

Honorable Fred K. Morrison (Ret.)  
Hearing Officer  
JAMS  
2520 Venture Oaks Way  
Sacramento, California 95833  
916-921-5300

[REDACTED]

[REDACTED]

Claimant

vs.

[REDACTED] CITY POLICE DEPARTMENT,  
Respondent.

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**DECISION ON APPEAL OF TERMINATION**

**INTRODUCTION**

Claimant [REDACTED] was hired as a full-time police officer by the Respondent [REDACTED] City Police Department (Department) in November 2007. On May 27, 2014, [REDACTED] was terminated from his job as a police officer with the Department, based on multiple incidents involving the improper safeguarding of firearms. [REDACTED] appealed the termination decision. In accordance with a stipulation between [REDACTED] and the City of [REDACTED] City, the parties agreed that the Honorable Fred K. Morrison (Ret.) would serve as the Hearing Officer pursuant to Section 7.3 of the Memorandum of Understanding between the [REDACTED] City Police Department and the [REDACTED] City Police Officers Association. The parties agreed that the Hearing Officer's decision will constitute a final and binding resolution of Claimant's [REDACTED] termination and no further appeal will be permitted.

A hearing was held in the conference room of KC's Court Reporting in Monterey,

California, on November 12 and 13, 2014, to determine if the Department had just cause for [REDACTED] termination.

Claimant [REDACTED] was represented by Russell M. Perry of Rains Lucia Stern, PC, Ontario, California and the [REDACTED] City Police Department was represented by Edward P. Zappia of the Zappia Law Firm, Los Angeles, California.

To the extent the facts found to be true differ from either party's position, it is the result of determinations as to credibility, determinations of relevance, burden of proof consideration, and the weighing of the evidence, both oral and written.

## **FACTUAL BACKGROUND**

### **A. Incidents Involving Improper Safeguarding of Firearms**

#### **1. 2009 Theft of [REDACTED] Sig Sauer Handgun from his Vehicle and Resulting Discipline**

The first theft of a firearm in [REDACTED] possession occurred on October 25, 2009. According to the police report, [REDACTED] was off-duty running errands when he parked outside a liquor store for approximately 15 minutes. He did not remember if he locked his vehicle when he went in the store. When he returned to his car, his Department-issued Sig Sauer handgun, which he had stored in its holster in the unlocked center console of his vehicle, was missing. The weapon was never recovered.

An Internal Affairs investigation was conducted by Captain [REDACTED] who concluded [REDACTED] was in violation of Department Policy Manual section 312.3.2 for negligent storage of a firearm. Following a Notice of Intent to Decrease Salary and a Skelly hearing, Chief of Police [REDACTED] issued a Notice of Imposition of Discipline decreasing [REDACTED] pay grade from Step C to Step B for four months. [REDACTED] warned [REDACTED] that "this type of gross negligence does warrant discipline and set precedence for any future repeated type of negligence" by [REDACTED] and/or other employees.

#### **2. Minor Stepson's "Selfie"**

In August 2011, [REDACTED] stepson, [REDACTED], had an appointment with his probation officer. During this meeting a photo was found on [REDACTED] phone

depicting him holding a firearm. ██████ claimed he found the firearm in his parents' bedroom. ██████ was notified of the photograph by the probation officer, but did not report the incident to the Department.

3. 2012 Theft of ██████ AR-15 From His Home

In November 2010, ██████ received written authorization from then Chief ██████ to purchase an AR-15 assault rifle. On December 25, 2012, ██████ home was burglarized and his AR-15 rifle, which contained 28 rounds of ammunition, was stolen. ██████ notified the Department about the theft. ██████ stated that his home was locked, but the home security system was not functioning properly. He also stated he locked his bedroom door with a "pinhole" lock and stored the AR-15 in his bedroom closet. However, the AR-15 was not in a gun safe and did not have a trigger lock. The gun has not been recovered.

4. ██████ Stepson's 2013 Arrest While Carrying ██████ Glock 27 .40 Handgun

On July 24, 2013, ██████ stepson ██████ was a passenger in a Honda Civic pulled over by Officer ██████ of the ██████ Police Department. During the stop ██████ told ██████ partner that he had a gun in his waistband. ██████ drew and pointed his firearm at ██████ and told him not to reach for the gun. ██████ complied and ██████ partner retrieved an unloaded Glock 27 .40 caliber handgun from ██████. Officer ██████ tracked the Glock handgun to ██████ home address.

██████ identified ██████ as his stepson, who was living with him at the time, and admitted the Glock belonged to him ██████. He said that he did not know how ██████ had found the gun since "he hides the firearm well." As a result of the arrest, ██████ was also contacted by the ██████ County District Attorney's Office and the ██████ County Probation Department. ██████ gave conflicting accounts regarding the storage of the firearm. He had told the ██████ Police Department that the gun was well hidden, but he told the District Attorney's office that the gun was stolen from a locked safe. Shortly after making these statements he told ██████ probation officer that the gun was in an unlocked cabinet.

