

December 8, 2023

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

King County Courthouse
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REPORT AND DECISION

SUBJECT: Regional Animal Services of King County file no. **V23014723-A23005701**

MELISSA CAI

Animal Services Enforcement Appeal

Activity no.: A23014723

Appellant: **Melissa and Eileen Cai**

[REDACTED]
Sammamish, WA 98074

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

Overview

1. Melissa and Eileen Cai appeal a violation notice designating their dog, Beulah, as potentially dangerous. 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 find that Beulah meets the potentially dangerous code criteria. However, finding that the Cais did exactly what a responsible owner/handler would do—before, during, and after the incident—we significantly reduce the penalty.

Background

2. We typically refer to witnesses exclusively by their last name. However, there are two Cai sisters here, Melissa (who was handling Beulah the day of the altercation) and Eileen (Beulah's owner, who was out of town at the time). To avoid confusion or unnecessary repetition, we take the unusual step of employing first names.
3. On September 23, 2023, Regional Animal Services of King County (Animal Services) issued violation notice V23014723-A23005701 and a \$500 fine to Melissa for Beulah violating the code pertaining to potentially dangerous animals. Ex. D7. Melissa timely appealed. Ex. D8. We went to hearing on November 27.

Hearing Testimony

Connie Cui Testimony

4. Connie Cui testified that on September 21 she was biking on a public trail. She saw the girl [Melissa Cai] and her dog [Beulah]. She attempted to give Beulah as much space as possible by going on the right side of the trail. Melissa did not tighten Beulah's leash. Beulah jumped on Ms. Cui's left wrist and knocked her down away from Beulah. As Ms. Cui tried to get up, Beulah attacked again and bit her left thigh. Ms. Cui did not say anything before the incident. She stood up and Beulah was barking and growling at her, and Ms. Cui still remembers her teeth. Beulah continued to growl until Melissa left.
5. This incident has had a physical and mental impact on Ms. Cui. The bite to Ms. Cui's thigh broke the skin and bruised her. Ex. D4-001. Beulah bruised and scraped Ms. Cui's left wrist. Exs. D4-002-03. There is ongoing numbness in Ms. Cui's leg, and she does physical therapy, acupuncture, and massage for recovery. It was scary and traumatizing, and Ms. Cui is also seeing a counselor. She did not reach out to the Cais regarding payment for these treatments because she filed it with her insurance and is working with an attorney.

Melissa Cai Testimony

6. Melissa Cai testified that Eileen was out of town for a month, so she took Beulah out on a walk. Beulah was on a four-foot leash. They had been on a 40-minute walk; Beulah was calm and passed by multiple people. The trail narrowed to a point only one-person wide. As Ms. Cui passed, Melissa shortened Beulah's leash by half. Melissa stepped into a carve out in the vegetation. Melissa heard Ms. Cui say, "Thank you" for pulling Beulah out to the side.
7. Beulah suddenly jumped for Ms. Cui's wrist, which surprised Melissa. She does not remember Ms. Cui falling to the ground; however, it all happened so quickly, and she was focusing on other things, so she is not contesting that. Melissa remembers Ms. Cui being bitten on the wrist, stumbling off the bike, getting bit on the leg, but not falling. After Beulah bit Ms. Cui's wrist, Melissa tried to grab and pull Beulah away; however, Beulah is strong, and she overpowered Melissa and lunged again. Melissa remembered

the second bite as happening very quickly after the first, without a real gap. Melissa tried to control Beulah and pulled on the leash.

8. After the incident, Beulah barked a few times. Melissa put herself between Beulah and Ms. Cui, and Melissa does not recall Beulah barking then. Melissa and Ms. Cui had around a five-minute conversation; Melissa apologized, and they discussed vaccination records.
9. Melissa takes responsibility for what happened. She and her sister have offered to pay for the medical bill. Because she acknowledged it was her fault and offered to pay for medical expenses, a \$500 fine feels excessive. Melissa is not trying to shift the blame, but she does not believe Beulah is potentially dangerous. Eileen is doing muzzle training with Beulah.

Eileen Cai Testimony

10. Eileen Cai testified that she was not present at the incident. She apologized for what happened.
11. In July, Eileen took Beulah to the vet for senior blood work, and everything came back normal. Since Eileen was out of the country for a month, she was not aware that Beulah was in pain and losing her eyesight. Eileen believes that Beulah's spinal pain was triggered when Melissa pulled her to the side of the trail the day of the incident. Beulah may have also been surprised by the bike passing so close. Beulah's vision loss, spinal pain, being handled by Melissa, and Eileen being gone for so long may have contributed to her attack. Eileen believes that Beulah first bit Ms. Cui's wrist in response to her spinal pain. As to the second bite, Ms. Cui stumbling off her bike alarmed Beulah, causing her to react on instinct and bite Ms. Cui again. Eileen understands that the incident was traumatizing for Ms. Cui. She takes responsibility for Ms. Cui's costs.
12. Eileen brought Beulah to the vet to be tested again. The vet found that Beulah has vision loss and pain, especially in her hips. Eileen and the vet developed a pain management plan. Since implementing that plan, Eileen has noticed significantly less pain from Beulah. Ex. A1. Eileen and Beulah have actively consulted with three trainers to get multiple perspectives. Ex. A2.
13. Eileen believes Beulah does not qualify as a potentially dangerous animal. Beulah has never attempted to bite anyone, and she is usually friendly to people she meets, especially kids, and even to cats. Prior to this incident, Eileen and Beulah had been able to calmly pass cyclists on the trail.

