
IN THE SUPREME COURT FOR THE STATE OF IOWA
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 for Polk County,
Honorable Paul D. Scott

**PLAINTIFF/APPELLANT'S APPLICATION FOR FURTHER
REVIEW OF THE IOWA COURT OF APPEALS DECISION
FILED AUGUST 31, 2022**

Charles Gribble
Christopher Stewart
GRIBBLE BOLES STEWART & WITOSKY LAW
2015 Grand Avenue, Suite 200
Des Moines, Iowa 50312
Telephone: (515) 253-0551
Facsimile: (515) 243-3696
cgribble@gbswlaw.com
cstewart@gbswlaw.com
Attorneys for Plaintiff/Appellant

QUESTIONS PRESENTED FOR REVIEW

- I. Did the Court of Appeals erroneously deviate from established precedent by finding Copeland was a confidential employee under Iowa Code Chapter 35C, Iowa's Veterans Preference statute, therefore not entitling Copeland to a hearing showing incompetence or misconduct prior to his termination?

CERTIFICATE OF FILING AND SERVICE

I hereby certify e-filing of the Application for Further Review via EDMS with the Appellate Court on September 20, 2022, with the following counsel served by EDMS:

Alan Nagel
Assistant Attorney General
Hoover Building Second Floor
1305 East Walnut Street
Des Moines, IA 50319
(515)-281-5637
Alan.nagel@ag.iowa.gov
ATTORNEY FOR DEFENDANT/APPELLEE

I certify on September 20, 2022, the Application for Further Review was served on Appellant Tommy Copeland.

/s/ Kendra Levine
Kendra Levine

TABLE OF CONTENTS

CERTIFICATE OF FILING AND SERVICE.....3

TABLE OF CONTENTS.....4

TABLE OF AUTHORITIES.....5

FURTHER REVIEW STATEMENT.....7

STATEMENT OF THE CASE.....7

ISSUES.....8

I. UNDER CONTROLLING PRECEDENT, COPELAND DID NOT HOLD A CONFIDENTIAL RELATIONSHIP WITH ANY APPOINTING AUTHORITY.....8

CONCLUSION14

TABLE OF AUTHORITIES

Iowa Supreme Court Cases

<i>Allen v. Wegman</i> , 254 N.W. 74 (Iowa 1934).....	10, 11
<i>Andreano v. Gunter</i> , 110 N.W.2d 649 (Iowa 1961)	10, 13
<i>Bowman v. Overturff</i> , 294 N.W. 568 (Iowa 1940).....	13
<i>Ervin v. Triplett</i> , 18 N.W.2d 599 (Iowa 1945).....	10, 12, 13
<i>Hannam v. Iowa State Commerce Commission</i> , 292 N.W. 820 (Iowa 1940).....	10, 11
<i>Klatt v. Akers</i> , 5 N.W.2d 605 (Iowa 1942).....	10, 11
<i>Tusant v. City of Des Moines</i> , 300 N.W. 690 (Iowa 1940).....	8

Iowa Statutes

Iowa Code § 29A.12(1).....	9
Iowa Code § 29A.16(3).....	9
Iowa Code § 35C.6	9
Iowa Code Chapter 29A	9

STATEMENT OF THE ISSUES

I. UNDER CONTROLLING PRECEDENT, COPELAND DID NOT HOLD A CONFIDENTIAL RELATIONSHIP WITH ANY APPOINTING AUTHORITY

Iowa Supreme Court Cases

<i>Allen v. Wegman</i> , 254 N.W. 74 (Iowa 1934).....	10, 11
<i>Andreano v. Gunter</i> , 110 N.W.2d 649 (Iowa 1961)	10, 13
<i>Bowman v. Overturff</i> , 294 N.W. 568 (Iowa 1940).....	13
<i>Ervin v. Triplett</i> , 18 N.W.2d 599 (Iowa 1945).....	10, 12, 13
<i>Hannam v. Iowa State Commerce Commission</i> , 292 N.W. 820 (Iowa 1940).....	10, 11
<i>Klatt v. Akers</i> , 5 N.W.2d 605 (Iowa 1942).....	10, 11
<i>Tusant v. City of Des Moines</i> , 300 N.W. 690 (Iowa 1940).....	8

Iowa Statutes

Iowa Code § 29A.12(1).....	9
Iowa Code § 29A.16(3).....	9
Iowa Code § 35C.6	9
Iowa Code Chapter 29A	9

FURTHER REVIEW STATEMENT

Tommy Copeland requests Further Review of the Court of Appeals' determination that he held a confidential relationship with an appointing officer and was therefore barred from the statutory protections for veterans provided for in Iowa Code section 35C.6.

