

IN THE IOWA SUPREME COURT

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
IN AND FOR POLK COUNTY
HONORABLE PAUL D. SCOTT

DEFENDANT/APPELLEES' RESISTANCE TO APPLICATION FOR
FURTHER REVIEW

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STATEMENT OPPOSING FURTHER REVIEW

The Iowa Court of Appeals' decision in this matter is consistent with prior decisions of the Iowa Court of Appeals and this Court. This matter presents a routine application of law that has been settled by this Court. Copeland asks this Court to overturn a long-held standard consistently articulated in this Court's decisions. Further review should not be granted.

FACTUAL AND PROCEDURAL BACKGROUND

Copeland, a Veteran, worked as an Air Base Security Guard for the Iowa Air National Guard. (App. 13-16, 43). Per a position description questionnaire and other duty outlines, Copeland was required to be armed at all times, access restricted areas of military bases, and maintain a valid secret security clearance. Among further position requirements, Copeland also needed to maintain military-level weapon qualifications; less than lethal force methods qualifications; and a favorable background check. (App. 61-64). Copeland's job duties required him to be able to perform apprehension and restraining techniques, pass regular physical fitness tests, and exercise police powers granted by the Adjutant General. (App. 12, 61-64, 156, 219-220, 222-226). These were considered essential functions of his position. (App. 62). Copeland performed these duties to help fulfill responsibilities of the Adjutant General.

The Adjutant General is the director of the Department of Public Defense (“DPD”) and performs all functions, responsibilities, powers, and duties concerning the military forces of the State. Iowa Code § 29.1; *see also* Iowa Code § 29A.12(1) (providing that Adjutant General has command and control of the DPD and performs such duties pertaining to his office under law and regulation). To aid the Adjutant General in that duty, which would be impossible for one person to perform, the Adjutant General has Deputy Adjutant Generals. Iowa Code § 29A.16(1). Further, the Adjutant General is allowed to appoint a full-time staff with personnel authorization. Iowa Code §29A.16(3). This staff included Copeland himself along with the Security Forces Manager, his direct supervisor. (App. 255, 278-279); Iowa Code § 29.1. The Adjutant General oversees the state military reservations and all other property of the State kept or used for military purposes. Iowa Code § 29A.12(1).

Copeland was terminated for cause on August 3, 2020, because he failed to timely pass the Air Base Security Office Physical Agility Test on July 22, 2020. (App. 255). The July 2020 Physical Agility Test was Copeland’s fourth failed attempt. (App. 255).

After his termination, Copeland petitioned for writ of certiorari on August 28, 2020, alleging that he was terminated without receiving a pre-termination hearing pursuant to Iowa Code Section 35C.6. The district court denied Copeland’s petition

on July 1, 2021 and concluded that Copeland was in a confidential relationship with his appointing authority pursuant to Iowa Code Section 35C.8 and that a pre-termination hearing was thus not applicable. On August 31, 2022, the Iowa Court of Appeals affirmed the district court's denial. Copeland applied for further review on September 20, 2022.

ISSUES

I. THE IOWA COURT OF APPEALS CORRECTLY CONCLUDED THAT COPELAND HELD A CONFIDENTIAL RELATIONSHIP WITH HIS APPOINTING AUTHORITY.

This Court has developed a consistent standard used to determine whether a person shares a confidential relationship with their appointing authority. Copeland does not dispute that the prongs of this standard apply here. He instead raises an issue that is not relevant to the standard and invites this Court to overturn the standard. Similarly, different decisions by this Court are due to different facts and records, not due to a prior change in the standard as Copeland claims. Finally, there are several categories of employees without confidential relationships that demonstrate that the standard has not created an exception that swallows the rules governing Veteran's preference. As a result, further review should not be granted.

ARGUMENT

A. Further Review Should Not Be Granted Because All Authorities Governing Confidential Relationships Have Applied a Consistent Standard for 80 Years and That Same Standard Was Correctly Applied in This Case

1. Copeland Has Overstated the Differences Between Applicable Authorities

This Court outlined Iowa's standard for determining whether a person shares a confidential relationship with an appointing authority in 1941:

[W]here the duties of the appointing officer were of such a character that it is impossible for him to personally discharge them, and of necessity he was compelled to entrust the performance of them largely to others, a confidential relation arose between the officer and the others to whom a portion of his duties was necessarily delegated.

Where duties are not merely clerical and require skill, judgment, trust and confidence, the courts are inclined to regard the appointee to whom such duties are delegated as holding a strictly confidential relation to the appointing officer or board.

