IN THE COURT OF APPEALS OF TENNESSEE
AT Nashville
March 7, 2007 Session

THE METROPOLITAN GOVERNMENT OF NASHVILLE AND DAVIDSON COUNTY, TENNESSEE v. METROPOLITAN EMPLOYEE BENEFIT BOARD, ET AL.

Direct Appeal from the Chancery Court for Davidson County
No. 05-1443-11 Carol L. McCoy, Chancellor

No. M2006-00720-COA-R3-CV - Filed on June 22, 2007

In this administrative appeal, the Metropolitan Government of Nashville and Davidson County (Metro) challenges the lower court's affirmance of a grant of "in line of duty" (IOD) benefits to a park ranger. The award of IOD benefits required the park ranger's hypertension to have been caused by his work conditions and ultimately depended upon the applicability of the Tennessee Heart and Hypertension Act (the Act) to the park ranger's case. The pertinent section of the Act establishes a rebuttable presumption of causation for law enforcement officers suffering disability, illness, or death from heart disease or hypertension. Throughout the proceedings, including this appeal, Metro has contended that the Act does not apply to the park ranger because he is not employed by the Metro Police Department as required by the statute. The lower court ruled that, for purposes of the Act, the park ranger met this requirement because his commission as a special policeman remained under the control of the Metro Police Department and because his job duties and training were equivalent to those of Metro police officers. We affirm.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Chancery Court Affirmed; and Remanded

DAVID R. FARMER, J., delivered the opinion of the court, in which ALAN E. HIGHERS, J., joined. W. FRANK CRAWFORD, P.J., W.S., not participating.

Karl F. Dean, James L. Charles, James W. J. Farrar and Laura T. Kidwell, Nashville, Tennessee, for the appellant, The Metropolitan Government of Nashville and Davidson County, Tennessee.

C. Dewey Branstetter, Jr., and Mark A. Mayhew, Nashville, Tennessee, for the appellees, Metropolitan Employee Benefit Board and Aubrey Clay Whitworth.

OPINION

Officer Aubrey Clay Whitworth (Officer Whitworth), a park ranger with the Department of Parks and Recreation of the Metropolitan Government of Nashville and Davidson County (Metro), sought "in line of duty" (IOD) benefits for expenses related to his hypertension under section 13.12 of the Charter of the Metropolitan Government of Nashville and Davidson County (Metro Charter).[1] Pursuant to that section, Metro would pay Officer Whitworth's medical expenses related to on the job injuries. On July 22, 2003, and on July 12, 2004, respectively, Officer Whitworth filed occupational injury reports that identified on the job stress as the cause of his hypertension. In requesting IOD benefits, he relied upon the Tennessee Heart and Hypertension Act (the Act), which would establish a causal link between his job duties and the diagnosis of hypertension. The codified Act provides, in pertinent part, as follows:

> (a)(1) Whenever the state of Tennessee, or any municipal corporation or other political subdivision of the state that maintains a regular law enforcement department manned by regular and full-time employees and has established or hereafter establishes any form of compensation to be paid to such law enforcement officers for any condition or impairment of health that results in loss of life or personal injury in the line of duty or course of employment, there shall be and there is hereby established a presumption that any impairment of health of such law enforcement officers caused by hypertension or heart disease resulting in hospitalization, medical treatment or any disability, shall be presumed, unless the contrary be shown by competent medical evidence, to have occurred or to be due to accidental injury suffered in the course of employment . . . . Such law enforcement officer shall have successfully passed a physical examination prior to such claimed disability, or upon entering governmental employment and such examination fails to reveal any evidence of the condition of hypertension or heart disease.

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[1] Any employee of the metropolitan government entitled to benefits under any benefit plan established for the metropolitan government, who is injured by accident arising out of and in the course of his employment, shall be entitled to emergency treatment at the nearest of most available doctor's office, hospital or clinic, at the expense of the metropolitan government. Any further treatment, in addition to the emergency treatment herein provided for, shall be furnished the employee free of charge by doctors, nurses, etc., in the employment of board of hospitals. In the event it is determined that specialized treatment not available at a metropolitan hospital should be made available to such employee, then the same shall be made available at the nearest point or place where such specialized treatment is available, which treatment shall be paid for by the metropolitan government.

Metro. Gov't of Nashville and Davidson County, Tenn., Charter § 13.12.

Tenn. Code Ann. § 7-51-201(a)(1)(2005).[2]

The Metropolitan Board of Parks and Recreation denied both requests due to the Metropolitan Department of Law's determination that the Act did not apply to park rangers because their employer, the Department of Parks and Recreation, was not a "regular law enforcement department." Officer Whitworth sought review of the denial before the Metropolitan Employee Benefit Board (Benefit Board) and appeared before it on February 1, 2005. The Benefit Board's vote on the matter resulted in a tie.

