

*This opinion is nonprecedential except as provided by
Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A24-0645**

Christopher Humphrey,
Relator,

vs.

City of Minneapolis Civil Service Commission,
Respondent.

**Filed March 17, 2025
Affirmed
Cochran, Judge**

Minneapolis Civil Service Commission

Joseph A. Kelly, Rebecca L. Duren, Kelly & Lemmons, P.A., St. Paul, Minnesota (for relator)

Kristyn Anderson, Minneapolis City Attorney, Mark Enslin, Assistant City Attorney, Minneapolis, Minnesota (for respondent)

Considered and decided by Cochran, Presiding Judge; Larson, Judge; and Cleary, Judge.*

NONPRECEDENTIAL OPINION

COCHRAN, Judge

By certiorari appeal, relator challenges respondent's decision to remove him from a certified promotion list maintained by respondent for the position of police sergeant. Relator argues that the decision is not supported by substantial evidence and violates

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

relator's due-process rights. Because substantial evidence in the record supports the decision and relator does not have a constitutionally protected property interest in remaining on the list, we affirm.

FACTS

The following facts are undisputed. Respondent Minneapolis Civil Service Commission certifies qualified candidates for promotion to positions within the Minneapolis Police Department. In March 2022, the City of Minneapolis sought applications for the position of police sergeant. Relator Christopher Humphrey was employed as a police officer with the city. Officer Humphrey applied and tested for the position. At the time of the test, the Minneapolis Police Department Internal Affairs Division and the Office of Police Conduct Review were investigating a complaint alleging Officer Humphrey had engaged in misconduct. Despite the active investigation, the city allowed Officer Humphrey to take the required test and placed him sixth on the list of candidates eligible for promotion to sergeant in August 2022. The list was set to expire in June 2024. Between August 2022 and July 2023, several persons on the list were promoted but Officer Humphrey was not.

In September 2023, the city removed Officer Humphrey from the list pursuant to Minneapolis Civil Service Rule 6.12.E. This rule allows the city to “remove from a list of eligible candidates any individual [who] . . . [h]as a record of employment that has been unsatisfactory in any position, public or private, for any cause, which could impair the safe, efficient, and effective operation of City service.” Other than providing the language of

the rule upon which the city relied, the city did not provide Officer Humphrey with any further explanation for his removal from the list. Officer Humphrey filed a timely administrative appeal of the city's decision as provided for under the Minneapolis Civil Service Rules.

Following an investigative review, the city's director of human resource operations (the HR director) provided a staff report to the commission. The report considered whether Officer Humphrey was "appropriately removed" from the list pursuant to rule 6.12.E "due to an unsatisfactory employment record." The report noted that the labor agreement between the city and the Police Officers Federation contains no specific language governing removal of candidates from the list and therefore the civil-service rules govern. The report also explained that Officer Humphrey was removed from the list primarily due to the conduct being investigated and included exhibits from the open investigations—sworn statements from Officer Humphrey and photographic evidence. That evidence reflected misconduct involving alcohol and a weapon while at a police training event. The report determined that removal pursuant to rule 6.12.E was appropriate, even though the police department investigations were still open, because a preponderance of the evidence supported removal based on Officer Humphrey's "admission" in sworn testimony to the misconduct. Consequently, the HR director denied Officer Humphrey's appeal. The HR director sent the report to Officer Humphrey's attorney as well as to the commission.

In February 2024, the commission met to review the HR director's denial of the appeal as detailed in the report. One commissioner suggested that the commission take no action to reverse the HR director's denial of the appeal because the information included

with the HR report showed that Officer Humphrey's conduct involved "alcohol" and a "weapon." Another commissioner expressed concerns related to due process but ultimately agreed that Officer Humphrey's removal from the list was appropriate. After discussing the matter, the commission decided to take no action on the HR director's denial of Officer Humphrey's administrative appeal. As a result, per rule 2.04 of the civil-service rules, the commission effectively upheld the city's decision to remove Officer Humphrey from the list.

Officer Humphrey appeals to this court by writ of certiorari.

DECISION

Officer Humphrey challenges the decision of the commission upholding his removal from the list. Decisions of administrative agencies, including cities, generally "enjoy a presumption of correctness." *CUP Foods, Inc. v. City of Minneapolis*, 633 N.W.2d 557, 562 (Minn. App. 2001), *rev. denied* (Minn. Nov. 13, 2001). A quasi-judicial decision¹ of an agency that is not subject to the Minnesota Administrative Procedure Act "will be upheld unless [it is] unconstitutional, outside the agency's jurisdiction, procedurally defective, based on an erroneous legal theory, unsupported by substantial evidence, or arbitrary and capricious." *Cole v. Metro. Council HRA*, 686 N.W.2d 334, 336 (Minn. App. 2004).

