

# MEMORANDUM DECISION

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ATTORNEY FOR APPELLANT

Matthew J. McGovern  
Fishers, Indiana

ATTORNEY FOR APPELLEES

Christopher Sturgeon  
Jeffersonville, Indiana

## IN THE COURT OF APPEALS OF INDIANA

Mark A. Goodlett,  
*Appellant-Plaintiff,*

v.

Town of Clarksville and Town of  
Clarksville Fire Department,  
*Appellees-Defendants.*

December 8, 2023

Court of Appeals Case No.  
23A-CT-460

Appeal from the  
Clark Circuit Court

The Honorable  
James B. Hancock, Special Judge

Trial Court Cause No.  
10C02-1911-CT-200

**Memorandum Decision by Senior Judge Najam**  
Judges Crone and Pyle concur.

**Najam, Senior Judge.**

## Statement of the Case

- [1] Mark A. Goodlett appeals from the trial court’s order affirming the decision of the Town of Clarksville Board of Police and Fire Commissioners (“the Board”) terminating his employment as a firefighter. We affirm.

## Facts and Procedural History

- [2] Goodlett was employed by the Town of Clarksville (“Town”) as a full-time firefighter. In December 2018, he was injured while working in that position. As a result, he was placed on paid medical leave for 180 days through the Town’s worker’s compensation program and was placed under lifting and other restrictions. Because the fire department could not accommodate the restrictions, Goodlett remained on leave.
- [3] Goodlett was also employed by the New Chapel Fire Department as a paramedic in December 2018. After he was injured in his position as a Clarksville firefighter, Goodlett ceased working as a New Chapel paramedic for a short time. But in January 2019, Goodlett obtained a doctor’s note that released him to return to work, and he resumed working as a paramedic that same month. The doctor that issued the note was not affiliated with the Town of Clarksville’s worker’s compensation program, and Goodlett did not provide the note to the Town.
- [4] At the end of February 2019, while still on medical leave from his job as a Clarksville firefighter, Goodlett applied for disability benefits. As part of the application, Goodlett had to state whether he had received or would receive

any other income while on disability and the source and amount of the income. He indicated that he would receive income from a limited liability company, but he did not disclose that he had been working for and receiving income from the New Chapel Fire Department as a paramedic. The application also required him to sign an affidavit stating that the information was complete and true and that no material fact had been concealed or omitted.

[5] After being contacted by two individuals from New Chapel who informed him that Goodlett was working as a paramedic, the Fire Chief of the Clarksville Fire Department launched an investigation that included video surveillance of Goodlett on duty as a New Chapel paramedic. In a recorded interview in April 2019, Goodlett admitted to the Fire Chief that he was working as a paramedic for New Chapel.

[6] In June, the Fire Chief filed a Notice of Charges with the Board. The notice alleged violations of five of the fire department's general orders and five provisions of the Indiana Code and requested that the Board dismiss Goodlett from his employment. The Board subsequently presided over an evidentiary hearing on the charges and determined that Goodlett should be dismissed as a Clarksville firefighter.

[7] Goodlett then sought judicial review of his termination in Clark Circuit Court. The trial court heard oral argument from the parties and affirmed the Board's decision. Goodlett now appeals.

## Issue

- [8] The question presented is whether the Board's decision to terminate Goodlett's employment was arbitrary and capricious or otherwise violated due process.

## Discussion and Decision

- [9] The employment status of a firefighter is created by the combination of relevant statutes, ordinances, and safety board rules that prescribe duties and procedures. *City of Goshen v. Cooper*, 585 N.E.2d 719, 721 (Ind. Ct. App. 1992) (quoting *City of Terre Haute v. Brown*, 483 N.E.2d 786, 787 (Ind. Ct. App. 1985)). For instance, Indiana Code section 36-8-3-2(d) (1982) grants safety boards the authority to adopt rules for the government and discipline of firefighters. Further, as Goodlett correctly notes, Indiana Code section 36-8-3-4 (1999) grants firefighters a protected property interest in their continued employment. *See Dell v. City of Tipton*, 618 N.E.2d 1338, 1342 (Ind. Ct. App. 1993), *trans. denied*. Where such a statutorily created property interest in continued employment exists, the employment cannot be terminated without adherence to basic due process procedures. *Aguilera v. City of E. Chicago Fire Civ. Serv. Comm'n*, 768 N.E.2d 978, 986 (Ind. Ct. App. 2002), *trans. denied*.
- [10] In addition, Indiana Code section 36-8-3-4 provides for the discipline of full-time firefighters by a town safety board. Specifically, Section 36-8-3-4(b)(2) states that a firefighter may be disciplined by demotion, dismissal, reprimand, forfeiture, or suspension upon a finding and decision of the safety board that the firefighter is guilty of one or more of the following:

- (A) Neglect of duty.
- (B) A violation of rules.
- (C) Neglect or disobedience of orders.
- (D) Incapacity.
- (E) Absence without leave.
- (F) Immoral conduct.
- (G) Conduct injurious to the public peace or welfare.
- (H) Conduct unbecoming an officer.
- (I) Another breach of discipline.

[11] A member of a fire department who is dismissed may seek judicial review of the safety board's decision in the circuit or superior court, and the judgment of the trial court may be appealed by either party to this Court. Ind. Code § 36-8-3-4 (e), (j). "This Court reviews a decision of a municipal safety board as it does that of one by an administrative agency." *Peru City Police Dep't v. Martin*, 994 N.E.2d 1201, 1204 (Ind. Ct. App. 2013), *trans. denied*. Accordingly, we will reverse the decision of a safety board only if it is arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law; contrary to a constitutional right, power, privilege, or immunity; in excess of statutory jurisdiction, authority, or limitations, or short of statutory right; without observance of procedure required by law; or unsupported by substantial evidence. *Am. Senior Communities v. Ind. Fam. & Soc. Servs. Admin.*, 206 N.E.3d 495, 499 (Ind. Ct. App. 2023) (quoting *Walker v. State Bd. of Dentistry*, 5 N.E.3d 445, 448 (Ind. Ct. App. 2014), *trans. denied*), *trans. denied*. A decision is arbitrary and capricious when it is made without consideration of the facts and lacks any basis that may lead a reasonable person to the same decision. *Am. Senior Communities*, 206 N.E.3d at 499 (quoting *Ind. Real Estate Comm'n v. Martin*, 836

N.E.2d 311, 313 (Ind. Ct. App. 2005), *trans. denied*). The party challenging the decision bears the burden of demonstrating it was arbitrary and capricious.

*Gary Police Civ. Serv. Comm'n v. City of Gary*, 124 N.E.3d 1266, 1271 (Ind. Ct. App. 2019).

[12] Here, the Fire Chief charged Goodlett with violations of Section 3.3 of the department's General Orders entitled "General Conduct." *See* Exhibits Vol. 3, Ex. 1, p. 3; Ex. 2, pp. 37, 44, 46, 40, 49. The Chief alleged and the Board agreed that Goodlett violated Sub-section 3.3.4.1 Neglect of Duty; Sub-section 3.3.4.6 Immoral Conduct; Sub-section 3.3.4.8 Conduct Unbecoming an Officer; Sub-section 3.3.4.2 Violation of Rules; and Sub-section 3.3.4.9 Another Breach of Discipline. *See id.* The Board also concurred with the Chief's assertion that Goodlett's conduct constituted violations of Indiana Code section 36-8-3-4(b)(2)(A), (F), (H), (B), and (I), respectively. *See* Exhibits Vol. 3, Ex. 1, p. 4.

[13] Goodlett contends the Board's decision to terminate him is arbitrary and capricious because it violated the department's disciplinary procedures and denied him the due process to which he was entitled. In making this claim, he points to Section 3.4 of the fire department's General Orders entitled "Fire Department Progressive Discipline," in which offenses are classified into five different levels. *See* Exhibits Vol. 3, Ex. 2, p. 56. He asserts that the charges filed against him are consistent with the offenses described in Level 5, for which the stated discipline is:

1<sup>st</sup> offense: Permanent written reprimand & suspension exercised by the Chief

2<sup>nd</sup> offense: Up to and including termination request of Police and Fire Commissioners

*Id.* at 59, 56. He concludes that, according to the department’s rules, this is his first offense for which he could not be terminated.

[14] Goodlett contests neither the evidence presented nor the findings of the Board. Where, as here, the underlying facts are undisputed and only a question of law remains, “we decide independently whether the agency action is contrary to law” and “review such legal questions anew, giving the lower tribunal no deference.” *Noblesville, Ind. Bd. of Zoning Appeals v. FMG Indianapolis, LLC*, 217 N.E.3d 510, 513, 514 (Ind. 2023). Thus, our standard of review is *de novo*.

