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METROPOLITAN POLICE DEPARTMENT OF NASHVILLE AND DAVIDSON COUNTY, v. CHRIS VICK, Appellant.

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BEFORE THE CIVIL SERVICE COMMISSION OF THE METROPOLITAN GOVERNMENT OF NASHVILLE AND DAVIDSON COUNTY

IN THE MATTER OF: **METROPOLITAN POLICE DEPARTMENT OF NASHVILLE AND DAVIDSON COUNTY,** ***v.*** **CHRIS VICK,** ***Appellant.***	**DOCKET NO: 43.02-104832J**

INITIAL ORDER

This matter was heard on May 27, 2010, in Nashville, Tennessee, before Administrative Judge Mary M. Collier, assigned by the Secretary of State, Administrative Procedures Division, to sit for the Civil Service Commission of the Metropolitan Government of Nashville and Davidson County. Mr. Jon Michael, Assistant Metro Legal Counsel, represented the Metropolitan Police Department. The Grievant, Mr. Christopher Patrick Vick, was present and was represented by legal counsel, Mr. P. Brocklin Parks.

The issue of this hearing was whether the Metropolitan Police Department of Nashville and Davidson County (hereinafter "MNPD") properly terminated Sergeant Vick's employment. After consideration of all of the evidence, arguments of counsel, and the entire record in this matter, it is determined that Sergeant Vick's termination of employment was proven to be appropriate by a preponderance of the evidence and should therefore be **UPHELD**. In addition, all but one of the 5-day suspensions was proven to be appropriate by a preponderance of the evidence. Accordingly, it is hereby **ORDERED** that Sergeant Vick's appeal is **DENIED** in part and **GRANTED** in part. This decision is based upon the following.

PROCEDURAL HISTORY

On September 1, 2009, MNPD Chief Ronal W. Serpas notified Sergeant Vick that he was charged with violating MNPD GENERAL ORDER 06-05, Deportment and Personal Appearance: Section VII Personal Behavior, subsections A (Adherance to Policy & Rules of the Metropolitan Government), E (Honesty & Truthfulness), and F (Responsibility); and Section VIII Official Obligations, subsections F (Deficient or Inefficient Performance of Duties (2 separate violations)), S (Failure to Cooperate/Withholding Information), and V (False or Inaccurate Reports). Sergeant Vick was also notified that he was charged with violating Metro Civil Service Rule 6.7, Grounds for Disciplinary Action: subsections 2 (Deficient or inefficient Performance of Duties), 11 (Violation of any written rules, policies or procedures of the department in which the employee is employed), 13 (Dishonesty), 18 (Excessive Absenteeism and excessive tardiness and/or abuse of sick leave), and 26 (Falsifying employment or promotional application or any official document of Metro Government).

On September 21, 2009, Sergeant Vick was afforded a pre-termination due process hearing before Hearing Officer Deputy Chief Louise Kelton. MNPD found Sergeant Vick guilty of all seven of the departmental charges and all five of the Civil Service charges. On September 21, 2009, Deputy Chief Kelton notified Sergeant Vick in writing of her recommendation to terminate his employment with MNPD.

Sergeant Vick appealed Deputy Chief Kelton's decision by requesting a grievance hearing before the Civil Service Commission of the Metropolitan Government of Nashville and Davidson County. The *de novo* contested case was heard on May 27, 2010.

At the outset of the hearing, Sergeant Vick's counsel announced that Sergeant Vick is only challenging the finding of guilt in Charges 1, 2, 3, and 5, as set forth in Deputy Chief

Kelton's September 21, 2009, memorandum. Counsel further explained that while Sergeant Vick is not challenging the findings of guilt on Charges 4, 6, and 7, he is challenging the discipline imposed.

Hence, Sergeant Vick is appealing the findings of guilt and the discipline imposed for the following 4 CHARGES:

> CHARGE # 1: Violation of MNPD GENERAL ORDER 06-05, Deportment and Personal Appearance: Section VII Personal Behavior, subsection E. Honesty & Truthfulness – termination of employment imposed;
>
> CHARGE # 2: Violation of MNPD GENERAL ORDER 06-05, Deportment and Personal Appearance: Section VIII Official Obligations, subsection V. False or Inaccurate Reports – termination of employment imposed;
>
> CHARGE # 3: Violation of MNPD GENERAL ORDER 06-05, Deportment and Personal Appearance: Section VIII Official Obligations, subsection S. Failure to Cooperate/Withholding Information – termination of employment imposed; and
>
> CHARGE # 5: Violation of MNPD GENERAL ORDER 06-05, Deportment and Personal Appearance: Section VII Personal Behavior, subsection F. Responsibility – 5 day suspension imposed.

And, Sergeant Vick admits to the following misconduct but is appealing the discipline imposed for the following 3 CHARGES:

> CHARGE # 4: Violation of MNPD GENERAL ORDER 06-05, Deportment and Personal Appearance: Section VII Personal Behavior, subsection A. Adherance to Policy & Rules of the Metropolitan Government – 5 day suspension imposed;

CHARGE # 6: Violation of MNPD GENERAL ORDER 06-05, Deportment and Personal Appearance: Section VIII Official Obligations, subsection F. Deficient or Inefficient Performance of Duties (Faulty decision making or poor judgment) – 5 day suspension imposed; and

CHARGE # 7: Violation of MNPD GENERAL ORDER 06-05, Deportment and Personal Appearance: Section VIII Official Obligations, subsection F. Deficient or Inefficient Performance of Duties (Careless, negligent or improper use of department property or equipment) – 5-day suspension imposed.

Finally, because no separate discipline was imposed, Sergeant Vick did not appeal the findings that he also violated the Metro Civil Service Rules.

At the conclusion of the hearing, the matter was taken under advisement, pending receipt of the transcript and the submission of the parties' Proposed Findings of Fact and Conclusions of Law and reply briefs[1] pursuant to TENN. CODE ANN. § 4-5-308(b).

SUMMARY OF EVIDENCE

Four (4) witnesses testified at the hearing:

(1) MNPD Sergeant Gary Faulcon;

(2) MNPD Lieutenant Floyd Allen Hyde;

(3) MNPD Lieutenant Gordon Glenn Howey, Jr., Specialized Investigations Division; and

(4) Appellant, MNPD Sergeant Christopher Patrick Vick.

15 exhibits were entered into evidence:

COLLECTIVE EXHIBIT 1 — Technical Record Packet;

EXHIBIT 2 — STIPULATIONS OF FACT;

[1] Neither party chose to file a Reply Brief.

