IN THE IOWA DISTRICT COURT IN AND FOR SCOTT COUNTY

JOSEPH REYES,	)	
	)	**Case No. CVCV124540**
Plaintiffs,	)	
	)	
v.	)	
	)	
THE CITY OF DAVENPORT, an Iowa Municipal Corporation, and THE DAVENPORT CIVIL SERVICE COMMISSION,	)	**RULING ON COUNTER MOTIONS FOR SUMMARY JUDGMENT**
	)	
Defendants.	)	

On November 18, 2014, the parties' counter motions for summary judgment came before the court for oral argument. Attorney Michael J. Meloy appeared on behalf of Plaintiff, Joseph Reyes, (hereinafter "Reyes"). Attorney Benjamin J. Patterson appeared on behalf of Defendants, the City of Davenport and the Davenport Civil Service Commission, (hereinafter collectively "Defendants"). The court has considered the briefs, exhibits, and the applicable law, and now makes the following ruling:

FINDINGS OF FACT

The court finds the following facts are undisputed:

Reyes is employed with the City of Davenport as a fire fighter and has been employed as such continuously since February 3, 1997. He is a civil service employee pursuant to Iowa Code Chapter 400. Defendant City of Davenport is an Iowa municipal corporation duly organized pursuant to the laws of the State of Iowa. Defendant Davenport Civil Service Commission is a duly organized commission pursuant to Iowa Code Chapter 400. Defendants have a duty to follow the statutory law of Iowa Code Chapter 400 governing promotions of Civil Service Fire Department employees.

On January 14, 2009, the Davenport Civil Rights Commission certified a list of individuals who passed the test for the position of Firefighter/Engineer to use for promotion to

that rank. There were eleven individuals listed on that list, including Reyes. That list stated that the certification date of the list was January 14, 2009 and the expiration date was January 14, 2011. Over the next two years, nine of the eleven individuals on that list were promoted to the position of Firefighter/Engineer. Reyes and one other individual on that list were not promoted within the two year period of January 14, 2009 to January 14, 2011.

On May 11, 2011, the Davenport Civil Rights Commission certified a new promotional list, which expired on May 11, 2013. Defendants used the May 11, 2011 list to make a promotion to Firefighter/Engineer on August 21, 2011. Reyes was not on that second list and was not promoted to the position of Firefighter/Engineer.

On January 13, 2014, Reyes filed a Petition for Writ of Mandamus and Declaratory Judgment. On October 17, 2014, Defendants filed a Motion for Summary Judgment. Reyes filed a resistance and a Counter Motion for Summary Judgment on October 31, 2014.

CONCLUSIONS OF LAW

1. Summary Judgment Standard:

A motion for summary judgment is appropriate where "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Iowa R. Civ. P. 1.981(3) (2013). The moving party carries the burden of proving the absence of a fact issue. *McIlravy v. North River Ins. Co.*, 653 N.W.2d 323, 328 (Iowa 2002) (citations omitted). "If reasonable minds could differ on how to resolve an issue, then a genuine issue of material fact exists." *Id.* However, speculation and mere allegations are not material facts. *Hlubek v. Pelecky*, 701 N.W.2d 93, 95-96 (Iowa 2005) (citations omitted).

In ruling on a motion for summary judgment, the facts must be viewed in the light most favorable to the non-moving party. *Id.* Thus, the court considers "on behalf of the nonmoving

party every legitimate inference that can be reasonably deduced from the record." *Phillips v. Covenant Clinic*, 625 N.W.2d 714, 718 (Iowa 2001) (citations omitted). "An inference is legitimate if it is 'rational, reasonable, and otherwise permissible under the governing substantive law.'" *Smith v. Shagnasty's Inc.*, 688 N.W.2d 67, 71 (Iowa 2004) (quoting *McIlravy*, 653 N.W.2d at 328). But an inference based on "speculation or conjecture" is not to be indulged. *Id.*

2. Analysis:

The crux of this case is the meaning of Iowa Code § 400.11(2)(b). That section provides:

> Except where the preferred list exists, persons on the certified eligible list for promotion shall hold preference for promotion for two year following the date of certification, except for certified eligible lists of fire fighters as defined in section 411.1, subsection 10, which lists shall hold preference for three years upon approval of the commission, after which the lists shall be canceled and promotion to the grade shall not be made until a new list has been certified eligible for promotion.

Both sides agree this case hinges on the court's interpretation of the phrase "upon approval of the commission" as used in Iowa Code § 400.11(2)(b). Based on the undisputed facts, if the court finds this statute provides for fire fighter promotional lists to be used for two years, Reyes' case fails. If the court finds this statute provides for fire fighter promotional lists to be used for three years, there is a question of fact whether Reyes should have been promoted to the position of Firefighter/Engineer in August of 2011.

Rules of statutory construction are to be applied only when the explicit terms of a statute are ambiguous *Marcus v. Young,* 538 N.W.2d 285, 289 (Iowa 1995). Precise, unambiguous language will be given its plain and rational meaning in light of the subject matter. *Id.*

The ultimate goal of statutory construction is to give effect to the intent of the legislature. *Citizens' Aide/Ombudsman v. Miller,* 543 N.W.2d 899, 902 (Iowa 1996). A court should not, under the guise of construction, enlarge or otherwise change the terms of the statute as the legislature adopted it. *Marcus,* 538 N.W.2d at 289. A court should not construe a statute in a way that would produce impractical or absurd results. *United Fire & Cas. Co. v. Acker,* 541

N.W.2d 517, 518 (Iowa 1995). Finally, a court should not speculate as to the probable legislative intent apart from the wording used in the statute. *State v. Haberer,* 532 .w.2D 757, 759 (Iowa 1995).

