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5 **PUBLIC SAFETY CIVIL
SERVICE COMMISSION**

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

9 **IN RE THE APPEAL OF:**)
10 **MICHAEL M. CHIN**)
11 **Appellant,**) **NO: 08-006**
12 **vs.**) **FINDINGS OF FACT,**
13 **CITY OF SEATTLE, SEATTLE POLICE**) **CONCLUSIONS OF LAW,**
14 **DEPARTMENT,**) **AND ORDER**
15 **Respondent/Employer.**)
16 _____)

17 **I. INTRODUCTION**

18 The Commission heard this matter pursuant to a Notice of Appeal filed by Officer
19 Michael M. Chin appealing discipline imposed by the Seattle Police Department (Department).
20 The discipline included: 1) a suspension for a period of 15 days; 2) a transfer out of the Traffic
21 Section of the Department; and, 3) a requirement that he report all overtime and off-duty hours
22 worked. A full evidentiary hearing was held on July 8, and 10, 2008 before Commissioners
23 Bown, Johnson, and Nark, with Commissioner Nark acting as Presiding Officer. At the hearing,

1 attorney Darrell Charles represented Officer Chin, and Rennison Bispham, Police Department
2 Legal Advisor, represented the Department.

3 After considering the evidence in this case, including the testimony, documentary
4 evidence, and arguments of the parties and their representatives, the Commission enters the
5 following Findings of Fact, Conclusions of Law, and Order.

6 **II. BURDEN OF PROOF**

7 PSCSC Rule 6.21 provides as follows:

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

12 The Department has the burden of showing that the suspension was imposed in good faith
13 for cause. Officer Chin has the burden of proving by a preponderance of the evidence that the
14 disciplinary transfer and mandatory reporting of overtime and off-duty work hours were not
15 imposed in good faith for cause.

16 **III. FINDINGS OF FACT**

17 1. Officer Chin is a twenty-four-year veteran of the Department. He was first
18 assigned to the South Precinct Patrol Unit. In 2003, he was assigned to the Traffic Section part
19 time as a motorcycle officer, and worked in that capacity full-time from 2004 to March 11, 2008,
20 when he was reassigned to the Traffic Collision Investigation Section as a disciplinary transfer.

21 2. Officer Chin's Performance Review for 2006, prepared on January 26, 2007,
22 shows him to be "fully competent" in some categories, and to "exceed job requirements" in
23 others, including "decision and judgment in routine situations," "workplace safety," and "personal
safety and required training". Summary comments to the Review state that Officer Chin has

1 always been a "top performer" but that he worked long hours and "didn't know when to stop".

2 Stipulated Exhibit 5.

3 3. A 2006 Disciplinary Action Report (DAR) states that Officer Chin had violated
4 Department Manual § 1.003(III)(A), "Adherence to Laws, Policies, and Procedures," by signing
5 in for work in an off-duty position for King County Metro, when he was actually at a Seattle
6 Police Department facility unconnected with the off-duty position. The DAR imposed a penalty
7 of a thirty-day suspension without pay held in abeyance for one year, but states that the "thirty-
8 day suspension will be imposed if there is any similar misconduct during this time period as well
9 as any discipline resulting from the subsequent misconduct. In addition, all off-duty work and
10 hours must be reviewed and approved by your lieutenant for the next four months." Stipulated
11 Exhibit 6.

12 4. The King County Metro incident occurred in early 2006, and the Loudermill
13 hearing was held in April or May of 2006. The DAR for that incident is dated November 6,
14 2006, and there is conflicting evidence on whether it was ever served on Officer Chin and was
15 not signed by the Chief. It was not in his personnel file when he checked for it, and the President
16 of the Seattle Police Officers Guild (SPOG) did not see the DAR until the fall of 2007.
17 Department representatives thought Officer Chin was required to report all off-duty *and overtime*
18 hours, but Officer Chin and the SPOG President testified that Officer Chin was told to report
19 only off-duty hours since the Department was already aware of his traffic overtime hours.

20 5. In April of 2006, the Department instituted a requirement that all traffic officers
21 file a report of regular hours, overtime hours, and scheduled off-duty work "immediately in
22 advance of each workweek." Stipulated Exhibit 1. If there was a concern about the scheduled
23 hours, a Traffic Sergeant was to discuss the matter with the officer and document it in a memo to

1 the officer, with a copy to the chain of command and SPOG, reinforcing the expectation that
2 while on duty, the officer was to "remain alert and capable of safely operating a vehicle and
3 responding appropriately to emergencies and may face discipline for failing to do so." Stipulated
4 Exhibit 1. Following the discussion, if there was still a concern that the number of scheduled
5 working hours was too great to allow for adequate rest, and created a potential safety problem for
6 the officer or others, the Department could adjust the schedule by canceling participation in an
7 overtime event. Stipulated Exhibit 1.

