

NO. A10-528

State of Minnesota
In Court of Appeals

City of St. Paul,

Appellant,

v.

William A. Eldredge,

Respondent,

and

Nancy Dudley Kelly, William Carter, and Mark Quayle, individually
and as members of the Saint Paul Civil Service Commission,

Respondents.

RESPONDENT WILLIAM A. ELDREDGE'S BRIEF AND APPENDIX

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The appendix to this brief is not available for online viewing as specified in the *Minnesota Rules of Public Access to the Records of the Judicial Branch*, Rule 8, Subd. 2(e)(2).

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STATEMENT OF THE CASE AND FACTS

Respondent William A. Eldredge (“Eldredge”) does not dispute any of the facts set forth in the Brief filed by Appellant City of St. Paul (“the City”). The only relevant fact in this Appeal is that the City filed its writ of certiorari appeal to the District Court beyond the 15-day deadline set forth in the Minnesota’s Veteran’s Preference Act (“the VPA”), Minn. Stat. § 197.46.

LEGAL STANDARD

Eldredge agrees with the City that *de novo* is the proper standard of review on the purely legal question raised by this Appeal.

ARGUMENT

Nearly two months after the Veteran’s Preference Panel issued a ruling rejecting the City’s attempt to terminate Eldredge from his position as a firefighter, the City attempted to initiate a certiorari appeal of that determination to the District Court. Eldredge immediately moved to dismiss the appeal as untimely, in light of the fact that the VPA gives parties only 15 days in which to appeal an adverse ruling. Citing to Minnesota Supreme Court and Court of Appeals precedents, District Court Judge Dale Lindman granted Eldredge’s motion. Because the VPA dictates the City’s appeal rights, the District Court held that the City had missed its appeal deadline by initiating its certiorari appeal “some 49 days after the Veteran’s Preference Panel’s Decision.” (Add-5). Because the District Court’s well-reasoned decision dismissing the appeal correctly applies binding precedent on this subject, it should be affirmed, and Eldredge should be returned to work as a firefighter immediately.

I. THE VPA'S 15-DAY LIMITATION PERIOD APPLIES TO THE CITY'S APPEAL.

The VPA contains a single deadline for appealing decisions made by a Veteran's Preference panel: 15 days after notice of the decision. Minn. Stat. § 197.46. It does not, as the City apparently believes, provide *sub silentio* for a longer appeal deadline for municipalities and other public employers subject to the VPA. As a simple matter of statutory interpretation, the only possible appeal deadline is the 15-day deadline set forth in the statute.

The VPA provides, in relevant part, as follows:

The veteran may appeal from the decision of the board upon the charges to the district court by causing written notice of appeal, stating the grounds thereof, to be served upon the governmental subdivision or officer making the charges within 15 days after notice of the decision and by filing the original notice of appeal with proof of service thereof in the office of the court administrator of the district court within ten days after service thereof.

Id. Apart from considerations of fairness, there is no reason in logic or law for a court to imply into existence a longer appeal deadline applicable to employers, but not employee veterans.

The plain reading of the statute is confirmed by all authorities and courts which have visited the issue to date. Although the statute is silent as to an employer's right to appeal a Veteran's Preference panel decision, stating only that "[t]he veteran may appeal," the Minnesota Supreme Court interpreted the statute to provide co-extensive

appeal rights on the part of employers. *See Matter of Schrader*, 394 N.W.2d 796, 802 (Minn. 1986) (“both the veteran and the employer may appeal to the district court from the decision of the hearing board”). *Schrader*, which is binding here, neither states nor implies a distinction between the appeal rights of a veteran employee and a public employer.

The Supreme Court decision in *Schrader* more recently was interpreted by this Court to provide employers with the “same right to appeal” as employees in the Veterans Preference context. *City of Elk River v. Rollins*, No. C0-96-2393, 1997 WL 370461, at *3–4 (Minn. Ct. App. July 8, 1997) (unpublished) (R-1). The “same right” necessarily includes the VPA’s 15-day appeal deadline. The 60-day period advocated by the City would not be the “same;” it would be four times longer, *i.e.*, “different.”

