

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' FINAL BRIEF

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CERTIFICATE OF FILING AND SERVICE

I hereby certify e-filing of the Defendants/Appellees' Final Brief via EDMS with the Appellate Court on January 19, 2022, with the following counsel served via EDMS.

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STATEMENT OF THE ISSUE PRESENTED FOR REVIEW

I. THE DISTRICT COURT PROPERLY DENIED THE WRIT OF CERTIORARI ON THE BASIS THAT COPELAND WAS IN A STRICTLY CONFIDENTIAL RELATIONSHIP WITH HIS APPOINTING AUTHORITY.

O'Malley v. Gundermann, 618 N.W.2d 286(Iowa 2000)

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ROUTING STATEMENT

This appeal is appropriate for transfer to the Court of Appeals because it can be resolved by a routine application of existing legal principles. *See Iowa R. App. P. 6.1101(3)(a)*.

STATEMENT OF THE CASE

This is an appeal by Plaintiff-Appellant Tommy Copeland from the district court's order denying Copeland's Petition for Writ of Certiorari. Copeland contends the district court erred by concluding that he held a confidential relationship with his appointing authority.

FACTUAL AND PROCEDURAL BACKGROUND

Copeland worked as an Air Base Security Guard for the Iowa Air National Guard. (Records and Proceedings Complained of or Pertinent to the Petition 32; App. 43). Copeland reported to a Security Forces Manager who himself ultimately reported to the Adjutant General and his Deputies. (Records and Proceedings 244, 267-68 App. 255, 278-279); Iowa Code §29.1; Iowa Code §29A.16. 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 of Iowa. Iowa Code § 29.1; *see also* 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). The Adjutant General has charge of the state

military reservations and all other property of the State kept or used for military purposes. Iowa Code § 29A.12(1). Deputy Adjutants General serve the office of the Adjutant General. The Deputy Adjutant General for the Iowa Air National Guard serves in the office of the Adjutant General and performs those duties that the Adjutant General may assign. Iowa Code § 29A.16.

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. (Records and Proceedings, 50-53; App. 61-24). Importantly for this case, Copeland's job duties required him to be able to run, climb stairs, perform apprehension and restraining techniques, and timely pass the Air Base Security Officer Physical Agility Test (Records and Proceedings, 51, 145, 208-209, 211-215; App. 12,156, 219-220, 222-226). These were considered essential functions of his position. (Records and Proceedings, 51; App. 62) 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. (Records and Proceedings 1, 244; App. 255). The July 2020 Physical Agility Test was Copeland's fourth failed attempt. (Records and Proceedings 244; App. 255) Copeland is a Veteran. (Records and Proceedings, 2-5; App.13-16).

On August 28, 2020, Copeland filed a Petition for Writ of Certiorari alleging that the Iowa National Guard failed to grant him a pre-termination hearing pursuant to Iowa Code Chapter 35C prior to his termination. (Petition; App.5). Following briefing and a hearing, the district court denied Copeland’s Petition. The district court concluded that Copeland held a confidential relationship with his appointing officer and so was not due a pre-termination hearing pursuant to Iowa Code Chapter 35C. (Ruling on Plaintiff’s Petition for Writ of Certiorari). Copeland filed a timely notice of appeal.

ARGUMENT

I. THE DISTRICT COURT PROPERLY DENIED THE WRIT OF CERTIORARI ON THE BASIS THAT COPELAND WAS IN A STRICTLY CONFIDENTIAL RELATIONSHIP WITH HIS APPOINTING AUTHORITY.

A. Error Preservation

Copeland preserved error on this issue.

B. Standard of Review

“An appeal from an order or judgment of the district court in a certiorari proceeding is governed by the rules of appellate procedure applicable to appeals in ordinary civil actions.” Iowa R. Civ. P. 1.1412. A writ of certiorari is proper under Iowa Rule of Civil Procedure 1.1401 when one who exercises judicial functions is alleged to have acted illegally. Writs of certiorari are reviewed for errors of law.

