IN THE CHANCERY COURT FOR MONTGOMERY COUNTY, TENNESSEE AT CLARKSVILLE

STEPHEN SHERLOCK, Plaintiff,	)	
	)	Docket No.: MC CH CV AA 08-3
vs.	)	
The CITY OF CLARKSVILLE, TENNESSEE, And MAYOR JOHN "JOHNNY" PIPER, and MICHAEL ROBERTS, WILLIAM MCNUTT, TIMOTHY HARVEY, AND JOHN STANLEY, In their Individual and as Officials of the CITY OF CLARKSVILLE, TENNESSEE, Defendants.	)	A TRUE COPY ATTEST FILED 7-6 2009 TED A. CROZIER, JR., C & M

PETITIONER'S BRIEF IN SUPPORT OF STANDARDS OF CERTIORARI REVIEWTO BE APPLIED IN THIS CAUSE

Comes now the Petitioner, Stephen Sherlock by and through his attorney of record, Peter M. Napolitano and submits this Brief in Support of the standards of review to be applied by this Honorable Court to the Certiorari review of the Petition pursuant to the Court's order of June 26, 2009.

I. OVERVIEW OF THE FACTS AND PETITION

At a hearing held before the Court on June 26, 2009, this Honorable Court consented to review this Petition for Certiorari review and will issue a Writ of Certiorari upon presentment by Petitioner's counsel. The Court further ordered and now requests only for the parties to brief the issue as to the standards of review to be applied to its review as sought in the Petition.

The Petitioner timely filed his Petition seeking a Writ of Certiorari and this Honorable Court's review of the Respondent City of Clarksville Mayor's decision and other officials acting as a board, tribunal or officer(s) to bring about the unlawful termination and then unilaterally overturn the majority decision of a three member disciplinary tribunal which considered the termination of the Petitioner, a veteran City of Clarksville Firefighter for his alleged violation of the City's Code of Ethics policy. The

details of the matter are detailed specifically in the Petition and the Court is respectfully directed to a review of the Petition for the relevant facts.

Basically, the Petitioner alleges that a de facto committee or tribunal comprised of the then acting City attorney, Timothy Harvey, the Fire/Rescue Department Chief, Michael Roberts, and the City's then Director of Personnel, William McNutt, acted pursuant to the City Code disciplinary procedures and process to bring about the termination of the Petitioner. This is one of the two "boards," "tribunals" or "Committee's" which actions and omissions are alleged were in violation of the Petitioner's due process rights and unlawfully brought about his unlawful termination by: (1) violating Petitioner's constitutional and statutory rights; (2) were in excess of statutory provisions; (3) involved unlawful procedures; (4) were arbitrary and capricious; and (5) unsupported by material evidence.

The second challenge and perhaps the more crucial action sought for review to the unlawful termination of Petitioner is alleged against Mayor John Piper for his unilateral decision to over-turn and/or override the majority decision of the three member disciplinary tribunal which voted to not sustain the termination after a hearing. Petitioner alleges and the record will show that Mayor Piper's actions were (1) in violation of the Petitioner's constitutional and/or statutory rights; in excess of the Mayor's authority and related statutory provisions pertaining thereto; involved unlawful procedure and animus; were arbitrary and capricious; and were unsupported by material evidence. The Court may view Mayor Piper's actions individually or as an extension of the three member disciplinary tribunal's decision and functions.

As this Court correctly stated at the hearing on June 26, 2009, regardless of the statute that the Petition applied to seek certiorari review, the standards and criteria of review are the same whether brought under either TCA § 27-8-101 or § 27-9-101. Accordingly, since both or either provide for statutory writs of certiorari, the rules and standards of "common law certiorari" apply. The statutes are merely the vehicles through which the underlying matter for review is brought before the Court for issuance of the Writ of Certiorari. (See case analysis and support below).

Both statutes result in the same process if the Court grants and issues the requested Writ, as it has decided to do in this case, ie., order the inferior tribunal, board

or officer file with the Court, a certified record of the proceedings below for the Court's review.

Since it is somewhat unclear which (or all) of the entities' actions will be reviewed by the Court, ie. the de facto "committee" comprised of the acting city attorney, personnel director and Department Chief, or the extended three member disciplinary tribunal including Mayor Piper, or Mayor Piper acting as an individual officer, the petitioner will agree that TCA §27-8-101 should apply since it encompasses the actions of tribunals, boards, or officers and the same standards of review shall apply.

II. STANDARDS AND CRITERIA TO BE APPLIED TO CERTIORARI REVIEW IN THIS ACTION

Based upon consistent decisions of the Tennessee Supreme Court and Courts of Appeal, when reviewing the administrative agency or officer's decision, the Court shall apply the procedures and standards of review of "common law certiorari", specifically whether the agency has:

A)- Acted in violation of constitutional or statutory provisions;

B)- Acted in excess of its own statutory authority; or

C)- Has followed unlawful procedure; or

D)- Been guilty of arbitrary, or capricious action; or

E)- Has acted without material evidence to support its decision.

In ***Tidwell et. al. v. City of Memphis, unpublished, NO. W2004-00024-COAR3-CV (TN 12/28/2004) (TN.2004) (copy attached),*** the Court of Appeals addressed the application of standards of certiorari review to be applied pursuant to TCA §§ 27-8-101 and 102, under a statutory writ of certiorari and summarized as follows:

> ***"...Generally, under common law certiorari, the scope of review is limited to the record to determine as a question of law whether there is material evidence to support the agency's findings. However, new evidence is admissible on the issue of whether the administrative***

body exceeded its jurisdiction or acted illegally, capriciously, or arbitrarily..." (id. Pg 4).