Subsequent to *Rollins*, this Court expressly recognized that a public employer wishing to appeal a VPA panel’s decision is subject to the VPA’s 15-day statutory deadline:

An appeal from a VPA board’s decision may be taken to district court **within 15 days after notice of the decision**. Minn. Stat. § 197.46; *see Schrader*, 394 N.W.2d at 802 (providing either veteran or employer may appeal board’s decision to district court). On August 5, 1997, the VPA board’s July 24 decision was served on the city council during its regularly scheduled monthly meeting. The personnel committee then met and recommended an appeal. **The mayor signed the notice of appeal and filed it on August 20, thereby meeting the 15-day limit.** On September 2, 1998, the city council unanimously ratified the decision to appeal.

Stafne v. City of Center City, No. C1-98-835, 1998 WL 778931, at *3 (Minn. Ct. App. Nov. 10, 1998) (unpublished) (A-33) (emphasis added).¹

Based on these authorities, the often-cited and well-respected *Minnesota Practice Guide*, by Professor Stephen F. Befort, likewise interprets the VPA to provide a 15-day appeal deadline for a public employer as well as an employee. It states: “[e]ither the employee or the public employer may appeal the hearing body’s decision to the district court within 15 days after notice of the removal panel’s decision, and by filing the original notice of appeal with proof of service within 10 days after service.” 17 Stephen F. Befort, *Minnesota Practice-Employment Law & Practice* § 12.37(e) (2d ed. 2003).

No contrary opinion has been found in any case, treatise, scholarly journal, bar periodical, or other printed publication. The *Minnesota Practice Guide* is accorded significant weight by Courts in this state; it has been cited approvingly in several recent cases before the Supreme Court. *See, e.g., Kratzer v. Welsh Cos., LLC*, 771 N.W.2d 14, 19 n.7 (Minn. 2009); *Frieler v. Carlson Mktg. Group, Inc.*, 751 N.W.2d 558, 579 (Minn. 2008).

¹ The City incorrectly asserts that *Stafne* is “inapplicable.” *City’s Brief*, p. 8. *Stafne* and this case differ only in outcome. In *Stafne*, the employer’s appeal was timely filed; in this case, it was over a month late. The District Court in *Stafne* held that the public employer had, in fact, appealed within its 15-day deadline. The District Court’s determination was hardly “dicta,” as the City claims (*id.*); it was a disputed issue central to the court’s holding.

In sum, based upon both binding precedent and respected scholarly opinion concerning that precedent, the 15-day appeal limitation period contained in the VPA applies to both the veteran employee and the public employer. As such, in light of the undisputed fact that the City's appeal in this matter was served and filed well after the expiration of the 15-day deadline, the City's appeal is untimely and its dismissal by the District Court should be affirmed.

II. THE STATUTE GOVERNING APPEALS FROM THE CIVIL SERVICE COMMISSION IS INAPPLICABLE.

Despite the overwhelming case law to the contrary, the City asserts that its certiorari appeal should be subject to the 60-day appeal deadline applicable to employment-related decisions made by the Civil Service Commission.² Minn. Stat. § 484.01, subd. 2. This argument is fatally flawed, because it erroneously presupposes that the rules governing Civil Service Commission proceedings apply in the first place, in respect to appeal times or any other procedural or substantive matter addressed by the VPA. As all parties acknowledge, Eldredge's case was a **Veteran's Preference** appeal, not a garden variety appeal by a non-veteran City employee of an adverse employment decision. This means that the VPA, not Minn. Stat. § 484.01, subd. 2, governs the parties' respective appellate rights.

²Minnesota Statutes Section 484.01 is listed as the sole authority supporting the City's right to appeal in its Statement of the Case to the District Court.

By statute, a municipal Civil Service Commission has original jurisdiction to hear certain designated cases in various areas, including situations where certain municipal employees seek review of disciplinary or termination decisions. *See generally* Minn. Stat. § 44.08. A 60-day limitation period applies to decisions resulting from such proceedings. Minn. Stat. § 484.01, subd. 2.

