

July 5, 2019

**OFFICE OF THE HEARING EXAMINER  
KING COUNTY, WASHINGTON**

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**REPORT AND DECISION**

SUBJECT: Regional Animal Services of King County file no. **V19009331**

**JARED JOHNSON**

Animal Services Enforcement Appeal

Activity no.: A19001811

Appellant: **Jared Johnson**

[REDACTED]  
Enumclaw, WA 98022

Telephone: [REDACTED]

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King County: Regional Animal Services of King County  
*represented by* **Chelsea Eykel**  
Regional Animal Services of King County  
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**FINDINGS AND CONCLUSIONS:**

Overview

1. Regional Animal Services of King County (Animal Services) asserts that Jared Johnson's dog, Loki, committed violations, qualifies as viciousness, and needs to be contained. Mr. Johnson timely appealed. After hearing the witnesses' testimony and observing their demeanor, studying the exhibits admitted into evidence, and considering the parties' arguments and the relevant law, we sustain the violations and the viciousness designation, but modify the confinement order.

## Background

2. According to both Mr. Johnson and the complainants, Mark and Catherine Boehm, there were no issues before 2016. Mr. Johnson testified that the Boehms would come over and visit, and the Boehms agreed they had no problems with Loki. However, according to the list the Boehms submitted a few weeks before the hearing and then testified to at hearing, Loki has been involved in five altercations on their property since then. Ex. 9.
3. The first event the Boehms testified to was in June 2016. Loki charged and snarled at a friend visiting the Boehms who was attempting to get out of his car. The friend had to block Loki with his car door, before Mr. Johnson came and retrieved Loki. Mr. Johnson did not testify about that event.
4. Mr. Boehm testified that in August 2016, Loki again came charging out of the Johnsons' front door and onto the Boehm property. Loki bit Mr. Boehm's leg, leaving a small red mark, which the Boehms photographed. Ex. 10. This surprised Mr. Boehm, because Loki had not bitten before. Mr. Johnson came and retrieved Loki. Mr. Boehm told the Johnsons then that Loki was not welcome on the Boehm property. Mr. Johnson did not testify about that event.
5. Mr. Boehm testified that in March 2018, Loki again charged out the Johnsons front door and at him. He put up his arm to protect himself, and Loki bit his arm. Mr. Johnson was there, and testified that Mr. Boehm called Loki when Loki was about ten feet away, and that Loki stopped well short of Mr. Boehm. Mr. Johnson was adamant that Loki did not bite at Mr. Boehm.
6. Mr. Boehm testified that in July 2018, while he was up working on the roof, Loki trespassed on his property, circling the house and barking aggressively, before Mr. Johnson retrieved him. Mr. Johnson did not testify about that event.
7. Mr. Boehm testified that in January 2019, he was stacking firewood with his 12-year-old son, when Loki came into the yard and was aggressive. He used the wood he was chopping to block Loki's advance. Loki retreated but then came back at him. Ms. Boehm testified that she saw Loki charging past, barking at Mr. Boehm. Both Boehms stated that Mr. Johnson came over and retrieved Loki, an event they filmed. Mr. Johnson testified that the event started when a repair person left the side gate open, and that it was not him but his father who retrieved Loki and was depicted in the video. Ex. 11.
8. At that point the Boehms filed a complaint with Animal Services. Ex. 6. Animal Services issued a warning to the Johnsons. Ex. 8. A warning is not a finding nor an appealable order.
9. The final episode was in April 2019. Mr. Johnson testified that an inspector did not close the gate, giving Loki an escape route. Mr. Johnson's sister, Anne-Marie, testified that she arrived home, but remained in her car to respond to some texts. She heard Loki barking and approaching, but assumed one of the other Johnsons was with Loki. (No other Johnson was actually with Loki at that point.) Mr. Boehm testified that Loki came on his property barking and growling, with his teeth bared and his head low. Conversely Ms.

Johnson mentioned several times that Loki was “just saying hello” to Mr. Boehm and was standing by the gate and far away from Mr. Boehm when she got out of her car.