Pursuant to the Benefit Board's by-laws, the In Line of Duty (IOD) Committee then considered the dispute. The IOD Committee recommended that the Board make the presumption available to sworn police officers[3] who are employed by the Department of Parks and Recreation and who perform law enforcement duties. It also recommended that the Benefit Board apply the presumption to Officer Whitworth and grant his request for IOD status.

At the hearings, Metro called no witnesses and proffered no evidence. Officer Whitworth, on the other hand, provided evidence of the near-equivalent job descriptions of park rangers and police officers; a letter from the Tennessee Peace Officer Standards and Training (POST) Commission stating that the Commission "considers the Metro Nashville Park Police [to be] a separate law enforcement entity from the Metro Nashville Police Department" and that the park rangers are required to comply with POST certification standards for law enforcement officers; and the text of a 2003 Metro ordinance including special police employed by the Department of Parks and Recreation within the definition of "policeman" for inclusion in the police and fire pension plan.

Following the Benefit Board's approval of the IOD Committee's recommendations on April 5, 2005, Metro asserted a legal error had been made and requested that the Board reconsider the issue. The Board declined to reconsider the issue, and Metro then filed a petition for a writ of certiorari in the Chancery Court of Davidson County.

On March 1, 2006, the chancellor upheld the action of the Benefit Board:

> [Metro Park Rangers] are law enforcement officers of a municipality, Nashville, that has a regular law enforcement department, the Metro Police Department. The Department is manned by regular and full-time employees, both Metro Police Officers and special police. Park Rangers are special police with the functional job equivalency of Metro Police Officers. They are required to provide police

[2] Although the events in this case arose before this most recent publication date of the Act, we nevertheless cite to this version, as no material changes to the text have occurred in the intervening period.

[3] The sworn law enforcement positions within the Department of Parks and Recreation included Park Ranger I, Park Ranger II, Park Ranger Sergeant, and Park Ranger Lieutenant. Officer Whitworth occupied the position of Park Ranger II.

> protection to the parks, playgrounds and other recreational areas, to adhere to the rules and regulations of the Metro Police Department, albeit in a specified jurisdictional area, and the Metro Police Chief has authority to terminate them.
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> . . . .
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> To require that Metro Park Rangers be nominal employees of the Metro Police Department before they can be eligible for coverage places form over substance. From Metro's inception, its Charter created an intentional overlap between the Metro Police Department and police protection for its parks and playgrounds. It established that special police, Metro Park Rangers, would be placed within its Parks and Recreation Department. These special police are linked inextricably to the Metro Police Department by job designation, job duties, job training, police department rules and regulations, and accountability to the Metro Police Chief. Given the remedial purpose of the statute, the law enforcement duties performed by Park Rangers and the language of the Metro Charter, the Benefit Board did not act in excess of its authority, nor did it act illegally, arbitrarily or fraudulently.

Metro then filed its timely notice of appeal.

On appeal, Metro concedes that Officer Whitworth qualifies as a law enforcement officer as contemplated by the Act and that Officer Whitworth would otherwise qualify for IOD status if the presumption applied to his case. Its challenge to the application of the presumption rests upon the identity of Officer Whitworth's employer. Metro contends that a benefits applicant must be employed by a "regular law enforcement department" to be eligible for the presumption and that the Metro Police Department is the only "regular law enforcement department" subject to the Act in this case; therefore, because the Metro Police Department does not employ Officer Whitworth, Metro argues, the Act does not apply. Officer Whitworth, on the other hand, argues that the Act allows for more than one "regular law enforcement department" and that the force of park rangers employed by the Board of Parks and Recreation constitute another "regular law enforcement department" subject to the Act.

Issues Presented and Standard of Review

The parties first dispute how to frame the main issue on appeal, which in turn impacts the standard of review. Metro casts the issue, as slightly restated, as follows:

> Whether the heart and hypertension presumption provided by Tennessee Code Annotated Section 7-51-201 applies to a Metropolitan Government park ranger who is not employed by the regular law enforcement department of the Metropolitan Government.

Officer Whitworth, on the other hand, frames the issue in the following manner:

> Whether the trial court erred in holding that "given the remedial purpose of the statute, the law enforcement duties performed by Park Rangers and the language of the Metro Charter, the [Metropolitan Employee] Benefit Board did not act in excess of its authority, nor did it act illegally, arbitrarily or fraudulently."

Officer Whitworth raises the additional issue of frivolous appeal.