However, the parties' procedural and substantive rights in this matter arise under the VPA alone. When called upon to adjudicate a Veteran's Preference case, a Civil Service Commission sits as a Veteran's Preference panel. It does not sit as a "Civil Service Commission panel" as such. When it ruled in Eldredge's favor and ordered his reinstatement, the St. Paul Civil Service Commission was sitting by designation as a Veteran's Preference Panel; it was not acting in its capacity as the St. Paul Civil Service Commission. The fact that the panel was composed of individuals who also serve as Civil Service Commissioners is purely a product of administrative convenience in Veterans Preference cases which happen to arise in big cities. It does not alter the parties' substantive rights, including the unambiguous appeal deadline provided for in the VPA. Minn. Stat. § 197.46.

This seemingly uncontroversial fact is confirmed by the very language used by courts in discussing what the St. Paul Civil Service Commission actually does when it decides Veteran's Preference cases:

Appellant demanded a hearing pursuant to the VPA. The St. Paul Civil Service Commission ("the hearing board") was designated as **an appropriate hearing board under the VPA** for appellant's grievance.

City of St. Paul v. Carlisle, No. C1-00-884, 2000 WL 1847716, at *1 (Minn. Ct. App. Dec. 19, 2000) (unpublished) (emphasis added) (R-5). *See also Brown v. St. Paul Dep't of Fire & Safety Servs.*, No. A04-757, 2004 WL 2940873, at *2 (Minn. Ct. App. Dec. 21, 2004) (unpublished) (“Brown appealed the chief’s decision to the Saint Paul Civil Service Commission, and, following a two-day hearing, the commission, **acting as the Veterans Preference Board**, upheld Brown’s termination.”) (emphasis added) (R-9). What is good for St. Paul is good for Minneapolis, and other cities which have civil service commissions. *See Wagner v. Minneapolis Pub. Sch., Special Sch. Dist. No. 1*, 569 N.W.2d 529, 531 (Minn. 1997) (“The ALJ submitted the findings, conclusions, and recommendation to the Minneapolis Civil Service Commission, **sitting as a Veterans Preference Board**.”) (emphasis added); *State ex rel. Laux v. Gallagher*, 527 N.W.2d 158, 161 (Minn. Ct. App. 1995) (“The state appealed to the [Minneapolis] Civil Service Commission, **sitting as a veterans preference board**.”) (emphasis added); *Lewis v. Minneapolis Bd. of Educ., Special Sch. Dist. No. 1*, 408 N.W.2d 905, 906 (Minn. Ct. App. 1987) (“This appeal is from an order of the district court affirming an order of the Minneapolis Civil Service Commission **sitting as a veteran’s preference hearing panel** . . . pursuant to the Veteran’s Preference Act, Minn. Stat. § 197.46[.]”) (emphasis added); *Hanson v. City of St. Cloud*, No. C3-94-1993, 1995 WL 265073, at *1 (Minn. Ct. App. May 9, 1995) (unpublished) (“The [St. Cloud] Civil Service Board, **acting as a veterans preference board** conducted a six-day hearing . . . [and] approved the termination.”) (emphasis added) (R-13).

The notion that an individual or body can “sit” by statutory or constitutional designation as another individual or body is well known in the law. For example, the Minnesota Constitution allows for the seating of District Court judges as appellate judges by designation. MINN. CONST. art. VI, § 2. When sitting by designation on the Court of Appeals, no one seriously doubts that these District Court judges have the full powers (and responsibilities) of “regular” Court of Appeals judges. Similarly, a city council is statutorily authorized to sit as a municipal board of appeals and adjustments to resolve zoning issues. *See Hinz v. City of Lakeland*, No. A06-1872, 2007 WL 2481021, at *3 (Minn. Ct. App. Aug. 31, 2007) (unpublished) (R-17).³

Such is the case here. While the Civil Service Commissioners remain Civil Service Commissioners, when they are “borrowed” under the VPA for use as Veteran’s Preference panelists, they act solely in their Veteran’s Preference panelist capacities, and not in their capacities as Civil Service Commissioners. In short, there is nothing unprecedented or even unusual in the idea of having the same group of officials act in different capacities, and subjecting them to different rules and regulations depending upon the capacity in which they are serving.