### Analysis

10. We went to hearing on June 19. Unless directed to by law—and no special directive applies to today’s case—the examiner does *not* grant substantial weight or otherwise accord deference to agency determinations. Exam. R. XV.F.3. Ours is a true *de novo* hearing. For those matters or issues raised in an appeal statement, Animal Services bears “the burden of proving by a preponderance of the evidence both the violation and the appropriateness of the remedy it has imposed.” KCC 20.22.080.G; .210.
11. Substantively, the code defines “vicious” as:
 

Having performed the act of, or having the propensity to do any act, endangering the safety of any person, animal or property of another, including, but not limited to, biting a human being or attacking a human being or domesticated animal without provocation,

and declares as a nuisance, “Any animal that has exhibited vicious propensities and constitutes a danger to the safety of persons or property off the animal’s premises or lawfully on the animal’s premises.” KCC 11.04.020.BB; .230.<sup>1</sup>
12. We have overturned numerous vicious dog designations where we found that the dog approached and barked aggressively—scaring the person—but did not actually make a move to get at the person. So really, this case boils down to whether (a) Loki actually nipped at Mr. Boehm (as the Boehms claim) and/or tried to get at their visitor, thus performing an act endangering the safety of a person and constituting a danger, or (b) the incidents were just Loki barking at a distance and not actually trying to make contact (as the Johnsons claim) and thus insufficient to support a viciousness designation. Mr. Johnson’s summation that this was a “he said/she said” dispute is not inaccurate. Our question is whose “said” is more credible.
13. Mr. Johnson staked a lot of his credibility and his attack on the Boehms credibility on Mr. Boehm allegedly misidentifying Mr. Johnson as the person in the video retrieving Loki from the Boehm property in January 2019. Mr. Johnson testified that it was his father, John Johnson, who retrieved Loki. The elder Mr. Johnson testified that he has a 1973 red NOLS (National Outdoor Leadership School) jacket that only he wears, so it must have been him retrieving Loki.
14. Reviewing the video, the outer covering looks less like a 46-year-old jacket and more like a modern hoodie. What is much clearer from the video is that the person retrieving Loki carried a pronounced paunch. In contrast, the elder Mr. Johnson testified about long hikes with Loki and his outdoor recreation history, and it showed; he looked fit and lean at hearing. We find that the person on the July 2018 video was *not* the elder Mr. Johnson.

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<sup>1</sup> We discuss the two minor violations in paragraph 28.

15. Mr. Johnson correctly pointed out that the August 2016 picture Mr. Boehm submitted of his leg showed only a red spot, nothing like the bloody bite Ms. Johnson had received from a random stray dog. Ex. 10 & 29. That would cut against the Boehms’ credibility if they had claimed Loki caused significant injury. However, the Boehms have never alleged anything like that. Instead, they described the August 2016 incident as Loki “bit Mark on the leg. It left a small red wound,” and the March 2018 incident as “Loki bit Mark’s arm.... It hurt but did not pierce skin.” Ex. 6. So the lack of evidence of something grievous does not undercut the Boehms’ credibility.
16. The Johnsons’ overarching theory was that the Boehms were embellishing what happened with Loki because the Boehms had some sort of vendetta against the Johnsons stemming from the Johnsons complaining in 2016 about the Boehms’ illegal target practice. The Boehms filing a code enforcement complaint against the Johnsons’ deck work in June 2019 bolsters the Johnsons’ case a little, but that was months *after* the latest altercation with Loki (April 2019), well after the Boehms asked for a warning and no fine (January 2019), and three years after the Boehms assert Loki’s behavior changed (June 2016). By the time of our June 2019 hearing, the blood between the Boehms and Johnsons was well-poisoned, but that does not tell us much about the time period in question.
17. In our dozen plus years as a third-party neutral analyzing hundreds—and at this point likely over a thousand—enforcement cases, we have observed numerous instances of a someone using the enforcement process as a cudgel to beat their neighbors over minor perceived wrongs, often for reasons unrelated to the officially-stated complaint. There is even a name for such complainants—“querulants.”
18. The Boehms do not fit the mold. Paying their own money to build a fence to protect Loki’s incursions is not the act of someone trying to get the government to beat down a neighbor. (Ms. Boehm also described trying to find another house to move to because they fear Loki, especially for their son, and just wanting the problem solved so they can enjoy their yard.) We have never seen a querulant submit a complaint, but then request that the agency only issue a *warning* to prevent a future repeat, not a citation to punish past behavior. In our experience, querulants have uniformly wanted their pound of flesh; they do not tell agencies they do not want a neighbor fined. Ex. 7 at 002, n.3.
19. That seems consistent with the Boehms’ 2015 complaint about a different neighbor’s dog. Animal Services issued a violation notice that was appealed to the tribunal that at the time heard animal appeals—the Board of Appeals. In its decision, the Board noted that the Boehms did not attend the hearing.<sup>2</sup> That absence sets them apart from the

