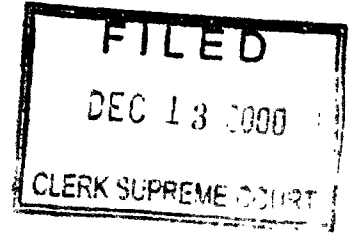


IN THE COURT OF APPEALS OF IOWA

No. 0-628 / 99-1999  
Filed December 13, 2000



**JAMES BUTLER,**  
**Plaintiff-Appellant,**

**vs.**

**CIVIL SERVICE COMMISSION,**  
**Defendant-Appellee.**

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Appeal from the Iowa District Court for Polk County, Joel D. Novak, Judge.

The plaintiff, a police officer, appeals from the district court's ruling dismissing his appeal from the defendant's decision upholding the plaintiff's five-day suspension for alleged inappropriate conduct while off duty. The plaintiff claims that the district court erred in determining that he engaged in misconduct justifying the suspension and in failing to find that chief of police engaged in arbitrary and capricious conduct in imposing a five-day suspension. **AFFIRMED.**

Maggi Moss of Parrish, Kruidenier, Moss, Dunn & Montgomery, L.L.P.,  
Des Moines, for appellant.

Carol Moser, Assistant City Attorney, for appellee.

Considered by Miller, P.J., and Hecht and Vaitheswaran, JJ.

**MILLER, P.J.**

James Butler is a police officer for the City of Des Moines. He appeals the district court's ruling dismissing his appeal from the Civil Service Commission's decision that upheld his five-day suspension for alleged misconduct while off duty. He claims the district court erred in determining he engaged in misconduct justifying the suspension and in failing to find the chief of police engaged in arbitrary and capricious conduct in imposing a five-day suspension. We affirm.

**I. BACKGROUND FACTS AND PRIOR PROCEEDINGS**

While off duty as a police officer, Butler worked for a variety of private businesses, including the 7-Eleven Store at which the incident in this case took place. On the date in question Butler was working at the 7-Eleven when he observed Tony White, Tony's brother Curtis White, and their friend Phillip Little enter the store around or shortly after 2:00 a.m. Upon entering the store Tony White picked up some beer from the store's cooler but then put it down on a shelf after realizing it was too late to legally purchase beer.<sup>1</sup> He then proceeded to leave the store without the beer. Butler stopped Tony White as he attempted to leave the store and eventually took him to another part of the store that was not open to the public. At that point there was physical contact between White and Butler, and White fell over some store equipment, possibly sustaining injury. Curtis White then went back to where Butler and Tony White were, and after some discussion between Curtis White and Butler, the Whites and Little left the store.

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<sup>1</sup> Under Iowa Code section 123.49(2) it was illegal for the 7-Eleven store to sell beer after 2:00 a.m.

As a result of the incidents that occurred in the 7-Eleven White filed a complaint with the Des Moines police department claiming Butler's conduct toward him was inappropriate. The complaint was received by the City of Des Moines Office of Professional Standards and an investigation ensued. Through this investigation it was disclosed White had called the Des Moines police department for medical assistance for injuries he claimed to have sustained during the incident with Butler at the 7-Eleven. It was also disclosed that Philip Little had returned to the 7-Eleven to confront Butler about his treatment of Tony White. Little apparently exchanged some words with Butler at the store which escalated to the point where Butler chased Little to the apartment of Tony White and arrested him.

At some point an on-duty Des Moines police officer had responded to White's call for police assistance and a police officer arrived at the White apartment. Butler provided information and reports to the officer and requested White be arrested and charged with theft, assault and resisting arrest. In reliance on Butler's statements the on-duty police officer arrested Tony White. Butler then returned to the 7-Eleven to review the surveillance tape. Apparently the tape did not record the incident which, at his own admission, made Butler mad so he threw the tape on the floor damaging it, and then threw it in the garbage. However, the tape was not damaged to the extent it could not be viewed and it was subsequently found it did not show the incidents which occurred at the store that evening.

