



IN THE COURT OF APPEALS OF IOWA

IN THE MATTER OF THE DISCHARGE OF PATROLMAN C

CRAIG PORTER,	)	
	)	
Appellant,	)	Filed December 28, 1977
	)	
v.	)	
	)	
THE CITY OF URBANDALE,	)	330
URBANDALE CIVIL SERVICE	)	<u>2-59421</u>
COMMISSION,	)	
	)	
Appellee.	)	

Appeal from Polk District Court - Anthony Critelli, Judge.

Police officer appeals from trial court judgment affirming his discharge from police force. Affirmed.

Mike Wilson Law Firm of Des Moines, for appellant.

Michael J. Laughlin, of Erickson, Seckington, Laughlin and Huston, of Urbandale, for appellee.

Submitted to Albee, C.J., and Donielson, Snell, Oxberger and Carter, JJ.

PER CURIAM

Plaintiff, police officer, appeals from an adverse trial court judgment in an action challenging civil service commission affirmance of his discharge as a patrolman for the City of Urbandale. We affirm.

Pursuant to § 400.27, The Code, district court review of the civil service commission proceedings is by trial de novo, as an equitable action. Accordingly, our review of the trial court's action is de novo. Rule 4, Rules of Appellate Procedure; *Millsap v. Cedar Rapids Civil Service Commission*, 249 N.W.2d 679, 683 (Iowa 1977).

The issue for determination on this appeal is whether the evidence supports the findings of the civil service commission and the trial court that the Urbandale chief of police acted within his defined powers when he peremptorily discharged plaintiff for excessive use of force in violation of the general orders of the department. This action of the chief of police resulted from an incident where plaintiff sprayed chemical mace on three juvenile girls.

Section 400.19, The Code, provides in part:

The chief of police. . . may peremptorily suspend, demote, or discharge any subordinate then under his direction, for neglect of duty, disobedience of orders, misconduct or failure to properly perform his duties."

The incident upon which plaintiff's discharge was based took place during a disturbance at a motel to which police responded. Several juveniles at this location were loud and boisterous in one of the rooms. One girl had locked herself in the bathroom. Plaintiff told three other girls to be quiet but they continued yelling and bouncing on the bed. Thereupon plaintiff discharged two or three streams of mace on the girls. Subsequently the girl who had been in the bathroom scuffled with plaintiff and sustained a laceration. This latter incident apparently was through no fault on plaintiff's part.

Section 101.2 of the general orders of the Urbandale police department provides "officers shall not use more force than necessary in making an arrest," and, as to the use of mace, § 202.1 of these general orders limits its use to situations (1) when force was necessary to effect an arrest; or (2) to ward off attack; or (3) when physical resistance was encountered and reasonable efforts had failed to control the individual.

The trial court, in affirming the discharge, found plaintiff's use of mace to be excessive force under the circumstances and a violation of § 202.1 of the general orders of the department. Upon our de novo review of the record we agree that the evidence

supports such determination and that, therefore, the chief of police acted within his defined powers when he peremptorily discharged plaintiff. See, e.g., *Millsap v. Cedar Rapids Civil Service Commission*, *supra*, 249 N.W.2d at 688.

The judgment is affirmed.