Therefore, the Court’s “review is limited to corrections of errors at law, and [this Court is] bound by the findings of the district court if supported by substantial evidence. *O’Malley v. Gundermann*, 618 N.W.2d 286, 290 (Iowa 2000); *Sullins v. Iowa District Court for Polk County*, 928 N.W.2d 897 (Iowa 2019). “A confidential relationship is a legal status. It is a conclusion of law, rather than a finding of fact. A matter for judicial construction and determination.” *See Machamer v. Iowa Dep’t of Admin. Servs.*, 895 N.W.2d 487, 2016 WL 7395731, at *2 (Iowa Ct. App. Dec. 21, 2016) (unpublished opinion) (citing *Klatt v. Akers*, 5 N.W.2d 605, 611 (Iowa 1942) (holding that a confidential relationship is a legal status under “Soldier’s Preference law”).

C. The District Court Correctly Concluded that Copeland Held a Strictly Confidential Relationship to His Appointing Authority and Was Therefore Not Entitled to the Protections in Iowa Code Chapter 35C.

Iowa’s veteran’s preference statute provides procedural protections for certain public employees who fall within its scope:

No person holding a public position by appointment or employment, and belonging to any of the classes of persons to whom a preference is granted under this chapter, shall be removed from such position or employment except for incompetency or misconduct shown after a hearing, upon due notice, upon stated charges, and with the right of such employee or appointee to a review by a writ of certiorari or at such person’s election, to judicial review in accordance with the terms of the Iowa administrative procedure Act, chapter 17A, if that is otherwise applicable to their case.

Iowa Code § 35C.6. However, the protections in the veteran’s preference statute do not apply to employees who serve as department deputies or serve with confidential relations with the appointing officer. Iowa Code § 35C.8 (Nothing in this chapter shall be construed to apply to . . . to any person holding a strictly confidential relation to the appointing officer).

The principles governing confidential relationships were enunciated by the Iowa Supreme Court more than eighty years ago and have been reaffirmed and repeatedly endorsed since. A confidential relationship is very broad and is not at all confined to any specific association of the parties, but applies generally to all persons who are associated by any relation of trust or confidence. *Andreano v. Gunter*, 110 N.W.2d 649, 655 (Iowa 1961). As explained by the Iowa Supreme Court 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., 230 Iowa 22, 296 N.W.2d 719, 720 (1941) (internal

citations omitted) (emphasis added). The Court reaffirmed these principles twenty years later. *Andreano*, 110 N.W. at 655 (observing that these rules express the law in Iowa and stating, “we consider them sound and reaffirm them.”).

To determine whether a confidential relationship exists, courts review the duties of the appointing officer to determine whether the officer is compelled to entrust the performance of duties to the employee because the appointing officer cannot discharge those duties personally. *Machamer*, 2016 WL 7395731 at *2. In *Machamer*, the Court of Appeals concisely distilled the factors to be considered in assessing whether a confidential relationship exists: (1) whether the employee was given latitude and required to exercise discretion and good judgment when performing their duties, and (2) whether the appointing officer is required to perform a duty involving skill or integrity such that they could incur liability personally or on behalf of their employer if not properly executed and the officer entrusts this duty to the employee. *Machamer*, 2016 WL 7395731 at *2-*3 (concluding the Chief of Organizational Performance for the Iowa Department of Administrative Services was not entitled to Veteran’s preference due to confidential relations with the agency director) (citing *Hannam v. Iowa State Commerce Comm’n*, 292 N.W.2d 820, 820 (Iowa 1940); *Allen v. Wegman*, 254 N.W.2d 74, 79 (Iowa 1934)); *see also Bowman v. Overturff*, 229 Iowa 329, 294 N.W.2d 568, 570 (Iowa 1940) (concluding same under prior code for jailer because sheriff delegated duties to jailer which require skill,

confidence, and integrity and that deputy relationship was not required for this conclusion); *Hannam*, 292 N.W.2d at 820-21 (concluding same under prior code for general inspector serving under chief inspector of transportation division of the Iowa State Commerce Commission because the inspector was vested with discretion from the Commission and needed to operate with good judgment and integrity); *Braunschweig v. Holmes*, 707 N.W.2d 338, 2005 WL 2989941, *3 (Iowa Ct. App. 2005) (same for assistant county attorney).

