IN THE

ARIZONA COURT OF APPEALS

DIVISION ONE

BRANDON BAEUERLEN, *Appellee*,

v.

ARIZONA STATE PARKS AND TRAILS DEPARTMENT, *Appellant*.

No. 1 CA-CV 21-0182
FILED 3-1-2022

Appeal from the Superior Court in Maricopa County
No. LC2020-000128-001
The Honorable Daniel J. Kiley, Judge

REVERSED AND REMANDED

COUNSEL

Arizona Attorney General's Office, Phoenix
By Kirstin A. Story
Counsel for Appellant

Yen Pilch Robaina & Kresin PLC, Phoenix
By Thomas Griffin
Counsel for Appellee

OPINION

Judge Samuel A. Thumma delivered the opinion of the Court, in which Chief Judge Kent E. Cattani and Judge Maurice Portley joined.[1]

T H U M M A, Judge:

¶1 The Arizona State Parks & Trails Department (Department) terminated Park Ranger Brandon Baeuerlen after he harassed a female co-worker he supervised. Baeuerlen appealed his termination to the Arizona Law Enforcement Merit System Council (Council). After an evidentiary hearing, the Council found "just cause" to discipline Baeuerlen but also recommended the termination be reduced to a demotion.

¶2 The Department's Director adopted the Council's just cause finding, rejected the recommended demotion and upheld the termination. Baeuerlen appealed to the superior court, which reversed and remanded for the Department to again review the Council's recommendation. The Department then filed this appeal.

¶3 Because the Council found that the Department had just cause to impose discipline on Baeuerlen, the Council lacked authority to recommend lesser discipline than that imposed by the Department. Accordingly, the superior court's order is reversed, and this matter is remanded for entry of judgment affirming Baeuerlen's termination.

FACTS AND PROCEDURAL HISTORY

¶4 In July 2019, after an administrative inquiry, the Department's Director notified Baeuerlen he was being charged with misconduct in the workplace spanning many months. The notice stated the Department was considering disciplinary action, including termination, and allowed Baeuerlen to respond. Baeuerlen responded, admitting some charges but disputing others.

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[1] The Honorable Maurice Portley, Retired Judge of the Court of Appeals, Division One, has been authorized to sit in this matter pursuant to Article 6, Section 3, of the Arizona Constitution.

¶5 After considering Baeuerlen's response, the Department's Director dismissed Baeuerlen later in July 2019. The termination letter specified reasons for his firing, which included pressuring a subordinate employee to go on dates; inappropriate acts with the subordinate employee at work; disobeying directives that he not discuss inquiries by supervisors with the subordinate employee and improperly staffing the park so that he would be alone with the subordinate employee. The letter noted Baeuerlen's conduct violated applicable Standards of Conduct. *See* Ariz. Admin. Code (A.A.C.) R2-5A-501(2022).[2]

¶6 Baeuerlen timely appealed his termination to the Council. *See* Ariz. Rev. Stat. (A.R.S.) § 41-1830.16. The Council held an evidentiary hearing, where the Department had the burden of proof to show that just cause existed for disciplinary action. A.R.S. §§ 38-1106(G) & (K). The Council then issued an order[3] making the following findings:

> 1. Based on the evidence presented, the Council finds that the Department had just cause to impose discipline on Appellant Baeuerlen.
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> 2. The Council recommends to the Department's Director that the discipline imposed be reduced from termination to a demotion to an appropriate lower level position.
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> 3. The Council recommends to the Department's Director that Appellant Baeuerlen be reinstated to the earliest available opening in the Department in the lesser position to which he is being demoted, if the Director accepts the Council's recommendation to reduce the level of discipline from termination to demotion, provided however that no incumbent employee should be displaced in

[2] Absent material revisions after the relevant dates, statutes and rules cited refer to the current version unless otherwise indicated.

[3] Although the order referenced A.R.S. § 41-1830.12 rather than A.R.S. § 41-1830.16, the parties concede that was a typographical error.