Brown v. State Printing Bd., 296 N.W.2d 719, 720 (Iowa 1941) (internal citations omitted); *Andreano v. Gunter*, 110 N.W. 649 at 655 (Iowa 1961) (holding that the *Brown* standard is sound and reaffirming it). All subsequent precedents have consistently used the elements within the *Brown* standard to determine whether a confidential relationship exists. See *Hannam v. Iowa State Com. Comm'n*, 292 N.W. 820, 821 (Iowa 1940) (holding that an appointing officer with a duty involving skill and integrity that entrusts another to discharge that duty, their relations become confidential.) (citation omitted); *Bowman v. Overturff*, 294 N.W. 568, 570 (Iowa 1940) (holding confidential relationship existed where appointing authority was compelled to delegate duties requiring skill, confidence, and integrity) (citation omitted); *Klatt v. Akers*, 5 N.W.2d 605, 612 (Iowa 1942) (holding confidential

relationship existed where appointing authority was compelled by law to perform duties that required trust, confidence, and skill, that he could not do personally); *Ervin v. Triplett*, 18 N.W.2d 599, 601-02 (Iowa 1945), overruled on other grounds by *Andreano v. Gunter*, 110 N.W.2d 649 (Iowa 1961) (concluding that record not sufficient to conclude that detective had confidential relationship with appointing authority).

Different outcomes in cases where the *Brown* standard was applied result from differences of fact, not differences in how the law was applied to facts. In *Ervin*, the Court focused on a variety of issues that did not concern whether a confidential relationship existed, including whether the Veteran's preference statutes applied in lieu of civil service statutes, whether the employee was illegally demoted, and whether detective and patrolman are distinct positions. *Ervin*, 18 N.W.2d, at 600-01. By the time the *Ervin* Court reached the confidential relationship analysis, it was starved of a record and stated in dicta that, "[t]he work of a detective *may* be of a confidential nature and his reports *may* be confidential to his immediate superior" but held that "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 commissioner of public safety". *Id.* at 601-02 (emphasis added). *Ervin* determined that there was no confidential relationship

with the appointing authority due to a lack of facts on the record, not due to a change or ‘tightening’ in the *Brown* standard. *Id.*

Like *Ervin*, *Andreano* also does not support that a change in the *Brown* standard occurred, and instead explicitly reaffirms the standard. *Andreano*, 110 N.W.2d at 655 (reaffirming *Brown* standard). In *Andreano*, the Court concluded that an assistant chief was in a confidential relationship with the appointing authority because he was placed in a position of trust and confidence and performed duties delegated from the appointing authority or from the chief of police. *Id.* at 655-56. The *Andreano* court drew a contrast to *Ervin* stating that “there is a broad difference between such an officer and an assistant chief of police.” *Id.* at 656 (citing *Ervin*, 18 N.W.2d at 599). However, because the holding of no confidential relationship in *Ervin* is based on a lack of a supporting record, not due to a change in the *Brown* standard, this citation in *Andreano* also does not support a change in the *Brown* standard. *Id.* at 656 (citing *Ervin*, 18 N.W.2d at 600-601).

In sum, *Ervin* and *Andreano* do not support Copeland's assertion that the *Brown* standard has changed and tightened. (Application for Further Review, 10-12) Instead, *Brown* and its progeny have consistently applied elements of the *Brown* standard to determine whether a confidential relation exists for decades. 296 N.W.2d at 720 (holding confidential relationship exists with employee where appointing authority cannot personally perform duties requiring skill, judgment, and trust and

must delegate portion of them to employee). This Court should not grant further review to allow Copeland to argue that the *Brown* standard should be changed.

2. Copeland’s Only Issue on Review Is To Overturn The Confidential Relationship Standard

Copeland’s dispute on further review is narrow. Copeland does not dispute that his duties required him to exercise discretion and good judgment along with skill, trust, and confidence. *Brown*, 296 N.W.2d at 720 (“Where duties ... require skill, judgment, trust and confidence, the courts are inclined to regard the appointee to whom such duties are delegated as holding a strictly confidential relation”); *See Copeland v. State*, No. 21-0981, 2022 WL 3907742, at *3 (Iowa Ct. App. Aug. 31, 2022) (concluding that Copeland focuses on the delegation part of the analysis, arguing that because he reported directly to the security forces manager, “he did not have a confidential relationship with the Adjutant General or the [Deputy] Adjutant General,”). Further, Copeland does not dispute that the Adjutant General and his deputies cannot personally perform all their duties and are compelled to entrust many of them to others through delegation. *Id.* (“[W]here the duties of the appointing officer were of such a character that it is impossible for him to personally discharge them, and of necessity he was compelled to entrust the performance of them largely to others, a confidential relation arose between the officer and the others to whom a portion of his duties was necessarily delegated”); *See Copeland v. State*, No. 21-0981, 2022 WL 3907742, at *3 (Iowa Ct. App. Aug.

