IN THE COURT OF APPEALS OF IOWA

No. 2-355 / 91-1800

FILED
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CLERK SUPREME COURT

**JEFFREY T. RIDLEY,**

Appellee,

vs.

**OSKALOOSA CIVIL SERVICE COMMISSION,**

Appellant.

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Appeal from the Iowa District Court for Mahaska County, Phillip R. Collett, Judge.

The civil service commission appeals the district court ruling reversing its decision to terminate the employment of a police officer. **AFFIRMED.**

James M. Hansen of Clements, Pabst, Hansen & Maughan, Oskaloosa, for appellant.

Greg A. Life of Life Law Office, Oskaloosa, for appellee.

Considered by Oxberger, C.J., and Schlegel and Habhab, JJ.

**HABHAB, J.**

Jeffrey T. Ridley became employed as a police officer in Oskaloosa, Iowa, in 1981. He was promoted to the position of lieutenant in 1984. Jeffrey had supervisory duties over other police officers. He was considered by the police department to be a dedicated and competent police officer.

Russell Van Renterghem joined the police force in 1987. Jeffrey and Russell became close friends. The two men and their families often engaged in social activities together. Russell's wife, Beth, often baby-sat the Ridley children. Jeffrey and Beth competed as a body-building team together. The two families exchanged gifts at Christmas and on birthdays. Jeffrey and Russell even went together to get their ears pierced.

In September 1990 Russell was assigned as an investigator to the Southeast Iowa Interagency Drug Task Force. This job required him to work undercover and took up more of his time. The friendship between the two men cooled, which caused Jeffrey some emotional distress.

In September 1990, the Van Renterghems began to receive hang-up calls, in which the caller hung up the telephone as soon as someone answered. The calls occurred about once every three or four days, but sometimes a week would go by without any hang-up calls. The calls upset Beth.

Russell reported the calls to the telephone company on either September 16 or 17, 1990. It installed a trap on

the Van Renterghems' telephone line which recorded the telephone number of any incoming calls. The trap was left on the Van Renterghems' telephone line for three or four weeks. During that time they received four hang-up calls--on September 26, September 30, October 2, and October 5. Three of the calls were made from the Ridley residence, and one from the police station.

In late September Russell notified the police chief, Mark Diamond, that he had been receiving hang-up calls and had the trap installed on his telephone. On October 8, 1990, Chief Diamond was informed of the origin of the calls. He then contacted the Division of Criminal Investigation (DCI) and the county attorney's office.

The DCI interviewed Jeffrey on October 24 and he admitted he had made the hang-up calls. Chief Diamond, Russell, and Jeffrey met that same day and discussed the problem. Jeffrey stated that he had become upset because of the deterioration of his friendship with Russell, and that he had attempted to telephone Russell several times in order to talk about the problem, but that his pride would get the better of him and he would hang up. Chief Diamond ordered the men to have no further contact with one another.

Jeffrey was suspended without pay on November 7, 1990, pending further investigation by Chief Diamond. Jeffrey received notice on November 16, 1990, that he was terminated from his employment due to violations of departmental rules.

Jeffrey appealed his termination to the Oskaloosa Civil Service Commission. After a hearing, the commission found the hang-up calls were harassing in nature and showed poor judgment by Jeffrey. The commission concluded Jeffrey had engaged in misconduct. The commission also concluded his conduct irrevocably breached the trust necessary between all officers in the department and affirmed the termination of his employment.

Jeffrey appealed to the district court. The court determined Jeffrey's actions constituted misconduct. The court noted, however, that the misconduct related more to a personal matter than to his work as a police officer. The court determined this was a first offense on the part of Jeffrey. Further, the court concluded there was a paucity of evidence showing the conduct was detrimental to the public service. The court then held Jeffrey should be suspended without pay for a period of thirty days and thereafter reinstated as a lieutenant in the Oskaloosa Police Department. The Oskaloosa Civil Service Commission appeals. We affirm as modified and remand with directions.