> order to accommodate Appellant's reinstatement.
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> 4. The Council further recommends to the Department's Director that Appellant should receive no retroactive compensation for the period from his termination to the date of his reinstatement to the lesser position to which he is being demoted, if the Director accepts the Council's recommendation to reduce the level of discipline from termination to demotion.

¶7 The Department timely objected to the order, arguing to the Department's Director that the Council lacked authority to recommend demotion rather than termination because it found the Department had just cause to discipline Baeuerlen. Baeuerlen asked the Department's Director to accept the Council's demotion recommendation, arguing that failing to do so would be contrary to law. In a Final Decision, the Department's Director "concur[red]" with the Council's finding "that the Department had just cause for disciplinary action," adding that "[s]erious violations of Department Policy, as well as the Standards of Conduct for State Employees, were material facts established by the evidence of record, and those facts fully support the personnel action chosen by the Department." The Final Decision rejected the demotion recommendation and terminated Baeuerlen, reasoning that termination "was not arbitrary or capricious, and is supported by a preponderance of evidence presented at the hearing." The Final Decision added the Director "has the authority to reject [Council] recommendations and does so in this case."

¶8 Baeuerlen timely appealed the Final Decision to the superior court. After full briefing, the superior court reversed the Final Decision, concluding the Department's Director applied an incorrect legal standard in deciding whether to accept the Council's demotion recommendation. This Court has jurisdiction over the Department's timely appeal of the superior court's decision pursuant to Article 6, Section 9, of the Arizona Constitution, A.R.S. §§ 12-913, -120.21(A)(1) and -2101(A)(1) and Ariz. R. Jud. Rev. Admin. Dec. 13(a).

DISCUSSION

¶9 The Department argues that, because the Council determined the Department had "just cause" to impose discipline, it lacked statutory authority to recommend demotion. *See* A.R.S. § 41-1830.16. This court reviews de novo the superior court's decision reversing the Director's Final Decision. *Ariz. Com. Diving Servs., Inc. v. Applied Diving Servs., Inc.*, 212 Ariz. 208, 211 ¶ 7 (App. 2006).

¶10 The first issue the Council must resolve in considering an appeal from the imposition of employee discipline is whether the agency has shown "just cause" to discipline the employee. A.R.S. § 41-1830.16(C)(1) (Council "[s]hall determine whether the employing agency has proven by a preponderance of the evidence that the employing agency had just cause to discipline the employee.") "Just cause" in this context has the same meaning as prescribed in A.R.S. §§ 38-1101, et seq. *See* A.R.S. § 41-1830.16(H)(5). That portion of Title 38 includes the "peace officers bill of rights," A.R.S. § 38-1102, and contains a detailed "just cause" definition.

¶11 As relevant here, "just cause" includes that "[t]he disciplinary action is reasonably related to the standards of conduct for a professional law enforcement officer, the mission of the agency, the orderly, efficient or safe operation of the agency or the officer's fitness for duty;" "[t]he discipline is supported by a preponderance of evidence that the conduct occurred" and "[t]he discipline is not excessive and is reasonably related to the seriousness of the offense and the officer's service record." A.R.S. §§ 38-1101(7)(B), (C) & (D). Thus, a finding of "just cause" includes ***both*** a finding that conduct supporting discipline was shown by a preponderance of the evidence ***and*** that the discipline imposed is not excessive.

¶12 If the Council finds the agency has not shown just cause, it may make one of two rulings. If it "finds that just cause did not exist for ***any discipline*** to be imposed," the Council "[s]hall reverse the decision of the state agency head." A.R.S. § 41-1830.16(C)(3) (emphasis added). Alternatively, the Council "[m]ay recommend modification of a disciplinary action if the state agency head has not proven by a preponderance of the evidence that the employing agency had just cause to discipline the employee." A.R.S. § 41-1830.16(C)(2).[4] The agency head then

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[4] *See also* A.R.S. § 41-1830.16(D) ("On a finding that the state agency head has not proven just cause to discipline the employee by a preponderance of the evidence, the council may recommend a proposed disciplinary action in light of the facts proven.").

must accept the Council's statutorily authorized recommendation "unless the recommendation is arbitrary or without reasonable justification" and, in that circumstance, "shall state the reasons for rejecting the recommendation." A.R.S. § 41-1830.16(E).

