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**CITY OF SEATTLE
PUBLIC SAFETY CIVIL SERVICE COMMISSION**

IN RE THE APPEAL OF:)	
)	
ARLANDI A. MUHAMMAD,)	
)	NO: 06-002
Appellant,)	
)	FINDINGS OF FACT,
vs.)	CONCLUSIONS OF LAW,
)	AND ORDER
CITY OF SEATTLE, SEATTLE POLICE)	
DEPARTMENT,)	
)	
Respondent.)	
)	

I. INTRODUCTION

The Commission heard this matter pursuant to a Notice of Appeal filed by Officer Arlandi A. Muhammad. Officer Muhammad’s conduct is not in factual dispute. Chief of Police Kerlikowske ultimately concluded that Officer Muhammad failed to meet the Department’s standards as reflected in its rule entitled “Failure to Exercise Appropriate Judgment and Discretion”. The Chief decided that a disciplinary transfer from the assignment of detective to patrol officer was the appropriate discipline.

Officer Muhammad timely appealed to this Commission. The Commission held a full evidentiary hearing on November 14-16, 2006 before Commissioners Bown, Johnson, and Nark,

1 with Commissioner Nark acting as Presiding Officer. The record closed on December 4, 2006.

2 Attorney Hector Steele Rojas of Northwest Law Center, PLLC, represented Officer
3 Muhammad. Dan Berger, Assistant City Attorney, represented the Police Department
4 (Department). After considering the evidence in this case, including the testimony,
5 documentary evidence, and arguments of the parties and their representatives, the Commission
6 unanimously enters the following Findings of Fact, Conclusions of Law, and Order.

7 **II. BURDEN OF PROOF**

8 PSCSC Rule 6.21 provides as follows:

9 BURDEN OF PROOF. At any hearing on appeal from a demotion, suspension,
10 or termination, the disciplining authority shall have the burden of showing that its
11 action was in good faith for cause. At any other hearing, the petitioner or
appellant shall have the burden of proof by a preponderance of the evidence

12 It is undisputed that the disciplinary action at issue is a transfer and that Officer
13 Muhammad bears the burden of proving by a preponderance of the evidence that the disciplinary
14 transfer was not in good faith for cause.

15 **III. ISSUES**

16 The Department based its disciplinary action on its view that Officer Muhammad violated its
17 rule regarding "Failure to Exercise Appropriate Judgment and Discretion". The issues in the
18 appeal are: 1) Is that rule reasonable? 2) Did Officer Muhammad violate the rule? 3) If he did,
19 was a disciplinary transfer proportionate to the misconduct? and, 4) Was a disciplinary transfer
20 consistent with discipline imposed in prior comparable cases?

21 **IV. FINDINGS OF FACT**

22 The following findings of fact, mostly undisputed, are based upon testimony and exhibits
23 offered at the hearing, and the Proposed Findings of Fact submitted by the parties.

1 1. Officer Muhammad is a twenty-year veteran of the Department employed as a Police
2 Officer since May, 1986. He was first assigned to be a detective in approximately 1990, and has
3 served in that assignment for about 12 of his 20 years on the force. The balance of his
4 employment has been as a uniformed patrol officer.

5 **A. The Discharge of Detective Muhammad's Firearm**

6 2. On the afternoon of August 16, 2005, Officer Muhammad visited the apartment of a
7 friend, Krisztina Brieska, located in the City of Lynnwood, Washington. Officer Muhammad was
8 off-duty. He was carrying his duty weapon with him, a .45 caliber handgun.¹ Sometime shortly
9 after 6 p.m. he decided to go get something to eat at a nearby pizza place. Officer Muhammad
10 testified that he placed the gun, which was not in a holster, on top of a stack of phonebooks in a
11 cabinet above Ms. Brieska's refrigerator.

12 3. While Officer Muhammad was out of the apartment, Ms. Brieska stood on a chair in
13 front of the refrigerator in order to remove a phone book from the cabinet. She stated that as she
14 reached into the cabinet, she grabbed the gun with her right hand. She picked up the phone book
15 with her left hand. She further testified that as she was holding these items she stepped down to
16 the floor, in an approximately northeast direction.

17 4. She stated that as she was holding these two items she began to lose her grip on the
18 phone book in her left hand. She testified that she reached for the book using her right hand
19 carrying the gun to prevent dropping the book. She then accidentally fired the gun.