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<sup>2</sup> Ex. 21. The Board’s decision upholding one of the three violations seems inconsistent with its own rules. The Board’s rule was that hearsay “shall not be sufficient in itself to support a finding unless [the hearsay] would be admissible over objection in a civil action in court of competent jurisdiction of this State.” <https://www.kingcounty.gov/~media/independent/board-of-appeals/documents/Rules2015.ashx> at 6, Rule 25.D.4 (emphasis added). There is no mention in the Board’s decision of any pictures or other exhibits. And the Boehms did not attend and testify. So it appears Animal Services’ case at the 2015 hearing was based entirely on hearsay—the Boehms’ complaint. Unless we are missing something, that should *not* have been sufficient, by itself, to sustain any violation.

numerous querulants we have had the displeasure of encountering, who have participated vigorously and vociferously pushed their agenda at every opportunity.<sup>3</sup>

20. Still, the Johnsons did a good job showing the Boehms are, if not querulants, at least more sensitive than average. That would matter in an appeal involving a noise violation, where we must determine whether the animal makes noise to “disturb” a person. When analyzing whether noise truly “disturbs” (interferes with normal functioning, such as sleep) versus merely “annoys” (irritates), we have to guard against measuring conduct “by its effect on those who are inordinately timorous.” *Seattle v. Eze*, 111 Wn.2d 22, 29–30, 759 P.2d 366 (1988). So the Boehms being scared of Loki or their perception of what Loki *might* do would not be sufficient if Loki had not actually made a move on the Boehms or their visitor. Either Loki did or did not attempt to make contact.
21. Especially when analyzing the March 2018 incident involving Mr. Johnson and the April 2019 incident involving Ms. Johnson, credibility goes two way—it is relative, not absolute. We did not find Mr. Johnson’s description of the March 2018 incident as credible as Mr. Boehm’s. We did not find Ms. Johnson particularly credible—while both Mr. Johnsons asserted that they understood how scared the Boehms were of Loki and the need to keep Loki away, Ms. Johnson repeatedly described the April 2019 incident as Loki just “saying hi” to Mr. Boehm. Ex 23, plus testimony. We found the Johnsons less credible than the Boehms.
22. The neighbor letters the Johnsons submitted do not enhance their credibility. Given that the Boehms have been consistent—and measured—in the behavior they have claimed Loki has exhibited, it is hard to imagine how a neighbor would have concluded that, “I am appalled to hear that people are saying that [Loki] is an extremely vicious dog wanting to kill others,” unless the Johnsons had told them that. Ex. 17. There is no evidence the Boehms ever claimed anything so extreme. Our decisions almost never turn on hearsay evidence—and today’s case is no exception—but the letters were not particularly helpful.
23. The letters do augment the Johnsons’ testimony that Loki is a *typically* a sweet dog who gets along great with the Johnsons and their friends. However, we have seen too many counter examples of dogs that behave wonderfully in general, but then show a very different side, to give such testimonials much weight. We do not mean to sound jaded, just experienced, having reviewed a few hundred (alleged) vicious dog cases.
24. It is possible the Boehms have manufactured instances of Loki coming at them and their visitor, staged a photograph, and are using Loki—as Mr. Johnson accuses—as a “pawn” against the Johnsons. But we find it more likely that the Boehms are telling the truth and it is the Johnsons who do not want to see or accept that their lovable dog has another side. In the end, we find the Boehms’ version of events more credible than the Johnsons’. Weighing the evidence under the more-probable-than not standard that applies to our cases, we find Animal Services has met its burden of proving that Loki is vicious.

