

January 10, 2022

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

King County Courthouse
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www.kingcounty.gov/independent/hearing-examiner

REPORT AND DECISION

SUBJECT: Regional Animal Services of King County file no. **V21012617-A21004997**

JACOB HUDSON

Animal Services Enforcement Appeal

Activity no.: A21004997

Appellant: **Jacob Hudson**

[REDACTED]
Issaquah, WA 98027

Telephone: [REDACTED]

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King County: Regional Animal Services of King County
represented by **Rebecca Smokoska**
Regional Animal Services of King County
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FINDINGS AND CONCLUSIONS:

Overview

1. Jacob Hudson appeals a Regional Animal Services of King County (Animal Services) notice and order related to his dogs, Kenai and Blu. 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 deny the appeal as to Kenai's viciousness designation and confinement order, grant it as to Blu, and reduce the penalty for the viciousness, vaccination, and licensing violations.

Background

2. On October 13 Animal Services issued Jacob Hudson a violation notice for his dog, Kenai, not being vaccinated for rabies, being unlicensed and unaltered, qualifying as vicious, and needing to be confined, and his dog, Blu, being unlicensed and unaltered, qualifying as vicious, and needing to be confined. Ex. D7. Mr. Hudson filed a timely appeal on October 18, 2021. Ex. D8. We went to hearing on January 5, 2022.

Hearing Testimony

Testimony of Emily Harig

3. Emily Harig testified that on October 4 she went out to deliver a package to the Hudson residence. She pulled into the driveway and saw a “Beware of Dog” sign in the garage window. Ms. Harig honked her horn. She did not see or hear anything, so she grabbed the package and approached the home. She heard barking from inside the house. She put the package on the porch and noticed a sign on the door with Mr. Hudson’s name and signature. The note said he was not home and asked UPS to leave the package; however, the package needed a signature of someone twenty-one years old or older.
4. Ms. Harig was in the process of writing Mr. Hudson a note explaining why she could not leave the package when a child of about ten years opened the front door and poked his head out. Ms. Harig asked the child to close the door. There was a fifty-to-sixty-pound white, brown mix brindle pit bull [Blu] pushing against the child’s leg. The child continued to try to speak with Ms. Harig, and she again asked the child to close the door. Ms. Harig was about ten feet away from the child.
5. Ms. Harig continued to ask the child to close the door. Blu was trying to push past the child, so the child held Blu’s harness. The child was then dragged by Blu out the door and across the porch about eight feet before the child let go of Blu’s harness.
6. Blu started circling and barking at Ms. Harig. Blu did not appear friendly, but it did not seem to Ms. Harig that Blu initially was trying to bite her. Rather, it seemed to her that Blu was only trying to protect the child.
7. However, a chocolate lab [Kenai] followed out the door. Kenai was growling, barking and had her hackles up. At this point Blu seemed to develop a pack mentality, because Blu started to mimic Kenai’s behavior, with Blu taking cues from Kenai and upping his aggression. Both dogs were growling and had their hackles raised, and both dogs were intermittently snapping and lunging at Ms. Harig. Ms. Harig was shouting at the dogs to stop and to go back into the house.
8. The dogs then split apart. Kenai circled behind Ms. Harig and bit her left lateral thigh. Ms. Harig was pushing the dogs back with her feet and scanner. Ms. Harig believes that if she did not hold the dogs back, she would have been more severely attacked. The child just stood and looked shaken.

9. Eventually, Ms. Harig was able to shout at the dogs enough for them to go back into the house. Ms. Harig told the child to close the door, which he did. Ms. Harig told the child that the lab had bitten her. The child responded that sometimes the dogs are not very nice. Ms. Harig instructed the child to not open the door until she was inside her vehicle. Ms. Harig drove away, got a bag of ice, and called her supervisor.
10. Ms. Harig then went to urgent care and was given an antibiotic. She reported the incident to Animal Services the following day. She had a large contusion on her left thigh and puncture wounds. Ex. D3. She still has scars today. Working with the injury was difficult. She feared for her life throughout the event. Ms. Harig used to work for an emergency vet, but now she is worried about a dog coming to bite her when she delivers packages.