1. Copeland was given latitude and was required to exercise discretion in the performance of his duties.

The district court correctly concluded that Copeland held a confidential relation with his employer because Copeland's duties were non-clerical and he was given latitude and required to exercise discretion and good judgment when performing his duties. Copeland's job description made clear that while performing his duties he was required to exercise skill, judgment, and trust. (Records and Proceedings, 50-53; App. 61-64); *see also Machamer*, 2016 WL 7395731 at *2. As an Air Base Security Officer, Copeland was armed at all times and accessed restricted areas on a military base. His job duties required him to activate and monitor a highly sophisticated security surveillance system and provide enhanced security posture for the facility. He was responsible for ordering unauthorized persons off the premises or detaining them for questioning. He was expected to understand the

limitations and responsibilities of police power and perform those duties in a professional manner. In the event of emergency alarms or disaster situations, he was expected to provide timely and accurate information to responding agencies and dispatch security personnel as necessary. (Records and Proceedings, 50-51; App. 61-62). These essential duties and critical competencies demonstrate that the DPD and Copeland's superiors placed a great deal of trust in Copeland's ability to operate with integrity in restricted areas and sensitive scenarios. Further, the nature of Copeland's work required vigilance and a quick response time in dangerous situations while carrying a weapon. *Id.*

Copeland's position required him to exercise discretion and good judgment while performing his duties to avert life-or-death scenarios. His errors could cause bodily harm or security breaches that could create exposure to both the Security Forces Manager for and the Department of Public Defense itself. *Machamer*, 2016 WL 7395731 at *2-3. (concluding that where duty failures could open employee's supervisor or employer to liability the employee likely shares a confidential relationship). Thus, Copeland's duties were not merely clerical; he needed to be trusted to serve with integrity in sensitive military environments, exercise good judgment in extreme scenarios, and maintain the physical skills to perform his duties. Copeland's work required good judgment, skill, and integrity to be done successfully and therefore satisfied the requirements outlined in *Machamer* that

support a finding of a confidential relationship.

Copeland's role as a security officer for the National Guard closely resembles the duties of peace officers featured in *Bowman*. Like peace officers, Copeland carried his weapon with or without a professional permit. Iowa Code §§ 724.2 (without permit), 724.6 (professional permit). Similarly, members of the national guard can be designated peace officers and share those immunities. Iowa Code §§ 29A.50, 29A.56. For these reasons, the *Bowman* case serves as a close analogue to this case. Like the jailer in the *Bowman* case to whom the sheriff delegated duties requiring integrity, skill, and good judgment, Copeland's delegated duties required the same qualities. *Bowman*, 294 N.W.2d at 570 (Iowa 1940). It is of no consequence whether Copeland served as a deputy, only that his role required those attributes suggesting a confidential relationship. *Id.*; see also *Hannam*, 292 N.W.2d 820-21. The Court should affirm the district court's conclusion that Copeland shared a confidential relationship as a matter of law and falls within the exception to the veteran's preference law in Iowa Code section 36C.8.

2. *Delegation of Authority.*

Copeland's status also satisfies the second prong of the standard because the duties assigned by statute to the Adjutant General and the Deputy Adjutants General are of such a character that it is impossible for them to personally discharge all such duties, and out of necessity they are compelled to delegate and entrust the

performance of those duties to others, like Copeland. *See Brown v. State Printing Bd.*, 296 N.W.2d at 720. Iowa Code chapter 29A grants the Adjutant General charge of state military reservations and other property of the State kept or used for military purposes. Iowa Code § 29A.12(1). Similarly, Deputy Adjutants General have the duty to aid the Adjutant General by performing duties assigned to them. Iowa Code § 29A.16(3). Copeland's superiors oversaw the military facility that he worked to secure, could not secure an entire military facility by themselves, and were thus compelled to entrust the performance of those duties to others such as Copeland. As a result, the District Court properly concluded that Copeland held a confidential relationship with his appointing authority pursuant to Iowa Code § 36C.6.

Copeland argues that the District Court improperly analyzed with whom he shared a confidential relationship pursuant to Iowa Code section 36C.8. (Copeland Proof Brief, 13-14). Specifically, Copeland claims that no appointing officer was required to perform those duties delegated to Copeland. (Copeland Proof Brief, 13-14). This claim fails because the Adjutant General has the duty to, and may incur liability for, protecting and maintaining the military facility where Copeland worked. Iowa Code § 29A.12(1). Further, the Adjutant General may delegate the fulfillment of this duty to his Deputies and, ultimately, to a Security Forces Manager. Iowa Code § 29A.18(3). Failure to maintain a military installation could demonstrably lead to liability under this statute as well as third-party tort liability.

