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**Disciplinary Consequences of Peace Officer Untruthfulness  
Part Two - Employee Dishonesty**

*Contents*

- A. Does the type of lie matter?
- B. Untruthfulness unrelated to official duties: termination can be excessive punishment.
- C. Untruthfulness related to official duties: termination upheld.
- D. Untruthful testimony while under oath.
- E. Untruthfulness related to residency requirements, time cards or activity reports.
- F. Summary

[Part One](#) addressed untruthfulness in the pre-employment application process, and its ramifications, after an applicant is hired.

Part Two examines disciplinary punishment for untruthfulness after a person becomes an officer or employee.

Some have taken it for granted that a law enforcement officer's untruthfulness is misconduct that warrants termination. As the case law demonstrates, that is not often the result.

**A. Does the type of lie matter?**

A federal court in Illinois recently addressed the issue of when untruthfulness by a police officer warrants termination, and when it does not. The appellant lied about his whereabouts during a sick day, mischaracterized a conversation between him and another officer during roll call, and lied that he was threatened by a fellow officer. In overturning

his termination, the court wrote:

“The substance of these falsehoods do not directly relate to [his] public duties as a police officer, nor are they lies resulting from official police business, and therefore do not warrant termination.”

The court elaborated, as follows:

“Numerous Illinois courts have been faced with determining when an officer’s dishonesty warrants dismissal. While not creating a bright-line rule, they have generally separated the lies into two categories: those which relate directly to the officer’s public duties and those which only relate to internal police administration.

“The former warrant termination, the latter do not. The key factor is the subject matter of the falsehood, more specifically, how it relates to a policeman’s duties to the public.”

[Harder v. Vil. of Forest Park](#), #05-C-5800, 2008 U.S. Dist. Lexis 36892 (N.D.Ill.).

### **B. Untruthfulness unrelated to official duties: termination can be excessive punishment.**

The Illinois Supreme Court refused to uphold the termination of an officer who falsely denied that he had been driving his personal car on the previous day while he was supposed to be on duty. The lie did not justify dismissal, because they did not relate directly to the officer’s public duties but only to matters of internal police administration. [Kreiser v. Police Bd. of Chicago](#), 370 N.E.2d 511 (Ill. 1977).

Another case of excessive punishment involved an off-duty officer who did not tell the truth about taking a police car outside of the zone of effective radio communication. [Christenson v. Bd. Fire and Police Cmsnrs. of Oak Forest](#), #79-652, 404 N.E.2d 339 (Ill. App. 1980).

An appellate court found that termination was too harsh a penalty for an officer that told his sergeant that he was going to court to testify in a traffic case. In fact, it was personal business relating to his wife’s divorce suit. He later said he was worried that he would be docked in pay if he had told the truth. [Humbles v. Bd. of Fire and Police Cmsnrs. of Wheaton](#), 368 N.E.2d 1049 (Ill. App. 1977).

- There is a difference between misrepresentations to a superior officer about activities not relating to official duties, and filing a false report or lying at a formal internal investigation.

A federal appellate panel affirms the termination of an FBI agent who, during an I-A interview, significantly understated the number of times he had misused a Bureau vehicle. It was unnecessary to prove an intent to deceive his superiors. [Ludlum v. Dept. of Justice](#), #01-3093, 278 F.3d 1280 (Fed. Cir. 2002).

### **C. Untruthfulness related to official duties: termination upheld.**

The Supreme Court, in a 9-to-0 holding, reversed a federal appeals panel and MSPB rulings that annulled the terminations of six federal employees, including a police officer, who had lied to their superiors during an official investigation. The workers each denied engaging in the conduct under investigation. Management imposed the ultimate penalty because of their untruthfulness.

Writing for a unanimous court, the Chief Justice said, “We hold that a government agency may take adverse action against an employee because the employee made false statements in response to an underlying charge of misconduct.” [LaChance v. Erickson](#), 522 U.S. 262 (1998).