COLLECTIVE EXHIBIT 3 — Attachments to the STIPULATIONS OF FACT;

EXHIBIT 4 — Supplement Report dated October 15, 2007;

EXHIBIT 5 — Incident Report dated October 8, 2007;

EXHIBIT 6 — Investigation File of Lieutenant Hyde;

EXHIBIT 7 — MNPD GENERAL ORDER No. 06-05, Deportment and Personal Appearance, effective October 26, 2006;

EXHIBIT 8 — MNPD Disciplinary/Corrective Action Grid;

EXHIBIT 9 — MNPD Office of Professional Accountability Confidential Report;

EXHIBIT 10 — MNPD Office of Professional Accountability Confidential Report — Transcribed Interview of Sergeant Christopher P. Vick;

EXHIBIT 11 — MNPD Office of Professional Accountability Confidential Report — Additional Transcribed Interviews;

COLLECTIVE EXHIBIT 12 — MNPD Settlement File;

EXHIBIT 13 — Metro Nashville Civil Service Commission Rules Section 6.7 — Grounds for Disciplinary Action;

EXHIBIT 14 — September 1, 2009, Memorandum from MNPD Chief of Police Ronal W. Serpas to Sergeant Christopher Vick; and

EXHIBIT 15 — September 21, 2009, Memorandum from MNPD Deputy Chief Louise Kelton to Sergeant Chris Vick.

FINDINGS OF FACT

1. The Appellant, Christopher Patrick Vick, was employed by MNPD as a police officer from 1987 to 2009.

2. At the time of the 2007 incident at issue in this case, Mr. Vick worked as a sergeant in MNPD's Emergency Contingency Section ("ECS") under the supervision of Lieutenant Floyd Allen Hyde.

3. From September 21, 2007, until October 8, 2007, Lt. Hyde was out of the office for military leave, followed by a personal vacation. Before taking this leave, Lt. Hyde placed his duty pistol, which was in the holster on his web belt, in the second-from-the-top drawer of a filing cabinet in his office at ECS. This was the location that Lt. Hyde typically stored his weapon.

4. Upon his return to work on October 8, 2007, Lt. Hyde discovered that his duty pistol was missing from the second-from-the-top drawer of the filing cabinet in his ECS office, where he had placed the weapon prior to his extended absence from the office.

5. As soon as Lt. Hyde discovered that his duty pistol was missing, he initiated a thorough search for the missing gun. The office staff joined Lt. Hyde in searching the ECS office for the pistol. This search included a search of every drawer in Lt. Hyde's filing cabinet, the rails to the filing cabinet drawers, and the floor beneath the bottom drawer of the filing cabinet. This search incorporated all the MNPD personnel who were present at ECS at that time, and covered not only Lt. Hyde's office but all of the facility. The missing gun was not located during this office search.

6. When the initial office search failed to locate the gun, Lt. Hyde took another officer to Lt. Hyde's home to continue the search. They searched both Lt. Hyde's house and his RV. The missing gun was not located in Lt. Hyde's home or his RV.

7. Sgt. Vick was not in the ECS office on October 8, 2007, when Lt. Hyde discovered that his gun was missing. On October 8, 2007, Lt. Hyde called Sgt. Vick and asked him if he had seen the missing weapon. Sgt. Vick was driving in his MNPD Expedition SUV when he received the phone call. While they were on the telephone, Sgt. Vick conducted a cursory search of his truck and did not locate the weapon. Sgt. Vick replied to Lt. Hyde that he

had not seen Lt. Hyde's pistol. Lt. Hyde then told Sgt. Vick to search the truck the first chance he got.

8. Failing to find the gun, Lt. Hyde requested that an INCIDENT REPORT be prepared for the missing gun on October 8, 2007. That INCIDENT REPORT was completed by Officer David Bebout on the same day.

9. On October 9, 2007, Sgt. Vick conducted the requested search of his MNPD truck. During this search, Sgt. Vick found Lt. Hyde's gun under a pile of duty-gear on the back seat of Sgt. Vick's MNPD truck. Upon finding the missing gun in his MNPD truck, Sgt. Vick did not report to Lt. Hyde, his coworkers, or any of his superiors that he had located the missing gun in his MNPD vehicle.

10. Instead of reporting that he had located the missing gun, Sgt. Vick decided to return the gun to Lt. Hyde's filing cabinet covertly. On October 9, 2007, Sgt. Vick carried the gun from his MNPD truck into the ECS offices and covertly put it in the filing cabinet in Lt. Hyde's office.

11. During the hearing, Sgt. Vick testified that he put the gun back in the top drawer of the filing cabinet and then as he was closing the drawer, the gun fell out of the top drawer and landed on the floor underneath the bottom drawer of the filing cabinet. While it is undisputed that Sgt. Vick found the gun in his MNPD truck and covertly returned it to Lt. Hyde's filing cabinet, Sgt. Vick's account of where in the filing cabinet he placed the gun is not found to be credible. Sgt. Vick explained that the gun would not have fallen into the second drawer because the second drawer was full of files and because of this it fell all the way to the bottom of the filing cabinet. This statement is contradicted by Lt. Hyde's credible testimony that the second-to-the-top drawer is the drawer with junk in it where he stores his gun belt and gun. Lt. Hyde

also credibly testified about the types of files he kept in the bottom 2 drawers of the filing cabinet. Similarly, MNPD Lieutenant Gordon Glenn Howey, Jr., credibly testified that he tried to recreate the filing cabinet scenario as described by Sgt. Vick and that it could not be recreated. Because of these discrepancies and the fact that it would be physically impossible for the gun to have fallen from the top drawer to the floor beneath all of the other drawers of the filing cabinet as described by Sgt. Vick, Sgt. Vick's testimony during the hearing that he placed the gun in the top drawer of the filing cabinet is found to be untruthful. Likewise, it is determined that Sgt. Vick's statements regarding his placement of the gun in the top drawer of the filing cabinet during the MNPD investigation were also untruthful.

12. Sgt. Gary Faulcon and Officer Alan Jordan were both present at ECS on October 9, 2007, when Sgt. Vick entered the office. Sgt. Vick told Officer Jordan and Sgt. Faulcon that he was looking for Lt. Hyde's gun. This statement was a lie because Sgt. Vick knew that he had Lt. Hyde's gun on his person when he entered the ECS office.

13. On October 9, 2007, after covertly bringing the gun into Lt. Hyde's office after he found it in his MNPD SUV, Sgt. Vick pretended that he discovered the gun on the floor below the bottom drawer of the filing cabinet. Sgt. Vick did not tell the other officers present in the office or Lt. Hyde that he had found the gun in his MNPD SUV and brought it into Lt. Hyde's office.

14. Sgt. Faulcon retrieved the gun from the floor below the filing cabinet, cleared it, and called Lt. Hyde to notify him that the missing gun had been found.

15. On October 10, 2007, Lt. Hyde instructed Sgt. Vick to prepare a Recovered Property Report relating to the recovery of the missing gun on October 9, 2007. Sgt. Vick prepared the Recovery Report, backdating it to October 9, 2007, at 1100 hours. The Recovery

Report was received by Lt. Hyde on October 16, 2007. Sgt. Vick's Recovery Report offers no explanation of who removed the gun, who returned the gun, or when the gun had been removed.

16. In the Recovery Report, Sgt. Vick withheld the fact that he had found the missing gun in his MNPD vehicle and returned it to Lt. Hyde's office.

