
IN THE SUPREME COURT FOR THE STATE OF IOWA
No. 21-0981

TOMMY MARION COPELAND,
Plaintiff/Appellant,

vs.

STATE OF IOWA and IOWA AIR NATIONAL GUARD,
Defendants/Appellees.

Appeal from the Iowa District Court for Polk County,
Honorable Paul D. Scott

Plaintiff/Appellant's Final Brief and Oral Argument Request

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CERTIFICATE OF FILING AND SERVICE

I hereby certify e-filing of the Plaintiff/Appellant's Final Brief via EDMS with the Appellate Court on January 19, 2022, with the following counsel served by EDMS:

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I certify on January 19, 2022, the Plaintiff/Appellant's Final Brief was served on Appellant Tommy Copeland.

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STATEMENT OF THE ISSUES

I. COPELAND DID NOT HOLD A CONFIDENTIAL RELATIONSHIP WITH ANY APPOINTING AUTHORITY

Iowa Supreme Court Cases

Andreano v. Gunter, 110 N.W.2d 649 (Iowa 1961)

Ervin v. Triplett, 18 N.W.2d 599 (Iowa 1945)

State Pub. Def. v. Iowa Dist. Ct., 886 N.W.2d 595 (Iowa 2016)

Iowa Court of Appeals Cases

Machamer v. Iowa Dept. of Admin. Serv., No. 15-1861, 2016 WL 7395731 (Iowa Ct. App. Dec. 21, 2016)

Additional Iowa Authority

Iowa Code section 35C.8

Iowa Code § 8A.401(1)

ROUTING STATEMENT

Pursuant to Iowa R. App. P. 6.1101, the Iowa Supreme Court should retain this case as it presents a fundamental and urgent issue of broad public importance requiring prompt or ultimate determination by the Supreme Court due to the lack of protection given to veterans under the veterans' preference law in Iowa Code chapter 35C.

STATEMENT OF THE CASE

I. Nature of the Case

Tommy Copeland appeals the July 1, 2021 Ruling on his Petition for Writ of Certiorari finding Copeland was not entitled to protections under Iowa Code §35C.6 as his working relationship was confidential under Iowa Code §35C.8.

II. Procedural History

On August 28, 2020, Copeland filed a Petition for Writ of Certiorari outlining the failures by the State of Iowa and the Iowa Air National Guard to adhere to Iowa Code Chapter 35C by terminating him without a pre-termination hearing to determine whether he was incompetent and/or had committed misconduct in his position. (App. 5-7.) Following briefing by the parties, hearing was held on May 13, 2021. (App. 449.) On

July 1, 2021, the Honorable Paul D. Scott denied Copeland's Petition for Writ of Certiorari. (App. 445-455.)

FACTUAL BACKGROUND

This case arises out of Copeland's employment and termination of employment with the State of Iowa/Iowa Air National Guard (hereinafter State). The facts are not in dispute.

Copeland was hired by the State as an Air Base Security Guard and filled said role until his termination. (App. 6, 8.) As part of Copeland's duties, he provided armed responses, controlled entry into restricted areas, checked heating/cooling systems, monitored boilers, and maintained firearms qualifications. (App. 65.) Copeland is a veteran and holds Veteran's Preference Rights under Iowa Code Chapter 35C. (App. 6, 8.) The State was aware Copeland was a veteran at the time of hire and termination. (App. 6, 8.) On August 1, 2020, Copeland was terminated from his position with the State. (App. 6, 8.) Prior to his termination from his position with the State, Copeland was not provided a hearing alleging incompetency or misconduct or an opportunity to respond to any allegations. (App. 6, 8.)

ISSUES

I. COPELAND DID NOT HOLD A CONFIDENTIAL RELATIONSHIP WITH ANY APPOINTING AUTHORITY

A. Issue Preservation

This issue was raised in front of the district court, which found in favor of the State. (App. 451-453.)