Metro concludes that because there are no disputed facts in this case, our review is *de novo* with no presumption of correctness. Officer Whitworth asserts that this Court must review the Benefit Board's decision under the more limited scope of the common law writ of certiorari, as described in *McCallen v. City of Memphis*. According to that case,

> [j]udicial review of administrative determinations . . . is limited in scope. The . . . extent of a judicial review . . . is narrow. As a general rule [local governmental bodies are] clothed with broad discretionary powers, the decision . . . will not be disturbed or set aside by a reviewing court unless [it] is arbitrary, or capricious, [an abuse of discretion, or clearly erroneous.]

McCallen v. City of Memphis, 786 S.W.2d 633, 641 (Tenn. 1990).

Metro filed its petition pursuant to Tennessee Code Annotated Section 27-8-101, the embodiment of the common law writ of certiorari. In her final order, the chancellor reiterated the standard of review under the common law writ of certiorari and implied that the court's review proceeded accordingly. She then identified the issue as solely a question of law, requiring her to interpret Tennessee Code Annotated Section 7-51-201(a)(1).

Judicial review of an administrative adjudication like this no longer proceeds under the common law writ of certiorari. Tennessee Code Annotated Section 27-9-114 provides that Uniform Administrative Procedures Act (UAPA) standards[4] govern the review of civil service

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[4]Subsection (h) of Tennessee Code Annotated Section 4-5-322 specifies the UAPA scope of judicial review as follows:

> (h) The court may affirm the decision of the agency or remand the case for further proceedings. The court may reverse or modify the decision if the rights of the petitioner have been prejudiced because the administrative findings, inferences, conclusions or decisions are:
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> (1) In violation of constitutional or statutory provisions;
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> (2) In excess of the statutory authority of the agency;
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> (3) Made upon unlawful procedure;
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> (4) Arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion; or
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> (5)(A) Unsupported by evidence which is both substantial and material in light of the entire

(continued...)

board decisions affecting the employment status of civil servants. Tenn. Code Ann. § 27-9-114(b)(1) (2000); *Tidwell v. City of Memphis*, 193 S.W.3d 555, 559 (Tenn. 2006). So long as the decision is a result of a proceeding before a "civil service board" and affects the "employment status" of a civil service employee, it comes within the scope of Tennessee Code Annotated Section 27-9-114(b)(1) and is subject to review under the UAPA provisions for contested case appeals. Tenn. Code Ann. § 27-9-114(b)(1); *cf. Tidwell*, 193 S.W.3d at 559 (stating these threshold requirements for Tenn. Code Ann. § 27-9-114(a)(1)). If Tennessee Code Annotated Section 27-9-114 did not apply to the Benefit Board's decision, the standards under the common law writ of certiorari would still govern our review of it. *Tidwell*, 193 S.W.3d at 559. We conclude, however, that the common law writ of certiorari no longer applies in this type of case.

The recent Tennessee Supreme Court case of *Tidwell v. City of Memphis* places the Benefit Board's decision squarely within the scope of Section 27-9-114 and, accordingly, under the UAPA standard of review. In that case, the court reviewed the proceedings of an on the job injury appeals panel similar to the Benefit Board. *See Tidwell*, 193 S.W.3d at 557–58. Like the Benefit Board, the panel in *Tidwell* reviewed decisions related to claims for benefits and lacked the specific designation of "civil service board." *Id.* The court held that decisions affecting "employment status" encompassed the entire legal relation between employer and employee, not just disciplinary action or terminations of employment. *See id.* at 563. Additionally, the court rejected the notion that Section 27-9-114 applied only to entities with the formal title of "civil service board." *Id.* at 562. Rather, it held that a panel sitting in an adjudicative capacity to review administrative grants or denials of employee benefits is the functional equivalent of a "civil service board." *See id.* at 562–63. For the purposes of Section 27-9-114, the Benefit Board functioned as a "civil service board" and rendered a decision that affected Officer Whitworth's "employment status." Thus, the UAPA provisions of Section 4-5-322(h) govern the judicial review of the Benefit Board's action.

Officer Whitworth contends that the Benefit Board's determination deserves the utmost deference on appeal because the Metro Charter vests ultimate authority and sole discretion in the Board to interpret Metro's benefit plan and to decide whether to grant or deny benefits under it. This argument would carry more force if the Board had interpreted the benefit plan itself to include this presumption. But the record clearly reveals that the Benefit Board was interpreting the Act, a state statute, and determining whether it applied to park rangers in general and to Officer Whitworth in particular. The Metro Charter does not, nor could it, vest ultimate authority in the Benefit Board to interpret the Act and thereby bind this Court. We see no other

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[4](...continued)
record.

(B) In determining the substantiality of evidence, the court shall take into account whatever fairly detracts from its weight, but the court shall not substitute its judgment for that of the agency as to the weight of the evidence on questions of fact.