17. In the Recovery Report, Sgt. Vick's hand written account of the gun's recovery states:

> On Tuesday morning October 09, 2007, after everyone in the section had been notified of the missing weapon, it was returned to Lt. Hyde after it had been borrowed due to personnel's weapon being left at their residence. This was an oversight on officer's part in failing to return weapon in a timely manner and was not malicious in nature. The weapon was not damaged and was never left unsecured by the responsible officer. This was a failure to effectively communicate on this officer's part.

18. During the hearing, Sgt. Vick testified that this Recovery Report account was drafted using the Word word-processing program and printed out and edited by Sgt. Vick and Lt. Hyde. In contrast, Lt. Hyde's credible testimony was that he read this language when the report was given to him and he then explained that more clarification was needed. In addition, Sgt. Vicks's testimony during the hearing regarding the drafting process of the Recovery Report is not found to be consistent with his October 24, 2007, written report. Because of these inconsistencies, Sgt. Vick's testimony on this point is not found to be credible.

19. Sgt. Vick's withholding of his own name, failure to affirm his personal knowledge of where the gun was actually found, and vague references to "personnel," the "officer," and "the responsible officer," all implied that Sgt. Vick was not responsible for the missing gun.

20. Sgt. Vick asked Lt. Hyde if he could continue to look into the matter concerning the missing weapon and Lt. Hyde allows him to do so as long as Sgt. Vick "does not cover for another officer."

21. On October 11, 2007, Lt. Hyde notified all members of the ECS unit that if he did not receive an explanation of the disappearance and subsequent recovery of the gun by October 16, 2007, then all members of the unit would be issued "counseling statements" regarding the incident.

22. On October 12, 2007, Sgt. Vick attempted to call Lt. Hyde but was unable to make contact.

23. On October 14, 2007, Sgt. Vick telephoned Lt. Hyde again and left a voicemail concerning the incident. In that voicemail message, Sgt. Vick requests to meet with Lt. Hyde, and offers to "take the blame if nobody steps up tomorrow."

24. On October 15, 2007, Sgt. Vick met with Lt. Hyde and discussed the disappearance and recovery of the weapon. Lt. Hyde recorded that conversation, during which, Sgt. Vick explained his three theories of what might have happened with the missing gun incident. In his first theory, Sgt. Vick posited that Lt. Hyde himself, "put it in there and you had it out of the holster for some reason, switching holsters, whatever the scenario may have been and threw it in there in a rush, slammed your door, and it flipped out." Another of Sgt. Vick's theories suggested the possibility that Lt. Hyde had simply forgotten that that he put the gun back in the cabinet himself. The third, longest, and most detailed theory outlined by Sgt. Vick explained a scenario where an officer borrowed the gun, forgot about the gun, and later returned the gun to the filing cabinet. In response to this third theory, Lt. Hyde pointedly asked Sgt. Vick, "Do you have any special knowledge of that?" Sgt. Vick replied, "No, I do not."

25. Also during that recorded conversation on October 15, 2007, Sgt. Vick stated, "I saw the way some of the searching was done. Come on," in reference to the searches of the ECS offices.

26. Between October 9, 2007, when he found the missing gun in his MNPD vehicle, and October 16, 2007, Sgt. Vick did not explain his actual knowledge of having personally found the missing gun in his MNPD vehicle to Lt. Hyde.

27. On the October 16, 2007, deadline set by Lt. Hyde for reporting what happened with the gun incident, Sgt. Vick advised Lt. Hyde that he would accept responsibility for borrowing and replacing the weapon. Lt. Hyde instructed Sgt. Vick to prepare a detailed report concerning the matter.

28. On October 24, 2007, Sgt. Vick submitted his detailed report concerning the matter. In this report, Sgt. Vick addresses the replacement of the gun into the filing cabinet by stating, "So in a rash, quick, obviously not well thought out decision I placed it back in the cabinet and advised it had been found in an attempt to squash [sic] the incident."

29. On October 29, 2007, Lt. Hyde submitted a set of interrogatories via email to Sgt. Vick, which were subsequently responded to by Sgt. Vick. Shortly thereafter, the matter was turned over to the Office of Professional Accountability ("OPA") to begin a formal investigation.

30. Sgt. Vick was interviewed by OPA investigators on December 27, 2007, and again on June 30, 2008, regarding the specific facts surrounding the missing gun incident at ECS. OPA interviewed several other members of the ECS unit as part of its investigation of the incident.

31. During Sgt. Vick's OPA interview on December 27, 2007, he repeatedly denied being untruthful during the gun incident and the investigation of the gun incident.

32. During his June 30, 2008, OPA interview, Sgt. Vick denied that he had withheld information from Lt. Hyde about the gun during Lt. Hyde's investigation of the incident.

33. During his June 30, 2008, OPA interview, Sgt. Vick denied having made critical remarks about the way the search for the missing gun had been conducted.

34. During his June 30, 2008, OPA interview, Sgt. Vick defended his choice of words in the October 9, 2007, Recovery Report by explaining to OPA investigators, "that's based off the best information that I had at the time that I did the report." Sgt. Vick repeated this defense several times during the interview.

35. During his June 30, 2008, OPA interview, Sgt. Vick told OPA investigators that his Recovery Report reflected what he thought was "probable" at that time. Specifically, Sgt. Vick explained his thinking with regard to probability by stating: "Based on what we have at the time this report's done, is that weapon's missing, weapon's found in my truck, what's the probable … what's probable, what's the probable actions at this point?"

36. During his June 30, 2008, OPA interview, Sgt. Vick told the investigator, "I wasn't trying to covertly put it back." Sgt. Vick attempted to explain that denial of covert efforts in his returning the gun to the filing cabinet by stating, "I put it back and had every intent of telling Lt. Hyde it was back when he came back because I wanted to first question him or ask him if he had done it or, or if he had any ideas what was going on or whatever." In his response to the OPA investigator's question of whether Sgt. Vick thought his return of the gun was clandestine, sneaky, blatant, covert, sly, underhanded, or deceitful, Sgt. Vick answered no.

37. OPA completed its investigation and presented an investigation report signed by Detective Curtis Gardner and Lt. Gordon Howey on January 28, 2009, as well as their supervisor, Director Kennetha Sawyers on February 11, 2009.

ANALYSIS and **CONCLUSIONS OF LAW**

I. SERGEANT VICK IS APPEALING THE FINDINGS OF GUILT AND THE DISCIPLINE IMPOSED FOR CHARGES 1, 2, 3 AND 5. IT IS DETERMINED THAT MNPD HAS PROVEN CHARGES 1, 2, 3 AND 5 BY A PREPONDERANCE OF THE EVIDENCE AND THE DISCIPLINE IMPOSED IS APPROPRIATE AND UPHELD.

A. CHARGE # 1: **MNPD has proven by a preponderance of the evidence that Sergeant Vick violated MNPD GENERAL ORDER 06-05, Deportment and Personal Appearance: Section VII Personal Behavior, subsection E. Honesty & Truthfulness. MNPD properly terminated Sergeant Vick's employment for this violation.**

MNPD GENERAL ORDER 06-05, Deportment and Personal Appearance: Section VII Personal Behavior, subsection E. Honesty & Truthfulness provides:

> Employees shall be honest and truthful. Truthfulness shall apply when an employee makes a materially false statement with the intent to deceive. A statement is material when, irrespective of its admissibility under the rules of evidence, it could have affected the course or outcome of an investigation or an official proceeding.