Testimony of Jacob Hudson

11. Jacob Hudson testified that he has never had issues with his dogs. His dogs are not aggressive and never have been. He has had people in and out of his house before and the dogs have not done anything.
12. On the day of the incident, he was not home. When he returned home, his child told him the dogs got out but was not entirely sure what happened. The “Beware of Dog” sign predates Blue and Kenai and is from when his grandparents had an aggressive dog many years ago. He did not respond to Animal Services initially because he was trying to find the dogs’ rabies vaccine records and he works night shift. He finds it extremely unlikely that his dogs would have attacked someone.

Legal Standards

13. Animal Services asserts that Kenai did not have her rabies vaccination, in violation of KCC 11.04.520, which requires all dogs and cats six months of age or older be vaccinated against rabies.
14. Animal Services asserts that neither Kenai nor Blu were licensed as of October 4, in violation of KCC 11.04.030.A, which requires all dogs eight weeks old and older be licensed and registered.
15. Animal Services asserts that both Kenai and Blu qualify as “vicious,” defined as, “performing the act of... 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,” with “[a]ny 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” qualifying as a nuisance. KCC 11.04.020.BB; KCC 11.04.230.H.
16. We do not grant substantial weight or otherwise accord deference to agency determinations. Exam. R. XV.F.3. 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.B.

Analysis

Kenai's Viciousness Designation

17. The analysis for Kenai is straightforward. Ms. Harig—merely trying to deliver a package Mr. Hudson requested, then having a conversation with the child, then later trying to keep the circling, snarling and lunging dog off her—in no sense legally provoked Kenai to sneak behind Ms. Harig and bite her. Ms. Harig still has a scar from the bite and is scared that a repeat incident might occur while delivering packages. Even without ratcheting up Blu (discussed below), which could have led to more serious consequences (both by doubling the attackers and given a pit bull's relative bite force), Kenai constitutes a danger and needs to be contained. Animal Services easily meets its burden of proof for Kenai's viciousness designation and compliance order.

Blu's Viciousness Designation

18. The case against Blu is more nuanced. The fact that Blu did not actually deliver a bite is not itself dispositive; the law (quoted above) does not require an actual bite to sustain a viciousness designation, given the “including, but not limited to” language in the County definition. We consistently require something more than just the chase-or-approach-a-person-in-a-menacing-fashion behavior that would be sufficient to sustain a potentially dangerous dog designation under the state's two-tiered system. Instead, where an altercation did not result in actual contact, our viciousness rulings have tracked RCW 9A.28.020's definition of “criminal attempt,” which requires performance of an “act which is a substantial step toward the commission of that crime.” In the dog context, a dog must take some step towards contact, such as a lunge, and not simply bark menacingly in mere proximity.
19. Here Blu lunged repeatedly at Ms. Harig, thus performing a vicious act endangering her safety. However, we cannot conclude—with nearly the same confidence level we can for Kenai—that Blu constitutes a danger to people legally on Blu's property.
20. First, unlike Kenai, Blu did not actually bite Ms. Harig. While we find it likely that Blu was trying to bite her and would have connected, had Ms. Harig not defended herself, that finding requires some inference. It is not the same thing as the proof Ms. Harig carries on her leg of Kenai's bite.
21. Second, while Blu was the first dog that busted out of the house to charge Ms. Harig, and while Blu was likely attempting to bite Ms. Harig, Ms. Harig's testimony was precise and persuasive:
- Blu came out first, but was initially only barking;
 - Ms. Harig interpreted Blu's opening behavior as guarding the boy, not as actually trying to bite her; and
 - Only after Kenai came at Ms. Harig and ratchet up the aggression, did Blu follow Kenai's lead and “for sure try and attack.”

22. Third, Mr. Hudson’s assessment of Blu is consistent with Ms. Harig’s. In his appeal statement, while expressing disbelief that *either* dog bit Ms. Harig, Mr. Hudson called out Blu by name as being especially non-aggressive. Ex. D8. Animal owner reflections are often biased and self-serving, in the same way as parents reflections of their children. We see an amazing amount of obliviousness and denial on our docket, even more than what Mr. Hudson exhibited here (continuing to deny that either dog attacked Ms. Harig, despite the testimony and photos of Kenai’s bite). Yet owner statements comparing their animals with *each other* are typically less biased and self-serving, the same way a parent’s description of one of their children as, say, kinder than their other child would likely carry more weight than that parent simply lauding both their children as kind. And, again, his assessment of Blu v. Kenai matches Ms. Harig’s.
23. Kenai being the driving force does not excuse Blu’s endangering behavior, but it does create a real question of whether, if Kenai had not gotten loose and gone on the attack, Blu would have simply continued barking at Ms. Hudson v. unilaterally ratcheting things up. Thus, if Kenai is contained in the future—as the order of confinement we uphold today requires—would an unrestrained Blu by himself pose a danger?
24. A viciousness designation is serious. In addition to the default \$500 penalty, it imposes confinement terms that can be costly, and it raises the specter of future removal of the dog from the County, if the confinement terms are not met. *See* KCC 11.04.290. And a viciousness designation stays with the animal. Thus, even if Kenai died or the dogs were otherwise separated, Blu’s viciousness designation would remain. We are more exacting on viciousness designations than on most other violations, the more being at stake. *See Mathews v. Eldridge*, 424 U.S. 319, 335 (1976) (nature of private interest being affected a factor in determining how much process is due). In the end, we are not convinced that Animal Services has proved that Blu constitutes a danger. We thus overturn Blu’s viciousness designation.

