹²⁸ *Id.*
¹²⁹ Testimony of J. Lee.

eyes, impact on her speech, and a staggering gait. When she has been drinking she has two speeds: “reckless and angry.” She appeared both. She took the truck keys and drove away.¹³⁰

He called Officer Pavil on his personal telephone because he was concerned calling 911 would take too long to get the DUI investigation underway. He explained that BPD had a number of less experienced dispatchers so there could have been a delay reaching Officer Pavil. He testified he impliedly reported Ms. Evans as a DUI in the 10:23 a.m. call. He admitted he did not provide details of his observations from his home that morning during that call but stated his opinion that Officer Pavil should have understood the risk due to their 7:00 a.m. conversation.¹³¹

It is important to note again that the narrow inquiry here is whether it was believable that Sgt. Lee called Officer Pavil on his personal telephone to prompt an official investigation into the possibility that Ms. Evans was committing a crime. This decision concludes he did not.

Sgt. Lee was not a credible witness. Many of the details Sgt. Lee testified to at the October 2019 hearing were not relayed to Lt. Davis and the union representative in April 2018. He did not tell them that he went to the shooting range for several hours rather than driving straight home. He did not describe his multiple observations of Ms. Evans in the home before she drove away in his truck. The fact that Sgt. Lee did not provide the additional information during the administrative interview does not mean it is not true, but the failure demonstrates he was not appropriately or entirely forthcoming at the time.

More importantly, though, there were several other reasons not to believe his testimony. Sgt. Lee testified at the hearing that because he told Officer Pavil near 7:00 a.m. that Ms. Evans had been drinking, Officer Pavil should have understood the request for assistance to get the keys was a subtle way of reporting a fear Ms. Evans was DUI. Sgt. Lee stated he did not provide the details of his observations both because he did not want to unduly influence Officer Pavil’s independent determination of impairment and, alternatively, it was possible he failed to relay that information because he panicked. The fact that he failed to relay any of his observations to Officer Pavil strongly undercut the credibility of his statement he was making a DUI report in the 10:23 a.m. or 10:30 a.m. telephone calls.

It was patently implausible that an experienced officer reporting a DUI would not include the important details of his recent observations. It would be critical to relay information regarding current signs of impairment rather than rely on hours-old potentially stale information.

¹³⁰ Testimony of J. Lee.

¹³¹ *Id.*

It was similarly unlikely that if Sgt. Lee were reporting a crime, he would fail to give that information to Officer Pavil-- whom he described as forgetful and non-detail oriented—but instead rely on Officer Pavil to make correct inferences from prior information. Likewise, it was unbelievable that Sgt. Lee would panic making a DUI report and remain in that state from the time of the first call until he met Officer Pavil at Alder Street.

This decision concludes that Sgt. Lee did not tell Officer Pavil to stop Ms. Evans's truck during the 10:23 a.m. telephone call as he stated during his administrative interview. Nor did he tell Officer Pavil on-scene that Ms. Evans was drunk. This decision concludes Sgt. Lee did not mention the possibility Ms. Evans was DUI to Officer Pavil during their telephone calls or initial contact at Alder Street. Sgt. Lee was not reporting a crime.

Had Sgt. Lee done so, there is no doubt that Officer Pavil's approach to Ms. Evans would have been different. Officer Pavil did not follow any of the procedures or ask any of the questions that are part of a typical DUI investigation. His failure to do so indicates the crime was not reported to him. Sgt. Lee's conduct at the scene when Officer Pavil exited the house confirms that conclusion. Sgt. Lee, who testified at the hearing that Ms. Evans was staggering drunk when she left their home, did not ask how or why Officer Pavil apparently concluded in mere seconds that she was not impaired. Some follow-up by Sgt. Lee would be natural if he had just reported Ms. Evans as DUI given the concerns he described.

This decision also concludes Sgt. Lee did request Officer Pavil not bring Officer Cash with him to Alder Street. Had a DUI report been made, Officer Cash should have been present at part of the recruit training process. It is not credible that Officer Pavil on his own initiative decided to leave Officer Cash behind and then essentially ignore a request by his supervisor to properly investigate a DUI. Certainly, no motive for him to do so was suggested.

