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

6 IN RE THE APPEAL OF:

7 **DONNIE R. LOWE**
8 Appellant,

9 vs.

10 **SEATTLE POLICE DEPARTMENT,**
11 **CITY OF SEATTLE**

12 Respondent/Employer.

PSCSC No. 13-01-007

FINDINGS OF FACT
DECISION AND ORDER

13
14 **I. INTRODUCTION**

15 Lt. Donnie Lowe timely appealed his termination following sustained allegations of
16 domestic violence, violating a no-contact order, and dishonesty.

17 The Commission held a full evidentiary on the following six days: February 3, 4, 5, and
18 9, 2015; and March 2 and 3, 2015. The Commission received and reviewed exhibits from the
19 parties, all of which were admitted into evidence. The Commission received four post-hearing
20 briefs, the last of which was filed on April 6, 2015. Considering all of his evidence and
21 argument the Commission enters the following Findings of Fact, Decision, and Order.

II. FINDINGS OF FACT

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2 1. On June 2, 2012 Nanette Lowe called 911 to report that her husband, Lt. Donnie Lowe,
3 had assaulted her. During this call she spoke in Tagalog to ask one of her family members, "Did
4 you see him slap me?"

5 2. When Seattle Police officers arrived at her house, she told them that Lt. Lowe had placed
6 a forearm on her chest and had slapped her once across the face. She repeated this same version
7 of events two days later to King County Sheriff deputies Bartlett and Tompkins.

8 3. Ms. Lowe later recanted and testified that the altercation that night between her and her
9 husband was verbal and that Lt. Lowe never slapped her.

10 4. Lt. Lowe was prosecuted in Seattle Municipal Court on September 25, 2012. After the
11 trial of Lt. Lowe concluded with a not guilty verdict, the Seattle Police Office Professional
12 Accountability conducted an investigation of the events of June 2, 2012 and presented a report to
13 SPD command staff and Chief James Pugel. Chief Pugel concluded that Lt. Lowe had assaulted
14 his wife.

15 5. Ms. Lowe testified at the hearing held in this case and repeated her recantation of her
16 statements in the 911 call, to the responding police officers that night, and to the King County
17 Sheriff's deputies.

18 6. On August 14, 2012, while there was a no-contact order in place between Lt. Lowe and
19 his wife, Lt. Lowe was stopped for a possible traffic infraction by Officer Unger. In the car with
20 Lt. Lowe was a woman who Lt. Lowe later claimed was his 16 year-old niece. Officer Unger
21 believed the woman might be Lt. Lowe's wife, and later took steps to verify this belief.

22 7. Lt. Lowe was charged with violating the no-contact order and OPA did an investigation.
23 During the investigation a later charge was added against Lt. Lowe of lying during the

1 investigation.

2 8. At the hearing in this matter, Lt. Lowe's niece, Rhoanne Morales and his wife testified
3 that it was Rhoanne and not Ms. Lowe that was in the car that day with Lt. Lowe. The
4 Commission finds that both this testimony and Ms. Lowe's recantation concerning the assault are
5 not credible.

6 9. The Commission finds that there was substantial evidence to support Chief Pugel's
7 conclusion that Lt. Lowe violated the no-contact order and lied during the investigation.

8 III. DECISION

9 A. Standard of Review

10 Both parties agree that the Seattle Police Department (SPD) has the burden to show that
11 Lt. Lowe was terminated in good faith for cause and recognize that this Commission uses the
12 seven factor test for just cause approved by the Court of Appeals in *City of Seattle v. Werner*,
13 163 Wn.App. 899, 261 P.3d 218 (2011). The parties differ on whether SPD's burden is by a
14 preponderance of the evidence or must meet the clear and convincing standard. We need not
15 resolve this question, because we conclude that SPD has met its burden under either standard.

16 While not exclusive, the Commission considered whether the following seven factors
17 were present: (1) the employee had notice that his conduct would result in discipline; (2) the rule
18 was reasonable; (3) the employer investigated; (4) the investigation was fair; (5) the decision-
19 maker had substantial evidence that the rule was violated; (6) the employer applies its rules even-
20 handedly; and (7) the discipline administered was fair in relation to the nature of the offense and
21 imposed with regard to the employee's past work record.