Penalties

25. Mr. Hudson duly licensed both dogs after receiving the violation. It is even possible Kenai was properly vaccinated as of the October 4 incident, and that only the paperwork was lacking. In any event, Mr. Hudson promptly got Kenai up to date on her shots. We reduce the penalty for those violations.
26. As for Kenai’s viciousness violation, where an appellant shows the violation occurred despite (not because of) their actions and/or steps they have taken post-violation to avoid a repeat, we typically reduce the penalty. Here, Mr. Hudson’s post-bite response exhibited some obliviousness and a fair amount of denial. He did not, for example, mention any steps he had taken to try to ensure that his child does not again open the door and allow a potential repeat of the October 4 attack. He did not even acknowledge, let alone apologize for, the trauma his dogs have caused Ms. Harig. It was not his finest hour.
27. However, we reject Animal Services’ argument that—especially with the “Beware of Dog” sign—it was irresponsible to leave a 10-year-old home alone when a package was

expected. We find credible Mr. Hudson's testimony that the "Beware of Dog" sign was a family vestige for a deceased dog, and not related to Blu or Kenai. Kenai and Blu were left secured in the house, not out wandering the neighborhood. Nor is there any indication that either dog had earlier escaped when left home alone with the child.

28. While Mr. Hudson's *post*-bite response was lacking, we do not attribute the dogs going at (and Kenai biting) Ms. Harig to anything irresponsible Mr. Hudson was doing (or failing to do) up through the bite. We reduce the viciousness penalty somewhat, though not as much as we would have if Mr. Hudson's post-bite response had exhibited more accountability.

DECISION:

1. We reduce the penalty for Kenai's and Blu's licensing violations from \$500 total to \$120 total.
2. We reduce the rabies vaccination violation from \$50 to \$25.
3. We deny Mr. Hudson's appeal as to Kenai's viciousness designation and compliance order, but we reduce the penalty from \$500 to \$300.
4. We grant Mr. Hudson's appeal as to Blu's viciousness designation.

ORDERED January 10, 2022.



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 *February 9, 2022*. 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 JANUARY 5, 2022, HEARING IN THE APPEAL OF JACOB HUDSON, REGIONAL ANIMAL SERVICES OF KING COUNTY FILE NO. V21012617-A21004997

David Spohr was the Hearing Examiner in this matter. Participating in the hearing were Rebecca Smokoska, Emily Harig, and Jacob Hudson. A verbatim recording of the hearing is available in the Hearing Examiner’s Office.

The following exhibits were offered and entered into the record by Animal Services:

- Exhibit no. D1 Regional Animal Services of King County staff report to the Hearing Examiner
- Exhibit no. D2 Online Complaint form of October 4, 2021 incident by Emily Harig, dated October 5, 2021
- Exhibit no. D3 Photograph of bite wound
- Exhibit no. D6 RASKC investigation report no. A21004997
- Exhibit no. D7 Notice of violation no. V21012617-A21004997, issued October 13, 2021
- Exhibit no. D8 Appeal, received October 18, 2021
- Exhibit no. D9 Map of subject area

DS/lo

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CERTIFICATE OF SERVICE

SUBJECT: Regional Animal Services of King County file no. **V21012617-A21004997**

JACOB HUDSON

Animal Services Enforcement Appeal

I, Lauren Olson, 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 January 10, 2022.



Lauren Olson
Legislative Secretary

Harig, Emily
Hardcopy

Hudson, Jacob
Hardcopy

Smokoska, Rebecca
Regional Animal Services of King County