Tony White lodged a complaint of excessive use of force against Butler. Following an internal investigation, several of Butler's superior officers found no

excessive use of force on Butler's part. Sometime later Assistant Chief Kayne Robinson reviewed the incident and submitted a report of the incident to Chief Moulder in which he found that Butler had engaged in several types of serious misconduct. He recommended a ten-day suspension for Butler. In addition, the City of Des Moines Office of Professional Standards issued a report in which it sustained complaints against Butler for "Excessive use of force, Derogatory remarks, Courtesy, Impartiality in enforcement of laws and submission of reports." After reviewing these reports Chief Moulder concurred, and suspended Butler for ten days.

The Des Moines police department has a process whereby Chief Moulder's disciplinary action can be reviewed by the "Chief's Guidance Committee." This process was utilized in this case. The committee consisted of five police officers, four chosen by Chief Moulder and one by Butler. The guidance committee can comment upon proposed disciplinary action and make recommendations, however their input is not binding on the chief and the ultimate decision on what action to take is his. The committee reviews the entire record and may ask for additional information from employees. In this case they reviewed the same information that was before Chief Moulder.

The committee found Butler did act inappropriately in several ways during the incident with White. Specifically, they found he had used poor judgment and demonstrated less than professional conduct. It found that he had violated departmental policies by using profanity, by failing to document his use of force and the circumstances surrounding his use of force, by loss of self-control resulting in potential damage of evidence (i.e. the video tape), and by improper

custodianship of the evidence. However, the committee recommended that Butler be exonerated on the excessive force complaint and suggested that the allegation of impeding medical treatment for White could not be substantiated. The committee recommended Butler's suspension should be reduced to three days.

Based in part on this recommendation Chief Moulder reduced the suspension to five days. In Moulder's letter to Butler he indicated the reasons for the discipline. Moulder stated in the letter that Butler's acceptance of responsibility for the mishandling of the event was encouraging, but that he nevertheless felt the matters were most serious and that the magnitude of the discipline reflected the gravity of the conduct.

Butler appealed Chief Moulder's decision to the Des Moines Civil Service Commission, as authorized by Iowa Code section 400.20. Chief Moulder filed a specification of charges with the Civil Service Commission as required by section 400.22, specifying the charges and grounds upon which Butler was suspended. In this document Moulder stated that Butler's actions were contrary to rules 1.1.1 (a), (b), (g), (h), (p), (q), and (r) of the Des Moines Police Department Rules and Regulations, and amounted to misconduct for which the disciplinary action was appropriate. Included in Moulder's written specification of charges were: malicious prosecution without probable cause; destruction of property; use of force and language contrary to departmental training and regulations; and ignoring the special duty of care he had to an injured person. After a hearing the commission upheld the five-day suspension.

Butler appealed the decision of the Civil Service Commission to the district court as provided for in Iowa Code section 400.27. The district court found Butler's actions did reach the level of "misconduct" as that term has been interpreted by the Iowa Supreme Court. The court also determined the five-day suspension was appropriate to correct the misconduct that had concerned Chief Moulder. It upheld the decision of the commission and dismissed Butler's appeal. Butler timely appealed the decision of the district court, alleging the court erred in determining his behavior constituted misconduct and in failing to find Moulder acted arbitrarily and capriciously in disciplining him.