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<sup>3</sup> See, e.g., [https://kingcounty.gov/~media/independent/hearing-examiner/documents/case-digest/appeals/code-enforcement/2017/february/%202017/ENFR150805\\_Kirkas.ashx?la=en](https://kingcounty.gov/~media/independent/hearing-examiner/documents/case-digest/appeals/code-enforcement/2017/february/%202017/ENFR150805_Kirkas.ashx?la=en).

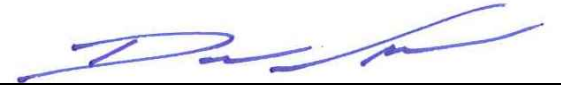
25. The letters, as well as the Johnsons’ testimony, do influence how we frame Loki’s confinement terms. Normally a viciousness designation means a party cannot allow the animal to run off-leash. Here, there is no indication that Loki has threatened anyone except on the Boehm property. Mr. Johnson talked about walking Loki on his hikes off-leash, without incident. Given that the Johnsons seemed in some denial about Loki’s aggression vis-à-vis the Boehms, it is possible that Loki has been aggressive in other contexts, and the Johnsons just interpreted it as Loki saying hello. However, the real conflict for the last three years has been in vicinity of the Boehm house. We will restrict the no-off-leash requirement to within a mile of the Boehms.
26. The Johnsons will need to keep Loki from escaping their property. Mr. Johnson’s idea of an L-shaped fence in the front yard seems doomed from the start, given that Loki has gotten out of the front door before, and if it happened in the future, an open-sided fence would not provide a backup containment system. Mr. Johnsons has always retrieved Loki *after* he entered the Boehm’s property, but that is too little too late. The Johnsons must keep Loki on his property *before* he escapes.
27. Given that Loki has no history of jumping over or tunneling under a fence, some sort of small-perimeter, medium-height picket enclosure in the immediate vicinity of the front door, with the gate, would seem both less labor-intensive to install and better geared to success. They also need a self-latching gate—history has shown they cannot rely on visitors to close gates. The Johnsons must effectively contain Loki if they want to keep him for the long haul.
28. Finally, in addition to viciousness, Animal Services asserted two minor violations for April 18. First, Loki was trespassing, which Mr. Johnson does not dispute. Second, Loki was “running at large,” meaning “off the premises of the owner and not under the control of the owner, or competent person authorized by the owner, either by leash, verbal voice or signal control,” with “under control” itself including “restrained from approaching any bystander or other animal” when “off the premises of the owner.” KCC 11.04.020.W, AA; .230.B. Mr. Johnson’s appeal statement asserted that Loki was only on the private road. As discussed above, those are not the facts as we have found them; Loki was on the Boehm property and approached Mr. Boehm.

## DECISION

1. We DENY Mr. Johnson’s appeal as to the violations.
2. We MODIFY Animal Services’ April 20, 2019, confinement order, as follows:
  - A. Secure Loki in a fenced area suitable for his size when unattended and outside the home. Lock all passages with a padlock to prevent accidental release. Outside the front door, by **September 5, 2019**, erect a fully-enclosed containment system, with a self-latching gate.

- B. Restrain Loki using a leash no more than eight feet long, with a collar or harness, when off the Johnson property and within a mile of 28639 SE 435<sup>th</sup> Street, Enumclaw, WA 98022. A competent and capable person must always handle Loki when attended outside.
- C. If not already completed, microchip Loki and provide the microchip number to the King County Animal Licensing Office (206) 296–2712 by **August 5, 2019**.
- D. Keep Loki current on his rabies vaccination.

