

SUPREME COURT OF NEBRASKA

Hauser v. Nebraska Police Standards Advisory Council, 269 Neb. 541

694 N.W.2d 171 (2005) · No. S-03-1386 · Decided March 25, 2005

SUMMARY

The Nebraska Supreme Court affirmed the district court’s decision upholding the revocation of Steven J. Hauser’s law enforcement certificate. The court held that the State Patrol’s internal codes of conduct and ethics and Hauser’s oath of office could guide the determination of whether he neglected his duties, even though they were not promulgated under the Administrative Procedure Act. The court also concluded that clear and convincing evidence supported revocation based on Hauser’s repeated domestic violence and declined to consider his due process and retroactivity arguments because they had not been presented to the administrative agencies or adequately addressed by the district court.

CASE DETAILS

COURT	Supreme Court of Nebraska
WRITING FOR THE COURT	Wright, J.; Hendry, C.J.; Connolly, J.; Gerrard, J.; Stephan, J.; McCormack, J.; Miller-Lerman, J.
JURISDICTION	Nebraska
DECIDED	March 25, 2005
DOCKET	S-03-1386
DISPOSITION	affirmed
PROCEDURAL POSTURE	Hauser appealed under the Nebraska Administrative Procedure Act from the Hall County District Court's judgment affirming the Commission's revocation of his law enforcement certificate.
STANDARD OF REVIEW	Under the Administrative Procedure Act, the appellate court reviews the district court's judgment for errors appearing on the record. The inquiry is whether the decision conforms to the law, is supported by competent evidence, and is not arbitrary, capricious, or unreasonable. Whether the decision conforms to the law is reviewed independently as a question of law.
PRECEDENTIAL VALUE	Published precedential opinion of the Supreme Court of Nebraska.
PARTIES	Steven J. Hauser v. Nebraska Police Standards Advisory Council, Nebraska Commission on Law Enforcement and Criminal Justice

TOPICS

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QUESTIONS PRESENTED

1. Whether the State Patrol's internal codes of conduct and ethics and Hauser's oath of office could be considered in determining whether he neglected his duties under Neb. Rev. Stat. § 81-1403(5), even though those materials were not promulgated under the Administrative Procedure Act.
2. Whether competent and clear and convincing evidence established statutory grounds for revocation of Hauser's law enforcement certificate.
3. Whether Hauser's off-duty domestic violence could constitute neglect of duty under § 81-1403(5).
4. Whether Hauser's due process and retroactivity arguments concerning the Attorney General's participation and 2000 Neb. Laws, L.B. 994, were preserved for appellate review.

HOLDINGS

1. An agency and reviewing court may consider an agency's internal codes of conduct and ethics and an officer's oath of office as guides for determining whether statutory grounds such as neglect of duty have been violated, even when those materials were not promulgated under the Administrative Procedure Act, so long as they are not used themselves to prescribe the penalty.
2. The evidence established statutory grounds to revoke Hauser's law enforcement certificate because his repeated assaultive conduct toward his wife constituted neglect of duty under § 81-1403(5), and the conduct could be considered even though most of it occurred while he was off duty.
3. The district court's decision affirming the certificate revocation was properly affirmed because it conformed to the law, was supported by competent evidence, and was not arbitrary, capricious, or unreasonable.
4. The court declined to consider Hauser's due process and retroactivity arguments because they were not presented to or passed upon by the agency and district court.

KEY QUOTATIONS

“One cannot continually engage in a pattern of assaultive behavior toward one's spouse and not be in violation of § 81-1403(5), which justifies the revocation of one's law enforcement certificate.” (694 N.W.2d at 179)

FACTUAL BACKGROUND

Hauser was a Nebraska state trooper and held a Nebraska law enforcement certificate. During 1998, he repeatedly physically and mentally abused his wife, including assaulting and restraining her, and on one occasion denied physical contact when questioned by police. After an administrative complaint and hearing, the Council and Commission concluded that his conduct constituted neglect of duty and revoked his certificate. The district court upheld the revocation on remand.

PROCEDURAL HISTORY

The Nebraska Police Standards Advisory Council found that Hauser had physically abused his wife and lied to an investigating officer, and it ordered revocation of his law enforcement certificate. The Commission approved the revocation. The district court initially reversed, but the Nebraska Supreme Court reversed that judgment in an earlier appeal and remanded. On remand, the district court found clear and convincing evidence of neglect of duty and affirmed the revocation. Hauser appealed, and the Nebraska Supreme Court affirmed.

DISPOSITION

affirmed

CASES CITED

- Lein v. Nesbitt, 269 Neb. 109, 690 N.W.2d 799 (2005)
- Hauser v. Nebraska Police Standards Advisory Council, 264 Neb. 605, 650 N.W.2d 760 (2002)
- McAllister v. Nebraska Department of Correctional Services, 253 Neb. 910, 573 N.W.2d 143 (1998)
- Scott v. State ex rel. Board of Nursing, 196 Neb. 681, 244 N.W.2d 683 (1976)
- Kansas State Board of Healing Arts v. Foote, 200 Kan. 447, 436 P.2d 828 (1968)
- In re Complaint Against Jones, 255 Neb. 1, 581 N.W.2d 876 (1998)
- State v. Wilen, 4 Neb. App. 132, 539 N.W.2d 650 (1995)
- In re Appeal of Bonnett, 216 Neb. 587, 344 N.W.2d 657 (1984)
- Richardson v. City of Omaha, 214 Neb. 97, 333 N.W.2d 656 (1983)
- Langvardt v. Horton, 254 Neb. 878, 581 N.W.2d 60 (1998)
- Scurlocke v. Hansen, 268 Neb. 548, 684 N.W.2d 565 (2004)