

BOARD OF FIRE AND POLICE COMMISSIONERS  
OF THE CITY OF MILWAUKEE

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IN THE MATTER OF THE APPEAL OF JOEL A. MOELLER

Personnel Order 2011-75

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Hearing Dates: October 12, 2011 and October 19, 2011

Hearing Location: 200 East Wells Street, Room 301-A, City Hall  
Milwaukee, Wisconsin 53202

Commissioners: Paoi X. Lor, Sarah W. Morgan, and Carolina M. Stark

Hearing Examiner: Attorney John J. Carter

Appearances: Patricia A. Fricker, Assistant City Attorney,  
For the Milwaukee Police Department

Jonathan Cermele, Attorney at Law,  
For the Appellant Joel A. Moeller

**PROCEDURAL HISTORY**

Police Chief Edward A. Flynn charged Police Officer Joel A. Moeller in Personnel Order 2011-75 dated May 18, 2011 with violations of:

1. Rule 4, Section 010.00 referencing Standard Operating Procedures relating to Vehicle Pursuits, Section 660.20(B)(1); Core Value 1.00 - Competence, referencing Guiding Principle 1.05; Initiating vehicle pursuit without knowledge that the occupant has committed, is committing, or is about to commit a violent felony, for which the Appellant received a three (3) day suspension without pay.
2. Rule 4, Section 010.00 referencing Standard Operating Procedures relating to Vehicle Pursuits, Section 660.20(D)(1); Core Value 1.00 - Competence, referencing Guiding Principle 1.05; Engaging in a vehicle pursuit without notifying the Technical Communications Division, for which the Appellant received a two (2) day suspension without pay.

3. Rule 4, Section 105.00; Core Value 3.00 – Integrity, referencing Guiding Principle 3.11; Untruthfulness, for which the Appellant received a five (5) day suspension without pay.
4. Rule 4, Section 105.10; Core Value 3.00 – Integrity, referencing Guiding Principle 3.11: Failure to be honest and accurate with respect to all relevant facts and information in a report, for which the Appellant was discharged from the Department.

Appellant filed an appeal of the Order of the Chief to the Milwaukee Fire and Police Commission, which held Phase I and Phase II hearings.

### **SUMMARY OF HEARING PROCEEDINGS**

The Phase I hearing was held on October 12, 2011, and was recorded by a stenographic reporter, and the transcript of the proceedings is a part of the record in this matter. Testimony was taken from the following witnesses:

For the Chief of Police: Eddie Strong, Sergeant, Milwaukee Police Department

For the Appellant: Chad Boyack, Police Officer, Milwaukee Police Department  
Matthew Palmer, Police Officer, Milwaukee Police Department  
Joel Moeller, Appellant

The Phase II hearing for count 4 was held on October 19, 2011 and was recorded by a stenographic reporter, and the transcript of the proceedings is a part of the record in this matter. Testimony was taken from the following witness:

For the Chief of Police: No witnesses

For the Appellant: Joel Moeller, Appellant

Based upon the testimony and evidence received at the hearing, the Commission makes the following:

### **FINDINGS OF FACT**

1. The Appellant was appointed to the Milwaukee Police Department on February 19, 2001.
2. The Appellant was assigned to District 4, night shift, on February 6, 2011. The incident at issue occurred on October 21, 2010 while the Appellant was operating a one-person squad.
3. The Appellant was familiar with the Rules of the Department, including the Standard Operating Procedures and the Core Values.
4. The Appellant observed an automobile operating without headlights at approximately 2:49 a.m. and began following the vehicle with the intent to execute a traffic stop.
5. The Appellant followed the vehicle and activated his emergency lights. When the vehicle did not immediately stop, the Appellant thought perhaps the vehicle driver had not seen him. The Appellant followed the vehicle onto I-43 southbound and followed the vehicle as it exited I-43 to an area with construction along the roadway. The appellant believed that he was pursuing the vehicle on the basis of a refusal to stop and not on the basis of eluding/fleeing, as defined by Standard Operating Procedure 660.15.
6. At approximately 2:50 a.m., the Appellant was dispatched as a backup squad to a person with a weapon incident. The Appellant acknowledged receipt of the dispatch and decided to continue pursuit of the vehicle instead of aborting the pursuit and responding to the backup dispatch. This decision was within commonly accepted department practice. Approximately one minute later, the Appellant notified dispatch for the first time that he was attempting to execute a traffic stop but the driver would not pull over. A couple of minutes later, the vehicle driver struck a garage in an alley, attempted to flee on foot and was arrested after a foot chase.