A statute is ambiguous if reasonable people could disagree as to its meaning. *IBP, Inc. v. Harker,* 633 N.W.2d 322, 325 (Iowa 2001). Ambiguity may arise in two ways: (1) from the meaning of particular words; or (2) from the general scope and meaning of a statute when all its provisions are examined. *Id.* "Even ... a statute appear[ing] unambiguous on its ... face can be rendered ambiguous by its interaction with and its relation to other statutes." 2A Norman J. Singer & J.D. Shambie Singer, *Statutes and Statutory Construction* § 46.4, at 185 (7th ed.2007).

The plain language of Iowa Code § 400.11(2)(b) is unambiguous. The phrase "upon approval of the commission" can only be logically read to refer to the commission actually approving a three-year period of preference for fire fighters instead of a two-year preference period. That is the only interpretation that can give this phrase any meaning. As Defendants pointed out in their reply, if the legislature wanted this statute to mean fire fighter certified lists were automatically valid for three years, they could have left out this phrase entirely. The commission does not need to approve a certified list, that approval took place when the list was certified by the commission. This court must give effect to the intent of the legislature and cannot construe the statute to produce an impractical result, which is what would be required to find any other meaning for this phrase. *See Carolan,* 553 N.W.2d at 887.

The case of *Burds v. City of Dubuque,* 771 N.W.2d 653, 2009 WL 1492533 (Iowa Ct. App. 2009) (unpublished) supports this court's conclusion. In *Burds,* the commission certified a promotion list for fire department lieutenant on July 8, 2005 that erroneously contained two additional names so a new list was certified later on March 17, 2006. *Id.* at *1. The plaintiff was highest ranked on the list. *Id.* A new lieutenant position, effective July 1, 2007, came open; however, that position was not filled before the July 8, 2005 list expired. *Id.* As a result, a new

test was administered and a new list certified on October 11, 2007. *Id.* Burds did not take the exam and was not on the October list. *Id.*

Burds filed an action arguing the City should be required to fill the new position from the lists in effect on July 1. *Id.* at *2. The court held the July 8, 2005 list was not properly certified and so the March 2006 list had to be used. *Id.* at *3. Despite the fact the specific question of whether a two-year or a three-year preference period was required was not at issue, it is of particular note that all of the fire fighter certified lists in *Burds* were for a two-year period, not a three-year period. Most importantly for this discussion, if the court were to interpret Iowa Code § 400.11(2)(b) to mean fire fighter certified lists are automatically three years, the *Burds* case would never have been filed because either of the two previous lists would have been effective for three years during which time the new lieutenant position.

However, even if the phrase "upon approval of the commission" could be construed to be ambiguous, other rules of statutory construction compel the same conclusion. If a statute is ambiguous, the court, in determining the intention of the legislature, may consider among other matters: (1) the object sought to be attained, (2) the circumstances under which the statute was enacted, (3) the legislative history, (4) the common law or former statutory provisions, including laws upon the same or similar subjects, (5) the consequences of a particular construction, (6) the administrative construction of the statute, [and] (7) the preamble or statement of policy. *See* Iowa Code § 4.6. The court is required to interpret the language fairly and sensibly in accordance with the plain meaning of the words used by the legislature. *City of Des Moines v. Civil Serv. Comm'n,* 540 N.W.2d 52, 57 (Iowa 1995).

Reyes argues the phrase "upon approval of the commission" means approval of the promotion list itself and not the three-year preference duration. Reyes' argument would require the court to ignore Iowa Code § 400.11(1)(a) and (2)(a), which provide time limits in which the commission must certify a promotional list to the city council after the examination. Reyes'

argument also ignores the words used in § 400.11(2)(b) where it states ". . . persons on the certified eligible list for promotion shall hold ***preference*** for promotion. . ." (Emphasis added). The promotional list is certified by the commission. Preference to the individuals on these certified lists is then given for two years or three years ***upon approval of the commission***. In other words, fire fighters may have an extra year of preference if that extra year has been approved by the commission.

Reyes' additional argument is that the May 8, 2013 Davenport Fire Chief Memorandum, which stated the HR Director felt the two-year certified list was not consistent with § 400.11(2)(b) and that a three-year period should be used, contradicts Defendant's interpretation of the Code. Reyes argues Defendants are bound by the "admission" of previously violating Iowa Code § 400.11(2)(b) and this is legal estoppel. This court disagrees for the reasons already stated in this Ruling. For the court to interpret this statute as Reyes' urges, it would have to ignore the rules of statutory construction and find the phrase "upon the approval of the commission" to be superfluous, which it simply cannot do. Moreover, there is no legal estoppel here. The court is not bound by an internal policy interpretation; but must make its ruling based on the law.

This court's decision on the meaning of Iowa Code § 400.11(2)(b) is a legal question and its Ruling decides this case as a matter of law. Reyes' Petition must be dismissed.

RULING

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that Defendants' Motion for Summary Judgment is GRANTED and Plaintiff's Counter Motion for Summary Judgment is DENIED. Plaintiff's Petition for Writ of Mandamus and Declaratory Judgment is dismissed. Costs, if any, are assessed to Plaintiff.

State of Iowa Courts

Type: OTHER ORDER

Case Number	**Case Title**
CVCV124540	REYES JOSEPH VS CITY OF DAVENPORT

So Ordered

Marlita A. Greve, Chief District Judge,
Seventh Judicial District of Iowa