Violations of this GENERAL ORDER are Category AA offenses. Several of Sgt. Vick's statements violated this MNPD GENERAL ORDER.

First, on October 9, 2007, Sgt. Vick made false statements to Sgt. Faulcon and Officer Jordan about searching for the gun in the ECS office. Specifically, after finding the gun in his MNPD vehicle and carrying it on his person into the ECS office, Sgt. Vick told Officer Jordan and Sgt. Faulcon, that he was going to look for the gun in Lt. Hyde's office. These false statements were made in furtherance of Sgt. Vick's attempts to covertly return the missing gun to Lt. Hyde's filing cabinet without anyone finding out that it was Sgt. Vick who returned the gun. During the hearing, Sgt. Vick admitted that these statements were false. These statements are found to be materially false statements made by Sgt. Vick with the intent to deceive. These false statements by Sgt. Vick constitute a clear violation of MNPD GENERAL ORDER 06-05,

Deportment and Personal Appearance: Section VII Personal Behavior, subsection E. Honesty & Truthfulness.

Second, Sgt. Vick made false statements to Lt. Hyde regarding his knowledge of the third explanatory theory regarding the missing gun. Several days after Sgt. Vick found the gun in his vehicle and covertly returned the gun to Lt. Hyde's filing cabinet, Sgt. Vick informed Lt. Hyde that he had three possible explanatory theories of the missing gun. In the October 15, 2007, conversation, which was recorded, between Mr. Vick and Lt. Hyde, Sgt. Vick specifically outlined his three theories for Lt. Hyde. The third, longest, and most detailed theory outlined by Sgt. Vick explained a scenario where an officer borrowed the gun, forgot about the gun, and later returned the gun to the filing cabinet. In response to this third theory, Lt. Hyde pointedly asked Sgt. Vick, "Do you have any special knowledge of that?" Sgt. Vick replied, "No, I do not." Sgt. Vick's statement to Lt. Hyde was false because Sgt. Vick had specific personal knowledge about where the gun was actually found and that he had in fact returned it to the filing cabinet. The MNPD Office of Professional Accountability ("OPA") investigators properly determined that Sgt. Vick already knew the facts about the location and return of the gun before presenting his three theories to Lt. Hyde. OPA also properly determined that Sgt. Vick was untruthful in his denial of having special knowledge of the third theory. It is determined that Sgt. Vick's statement to Lt. Hyde that he had no special knowledge of his third theory pertaining to the missing gun, which mirrored the actual events that had already transpired with the missing gun, was a materially false statement made by Sgt. Vick with the intent to deceive. This false statement by Sgt. Vick constitutes a clear violation of MNPD GENERAL ORDER 06-05, Deportment and Personal Appearance: Section VII Personal Behavior, subsection E. Honesty & Truthfulness.

Third, Sgt. Vick made false statements to investigators from OPA about whether he had been untruthful during the incident. Sgt. Vick was one of several MNPD employees interviewed during the course of the OPA investigation. During Sgt. Vick's OPA interview on December 27, 2007, he repeatedly denied being untruthful during the incident and the investigation of the incident. It is determined that these denials constituted materially false statements by Sgt. Vick to OPA personnel in the course of their investigation made by Sgt. Vick with the intent to deceive. These false statements by Sgt. Vick constitute a clear violation of MNPD GENERAL ORDER 06-05, Deportment and Personal Appearance: Section VII Personal Behavior, subsection E. Honesty & Truthfulness.

Fourth, Sgt. Vick made false statements to OPA investigators about whether he withheld information from Lt. Hyde about the gun. OPA conducted another interview of Sgt. Vick on June 30, 2008, during which Sgt. Vick denied that he had withheld information from Lt. Hyde about the gun during Lt. Hyde's investigation of the incident. These denials are contradicted by the fact that Sgt. Vick waited several days to inform Lt. Hyde that he had found the gun in his MNPD vehicle and personally replaced the gun in Lt. Hyde's filing cabinet; the fact that Sgt. Vick spoke with Lt. Hyde on multiple occasions during the investigation without sharing this pertinent information; and the fact that Sgt. Vick prepared the Recovery Report of October 9, 2007, without identifying himself as the individual who had found and returned the gun. Likewise, during the hearing, Sgt. Vick admitted under oath that he withheld information during Lt. Hyde's investigation of the missing gun incident. It is determined that these denials constituted materially false statements by Sgt. Vick to OPA personnel in the course of their investigation made by Sgt. Vick with the intent to deceive. These false statements by Sgt. Vick

constitute a clear violation of MNPD GENERAL ORDER 06-05, Deportment and Personal Appearance: Section VII Personal Behavior, subsection E. Honesty & Truthfulness.

Fifth, Sgt. Vick made false statements to OPA investigators about whether he made critical comments about the way that the searches of the ECS office were performed when the gun was first discovered missing. In his June 30, 2008, interview with OPA, Sgt. Vick denied having made critical remarks about the way the search for the missing gun had been conducted. However, the recording of Sgt. Vick's October 15, 2007, conversation with Lt. Hyde reveals that Sgt. Vick stated, "I saw the way some of the searching was done. Come on," in reference to the searches of the ECS offices. Sgt. Vick later denied having been present at ECS when those searches were conducted. Specifically, Sgt. Vick told OPA investigators, "I wasn't there to watch the search. I never said that. I wasn't in the office all day Monday." When the OPA investigator reminded Sgt. Vick that his prior statement, about seeing how the search was performed, had been tape recorded, Sgt. Vick responded, "I wasn't there during those searches. I, there's no way that I would've known if they were thorough or not." It is determined that Sgt. Vick's denial of making critical comments regarding the nature of the search is a materially false statement made by Sgt. Vick with the intent to deceive. This false statement by Sgt. Vick constitutes a clear violation of MNPD GENERAL ORDER 06-05, Deportment and Personal Appearance: Section VII Personal Behavior, subsection E. Honesty & Truthfulness.

Sixth, Sgt. Vick's fundamentally conflicting statements about whether or not he witnessed the search of the ECS offices is determined to be another materially false statement made by Sgt. Vick with the intent to deceive. These statements constitute a clear violation of MNPD GENERAL ORDER 06-05, Deportment and Personal Appearance: Section VII Personal Behavior, subsection E. Honesty & Truthfulness.