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B. The Department and the DA's Investigations Regarding the Failure to Properly Safeguard the Glock and the Unauthorized Possession and Storage of an AR-15 Assault Rifle.

Following [REDACTED] arrest, Acting Chief [REDACTED] ordered Sergeant [REDACTED] to conduct an Internal Affairs investigation into [REDACTED] regarding improper storage of his handgun. During his investigation [REDACTED] discovered that [REDACTED] had qualified an AR-15 on the Department firing range on August 10, 2013, and that the qualification records listed the serial number for the AR-15 that was stolen from [REDACTED] home in December 2012. On August 30, 2013, after reading [REDACTED] his POBR rights and obtaining his consent, [REDACTED] searched [REDACTED] locker and found an unregistered AR-15 rifle painted with a camouflage pattern. After discussing the situation with Chief [REDACTED] including the potential for criminal charges, it was decided an outside investigator should complete the investigation.

During this same period of time, [REDACTED] County District Attorney Investigator [REDACTED] was assigned to investigate whether [REDACTED] had negligently stored his Glock handgun. [REDACTED] interviewed [REDACTED] who stated he obtained [REDACTED] handgun from a drawer in a bedside chest in [REDACTED] bedroom. [REDACTED] thereafter interviewed [REDACTED] who claimed he stored the Glock handgun in a Sentry safe buried under clothing in his bedroom. [REDACTED] requested to see the safe, but [REDACTED] refused to provide the safe or let him see it. He claimed he had purchased it at Home Depot or Walmart. [REDACTED] checked with the store managers, who conducted a search of their records and reviewed store surveillance video, but were unable to discover anyone who matched [REDACTED] description who had purchased a safe from the store locations between January 1, 2013 and August 27, 2013.

[REDACTED] then interviewed Officer [REDACTED] who confirmed that [REDACTED] had told him after [REDACTED] arrest that "he hid his handgun well in his bedroom closet", but had not mentioned a safe. [REDACTED] also followed up with Probation Officer [REDACTED] who confirmed that [REDACTED] had told him he stored the handgun in a cabinet. When he had asked [REDACTED] if [REDACTED] had found a key to a safe, [REDACTED] said no, that [REDACTED] probably was looking for money and found the handgun in a cabinet. Given [REDACTED] conflicting

statements, [REDACTED] did not find [REDACTED] statement that he had stored the handgun in a safe to be credible. [REDACTED] concluded that [REDACTED] kept the gun in an unsecured chest of drawers next to his bed at the time [REDACTED] took it.

Outside investigator [REDACTED] was retained to complete the investigation initiated by [REDACTED]. [REDACTED] ordered [REDACTED] to appear for an interview and requested he bring any evidence which would tend to exonerate or mitigate the allegations against him. However, [REDACTED] did not bring any evidence to the interview that related to the safe or his purported purchase of the AR-15 found in his locker.

After completing his IA investigation, [REDACTED] reported his findings to the Department. [REDACTED] concluded [REDACTED] was in violation of the Policy Manual and/or Penal Code with respect to 1) [REDACTED] 2011 selfie of himself holding a handgun, 2) [REDACTED] 2013 possession of [REDACTED] Glock, 3) [REDACTED] possession of the camouflage AR-15 found in his locker and 4) the conflicting statements [REDACTED] made regarding his method of storing and safeguarding the handgun found in [REDACTED] possession when he was arrested 2013.

#### C. Notice of Intent to Impose Disciplinary Action

Sergeant [REDACTED], whose duties include overseeing all IA investigations, reviewed the investigative materials submitted by [REDACTED] and [REDACTED] and recommended [REDACTED] be terminated from his position as an officer effective May 1, 2014. A Notice of Intent to Impose Disciplinary Action was thereafter issued. The recommendation to terminate was based on violations of the Policy Manual and various provisions of the California Penal Code.

#### D. Skelly Hearing

On April 25, 2014, Interim Police Chief [REDACTED] conducted a Skelly hearing during which [REDACTED] and his counsel were given an opportunity to present arguments in defense of his conduct. The defenses presented are essentially the same as those that were argued at this hearing, including that [REDACTED] was not a credible witness, that the investigations conducted by [REDACTED] and [REDACTED] were biased and flawed, that [REDACTED] did not make contradictory statements regarding his storage of the handgun and that any differences were a matter of word choice and context, that [REDACTED]

purchase of the AR-15 from ██████████ was proper, and that the Department acted inconsistently regarding its weapons policy.

