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Minn. Stat. § 480A.08, subd. 3 (2018).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A18-0867**

Matthew Heinen,
Relator,

vs.

City of Sauk Rapids,
Respondent.

**Filed January 28, 2019
Affirmed
Halbrooks, Judge**

Sauk Rapids City Council

Marshall H. Tanick, Teresa J. Ayling, Meyer Njus Tanick, PA, Minneapolis, Minnesota
(for relator)

Dyan Jean Ebert, Cally R. Kjellberg-Nelson, Quinlivan & Hughes P.A., St. Cloud,
Minnesota (for respondent)

Considered and decided by Halbrooks, Presiding Judge; Bratvold, Judge; and
Klaphake, Judge.*

UNPUBLISHED OPINION

HALBROOKS, Judge

In this certiorari appeal, relator challenges respondent city's decision to terminate
his employment as an on-call volunteer firefighter, arguing that the city's decision was

* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to
Minn. Const. art. VI, § 10.

arbitrary, capricious, unreasonable, and unsupported by substantial evidence, that the city's response-time requirement violates Minn. Stat. § 415.16 (2018), and that his due-process rights were violated because he was deprived of a hearing. We affirm.

FACTS

Relator Matthew Heinen was employed as an on-call firefighter with respondent City of Sauk Rapids from November 2008 until April 2018. The fire department has a policy that requires members to live within a five-minute response-time zone to be eligible for employment. In December 2017, Fire Chief Jason Fleming learned that Heinen intended to move outside the response-time zone. He met with Heinen, who confirmed that he was moving. Heinen proposed that he list his mother's address to maintain eligibility as a firefighter, but Chief Fleming informed him that would not be permissible. At the end of the month, Heinen moved outside of the response-time zone.

On January 3, 2018, Heinen requested a leave of absence. The department's personnel policy permits members to request a leave of absence for up to three years for good cause. The policy specifies that good cause includes "illness, job related matters, family related matters, or other personal matters that may be reasonably perceived as temporarily interfering with the member's performance of his or her duties." Heinen later submitted an additional request for a variance to live outside of the response-time zone. The matters were referred to the fire department's executive committee.

On February 15, the city denied both requests. The city explained that leaves of absence were designed as "a means to accommodate temporary changes" and that Heinen moving outside the response-time zone was not a temporary change. The city also

acknowledged that it had granted variances in the past based on staffing and experience shortfalls, but determined that it was not currently experiencing a shortfall that warranted granting a variance. Finally, the city indicated that the termination of Heinen's employment would be placed on the agenda for the next city council meeting.

On February 20, Heinen met with Chief Fleming and Ross Olson, the city administrator. He informed them that he planned to stop living with his wife and to move in with his mother in order to reestablish residency within the response-time zone. On February 27, Olson emailed the other members of the executive committee and informed them that their options were to grant Heinen a short-term leave until he could provide proof that he permanently moved back into the response-time zone or to proceed with terminating his employment. The email indicates that leadership within the fire department preferred to proceed with terminating Heinen's employment. The executive committee elected to proceed with the termination.

On March 27, Olson notified Heinen that the termination of his employment would be on the agenda at the April 9 city council meeting. On April 6, Heinen's attorney sent a letter to the city's counsel asserting that Heinen should be reinstated as a firefighter. He argued that the five-minute response time had not been adopted as an official rule and that the fire department's policy permitted members to live outside the zone if they were still able to respond in a timely manner. He stated that, because leaves of absence and variances to live outside the zone had been granted in the past, Heinen was entitled to one. The city responded that it still intended to proceed with terminating Heinen's employment. On April 9, the city terminated Heinen's employment. Heinen appeals by writ of certiorari.