Seventh, Sgt. Vick made false statements to OPA investigators about whether his effort to return the missing gun to Lt. Hyde's filing cabinet was covert. In his June 30, 2008, interview with OPA, Sgt. Vick told the investigator, "I wasn't trying to covertly put it back." Sgt. Vick attempted to explain that denial of covert efforts by stating, "I put it back and had every intent of telling Lt. Hyde it was back when he came back because I wanted to first question him or ask him if he had done it or, or if he had any ideas what was going on or whatever." In his response to the OPA investigator's question of whether Sgt. Vick thought his return of the gun was clandestine, sneaky, blatant, covert, sly, underhanded, or deceitful, Sgt. Vick answered no. In contrast, during the hearing, Sgt. Vick described his conduct of returning the gun to the filing cabinet as covert. Specifically, Sgt. Vick testified "[o]bviously I wanted the gun back covertly . . .." It is determined that Sgt. Vick's inconsistent statements about whether his actions were covert constitute materially false statements made by Sgt. Vick with the intent to deceive. These false statements by Sgt. Vick constitute a clear violation of MNPD GENERAL ORDER 06-05, Deportment and Personal Appearance: Section VII Personal Behavior, subsection E. Honesty & Truthfulness.

Eighth, Sgt. Vick made false statements to Lt. Hyde regarding his three possible theories of what happened with the missing gun. In their conversation on October 15, 2007, which was recorded, Sgt. Vick suggests three possible theories that explain the incident with the missing gun. At the time of that October 15, 2007, conversation, Sgt. Vick had known for at least six days that he had personally found the gun in his MNPD vehicle and covertly replaced it in Lt. Hyde's filing cabinet. In his first theory, Sgt. Vick posited that Lt. Hyde himself, "put it in there and you had it out of the holster for some reason, switching holsters, whatever the scenario may have been and threw it in there in a rush, slammed your door, and it flipped out." On October

15, 2007, when he made this statement, Sgt. Vick knew with absolute certainty that this was not what happened, but still presented it to Lt. Hyde as a plausible theory of the case. Given what Sgt. Vick knew at the time, this theory was not and could not have been a factual account of the incident, as suggested by Sgt. Vick to Lt. Hyde. It is determined that Sgt. Vick's presentation of his first theory to Lt. Hyde on October 15, 2007, constituted another materially false statement made by Sgt. Vick with the intent to deceive. This false statement by Sgt. Vick constitutes a clear violation of MNPD GENERAL ORDER 06-05, Deportment and Personal Appearance: Section VII Personal Behavior, subsection E. Honesty & Truthfulness.

Ninth, Sgt. Vick made false statements during the investigation and again during the hearing about the manner in which the gun fell in the filing cabinet. Sgt. Vick told Lt. Hyde, OPA investigators and the undersigned administrative judge that he placed the gun back in the top drawer of the filing cabinet on October 9, 2007. Sgt. Vick insisted that when he closed the top drawer, the gun fell all the way through the filing cabinet and came to rest on the floor beneath the bottom drawer of the filing cabinet. Sgt. Vick testified that, "It dropped. Made a banging sound like metal hitting metal." While it is undisputed that Sgt. Vick found the gun in his MNPD truck and covertly returned it to Lt. Hyde's filing cabinet, Sgt. Vick's account of where in the filing cabinet he placed the gun is not found to be credible. Sgt. Vick explained that the gun would not have fallen into the second drawer because the second drawer was full of files and because of this it fell all the way to the bottom of the filing cabinet. This statement is contradicted by Lt. Hyde's credible testimony that the second-to-the-top drawer is the drawer with junk in it where he stores his gun belt and gun. Lt. Hyde also credibly testified about the types of files he kept in the bottom 2 drawers of the filing cabinet. Similarly, MNPD Lieutenant Gordon Glenn Howey, Jr., credibly testified that he tried to recreate the filing cabinet scenario as

described by Sgt. Vick and that it could not be recreated. Because of these discrepancies and the fact that it would be physically impossible for the gun to have fallen from the top drawer to the floor beneath all of the other drawers of the filing cabinet as described by Sgt. Vick, Sgt. Vick's testimony during the hearing that he placed the gun in the top drawer of the filing cabinet is found to be untruthful. It is determined that Sgt. Vick's testimony that he placed the gun in the top drawer of the filing cabinet constitutes a materially false statement made by Sgt. Vick with the intent to deceive. This false statement by Sgt. Vick constitutes a clear violation of MNPD GENERAL ORDER 06-05, Deportment and Personal Appearance: Section VII Personal Behavior, subsection E. Honesty & Truthfulness.

Likewise, it is determined that Sgt. Vick's statements regarding his placement of the gun in the top drawer of the filing cabinet during the MNPD investigation were also untruthful. The OPA investigators observed in their final investigation report, "It is important to note that neither Sergeant Faulcon nor Officer Jordan report hearing any noise associated with a weapon falling or tumbling to the ground in a file cabinet." In addition, as part of the OPA investigation, Lt. Howey and Det. Gardner, in the presence of Sgt. Vick and his attorney, conducted a test on the filing cabinet to see if a gun could fall through the cabinet as suggested by Sgt. Vick. Despite efforts by both Lt. Hyde and OPA investigators, nobody was able to get a gun to fall from the top drawer to the bottom of the filing cabinet as described by Sgt. Vick. It is determined that Sgt. Vick's statements during the MNPD investigation that he placed the gun in the top drawer of the filing cabinet constitute materially false statements made by Sgt. Vick with the intent to deceive. These false statements by Sgt. Vick constitute a clear violation of MNPD GENERAL ORDER 06-05, Deportment and Personal Appearance: Section VII Personal Behavior, subsection E. Honesty & Truthfulness.

Finally, Sgt. Vick's testimony that he does not remember borrowing Lt. Hyde's gun is found not to be credible. Despite choosing to provide detailed information[2] pertaining to many aspects of his conduct during the time in question, both during the lengthy investigation and the hearing, Sgt. Vick testified that he does not remember borrowing Lt. Hyde's gun. His demeanor during the hearing indicates that this purported lack of memory is false. Based upon his demeanor during the hearing and all of the circumstances in this case, it is determined that Sgt. Vick is again deliberately making false and untrue statements with the intent to deceive.

Overall, it is determined that Sgt. Vick made multiple materially false statements with the intent to deceive in ten different contexts. Each and every one of these false statements by Sgt. Vick constitutes a clear violation of MNPD GENERAL ORDER 06-05, Deportment and Personal Appearance: Section VII Personal Behavior, subsection E. Honesty & Truthfulness. Violations of the Honesty and Truthfulness MNPD GENERAL ORDER are Category AA offenses for employees of MNPD. It is determined that Category AA offenses carry a mandatory disciplinary action of dismissal, even for the very first offense. Therefore, it is determined that MNPD imposed the proper level of discipline – termination of employment – for Sgt. Vick's multiple violations of MNPD GENERAL ORDER 06-05, Deportment and Personal Appearance: Section VII Personal Behavior, subsection E. Honesty & Truthfulness. Accordingly, the termination of Sgt. Vick's employment with MNPD as it pertains to CHARGE # 1 is UPHELD.