31, 2022). Thus, Copeland does not dispute that both prongs of the *Brown* standard are applicable in this appeal. 296 N.W.2d at 720 (holding confidential relationship exists with employee where appointing authority cannot personally perform duties requiring skill, judgment, and trust and must delegate portion of them to employee). Copeland's cited reason for his application for further review is that he is not in a confidential relationship with his appointing authority because his duties were delegated to him by his direct supervisor and not his appointing authority. (Application Further Review, 9)

Whether the appointing authority delegated a portion of his obligations to secure a military base and exercise police powers directly to Copeland or through a chain of command is not a factor to assess a confidential relationship exists under the *Brown* standard. Iowa Code § 29A.12(1) (Adjutant General has charge of the state military reservations other property kept or used for military purposes); Iowa Code § 29.1 (Adjutant General directs DPD and performs all functions, responsibilities, powers, and duties concerning the military forces of the state of Iowa). Instead, under *Brown* and its progeny, a confidential relationship arises between the appointing authority and others to whom a portion of the authority's duties are *necessarily* delegated. 296 N.W.2d at 720 (emphasis added). *Brown* and its progeny demonstrate that a confidential relationship is not determined by an organization chart, it is a legal determination based on how an employee's duties

relate to the appointing authority's duties, what duties were delegated and why, and whether that employee must act with trust, skill, and confidence. *Klatt*, 5 N.W.2d 605 (holding that a confidential relationship is a legal status under "Soldier's Preference law"). In short, Copeland's sole basis for further review is to ask this Court to overturn decades of precedent and change the standard from one that focuses on duties and how and why they are delegated to a focus on an organization chart. This Court should not grant further review and allow Copeland to seek to overturn *Brown* and its progeny.

3. The Confidential Relationship Standard Does Not Create an Exception That Swallows the Rule

Iowa Code section 35C.8 standard demonstrate that many employees do not share a confidential relationship with an appointing authority. There are three major categories of employees that do not share a confidential relationship with their appointing authority. First, an employee had their duties delegated from their appointing officer, but their duties are clerical or otherwise do not require discretion, judgment, and skill. *Brown*, 296 N.W.2d at 720 (holding confidential relationship exists with employee where appointing authority cannot personally perform duties requiring skill, judgment, and trust and must delegate portion of them to employee). Second, an employee's duties were not delegated by their appointing officer. *Id.* Third, and perhaps most important, an employee's duties delegated from their appointing officer were not duties that the appointing officer is compelled to perform

under Iowa or Federal law or otherwise incur liability. *Allen v. Wegman*, 254 N.W. 74, 79 (Iowa 1934) (holding that when appointing officer must perform duty involving skill or integrity and could incur liability if the duty not properly performed, delegation of this duty creates confidential relationship).

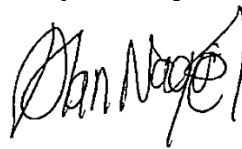
Copeland shared a confidential relationship with his appointing authority because he is the exception from each of these categories. Copeland was trained and employed to secure a military facility that the Adjutant General is directly charged with protecting under Iowa law. Iowa Code § 29A.12(1) (Adjutant General has charge of the state military reservations and all other property of the State kept or used for military purposes); (App. 61-64). The State or the Adjutant General could face liability if the Adjutant General failed to secure a military base along with military property and sensitive information. The Adjutant General cannot secure Iowa's military bases, property, and information alone or with his deputies. He had delegated these duties, in part, to Copeland. *Brown*, 296 N.W.2d at 720 (holding confidential relationship exists with employee where appointing authority cannot personally perform duties requiring skill, judgment, and trust and must delegate portion of them to employee); *Allen*, 254 N.W. at 79 (holding confidential relationship created when appointing officer must perform duty involving skill or integrity, could incur liability if the duty not properly performed, and delegates part of this duty to employee). As a result, Copeland held a confidential relationship with

his appointing authority. That confidential relationship does not create an exception that swallows the rules governing Veteran's preference.

CONCLUSION

For the foregoing reasons, the Iowa National Guard respectfully requests that this Court not grant further review because the Iowa Court of Appeals correctly applied consistent and established authorities to conclude that that Copeland held a confidential relation to his appointing authority.

Respectfully submitted,



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CERTIFICATE OF COMPLIANCE

This brief complies with the typeface requirements and type-volume limitation of Iowa Rs. App. P. 6.903(1) or (2) because:

- This brief has been prepared in a proportionally spaced typeface using Times New Roman in size 14 and contains 2523 words, excluding the parts of the brief exempted by Iowa R. App. P. 6.903(1)(g)(1).

Dated: September 30, 2022.

/s/ Alan Nagel
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CERTIFICATE OF FILING AND SERVICE

I hereby certify e-filing of the Defendants/Appellees' Resistance to Application for Further Review via EDMS with the Appellate Court on September 30, 2022, with the following counsel served via EDMS.

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