20 5. Ms. Brieska lived in apartment P-2 in Building P, which consists of five apartments.
21 The front door to her apartment leads immediately to a flight of stairs. Other than the entryway
22 and these stairs, the rest of her apartment is located on the second floor of the building.
23

1 6. The line of trajectory of the bullet was in an upward and southeasterly direction.
2 The bullet passed through the east wall of Ms. Brieska's second-floor apartment and entered into
3 the west wall of her neighbor's bedroom in apartment P-4. This was the apartment of Mark
4 Tarabochia. The round passed through the common wall, entered Mr. Tarabochia's bedroom,
5 continued across the bedroom, exited out the south wall of bedroom, and then exited the
6 apartment building.

7 7. Officer Muhammad was on his way back to the apartment when he heard the shot.
8 He arrived shortly and Ms. Brieska explained the incident to him.

9 8. Officer Muhammad then went to check on the neighbors. He first went downstairs
10 and knocked on the door of Apartment P-3. This apartment is on the first floor, below and to the
11 east of Ms. Brieska's apartment. Officer Muhammad spoke with the woman who lived there,
12 Ms. Hills. He asked her whether she heard a gunshot. She responded that she thought it was a
13 firecracker. He did not explain to her that a firearm had been discharged in a neighboring
14 apartment. He asked Ms. Hills whether she was okay and she responded that she was. He then
15 departed from her doorway.

16 9. Officer Muhammad also knocked on the door to Apartment P-4, Mr. Tarabochia's
17 apartment. Officer Muhammad did not tell Mr. Tarabochia that a gun had been fired in his
18 neighbor's apartment or that the bullet may have entered his own apartment. He did not ask if
19 anyone else was present in the apartment who might have been hurt by the bullet.

20 10. Officer Muhammad instead asked Mr. Tarabochia about a truck he had for sale.
21 Officer Muhammad was not genuinely interested in the truck. He was interested in finding out if
22 Mr. Tarabochia was all right without telling him about the gunshot.

23 ¹ The Department designated Officer Muhammad's personal weapon as his duty weapon. For purposes of this case,

1 11. Officer Muhammad offered two reasons for not alerting Mr. Tarabochia that a gun
2 had been fired in the neighboring apartment. First, he testified that he did not want to startle or
3 alarm Mr. Tarabochia. Second, he testified that Ms. Brieska had previous difficulties with her
4 landlord and he did not want to get her into any further trouble.

5 12. Officer Muhammad returned and told Ms. Brieska that no one had been hurt. She
6 left the apartment shortly thereafter to go to work.

7 13. Officer Muhammad did not immediately report the incident to either the Lynnwood
8 Police Department or to his supervisors in the Seattle Police Department.

9 14. Officer Muhammad left the apartment complex not long after he contacted the
10 neighbors and Ms. Brieska left for work. He testified that he did not give the shooting any
11 further thought and it did not occur to him to report the incident to his supervisor.

12 15. Mr. Tarabochia discovered the bullet holes in two walls in his bedroom later that
13 evening. (Ex.11-T, pp. 195-196.) He also realized that the bullet had come from Ms. Brieska's
14 apartment.

15 16. Mr. Tarabochia had seen Officer Muhammad in the apartment complex previously
16 and knew he was a friend of Ms. Brieska's. He then realized that Officer Muhammad's visit
17 earlier in the evening was a ploy.(*Id.*)

18 17. Mr. Tarabochia spent the next evening, Wednesday, August 17, with friends. (Ex.
19 11-A, p. 64.) He did not want to report the incident to the police. However, one of his friends
20 was concerned and himself reported the shooting to a manager of the apartment complex the next
21 morning, Thursday, August 18.(*Id.*) The apartment manager in turn called the Lynnwood
22 Police.(*Id.*)

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the weapon is considered his duty weapon just as if it were provided by the Department.