Legal Standards

14. Does Beulah meet the definition of "potentially dangerous animal"? KCC 11.04.230.F. Per KCC 11.01.320:
 - A. "Potentially dangerous animal" means any animal that when unprovoked:

1. Bites or inflicts injury on a human or domesticated animal;
2. Chases or approaches a person upon the streets, sidewalks, or any public grounds in a menacing fashion or apparent attitude of attack;
3. Has a known propensity, tendency, or disposition to attack, to cause injury, or otherwise to threaten the safety of humans or domestic animals; or
4. Jointly engages, with one or more animals in conduct meeting subsections A.1., A.2., or A.3., of this section, in which case all animals are deemed potentially dangerous, absent an affirmative demonstration that a specific animal was not responsible for a qualifying act.

B. Regardless of provocation, an animal is a “potentially dangerous animal” if it enters onto private property without the consent of the owner or occupant and bites a human or animal or chases or approaches a person in a menacing fashion or apparent attitude of attack.

C. An animal shall not be declared a “potentially dangerous animal” if the threat, injury, or bite alleged to have been committed by the animal was sustained by a person who was at the time committing a willful trespass upon the premises occupied by the owner of the animal, or who was abusing or assaulting the animal, or who was committing, or attempting to commit a crime. This exclusion does not apply to actions taken in defense of oneself, other humans, animals, or property.

15. As to whether Beulah was provoked to bite, provocation means “to torment, agitate, or harass an animal immediately before the attack, chase, or menacing behavior, [and] does not include actions taken to defend oneself, other humans, animals, or property.” KCC 11.01.350. In animal jurisprudence, reviewing courts focus on how an average dog, neither unusually aggressive nor unusually docile, would react to an inciting act.¹ And a key touchstone of courts’ analyses is that “provocation” requires the dog’s reaction to be roughly proportional to the victim’s act.²
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.

¹ *Bradacs v. Jacobone*, 244 Mich. App. 263, 273, 625 N.W.2d 108, 113 (2001) (citing *Kirkham v. Will*, 311 Ill. App. 3d 787, 792, 724 N.E.2d 1062 (2000)).

² *Stroop v. Day*, 271 Mont. 314, 319, 896 P.2d 439 (1995); *Bradacs* at 273–75; *Kirkham* at 792.

Analysis

17. Neither Cai did anything wrong. Indeed, they did exactly what a responsible owner/handler would do—before, during, and after the incident.
 - A. Neither Cai had any reason to suspect that Beulah would go after Ms. Cui (or anyone else) on September 21. There is no evidence that Beulah had previously exhibited any aggression. Eileen had even taken Beulah to the vet for bloodwork and pain tests in July; those came back normal.
 - B. In the moments leading up to Beulah’s attack, Melissa was walking her on a four-foot leash, and then moved to the side of the trail and pulled her back as Ms. Cui approached. While we understand why Ms. Cai would think Melissa did not rein in Beulah—Beulah bit her as she passed, then covered some distance to bite her again on the leg—we find Melissa’s explanation for that seeming inconsistency credible: Melissa did pull back on Beulah, but Beulah lunged and bit Ms. Cui’s wrist, then dragged Melissa to deliver another, more serious bite, to Ms. Cui’s thigh. Melissa did everything she could to prevent/stop the attack.
 - C. After the fact Melissa and Eileen have been responsible. Immediately afterwards Melissa provided numbers, apologized, and offered to pay for medical costs. Eileen has worked diligently with a vet to identify Beulah’s underlying medical conditions, and with multiple trainers to give Beulah her best chance of success. And they have diligently followed the compliance order.
18. But the focus of a potentially dangerous designation is on the dog, not on the owner or the person handling the dog. The designation is not a proxy for how much or how little care an owner is exercising. An owner/handler’s actions (or lack of actions) are relevant to the *monetary penalty*, if we uphold a violation, but not to whether a dog meets the code criteria for a particular violation.
19. The focus is also not on whether the animal acted out of mean-spiritedness, fear, or something else, only that, given a certain set of circumstances not amounting to legal provocation, the dog bit or injured someone. We accept that Beulah’s declining health and eyesight, as documented by her vet, contributed to her biting Ms. Cui twice. *See* Ex. A1. Yet the code criteria quoted above does not turn on whether Beulah is a good or bad dog or had reasons for what she did, only whether the bite was legally provoked or not.
20. Ms. Cui was not tormenting or harassing Beulah immediately before her attack; Ms. Cui was just riding by on a public trail at a normal speed. KCC 11.01.350. A passing cyclist might agitate an average dog, but that average dog would not respond by biting the cyclist and pulling her off her bike.³ Beulah biting Ms. Cui’s arm was grossly disproportional to her act of riding by. We likely would have upheld Beulah’s potentially dangerous designation even if Beulah had bit Ms. Cui’s arm and retreated.