8 6. Officer Chin was relieved of the mandatory reporting requirement in September
9 of 2007, and Sergeant Robert Robbins testified that the procedural aspects of the reporting policy
10 did not apply to Officer Chin after that time.

11 7. The Department has a policy that limits an officer's off-duty hours to 24 per
12 week.

13 8. The Department has no written policy that limits the amount of Department
14 overtime officers may work. There was general agreement in the testimony that there is an
15 "understanding," or "unwritten guideline," that officers "should" have a rest break of six to eight
16 hours during any 24 hour period, but the consensus is that this frequently does not happen in
17 actual practice. There is no evidence of any discipline attached to this informal "guideline".

18 9. Between October 21 and October 23, 2007, Officer Chin worked a combination of
19 49 hours of regular shift, overtime and off-duty work during a 53-hour period. From the
20 evidence in the record, it appears that Officer Chin was alert and productive during this time. He
21 issued the most tickets in his unit during that week and testified in court, and the Department
22 received no complaints about his conduct or driving.

1 10. Lieutenant Robin Clark filed a complaint with the Investigation Section of the
2 Department's Office of Professional Accountability (OPA-IS), alleging that Officer Chin had
3 "provided his supervisors with an incomplete report of his total number of hours worked during
4 the week of 10/21/07 to 10/27/07;" had "worked an excessive number of hours in that reporting
5 period in violation of *previous guidelines, instruction and direction* not to do so;" had stated that
6 "he had slept the entire day on Saturday 10/20/07 in preparation for his anticipated extended
7 work schedule beginning 10/21/07 when in fact he had worked a Husky game from 1430-2130
8 hours on that day;" and "may have made an inappropriate comment to his supervisor requesting
9 that sergeant mark timesheets in a way that would obscure the actual number of hours the named
10 employee actually worked." Stipulated Exhibit 9 at p. 75 (emphasis added).

11 11. Lieutenant Clark's complaint states that she had talked with Officer Chin several
12 times about the amount of overtime he was working, stating that it was not reasonable, or safe,
13 despite Officer Chin's belief that he needed very little sleep. The record also shows that Officer
14 Chin asked several times how much time he was required to have off, but did not receive a
15 concrete answer. Testimony in the record on this issue was that "common sense," or "being
16 reasonable" is the limit for departmental overtime, and that although there is no specific
17 consecutive number of work hours that is acceptable, Officer Chin should have known that
18 working 49 hours in a 53-hour period would lead to discipline.

19 12. OPA-IS classified the Lieutenant Clark's complaint allegations as indicators of a
20 "Professionalism-Exercise of Discretion allegation," Exhibit 9 at p. 82. OPA-IS initiated an
21 investigation, which included taking statements from Officer Chin, Lieutenant Clark, Sergeant
22 Robert Robin, and Officer Walter Hayden. Stipulated Exhibit 9, §§A through D.

1 13. Officer Chin did not dispute the number of hours he had worked between
2 10/21/07 and 10/23/07, but did dispute the rest of the allegations, including the allegation that he
3 had worked excessive hours "in violation of previous guidelines, instruction and direction not to
4 do so".

5 14. The investigation included an examination of Event Overtime Summaries, which
6 normally include officer names and the amount of overtime each worked at a particular event.
7 However the names of all officers except Officer Chin were redacted in most of the Summaries
8 provided for the investigation. Stipulated Exhibit 9, §G. The Department did not review the
9 timesheets of the other officers listed in these Summaries to determine whether they were
10 working an "excessive" number of hours within a given time period.

11 15. Officer Chin is listed in fourteenth place on a Department list of "Top 60 OT
12 Earners" for 2007. Stipulated Exhibit 15. There is no evidence that the Department reviewed
13 the timesheets of other officers on the list to determine whether they were working an
14 "excessive" number of hours within a given time period.

15 16. The investigation concluded that a preponderance of evidence indicated that
16 Officer Chin "should have reasonably been aware that working an excessive number of hours
17 without obtaining a sufficient amount of rest was contrary to Department and Traffic Section
18 policies," which demonstrated a "lack of discretion," but that there was insufficient evidence of
19 the other allegations. Stipulated Exhibit 9 at p. 80.

20 17. OPA-IS issued a proposed DAR sustaining the allegation of failure to exercise
21 appropriate judgment and discretion in working an excessive number of hours "in violation of
22 previous guidelines" and imposing a 30-day suspension without pay, a disciplinary transfer to
23 patrol, mandatory reporting of overtime hours, and revocation of Officer Chin's Off-Duty

1 Permit. Stipulated Exhibit 12. Following a Loudermill hearing with Chief of Police
2 Kerlikowske, the suspension was reduced to 15 days. Exhibit A.