## II. STANDARD OF REVIEW

A final ruling or decision by the Civil Service Commission is appealable to the district court. Iowa Code § 400.27 (1997); *Sieg v. Civil Serv. Comm'n of City of West Des Moines*, 342 N.W.2d 824, 826 (Iowa 1983). The matter is heard by the district court de novo as an equity action.<sup>2</sup> *Id*; Iowa Code § 400.27 (1997); *Sieg*, 342 N.W.2d at 826. An appellate court's review of the district court's ruling is also de novo and although it gives weight to the district court's findings of fact, it is not bound by them. *Sieg*, 342 N.W.2d at 826 (citing *Millsap v. Cedar Rapids Civil Serv. Comm'n*, 249 N.W.2d 679, 684 (Iowa 1977)). We must determine anew whether the evidence as a whole justifies the disciplinary action imposed

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<sup>2</sup> We note that while the district court initially set forth the correct de novo standard for this action it later cited language from *McCormack v. Civil Serv. Comm'n of City of Cedar Falls*, 315 N.W.2d 855, 858 (Iowa App. 1981) for the proposition that "Chief Moulder's decision must be upheld if there is any reasonable cause for the suspension that he felt was justified in this case." However, this standard set forth in *McCormack* was disavowed in *Sieg*, 342 N.W. 2d at 828, and therefore would not be the correct standard for the district court to apply here. See also *Johnson v. Civil Serv. Comm'n of Clinton*, 352 N.W.2d 252, 256-57 (Iowa 1984). Despite this apparent inconsistency and erroneous application by the district court we fully agree with the trial court's conclusion. As our review is de novo, the decision of the district court is not reversible if correct even if the court committed error in arriving at its decision. See *Johnson*, 352 N.W.2d at 257.

on the officer. *City of Des Moines v. Civil Serv. Comm'n*, 513 N.W.2d 746, 748 (Iowa 1994); *Sieg*, 342 N.W.2d at 829. Thus, we are not bound by the determinations of Chief Moulder, the commission, or the district court.

The party making charges of misconduct has the burden to prove that misconduct. *Johnson v. Civil Serv. Comm'n of Clinton*, 352 N.W.2d 252, 257 (Iowa 1984). Further, "Throughout the trial court and appellate court proceedings, the commission has the burden of showing that the [discipline] was statutorily permissible." *Smith v. Des Moines Civil Serv. Comm'n*, 561 N.W.2d 75, 77 (Iowa 1997). Thus, the commission has the burden of establishing Chief Moulder's five-day suspension of Butler was lawful.

### III. MERITS

Iowa Code section 400.19 permits the chief of police to suspend a police officer for "neglect of duty, disobedience of orders, misconduct, or failure to properly perform the subordinate's duties." Iowa Code § 400.19 (1997). Chief Moulder's imposition of the five-day suspension was based on his determination that the incident at the 7-Eleven constituted serious misconduct on Butler's part. The term "misconduct" is not defined in the statute but it has been interpreted by our supreme court as a broad term which includes "relatively minor or innocuous behavior" as well as "more flagrant and injurious breeches of decorum." *Sieg*, 342 N.W.2d at 829.

The image presented by police personnel to the general public is vitally important to the police mission. In turn, it also permeates other aspects of the criminal justice system, and impacts its overall success. Consequently, police officers must earn and maintain the public trust at all times by conducting themselves with good judgment and sound discretion.

*City of Fort Dodge v. Civil Serv. Comm'n*, 562 N.W.2d 438, 440 (Iowa App. 1997) (citations omitted).

On the basis of these sound reasons for requiring a high standard of conduct of police officers, it has been determined that the provisions of section 400.19 apply to officers off duty as well as on duty. *Millsap v. Cedar Rapids Civil Serv. Comm'n*, 249 N.W.2d 679, 687 (Iowa 1997). Officers may be suspended for "misconduct" while off duty as well as on. Therefore, although Butler was working in an off-duty capacity at the time of the incident it is undisputed he was still under the direction of the chief of police and subject to the department's rules and regulations. The misconduct for which the officer is suspended must also be detrimental to the public interest to warrant suspension. *City of Des Moines v. Civil Serv. Comm'n*, 513 N.W.2d at 748; *Sieg*, 342 N.W.2d at 828.