B. CHARGE # 2: **MNPD has proven by a preponderance of the evidence that Sergeant Vick violated MNPD GENERAL ORDER 06-05, Deportment and Personal Appearance: Section VIII Official Obligations, subsection V. False or Inaccurate Reports. MNPD properly terminated Sergeant Vick's employment for this violation.**

MNPD GENERAL ORDER 06-05, Deportment and Personal Appearance: Section VIII Official Obligations, subsection V. False or Inaccurate Reports provides: "Employees shall not

[2] Much of which was also found not to be credible.

knowingly make or allow or cause to be made a false or inaccurate oral or written report of an official nature." Violations of this GENERAL ORDER are Category AA offenses. Sgt. Vick's statements contained in the official reports he prepared pertaining to Lt. Hyde's missing gun and its return to the filing cabinet violated this MNPD GENERAL ORDER.

Sgt. Vick's October 9, 2007, Recovery Report was false in its representation of an unknown officer having responsibility for the missing gun. Sgt. Vick's Recovery Report of October 9, 2007, was written in a manner to cause the reader to believe that some other "personnel," besides Sgt. Vick himself, was involved with the missing gun. The same narrative in that report also vaguely refers to an oversight on the "officer's" part, while specifically avoiding any reference to Sgt. Vick himself. Sgt. Vick attempted to defend this method of reporting by explaining to OPA investigators, "I do the reports in the third person." Sgt. Vick, however, failed to utilize his own proper name as a third person subject in the October 9, 2007, Recovery Report, despite the fact that he knew he had found and replaced the missing gun. In his December 27, 2007, OPA interview with Lt. Howey, Sgt. Vick was asked if his phrase, "Oversight on officer's part," was a reference to himself. In that interview, Sgt. Vick replied yes, and then further confirmed by explaining that he was referring to himself.

During his June 30, 2008, OPA interview, Sgt. Vick defended his choice of words in the Recovery Report by explaining to OPA investigators, "that's based off the best information that I had at the time that I did the report." Sgt. Vick repeated this defense several times during the interview. However, Sgt. Vick's vague statements in the Recovery Report clearly did not present the "best" information available at the time the Recovery Report was composed, because it did not identify his own role in the incident or the fact that he had found the missing gun in his MNPD vehicle not the filing cabinet. However, Sgt. Vick completed the Recovery Report

without identifying himself by name or identifying the actual facts pertaining to the recovery of the weapon, thus creating a false and inaccurate report, in violation of MNPD GENERAL ORDER 06-05, Deportment and Personal Appearance: Section VIII Official Obligations, subsection V. False or Inaccurate Reports.

Additionally, on June 30, 2008, Sgt. Vick told OPA investigators that his Recovery Report reflected what he thought was "probable" at that time. Specifically, Sgt. Vick explained his thinking with regard to these probabilities by stating: "Based on what we have at the time this report's done, is that weapon's missing, weapon's found in my truck, what's the probable … what's probable, what's the probable actions at this point?" Sgt. Vick's admission to the use of unspecified probabilities rather than facts is also a violation of MNPD GENERAL ORDER 06-05, Deportment and Personal Appearance: Section VIII Official Obligations, subsection V. False or Inaccurate Reports because Sgt. Vick asserted alleged probabilities as facts. In addition, Sgt. Vick's testimony pertaining to his drafting of the Recovery Report was not found to be credible.

Similarly, Sgt. Vick's October 24, 2007, report of the missing gun incident violated the MNPD General Order regarding False or Inaccurate Reports. Lt. Hyde directed Sgt. Vick to complete a detailed report about the missing gun after Sgt. Vick finally admitted to his role in the incident on October 16, 2007. Sgt. Vick's written report of October 24, 2007, insists that he has no recollection of borrowing the gun. However, that insistence is contradicted by Sgt. Vick's admission to OPA investigators that the vague October 9, 2007, Recovery Report was his admission of his role in the incident, which included borrowing the gun. Sgt. Vick's inconsistency between his statement to OPA that his report constituted his admission versus his failure to recall borrowing the gun constitutes a violation of the MNPD GENERAL ORDER for False or Inaccurate Reports in at least one of these two reports. The inconsistencies between the

reports and Sgt. Vick's testimony led to the above finding that Sgt. Vick's testimony in this regard was not credible. This finding further supports a determination that Sgt. Vick violated MNPD GENERAL ORDER 06-05, Deportment and Personal Appearance: Section VIII Official Obligations, subsection V. False or Inaccurate Reports.

Sgt. Vick's Recovery Report of October 9, 2007, violated MNPD GENERAL ORDER 06-05, Deportment and Personal Appearance: Section VIII Official Obligations, subsection V. False or Inaccurate Reports by stating that the gun had always been in a secure location, despite his claims that he did not know when the gun came to be in his vehicle or where it was before being in his vehicle. Sgt. Vick's October 9, 2007, Recovery Report states, "The weapon was not damaged and was never left unsecured by the responsible officer." In contrast, Sgt. Vick repeatedly denies having any recollection of borrowing the gun. Sgt. Vick admitted, under oath, that he did not know whether the gun was in his truck for the duration of the time it was out of Lt. Hyde's filing cabinet. Sgt. Vick further admitted, under oath, that if he didn't know with certainty where the gun was located, then he necessarily could not know whether the gun was in a secure place. These logical admissions render Sgt. Vick's written reports false and inaccurate, in express violation of MNPD policy regarding False or Inaccurate Reports.

It is determined that multiple statements made by Sgt. Vick's in his written reports violated MNPD GENERAL ORDER 06-05, Deportment and Personal Appearance: Section VIII Official Obligations, subsection V. False or Inaccurate Reports. Violations of the False or Inaccurate Reports MNPD GENERAL ORDER are Category AA offenses for employees of MNPD. It is determined that Category AA offenses carry a mandatory disciplinary action of dismissal, even on the first offense. Therefore, it is determined that MNPD imposed the proper level of discipline – termination of employment – for Sgt. Vick's multiple violations of MNPD GENERAL

ORDER 06-05, Deportment and Personal Appearance: Section VIII Official Obligations, subsection V. False or Inaccurate Reports. Accordingly, the termination of Sgt. Vick's employment with MNPD as it pertains to CHARGE # 2 is UPHELD.

C. CHARGE # 3: **MNPD has proven by a preponderance of the evidence that Sergeant Vick violated MNPD GENERAL ORDER 06-05, Deportment and Personal Appearance: Section VIII Official Obligations, subsection S. Failure to Cooperate/Withholding Information. MNPD properly terminated Sergeant Vick's employment for this violation.**

MNPD GENERAL ORDER 06-05, Deportment and Personal Appearance: Section VIII Official Obligations, subsection S. Failure to Cooperate/Withholding Information provides:

> In accordance with established rights under law, employees shall not withhold any information pertinent to the investigation of any matter, whether internally or externally, investigated by any official entity. Additionally, any employee who withholds information or fails to cooperate with any internal investigation may be disciplined in addition to any other disciplinary action based upon conduct disclosed by the primary investigation.

Violations of this GENERAL ORDER are Category A offenses. Sgt. Vick's statements and conduct pertaining to Lt. Hyde's missing gun and its return to the filing cabinet violated this MNPD GENERAL ORDER.

