IN THE SUPREME COURT OF IOWA

No. 24-0864

ANTOINE SMITH

Appellant,

vs.

CITY OF CEDAR RAPIDS,

Appellee.

APPEAL FROM THE IOWA DISTRICT COURT
FOR LINN COUNTY
THE HONORABLE JUDGE CHAD KEPROS
NO. LACV102698

APPELLANT'S AMENDED AND SUBSTITUTED REPLY BRIEF

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A. This Court Must Reverse the District Court's Misinterpretation of Iowa Code § 80F.1(3).

The City argues that formal administrative investigations are complete upon approval of the Chief of Police. (City's Br. at 16). This argument is fundamentally flawed in a number of ways.

First, statutory interpretation is a question of law, not fact. See Hornby v. State, 559 N.W.2d 23, 25 (Iowa 1997) (Statutory interpretation is a question of law for the court to determine). That CRPD has an internal policy indicating the investigation isn't complete until approved by the Chief is irrelevant to the legal question. The Court must first decide what the law is by starting with the statute's text. See Nahas v. Polk Cnty., 991 N.W.2d 770, 780–81 (Iowa 2023) (starting point is text of statute); Doe v. State, 943 N.W.2d 608, 610 (Iowa 2021) ("Any interpretive inquiry begins with the language of the statute at issue."). The Court does not look beyond the words of the statute if the text is plain and its meaning is clear. See Neal v. Annett Holdings, Inc., 814 N.W.2d 512, 519 (Iowa 2012). Here, the text of the statute does not provide that the investigation is completed upon the approval of the Chief of Police. See Iowa Code § 80F.1(3) (2023). Indeed, no definition nor provision in the entire chapter includes any such

language. See Iowa Code Ch. 80F (2023). As a matter of law, the text does not include the City's language, therefore, their argument is without merit.

Further, CRPD's policy cannot be used to modify the words of section 80F.1(3). The district court erred in reading language into the statute that does not exist. (D0033, Ruling at 5-9). See State v. Miller, 4 N.W.2d 29, 36-37 (Iowa 2024) (It is not the role of the court to rewrite a statute under the guise of interpretation, construction, and application of the statute); In re Estate of Whalen, 827 N.W.2d 184, 185 (Iowa 2013) ("We may not rewrite the statute to second-guess the policy choices codified by our legislature.").

Additionally, the legislative history cuts against the City's contentions. It is significant that the legislature amended the POBR each year since 2021 and nowhere did they include that language or anything like it. See 2021 Iowa Acts ch. 183 § 17-20; 2022 Iowa Acts ch. 1142 § 1-4; 2023 Iowa Acts ch. 149 § 1-4; H.F. 2592. See In re Estate of Whalen, 827 N.W.2d at 190 (considering the legislative history of statute including amendments and finding it significant that the legislature nowhere enacted a requirement for enforcement of a decedent's wishes in the law); Neumeister v. City Dev. Bd., 291 N.W.2d 11, 15 (Iowa 1980) (typically courts decline to read language into a statute which the legislature could have supplied if it had so intended). What's more, in each of the four years the legislature amended the POBR they expanded officers' rights. See 2021 Iowa

Acts ch. 183 § 17-20; 2022 Iowa Acts ch. 1142 § 1-4; 2023 Iowa Acts ch. 149 § 1-4; H.F. 2592. And, in amending the POBR in 2021, the legislature added teeth to the statute to allow officers to sue for violations of their rights. See Iowa Code § 80F.1(13) (2023) (providing "An officer shall have the right to bring a cause of action against any person, group of persons, organization, or corporation for damages arising from the filing of a false complaint against the officer or any other violation of this chapter including but not limited to actual damages, court costs, and reasonable attorney fees."). That they amended the statute to include reasonable attorneys' fees indicates the intent to discourage violations of the statute. It follows that neither the legislative history nor purpose of the POBR support the City's contention.