Those actions coupled with calling Officer Pavil's private telephone rather than 911 lead to the conclusion a he was not making a legitimate crime report. Instead, Sgt. Lee was seeking assistance from an on-duty officer with either a civil matter involving return of personal property or help with a domestic dispute outside proper police channels. This was a misuse of his authority. Sgt. Lee was thereafter evasive and not candid during the administrative and hearing processes.

b. Sgt. Lee's Use of a Subordinate Officer to Assist Him in a Personal Matter and Lack of Credibility Meet the Standards of 13 AAC 85.110(b)(3) and 13 AAC 85.110(a)(2) and (3)

For decertification to be appropriate, once the misconduct has been established, the Executive Director must prove that the acts or omissions raise substantial doubt about the officer's honesty, fairness, and respect for the rights of others or the laws, or was detrimental to the integrity of the police department.¹³² These characteristics must be defined carefully to avoid opening the door for selective or arbitrary enforcement.¹³³ In cases like this care must also be taken to ensure the allegation is not used a pretext for personal dislike or animus or mere dissatisfaction with performance standards.

Honesty is defined as "adherence to facts, freedom from duplicity, truthfulness, sincerity."¹³⁴ Sgt. Lee was not honest.

"Fairness" as used in 13 AAC 85.900(9) means "marked by impartiality and honesty, free from self-interest, prejudice or favoritism."¹³⁵ Sgt. Lee's conduct was unfair. "Personal use of states resources in manners not allowed to the public is always unfair."¹³⁶ Sgt. Lee placed a subordinate officer in the position of performing his patrol duties as assigned or complying with a request from a direct supervisor; that was unfair. Not every unfair act would raise a substantial doubt of an officer's fitness or warrant revocation of a certificate, but the misconduct here falls within hard-core prohibitions.

Respect for the rights of others and respect for the law are analyzed together as the elements are similar.¹³⁷ Sgt. Lee disregarded a boundary no law enforcement officer of good moral character would overlook. He misused police resources for his own and a family member's benefit. He placed a subordinate officer in an untenable situation and interrupted the training of a recruit officer. The public and the department were both damaged from the perception that the police enforced two sets of rules: one for themselves and one for everyone else. He was less than forthcoming during the investigation, and less than candid with the final

¹³² *Id.*

¹³³ *See, e.g. In re. E.X.*, OAH Case No. 13-0473-POC (APSC-2013), Decision at 17. (Discussing same terms used in good moral character context,

¹³⁴ *Id. citing Webster's New World Dictionary at 1086 (1986 Unabridged).*

¹³⁵ *In re EX, supra*, Decision at 20.

¹³⁶ *Id.* at 21.

¹³⁷ *Id.*

tribunal. A reasonable person would have substantial doubts regarding his ability to respect the rights of others and the law.

The final step is to ask whether based on these acts and omissions the Council should revoke Sgt. Lee's certification for mandatory (Count I) or discretionary (Count II) reasons. At the hearing Sgt. Lee argued that he did not deserve lose his certification; he is a better officer than the allegations make it appear. He and his witnesses described numerous accomplishments as a police officer and a person.

Sgt. Lee has a history of service to his country. He has demonstrated care for his fellow officers and taken steps for the good of the department. For example, he routinely covered extra shifts and monitored the police radio in case assistance was needed; he developed a protocol to for dispatch to prioritize calls; he made sure reports for small crimes against local merchants were promptly written even though the likelihood of prosecution was small; he developed a NARCAN response to reduce overdose death; and more. His experience as an EMT III and firearms expert were of great value to BPD.

Sgt. Lee did good works for the community. His community outreach as the "Lollipop Cop" was remarked on by several witnesses, including his detractors. Local social workers were aware that his home was always open to infants and children in need of aid. He received numerous commendations and awards. He and his supporters argued that this conduct was more representative of his character than the incident involving his girlfriend's potential DUI and statements during the investigation.