Tenn.Code Ann. § 4-5-322(h) (2005).

justifications for judicial deference in this case, and to accord such deference would erode appellate review of administrative proceedings.

The pivotal issue on appeal involves the Benefit Board's interpretation of the Act. Statutory interpretation presents a question of law that this Court reviews under a *de novo* standard with no presumption of correctness. *Tidwell v. City of Memphis,* 193 S.W.3d 555, 559 (Tenn. 2006)(classifying statutory interpretation as a question of law). Accordingly, we independently construe this provision, without deference to the interpretations rendered by the Benefit Board or the Chancery Court. *See id.*; *McNiel v. Cooper*, No. M2005-01206-COA-R3-CV, 2007 WL 969407, at *3 (Tenn. Ct. App. Mar. 13, 2007). Importantly, a *de novo* review in this case comports with the UAPA standard allowing for reversal where the administrative tribunal's decision violates statutory provisions. *See* Tenn. Code Ann. § 4-5-322(h)(1) (2005).

When interpreting statutes, this Court seeks to give effect to the intent and purpose of the legislature and to preserve the statute's intended scope. *See Sanders v. Traver*, 109 S.W.3d 282, 284 (Tenn. 2003)(citing *State v. Walls*, 62 S.W.3d 119, 121 (Tenn. 2001)). To ascertain the legislature's intent, we begin with the statutory text and focus on the natural and ordinary meaning of the language within the context of the entire statute. *Calaway v. Schucker*, 193 S.W.3d 509, 513 (Tenn. 2005).

We therefore restate the issues on appeal and address them in turn:

(1) Whether Tennessee Code Annotated Section 7-51-201(a)(1) applies to Officer Whitworth, a park ranger for the Department of Parks and Recreation of Metropolitan Nashville and Davidson County; and

(2) Whether Metro's appeal in this matter is frivolous.

Analysis

Tennessee Code Annotated Section 7-51-201(a)(1)

Metro contends that because the Board of Parks and Recreation, and not the Metro Police Department, employs Officer Whitworth, the presumption established by the Act cannot apply to his case. It asserts that the Act extends only to law enforcement officers employed by a "regular law enforcement department." Although it concedes Officer Whitworth is a law enforcement officer, Metro argues that his claim fails by virtue of his employer's identity. Officer Whitworth, on the other hand, argues that the Act allows for more than one "regular law enforcement department;" that the force of park rangers constitutes another "regular law enforcement department" subject to the Act*;* and that he is therefore entitled to the presumption.

As noted above, the only dispute on appeal involves the Act's employment requirement. If Officer Whitworth prevails on this point, then the presumption will apply to his case and will

secure the IOD benefits he has requested. Accordingly, we must consider Officer Whitworth's employment by Metro and whether its terms satisfy the requirements of the Act.

We begin with the text of the statute and note that there is no explicit requirement that an applicant be employed by a "regular law enforcement department":

> Whenever the state of Tennessee, or any municipal corporation or other political subdivision of the state . . . maintains a regular law enforcement department manned by regular and full-time employees and has established [a benefit plan for] such law enforcement officers for [death or injuries sustained in the line of duty], [there is a rebuttable presumption of causation]. . . .

Tenn. Code Ann. § 7-51-201(a)(1)(2005). Rather, the references to employment and to a regular law enforcement department plainly delineate between political entities (such as municipalities) that are subject to the Act and those that are not.

The statute clearly requires the law enforcement officer to be an employee of the political entity subject to the Act.[5] It is obvious that Metro must employ Officer Whitworth. But the statutory language also requires a connection, albeit undefined, between the law enforcement department and the law enforcement officer-applicant. First, the legislature's use of the word "such" in "such law enforcement officers" refers the reader back to the previous text pertaining to the law enforcement department. Moreover, common sense dictates that a law enforcement officer be linked in some manner to a regular law enforcement department.

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[5] Indicia other than the statutory text suggest that employment by the political entity (rather than the law enforcement department) is sufficient in itself so long as the applicant is a "law enforcement officer." The caption of the 1970 enactment (pertaining to law enforcement personnel) provided that the Act made the presumption available to "all law enforcement officers regularly employed by the State of Tennessee, any county, city, municipal, or other governmental agency in the State of Tennessee." 1970 Tenn. Pub. Acts 699. Additionally, in the 1995 case of *Wingert v. Government of Sumner County*, the Tennessee Supreme Court restated the Act's prerequisites in similar fashion by noting that the Act established a presumption of causation to benefit police officers who suffered from heart disease or hypertension, "if . . . employed by a covered employer, such as [the county]." *Wingert v. Gov't of Sumner County,* 908 S.W.2d 921, 922 (Tenn. 1995).