B. The City's Policy Arguments Are for the Legislature, Not This Court.

The City argues that its policy[1] of not considering the investigation completed until approved by the Chief of Police provides room for additional investigation as needed and provides certainty, predictability, and uniformity with respect to officers' rights. (City's Br. at 16-18). The City fails to explain or articulate how it does any of these. It also fails to speak about the timing of when

[1] The provision of CRPD's complaint procedure policy that the City rests it hat on pre-dates the 2021 amendments to the POBR and were not changed despite the statutory amendments. (D0026 City's MSJ App. 0511, 0457, 0472; City's Br. at 8).

the Chief would approve the investigation. Contrary to the City's naked assertion, it leaves officers guessing as there is no requirement for the Chief to approve the investigation at any time, such as before any pre-discipline hearing. Regardless, the City's argument is meritless because it is not the role of courts to rewrite statutes. See Schaefer v. Putnam, 841 N.W.2d 68, 75 (Iowa 2013) ("We may not extend, enlarge, or otherwise change the meaning of a statute under the guise of construction."). Their policy argument is not one for this Court rather it is best left for the legislature. See State v. Bleeker, 372 N.W.2d 728, 731 (Iowa 1982) ("Because of its clear wording it must be left to the legislature to sort through the policy arguments and, if it wishes, empower the witness-spouse to decide whether the privilege is to apply."); Stewart v. Madison, 278 N.W.2d 284, 295 (Iowa 1979) (the change in the law sought should be left to the legislature); Olson v. Employment Appeal Bd., 460 N.W.2d 865, 867 (Iowa Ct. App. 1990) (concluding no statutory or case law basis exists for argument and creation of an exception is best left to the legislative process). Thus, this Court need not consider the City's policy assertions and contentions.

In summary, the text of the POBR does not state that the investigation is completed when approved by the chief of police. These words cannot be read into the text of the statute as a matter of law. The POBR's legislative history nor its purpose support the City's contention. The City's conclusory policy

arguments are for the legislature and have no merit before this Court. Accordingly, the district court erred in interpreting the statute and granting the City summary judgment as a matter of law.

C. The City and District Court Misapplied the Ordinary Meaning of Iowa Code § 80F.1(3).

The parties agree that the word "completed" is undefined in the statute and guidance is needed from this Court. (City Br. at 15). Also, the parties agree that the Court should apply the statute based on the ordinary meaning of the word in the context of the POBR. (Id.) See Iowa Code § 80F.1(1) ("As used in this section, unless the context otherwise requires:…").

The City argues that the investigation is completed when it lacks no essential details and has been brought to an end. (City Br. at 21-22). Even taking this version of the definition of completed as suggested by the City demonstrates that the investigation is completed when the investigator has taken the essential investigation steps or activities, which will vary based on a case-by-case basis, and the investigator ceases or brings to an end those activities. (Smith Br. at 28). In other words, when the investigator is done with the steps of the investigation. Most often, this will be signified by the investigator finishing and turning in the complete investigative report with attachments to the decisionmaker.

Also, the City's argument that the approval of the officer's punishment, here a suspension, provides "certainty that all relevant evidence has been

collected" is nonsensical. (City Br. at 24). Approving punishment of an officer does not ensure all of the evidence is collected rather a pre-discipline hearing where the officer has a full and fair opportunity to respond and address any flaws in the investigation is a check on the process.

Applying the definition to the undisputed facts shows that the district court and City misapplied the statute. The undisputed material facts, as presented in Smith's brief, show the City is not entitled to summary judgment as a matter of law and this Court should reverse, granting judgment for Smith, or, remand for trial.

D. It Is of No Consequence That the Chief of Police Could Order Additional Investigation Because Speculation and Conjecture Cannot Support or Defeat an MSJ.

Before the district court, the City contended the chief of police could order further investigation, therefore, the investigation wasn't completed until the Smith was punished on May 31, 2023. The district court bought this argument. In doing so, the court erred because speculation is insufficient to support a motion for summary judgment or resist an opposing party's MSJ. See Susie v. Fam. Health Care of Siouxland, P.L.C., 942 N.W.2d 333, 336 (Iowa 2020) (speculation insufficient to generate a genuine issue of material fact); Smith v. Shagnasty's Inc., 688 N.W.2d 67, 71 (Iowa 2004) (assertions and speculation insufficient to support MSJ under rule 1.981); McIlravy v. N. River Ins. Co., 653 N.W.2d 323,