³ Another familiar example is the United States Vice President’s dual role as successor to the President (in the executive branch) and President of the Senate (in the legislative branch). Although Vice President Biden would “sit as” a Senator if called upon to cast a tie-breaking vote—this vote carrying no more or less weight than that of (say) Senator Klobuchar—he would at all times retain the status and emoluments of the office of Vice Presidency.

Eldredge's position is also supported by the language of Civil Service appeal statute itself, which specifically states "[t]his subdivision does not alter or amend the application of sections 197.455 and 197.46, **relating to veterans preference.**" Minn. Stat. § 484.01, subd. 2 (emphasis added). No exception to this VPA carve-out is made for the VPA's appeal deadline. The meaning of this language is clear—the legislature intended to exclude Veteran's Preference matters which happen to be heard by established civil service commissions from all conflicting requirements (substantive and procedural) of the civil service statute, including its 60-day deadline for appealing garden-variety civil service claims.

In sum, this Court should properly find, as did the Court below, that the applicable deadline for the City to have appealed the Commission's July 31, 2009 Order was 15 days after that Order's receipt, and that Minn. Stat. § 484.01, subd. 2 has no applicability to this VPA matter. Because the City has indisputably failed to meet this deadline, the dismissal of its attempted appeal should be affirmed.

III. THE CITY'S PROPOSED DISTINCTION BETWEEN THE APPELLATE RIGHTS GRANTED TO "FIRST CLASS CITIES" AND SMALLER TOWNS IS BOTH CONTRARY TO PRECEDENT AND ABSURD ON ITS FACE.

In an effort to avoid the implications of these precedents and authorities, the City next claims that the Court should make a distinction between Veteran's Preference appeals by large "first class cities" like St. Paul and those by smaller municipalities lacking civil service commissions of their own. *City's Brief*, pp. 9, 12. The City asserts

that “first class cities” should receive the certiorari appeal rights provided for under Minnesota Statutes Section 484.01, subd. 2 (including a 60-day appeal deadline); smaller cities are stuck with the fifteen-day deadline or, alternatively, no appeal rights at all.⁴ *Id.* Indeed, this is how the City attempts to distinguish *Stafne*, which arose out of a Veteran’s Preference decision in Center City, a municipality too small to have its own civil service commission. *Id.*, p. 9. Because this argument is contrary to precedent and would lead to absurd and unreasonable results, it should properly be rejected by the Court.

First, the City’s apparent position that small towns have no appeal rights ignores the fact that the District Court in *Stafne* **actually heard and decided** that case on its merits, despite the fact that it was a veteran’s preference appeal by a small town employer. *See Stafne*, 1998 WL 778931, at *4. *See also Myers v. City of Oakdale*, 461 N.W.2d 242, 244 (Minn. Ct. App. 1990) (same). If, as the City argues, § 484.01 does not provide small towns such as Center City or Oakdale with appeal rights, one might

⁴ If the City is correct that it had no right of appeal under the VPA, despite the holding in *Schrader*, it would always have a default right to seek certiorari review of the under the general certiorari statute, insofar as the St. Paul Civil Service Commission (*qua* veteran’s preference panel) rendered a quasi-judicial decision in its decision to reinstate Eldredge. *See* Minn. Stat. § 606.06 (“A writ of certiorari for review of an administrative decision pursuant to chapter 14 is a matter of right.”). However, such an appeal would have to be brought to the Court of Appeals. *See* Minn. Stat. § 606.01 (stating that “[t]he Party shall apply to the Court of Appeals for the writ”); *accord Heideman v. Metro. Airports Comm’n*, 555 N.W.2d 322, 324 (Minn. Ct. App. 1996). Insofar as the City appealed the VPA decision to the **District Court** based upon Minn. Stat. § 484.01, subd. 2, its hypothetical right to appeal to the **Court of Appeals** is of no moment. In other words, even should this Court agree with the City’s position that it had no appeal rights under the VPA—contrary to *Schrader* and *Stafne*—dismissal of its appeal must be upheld for having been brought before the incorrect court.