Moreover, a recent amendment to Title 7, Chapter 51, Part 2 of the Tennessee Code likewise supports this conclusion even though it pertains to death benefits for officers killed in the line of duty; became effective subsequent to the events of this case; and is therefore inapplicable here. It defines "law enforcement officer" for the section awarding compensation to the estate of an officer who is killed in the line of duty:

> "Law enforcement officer" means the sheriff, sheriff's deputies, or any police officer *employed by a municipality or political subdivision of the state of Tennessee* whose primary responsibility is the prevention and detection of crime and the apprehension of offenders.

2006 Tenn. Pub. Acts 2326–27 (codified at Tenn. Code Ann. 7-51-208 (Supp. 2006))(emphasis added).

Notwithstanding these points, the principle of stare decisis constrains our decision within the bounds established by Tennessee Supreme Court, which has most often interpreted the Act as requiring an applicant to be employed by a "regular law enforcement department."

The Tennessee Supreme Court has interpreted this provision as setting forth three prerequisites for the presumption to apply: the law enforcement officer (1) must be employed by a regular law enforcement department, (2) must have suffered a disability resulting from hypertension or heart disease, and, (3) prior to the injury or to employment with the government, must have successfully passed a physical examination that fails to reveal existing heart disease or hypertension. *Bohanan v. City of Knoxville*, 136 S.W.3d 621, 625 (Tenn. 2004); *Krick v. City of Lawrenceburg*, 945 S.W.2d 709, 712 (Tenn. 1997); *Stone v. City of McMinnville*, 896 S.W.2d 548, 550 (Tenn. 1995); *Perry v. City of Knoxville*, 826 S.W.2d 114, 115 (Tenn. 1991); *Bacon v. Sevier County*, 808 S.W.2d 46, 48 (Tenn. 1991); *City of Oak Ridge v. Campbell*, 511 S.W.2d 686, 688 (Tenn. 1974); *Burress v. Shelby County*, 74 S.W.3d 844, 846 (Tenn. Ct. App. 2001). *But see Wingert*, 908 S.W.2d at 922 ("The claimant relies on [the Act], which creates a rebuttable presumption that a police officer such as Mr. Wingert, who suffers injury or death because of hypertension or heart disease, is entitled to workers' compensation benefits, *if he is employed by a covered employer, such as Sumner County*." (emphasis added)). We can find little guidance on the question of employment because the bulk of case law involves undisputed employees of regular law enforcement departments and most often focuses on whether the governmental entity has rebutted the presumption of causation. *See, e.g., Bohanan*, 136 S.W.3d 621 (Tenn. 2004); *Krick*, 945 S.W.2d 709 (Tenn. 1997); *Stone*, 896 S.W.2d 548 (Tenn. 1995); *Perry*, 826 S.W.2d 114 (Tenn. 1991); *Campbell*, 511 S.W.2d 686 (Tenn. 1974); *Burress*, 74 S.W.3d 844 (Tenn. Ct. App. 2001). *But see Bacon*, 808 S.W.2d at 48–49 (declining to apply the presumption where bailiff was not a law enforcement officer employed by a regular law enforcement department). And, as discussed below, although the case of *Bacon v. Sevier County* addressed whether the Act extended to a bailiff employed by the clerk and master and chancellor, it fails to resolve the more narrow issue presented here. Acknowledging the requirement that Officer Whitworth must have been employed by a regular law enforcement department, we will first determine whether the Department of Parks and Recreation, his nominal employer, meets the requirement.

Whether the Department of Parks and Recreation Maintains a Regular Law Enforcement Department

As a preliminary matter, we must respond to Officer Whitworth's contention that park rangers constitute a separate "regular law enforcement department" for purposes of the Act. We do not perceive the class of park rangers to be a standalone, "regular law enforcement department" for several reasons. The primary reason is that the Metro Charter does not delegate to the Department of Parks and Recreation the authority to maintain a regular law enforcement department. Rather, it empowers the Board of Parks and Recreation to hire commissioned, special policemen as custodial personnel. Metro. Gov't of Nashville and Davidson County, Tenn., Charter § 11.1005. The term "custodial"[6] does not minimize the authority of the park rangers. It merely describes their function, to maintain control over and supervise all activity in the park, and also underscores the Board's role as nominal employer of the park rangers.

[6]Webster's dictionary defines "custodial" as "relating to guardianship" and "custodian" as "one that guards and protects or maintains." *Webster's Ninth New Collegiate Dictionary* 318 (1991).

Although the Board's decision to hire park rangers for police protection of the parks requires the police chief to appoint them as special police officers,[7] the chief retains the power to revoke their commissions at any time (with the mayor's approval) and to dictate the rules and regulations by which the rangers must abide as special police.[8] The authority to hire employees clothed with police power is not tantamount to maintaining a law enforcement department, particularly when control over their performance as special police resides elsewhere. Indeed, the Metro Charter vests the Metro Police Department with all police power and law enforcement authority held by the metropolitan government.