Sgt. Lee's service to the community of Bethel is commendable. In addition, it does not escape notice that these events took place during a difficult period in his life. Sgt. Lee is not the first police officer nor will he be the last to experience professional difficulties and poor judgment during a time of personal upheaval or when romantically involved with a person who abuses alcohol. Nor is he the first officer to find his skills a poor match with a new administration. The test here is not whether on balance Sgt. Lee has been a good police officer or whether he would make similar future mistakes. The question is whether the conduct he committed would cause a reasonable person to have substantial doubt about his honesty, fairness, respect for the rights of others or respect for the law.

Here, Sgt. Lee resigned under threat of discharge for abuse of office and dishonesty in the underlying investigation. His conduct has been such as to "cause a reasonable person to have substantial doubt about [his] honesty, fairness, and respect for the rights of others and for the

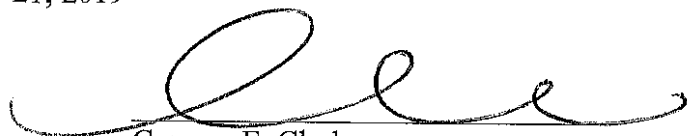
laws of this state and the United States or that is detrimental to the integrity of the police department where [he] worked. Mandatory revocation of Sgt. Lee's certificate is required pursuant to 13 AAC 85.110(b)(3).

The facts as determined also justify discretionary decertification pursuant to 13 AAC 85.110(a)(2) and (3). Here, a substantial doubt about Sgt. Lee's honesty, fairness, and respect for the rights of others and respect for the law was established in how he requested assistance in a personal matter on April 6-7, 2018 and, more importantly, how he subsequently attempted to justify that conduct during the following internal administrative interviews and in his testimony at the hearing. Good cause for discretionary revocation under 13 AAC 85.100(a)(2) was established. The totality of the evidence also supports a finding that he lacked good moral character as defined in 13 AAC 85.010.

IV. Conclusion

This decision concluded that Sgt. Lee called Officer Pavil for "a favor." Sgt. Lee provided incomplete and dishonest answers regarding his conduct during the investigative process. He resigned in lieu of termination for the conduct. The Executive Director met his burden of showing that mandatory revocation is required under 13 AAC 85.110(b)(3) and discretionary revocation of Sgt. Lee's police certificate is appropriate under 13 AAC 85.010(a)(3). The Executive Director's request for revocation of Sgt. Lee's certificate is therefore granted.

Corrected Opinion Dated: January 21, 2019

A handwritten signature in black ink, appearing to read 'C. Clark', written over a horizontal line.

Carmen E. Clark
Administrative Law Judge

3. The ALASKA POLICE STANDARDS COUNCIL, in accordance with AS 44.64.060(e)(4), rejects, modifies or amends one or more factual findings as follows, based on the specific evidence in the record described below:

by striking the two sentences on page 14 beginning with "As a result this decision concluded that Burke Waldron's testimony..." and ending with "... reliance on testimony by Chief Waldron," from the decision as being unsupported by the record and to otherwise adopt the decision as final.

Judicial review of this decision may be obtained by filing an appeal in the Alaska Superior Court in accordance with AS 44.62.560 and Alaska R. App. P. 602(a)(2) within 30 days after the date of distribution of this decision.

DATED this 5th day of March, ~~20XX~~, 2020

By:  Justin Doll (Mar 10, 2020)

Signature

Justin Doll

Name

APSC Chairman

Title

4. The ALASKA POLICE STANDARDS COUNCIL, in accordance with AS 44.64.060(e)(5), rejects, modifies or amends the interpretation or application of a statute or regulation in the decision as follows and for these reasons:

Judicial review of this decision may be obtained by filing an appeal in the Alaska Superior Court in accordance with AS 44.62.560 and Alaska R. App. P. 602(a)(2) within 30 days after the date of distribution of this decision.

DATED this _____ day of _____, 201__.

By: _____

Signature

Name

Title