Sgt. Vick withheld information from Lt. Hyde and other superior officers about having found the missing gun in his MNPD vehicle and having covertly replaced the gun in the filing cabinet. Sgt. Vick withheld this information from Lt. Hyde and other superior officers for several days during the investigation of the missing gun. During the hearing, Sgt. Vick acknowledged that he had the pertinent information from the moment he found the gun in his MNPD truck.

Sgt. Vick failed to cooperate with Lt. Hyde's investigation of the missing gun by presenting three alternating theories about the case to Lt. Hyde, despite the fact that Sgt. Vick

knew exactly where the gun was found and how it was returned to the filing cabinet. On October 15, 2007, Sgt. Vick presented Lt. Hyde with three alternating theories of what happened with the missing gun. One of Sgt. Vick's theories suggested the possibility that Lt. Hyde had simply forgotten that that he put the gun back in the cabinet himself. Sgt. Vick knew that Lt. Hyde had been investigating the missing gun incident for several days at that point. And, Sgt. Vick knew that he had covertly put the gun back in the filing cabinet after he found it in his MNPD vehicle. However, Sgt. Vick proceeded to obfuscate Lt. Hyde's investigation by presenting knowingly inaccurate theories of the case, in a pointed failure to cooperate with the investigation, thus violating the MNPD GENERAL ORDER requiring cooperation.

In addition, Sgt. Vick's testimony that he does not remember borrowing Lt. Hyde's gun is found not to be credible. Despite choosing to provide detailed information[3] pertaining to many aspects of his conduct during the time in question, both during the lengthy investigation and the hearing, Sgt. Vick testified that he cannot remember borrowing Lt. Hyde's gun. His demeanor during the hearing indicates that this purported lack of memory is false. It appears that Sgt. Vick is again deliberately withholding information.

It is determined that each of these instances of Sgt. Vick's withholding information and failing to cooperate with the investigation constitutes a violation of MNPD GENERAL ORDER 06-05, Deportment and Personal Appearance: Section VIII Official Obligations, subsection S. Failure to Cooperate/Withholding Information. Violations of the Failure to Cooperate / Withholding Information MNPD GENERAL ORDER are Category A offenses for employees of MNPD. It is determined that Category A offenses carry disciplinary action ranging from a 20 day suspension to dismissal and/or demotion, for a first offense. Based upon Sgt. Vick's persistent efforts to withhold pertinent information, coupled with his overarching failure to

[3] Much of which was also found not to be credible.

cooperate in the investigations conducted by Lt. Hyde and OPA, it is determined that MNPD imposed the proper level of discipline – termination of employment – for Sgt. Vick's multiple violations of MNPD GENERAL ORDER 06-05, Deportment and Personal Appearance: Section VIII Official Obligations, subsection S. Failure to Cooperate/Withholding Information. Accordingly, the termination of Sgt. Vick's employment with MNPD as it pertains to CHARGE # 3 is UPHELD.

D. CHARGE # 5: **MNPD has proven by a preponderance of the evidence that Sergeant Vick violated MNPD GENERAL ORDER 06-05, Deportment and Personal Appearance: Section VII Personal Behavior, subsection F. Responsibility. MNPD properly imposed a 5-day suspension for this violation.**

MNPD GENERAL ORDER 06-05, Deportment and Personal Appearance: Section VII Personal Behavior, subsection F. Responsibility provides that "Employees shall at all times conduct themselves in a responsible manner." Violations of this GENERAL ORDER are Category D offenses. Sgt. Vick's statements and conduct pertaining to Lt. Hyde's missing gun and its return to the filing cabinet violated this MNPD GENERAL ORDER.

Sgt. Vick failed to act responsibly when he borrowed Lt. Hyde's handgun without permission, denied any knowledge of the removal or location of the gun, failed to report that he had found the missing gun, covertly returned the gun, falsely implied that he found the gun in the filing cabinet, and then failed to disclose his detailed knowledge of the incident. It is determined that Sgt. Vick's actions, inactions, and false and misleading statements throughout this incident, investigation and hearing constitute violations of MNPD GENERAL ORDER 06-05, Deportment and Personal Appearance: Section VII Personal Behavior, subsection F. Responsibility. Violations of the Responsibility MNPD GENERAL ORDER are Category D offenses for employees of MNPD. The aggravating factors of Sgt. Vick's Responsibility violations prompted MNPD to elevate the charge to a Category C offense, which carries a disciplinary action ranging from 2 to

6 days suspension for a first offense. Whether these violations are viewed as aggravated violations or merely multiple violations, which carry a disciplinary action ranging from 5-10 days suspension, of the Responsibility MNPD GENERAL ORDER, it is determined that the 5-day suspension is an appropriate, although lenient, discipline for CHARGE # 5. Accordingly, the 5-day suspension of Sgt. Vick's employment with MNPD as it pertains to CHARGE # 5 is UPHELD.

II. SERGEANT VICK ADMITS TO THE MISCONDUCT BUT IS APPEALING THE DISCIPLINE IMPOSED FOR CHARGES 4, 6 AND 7. IT IS DETERMINED THAT MNPD HAS PROVEN BY A PREPONDERANCE OF THE EVIDENCE THAT THE DISCIPLINE IMPOSED FOR CHARGES 6 AND 7 IS APPROPRIATE. ACCORDINGLY, THE DISCIPLINE IMPOSED FOR CHARGES 6 AND 7 IS UPHELD. HOWEVER, IT IS DETERMINED THAT MNPD HAS NOT PROVEN BY A PREPONDERANCE OF THE EVIDENCE THAT THE DISCIPLINE IMPOSED FOR CHARGE 4 IS APPROPRIATE. ACCORDINGLY, THE DISCIPLINE IMPOSED FOR CHARGE 4 IS REDUCED.

A. CHARGE # 4: **Sergeant Vick admits that he violated MNPD GENERAL ORDER 06-05, Deportment and Personal Appearance: Section VII Personal Behavior, subsection A. Adherance to Policy & Rules of the Metropolitan Government.**

MNPD GENERAL ORDER 06-05, Deportment and Personal Appearance: Section VII Personal Behavior, subsection A. Adherance to Policy & Rules of the Metropolitan Government provides that "[e]mployees shall adhere to all policies, procedures, rules, regulations, ethical codes, and administrative or executive orders as established by the department or Metropolitan Government."

Sgt. Vick violated the MNPD policy regarding Secondary Employment by failing to secure proper permission for secondary employment, and then taking sick leave to perform his secondary employment. In so doing Sgt. Vick violated both the Orders regarding the process for securing approval on secondary employment, as well as the Order regarding secondary employment during sick leave. Sgt. Vick admits to the misconduct underlying this Charge and

did not appeal the finding of misconduct pertaining to this Charge. However, Sgt. Vick did challenge the five-day suspension issued by MNPD for his violation of this GENERAL ORDER.