3 18. The Commission considers several factors in determining just cause, including
4 whether: (1) the employee had notice of the rule or order violated and that his conduct would
5 result in disciplinary consequences; (2) the rule was reasonable; (3) the employer investigated to
6 determine whether the rule was in fact violated; (4) the investigation was fair; (5) the employer's
7 decision maker had substantial evidence that the employee violated the rule as charged; (6) the
8 employer applies its rules evenhandedly; and (7) the discipline administered was fair in relation
9 to the nature of the offense and imposed with regard to the employee's past work record.

10 19. The rule at issue in this case is found in Seattle Police Department Manual,
11 Section 5.001, subsection VII .A.1.a:

12 1. Exercise of Discretion

13 a. Discretion consists of the ability to apply reason, professional
14 experience and judgment in decision-making. Employees are authorized
15 and expected to use discretion consistent with the mission of the
16 Department and duties of their office and assignment. The scope of
17 discretion is proportional to the severity of the crime or public safety issue
18 being addressed. For example, an employee's scope of discretion in
19 dealing with a minor traffic infraction is broader than when an employee is
20 affecting an arrest on probable cause for a domestic violence misdemeanor
21 or felony.

18 20. Officer Chin does not question whether the rule itself is reasonable or whether
19 there was a fair and reasonable investigation. Therefore, the issues in this case are: 1) Did
20 Officer Chin have notice of the rule violated and that his conduct would result in disciplinary
21 consequences? 2) was there substantial evidence that Officer Chin violated the rule? 3) did the
22 Department apply the rule evenhandedly? and 4) was the discipline administered fair in
23

1 relationship to the nature of the offense and imposed with regard to Officer Chin's past work
2 record?

3 V. CONCLUSIONS

4 Notice

5 1. Police Officers have notice of the contents of the Department Manual, including
6 Section 5.001. Officer Chin also testified that he had read the Department Manual, including the
7 section on exercising discretion.

8 2. There any written Department policy or guideline on Department overtime.
9 Officer Chin had been told to "be reasonable" and to "use common sense" in the number of
10 consecutive hours he worked. The Department declined to provide any more particular
11 statement of their expectations.

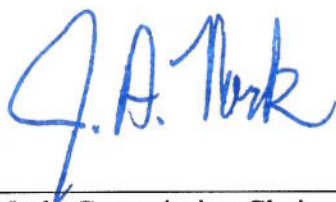
12 Substantial Evidence

13 3. There was substantial evidence that Officer Chin worked 49 hours in a 53-hour
14 period, and close to 90 hours in a one-week period. However, since there was no generally
15 applicable rule regarding Department overtime, and no specific performance expectations
16 communicated to Officer Chin, the Commission unanimously concludes that the Department did
17 not meet its burden of showing that Officer Chin violated Section 5.001.

18 Evenhanded Application

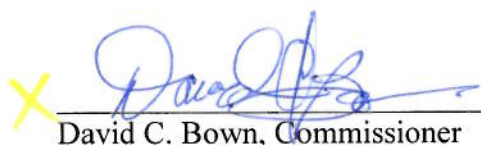
19
20 4. The Department did not address overtime in an evenhanded manner. Other officers
21 worked more overtime than Officer Chin, but the Department did not review their timesheets to
22 determine whether they were working an excessive number of hours within a given time period.
23 It appears that uncontrolled Department overtime work is a problem for the Department.

1 jurisdiction over this case and may receive additional evidence or issue an additional order
2 regarding remedies if the parties are unable to present to the Commission an agreed remedy
3 within 30 days of the date of these Findings of Fact, Conclusions of Law, and Order.

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7 Joel A. Nark, Commission Chair

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9 08-04-08
Date

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11  X

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13 David C. Bown, Commissioner

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15 8/5/08
Date

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18
19 **DISSENT, IN PART**

20 I agree with the majority's reasoning and conclusions regarding the 15-day suspension.
21 However, I cannot agree that Officer Chin met his burden of demonstrating that the Department
22 lacked just cause for the disciplinary transfer out of the Traffic Unit and the mandatory reporting
23 of overtime and off-duty hours. Therefore, I dissent from those portions of the decision.

Officer Chin was told repeatedly by Sergeant Robbins and Lieutenant Clark that he was working an excessive number of hours and was told to reduce his overtime hours and/or ask for time off from his regular shift to provide time for sufficient rest breaks. Although he was not told exactly how much time he should take off, he was told to be reasonable and to use common sense. While a standard of "reasonableness" might be considered vague in some situations; I do

1 not believe it is under the facts before the Commission. Working 49 hours during a 53-hour time
2 period is not reasonable under any sense of the term. In doing so, Officer Chin violated a clearly
3 conveyed workplace expectation, and the Department had just cause to impose the disciplinary
4 measures of transferring him out of the Traffic Section and requiring that he report all overtime
5 and off-duty hours.

6 For these reasons, I respectfully dissent from the majority decision on these points.

7 
8 Herb V. Johnson, Commissioner

08/05/2008
Date