ORDERED July 5, 2019.



David Spohr  
Hearing Examiner

### **NOTICE OF RIGHT TO APPEAL**

King County Code 20.22.040 directs the Examiner to make the County's final decision for this type of case. This decision shall be final and conclusive unless appealed to superior court by *August 5, 2019*. Either party may appeal this decision by applying for a writ of review in superior court in accordance with chapter 7.16 RCW.

### **MINUTES OF THE JUNE 19, 2019, HEARING IN THE APPEAL OF JARED JOHNSON, REGIONAL ANIMAL SERVICES OF KING COUNTY FILE NO. V19009331**

David Spohr was the Hearing Examiner in this matter. Participating in the hearing were Chelsea Eykel, Mark Boehm, Jared Johnson, Catherine Boehm, Anna-Marie Johnson, and John Johnson. A verbatim recording of the hearing is available in the Hearing Examiner's Office.

The following exhibits were offered and entered into the record:

- |                |  |
|----------------|--|
| Exhibit no. 1  | Regional Animal Services of King County staff report to the Hearing Examiner   |
| Exhibit no. 2  | Online Complaint form of April 18 incident by Mark Boehm, dated April 19, 2019 |
| Exhibit no. 3  | RASKC investigation report no. A19001811                                       |
| Exhibit no. 4  | Notice of violation no. V19009331, issued A19001811                            |
| Exhibit no. 5  | NVOC mailing/tracking history  |
| Exhibit no. 6  | Report of Complaint or Problem for case no. A1900589                           |
| Exhibit no. 7  | RASKC investigation report no. A1900589  |
| Exhibit no. 8  | Warning Notice no. V19009077   |
| Exhibit no. 9  | Log of incidents involving Loki  |
| Exhibit no. 10 | Photograph of Mark Boehm, minor bite   |

Exhibit no. 11	Video of Jared Johnson retrieving Loki from the Boehm property
Exhibit no. 12	Map of subject area
Exhibit no. 13	Appeal, received May 9, 2019
Exhibit no. 14	Appeal, received May 9, 2019 (copy)
Exhibit no. 15	Photograph of Loki
Exhibit no. 16	Anthony and Kerri Beals statements
Exhibit no. 17	Keana Beals statement
Exhibit no. 18	Jerry Johnson statement
Exhibit no. 19	Campbell family statement
Exhibit no. 20	Map of subject area
Exhibit no. 21	Brad Kruse animal appeal
Exhibit no. 22	King County Shooting Code
Exhibit no. 23	Anna Marie witness statement
Exhibit no. 24	Deck permit notice
Exhibit no. 25	Photograph of painted line on Johnson property
Exhibit no. 26	Photograph of video camera and signs
Exhibit no. 27	Photograph of locked gates
Exhibit no. 28	Photograph of fencing idea
Exhibit no. 29	Photograph of Anna Marie, dog bite from a random stray dog

DS/jo



July 5, 2019

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**CERTIFICATE OF SERVICE**

SUBJECT: Regional Animal Services of King County file no. **V19009331**

**JARED JOHNSON**

Animal Services Enforcement Appeal

I, Jessica Oscoy, certify under penalty of perjury under the laws of the State of Washington that I transmitted the **REPORT AND DECISION** to those listed on the attached page as follows:

- EMAILED to all County staff listed as parties/interested persons and parties with e-mail addresses on record.
- placed with the United States Postal Service, with sufficient postage, as FIRST CLASS MAIL in an envelope addressed to the non-County employee parties/interested persons to addresses on record.

DATED July 5, 2019.



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Jessica Oscoy  
Legislative Secretary

**Boehm, Mark/Catherine**

Hardcopy

**Eykel, Chelsea**

Regional Animal Services of King County

**Johnson, Anna-Marie**

**Johnson, Jared**

Hardcopy

**Johnson, John**