¹ Because the commission considered and weighed evidence regarding whether Humphrey should be removed from the list, applied the facts to the standards set out in the civil-service rules, and its decision was binding, the commission acted in a quasi-judicial capacity. *Minn. Ctr. for Env't Advoc. v. Metro Council*, 587 N.W.2d 838, 841-42 (Minn. 1999).

Officer Humphrey contends that the city's decision requires reversal because (1) the decision is not supported by substantial evidence and (2) the city deprived him of a constitutionally protected property interest in remaining on the list without due process of law. We address each argument in turn.

I. The commission's decision to uphold the removal of Officer Humphrey from the list is supported by substantial evidence.

"The substantial-evidence standard addresses the reasonableness of what the agency did on the basis of the evidence before it." *In re A.D.*, 883 N.W.2d 251, 259 (Minn. 2016) (quotation omitted). Substantial evidence is "(1) such relevant evidence as a reasonable mind might accept as adequate to support a conclusion; (2) more than a scintilla of evidence; (3) more than some evidence; (4) more than any evidence; or (5) the evidence considered in its entirety." *Cannon v. Minneapolis Police Dep't*, 783 N.W.2d 182, 189 (Minn. App. 2010) (quoting *Minn. Ctr. for Env't Advoc. v. Minn. Pollution Control Agency*, 644 N.W.2d 457, 464 (Minn. 2002)).

"The substantial evidence test requires a reviewing court to evaluate the evidence relied upon by the agency in view of the entire record as submitted." *Cable Commc'ns Bd. v. Nor-West Cable Commc'ns P'ship*, 356 N.W.2d 658, 668 (Minn. 1984). "If [the commission] engage[d] in reasoned decisionmaking, the court will affirm, even though it may have reached a different conclusion had it been the factfinder." *Id.* at 669.

Officer Humphrey argues that the commission's decision to remove him from the list is unsupported by substantial evidence because the decision "was not reasonable based on the entirety of the evidence." We are not persuaded.

The record reflects that the commission removed Officer Humphrey pursuant to rule 6.12.E. That rule provides the commission may remove an employee who “has a record of employment that has been unsatisfactory in any position, public or private, for any cause, which could impair the safe, efficient, and effective operation of City service.” The city supported its decision with evidence that Officer Humphrey engaged in misconduct involving alcohol and a weapon while at a work training event. This evidence includes sworn testimony from Officer Humphrey admitting that he was intoxicated while on duty, as well as photographic evidence showing Officer Humphrey asleep next to a can of beer and with his weapon on his person while at the training event. Such conduct by Officer Humphrey “could impair the safe, efficient, and effective operation of City service” within the meaning of rule 6.12.E. Substantial evidence supports the commission’s decision to uphold the removal of Officer Humphrey from the list pursuant to the rule.

To convince us otherwise, Officer Humphrey contends that at the time he was removed from the list, he “did not have a record of employment that was unsatisfactory.” He notes that the police department did not complete its investigations or impose any discipline on him for this conduct until after he was removed from the list. But rule 6.12.E does not require discipline before the city can remove a candidate from the list. It only requires that the employee “has a record of employment that has been unsatisfactory . . . which could impair the safe, efficient, and effective operation of City service.” Here, Officer Humphrey’s employment record shows that he engaged in the conduct in question prior to his removal from the list. As a result, this argument is unavailing.

Officer Humphrey also argues that the city’s decision to remove him from the list is not supported by substantial evidence, when viewing the record as a whole, because the HR director’s report references the 2023 job posting for sergeant instead of the 2022 job posting for sergeant—the posting in effect when Humphrey took the promotional test. According to Officer Humphrey, the reference to the 2023 job posting “misled” the commission because the posting contains information detailing how formal discipline by the police department can impact an officer’s eligibility for a promotion, which was not included in the 2022 job posting. But the city’s decision was not based on the 2023 job posting. Instead, the decision was based on the Minneapolis Civil Service Rules. And, as discussed above, there is substantial evidence to support Officer Humphrey’s removal from the list pursuant to rule 6.12.E. Therefore, we reject Officer Humphrey’s argument that the record, viewed in its entirety, lacks substantial evidence to support the commission’s decision to uphold removal of Officer Humphrey from the list.

II. The commission’s decision to uphold the removal of Officer Humphrey from the list did not violate his right to due process.

Officer Humphrey next argues that the commission violated his constitutional right to due process when it removed him from the list without proper notice and a meaningful opportunity to be heard. The commission responds that Officer Humphrey did not have a protected property interest in remaining on the list and, as a result, there can be no due-process violation. We agree with the commission.