328 (Iowa 2002) ("an inference is not legitimate if it is 'based upon speculation or conjecture.'"). Moreover, it is irrelevant that the chief might order further investigation or that Lt. Doyle has been directed to perform additional investigation by the panel of Captains in other cases.[2] Doyle's affidavit is self-serving. See Iowa Film Prod. Serv. v. Iowa Dept. of Econ. Dev., 818 N.W.2d 207, 222 (Iowa 2012) (refusing to consider self-serving affidavits that do not contain hard facts); Larsen v. Cady, 274 N.W.2d 907, 909 (Iowa 1979) (recognizing one may not make a void tax deed valid by a self-serving affidavit). Notably, during his deposition, the City's counsel made clear that Lt. Doyle was not a corporate representative speaking on behalf of the City yet they rely on him to support their MSJ and attempt to defeat Smith's. (D0018, Smith MSJ App. 96: 18-21; Doyle tr. 96: 18-21). Regardless, what might have happened has no relevance to the issue or outcome of this case. The district court should not have considered the City's self-serving speculation and conjecture about what could have happened to deny Smith's MSJ. Even if the district court was to consider it, at the very least, the court should have construed this fact in favor of Smith as the nonmoving party and denied the City's cross-MSJ. See Susie, 942 N.W.2d

[2] Doyle did not indicate whether that directive was to investigate additional allegations of misconduct against the officer or because he missed something. Smith did not have the opportunity to subject Doyle to cross-examination on his assertion.

at 337 (facts are viewed in the light most favorable to the nonmoving party). Hence, the district court erred and must be reversed.

E. The District Court Erred in Granting the City Summary Judgment Because the Record Evidence Shows Chief Jonker Reviewed and Approved the Investigation on May 12, 2023, Not May 31, 2023.

A dispute of material fact exists as to when Interim Chief Jonker signed off on the investigation report. The district court found, as the City asserted, that Jonker signed off on the investigation on May 31, 2023. But the record evidence shows that this is when he punished Smith.[3] The copy of the Captains' memorandum to Jonker shows he signed-off in handwriting on the memorandum and Lt. Doyle's investigation report on May 12, 2023. (D0018, SOMF at 2; MSJ App. 136-137, 138-146). The evidence shows that Jonker reviewed and approved these documents on May 12, 2023, not May 31, 2023. (City Br. at 21). Again, the district court and City conflate the punishment of the officer (discipline process) with the completion of the investigation. The investigation precedes the discipline process under the POBR. Considering this with Jonker having reviewed and "concur[red]" with the investigation and Captains' recommendations on May 12, 2023, as well as Doyle not serving Smith the

[3] There is a difference between deciding and imposing a punishment and transitioning from the investigation phase to the pre-discipline phase. Deciding a punishment is not investigating under the POBR.

"notice of administrative hearing" until May 18, 2023[4] (D0033, Ruling at 2; D0018, SOMF at 2-3), plus CRPD's refusal to provide the requested report under section 80F.1(9) until after May 31, 2023, it cannot be said that the City is entitled to judgment as a matter of law. Further, the City fails to identify any investigation activities that were taking place after April 18, 2023, up to May 31, 2023. The record evidence shows this is because all of the investigation activities were finished on April 18, 2023 when Lt. Doyle completed and turned in the investigation report. What's more, labeling Doyle's report as an "initial" report does not support their position (City Br. at 22); it was the only investigation report under Iowa Code § 80F.1(9). And to the City's contention that accepting April 18, 2023 as the completion of the investigation "would be to discount the remainer of the formal administrative investigation – many steps of which serve important functions to protect the due process rights of officers" is unsupported. (City Br. at 23). The City points to no record evidence of any investigation activities, such as witness interviews or gathering of any evidence, after April 18, 2023. This is because they cannot as it simply did not occur. They also do not identify "many steps". Deciding and imposing a punishment upon an officer is not a step of a formal administrative investigation. It is not investigating by under

[4] Six days later is not "immediately" providing the results of the investigation under section 80F.1(3) as a matter of law.

any fair reading either. Moreover, it is disingenuous for the City to contend *they* are protecting the due process rights of their officers when CRPD is hiding the ball from officers by not immediately providing the results of the investigation and they refuse to provide the complete investigative agency reports and witness statements before a pre-discipline hearing. *They* are denying officers a full and fair opportunity to respond and present their defense in a pre-discipline hearing.