1 **B. The Lynnwood Police Department Investigation**

2 18. A Lynnwood police officer immediately came to the scene. The apartment manager
3 allowed the officer access to Ms. Brieska's and Mr. Tarabochia's apartments. (*Id.*) The
4 Lynnwood police did not know the circumstances of the shooting or the whereabouts of
5 Ms. Brieska. A Lynnwood Detective, Jerry Rittgarn, contacted Ms. Brieska's employer, who
6 said she had inexplicably missed work the previous night, and that this was out of character for
7 her. (Ex. 11-B, p. 68.) The combination of the unreported shooting and Ms. Brieska's sudden
8 and mysterious absence from work the following night caused Det. Rittgarn to be concerned.²

9 19. Det. Rittgarn learned from Ms. Brieska's employer that Officer Muhammad had
10 been one of her references and that he was a Seattle police officer. (*Id.*) At about 2 p.m. on
11 August 18, the Lynnwood detective contacted Officer Muhammad on the telephone. He asked
12 Officer Muhammad a general question about what had happened at the Lynnwood apartment a
13 couple of nights earlier. Officer Muhammad paused and then admitted he knew what had
14 happened. He told Det. Rittgarn that he would have to call him back and then ended the
15 conversation after speaking with him for no more than a minute or two.

16 20. Immediately after receiving the call from the Lynnwood Police Department, Officer
17 Muhammad reported the incident to his sergeant and then to his lieutenant.

18 21. Officer Muhammad then called Det. Rittgarn back. He told the detective he was
19 willing to provide a statement. Officer Muhammad gave a written statement to the Lynnwood
20 Police. Officer Muhammad wrote in that statement that he had reported the incident. (Ex. 11-D,
21 p. 87.) He did not indicate in the statement that he had reported the incident to the Seattle Police

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23 ² Officer Muhammad criticized the Lynnwood investigation at the hearing. However, the parties entered into a stipulation that: 1) the Lynnwood investigation did not affect Chief Kerlikowske's decision; and 2) the Seattle Police

1 Department only after he learned that the Lynnwood Police had initiated an investigation.

2 **C. The Seattle Police Department Investigation.**

3 22. The Investigation Section of the Department's Office of Professional Accountability
4 (OPA-IS) initiated an investigation. Det. Sergeant Brian Miles was assigned as the investigator.
5 During the course of the investigation, the Department's Crime Scene Investigation (CSI) Unit
6 visited Ms. Brieska's and Mr. Tarabochia's apartments. CSI took photos, made measurements of
7 the bullet's trajectory, and prepared a report. (Ex. 11-E.)

8 23. Neighbors told police investigators that shortly after hearing the gunshot, they
9 observed Officer Muhammad outside the front door to apartment P-2 pacing and appearing
10 nervous. (Ex. 11-P, pp. 142, 152-154; Ex. 11-Q, p. 162.) Officer Muhammad testified that he
11 had gone outside to try to locate an exit hole from the round. He stated that he was not able to
12 find the exit hole. The exit hole in the apartment building's exterior wall was plainly visible in a
13 CSI photograph taken almost 10 days later. (Ex. 20).

14 24. On or about January 10, 2006, the OPA-IS Investigator issued a case summary
15 report addressing six allegations. The OPA-IS Commander recommended on February 1, 2006
16 that four allegations be sustained.

17 **D. Chief Kerlikowske's Decision**

18 25. The Department issued a proposed Disciplinary Action Report (DAR) sustaining
19 three allegations: failure to report the discharge of a firearm in violation of the Department's
20 Policy and Procedure Manual, §3.040; failure to exercise appropriate judgment and discretion in
21 violation of Manual §1.003.VII.A.1; and failure to adhere to laws, policies and procedures in
22 violation of Manual §1.003.III.A. The proposed disciplinary action included a 15-day

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Department investigation was fair and reasonable. Given that stipulation, the Commission need not consider the

1 suspension and a disciplinary transfer.

2 26 Chief Kerlikowske reviewed the entire OPA-IS case file. Before reaching a final
3 decision, Chief Kerlikowske held a *Loudermill* meeting with Officer Muhammad, his Guild
4 representative, his attorney, and members of his chain of command.

5 27. Chief Kerlikowske did not sustain the alleged violation of the Department's Policy
6 and Procedure Manual, §3.040 for failure to report the discharge of a firearm, or the failure to
7 adhere to laws, policies and procedures in violation of Manual §1.003.III.A. The Chief
8 determined that the specific policy addressing the procedures for reporting the discharge of a
9 firearm did not address the situation where another person fires an officer's duty weapon.