> The department of the metropolitan police shall be responsible within the area of the metropolitan government for the preservation of the public peace, prevention and detection of crime, apprehension of criminals, protection of personal and property rights and enforcement of laws of the State of Tennessee and ordinances of the metropolitan government. The director and other members of the metropolitan police force shall be vested with all the power and authority belonging to the office of constable by the common law and also with all the power, authority and duties which by statute may now or hereafter be provided for police and law enforcement officers of counties and cities.

Metro. Gov't of Nashville and Davidson County, Tenn., Charter § 8.202. In this case, although the statutory text of the Act does not explicitly limit any given political subdivision of the state to

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[7] Whereas the police chief generally has discretion in deciding whether or not to appoint an individual to a commissioned position with the special police, Section 11.1005 of the Metro Charter removes that discretion. It provides that the Board of Parks and Recreation

> may employ custodial personnel *who shall be designated as special police by the chief of police*, without obligation to give a public officer's liability bond as provided for by section 8.205 of this Charter, and whose jurisdiction as special police shall be limited to the area of parks, playgrounds and other recreational areas. This section shall not be deemed to interfere with the right of the department of police to exercise police jurisdiction within said areas, nor with the duty to provide such police personnel as may be reasonably requested by the director of parks and recreation for the maintenance of law and order therein.

Metro. Gov't of Nashville and Davidson County, Tenn., Charter § 11.1005 (emphasis added).

[8]

> The chief of police may appoint, in his discretion and upon the application of any individual, firm or corporation showing the necessity thereof, one or more special policemen, to be paid by the applicant, who shall have the powers and duties of policemen while in or on the premises of such applicant or in the actual performance of the duties for which employed. *Special policemen shall be subject to the rules and regulations of the department of metropolitan police and their appointments shall be revocable at any time by the chief of police with the approval of the mayor.*

Metro. Gov't of Nashville and Davidson County, Tenn., Charter § 8.205 (emphasis added).

one "regular law enforcement department," we view the Metro Police Department as the only one pertinent to this case because the Metro Charter delegates all police power vested in the metropolitan government to it. In contrast, the Metro Charter delegates to the Board of Parks and Recreation only the power to hire special police as custodial personnel charged with protecting Metro parks and playgrounds.

Even though the POST Commission letter submitted by Officer Whitworth states that it considers the park rangers to constitute a separate law enforcement department, the POST Commission regulates the training standards for law enforcement officers throughout the state. *See* Tenn. Code Ann. § 38-8-104 (2006). Its perception of the park ranger division, technically, does not bear upon the issue of whether the division is a "regular law enforcement department" under the Act. It appears from the letter that the POST Commission arrives at this conclusion because park rangers are law enforcement officers. We decline to adopt this logic in interpreting the Act. We do find, however, that the letter strongly supports the uncontested fact that Officer Whitworth is indeed a "law enforcement officer" whose job responsibilities and police authority require that he be trained and held to the same standards as Metro police officers.

Officer Whitworth also cites the unreported case of *Metropolitan Airport Authority & William Harkins v. Metropolitan Government of Nashville and Davidson County*, Davidson Equity (Tenn. Ct. App. 1978), to support his contention that there can be more than one "regular law enforcement department" for a particular jurisdiction.[9] Indeed, he contends that there are at least three (3) in the Metro area: the Metro Police Department, the Park Police (the force of park rangers at issue), and the Metro Airport safety and security section. We need not reach this issue and, in any event, find the *Harkins* case to be inapplicable here. In that case, the issue was whether certain employees of the Metro Nashville Airport Authority (MNAA) qualified for the presumption under the Act.[10] Metro argued that the Metro Police Department was the only "regular law enforcement department" at issue and that the presumption could not apply to the MNAA employees because they were not employed by the Metro Police Department. *Harkins*, slip op., at 3, 7. In *Harkins*, this Court likewise never reached the issue of whether a given political entity could maintain more than one "regular law enforcement department" as contemplated by the Act. *Id.* at 7. The Act applied to MNAA employees because the MNAA was a separate political subdivision of the State of Tennessee: it was a political entity independent of Metro Nashville and was empowered to establish its own fire and police departments. *Id.* The MNAA law enforcement department and the Metro Police Department were separate police forces serving independent, covered entities. *Id.* In this case, Metro is the

[9] Officer Whitworth also relies upon this Court's emphasis upon the employees' job duties and responsibilities in reaching its conclusion. Our reading of the case reveals that the court's consideration of the employees' job duties pertained more to the question of whether the security specialists were law enforcement officers than to the issue of whether the Airport Authority maintained a regular law enforcement department. Here, Metro concedes that Officer Whitworth is a law enforcement officer.