In short, when viewing the record evidence in the light most favorable to Smith, the district court erred because sufficient facts exist to overcome summary judgment on the 80F.1(3) and 80F.1(9) issues. Moreover, these undisputed facts provide an alternative theory to support judgment in favor of Smith in the event his claim that the investigation was completed on April 18, 2023, as a matter of law is unsuccessful. The district court erred in applying the statute because it failed to consider the undisputed material facts. This Court should order judgment in favor of Smith, or, alternatively, remand the case to district court for trial.

F. The City's Contentions Regarding the Construction of the POBR is Impractical and the Ruling Must Be Reversed.

This Court must consider the practical effect of its construction of statutes. See AFSCME/Iowa Council 61 v. State, 484 N.W.2d 390, 395 (Iowa 1992) ("Courts should never be oblivious to the practical effect of their construction of

statutes.") This case concerns the second largest city in Iowa[5]. Consider an example from another large, metropolitan city.

A complaint is made against an officer alleging the officer violated his restricted duty status related to an on-duty injury. More specifically, the complainant reports seeing the officer at a local gym lifting weights and working out in excess of his workers' compensation restrictions. The officer is served notice of the complaint with a summary of this allegation. The investigator obtains surveillance camera video from the gym, building keycard access records for the gym and police station, and gathers workers' compensation documents, including documents detailing the officer's injuries and physical restrictions and the chief's email assigning the officer to restricted duty status. The investigator interviews witnesses, provides a summary of the complaint to the officer, and then interviews the officer who is the subject of the complaint with his legal counsel. During the officer's interview, the officer responds to questions, acknowledging that he worked out at the gym. He also indicates that he is trying to get back to work as soon as possible and did not believe that he was acting inconsistent with his restrictions or care plan. The officer is shown his restrictions, and he agrees the weights he was lifting on the days alleged was in excess of the written restrictions. The officer explains that he spoke with his

[5] Google Search "second largest city in Iowa".

treating doctor, who ordered PT and said that the PT provider would contact him to schedule an appointment. The officer said he was working out while waiting on PT as he never received any calls from the PT provider to schedule his appointments. Finding this odd, the investigator follows up with a workers' compensation representative and the provider. Through the representative, the provider asserts that the officer is not being truthful because the provider called, and he never called them back. They provide the investigator with alleged dates of calls to the officer.

After that, the investigator completes a written report and attaches the witness statements and evidence. At this large department, the investigator decides the disposition of the complaint, which may be sustained, unsubstantiated, unfounded, exonerated, or policy failure, and brings administrative charges with recommendations for discipline ranging from suspension to termination. The investigator indicates the evidence tends to show the officer violated his work restrictions and was not truthful in that the city's physical therapy provider called the officer on specific dates over a week's time to schedule appointments, but the officer did not return the calls to schedule his appointments. The investigator submits his completed investigation report to the chief of police with the conclusion that the officer likely lied.

That same day, the officer is immediately served the results of the investigation with administrative charges of conduct unbecoming, insubordination, and untruthfulness along with notice of the pre-discipline hearing, which is set for 12 days later. The notice indicates termination of employment is being considered.

The officer, through legal counsel, submits a written request for the complete investigative report and witness statements under Iowa Code § 80F.1(9). The next business day, the department provides the complete report with attachments i.e., the same materials that the investigator provided to the chief. The report and attached witness statements provided dates and times that the medical provider purportedly contacted the officer to schedule the appointment and witness statements that the officer did not return their calls. It also included statements indicating that the officer is responsible for making the appointments and the officer was failing to do so. This is the first the officer becomes aware of the specific allegations and statements from his accusers regarding the appointments as he was provided nothing else to this point.