22 Lt. Lowe argues that the investigation was unfair and that there was not substantial
23 evidence to support Chief Pugel's decision. With respect to the investigation, Lt. Lowe argues

1 that exculpatory evidence was not contained in the summary report and that the evidence was
2 presented to the Chief in a prejudicial manner. The Commission disagrees. Chief Pugel testified
3 that he read the entire record, not just the summary reports. It was evident to the Commission
4 that he took this case very seriously and reviewed all of the information available. Further, Lt.
5 Lowe had the opportunity to present whatever evidence he wanted to present to Chief Pugel and
6 all cooperating witnesses were interviewed.

7 B. Domestic Violence

8 The Commission is persuaded that Lt. Lowe did place his forearm on his wife's chest and
9 slap her, as Ms. Lowe reported on the 911 call. Her statements on the 911 call, during the
10 investigation at the Lowe home that same night, and her statements to the King County Sheriff's
11 deputies all support that conclusion. Her later recantation is understandable, but the Commission
12 believes that her earlier statements closer in time to the event are more reliable.

13 C. Violation of No-Contact Order

14 Lt. Lowe argues that there is not substantial evidence to support Chief Pugel's
15 determination that Lt. Lowe violated the no-contact order. There was considerable evidence
16 concerning the violation of the no-contact order, and while Lt. Lowe interpreted the evidence to
17 support him, the Commission finds that there was substantial evidence to support Chief Pugel's
18 decision. Lt. Lowe's supporting witnesses (Ms. Lowe and his niece, Rhoanne Morales) were not
19 credible. The Commission was persuaded that Ms. Lowe was present in the car with Lt. Lowe.
20 Ms. Unger's testimony concerning Ms. Lowe's dress and the video tape of Ms. Lowe entering
21 the King County Chinook Building wearing that dress, amongst other evidence, indicate that Ms.
22 Lowe was in the car with Lt. Lowe and that therefore Lt. Lowe violated the no-contact order.

23 D. Lying in the Investigation

1 Ms. Unger was sure of two things. One was her identification of the dress, and the other
2 was that the person in the car with Lt. Lowe was not 16 years old. Lt. Lowe maintained that it
3 was his 16-year-old niece in the car with him and not his 43-year-old wife. Consistent with our
4 determination that Lt. Lowe violated the no-contact order and that Ms. Morales was not credible,
5 we find that there is substantial evidence that Lt. Lowe lied in the investigation.

6 E. Discipline Imposed

7 Lt. Lowe argues that his termination is unfair in relation to the nature of the offense,
8 especially considering his past work record, and that the termination is not commensurate with
9 discipline imposed on other similarly situated employees. Lt. Lowe's prior disciplinary record is
10 as follows: (1) an oral reprimand on March 26, 2003 for conduct unbecoming an officer (in
11 September 2002, Lt. Lowe retrieved personal items for a family member from a third party's
12 home while in uniform); (2) a January 29, 2007 written reprimand for making inappropriate
13 contact with a handcuffed suspect (on June 6, 2006, Lt. Lowe made physical contact with his son
14 while his son was in custody); and (3) a four-day suspension in 2009 for reckless driving after
15 having consumed alcohol on November 23, 2008.

16 The Commission finds that the other discipline cases presented by Lt. Lowe are not
17 reasonably comparable to the current situation. Additionally, the Commission agrees with Chief
18 Pugel that as a person advances in rank it is reasonable to have higher expectations with regard to
19 wrongful conduct. Given Lt. Lowe's prior disciplinary record, termination was appropriate in this
20 case.

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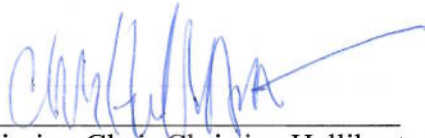
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IV. ORDER

Lieutenant Lowe's appeal is denied.

Dated this 22nd day of June, 2015.

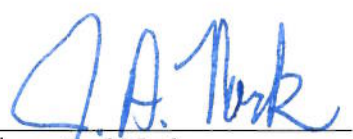
**PUBLIC SAFETY CIVIL SERVICE COMMISSION
OF THE CITY OF SEATTLE**



Commission Chair Christian Halliburton

6/22/15

Date



Commissioner Joel Nark

6/22/15

Date



Pro-tem Commissioner Terry Carroll

6/18/15

Date