E. Notice of Imposition of Disciplinary Action

After reviewing the Investigative report, the IA and DA investigations, Sergeant ██████████ recommended discipline, and the issues presented during the Skelly hearing, Interim Chief ██████████ issued a Notice of Imposition of Disciplinary Action terminating ██████████ on May 27, 2014. The decision was based on multiple incidents of improper safekeeping and/or possession of firearms, and the conflicting statements ██████████ gave about his method of storing the Glock handgun found in ██████████ possession. Regardless, whether ██████████ was a credible witness and was believable regarding where he found the weapon, ██████████ found that the fact remains ██████████ was able to gain possession of the gun and remove it from the house. ██████████ also noted that ██████████ had violated the basic requirements of police work involving safeguarding weapons and telling the truth.

F. ██████████ Assertion of His Fifth Amendment Rights

After initiating the appeal of his termination, ██████████ asserted his Fifth Amendment rights at the appeal hearing and refused to testify. The Department, then and now, argues his appeal should be dismissed on this basis. At the hearing, the Hearing Officer ruled that dismissal was neither appropriate nor necessary. Since the ██████████ City Police Department was seeking to terminate ██████████ employment as a ██████████ City Police Officer and the ██████████ County District Attorney's Office was prosecuting him for conduct that was also being used to justify his termination, ██████████ assertion of his Fifth Amendment right not to testify did not support a finding that he was attempting to use his right to refuse to testify to gain an unfair advantage in the termination hearing.

DISCUSSION

Having reviewed all the testimony and evidence presented at the hearing, and the parties' briefing, including ██████████ analysis of each of the allegations which were sustained against him, the Hearing Officer finds that the allegations against ██████████ are supported by clear and convincing evidence, that the Department met its burden of

proving misconduct by Officer [REDACTED] and that Officer [REDACTED] termination was justified.

First, [REDACTED] arguments that termination was not a proper disciplinary measure under the facts and constituted "excessive" discipline are not persuasive. Contrary to [REDACTED] contentions, he was not terminated for an isolated incident of misconduct. He was terminated for a series of acts in which he either failed to safeguard firearms or to store them properly.

If the termination was based on an isolated incident, [REDACTED] would have been entitled to "progressive discipline", but it was not. The sustained allegations involve multiple incidents relating to his failure to properly store and safeguard his firearms. The first incident, the theft of his Sig Sauer handgun from his vehicle, resulted in discipline which should have resulted in an increased effort by [REDACTED] to properly store his police firearms and prevent their loss. In spite of the earlier theft of his weapon in 2012, an automatic rifle, the AR 15, was taken from his home during a burglary because it was not properly stored and secured. Then in 2013, he failed to safeguard his Glock handgun and it was found and taken by his stepson who was stopped by the police with the weapon in his waistband. Again in 2013, an AR 15, automatic weapon, was found improperly stored in his police locker. The selfie incident in 2011 was less egregious and the proof that the gun possessed by the stepson was [REDACTED] weapon was insufficient. However, the other incidents support the Department's decision to terminate [REDACTED]

Second, contrary to [REDACTED] assertions, after the arrest of [REDACTED] stepson while the stepson was in possession of [REDACTED] handgun, the Department conducted a thorough and complete internal affairs investigation into the incidents involving [REDACTED] improper safeguarding of firearms. No evidence was admitted that cast doubt on the accuracy of the investigations and subsequent reports.

Regarding his possession of an unregistered assault weapon, the evidence suggests this was more of a technical violation. [REDACTED] had not taken the proper steps to change the registration from [REDACTED] to himself, but he had qualified the weapon with the Range Master, Sergeant [REDACTED]. [REDACTED] was aware he was using

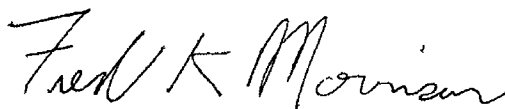
and in possession of the weapon. Also, some of the evidence suggested that the Department's policy may not have been clear to [REDACTED]. Nevertheless, the Department proved that storage of the AR-15 in [REDACTED] locker was improper. Fourth, [REDACTED] failure to produce evidence to support his defenses, such as the existence of the safe in which he claims his handgun was stored, may be considered in determining the merits of his arguments.

Finally, [REDACTED] made contradictory statements regarding his storage of the Glock handgun when his stepson was arrested with that weapon in 2013. As the Department argued, this reflected on his credibility and honesty, which are essential traits in a police officer.

### **CONCLUSION**

The Department proved by clear and convincing evidence that the decision to terminate [REDACTED] employment was justified. [REDACTED] failure to properly safeguard his firearms resulted in three proven thefts or misappropriations in four years, despite the Department's prior discipline and warning following the first incident in 2009. The Department properly concluded that due to the repeated violations termination was the appropriate remedy and a lesser penalty would not be effective. [REDACTED] failed to produce persuasive evidence to support his defense arguments that he was improperly terminated because the Department failed to carry out a proper investigation and acted inconsistently with regard to its weapon policy.

DATED: March 19, 2015



Hon. Fred Morrison (Ret.)  
Hearing Officer