

IN THE CHANCERY COURT FOR MONTGOMERY COUNTY, TENNESSEE  
AT CLARKSVILLE

JEFF BURKHART,

Petitioner,

vs.

CITY OF CLARKSVILLE, TENNESSEE,  
and JOHNNY PIPER, MAYOR CITY OF  
CLARKSVILLE,

Respondents.

Docket # MCAA07-3

FILED November 23 20 09  
TED A. CROZIER, JR., CLERK & MASTER  
BY Joshua Baggett  
DEPUTY CLERK  
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**MEMORANDUM OPINION**  
**AND ORDER**

This cause is before the court upon the Petition for Judicial Review filed by the Petitioner, Jeff Burkhart against the Respondents, the City of Clarksville and Mayor Johnny Piper. Upon a review of the administrative record, the arguments of counsel and the record as a whole, the court makes the following findings of fact and conclusions of law:

1. At the time of his termination, the Petitioner, Jeff Burkhart, was a twenty-two year employee of the Clarksville Fire Department and served as Assistant Chief, Shift Commander. He had held this position for approximately six years.

2. The Petitioner has worked in the construction business for approximately thirty years. In the past, he has been a residential and commercial builder, and is currently building and developing commercial real estate. The Petitioner is a former president of the Montgomery County Home Builders Association, and currently holds the necessary licenses through the State of Tennessee to be both a builder and developer of residential and commercial real estate.

3. In November, 2008, Petitioner was elected to the Clarksville City Council, and due to

his election, he is prohibited from employment with the City of Clarksville. Therefore, reinstatement to his position is not a remedy available to the Petitioner in this case. Back pay, however, is an available remedy.

4. On the morning of April 20, 2007, the Petitioner was notified by Fire Chief Mike Roberts to come into his office. Upon arriving in Chief Roberts' office, he was met by Mayor Johnny Piper, and Deputy Fire Chief John Stanley. The Mayor informed the Petitioner that he was considering transferring the Petitioner to the position of building and maintenance supervisor, and that he was ninety-five percent sure that he was going to transfer him.

5. Shortly after leaving the meeting, the Petitioner returned to Chief Roberts' office and told Chief Roberts that he was not interested in the position. He informed Chief Roberts that he did not believe that he was qualified to accept the position. He further asked Chief Roberts if the Mayor had the authority to transfer him, and Chief Roberts told the Petitioner that the Mayor did have the authority.

6. Later that afternoon Petitioner was summoned to a meeting in the Mayor's office at which the Petitioner, the Mayor, Chief Roberts and Deputy Chief Stanley were in attendance. The Petitioner told the Mayor that he was not interested in the transfer and told the Mayor that he did not feel comfortable in the position due to safety issues. The Mayor told the Petitioner that he would think about it over the weekend and let the Petitioner know his decision.

7. Beginning Monday, April 30, 2007, Chief Roberts attempted four times to contact the Petitioner, and all attempts were unsuccessful. On Tuesday, May 1, 2007, Chief Roberts again telephoned the Petitioner four times with no success. Mayor Piper's office left a message for the Petitioner to call the Chief of the Fire Department, and the Petitioner returned this call within fifteen minutes. Deputy Chief Stanley informed the Petitioner that the Mayor had decided to transfer him to the position of supervisor of building and maintenance, and that he would need to be present at

8:00 a.m. on Thursday morning in the Mayor's office to discuss the matter.

8. On Thursday, the meeting in the Mayor's office took place with the Petitioner, Mayor Piper, Chief Roberts and Deputy Chief Stanley present. During this meeting, Mayor Piper informed the Petitioner that his transfer to the building and maintenance department as its supervisor would be a lateral transfer with no reduction in pay or benefits. There was no discussion in the meeting regarding the duties of the building and maintenance supervisor, why the Mayor had decided to transfer the Petitioner, or any discussion regarding the direction the Mayor intended to take the building and maintenance department. The Petitioner refused the transfer, citing safety reasons and he was terminated by the Mayor for insubordination. During his testimony before the Administrative Appeals Board, Mayor Piper testified that his vision for the building and maintenance supervisor position would be more of a management position and not a "hands on" position that would require an electrician's license or plumber's license. The Mayor testified that he believed the Petitioner's extensive background in the construction field made him uniquely qualified for this position. The Mayor admitted, however, that he did not communicate his vision to the Petitioner during any of their pre-termination meetings, but added that the Petitioner likewise did not ask about these matters.

9. At the time of his transfer, the position of Building Maintenance Supervisor required the Petitioner to "direct and perform work in the installation and maintenance of electrical equipment and systems, plumbing fixtures, gas lines when necessary," and to "repair gas and electric lines when necessary." At all times material, Petitioner has never held an electrician or plumber's license.

