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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON, COUNTY OF KING

B.T. ROBERT MAHONEY

Petitioner,

vs

CITY OF SEATTLE,

Respondent.

CAUSE No. 09-2-35154-6 SEA

MEMORANDUM DECISION

The Commission Applied the Current Burden of Proof at the Hearing

Officer Mahoney appealed the disciplinary decision to the Public Safety Civil Service Commission. As such, he was entitled to a public hearing under SMC 4.08.100. At such a hearing, the Seattle Police Department (Department) bears the burden of proving that the disciplinary decision "was made in good faith for cause." SMC 4.08.100(A). The Department is required to prove these requirements by a preponderance of the evidence. PSCSC Rule 6.21.

Officer Mahoney contends the Commission failed to apply the preponderance of the evidence burden of proof. Instead, he contends the Commission applied a deferential standard, determining whether the Chief of Police had substantial evidence to justify discipline.

MEMORANDUM DECISION

Judge Paris K. Kallas
King County Superior Court
516 3rd Avenue W 965
Seattle, WA 98104
(206) 296-9105

1 The argument fails. The Commission accurately stated the burden of proof at the outset
2 of the *Amended Findings of Fact, Conclusions of Law and Order (Amended Order)*, at page 2,
3 lines 1-4. In addition, in the Conclusions of Law and Decision, the Commission plainly found
4 that the Department carried the burden of proof in some regards and failed to meet the burden in
5 other regards. *Amended Order*, page 5, conclusion 14; page 6, conclusion 20; page 6, lines 5-11.
6 Thus, the *Amended Order* reveals the Commission was aware of and applied the preponderance
7 of the evidence standard. And although the Commission further determined that the Chief acted
8 on substantial evidence, this determination was made in the context of the non-exclusive factors
9 the Commission considers in assessing whether the Department carries its burden of proof.
10 *Amended Order*, page 2, lines 5-16.

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14 ***Under the Facts of this Case, a Higher Quantum of Proof is not Required***

15 Officer Mahoney next argues that even if the preponderance of the evidence standard was
16 properly stated and applied, it is too low a burden given the reputational harm at stake for Officer
17 Mahoney. He contends he is entitled to a higher standard of proof under *Nguyen v. State*, 144
18 Wn.2d 516 (2001) and *Ongam v. Department of Health*, 159 Wn.2d 132 (2006).

19
20 But Respondent correctly responds that the Washington courts have declined to extend
21 *Nguyen's* higher standard to other contexts. See e.g., *Eidson v. Department of Licensing*, 108
22 Wn. App. 712 (2001); *Hardee v. DSHS*, 152 Wn. App. 48 (2009), review granted; *Kraft v.*
23 *DHSH*, 145 Wn. App. 708 (2008). For example, the *Eidson* Court distinguished proceedings
24 that revoke a professional license from those that relate to loss of a specific job. The Court
25 further addressed the nature of the profession at issue, noting that a less stringent standard "is
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MEMORANDUM DECISION

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1 more protective of the public interest in individual life and health.” *Id. at 719, citing Gandhi v.*
2 *State Medical Examining Board*, 483 N.W.2d 295, 301 (1992).


3
4 Here, Officer Mahoney was neither terminated from his position nor subject to state
5 revocation proceedings under RCW Chapter 43.101. Instead, he was subject to a disciplinary
6 transfer and 30-day suspension. And given the nature of the law enforcement profession and the
7 impact on public safety and confidence, a less stringent standard protects the public interest. So
8 although the allegations pose a threat to Officer Mahoney’s reputation, this alone does not justify
9 the *Nguyen* evidentiary standard.
10

11 ***Substantial Evidence Supports the Commission’s Factual Findings***

12 Officer Mahoney argues that insufficient evidence supports the Commission’s finding
13 regarding notice. But substantial evidence supports the finding that Officer Mahoney had notice
14 and knowledge that inappropriate contact with an Explorer would result in disciplinary action.
15 To the extent the Commission’s finding may be read to further imply that such a ban is expressly
16 contained in the Department Manual, Officer Mahoney correctly challenges the finding. There is
17 no such evidence in the record. Nonetheless, the remainder of the finding is factually supported.
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20 Officer Mahoney also argues there is no substantial evidence that the Chief applied
21 discipline even-handedly. The argument fails for the reasons set forth by Respondent.
22

23 DATED this 29th day of April 2010.

24 
25 _____
26 Honorable Paris K. Kallas
27 Chief Civil Judge
28

29 MEMORANDUM DECISION

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