DECISION

We review a city's quasi-judicial decision to terminate an employee to determine whether the proceedings were proper and whether the termination decision was arbitrary, oppressive, unreasonable, fraudulent, based on an erroneous interpretation of the law, or unsupported by the evidence. *Dietz v. Dodge County*, 487 N.W.2d 237, 239 (Minn. 1992). When the employee is an at-will employee, that employee may be terminated for any reason or no reason at all. *Randall v. N. Milk Prods., Inc.*, 519 N.W.2d 456, 459 (Minn. App. 1994). An at-will employee's termination therefore cannot be procedurally improper, arbitrary, oppressive, unreasonable, or unsupported by the evidence. *Reierson v. City of Hibbing*, 628 N.W.2d 201, 204 (Minn. App. 2001). Additionally, at-will employees have no property interest in their employment and therefore are not entitled to due process. *Id.* at 204-05. Whether employment is "at will" is a question of law appropriate for certiorari review. *Dietz*, 487 N.W.2d at 240.

The city argues that Heinen was an at-will employee. The city's personnel policy states:

All City employees, other than employees whose employment is governed by the terms of a collective bargaining agreement which provides for termination of employment only for cause and other stated reasons, are employees at will. This means that the employee has the right to terminate his or her employment at will whenever he or she chooses, for any reason. Likewise, the City has the right to terminate its employment relationship with the employee whenever it chooses, for any reason. No provision in this personnel policy manual is intended to limit the rights of the City and its employees to terminate the employment relationship at any time, with or without cause.

Heinen's employment was not governed by the terms of a collective-bargaining agreement. He was therefore an employee at-will under the city's personnel policy.

Heinen argues that the fire department's personnel policy modifies his employment status and establishes that he may only be terminated for just cause. An at-will employment relationship may be contractually modified to provide for additional job-security provisions. *Pine River State Bank v. Mettille*, 333 N.W.2d 622, 627 (Minn. 1983). The fire department's personnel policy contains a provision entitled "Grounds for Discipline," which provides that "[a]ny member may be disciplined pursuant to the City's personnel policy and Code of Conduct, including suspension and expulsion from membership, for just cause." The policy includes a non-exhaustive list of conduct justifying discipline.

Heinen argues that this provision supersedes the city's personnel policy and establishes that he could only be terminated for "just cause." He argues that the city policy and department policy are in conflict, and because the department's policy is more specific it controls. We disagree that the two policies are in conflict. The department's policy states that members are subject to the city's personnel policy and may be disciplined pursuant to the policy. The city's personnel policy similarly contains a provision that provides employees may be disciplined "for cause." Thus, both policies provide that an employee may be disciplined for cause. But these provisions relate to discipline; they do not establish that an employee may only be terminated for cause. Indeed, the city's policy states that disciplinary proceedings "shall not waive or impair the City's right to terminate an employee at will."

Heinen's employment was not terminated as a disciplinary measure; he was terminated because he became ineligible for employment when he moved outside the response-time zone. The department's policy contains a separate provision that addresses "Changes in Employment or Residence that Affect Response Time." That provision provides that if the executive committee determines that the member is no longer able to respond in a timely manner then the committee may recommend that the city council consider discharging the employee. This provision is separate from that regarding disciplinary action. This distinction, as well as the city policy's statement that disciplinary proceedings "shall not waive or impair the City's right to terminate an employee at will," support our determination that the department's policy did not modify Heinen's at-will status. The policy provided that he may be disciplined for cause; it did not establish that he may only be terminated for cause.

We conclude that Heinen's employment was at-will. His termination therefore cannot be procedurally improper, unreasonable, or arbitrary. *Reierson*, 628 N.W.2d at 204. And because at-will employees have no property interest in their employment, he was not entitled to due process and a hearing before his employment could be terminated. *Id.*

Finally, Heinen argues that the termination of his employment violated Minn. Stat. § 415.16, subd. 3. The statute provides that a city with a volunteer fire department may adopt a residency requirement related to response time if there is "a demonstrated, job-related necessity." Minn. Stat. § 415.16, subd. 3. Heinen argues that, under the statute, the city was required to establish a "demonstrated, job-related necessity" to terminate Heinen's employment following his move outside of the response-time zone. Heinen's

assertion misinterprets the statute. The statute provides that a city may generally adopt a response-time requirement if there is a “demonstrated, job-related necessity.” *Id.* It does not govern how the city applies the response-time requirement after it is adopted. Therefore, the termination of Heinen’s employment did not violate the statute.

Affirmed.