10. The Petitioner timely appealed his termination, and an Administrative Appeals hearing was held on May 31, 2007 before City Councilman William Forrester, City Councilman

Wayne Harrison, and city employee Tae Eaton. All parties were represented by counsel.

11. At the beginning of the hearing, the hearing officer, Sheila Michaels, informed the committee that pursuant to Section 1-1316 of the City Code:

[T]he sole issue to be decided by the committee is whether there is just cause to support the disciplinary action of termination. Upon review, the committee should determine whether the decision of the department head is supported by substantial and material evidence. If the committee determines that the decision of the department head is in fact supported by substantial and material evidence of cause, the recommended disciplinary action shall be affirmed.

TR at 3-4.

At the conclusion of the proof, the committee voted unanimously to sustain the Mayor's decision.

12. On August 14, 2007, Mr. Burkhart filed his Petition for Judicial Review claiming that the Mayor's decision to transfer him from Assistant Fire Chief to supervisor of building and maintenance was a demotion under the city code and as a result, the transfer could only be made on a showing of cause and after having been afforded his due process rights. The Petitioner further argues that he was within his rights to refuse the transfer because he did not possess the necessary qualifications for this position and he justifiably believed that the transfer was hazardous to his health and to the health of others.

13. The City argues that the question before the hearing panel was whether there was just cause to support the Petitioner's termination on the ground of insubordination. The City claims that there was substantial and material evidence upon which the Appeals Board could have concluded that the transfer was not a demotion based upon the testimony of the Mayor, the Fire Chief, the Deputy Fire Chief and the Human Resources Director and that with the Mayor's vision for the supervisor position to be a manager and not "hands on," the Petitioner was not justified in refusing the transfer.

14. This action was originally filed in the Chancery Court for Davidson County,

Tennessee. An initial flurry of motions were filed on behalf of the Defendants pursuant to Rule 12, Tennessee Rules of Civil Procedure, and Chancellor Carol L. McCoy, in finding that venue was improper in Davidson County, Tennessee, also ruled that the City's hearing panel was acting as the equivalent of a civil service board. See generally Tidwell v. City of Memphis, 193 S.W.3d 155(Tenn.2006). Therefore this Petition for Judicial Review is governed by T.C.A. § 27-9-114 and the judicial review standards set forth in T.C.A. § 4-5-322 control this action.

15. T.C.A. § 4-5-322(h) provides as follows:

The court may affirm the decision of the agency or remand the case for further proceedings. The court may reverse or modify the decision if the rights of the petitioner have been prejudiced because the administrative findings, inferences, conclusions or decisions are:

- (1) In violation of constitutional or statutory provisions;
- (2) In excess of the statutory authority of the agency;
- (3) Made upon unlawful procedure;
- (4) Arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion; or
- (5) (A) Unsupported by evidence that is both substantial and material in the light of the entire record.  
  
(B) In determining the substantiality of evidence, the court shall take into account whatever in the record fairly detracts from its weight, but the court shall not substitute its judgment for that of the agency as to the weight of the evidence on questions of fact.

16. "Substantial and material evidence" is "such relevant evidence as a reasonable mind might accept as adequate to support a rational conclusion and such as to furnish a reasonably sound basis for the action under consideration." Dickson v City of Memphis Civil Service Commission, 194 S.W.3d 457,464 (Tenn.App.2005). "The substantial and material evidence standard does not justify a reversal of an administrative decision only because the evidence could also support another

result. [The court] may reject an administrative determination only if a reasonable person would necessarily arrive at a different conclusion based on the evidence." Martin v. Sizemore, 78 S.W.3d 249, 276 (Tenn.Ct.App.2001).

17. Taking into account the standard of review applicable to this case as well as this court being prohibited from substituting its judgment for the hearing panel on questions of fact, this court is of the opinion that "a reasonable mind might accept as adequate" that the transfer was not a demotion because it was to have been with no loss of salary or benefits. This court is further of the opinion that "a reasonable mind might accept as adequate" that the Petitioner's refusal to be transferred in light of the Mayor's vision for the supervisor position coupled with the Petitioner's extensive construction background, constituted insubordination under the City Code.

18. The court is further of the opinion that the decision of the hearing panel was not arbitrary or capricious under the facts of this case.

The decision of the hearing panel is hereby affirmed, and the Petition for Judicial Review is hereby dismissed.

**IT IS SO ORDERED.**

This the 23 day of November, 2009.



Laurence M. McMillan, Jr., Chancellor