reasonably ask: How were their appeals actually heard on the merits in the absence of any supposed rights under the civil service appeal statute? The answer is that the appellate decisions on the merits in those cases, and any number of other reported and unreported cases under the VPA, were predicated on the facts that: (1) employers have appellate rights under those circumstances; and (2) those rights—and obligations, including the fifteen-day deadline—are comprehensively governed by the VPA, as interpreted by Minnesota courts.

Moreover, the distinction in appellate rights between “first class cities” and small towns proposed by the City should be rejected because it would lead to an absurd result. *See* Minn. Stat. § 645.17(1) (stating that courts must construe statutes in a manner that presumes that the legislature did not intend “absurd” or “unreasonable” results); *accord Welsh v. Welsh*, 775 N.W.2d 364, 368 (Minn. Ct. App. 2009). It strains both credulity and the dictates of fairness to suggest that the legislature would grant larger cities having Civil Service Commissions VPA appeal rights superior to those of smaller cities. One must conclude that the legislature intended for the same standard—as contained in the VPA, including the fifteen-day deadline—to apply in both circumstances.

For these reasons, the City’s interpretation of the various appeal deadlines provided for in the relevant statutes should properly be rejected by the Court. The City’s position on this issue has been conclusively rejected by the appellate courts of this State, a respected secondary authority, and the District Court in this case. As such, the Court should apply the appropriate 15-day deadline and affirm the dismissal of the City’s appeal as untimely.

IV. BOTH THE EQUITIES AND REMEDIAL NATURE OF THE VPA FAVOR ELDREDGE.

As a general matter, the VPA has been held to be a remedial statute that is to be liberally construed to accomplish its legislative purpose of aiding honorably-discharged veterans of our country's armed forces. *Winberg v. Univ. of Minn.*, 499 N.W.2d 799, 801 (Minn. 1993); *Nieszner v. St. Paul Sch. Dist. No. 625*, 643 N.W.2d 645, 649 (Minn. Ct. App. 2002).

In contrast, statutory deadlines for appeal must be strictly construed and adhered to. *King v. Univ. of Minn.*, 387 N.W.2d 675, 677 (Minn. Ct. App. 1986), *review denied* (Minn. Aug. 13, 1986).

In light of these well-established policy preferences favoring veterans and disfavoring untimely appeals, there is no reason in logic or fairness to give the City four times as long as an honorably-discharged veteran to appeal an adverse VPA decision. The 15-day period for appealing a Veteran's Preference decision reflects a clear legislative judgment favoring a fast return to work for honorably discharged veterans.⁵ There can be no other reasonable basis to account for this short time period. Indeed, in light of the fact that Eldredge still has yet to be returned to work despite his victory before the VPA in July of 2009, this case presents a textbook example of the evil that the Minnesota legislature evidently was trying to avoid when it granted these rights to veterans of our country's armed forces.

⁵ Underscoring this legislative purpose, the same statute provides a full 60 days during which a veteran may request a Veteran's Preference hearing to challenge an adverse employment action. *See* Minn. Stat. § 197.46.

Eldredge served this country as a soldier, and now has served his community as a firefighter for many years. He should not now be ill-served by a legally unprecedented, legislatively unintended, and logically unsupportable extension of the expired appeal period to 60 days for the City, four times the VPA's 15-day statutory appeal deadline. Eldredge has earned every right granted to him by the legislature in the VPA in recognition of his honorable service, including the right to be returned to work in a timely manner after he prevails in his VPA appeal. The Court should therefore acknowledge the remedial nature of the VPA, construe any ambiguities contained therein in Eldredge's favor, and affirm the District Court's ruling that the City missed its appeal deadline.

CONCLUSION

Based on the foregoing, the District Court's ruling should be affirmed in its entirety, and the City's appeal should be dismissed.

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