The Iowa Court of Appeals decision in this matter directly conflicts with decisions of this Court and the Iowa Court of Appeals. Iowa R. App. P. 6.1103(1)(b)(1). Further, the Iowa Court of Appeals' decision determines an important question of law, namely whether a bottom ranking employee, two (2) to three (3) rungs the appointing authority was confidential and therefore not entitled to the statutory protections for veterans provided for Iowa Code section 35C.6. Iowa R. App. P. 6.1103(1)(b)(2), (3). Lastly, these issues are broadly important to public employees who are veterans. Iowa R. App. P. 6.1103(1)(b)(4).

STATEMENT OF THE CASE

I. FACTUAL BACKGROUND

This case arises out of Copeland's employment and termination of employment with the State of Iowa/Iowa Air National Guard (hereinafter State). The facts are not in dispute.

Copeland was hired by the State as an Air Base Security Guard and filled said role until his termination. (App. 6, 8.) As part of Copeland's duties, he provided armed responses, controlled entry into restricted areas, checked heating/cooling systems, monitored boilers, and maintained firearms qualifications. (App. 65.) Copeland is a veteran and holds Veteran's Preference Rights under Iowa Code Chapter 35C. (App. 6, 8.) The State was aware Copeland was a veteran at the time of hire and termination. (App. 6, 8.) On August 1, 2020, Copeland was terminated from his position with the State. (App. 6, 8.) Prior to his termination from his position with the State, Copeland was not provided a hearing alleging incompetency or misconduct or an opportunity to respond to any allegations. (App. 6, 8.)

ISSUES

I. UNDER CONTROLLING PRECEDENT, COPELAND DID NOT HOLD A CONFIDENTIAL RELATIONSHIP WITH ANY APPOINTING AUTHORITY

Argument

At the outset, it is an important to note that this Court has liberally construed Iowa Code Chapter 35C, Iowa's Veterans Preference Law, to benefit members of the armed forces who have sacrificed to ensure our freedoms. *Tusant v. City of Des Moines*, 300 N.W. 690, 694 (Iowa 1940).

The Court of Appeals found Copeland was a confidential employee and was not entitled to the protections of Iowa Code § 35C.6 as he “was delegated duties that are statutorily assigned to the Adjutant General and ‘require skill, judgment, trust and confidence’ from his superiors.” (Opinion at 10). This conclusion misses the mark when reviewing the hierarchy of the Iowa Air National Guard.

There is no dispute Iowa Code Chapter 29A grants the Adjutant General charge of state military reservations and other property owned by the State of Iowa that is used for military purposes. Iowa Code § 29A.12(1). Further, the Deputy Adjutant serves at the direction of the Adjutant General and performs “such duties as the Adjutant General may assign.” Iowa Code § 29A.16(3). However, Iowa Code Chapter 29A is silent regarding delegation of the Adjutant General duties to either a Security Forces Manager, the position above Copeland, or a person in Copeland’s position, an Air Base Security Guard. From the record we have present here, Copeland was assigned his duties by the Security Forces Manager, not the Adjutant General or Deputy Adjutant General. (App. 62.). Further, the duties performed by Copeland display he was not a confidential employee.

In the Court of Appeals decision, the majority relied upon essentially three cases they believed affirmed Copeland was in a confidential role: 1) *Allen v. Wegman*, 254 N.W. 74 (Iowa 1934) 2) *Hannam v. Iowa State Commerce Commission*, 292 N.W. 820 (Iowa 1940) and 3) *Klatt v. Akers*, 5 N.W.2d 605 (Iowa 1942). All three are distinguishable from Copeland.

First, it should be noted both *Ervin v. Triplett*, 18 N.W.2d 599 (Iowa 1945) and *Andreano v. Gunter*, 110 N.W.2d 649 (Iowa 1961) came out after the three (3) cases utilized by the majority. Simply put, this Court's interpretation of the confidential employee test was tightened after *Allen*, *Hannam* and *Klatt* as seen by the opinions of both *Ervin* and *Andreano*.

Next, *Allen*, *Hannam* and *Klatt* do not have any similarities to Copeland. In *Allen*, Allen ran the bookkeeping department, which "involved strictly confidential relations with the head of the office." *Allen*, 254 N.W. at 80. This is not the same as a security guard who provides responses, controls entry into restricted areas, checks heating/cooling systems, monitors boilers, and maintains firearms qualifications. (App. 65.). Simply, Allen reported directly to head of the office, the state

treasurer. 254 N.W. at 79-80. There was no one above Allen that was an intermediary between him and the treasurer for the State. *Id.*

In *Hannam*, the Veteran was directly appointed by the commission he served. 292 N.W. at 820. His duties included:

(a) to check up on each carrier and see that he had the required authority, (b) provide blanks for permits and certificates and instruct applicants regarding same, (c) investigate complaints of violations and, if warranted, file charges, (d) collect permit fees and give receipts, (e) in proper cases collect the ton mile tax, (f) advise carriers as to insurance requirements and see that all motor vehicles were properly marked, (g) investigate rate violation complaints and file charges, in proper cases, and (h) make special reports to the commission at its request.