B. Standard of Review

On the issue herein, under a writ of certiorari, review is for the correction of errors at law. *State Pub. Def. v. Iowa Dist. Ct.*, 886 N.W.2d 595, 598 (Iowa 2016). A writ of certiorari lies when a lower court “has exceeded its jurisdiction or otherwise has acted illegally.” *Id.* (quoting *State Pub. Def. v. Iowa Dist. Ct.*, 747 N.W.2d 218, 220 (Iowa 2008)). “Illegality exists when the court’s findings lack substantial evidentiary support, or when the court has not properly applied the law.” *Id.* (quoting *State Pub. Def.*, 747 N.W.2d at 220).

C. Argument

Copelands agrees employees labeled as confidential are not entitled to veterans’ preference under Iowa Code Chapter 35C. However, Copeland was not a confidential employee.

Iowa Code §35C.8 outlines “[n]othing in this chapter shall be construed to apply to the position of private secretary or deputy of any official or department, or to any person holding a strictly confidential relation to the appointing officer.” An “appointing authority” is defined as the “chairperson or person in charge of any state agency including, but not limited to, board, bureaus, commissions, departments, or any employee designated to act for an appointing authority.” Iowa Code § 8A.401(1).

A “confidential relationship” is very broad “and is not at all confined to any specific association of the parties, but applies generally to all persons who are associated by any relation of trust and confident.” *Andreano v. Gunter*, 110 N.W.2d 649, 655 (Iowa 1961).

The Court considers “the duties of the appointing officer to determine whether the officer was compelled to entrust the performance of the duties to others because it would be impossible to discharge those assigned duties personally.” *Machamer v. Iowa Dept. of Admin. Serv.*, No. 15-1861, 2016 WL 7395731, *2 (Iowa Ct. App. Dec. 21, 2016) (*citing Hannam v. Iowa State Comm. Comm’n*, 292 N.W.2d 820, 820 (Iowa 1940)).

In *Machamer*, the Chief of the Organizational Performance Bureau was found a confidential employee due to the fact he directly reported to the department's Chief Operating Officer and then the Director. 895 N.W.2d at *3. Machamer had previously been notified he was a confidential employee and not covered by the protections of Iowa Code §8A.411. *Id.* at *4.

In *Andreano*, the assistant chief of police was in a confidential relationship with the appointing officer, the city manager, within the meaning of the veterans' preference law. 110 N.W.2d at 655-56. In finding a confidential relationship with the city manager, the Court pointed to Andreano's duties in the formation of departmental policies and regulations, coordination of all line operations, and his duty of taking immediate control in a major emergency. *Id.* at 655. *Andreano* also found a broad difference between the trust, confidence, powers, and duties charged to an officer/detective and the assistant chief of police, or chief of police. *Id.* at 656.

In the present matter, the district court found Copeland has a confidential relationship with the Security Forces Manager, the Assistant Adjutant General, and the Adjutant General. (App. 452.)

However, a confidential relationship under Iowa Code §35C.8 is with an “appointing authority.” Only the Adjutant General and perhaps the Assistant Adjutant General would be an “appointing authority” under Iowa Code §8A.401(1). *See Andreano*, 110 N.W.2d at 656 (assistant chief of police have a confidential relationship with the city manager, but an officer does not).

No such relationship existed with Copeland and the Adjutant General and Assistant Adjutant General. *See Ervin v. Triplett*, 18 N.W.2d 599, 601-02 (Iowa 1945) (“The work of a detective may be of a confidential nature...to his immediate supervisor. However, the record does not in any way disclose that a person holding the position of detective...is one of “strictly confidential relation to the appointing officer” which in the instant case is the commission of public safety.”) Copeland’s case is like *Ervin*, where a police detective was found not to have a confidential relationship to the appointing authority—the commission of public safety—because, while Ervin’s work may have been confidential to his immediate supervisor, the detective did not do any confidential work for the commissioner. *Id.*

Copeland reported to the Security Forces Manager. (App. 62.) Copeland did not have a confidential relationship with the Adjutant General or the Assistant Adjutant General. The district court failed to properly analyze the entirety of the relationship criteria when determining whether Copeland was a confidential employee. In determining whether a confidential relationship exists, the Court:

must look at the duties of the appointing officer to determine whether *the officer was compelled to entrust the performance of the duties to others* because it would be impossible to discharge those assigned duties personally. We also look to see if the person appointed was ‘necessarily given considerable latitude and required to exercise his discretion and good judgment in dealing with many of the duties delegated to him.’ If the appointing officer is required to perform a duty involving skill or integrity and could incur liability to himself or to the entity that employs him if the duty is not properly executed and the officer entrusts ‘the discharge of this duty to another, their relations become confidential.’”