MNPD GENERAL ORDER 06-05, Deportment and Personal Appearance: Section VII Personal Behavior, subsection A. Adherance to Policy & Rules of the Metropolitan Government typically carries a Category D designation for disciplinary purposes but this varies by corresponding violation. While, MNPD may elevate the Category based upon aggravating factors, insufficient evidence was submitted during the hearing to prove by a preponderance of the evidence that aggravating factors exist with regard to CHARGE # 4. Accordingly, the discipline imposed with regard to CHARGE # 4 is hereby reduced from a 5-day suspension to a 4-day suspension.

B. CHARGE # 6: **Sergeant Vick admits that he violated MNPD GENERAL ORDER 06-05, Deportment and Personal Appearance: Section VIII Official Obligations, subsection F. Deficient or Inefficient Performance of Duties (Faulty decision making or poor judgment). MNPD properly imposed a 5-day suspension for this violation.**

Sgt. Vick admits to the misconduct of faulty decision making or poor judgment underlying this Charge and did not appeal the finding of misconduct pertaining to this Charge. However, Sgt. Vick did challenge the 5-day suspension issued by MNPD for his violation of this GENERAL ORDER. MNPD GENERAL ORDER 06-05, Deportment and Personal Appearance: Section VIII Official Obligations, subsection F. Deficient or Inefficient Performance of Duties (Faulty decision making or poor judgment) provides that the discipline shall depend upon the severity of the violation. MNPD rated this as a Category D offense but elevated it to a Category C offense based upon the aggravating factors. Category C offenses carry a disciplinary action ranging from 2 to 6 days suspension for a first offense. Sgt. Vick's misconduct of failing to report that he had found the missing gun, covertly returning the gun, falsely implying that he found the gun in the filing cabinet, and failing to disclose his detailed knowledge of the incident

constitutes aggravated conduct for which a Category C disciplinary action is warranted. Given this aggravated misconduct, it is determined that the 5-day suspension is an appropriate, although lenient, discipline for CHARGE # 6. Accordingly, the 5-day suspension of Sgt. Vick's employment with MNPD as it pertains to CHARGE # 6 is UPHELD.

C. CHARGE # 7: **Sergeant Vick admits that he violated MNPD GENERAL ORDER 06-05, Deportment and Personal Appearance: Section VIII Official Obligations, subsection F. Deficient or Inefficient Performance of Duties (Careless, negligent or improper use of department property or equipment). MNPD properly imposed a 5-day suspension for this violation.**

Sgt. Vick admits to the misconduct of careless, negligent or improper use of department property or equipment underlying this Charge and did not appeal the finding of misconduct pertaining to this Charge. However, Sgt. Vick did challenge the 5-day suspension issued by MNPD for his violation of this GENERAL ORDER. MNPD GENERAL ORDER 06-05, Deportment and Personal Appearance: Section VIII Official Obligations, subsection F. Deficient or Inefficient Performance of Duties (Careless, negligent or improper use of department property or equipment) provides that the discipline shall depend upon the severity of the violation. MNPD rated this as a Category D offense but elevated it to a Category C offense based upon the aggravating factors. Category C offenses carry a disciplinary action ranging from 2 to 6 days suspension for a first offense. Sgt. Vick possessed Lt. Hyde's gun without permission. Sgt. Vick admitted under oath that he could not confirm that this gun had been kept in a secure location during the time it was out of Lt. Hyde's filing cabinet. Sgt. Vick did not report that he had found the missing gun in his MNPD vehicle but instead covertly returned the missing gun to Lt. Hyde's filing cabinet. Sgt. Vick's misconduct of failing to report that he had found the missing gun, covertly returning the gun, falsely implying that he found the gun in the filing cabinet, and falsely implying that the gun had been secure at all times constitutes aggravated

conduct for which a Category C disciplinary action is warranted. Given this aggravated misconduct, it is determined that the 5-day suspension is an appropriate, although lenient, discipline for CHARGE # 7. Accordingly, the 5-day suspension of Sgt. Vick's employment with MNPD as it pertains to CHARGE # 7 is UPHELD.

III. SERGEANT VICK'S CONDUCT VIOLATED THE METRO CIVIL SERVICE RULES.

Because no separate discipline was imposed, Sergeant Vick did not appeal the findings that he also violated the Metro Civil Service Rules. These findings are UPHELD.

CHARGE # 8: Sgt. Vick's violation of Metro Civil Service Rule 6.7, Grounds for Disciplinary Action: 2. Deficient or inefficient performance of duties is UPHELD. The evidence supporting Charges 6 and 7 supports Charge 8 against Sgt. Vick.

CHARGE # 9: Sgt. Vick's violation of Metro Civil Service Rule 6.7, Grounds for Disciplinary Action: 11. Violation of any written rules, policies or procedures of the department in which the employee is employed is UPHELD. The evidence supporting Charges 1 - 7 supports Charge 9 against Sgt. Vick.

CHARGE # 10: Sgt. Vick's violation of Metro Civil Service Rule 6.7, Grounds for Disciplinary Action: 13. Dishonesty is UPHELD. The evidence supporting Charges 1 and 2 supports Charge 10 against Sgt. Vick.

CHARGE # 11: Sgt. Vick's violation of Metro Civil Service Rule 6.7, Grounds for Disciplinary Action: 18. Excessive absenteeism and excessive tardiness and/or abuse of sick leave is UPHELD. The evidence supporting Charge 4 supports Charge 11 against Sgt. Vick.

CHARGE # 12: Sgt. Vick's violation of Metro Civil Service Rule 6.7, Grounds for Disciplinary Action: 26. Falsifying employment or promotional application or any official

document of Metro Government is UPHELD. The evidence supporting Charge 2 supports Charge 12 against Sgt. Vick.

DECISION

It is determined that MNPD proved Charges 1, 2, 3 and 5 by a preponderance of the evidence and that the discipline imposed was appropriate. Accordingly, Sergeant Vick's termination of employment was proven to be appropriate by a preponderance of the evidence and it is **ORDERED that the termination of Sergeant Vick's employment with MNPD is UPHELD**.

Sergeant Vick admits to the misconduct but is appealing the discipline imposed for Charges 4, 6 and 7. All but one of the 5-day suspensions, that pertaining to Charge 4, was proven to be appropriate by a preponderance of the evidence. Accordingly, **it is ORDERED that the 5-day suspensions imposed for Charges 6 and 7 are** UPHELD. However, because MNPD did not prove by a preponderance of the evidence that the discipline imposed for Charge 4 is appropriate, **it is ORDERED that the discipline imposed for Charge 4 is reduced to a 4-day suspension.**

It is also ORDERED that the findings in Charges 8, 9, 10, 11 and 12 are UPHELD.

It is so **ORDERED**.

This INITIAL ORDER entered and effective this the _____ day of _____ 2010.

_____

MARY M. COLLIER
ADMINISTRATIVE JUDGE
ADMINISTRATIVE PROCEDURES DIVISION
OFFICE OF THE SECRETARY OF STATE

Filed in the Administrative Procedures Division, Office of the Secretary of State, this the _____ day of _____ 2011.

THOMAS G. STOVALL, DIRECTOR
ADMINISTRATIVE PROCEDURES DIVISION
OFFICE OF THE SECRETARY OF STATE