10 28. Chief Kerlikowske did, however, decide that Officer Muhammad failed to make a
11 sufficiently thorough check on the safety of others, failed to report the firearm discharge to the
12 local law enforcement agency and failed to timely notifying his supervisor of the discharge.
13 Chief Kerlikowske determined that each constituted a failure to exercise appropriate judgment
14 and discretion in violation of Manual §1.003.VII.A.1.

15 29. Chief Kerlikowske reduced the proposed disciplinary action from a disciplinary
16 transfer and a 15-day suspension to a disciplinary transfer alone.

17 V. ANALYSIS AND CONCLUSIONS OF LAW

18 1. The Appellant bears the burden under PSCSC Rule 6.21 of proving by a preponderance
19 of the evidence that a disciplinary transfer was not in good faith for cause. "In good faith for
20 cause" has been held to equate to just cause, i.e. "for a fair and honest cause or reason, regulated
21 by good faith on the part of the employer." *Baldwin v. Sisters of Providence*, 112 Wn.2d 127,
22 139 (1989).

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reasonableness or fairness of the Lynnwood investigation.

1 2. In applying this standard, the Commission looks to the following seven factors outlined
2 in Koven & Smith, Just Cause: The Seven Tests (2d Ed., 1992):

- 3 1) was there reasonable notice to the employee;
- 4 2) is the rule or order at issue reasonable;
- 5 3) did the employer conduct a reasonable investigation;
- 6 4) was the investigation conducted fairly;
- 7 5) did the employer base the decision on substantial evidence that the employee
8 had in fact violated the rule or order;
- 9 6) has the employer treated similar cases similarly; and
- 7) is the penalty reasonably related to a) the seriousness of the employee's
8 proven performance deficiencies or misconduct and b) the employee's record
9 of service.

10 3. The seven factors are just that - factors to be considered under the totality of the
11 circumstances. The parties stipulated at the reasonableness and fairness of the Seattle Police
12 Department investigation. Factors 3 and 4 are therefore not at issue in this case.

13 4. The Department rule in question is Manual Section 1.003.VII.A.1, which provides:

14 Employees who engage in conduct that is or reasonably appears to be excessive,
15 unwarranted and unjustified may be investigated for either a specific act of
16 misconduct (referenced by a specific Manual citation) or an allegation of "Failure
17 to Exercise Appropriate Judgment and Discretion" under this article.

16 **A. Is the Rule Reasonable?**

17 5. The Commission first considers whether Manual Section 1.003.VII.A.1 is reasonable
18 and provides reasonable notice to employees of what conduct is expected. Officer Muhammad
19 contends that it is vague, is not reasonable, and does not provide adequate notice. The
20 Department contends that the manual cannot possibly anticipate and address in a specific rule
21 every potential situation in which an employee could be disciplined for failure to take
22 appropriate action.

23 6. Two witnesses from the Seattle Police Officers Guild (SPOG), former President Kevin

1 Haistings and current President Rich O'Neill, testified regarding the manual section. Sgt.
2 Haistings testified that he was concerned that the section was vague.

3 7. The Department's Human Resources Legal Advisor Mark McCarty testified the rule is a
4 revised version of a long-standing rule addressing Conduct Unbecoming an Officer (CUBO). .

5 8. Sgt. O'Neill testified that although the union had filed an unfair labor practice charge
6 with the Public Employment Relations Commission (PERC) regarding this manual section,
7 SPOG advised its members that they should consider the rule in effect and enforceable until or
8 unless PERC ruled otherwise.³

9 9. First, the Commission concludes that PERC, not this Commission, has jurisdiction to
10 determine whether the Department engaged in any unfair labor practice with regard to its
11 adoption of the manual section.

12 10. However, police officers routinely confront a wide array of fact-specific and
13 unpredictable scenarios. The Commission therefore concludes that no employment manual can
14 possibly anticipate all the specific circumstances that an employee may be required to confront
15 and make decisions regarding.

16 11. A general rule may therefore be reasonable, although it still must provide employees with
17 reasonable notice of what conduct is expected, and what conduct may result in some form of
18 disciplinary action.