Butler acknowledged that he exercised poor judgment and lost his temper in the situation. He also admitted to using profanity and acting inappropriately concerning the preservation of the videotape evidence. Therefore, we conclude these alleged acts of misconduct are clearly proven by the record and Butler's own admissions. We find another allegation of misconduct set forth in Chief Moulder's specification of charges to be proved by the evidence also. Further, all of the proved acts of misconduct implicate the public interest. See, e.g., *Sieg*, 342 N.W.2d at 829 (finding profane and derogatory remarks showed lack of respect for fellow human being as well as exhibiting a total lack of self control and discipline, and thus were detrimental to the public service).

The allegation of arrest without probable cause is strongly supported by the facts that the beer was not taken from the store, that Tony White did not take

it near the store's exit, and that Butler did not arrest or attempt to arrest Tony White while he was at the store, the scene of the alleged crime. Instead, Butler let White leave and only had him arrested after he had a further altercation with one of White's friends and found out White had in fact called for medical assistance. While there appears to have been sufficient cause for Butler to approach White at the store and question him regarding his intentions, based on the additional circumstance listed above White's arrest sometime later clearly appears to have been without probable cause.

We agree with the trial court's conclusion that Butler's conduct did constitute "misconduct" under section 400.19. "Since peace officers are charged with a public trust, the public has every right to expect these officers to conduct themselves with good character, sobriety, judgment and discretion." *Sieg*, 342 N.W.2d at 829. Police officers' primary duties are to uphold the law and protect citizens. Butler's actions here were not representative of the good judgment, restraint and compassion necessary for effective law enforcement. See *Eilers v. Civil Serv. Comm'n*, 544 N.W.2d 463, 466 (Iowa App. 1995). His actions in the potential destruction of evidence, use of profanity, and causing White to be arrested without probable cause were the product of anger, and misjudgment. Such actions did not show the tact, self-restraint, personal integrity, and good judgment in relationship to the public which we expect and require from law enforcement officials.

Butler's second argument on appeal seems to be that, even assuming his actions did amount to misconduct under Iowa Code section 400.19, Chief Moulder acted arbitrarily and capriciously in giving him a five-day suspension for

the misconduct. Butler presented evidence before the commission regarding the disciplinary actions taken against other officers for misconduct in the past. Chief Moulder could not identify any situations where an officer was suspended for more than two days for misconduct similar to Butler's.

The district court stated "[t]here is no doubt this appears to be an unprecedented length of suspension." Furthermore, Chief Moulder admitted before the commission that there was not a lot of precedent for him to use in determining the appropriate discipline in this case. We agree with the district court. Based on the testimony in the record it appears that Butler received a somewhat unprecedented length of suspension for his misconduct. However, the misconduct by Butler included not only extended use of profanity, but also an attempt to destroy potential evidence as well as improperly instigating an arrest without probable cause. The supreme court has stated that while fairness might dictate equal treatment in most circumstances, the welfare of the general public is of such paramount concern in cases involving use of excessive force that it overrides considerations of like discipline. See *Johnson v. Civil Serv. Comm'n of Clinton*, 352 N.W.2d 252, 255 (Iowa 1984). We conclude that the same reasoning should apply where the misconduct involves, among other things, instigating an arrest without probable cause.

We conclude that although the length of Butler's suspension for the type of misconduct he committed was unprecedented, the past treatment of other officers under different situations is not determinative and does not make the suspension here arbitrary or capricious. Chief Moulder set forth in his letter to Butler specific reasons for the discipline that he imposed. We conclude that

Butler's actions, which involved several types of misconduct over an extended span of time, warrant the five-day suspension imposed in this case.

#### **IV. CONCLUSION**

We fully agree with the district court that Butler's conduct amounted to misconduct under Iowa Code section 400.19. Further, based on our de novo review of the evidence as a whole, we conclude that the disciplinary actions of Chief Moulder were not arbitrary or capricious. We agree with the district court that the suspension was lawful under Chapter 400 of the Iowa Code. The decision of the district court is affirmed.

**AFFIRMED.**