¶13 Here, the Council found "the Department had just cause to impose discipline," A.R.S. § 41-1830.16(C)(1), but then recommended demotion rather than termination. After finding the Department had "just cause" to discipline Baeuerlen, however, the Council had no authority to recommend a lesser sanction; that option is available only if the Council first finds an agency has not shown just cause to impose discipline. *See* A.R.S. § 41-1830.16(C)(2) (Council may "recommend modification of a disciplinary action ***if***" the agency "has not proven by a preponderance of the evidence" that the agency "had just cause to discipline the employee.") (emphasis added). In short, after the Council found the Department had shown just cause to discipline Baeuerlen, the Council lacked the authority to recommend that the Department demote Baeuerlen rather than terminating him.

¶14 Baeuerlen argues that while the Council found "just cause" to impose discipline, it "did not find just cause to terminate" him. A finding of "just cause," however, includes a finding that "[t]he discipline is supported by a preponderance of evidence that the conduct occurred" and "is not excessive and is reasonably related to the seriousness of the offense and the officer's service record." A.R.S. §§ 38-1101(7)(C) & (D). The Council could recommend modified discipline as contemplated under the statute only if it found the Department lacked just cause to discipline Baeuerlen. A.R.S. § 41-1830.16(C)(2). Because the Council found that the Department had just cause to discipline Baeuerlen, that option does not apply.

¶15 In substance, Baeuerlen argues that (C)(1) should be read to address whether there is a basis to impose any discipline, while (C)(2) should be read to address whether the discipline imposed was proper. Although the Legislature could have written the statute in that fashion, it did not. And "the best and most reliable index of a statute's meaning is the plain text of the statute." *State v. Christian*, 205 Ariz. 64, 66 ¶ 6 (2003). If the plain language of a statute is clear and unambiguous, it is given effect without resort to other statutory construction principles. *See, e.g.*, *Home Builders Ass'n v. City of Scottsdale*, 187 Ariz. 479, 483 (1997); *Poulson v. Ofack*, 220 Ariz. 294, 297 ¶ 8 (App. 2009); *Martinez v. Indus. Comm'n*, 175 Ariz. 319,

321 (App. 1993). Here (C)(2) would have applied only if the Council had found the agency failed to show just cause under (C)(1).[5]

¶16 The Council found just cause for Baeuerlen's discipline under (C)(1). Once it made that finding, the Council lacked any statutory authority to make binding recommendations on the Department under (C)(2). Thus, the Department's Director was not obligated to accept the demotion recommendation and could reject it regardless of whether the recommendation was "arbitrary or without reasonable justification." A.R.S. § 41-1830.16(E). Recognizing the Council lacked the power to make a binding recommendation once it had found just cause, the Department's Director did not err in rejecting the Council's demotion recommendation.

CONCLUSION

¶17 The judgment is reversed, and this matter is remanded for entry of judgment affirming the decision of the Department's Director to dismiss Baeuerlen for cause. Baeuerlen's request for attorneys' fees pursuant to A.R.S. § 12-348(A)(2) is denied.

AMY M. WOOD • Clerk of the Court
FILED: AA

[5] Nor does Baeuerlen's reliance on A.R.S. § 38-1106(J)(5) alter the analysis. That statute lists retroactive compensation options for "[a] law enforcement officer who prevails in an appeal where a termination has been reversed." A.R.S. § 38-1106(J); *see also* A.R.S. § 38-1101(A) ("'Appeal' means a hearing before a state or local merit board, a civil service board, an administrative law judge or a hearing officer."). Because there was no such reversal here, A.R.S. § 38-1106(J) does not apply.