19 12. CUBO has been upheld under a variety of circumstances. *See, e.g., Powers v. City of*
20 *Seattle*, 05-010; *Basney v. SPD*, 04-005. Washington courts have similarly recognized that rules
21 allowing discipline for disgraceful conduct or conduct unbecoming a city employee are
22 enforceable. *Porter v. Civil Service Commission of Spokane*, 12 Wn.App 767, 772-773 (1975);
23

1 *State ex. rel. Perry v. Seattle*, 69 Wn.2d 816. (1966)

2 13. We find that Manual §1.003.VII.A.1 is not on its face invalid. The rule strikes a
3 reasonable balance between allowing officers wide discretion in exercising their judgment, while
4 subjecting them to discipline when their choices amount to an abuse of that discretion. The rule
5 establishes a standard that “all decisions must be reasonable, articulable, warranted and justified”
6 while imposing discipline only where the actions rise to the level of being “excessive,
7 unwarranted and unjustified.” Sub-section I.C. of Manual §1.003 notes that “Discipline will
8 only be imposed where there is a nexus or relationship between the conduct and the duties, rank,
9 assignment, or responsibilities of the employee, whether on or off duty or in or out of uniform.”

10 14. Moreover, the rule is reasonable as applied under the facts presented. We find that
11 there is a legitimate nexus between the failure to report an accidental discharge involving an
12 authorized duty weapon belonging to a member of the Department and that individual’s official
13 responsibilities. Officer Muhammad was authorized to carry the weapon by virtue of his status
14 as an officer of the Department and the gun in question was his duty weapon. There is thus a
15 nexus between a potentially dangerous discharge of that weapon and his official responsibilities.

16 15. The Rule provides reasonable notice that Officer Muhammad’s uncontested conduct
17 in this case might result in disciplinary action. Absent extraordinary circumstances, the
18 Department can reasonably expect its officers to candidly inform an apartment dweller that a
19 shot was fired in a neighboring apartment and may have entered his apartment.

20 **B. Did Officer Muhammad Violate the Rule?**

21 **1. Officer Muhammad’s Failure to Inform the**
22 **Neighbors that a Shot Had Accidentally Been Discharged**

23 ³ The ULP charge was filed after the date of the weapon discharge at issue in this case. The charge was settled and changes to the rule are pending.

1 16. Officer Muhammad admitted that he did not notify the Lynnwood Police Department of
2 the shooting and that he only informed his supervisory chain when he learned that the Lynnwood
3 Police were investigating. He acknowledged that he used a ploy to check on Mr. Tarabochia by
4 asking about his truck rather than disclosing the shooting. He admitted that he did not explain to
5 Mr. Tarabochia that a round had been fired into his apartment nor did he specifically ask the
6 neighbor to check whether anyone had been hurt by the bullet.

7 17. Officer Muhammad's proffered reasons for not candidly informing Mr. Tarabochia that a
8 shot may have entered his apartment do not constitute the type of extraordinary circumstances
9 that could justify withholding that information. They also do not justify Officer Muhammad's
10 failure to directly check to make sure that no one was harmed by the errant bullet from his
11 weapon.

12 18. First, a desire not to alarm Mr. Tarabochia does not justify withholding the information.
13 Officer Muhammad knew, or certainly should have suspected, that the bullet may have entered
14 Mr. Tarabochia's apartment. Officer Muhammad's failure to so inform Mr. Tarabochia does not
15 avoid alarming him, since Mr. Tarabochia would likely, as he in fact did, discover the bullet
16 holes later.

17 19. Secondly, Officer Muhammad's desire to avoid getting his friend in trouble with her
18 landlord does not justify his conduct, since his interest in protecting his friend must be
19 outweighed by his duty to ensure that no one was injured by the shot.

20 20. Officer Muhammad's decision to not disclose to the next-door neighbor that a bullet had
21 apparently been fired into his apartment is "excessive, unwarranted and unjustified."

22 **2. Officer Muhammad's Failure to**
23 **Directly Determine That No One Was Injured**

1 21. Officer Muhammad's decision not to ask if he could check, or at least ask the neighbor to
2 check, that no one had been hurt by the round is also "excessive, unwarranted and unjustified."

3 22. Officer Muhammad's desire to help Ms. Brieska avoid getting into trouble, while
4 reasonable, does not justify his decisions and conduct. Officer Muhammad placed the interests
5 of his friend in covering up a serious and potentially deadly incident above the interest of
6 ensuring that no one had been hurt. Officer Muhammad engaged in an "excessive, unwarranted
7 and unjustified" abuse of discretion.