In a second case, the justices voted 7-to-2 to reverse the line of cases that allowed a criminal suspect to reply an “exculpatory no.” 18 U.S. Code §1001 permits prosecutions for lying to a federal agent. For several years, the Justice Dept. has declined to prosecute persons who simply deny their guilt; see U.S. Attorneys’ Manual #2669-42.160 (Sept. 1997). It was this line of lower court cases upon which the employees in Erickson had relied. [Brogan v. U.S.](#), 522 U.S. 398 (1998).

A federal court in Chicago has noted that “where an officer ... lies about a matter related to public duties and police business ... or a matter under investigation ... courts tend to uphold a board’s finding of cause for dismissal.” [DeMauro v. Loren-Maltese](#), #98 C 8318, 2001 U.S. Dist. Lexis 12409 (N.D. Ill.).

An Illinois appellate panel concluded that an officer was lawfully terminated for lying during an internal investigation. He had been warned to answer truthfully and that his statements constituted an official police report. He repeatedly told the investigator that he was putting gasoline in his squad car when he received an emergency call, but the gas pump records showed that he did not put gas into his squad car until later that day and his own daily activity report corroborated the gas pump records. [Valio v. Bd. Fire and Police Cmsnrs. of Itasca](#), #2-99-0019, 724 N.E.2d 1024 (Ill. App. 2d Dist. 2000).

The Massachusetts Supreme Court overturned an arbitration award reinstating an officer that falsely arrested a citizen and repeatedly lied in his reports about the event. They said that a “police officer who ... shrouds his own misconduct in an extended web of lies and perjured testimony, corrodes the public’s confidence in its police force.” [City of Boston v. Boston Police Assn.](#), #SJC-09297, 443 Mass. 813, 824 N.E.2d 855 (2005).

A New York appellate court rejected the theory that a probationary NYPD officer should not have been fired for making false and misleading statements to internal affairs investigators, because the underlying offense of credit card fraud occurred before he was hired. The panel also discarded a claim that internal affairs lacked authority to question him about pre-service conduct because hiring decisions are made by another city department. [Matter of Duncan v. Kelly](#), #104079/04, 2007 NY Slip Op 06408, 43 A.D.3rd 297, 841 N.Y.S.2d 237 (1st Dept.).

The state’s highest court subsequently affirmed that holding. [Matter of Duncan v. Kelly](#), #47-SSM-36, 2008 NY Slip Op 00181, 882 N.E.2d 872, 9 N.Y.3d 1024 (2008).

An arbitrator noted that although termination might not be appropriate for making a false insurance claim 14 years earlier, he upheld the dismissal because the officer lied during the I-A investigation and continued to mislead his superiors up until his time of termination. [Kitsap Co. and K.C. Deputy Sheriff’s Guild](#), 118 LA (BNA) 1173, AAA #75-L-390-00240-02 (Gaba, 2003).

Two Illinois cases involved police officers that refused to testify before a grand jury, but lied to their superiors about the circumstances. A police officer has a right to “take the Fifth” but he does not have a right to mislead his superiors about exercising one’s constitutional rights.

When asked by his commanding officer whether he had refused to answer questions at a Federal grand jury inquiry relative to his conduct as a police officer, the officer falsely replied that the only question he had refused to answer was not specific to his duty as a police officer. His termination was upheld by a three-judge appellate panel. They wrote that “the privilege against self-incrimination does not include the right to make a false report.” [Thanasouras v. Police Board of Chicago](#), #61281, 339 N.E.2d 504 (Ill. App. 1st Dist. 1975).

Two years later, the same appellate court was again confronted with a similar situation. The panel wrote:

“It is apparent to us that the underlying violation in these charges was plaintiff’s attempted deception of his superior officers at his hearing on December 20, 1971,

before the Internal Affairs Division of the Chicago Police Department. ...

“If plaintiff had reported to his superiors that he had been questioned by the grand jury concerning his conduct as a police officer, but that he had declined to answer on fifth amendment grounds, there would have been no grounds for disciplining him.”

[Noro v. Police Board of Chicago](#), #62771, 365 N.E.2d 419 (Ill. App. 1st Dist. 1977).

It should be noted that a retraction of a lie does not avoid the penalty of discharge. A New York appellate court affirmed termination of NYPD officer who lied at an internal affairs interview. A retraction of his earlier statements did not excuse the untruthful answers.

