

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Board of Commissioners of :
Upper Moreland Township, :
Appellant :
 :
 :
v. :
 : No. 2143 C.D. 2007
Officer Bryan McCauley : Submitted: June 6, 2008

BEFORE: HONORABLE BERNARD L. McGINLEY, Judge
HONORABLE ROCHELLE S. FRIEDMAN, Judge
HONORABLE JIM FLAHERTY, Senior Judge

OPINION NOT REPORTED

MEMORANDUM OPINION
BY JUDGE McGINLEY

FILED: July 25, 2008

This is an appeal from the order of the Court of Common Pleas of Montgomery County (trial court) which dismissed the appeal of the Board of Commissioners of Upper Moreland Township (Township) from the decision of the Upper Moreland Township's Civil Service Commission (Commission) which modified a suspension imposed by the Township on Bryan McCauley (Officer McCauley).

On December 23, 2005, Officer McCauley, an Upper Moreland Township Police Officer, was involved in an on-duty automobile accident. Following an internal investigation, the Upper Moreland Police Department, Chief of Police, William Moffett (Chief Moffett), recommended that Officer McCauley be suspended, without pay, for eight days. The Township accepted the recommendation. On March 14, 2006, the Township ordered that Officer

McCauley be suspended for eight days equal to 96 hours¹ for violating Section 644(2) and (4) of The First Class Township Code (Code)²:

No person employed in any Police or Fire force of any township shall be suspended, removed, or reduced in rank except for the following reasons:

.....

2. Neglect or violation of any official duty.

.....

4. Inefficiency, neglect, intemperance, disobedience of orders or conduct unbecoming an officer.

.....

Officer McCauley appealed the Township's decision to the Commission and a hearing was held on July 17, 2006. The Commission found that the evidence established the following:

I. FINDINGS OF FACT

.....

6. On . . . December 23, 2005 Officer McCauley was on duty in a marked patrol car when he received a radio dispatch that a probationary officer . . . was making a traffic stop.

7. Officer McCauley activated his overhead lights and siren and started toward . . . [the probationary officer's] location However, after receiving a second radio transmission that . . . [the probationary officer] did not need assistance, Office[r] McCauley deactivated his overhead lights and siren.

8. The speed limit along the relevant stretch of . . . Road is 25 m.p.h.

¹ The officers in Upper Moreland Township's Police Department work twelve-hour shifts. Accordingly, each day of suspension is equal to twelve hours.

² Act of June 24, 1931, P.L. 1206, added by Section 20 of the Act of May 27, 1949, P.L. 1955, *as amended*, 53 P.S. §55644(2), (4).

9. Officer McCauley drove toward . . . [the probationary officer's] location in excess of the speed limit due to the fact that . . . [the officer] was a probationary officer making a traffic stop without assistance from other police officers.

10. Before arriving at . . . [the] location, Officer McCauley struck an occupied vehicle at the intersection . . .

11. At the time of the collision, Officer McCauley was driving in excess of the speed limit, but less than 72 m.p.h.

12. Officer McCauley's speed was a contributing factor in the collision.

13. As a result of the collision, Officer McCauley and the occupants of the other involved vehicle received serious injuries.

14. In September of 2005, Office[r] McCauley was involved in a very minor automobile accident whereby no person was injured.

II. CONCLUSIONS OF LAW

. . . .
19. Conduct unbecoming an officer has been interpreted by Pennsylvania Courts as conduct which adversely affects the morale or efficiency of the police force, or tends to destroy public respect for and confidence in the police force [Brooks v. Civil Serv. Cmm'n. of Shaler Twp., 755 A.2d 115, 118 (Pa. Cmwlth. 2000)].

20. Officer McCauley's conduct on [December 23, 2005] . . . showed a lack of judgment and neglect of duty, but did not rise to the level of conduct unbecoming an officer as that phrase has been interpreted under Pennsylvania common law.

21. The evidence does not support a finding that Mr. McCauley engaged in conduct which can be deemed

inefficient or intemperate, nor does the evidence support a finding that he disobeyed an order.

22. Officer McCauley did not engage in conduct unbecoming an officer as that term is defined by General Order 81-1, section I.

