

IN THE SUPERIOR COURT FOR THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY

TOBIE J. MCINTOSH,	:	
	:	
Appellant,	:	
	:	
v.	:	C.A. No. 04A-01-003
	:	
CITY OF NEWARK	:	
	:	
	:	
Appellee.	:	

Submitted: March 20, 2006
Decided: March 31, 2006

O R D E R

This 31st day of March, upon consideration of the appellant’s Writ of Certiorari, appellee’s response thereto, and the record in this case, it appears that:

1) On March 7, 2001, former police officer Tobie, J. McIntosh (“appellant”) was charged with violating seven rules and regulations of the Newark Police Department. In accordance with the Law Enforcement Officers’ Bill of Rights¹ and the terms of the collective bargaining agreement between the Fraternal Order of Police and the City of Newark, appellant was entitled to an administrative hearing conducted by the Criminal Justice Council. Before the hearing, it was determined that an impartial board could not be convened within the Newark Police Department. A request to impanel a disciplinary hearing board was made to the Criminal Justice Counsel.

On April 3, 2001, a three-member Criminal Justice Board (“Board”) convened to hear the disciplinary allegations against appellant. The Board concluded that appellant had violated all

seven rules and regulations as alleged. The Board recommended the penalty of termination, as proposed by the Newark Police Department. City Police Chief Gerald T. Conway (“Chief Conway”) accepted the findings of the Board and recommended appellant be discharged. Appellant appealed to the City Manager; the manager affirmed. Appellant’s employment as a city police officer terminated on May 10, 2001.

2) Appellant sought unemployment compensation. A claims deputy found that the City had not established willful or wanton conduct by appellant and he was awarded benefits. The City appealed; an appeals referee affirmed the decision of the claims deputy. The City appealed that decision to the Unemployment Insurance Appeal Board (“UIAB”). After a full hearing, the UIAB affirmed the appeals referee. The City submitted an appeal to the Superior Court of Delaware on March 7, 2002. On June 19, 2002, the Superior Court affirmed the decision of the UIAB and concluded that evidence was sufficient to show appellant had engaged in negligent conduct, *res judicata* did not apply to the UIAB’s decision and the UIAB was not collaterally estopped from determining the issue of whether appellant’s conduct was intentional.²

3) On January 7, 2004 the Petitioner filed a Writ of Certiorari.

4) An opening brief was filed on December 5, 2005, and an Answering Brief on December 28, 2005. No reply brief has been filed.

5) The petitioner seeks review of the decision of the hearing conducted pursuant to the Law Enforcement Officers’ Bill of Rights. That decision formed the basis for the termination of the petitioner in May, 2001.

¹ 11 Del. C. §§ 9200-9209.

² *City of Newark v. Unemployment Insurance Appeal Board*, 802 A.2d 318 (Del. Super. 2002)

6) A writ of certiorari seeks review from the Superior Court of the record below. The writ issues as a matter of right,³ and is merely a preliminary formality. The issuance of the writ does not mean that this Court is required to decide a matter raised therein on its merits.⁴

7) The period of time for filing a Petition for a Writ of Certiorari has been set by decisions in this Court at 30 days.⁵ This Petition was filed some two and a half years after Petitioner's termination by the City of Newark. It is time barred.

The Petition for Writ of Certiorari is dismissed.

IT IS SO ORDERED.

Judge Susan C. Del Pesco

xc: Prothonotary
Roger A. Akin, Esquire
Robert C. McDonald, Esquire

³ 10 Del. C. § 142

⁴ *In re Butler*, 609 A.2d 1080, 1081 (Del. 1992) (citing *Castner v. State*, 311 A.2d 858 (Del. 1973)).

⁵ *Elcorta, Inc. v. Summit Aviation, Inc.*, 528 A.2d 1199 (Del. Super. 1987); *Rodriguez v. Palmer*, 2001 WL 1628317, (Del. Super. Ct. 2001).