[15] Goodlett accuses the Board of “an effort to circumvent” the department’s disciplinary procedures by relying on the enabling statute, Indiana Code section 36-8-3-4. Appellant’s Br. p. 16. To support that claim, Goodlett alleges the department could rely on only the disciplinary procedures set out in Section 3.4 of the department’s rules because it did not reserve its right to terminate members under Indiana Code section 36-8-3-4(b). He acknowledges the language of Sub-section 3.4.3, which states:

*The procedures for disciplinary action are not to be construed as a limitation upon the retained rights of the department but are merely a guide. The guide provides recommended penalties to apply for specific offenses. . . . In addition to the guidelines for disciplinary action and the offenses contained herein, the department retains the right to affect discipline based on other rules and regulations and codes of conduct. Specifically, the Town of*

Clarksville Employee Handbook and *other pertinent rules and/or policies may also serve as the basis for disciplinary action.*

Exhibits Vol. 3, Ex. 2, pp. 53, 54 (emphasis added). Nevertheless, he contends the lack of specific reference to Indiana Code section 36-8-3-4 amounts to a failure to reserve rights.

[16] Goodlett's contention that Clarksville failed to retain its rights under Indiana Code section 36-8-3-4 finds no support in the record. First, his argument incorrectly assumes the statute is secondary and subordinate to the department's rules. The rules were enacted pursuant to the statute and not in derogation of it. *See, e.g.*, Ind. Code § 36-8-3-2(d) (granting safety boards authority to adopt rules for government and discipline of firefighters). At all relevant times, Indiana Code section 36-8-3-4, the legal authority for the department's General Orders, remained in operation and effect, and the department was not required to declare that it retained its rights under the very source of its authority.

[17] Although the department did not need to reserve its rights under Indiana Code 36-8-3-4, it nevertheless did so in Sub-section 3.4.3 of the General Orders. The language of Sub-section 3.4.3 states that the department's procedures for disciplinary action are "merely a guide" that provides "recommended penalties." A recommendation is a suggestion, not a command. Thus, this sub-section makes clear that the department retains its rights under Indiana Code section 36-8-3-4 without limitation and notwithstanding adoption of any disciplinary procedures by the department. Indeed, the list in Sub-section 3.4.3



is not an exhaustive, exclusive list, and Indiana Code section 36-8-3-4 is indisputably an “other pertinent” rule/policy/code of conduct for firefighters.

[18] The department’s intention to rely on Indiana Code section 36-8-3-4 is clearly evidenced in its General Orders. Section 3.5 of the General Orders is entitled “IC 36-8-3-4” and sets forth the complete text of the statute. *See id.* at 60-64. And Sub-section 3.3.3 of the General Orders begins with the words “Per Indiana Code 36-8-3-4” and then tracks the pertinent text of Section 36-8-3-4(b). *Id.* at 36. The General Orders also incorporate state statutes by reference. Sub-section 3.3.4.9 sets forth the charge of “Another breach of discipline” and states:

[A]as civil employees of the town, members are required to follow:

- A. Federal Laws or Codes
- B. State Statutes**
- C. Town Policy
- D. Departmental Policy

Exhibits Vol. 3, Ex. 2, p. 49 (emphasis added).

[19] The General Orders represent a contract of employment between the Town and Goodlett. When, as here, a statute prescribes a duty and a contract is made involving performance of that duty, the statute becomes part of the contract. *Kirmse v. City of Gary*, 114 Ind. App. 558, 51 N.E.2d 883, 884 (1944) (holding that, in action for breach of contract for alleged unlawful discharge of police officer, officer’s contract of employment with city included statute providing for minimum compensation even if statute or its terms were not specifically and

formally set out in contract). Consequently, the laws that exist when a contract is made and which affect its validity, construction, discharge, and enforcement form a part of the contract even where the laws are not expressly referred to or incorporated by reference. *Id.* Here, however, both Indiana Code section 36-8-3-4 and state statutes more generally are expressly incorporated in Goodlett's employment contract with the Town.

[20] We also note that Goodlett does not suggest he was unaware of the department's General Orders. In fact, he indicated his knowledge of the content and requirements of the orders in his testimony at the administrative hearing. *See* Appellant's App. Vol. III, p. 100. And the Fire Chief acknowledged at the hearing that the General Orders are either given to or made available to each firefighter within the department. *Id.* at 22.