The penalty was appropriate because the officer did recant until the interviewer knew that he was lying. [Spiratos v. Safir](#), 672 N.Y.S.2d 311 (A.D. 1998).

#### **D. Untruthful testimony while under oath.**

Incredible as it seems, arbitrators have reinstated officers that were untruthful in court or other legal proceedings.

A divided Ohio appellate court affirmed the termination of a police officer that lied under oath to help a fellow officer who killed an arrested man. In a 2-to-1 holding, the court set aside the arbitrator’s award reducing the punishment to a three-day suspension.

The arbitrator relied on a penalty matrix, which at the time of the incident, did not include termination. The majority wrote

“It is also common sense and an inherent expectation that law enforcement officers taking an oath to uphold laws and serve the community must not lie. Honesty and service to the community are expectations of all law enforcement officers. A violation of this trust impairs an officer’s ability to perform the duties of his/her job.”

The dissenting justice wrote that he did not believe “that we should substitute our judgment for that of the arbitrator.” [City of Cincinnati v. Queen City Lodge](#), #C-040454, 2005 Ohio 1560, 2005 Ohio App. Lexis 1522, 177 LRRM (BNA) 2021 (2005).

A New York appellate court upheld the termination of a police officer who gave “evasive” answers to a grand jury. [Donnelly v. Police Dept.](#), 40 A.D.2d 649, 336 N.Y.S.2d 508 (1972).

## **E. Untruthfulness related to residency requirements, time cards or activity reports.**

The Connecticut Supreme Court sustained disciplinary action against police officers that misrepresented their residency. Wilbur v. Walsh, 147 Conn. 317, 160 A.2d 755 (1960).

A California appeals court affirmed the termination of an LAPD officer who submitted a false daily field activities report when in fact he was at a barbeque. The court said that he “harmed the public by depriving the public of police protection for a significant period and, through his dishonesty and lack of integrity, diminished public trust and confidence.” Haney v. City of Los Angeles, #B153530, 109 Cal. App.4th 1, 134 Cal Rptr.2d 411 (2d Dist. 2003).

Another appellate court in California concluded that an investigator was lawfully terminated for making false statements on a workers’ compensation claim form and was dishonest with his supervisor. Holmes v. Dist. Atty., #A081428, 81 Cal.Rptr.2d 174 (Cal. App. 1998).

## **F. Summary**

1. As explained in [Part One](#), a veteran employee can be terminated for untruthfulness in his or her employment application. It must be a material omission or misstatement, such as concealing a prior job, military service or an arrest record.
2. After an officer has earned permanent job status, termination is appropriate when the untruthfulness relates to an official duty. A lie about an officer’s marital problems is deserving of punishment, but normally not discharge.
3. Filing false reports, lying to agents or officers from other agencies and bringing false claims will normally result in termination.
4. Prosecutors should be consulted as to whether an officer’s credibility is affected by a minor lie. If the untruthful incident is routinely disclosed to judges and jurors, the officer’s effectiveness is impaired.
5. If management intends to terminate an officer, it is important to emphasize to a civil service board or reviewing court why untruthful peach officers pose a special problem (*as noted in Part One*): [1]
  - Under the application of the collective-knowledge doctrine, police officers rely on the validity of information provided to them by fellow officers.

- Supervisors render decisions based on information received from officers.
- According to the tenets of community policing, citizens are urged to communicate and cooperate with law enforcement officials. If they trust and respect police officers, the ability to garner their support will only be enhanced.
- Prosecutors depend on honest reports, statements, and affidavits when prosecuting criminals.
- Judges rely on honesty in evaluating warrants.
- Jurors determine guilt or innocence and often liability based on an officer's investigation and testimony.

**Endnote:**

- Spector, Elliot (2008). [Should Police Officers Who Lie Be Terminated as a Matter of Public Policy?](#) The Police Chief, April, 2008. IACP Net Doc. #597868.
- There is a list of articles and resources at the end of [Part One](#) of this article.
- Specimen regulations: [truthfulness of police officers](#)

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