Id. at 820-821. In similarities to Copeland, there is only one, the investigation of complaints of violations. (App. 65.).

Finally, in *Klatt*, the individual was a senior examiner. 5 N.W.2d at 606. His duties included securing confidential information, securing affidavits before filing of criminal charges, compiling confidential information for reports that required secrecy and the trust and confidence of the employee and required that the employee hold that information in confidence until it was properly disclosed. *Id.* at 608. In similarities to Copeland, the only similarities are the compiling of information. (App. 65.).

Simply put, in comparison of *Allen*, *Hannam* and *Klatt* to Copeland, the similarities are sparse. If the opinion that Copeland is a confidential employee as a security guard and therefore not entitled to protections of 35C, every employee is a confidential employee. The rule swallows the exception.

Copeland is similar to the veteran in *Ervin v. Triplett*, in which the Iowa Supreme Court found there was not a confidential relationship. 18 N.W.2d 599 (Iowa 1945) (overruled on other grounds). In *Ervin*, the Court found although the “work of a detective may be of a confidential nature...to his immediate supervisor. However, the record does not in any way disclose that a person holding the position of detective...is one of ‘strictly confidential relation to the appointing officer’ which in the instant case is the commission of public safety.” *Ervin v. Triplett*, 18 N.W.2d 599, 601-02 (Iowa 1945). Meaning, while Ervin’s work may have been confidential to his immediate supervisor, the detective did not do any confidential work for the commissioner. *Id.*

This argument was furthered in *Andreano v. Gunter*. In *Andreano*, the assistant chief of police was in a confidential relationship with the appointing officer, the city manager, within the meaning of the veterans’

preference law. *Andreano v. Gunter*, 110 N.W.2d 649, 655-56 (Iowa 1961). In finding a confidential relationship with the city manager, the Court pointed to Andreano's duties in the formation of departmental policies and regulations, coordination of all line operations, and his duty of taking immediate control in a major emergency. *Id.* at 655. *Andreano* also found a broad difference between the trust, confidence, powers, and duties charged to an officer/detective and the assistant chief of police, or chief of police, finding an assistant chief of police to have a confidential relationship with the city manager, but an officer does not. *Id.* at 656.

Here, Copeland reported to the Security Forces Manager. (App. 62.). Not the Adjutant General or Deputy Adjutant General. (App. 62.). He did not stand in the footsteps of the Adjutant General or Deputy General. Copeland was a base line security officer. (See *Bowman v. Overturff*, 294 N.W. 568, 570 (Iowa 1940) (Jailer was found to be a confidential employee when the sheriff had specifically put the jailer in charge of the jail, the jailer carried the keys to the jail, and acted for the sheriff in taking charge of the jail.).

Overall, Copeland did not hold a confidential relation to an appointing authority or board. Copeland should receive the benefit he

earned and a hearing should have been held prior to his termination to prove incompetence or misconduct.

CONCLUSION

For the reasons set out herein, Tommy Copeland requests the Iowa Supreme Court grant his Application for Further Review as the issues presented impact Veterans, public employees, public employers, and directly contravenes standing Iowa Supreme Court and Iowa Court of Appeals precedent.

GRIBBLE, BOLES, STEWART & WITOSKY LAW

BY: /s/ Charles Gribble

Charles Gribble AT003083

BY: /s/ Christopher Stewart

Christopher Stewart AT0013127

2015 Grand Avenue, Suite 200

Des Moines, Iowa 50312

Telephone: (515) 235-0551

Fax: (515) 243-3696

Email: cgribble@gbswlaw.com

cstewart@gbswlaw.com

ATTORNEYS FOR

PLAINTIFF/APPELLANT

**CERTIFICATE OF COMPLIANCE WITH TYPE-VOLUME
LIMITATION, TYPEFACE REQUIREMENTS, AND TYPE STYLE
REQUIREMENTS**

This application complies with the typeface and type-volume requirements of Iowa R. App. P. 6.1103(4) because:

This application has been prepared in a proportionally spaced typeface using Microsoft Word for Office 365 MSO in font size 14, Century Schoolbook and contains 1460 words, excluding the parts of the application exempted by Iowa R. App. P. 6.1103(4)(a).

/s/ Charles Gribble

Charles Gribble

Date: September 20, 2022