[21] Next, relying on the principle of statutory construction that specific provisions supersede general provisions, Goodlett argues that the specific disciplinary procedures for Level 5 offenses in the department's General Orders supersede the more general procedures in Indiana Code section 36-8-3-4(b).

[22] As we stated above, Goodlett was not charged with having committed a Level 5 offense. Rather, the Chief charged Goodlett with violations of Section 3.3 of the department's General Orders, and the Board agreed that Goodlett's conduct constituted violations of Section 3.3 as well as Indiana Code section 36-8-3-4(b)(2)(A), (B), (F), (H), and (I).

[23] We interpret administrative rules and procedures under the same principles applicable to the construction of statutes. *State v. C.M.B. III Enterprises, Inc.*, 734 N.E.2d 653, 659 (Ind. Ct. App. 2000), *trans. denied*. And Goodlett is correct that generally “where provisions of a statute are in conflict, the specific provision will take priority over the general provision.” *Salyer v. Washington Regular Baptist Church Cemetery*, 63 N.E.3d 1091, 1094 (Ind. Ct. App. 2016). However, this rule applies to provisions of the same order or rank. In the hierarchy of legal authority, Indiana Code section 36-8-3-4 and the department’s General Orders do not occupy the same rank. The statute is superior to the orders, which are rules promulgated pursuant to and derived from the statute. Accordingly, this rule does not apply here because we are not asked to reconcile conflicting provisions of one or more statutes.

[24] Lastly, Goodlett asserts the department’s disciplinary rules require a specific finding of “egregious action” before more severe discipline like termination may be imposed.<sup>1</sup> Additionally, he claims that due process requires he be put on notice of all charges against him and that the department never made an allegation of “egregious conduct.”

[25] First, Goodlett’s argument stems from the language in Sub-section 3.4.3:

The procedures for disciplinary action are not to be construed as a limitation upon the retained rights of the department but are

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<sup>1</sup> The Board asserts that Goodlett waived this issue because he did not raise it before the Board or in his appeal to the trial court. *See Appellees’ Br.* p. 13. Nevertheless, we will address the issue on its merits.

merely a guide. The guide provides recommended penalties to apply for specific offenses. However, *a more severe penalty based on an egregious action or several recurring progressive smaller penalties may result in more severe penalties*, including termination, in the best interest of the department.

Exhibits Vol. 3, Ex. 2, p. 53 (emphasis added). The language of this sub-section does not require a specific allegation or finding of egregious conduct. Instead, it merely places members on notice and explains that, while the rules contain suggested penalties for specific offenses, the rules do not restrict the department from imposing more severe penalties for more severe offenses. Moreover, Sub-section 3.4.1 plainly informs Clarksville firefighters that “[a] serious offense may bring immediate suspension and/or termination.” *Id.* at 52.

[26] Here, the Board found that Goodlett had committed immoral conduct, “a serious offense in violation of 3.3.4.6(E)(d)[,]” Appellant’s App. Vol. II, p. 54, a sub-section which expressly provides that “[f]alse documentation of applications, resumes, or other hiring/promotional documents will be considered serious offenses.” Exhibits Vol. 3, Ex. 2, p. 45. Goodlett does not contest that finding on appeal. He was properly charged with and found to have violated several provisions of Indiana Code section 36-8-3-4(b)(2) for which dismissal is a possible penalty based upon the nature and circumstances of the charged offense.

[27] Likewise, there was no violation of Goodlett’s due process rights. The Board did not charge him with “egregious conduct,” and it was not required to do so. Rather, the Board issued its Notice of Charges pursuant to Indiana Code

section 36-8-3-4, alleging conduct that constitutes violations of both the department's General Orders as well as Indiana Code section 36-8-3-4(b)(2). Goodlett was given reasonable notice of such and an opportunity to be heard. He appeared in person and by counsel and participated in the hearing before the Board to answer the charges and the Chief's request that he be dismissed from the department. Goodlett alleges no defect in this procedure.

## Conclusion

[28] The Board properly exercised its authority under Indiana Code section 36-8-3-4 and the department's General Orders. Accordingly, the Board's decision to terminate Goodlett for neglect of duty, immoral conduct, conduct unbecoming an officer, violations of department rules, and breaches of discipline was not arbitrary and capricious, and it did not otherwise violate Goodlett's due process rights.

[29] Affirmed.

Crone, J., and Pyle, J., concur.