Machamer, 895 N.W.2d at *2 (emphasis added). The district court jumped directly into analyzing the trust between Copeland and supervisors but failed to address the first part of the *Machamer* analysis: whether the appointing officer was compelled to entrust the performance of *his own duties* to others because it would be impossible to personally complete those duties. *See id.* The duties of the Adjutant General,

Assistant Adjutant General, and Security Forces Manager are never discussed by Defendants, nor are they discussed by the district court.

The district court found since Copeland held a confidential relationship as he:

...is armed at all times and trusted to have access to restricted areas on a military base, and is trusted and required to maintain valid secret security clearance, military-level weapon qualifications, a favorable background check, the ability to pass a strenuous Physical Agility Test, and a medical evaluation clearing him as fit to work.

(App. 452-453.) None of these are duties of the Adjutant General or Assistant Adjutant General. These are the base qualifications Copeland had to meet for his position, same for all employees in the security forces. Every employee has different qualifications, standards, and tests they must pass to obtain employment. Simply possessing those qualifications does not create a confidential relationship with an appointing authority. Copeland did not have any special authority over the Security Forces, he was simply an airbase security officer. (App. 61.)

Under *Machamer*, the court is to look at whether the person was “necessarily given considerable latitude and required to exercise his discretion and good judgment in dealing with many of the duties

delegated to him.” 895 N.W.2d at *2 (emphasis added). The district court also finds, in following the *Machamer* analysis, that Copeland was required to “exercise discretion and good judgment” and his job required “skill, judgment, trust, and confidence.” (App. 453; *Machamer*, 895 N.W.2d at *2.) This is true for the specific duties which Copeland was assigned. (App. 61.) Because neither the Adjutant General nor Assistant Adjutant General delegated duties to Copeland, however, that analysis is unnecessary.

Under the district court’s analysis, any employee would always hold a “confidential relationship” with the CEO and owner of any business because it would be impossible for them to do all duties for the entire company. Further, Copeland did not have the ability or power to do every act to which his superior, the Security Forces Manager, or even higher, the Assistant Adjutant General or Adjutant General could do. Once again, Copeland’s job duties do not outline any ability to take an adverse employment action, review, or even recommend an adverse action. (App. 61-64, 105-106.) This is different than the powers granted to the Security Forces Manager, who terminated Copeland, and the Assistant Adjutant

General or Adjutant General, who presumably have such powers. (App. 255.)

Based upon the record, the district court incorrectly analyzed the relationship between Copeland, the Adjutant General, and Assistant Adjutant General, finding there was a confidential relationship. Copeland was not a confidential employee and was entitled to a pre-discharge hearing pursuant to Iowa Code chapter 35C.

CONCLUSION

For the reasons set out herein, this Court must reverse the dismissal of Copeland's Writ of Certiorari and direct the State of Iowa/Iowa Air National Guard to reinstate Copeland with full back pay and benefits from August 1, 2020, until his retirement.

ORAL ARGUMENT REQUEST

Counsel requests to be heard by oral argument on this matter.

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CERTIFICATE OF COMPLIANCE WITH TYPE-VOLUME LIMITATION, TYPEFACE REQUIREMENTS, AND TYPE STYLE REQUIREMENTS

This brief complies with the type-volume limitation of Iowa R. App. P. 6.903(1)(g)(1) (no more than 14,000 words) because this brief contains 1,859 words, excluding the parts of the brief exempted by Rule 6.903(1)(g)(1), which are the table of contents, table of authorities, statement of the issues, and certificates.

This brief complies with the typeface requirements of Iowa R. App. P. 6.903(1)(e) and the type-style requirements of Iowa R. App. P.6.903(1)(f) because this brief has been prepared in a proportionally spaced typeface using Microsoft Word for Office 365 MSO in font size 14, Century Schoolbook.

/s/ Haley Bryan
Haley Bryan

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