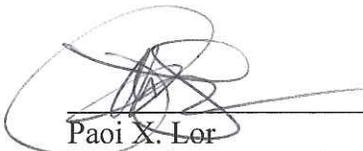
7. The Appellant pursued the vehicle for an approximate total of 2.9 miles at an approximate average speed of 43.9 miles per hour. The speed limit on the traveled section of I-43 was 50-55 miles per hour and the speed limit on the traveled city streets was 25-30 miles per hour. The Appellant's squad camera was operating throughout the pursuit.
8. While being pursued by the Appellant, the vehicle driver applied the brakes at intersections various times but failed to stop for three traffic signals. While being pursued by the Appellant, the vehicle driver drove at a reasonable speed. While being pursued by the Appellant, the vehicle driver did not attempt to avoid capture by using high speed driving or other evasive tactics.
9. The Appellant filed an Arrest Detention Report about the pursuit which stated in relevant part, "I continued to follow the vehicle which was traveling at the speed limit and stopping for all traffic signals." The Appellant did not review the squad camera video prior to writing the report. At the time the Appellant wrote the report, he believed and intended it to be honest and accurate.
10. During an interview with a member of the Professional Performance Division on March 10, 2011, the Appellant saw the squad camera video for the first time and then acknowledged that the statement in his Arrest Detention Report indicating that the vehicle stopped for all traffic signals was not accurate.
11. Before the Chief filed charges and issued discipline against the Appellant, the Professional Performance Division conducted an investigation of the incident at issue, including a review of the squad camera video and an interview of the Appellant.
12. The Appellant's record of service with the department includes 1) one meritorious award on February 18, 2002 related to three counts of armed robbery, operating an auto without owner's consent and carrying a concealed weapon, 2) one meritorious award on February 18, 2002 related to homicide, 3) a one-day suspension on June 18, 2007 for failure to fully investigate a crime and 4) an official reprimand on February 28, 2005 for failure to fully investigate a crime.

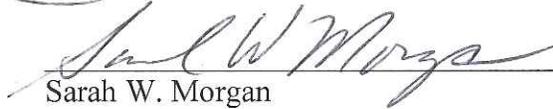
## CONCLUSIONS OF LAW

1. The Appellant was involved in a lawful vehicle pursuit for refusal to stop, as defined by Standard Operating Procedure 660.15. The vehicle pursuit never rose to the level of a pursuit for eluding/fleeing, as defined by Standard Operating Procedure 660.15. Therefore, the Appellant did not violate Rule 4, Section 010.00 referencing Standard Operating Procedures relating to Vehicle Pursuits, Section 660.20(B)(1); Core Value 1.00 – Competence. Accordingly, the Commission does not reach Phase II for Count 1.
2. Prior to the deliberations for Phase I, the Appellant, through his attorney, withdrew the appeal of count 2 for violating Rule 4, Section 010.00 referencing Standard Operating Procedures relating to Vehicle Pursuits, Section 660.20(D)(1); Core Value 1.00 - Competence, referencing Guiding Principle 1.05 for engaging in a vehicle pursuit without notifying the Technical Communications Division. Therefore, the Commission does not have jurisdiction over count 2, and the two-day suspension imposed by the Chief remains in effect.
3. While one sentence in the Appellant’s Arrest Detention Report was not accurate, the inaccuracy was simply a mistake. The Appellant was not intentionally dishonest or untruthful in his report. Therefore, the Appellant did not violate Rule 4, Section 105.00; Core Value 3.00 – Integrity, referencing Guiding Principle 3.11 for untruthfulness. Accordingly, the Commission does not reach Phase II for Count 3.
4. One sentence in the Appellant’s Arrest Detention Report was not accurate with respect to all of the relevant facts fact and information. Specifically, the report was not accurate with respect to the fact that the vehicle driver did not stop for all traffic signals. Therefore, the Appellant violated Rule 4, Section 105.10; Core Value 3.00 – Integrity, referencing Guiding Principle 3.11 for failure to be accurate with respect to all relevant facts and information in a report.
5. In regards to Count 4, the rule was applied fairly and without discrimination to the Appellant by the Chief.

6. Given that the Appellant's inaccuracy in the Arrest Detention Report was a mistake without any intent to be inaccurate, dishonest or untruthful, discharge for the violation in Count 4 does not reasonably relate to the seriousness of the violation or to his record of service. A five-day suspension without pay reasonably relates to the serious of the violation and the Appellants record of service and is hereby ordered by unanimous decision of the Commission.

Dated at Milwaukee, Wisconsin this 1<sup>st</sup> day of December, 2011.

  
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Sarah W. Morgan

  
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Carolina M. Stark