Neither the Adjutant General, nor his Deputies, nor a Security Forces Manager have can guard and protect a military facility alone. Thus, at each step of the way, Copeland's superiors were required to perform a duty where failure could incur liability to the State, and needed to ultimately delegate and entrust the performance of that duty to Copeland and his peers. These are the steps necessary to establish a confidential relationship with an appointing officer. *Brown v. State Printing Bd.*, 230 Iowa 22, 296 N.W.2d 719, 720 (1941) (internal citations omitted); *Machamer*, 2016 WL 7395731 at *2-*3 (delegation occurs when appointing officer is required to perform a duty involving skill or integrity such that they could incur liability and the officer entrusts this duty to the employee). The district court examined these factors, found they were satisfied in this case, and correctly concluded that Copeland shared a confidential relationship with his superiors. (Ruling, 8-9).

Copeland argues that even though the Adjutant General, Deputy Adjutants General, and the Security Forces Manager were all required to perform the duties ultimately entrusted to him, he only shared a confidential relationship with the Security Forces Manager. (Ruling, 10-11). However, a confidential relationship is not measured by who Copeland works with most closely, but the nature of the delegated duties. *Brown*, 296 N.W.2d at 729 (observing that a confidential relation is "not at all confined to any specific association of the parties"). In *Hannam*, the Court observed that plaintiff, a general transportation inspector, served under a

chief inspector, deputy superintendent, superintendent, and finally the Iowa State Commerce Commission, 292 N.W.2d at 820-21. Ultimately, the *Hannam* Court concluded that the plaintiff shared a confidential relationship with the Commission itself and that the Commission was his appointing officer. *Id.* This was true even though the general inspector worked several layers down the organization under superintendents and chief inspectors. *Id.* The *Hannam* Court looked past who the plaintiff might have worked with day-to-day to see who legally had the duty to perform the inspections that plaintiff was performing and who had entrusted those duties to plaintiff. *Id.* In so doing, the Court found that plaintiff's confidential relationship with the Commission itself. *Id.*; accord *Andreano*, 110 N.W.2d at 655 (concluding the employee was in a strictly confidential relationship with not only his direct supervisor but also his appointing authority); *Bowman v. Overturff*, 229 Iowa 329, 294 N.W.2d 568, 570 (Iowa 1940) (concluding same under prior code for jailer because sheriff delegated duties to jailer which require skill, confidence, and integrity and deputy relationship was not required for this conclusion).

The Court faces a situation similar to *Hannam* here. Like the plaintiff in *Hannam*, Copeland may more frequently interact with the Security Forces Manager, but that is not ultimately the way to measure a confidential relationship with an appointing officer. 292 N.W.2d at 820-21. When the Court looks to who is

legally obligated to protect the military facility Copeland guarded and maintained and who delegated this authority to Copeland, the Court should conclude the Adjutant General himself is the appointing authority with a confidential relationship with Copeland. This is because the Adjutant General himself, not the Security Forces Manager, ultimately has the duty to and is liable for securing the military facility where Copeland works. 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); Iowa Code § 29.1 (Adjutant general performs all functions, responsibilities, powers, and duties concerning the military forces of the state of Iowa). Because the Adjutant General is required to perform a duty involving skill or integrity and entrusted that duty to Copeland, the Adjutant general is the appointing authority and shares a confidential relationship with Copeland. *Machamer*, 2016 WL 7395731 at *2-*3 (delegation occurs when appointing officer is required to perform a duty involving skill or integrity such that they could incur liability and the officer entrusts this duty to the employee).

CONCLUSION

For the forgoing reasons, the Iowa National Guard respectfully requests that this Court affirm the dismissal of Copeland's certiorari petition because Copeland held a strictly confidential relation to his appointing authority.

CONDITIONAL REQUEST FOR ORAL ARGUMENT

Defendant/Appellant does not seek oral argument. However, if oral argument is granted to Copeland, the Board asks to be heard as well.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Alan Nagel". The signature is stylized and cursive.

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CERTIFICATE OF COMPLIANCE

This brief complies with the typeface requirements and type-volume limitation of

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Dated: January 19, 2022

/s/ Alan Nagel
Alan Nagel
Assistant Attorney General

CERTIFICATE OF FILING

I, Alan Nagel, hereby certify that on the 19th day of January, 2022, I, or a person acting on my behalf, filed Defendant/Appellees' Final Brief and Conditional Request for Oral Argument with the Clerk of the Iowa Supreme Court by EDMS.

/s/ Alan Nagel
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