[10] In *Harkins*, this Court considered the predecessor of the current codification of the Act, Tenn Code Ann. § 6-639. Since that time, there have been no material changes to the text that is germane to our analysis.

only covered entity in question, and the Department of Parks and Recreation and the Metro Police Department, unlike the MNAA security division and Metro Police Department in *Harkins*, are components of the same political entity, the Metro government.

Because the Department of Parks and Recreation neither constitutes nor maintains a "regular law enforcement department," we need not reach the issue of whether the Act contemplates more than one "regular law enforcement department" for a given political subdivision of the state. The Metro Police Department is the only one germane to this case. We therefore turn to the question of whether the Act extends to Metro employees who are commissioned special police but not nominal employees of the Metro Police Department.

Whether the Act Extends to a Metro Employee Who is a Commissioned Special Policeman But Not a Nominal Employee of the Metro Police Department

Metro's argument hinges on the fact that Officer Whitworth is not a nominal employee of the Metro Police Department. In essence, the chancellor found that Officer Whitworth was employed by the Metro Police Department for the purposes of the Act due to his inextricable link to it. Indeed, the chancellor emphasized the indicia of employment attributable to the Metro Police Department and, alternatively, to the Department of Parks and Recreation. We similarly find the following dichotomy to be crucial to our decision: although the Board of Parks and Recreation hired Officer Whitworth and is his employer in name, the Metro Police Department still maintains control over his performance of duties as a special policeman. Importantly, Officer Whitworth's authority as a special policeman is essential to his position as a park ranger.

Metro concedes that Officer Whitworth is a law enforcement officer by virtue of his job responsibilities, which are equivalent to those of a Metro police officer. His primary job duties are to "[l]ead[] and perform[]crime prevention and law enforcement duties throughout the Metropolitan Park System." Officer Whitworth serves the needs of his nominal employer, the Board of Parks and Recreation, and exercises his police authority within the limited jurisdiction of Metro parks and playgrounds. We conclude, however, that for purposes of the Act, Officer Whitworth is "employed" by the Metro Police Department for three reasons. First, the Metro Charter provides that the special police force is a component of the Metro Police Department. Second, the Metro Police Department (through the chief of police) maintains control over Officer Whitworth's discharge of duties as a special policeman. And, third, this conclusion is consistent with the purpose of the Act.

Officer Whitworth is able to perform his core job duties only by virtue of his commission as a special policeman, a post that is, according to the Metro Charter, a component of the Metro Police Department. The Metro Charter delegates all police power to the Metro Police Department and provides, by way of ordinance, that the Metro Police Department embraces the special police force within its structure. The Metro Charter states that "there shall be a department of metropolitan police, which shall consist of . . . such other officers and employees of such ranks and grades as may be established by ordinance." Metro. Gov't of

Nashville and Davidson County, Tenn., Charter § 8.201. And, the Metro Code echoes this statement, defining the composition of the Metro Police Department: "[t]here is established a department of metropolitan police, which shall consist of a director thereof, who is designated chief of police, and such other officers and *employees of such ranks and grades as are established by this article*." Nashville and Davidson County, Tenn., Code § 2.44.010 (emphasis added). Within that article of the Code is a provision for special police commissions. Nashville and Davidson County, Tenn., Code § 2.44.090.

Furthermore, as already noted, Officer Whitworth is accountable to the police chief of the Metro Police Department. He obtains his police authority only by appointment through the police chief. Moreover, he must comply with the rules and regulations established by the chief, can have his commission revoked at any time by the chief (with the mayor's approval), and must comply with the training and annual in-service requirements set by the chief. We perceive the element of control to be determinative in this case where the object of the control (the exercise of police power) constitutes the most essential requirement of fulfilling the duties of this park ranger position.

Finally, this conclusion is consistent with the intended scope of the Act. The chancellor stated that to require Officer Whitworth to be a nominal employee of the police department would elevate form over substance. We agree. As the court noted in *Harkins*, "[t]he apparent legislative intent is to protect those [who] enforce the laws . . . from a disadvantage in attempting to prove medical causation of a job-related disability or death." *Harkins v. Metro. Gov't of Nashville and Davidson County*, Davidson Equity, slip op. at 6, (Tenn. 1978). Stressful and hazardous situations are expected work conditions for a law enforcement officer, and common sense suggests that the regular exposure of law enforcement personnel to such environments propels this remedial legislation. Officer Whitworth, a civil servant in the employ of Metro, is vested with police power and charged with the primary duty of preventing and detecting crime and enforcing all applicable laws. His police authority and responsibilities subject him to the environment contemplated by the Act. To deny Officer Whitworth the access to this presumption, we believe, would contravene the purpose of the Act, which seeks to protect civil servants whose jobs involve this very type of stress. Where the material aspects of a park ranger's job duties and authority rest upon a commission as a special policeman; where the Metro Charter provides that the force of commissioned special police is a component of the Metro Police Department; and where control over the training, rules and regulations, and continued commission of the park ranger as a special policeman resides in the Metro Police Department, that park ranger is "employed" by the Metro Police Department for purposes of the Act. Nominal employment by the Metro Police Department is not required for the presumption to apply to Officer Whitworth.