8 **3. Officer Muhammad's Failure to Report the Incident to**
9 **Local Police and to his SPD Supervisors.**

10 23. We also find that Detective Muhammad's failure to make a timely report to his
11 supervisor and the local police department was not reasonable. A shooting, even by accident, in
12 an apartment complex where a bullet travels into an occupied apartment is by definition a serious
13 incident, even when fortunately no one was injured. Given the significance of the situation and
14 the fact that witnesses described Officer Muhammad as appearing nervous after the shooting, his
15 statement that it did not occur to him to report this incident and further, that the shooting
16 completely slipped his mind shortly afterwards, is either not credible or itself is an example of
17 poor judgment.

18 24. It is not credible or acceptable that it would not even occur to him to report this incident,
19 particularly in light of his admission that he did not want to get his friend in trouble. If he did
20 not want to get her in trouble by disclosing the shooting to the next-door neighbor, it stands to
21 reason that he did not want to put her at risk by reporting it to his supervisor or local law
22 enforcement. Even assuming that the incident completely slipped his mind, this demonstrates an
23 "excessive, unwarranted and unjustified" failure to appreciate the seriousness of the shooting.

1 25. If an officer's duty weapon is discharged into another person's apartment, the chain of
2 command has a legitimate need to be able to trust that the officer will bring the event to the
3 Department's attention. Officer Muhammad unreasonably violated that trust. Although the
4 Department has not specified how quickly an officer is expected to report such a situation, it is
5 clear that Officer Muhammad had no intention of reporting the shooting until he learned that the
6 Lynnwood Police were investigating it.

7 26. The Commission finds that Officer Muhammad violated legitimate and reasonable
8 department expectations, as reflected in Manual Section 1.003.VII.A.1.

9 27. The Commission therefore concludes that the Department had just cause to impose some
10 form of discipline for Officer Muhammad's misconduct.

11 **B. Was the Penalty Justified?**

12 Having concluded that some form of discipline was justified, the Commission turns to the
13 issues regarding whether the Department had just cause to impose the penalty it did impose – a
14 disciplinary transfer from detective duty to patrol duty.

15 **1. Is the Discipline Proportionate to the Misconduct?**

16 28. In determining whether the discipline is proportional to the misconduct, the Commission
17 considers whether the penalty is reasonably related to the seriousness of the employee's proven
18 misconduct and the employee's record of service.

19 **a. Officer Muhammad's Record of Service**

20 29. It is undisputed that Officer Muhammad's record reveals only one relative minor prior
21 disciplinary issue in his twenty years of service.

22 30. Officer Muhammad has, for all practical purposes, a clean disciplinary record.
23

1 **b. Officer Muhammad's Proven Misconduct**

2 31. Officer Muhammad failed to candidly inform the neighbor that an errant bullet from his
3 duty weapon might have entered the neighbor's apartment. In doing so, he did not adequately
4 check on the safety of others since the shooting posed the potential risk of grievous bodily injury
5 to anyone who might have been in the wrong place in the adjoining apartment. He failed to
6 report the details of the incident to the local police or his supervisor. He justified this in part on
7 the desire to help his friend avoid getting in trouble. Placing the interests of his friend above the
8 safety of others is a violation of the public trust and an example of poor judgment.

9 32. In deciding to impose a disciplinary transfer, Chief Kerlikowske reasoned that a detective
10 must exercise a high degree of independent judgment and that the Department must be able to
11 trust detectives to do so without the same level of direct supervision that patrol officers have.
12 Chief Kerlikowske found that Det. Muhammad's response to the shooting demonstrated poor
13 judgment and that a patrol assignment would provide him with greater structure to improve in
14 this regard.

15 33. Officer Muhammad argued that the transfer was excessive because of the collateral
16 impact upon his life, including the effect on his earning overtime and off-duty work. These
17 claims do not appear to be supported by the evidence. Officer Muhammad acknowledged that
18 after his disciplinary transfer he has not contacted his former off-duty employer, King County
19 Metro, to explore whether there were any opportunities that would fit his new schedule. His
20 claim that he has lost overtime is similarly unpersuasive. Officer Muhammad acknowledged that
21 there are other overtime opportunities available to patrol officers.

