

PERFECTING A RECORD FOR
JUDICIAL REVIEW
GODING V. CSC, 192 WN. APP.
270 (2015)

September 13, 2016

Presented by:

John R. Zeldenrust, Sr. DPA, KCPAO

CIVIL SERVICE PROVISIONS

RCW Chpt. 41.12 - Civil Service for City Police

RCW 41.12.090 - Procedure for removal,
suspension, demotion or discharge –
Investigation – Hearing – Appeal.

RCW Chpt. 41.14 - Civil Service for Sheriff's Office

RCW 41.14.120 - Removal, suspension, demotion,
or discharge – Procedure – Appeal.

RCW 41.14.120 – Key Provisions

- ❑ Covers persons in classified civil service
- ❑ Protects them from being removed, suspended, demoted or discharged, except for cause
- ❑ Affected employee may file written demand for investigation (appeal) to CSC within 10 days of decision
- ❑ CSC must set public hearing within 10 days of receipt of demand; hearing must occur within 30 days of receipt

RCW 41.14.120 – Key Provisions (cont.)

- ❑ Investigation/hearing limited to whether action was in good faith for cause
- ❑ Following hearing, CSC must issue written decision within 10 days; findings of CSC shall be certified
- ❑ Employee may appeal decision to Superior Court within 30 days of entry of order
- ❑ Superior Court determines appeal in a “summary manner”

RCW 41.14.120 – Key Provisions (cont.)

- ❑ Superior Court review limited to whether CSC's decision was or was not made in good faith for cause
- ❑ Standard of review is whether CSC's decision is arbitrary, capricious, or contrary to law
- ❑ Employee or Employer may appeal to Court of Appeals

CSC Hearing vs. Other Remedies

- ❑ Why might an employee choose a CSC remedy as opposed to a CBA remedy or a civil lawsuit?

Benefits of CSC

- ❑ Speed – entire process under RCW 41.14.120 designed to be completed in 60 days
- ❑ Cost – theoretically, the CSC route should be cheaper
- ❑ Formality – rules somewhat more relaxed in CSC context
- ❑ Statutory right of appeal

CSC Hearing v. Civil Lawsuit

Cons of CSC remedy

- ▣ May be less thorough (limited discovery)
- ▣ May foreclose other remedies (estoppel)
- ▣ Very limited judicial review (as opposed to civil lawsuit)
- ▣ No jury trial (as opposed to civil lawsuit)
- ▣ “For Cause” v. “Just Cause” (under CBA)
- ▣ Others?

GODING v. KCSO

General Issue

Did the Superior Court apply the incorrect standard of judicial review in reversing the CSC's determination that the Sheriff's discipline of a deputy was in good faith for cause?

GODING v. KCSO (cont.)

Factual Summary

- ❑ Friction develops between jail staff and KCSO transport personnel – disputes over rules, policies, practices
- ❑ KCSO directs its deputies to follow jail directives unless unsafe or illegal
- ❑ Deputy Goding issued written reprimand for failing to complete Superform paperwork (Superform Incident)

GODING v. KCSO (cont.)

- ❑ Goding refuses to restrain detainee when escorting him out of the jail – expresses concern that restraining detainee would be illegal (Handcuffing Incident)
- ❑ KCSO finds Goding insubordinate in Handcuffing Incident. Based on Superform incident and handcuffing incident (progressive discipline), KCSO suspends Goding for one day and transfers him to patrol

GODING v. KCSO (cont.)

- ❑ Goding appeals to CSC, which upholds discipline
- ❑ Goding appeals to superior court, which reverses
- ❑ KCSO appeals to Court of Appeals
- ❑ Court of Appeals reverses superior court and reinstates CSC decision
- ❑ What went wrong at the Superior Court?

GODING – LEGAL PRINCIPLES

- ❑ Judicial review of CSC decisions “severely limited”
- ❑ Review limited to whether employee was given proper notice and an opportunity to be heard, and whether competent evidence supports the charge
- ❑ Crucial question is whether there is (substantial?) evidence to support the CSC’s decision
- ❑ COA reviews the CSC’s record, not the record or decision of the superior court

GODING – LEGAL PRINCIPLES (cont.)

- ❑ The courts exercise independent judgment to determine whether the CSC acted arbitrarily, capriciously, or contrary to law
- ❑ CSC decision is not arbitrary or capricious simply because a reviewing court may have decided the issue differently
- ❑ Reviewing court cannot substitute its decision for the independent judgment of the CSC

CLOSING THOUGHTS – STANDARD OF REVIEW

- ❑ Procedural considerations – follow rules, provide notice, opportunity to be heard, *Loudermill* if appropriate
- ❑ If discipline is progressive, say so
- ❑ Ensure proper report of proceedings – electronic recording or court reporter
- ❑ Sworn witnesses
- ❑ Accurate exhibits
- ❑ Form of CSC decision – how does it look?

THANK YOU

YOU'VE BEEN A WONDERFUL AUDIENCE

Biographical Information
John R. Zeldenrust

John R. Zeldenrust graduated cum laude from the University of Puget Sound School of Law in 1990, where he was an Associate Editor of the Law Review. From 1990 to 1994, he served as a Judicial Clerk to the Honorable Jack P. Scholfield in Division One of the State Court of Appeals. He then spent three years in private practice at Lee, Smart, Cook, Martin & Patterson emphasizing appellate practice and insurance defense litigation. In 1997, he became an Assistant Attorney General with the Labor & Industries Division of the state Attorney General's Office, where he focused on workers' compensation law. Since 2000, he has been with the King County Prosecuting Attorney's Office, first as a Deputy and then as a Senior Deputy. He is currently in the Litigation Section of the Civil Division, and has also served in the Employment and County Services Sections. His practice emphasizes general appellate practice and litigation.