23. Inasmuch as this Commission finds that Officer McCauley did not engage in conduct unbecoming an officer under General Order 81-1, or violate Section 644(4) of the First Class Township Code . . . the Township committed an abuse of discretion in suspending Officer McCauley for conducting [sic] unbecoming an officer

24. Officer McCauley's conduct, i.e. driving without his emergency lights or siren activated in excess of the speed limit, which conduct contributed to a serious automobile accident, is sufficient to constitute neglect or violation of official duty as defined by Section 644(2) of the First Class Township Code Further, said conduct arises to neglect of duty under General Order 81-1, Section IV, Subsection 17 (Damage to a Township vehicle).

25. There was insufficient evidence presented at the hearing to conclude that Officer McCauley's first minor automobile accident [in September 2005] constituted a 'chargeable accident.' Therefore, the accident which occurred on December 23, 2005 is considered a first offense under General Order 81-1, Section IV, Subsection 17.

26. Chief Moffet[t] testified at the hearing that he recommended a suspension based on the December 23, 2005 accident being Officer McCauley's second chargeable accident. A second chargeable accident carries a suspension of five (5) to twenty (20) days, whereas a first chargeable accident carries a reprimand up to a ten (10) day suspension.

27. Inasmuch as the suspension was based on a second chargeable accident rather than a first chargeable

accident, the recommended suspension was arbitrary and/or an abuse of discretion.

.....

29. Considering the above findings of fact and conclusions of law, the . . . Commission appropriately modified the suspension and imposed a suspension of four (4) days equal to forty-eight (48) hours which is within the range of suspension for a first offense, neglect of duty, where the neglect of duty is based upon damage to a Township vehicle as a result of a chargeable accident pursuant to General Order 81-1, Section IV, Subsection 17.

Decision of the Township Civil Service Commission (Commission Decision), Findings of Fact (F.F) No. 6-14 at 2; Commission Decision, Conclusion of Law (C.L.) Nos. 19-27, 29 at 3-5 (emphasis added).

Following the hearing, the Commission issued a written order on September 27, 2006, and reduced Officer McCauley's penalty from an eight day suspension to a four day suspension.

The Township subsequently petitioned the trial court to review the Commission's decision. The trial court issued an Order denying the Township's appeal and affirmed the Commission's decision. The trial court determined that the Commission's decision to modify Officer McCauley's suspension was proper because there was insufficient evidence to support the charge of conduct unbecoming an officer and the September 2005 accident as a first offense. This appeal followed.

Before this court, the Township raises three issues on appeal.³ First, the Township contends that the Commission, as affirmed by the trial court, erred as a matter of law when it concluded Officer McCauley's operation of his police car in excess of the posted speed limit without activating the overhead lights or siren, thereby causing injuries to two members of the public, did not constitute conduct unbecoming an officer as the phrase is defined and interpreted under Pennsylvania Statute and common law. Second, the Township contends that the Commission erred as a matter of law, abused its discretion and exceeded its authority when it concluded the penalty issued by the Township was arbitrary, decided to supplant the Township's penalty with its own and reduced Officer McCauley's suspension. Third, the Township argues that the Commission erroneously placed a burden on it during the civil service hearing to establish that the penalty imposed by the Township was not arbitrary, capricious or discriminatory.

These issues were raised before the trial court. The Honorable Richard J. Hodgson, President Judge, ably disposed of these issues in his comprehensive opinion. Therefore, this Court shall affirm on the basis of that

³ Our review, where the trial court has taken no additional evidence, is limited to determining whether the civil service commission abused its discretion or committed an error of law. York Township Bd. of Commissioners v. Batty, 694 A.2d 395 (Pa. Cmwlth.), *petition for allowance of appeal denied*, 550 Pa. 695, 704 A.2d 1384 (1997).

opinion. Bd. of Comm'ns of Upper Moreland Township v. Officer Bryan
McCauley, (No. 06-27101, Filed January 9, 2008).

BERNARD L. McGINLEY, Judge

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ORDER

AND NOW, this 25th day of July, 2008, the order of the Court of Common Pleas of Montgomery County is hereby affirmed.

BERNARD L. McGINLEY, Judge