22 34. While Officer Muhammad's clean disciplinary record is clearly a mitigating factor, the
23 Commission concludes that his conduct in this incident was a significant failure to exercise

1 sound judgment. The Commission concludes that Chief Kerlikowske's reasons for imposing a
2 transfer are reasonable and support the decision to transfer Officer Muhammad. Chief
3 Kerlikowske also specifically noted that after a period of patrol duty, Officer Muhammad would
4 be eligible to move back to a detective position. Officer Muhammad has failed to bear his
5 burden to show that the transfer was excessive in relation to the misconduct. The Commission
6 concludes that the transfer was reasonable and proportionate under the circumstances.

7 **2. Were Comparable Cases Treated Comparably?**

8 35. Officer Muhammad argues that the disciplinary transfer is excessive by comparison to
9 discipline the Department imposed in other comparable cases. The appellant bears the burden of
10 proving such a claim. Elkouri & Elkouri, *How Arbitration Works*, p. 996 (6th Ed. 2003).

11 36. Officer Muhammad cites several cases involving officers who have been cited for driving
12 under the influence of alcohol. The officers involved in those cases received suspensions.

13 37. The Commission concludes that driving under the influence is, like Officer Muhammad's
14 misconduct in this case, serious.

15 38. The parties spent a substantial amount of time at the hearing disputing which was the
16 greater discipline – a suspension or a disciplinary transfer.

17 39. Officer Muhammad argued that a disciplinary transfer is a more severe form of
18 punishment than a suspension of 15 days or less. He bases this contention on the personal
19 impact the change in shift and differing opportunities for overtime or off-duty work has had on
20 him under his particular circumstances.

21 40. Chief Kerlikowske testified that he views a disciplinary transfer as being a less severe
22 form of discipline than a suspension, based on several factors. First, a suspension reduces the
23 officer's compensation, while in this case Appellant earns a higher hourly wage as a patrol

1 officer than as a detective. Second, a suspension means that the officer is not permitted to work
2 in any capacity during that time whereas a transfer means that the officer is still in good standing.
3 In some cases an officer must surrender his or her badge and weapon during a suspension. The
4 Chief also noted that a detective who is transferred to patrol may earn the detective position
5 back, whereas once a suspension is served, the officer never has a chance to earn the time back.

6 41. The Commission concludes that it need not resolve that issue in order to decide this case.
7 Employees' circumstances vary widely and one may consider a transfer more serious than a
8 suspension while another might, under different circumstances, conclude the opposite. The
9 question before the Commission is not whether one is *per se* more serious than the other, or even
10 whether a particular appellant considers one more serious than the other. The question before the
11 Commission is limited to whether the pattern of disciplinary decisions reflects a disparity
12 sufficient to call into question the fairness of the discipline rendered in this particular case.

13 42. While reasonable people may disagree about the appropriateness of the discipline
14 imposed in some of the driving under the influence cases, the Commission does not see a
15 disparity sufficient to evidence unfairness in Chief Kerlikowske's decision or to justify
16 overturning that decision.

17 43. The one case that the Department referred to as being similar was an accidental shooting
18 by an off-duty patrol officer whose friend had been violently attacked by a fleeing felon. The
19 officer gave chase, and then accidentally discharged a round. She reported the discharge on her
20 own two hours later. Despite the significant mitigating factors surrounding her actions, she
21 received a 15-day suspension. Because she was already a patrol officer, a disciplinary transfer to
22 detective was not a realistic option.

23 44. The Commission concludes that Officer Muhammad has failed to sustain his burden of

1 proof to establish that similar cases have been treated less severely.

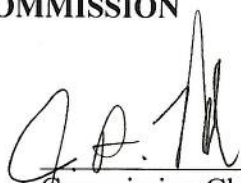
2 **VI. CONCLUSION**

3 The Commission finds that the Appellant has failed to sustain his burden that the
4 disciplinary transfer was not in good faith for cause.

5 **VII. ORDER**

6
7 Officer Arlandi Muhammad's appeal is hereby dismissed with prejudice.

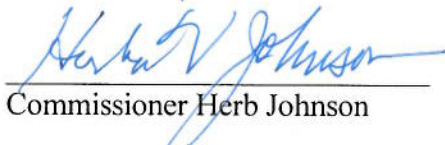
8 **PUBLIC SAFETY CIVIL SERVICE COMMISSION**
9 **OF THE CITY OF SEATTLE**

10 
11 _____
12 Commission Chair Joel Nark

1-18-07
Date

13 
14 _____
15 Commissioner David Bown

1-18-07
Date

16 
17 _____
18 Commissioner Herb Johnson

1-18-07
Date