At the pre-discipline hearing, the chief reads a prepared statement with the administrative charges. The chief also notifies the officer that he is considering termination and emphasizes the gravity of the charges. The chief informs the officer it is his opportunity to respond and provide anything he wishes the chief

to consider. The chief turns the floor over to the officer, who makes a statement. In the officer's statement, he acknowledges working out and the restrictions and makes his arguments about that issue. As to the untruthfulness charge, the officer explains that he is not allowed to self-schedule workers' compensation appointments, and he identifies several human resources employees who told him that. The officer also explains that the city's human resources and nurse case manager schedule the appointments, or they contact the provider to request an appointment, and the provider then contacts the officer to schedule the appointment. He notes this has been the consistent practice for his prior injuries too. He notes that the treating physician told him that she would order PT and they would be in touch with him to schedule therapy, but no one ever contacted him. He denies that he lied. Also, the officer argues that while he doesn't believe he violated any policy, the proposed punishment of termination is not warranted and excessive. The officer points to his lack of prior issues in the several years the officer has been employed with the city and his motive to return to work. Next, the officer's attorney then presents evidence on behalf of the officer, including cell phone statements and electronic cell phone log records for the dates the provider alleges they called the officer. These records conclusively show that the allegation of untruthfulness is not true as the physical therapy provider did not call the officer on any of the dates as alleged. It was also learned in the

hearing that the information the investigator relied upon came through layers of the city's workers' compensation representatives and was not first-hand information.

Based on the information presented, the chief asks to reconvene after he has had the opportunity to confer with his command staff and HR. The chief reviews the records provided by the officer and concludes that the records show the officer did not lie rather the providers did. The pre-discipline hearing is reconvened two days later as agreed. The chief finds the officer was truthful, not the other witnesses, based upon the evidence the officer provided in response to the allegations. The chief notifies the officer that he was sustaining the allegation of working out in excess of workers' compensation restriction with a cautionary letter serving as the punishment, and he decides the remaining allegations in favor of the officer.

Applying the law as the district court interpreted it and as argued by the City would mean that officer would not have received the results of the investigation or the complete investigative report before the pre-discipline hearing. Without these, the officer and his attorney would not have been able to gather the evidence to defend himself at the pre-discipline hearing. The officer would have been fired for dishonesty, insubordination, and conduct unbecoming. Such an outcome would have had dire consequences. By law, the city would

have to submit a change-in-status form to the Iowa Law Enforcement Academy (ILEA) within ten (10) days informing ILEA that the officer was terminated for dishonesty, insubordination, and conduct unbecoming. See Iowa Code § 80B.13(8) (2024) (providing decertification power); Iowa Code § 80B.13A; Iowa Admin Code r. 501-6.2; Iowa Admin. Code r. 501-2.1(5). The city could recommend his decertification on the form. With or without the recommendation, the form would trigger ILEA to open a decertification case against the officer. Also, with a finding of dishonesty, the chief of police would need to notify the County Attorney, who would have to put him on her *Brady/Giglio* list and send out disclosures on the cases the officer was involved with. See Iowa Code § 80F.1(1)(a) (defining "Brady-Giglio List").

Under the City and district court's construction and application of the statute, the officer would get the results of the investigation and complete investigative report only once the officer was terminated. It would take some time for the officer and his legal counsel to review everything and discover the issue. By that time, the officer's only choice is to sue under section 80F.1(13) and/or appeal to the civil service commission under Chapter 400. It would take weeks, if not months, for the officer to get the opportunity to present his evidence and receive a decision on the merits. In the meantime, ILEA would likely have gathered all the records from the police department and almost certainly would

find probable cause to petition to decertify the officer. If the ILEA council voted to petition to decertify the officer based on the probable cause finding, then the officer would have that to deal with too. The officer would be without a job and would have to incur significant attorneys' fees to fight to get his job back and possibly not have his certification revoked. Even if the officer would get his job back, there's still the issue of getting the officer off the *Brady/Giglio* list and informing everyone that the officer isn't in fact a liar, plus dealing with ILEA. In a worst-case scenario, the officer may even have to proceed to a hearing before an administrative law judge to present the evidence and defend himself. As an independent state administrative agency, the red tape the officer would have to deal with to clear his name with ILEA would likely be significant and slow. This is not what the legislature intended as evidenced by the text of sections 80F.1(3) and 80F.1(9) read together with *Loudermill* and the whole statute with its amendments in context. See Cleveland Bd. of Educ. v. Loudermill, 470 U.S. 532 (1985); Iowa Code § 80F.1(1); Iowa Code § 80F.1(17). Such an absurd result is wholly inconsistent with the correct interpretation and application of the statute. See State v. Iowa Dist. Court for Black Hawk Cty., 616 N.W.2d 575, 578 (Iowa 2000) ("the court interprets statutes so as to avoid absurd results."); State v. Alexander, 463 N.W.2d 421, 422 (Iowa 1990) (statutes are construed to avoid absurd results even when a literal interpretation would yield a contrary result).