³ A dog “attack[ing] an innocent child riding his bicycle down a public street because the movement of the bicycle has excited it or the sounds of traffic have startled it” does not qualify as “provocation.” *Robinson v. Meadows*, 203 Ill. App. 3d 706, 710-11, 561 N.E.2d 111, 808 (1990).

21. But that is not what happened. Beulah dragged an adult woman (Melissa) to get at Ms. Cui a second time. And this time Beulah inflicted a bite that did real damage, creating numbness and requiring ongoing therapy. It may not have been an infliction of a “severe injury” sufficient to earn Beulah a “*dangerous* animal” designation, but it was far from a back-off nip. KCC 11.01.120.A.1; KCC 11.01.320.A.1. Together Melissa and Eileen made one of the more effective presentations we can recall, but that second bite—even if it had been a minor one—makes this an easy call. Beulah’s continuing aggression even after the second bite is simply icing on that cake.
22. Eileen has been diligent in training Beulah, setting Beulah up for future success. Ex. A2. But the code standard is not a dog that “bit or inflicted injury on a human without provocation *and* constitutes a danger/presents an ongoing threat/risks repetition...” Rather, it is whether the dog bit a person without legal provocation.⁴ And on September 23, Beulah did that not once, but twice. We sustain the violation and Beulah’s compliance order.⁵
23. Where an owner or caretaker shows that the animal did something despite—not due to a lack of—their responsible behavior and/or they have taken steps after the violation to avoid a recurrence, we often reduce the otherwise applicable penalty. As discussed in paragraph 17, the Cais did everything right—before, during, and after the incident. We thus reduce the penalty significantly.

DECISION:

We deny the appeal but reduce the penalty from \$500 to \$100.

ORDERED December 8, 2023.



David Spohr
Hearing Examiner

⁴ Under the old code, there was a designation known as “vicious” that looked to whether the animal had “exhibited” vicious propensities, like biting a person without provocation, and also to whether the animal “constitutes” a danger. *Former* KCC 11.04.020.BB; 11.04.230.H. But in July the “vicious” designation was replaced with “potentially dangerous” and “dangerous” designations that contain no forward-looking inquiry.

⁵ There was discussion of the appropriateness of a muzzle. KCC 11.04.275.C.3 requires that a potentially dangerous dog, off the owner’s premises and not in a vehicle, be securely leashed and “humanely muzzled.” We will revisit the muzzle issue in a future case where, for example, a dog is labeled “potentially dangerous” for something *other* than a bite and there is no evidence that dog ever bit or even attempted to bite anyone. But here, had Beulah been muzzled on September 23, she would not have been able to pull Ms. Cui off her bike and certainly would not have been able to inflict a second bite to Ms. Cui’s thigh.

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 *January 8, 2024*. 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 NOVEMBER 27, 2023, HEARING IN THE APPEAL OF MELISSA CAI, REGIONAL ANIMAL SERVICES OF KING COUNTY FILE NO. V23014723-A23005701

David Spohr was the Hearing Examiner in this matter. Participating in the hearing were Chelsea Eykel, Connie Cui, Melissa Cai, and Eileen Cai. 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
Exhibit no. D2	RASKC investigation report no.
Exhibit no. D3	Online Complaint form of September 21, 2023, incident by Qian Cui, dated September 21, 2023
Exhibit no. D4	Photograph of injuries
Exhibit no. D5	Photograph of trail
Exhibit no. D6	Medical record, dated September 21, 2023
Exhibit no. D7	Notice of violation no. V23014723-A23005701, issued September 23, 2023
Exhibit no. D8	Appeal, received September 23, 2023
Exhibit no. D9	Map of subject area

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

Exhibit no. A1	Dr. Rupali Sodhi Statement
Exhibit no. A2	Heather Archer Statement

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CERTIFICATE OF SERVICE

SUBJECT: Regional Animal Services of King County file no. **V23014723-A23005701**

MELISSA CAI

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, through Quadient-Impress, with sufficient postage, as FIRST CLASS MAIL in an envelope addressed to the non-County employee parties/interested persons to addresses on record.

DATED December 8, 2023.



Lauren Olson
Legislative Secretary

Cai, Melissa/Eileen
Hardcopy

Cui, Connie
Hardcopy

Eykel, Chelsea
Regional Animal Services of King County