Having rendered our decision regarding the scope of the Act, we are compelled to respond to two points raised by Metro before addressing Officer Whitworth's allegations of frivolous appeal. First, Metro cites the *Bacon* case as controlling authority. In *Bacon*, the Tennessee Supreme Court considered whether a bailiff/process server who was employed by the

clerk and master and chancellor came within the scope of the Act. *Bacon v. Sevier County*, 808 S.W.2d 46, 48–49 (Tenn. 1991). After reciting the prerequisites of the Act, the court stated that, at the time the bailiff became disabled, the Act did not define "law enforcement officer." *Id.* at 48. It later concluded that the bailiff was not a "law enforcement officer employed by a regular law enforcement department manned by full-time employees." *Id*. The court supported this conclusion by reciting the following factors: the bailiff was not an employee of the sheriff's department, did not wear a uniform, had no formal police training, and operated in a non-criminal context. *Id.* at 48–49. Although the court relied on the fact that the bailiff was not employed by the sheriff's department in this case, there is no indication that this single fact proved determinative. Rather, the facts of that case are readily distinguishable from those before us, and the mere fact of employment by the clerk and master and chancellor, to us, appears to be one factor among several that support the court's conclusion. Unlike Officer Whitworth, the bailiff was neither hired to prevent and detect crime nor required to meet rigorous police training and certification standards. *Id.* Because of this broad factual support for the court's conclusion, we decline to treat one of the many relevant facts in *Bacon* as controlling in this case.

Metro also cites subsection (a)(2) of the Act as support for its argument that, had the General Assembly intended park rangers to be included within the scope of the statute (as an exception to the "law enforcement department" rule), it would have listed them in that subsection, which provides, in pertinent part, as follows:

> [f]or purposes of this subsection (a), "law enforcement officer" includes correctional security job classification employees of the departments of correction and children's services, and full-time county law enforcement officers.

Tenn. Code Ann. § 7-51-201(a)(2) (2005). Metro fails to account, however, for the statutory language that includes security officers from the various state agencies within the definition of "law enforcement officer." The subsection makes no mention of those officers' employers. Instead, it focuses on whether the employee is a law enforcement officer rather than on who employs the officer. *See id.*

We acknowledge the conceptual overlap between a law enforcement officer and a law enforcement department. Because the Tennessee Supreme Court's interpretation of the Act's prerequisites treats them separately, we have endeavored to approach this dispute in a similar fashion. Accordingly, in our opinion, subsection (a)(2) of the Act pertains only to the definition of "law enforcement officer" and does nothing to advance Metro's argument, especially in light of its concession that Officer Whitworth is a "law enforcement officer." We now turn to the issue of frivolous appeal.

Frivolous Appeal

Officer Whitworth also alleges that Metro has prosecuted a frivolous appeal and asks this Court to award him attorney's fees and court costs. We decline to do so. He contends that

Metro's argument requires a willful misreading of the statute; that it is absurd to state that cities or counties only have one "regular law enforcement department;" and that Metro urges this Court to repudiate its holding in the *Harkins* case. Although the statute does not state "the" regular law enforcement department (signaling one per jurisdiction), we have determined that the Metropolitan Police Department is the only "regular law enforcement department" pertinent to this case. Moreover, we have determined that, while similar to the case at bar, *Harkins* is not on point.

A frivolous appeal is one that is devoid of merit. *Indus. Dev. Bd. of the City of Tullahoma v. Hancock*, 901 S.W.2d 382, 385 (Tenn. Ct. App. 1995). Given the Tennessee Supreme Court's interpretation of the prerequisites set forth in Tennessee Code Annotated Section 7-51-201(a)(1), Metro's arguments do not appear to be devoid of merit; rather, they raise questions never directly addressed by the courts of this state. Accordingly, we decline Officer Whitworth's request for damages to compensate for a frivolous appeal.

For the foregoing reasons, we affirm the judgment of the court below. Costs of this appeal are taxed to the Metropolitan Government of Nashville and Davidson County, Tennessee, for which execution shall issue if necessary.

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DAVID R. FARMER, JUDGE