Also, the district court and City's interpretation and application would waste limited judicial resources, considerable taxpayer dollars, and inundate the courts with civil actions and civil service appeals if their interpretation is not reversed.

Additionally, this Court should consider that the City's process would not work for many employing agencies. Cedar Rapids is the second largest city in Iowa. Smaller police agencies do not have dedicated internal affairs (professional standards) personnel like Cedar Rapids does. Moreover, the statute is not limited solely to police officers rather it also covers fire fighters, emergency medical technicians, corrections officers, detention officers, jailers, probation or parole officers, communications officers and telecommunicators, and other law enforcement officers employed by a municipality, county, or state agency. See Iowa Code § 80F.1(1)(f) (2024) (defining "officer"). In agencies that do not have the staff to have a dedicated internal affairs (professional standards) official, they may request a neighboring agency to investigate the complaint, contract with a third-party investigator to perform the investigation, or they may hire legal counsel to conduct the investigation. Smith's interpretation of the statute works for agencies of any type and of all sizes.

Interpreting the statute to conclude that the investigation is completed no later than before the pre-discipline hearing works for all agencies. At the very least, this would draw a bright line between the investigation process and the

discipline process. It would also leave the door open for case-by-case analysis of when the investigation was completed based on the particular facts and circumstances of a case. This recognizes that investigations vary based on a variety of factors.

CONCLUSION

Smith requests this Court to reverse the district court's grant of summary judgment in favor of the City. The City argues "the entire investigation cannot be said to be 'brought to an end' until the Chief makes a determination as to discipline." (City's Br. at 22). But the district court and City's interpretation of the statute is mistaken in that it conflates the investigation process with the discipline process. Punishing an officer is not an investigation. The Court should draw a line between the two in interpreting the statute.

The problem with the district court's conclusion is that it allows the City to hold constitutionally required pre-discipline hearings without CRPD completing the required formal administrative investigations under the POBR. This is inconsistent with due process and the POBR. As a matter of common sense, one would not hold a pre-discipline hearing on the merits of the complaint without the investigation being completed. To hold such a hearing without a completed investigation would put the cart in front of the horse. If an employing agency could do this to an officer, it would defeat the purpose of the POBR and

render its provisions meaningless. See Johnston v. Iowa Dep't of Transportation, 958 N.W.2d 180, 190 (Iowa 2021).

This Court should reverse the district court and squarely hold that, as a matter of law, a formal administrative investigation must be completed no later than before a pre-discipline hearing. Holding that the investigation must be completed no later than before the pre-discipline hearing provides clarity and is simple to apply in practice. It gives effect to the POBR. See Miller, 4 N.W.3d at 37 ("We must give effect to the statutory requirement…") It also ensures due process. Such a holding is consistent with due process in that it ensures the issues are well-defined, helps provides officers a meaningful opportunity to respond pre-discipline, and helps reduce the risk of mistaken decisions and deprivations. The Court should conclude that the investigation was completed on April 18, 2023, and Smith was entitled to the report under 80F.1(9) prior to the pre-discipline hearing.

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CERTIFICATE OF FILING/SERVICE

I hereby certify that a true and accurate copy of this instrument has been and will be filed electronically with the Clerk of the Iowa Supreme Court and forwarded to all counsel via the electronic filing system on this 1st of October, 2024, and by U.S. Mail for any party not registered to receive notice of filings via the ECF process.

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CERTIFICATE OF COMPLIANCE

1. This brief complies with the type-volume limitation of Iowa Rule of Appellate Procedure 6.903(1)(g)(1) because it contains 4,653 words, excluding the parts of the brief exempted.

2. This brief complies with the typeface requirement of Iowa Rule of Appellate Procedure 6.903(1)(e) because it has been prepared in proportionately spaced typeface using Microsoft Word in Times New Roman 14 point type.

/s/ Skylar J. Limkemann