The commission contends the district court should have upheld its decision to discharge Jeffrey due to misconduct. The commission claims Jeffrey's conduct shows a lack of good character, sobriety, judgment, and discretion. It states that Jeffrey's explanation of why he made the hang-up calls in not believable. In addition, the

commission believes Jeffrey's conduct was detrimental to the police force and the community in general.

Misconduct is necessarily a broad term. Mahaffey v. Civil Service Commission, 350 N.W.2d 184, 186 (Iowa 1984). It includes relatively minor or innocuous behavior, or more flagrant and injurious breaches of decorum. Id. A suspension or dismissal pursuant to Iowa Code section 400.19 must be for conduct detrimental to the public service. Merritt v. Council Bluffs Civil Service Commission, 458 N.W.2d 867, 869 (Iowa App. 1990).

Our supreme court has discussed, at length, the scope of the district court's role in an appeal under section 400.27. Sieg v. Civil Service Commission of West Des Moines, 342 N.W.2d 824, 829 (Iowa 1983). Section 400.27 provides that an appeal from the Commission is heard de novo by the district court as an action in equity. In Sieg, the supreme court concluded that in an appeal "from an adjudicatory decision, rather than executive decision involving the expertise of the Commission, the district court shall try the case anew and give no weight or presumption of regularity to the findings of the Commission." Id. at 828. Our review of the district court's ruling is de novo and though we give weight to the trial court's findings of fact, we are not bound by them. Sieg, 342 N.W.2d at 826.

We adopt as our own the following findings of the trial court:

> Ridley is a lifelong resident of Oskaloosa who dreamed of being a policeman ever since he was a young boy. Following his college graduation with an Associate's Degree in criminology, Ridley was hired in July, 1981 to be a patrolman in the Oskaloosa police force. He was subsequently promoted to the position of lieutenant in May of 1984, the post he held up until his termination in 1990. As lieutenant and shift leader, Ridley had extensive supervisory duties with respect to the newer officers. He also took on various other duties, including those of firearms instructor, horizontal gaze nystagmus test trainer, field training officer for new recruits, etc. Outside of work, he actively led and participated in various public outreach activities to promote the Department and generally improve community relations. Notably, he helped raise over $10,000 for local charities, he befriended and spoke to adolescents who loitered in the shopping mall, helping to alleviate that problem, and he engendered a good street reputation, essential for establishing the trust of his confidential informants.
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> In terms of job performance, Ridley has been a dedicated and competent, if not exemplary police officer. Various fellow policemen testified to his professionalism as an officer and his abilities as a trainer (one of the best, if not the best). The Oskaloosa County Attorney pointed to other attributes, including Ridley's ability to testify better than any other member of the Department. Ridley's two written evaluations in the record, dated July 12, 1989 and August 13, 1990, contain more praise than criticism. By all indicates, Ridley worked hard to improve on his deficiencies and achieved success. Although Chief Diamond faulted Ridley for favoritism, other witnesses, including Russ Van Renterghem, felt otherwise. As with the Commission below, this Court places minimal if any importance on Ridley's two prior disciplinary infractions (involving the wearing of an earring, though covered by a bandage, and a comment to a member of the public), when viewed in the contest of his otherwise impressive nine-year record.

We agree with the district court that Jeffrey's actions constituted misconduct. The hang-up telephone calls showed a lack of good judgment and discretion. However, we also

find that his actions were not serious enough to warrant his dismissal from the police force. Several officers testified they would be willing to continue to work with him in the future. The Van Renterghems testified they did not want Jeffrey to leave his job. There was no evidence Jeffrey could not continue to be effective in the community as a police officer. We agree with the district court that a suspension without pay is in order for a period of thirty days. We affirm the district court.

We need not address Jeffrey's claim that the civil service commission does not have authority to appeal the district court's decision. Our supreme court, by prior order in this case, has ruled against Jeffrey.

Costs of this appeal are assessed to appellant. We deny Jeffrey's request for attorney fees.

**AFFIRMED.**