The Due Process Clause of the Fourteenth Amendment to the United States Constitution prohibits the states from depriving “any person of life, liberty, or property,

without due process of law.” U.S. Const. Amend. XIV, § 1. “[T]he due process protection provided under the Minnesota Constitution is identical to the due process guaranteed under the U.S. Constitution.” *In re Individual 35W Bridge Litig.*, 806 N.W.2d 820, 829 (Minn. 2011). To establish a due-process violation, Officer Humphrey must show that he has a constitutionally protected property interest in remaining on the list. *Hall v. State*, 908 N.W.2d 345, 358 (Minn. 2018). If he establishes a constitutionally protected interest, we then analyze whether he was deprived of that interest without due process of law. *Id.*

A person can have a property interest in employment, but the person must have “more than a unilateral expectation of it.” *Bd. of Regents of State Colls. v. Roth*, 408 U.S. 564, 577-78 (1972). To have a constitutionally protected property interest, the person must “have a legitimate claim of entitlement to it.” *Town of Castle Rock v. Gonzales*, 545 U.S. 748, 756 (2005). “[A]n applicant’s expectation of promotion based on test ranking or prior employment fails to rise to the level of a property interest entitled to constitutional protection” if the “employer may consider subjective and objective factors in making promotion decisions.” *Meyer v. City of Joplin*, 281 F.3d 759, 762 (8th Cir. 2002).² Similarly, there is no “legitimate claim of entitlement” to a government benefit if the government “may grant or deny it in their discretion.” *Castle Rock*, 545 U.S. at 756. Moreover, property interests are not created by the constitution; they are instead created by independent sources such as state law or the terms of employment. *Roth*, 408 U.S. at 577.

² “Although not binding on Minnesota state courts, Eighth Circuit caselaw can be persuasive.” *State v. Eichers*, 840 N.W.2d 210, 216 (Minn. App. 2013), *aff’d on other grounds*, 853 N.W.2d 114 (Minn. 2014).

Officer Humphrey does not contend that the city’s labor agreement with the Police Officers Federation gives him a protected property interest in remaining on the list. Instead, he argues that the civil-service rules provide him with a constitutionally protected property interest in remaining on the list. To support his argument, he emphasizes that the purpose of the rules are “to ensure a fair and effective system of human resource management.” He also notes that the civil-service rules provide that a candidate can be removed from the list “[o]nly when certain criteria are met.” This argument is unavailing.

The plain language of the civil-service rules demonstrates that the rules do not create “a legitimate claim of entitlement” to remain on the list. *Castle Rock*, 545 U.S. at 756. Instead, the civil-service rules unambiguously provide the city’s HR director with the discretion to remove a candidate from the list. Specifically, rule 6.12 states that:

[T]he Human Resources Department . . . *may remove from a list of eligible* candidates any individual to whom one or more of the following criteria for disqualification apply:

. . . .

E. Has a record of employment that has been unsatisfactory in any position, public or private, for any cause, which could impair the safe, efficient, and effective operation of City service;

. . . .

H. For *any good and sufficient reason* related to the [candidate’s] ability to carry out the duties of the job and in the judgment of the Human Resources Department and Civil Service Commission, is undesirable as a public employee.

(Emphasis added.) Because the city had the discretion to remove Officer Humphrey from the list under rule 6.12.E or 6.12.H, Officer Humphrey did not have a “legitimate claim of

entitlement” to remain on the list. He only had an “expectation” that he would remain on the list. *See Castle Rock*, 545 U.S. at 756 (explaining that a person must have more than a “unilateral expectation” to have a constitutionally protected property interest). We therefore conclude that the civil-service rules do not provide Officer Humphrey with a constitutionally protected property interest in remaining on the list.³ And because Officer Humphrey has no constitutionally protected property interest in remaining on the list, there is no basis upon which to conclude that his due-process rights were violated when he was removed from the list.⁴

In sum, we conclude substantial evidence supports the commission’s decision and the commission did not violate Officer Humphrey’s constitutional due-process rights.

Affirmed.

³ Further, Officer Humphrey does not dispute that the city had discretion to deny him a promotion.

⁴ While we conclude that Officer Humphrey has not demonstrated a due-process right to remain on the list, we acknowledge Officer Humphrey’s concerns regarding the city’s administrative-appeal process. According to Officer Humphrey, he was not given an opportunity to submit any information into the record after he filed his appeal letter. Officer Humphrey also maintains that the HR director who prepared the staff report for the commission never contacted him. The record leaves unanswered why the city did not provide such procedures to Officer Humphrey in the interest of fairness.