The Court specified and clarified further:

Thus, the trial court may reverse or modify the action of the administrative agency when that agency "acted in violation of constitutional or statutory provisions or in excess of its own statutory authority; has followed unlawful procedure or been guilty of arbitrary or capricious action; or has acted without material evidence to support its decision"...Id

The Petitioner has alleged and strongly purports that the record and conduct of the entire proceedings, acts and omissions of the respondent(s) will fit squarely into each and every one of the standards of review in this case.

The Court of Appeals in ***Tidwell*** not only reiterates the long applied standards of review for certiorari but also points out that under such review this Court is not limited to the record to be produced but "...***may consider new evidence on the issue of whether the administrative body exceeded its jurisdiction or acted capriciously or arbitrarily..."(id. @ pg. 4)***

Thus, as the Petition alleges and as will be presented in petitioner's subsequent memorandum of law and reference to the record and hearing transcript in support thereof, additional and new evidence of Mayor Piper's actions will further evidence the unlawful, capricious and arbitrary nature of his and other official's actions in this matter. Equally and perhaps more important to the issues is the fact that the Mayor specifically lacks the authority to take the action he did since his power derives from the city charter, not the city code. There is no such power or authority in the City Charter for the Mayor to take such unilateral action despite such provision in the code.

Most recently, the Tennessee Supreme Court cited and by inference upheld ***Tidwell*** in ***Derek Davis v. Shelby County Sherriff's Department, 278 S.W. 3d 256 (Tenn. 2009), entered February 20, 2009 (copy attached).*** In Davis, the Supreme Court was confronted with an appeal from the Tennessee Court of Appeals

which challenged the decision of the Shelby County Chancery Court on the issue of its application of the standards in reviewing a petition for certiorari review by a terminated police officer.

Although the Davis case focused primarily on the correct standards to be applied to the decisions of a civil service commission/board under the Uniform Administrative Procedure Act, the Court reiterated by contrast that the appropriate standard of review of an administrative decision of an inferior board or tribunal (not civil service status) as set down in ***Tidwell***, stating:

> ***"...the Court's review ...is limited to whether the inferior board or tribunal exceeded its jurisdiction or acted illegally, arbitrarily, or fraudulently...This standard of review has been defined as (review under the common law writ of certiorari)..." Tidwell @ 559-60.***

The Court elaborated further:

> ***"...Under the common law writ of certiorari review, a board's determination is arbitrary and void if it is unsupported by any material evidence..." citing Watts v. Civil Serv. Bd. For Columbia, 606 S.W. 2d 274, 276-77 (Tenn. 1980).(Davis @ pg 4).***

Lastly, the Tennessee Court of Appeals at Nashville again made clear the standards and criteria to be applied in judicial review of an action by an administrative body, specifically referencing **TCA §27-8-101** in ***Demonbreun v. Metropolitan Board of Zoning Appeals, 206 S.W. 3d 42 (Tenn. App. 2005, stating:***

> ***"...Judicial review of an action by an administrative body is by way of the common law writ of certiorari. See Tenn. Code Ann. § 27-8-101 (2000);...In such a review, the action of the administrative body may be reversed or modified only upon a determination that the action was: (1) in violation of constitutional or statutory provisions; (2) in excess of statutory authority; (3) an unlawful procedure; (4) is***

arbitrary or capricious; or (5) unsupported by material evidence...id @pg. 3 (copy attached).

Based upon the foregoing, Petitioner respectfully prays this Honorable Court:

1. Apply the standards of review established above in reviewing the actions and decision of Mayor Piper and the three member de facto tribunal or board composed pursuant to the City's code and comprised of then acting city attorney Timothy Harvey, Fire/Rescue Department Chief Michael Roberts and then, now former City Personnel Department Director William McNutt;
2. Permit the parties by a date certain to submit additional briefs or memoranda of law and references to the underlying hearing transcript and other related evidentiary documents produced as part of the certified official record pursuant to the Court's issued Writ of Certiorari;
3. Order or direct any further, general or different action(s) to be taken to facilitate a timely review in this case;

Respectfully submitted,

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Certificate of Service

I hereby certify that a copy of this brief has been served by hand delivery on this the 6th day of July, 2009 to the following:

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Unpublished Opinion

ROY L. TIDWELL, ET AL.
v.
CITY OF MEMPHIS.

No. W2004-00024-COA-R3-CV.

Court of Appeals of Tennessee, at Jackson.

September 23, 2004 Session.

Filed December 28, 2004.

Direct Appeal from the Chancery Court for Shelby County; No. CH-01-2221-1; Walter L. Evans, Chancellor.

Judgment of the Chancery Court Reversed.

Sam L. Crain, Jr., Memphis, TN, for Appellant

Timothy Taylor, Memphis, TN, for Appellee Roy L. Tidwell

Mark Allen, Memphis, TN, for Appellees Richard Coggins, et al.

Alan E. Highers, J., delivered the opinion of the court, in which W. Frank Crawford, P.J., W.S., and Holly M. Kirby, J., joined.

OPINION

ALAN E. HIGHERS, Judge.

The City of Memphis promulgated an On-the-Job Injury Program to handle claims filed by city employees seeking benefits for on-the-job injuries. Thirteen firefighters and one police officer filed applications for benefits with the city. When the city denied the applications, the employees filed appeals to the On-the-Job Injury Appeals Panel which affirmed the city's denial of benefits. Each employee appealed the panel's determination to the Chancery Court of Shelby County by filing a Petition for Writ of Certiorari seeking review under a statutory writ of certiorari or, in the alternative, a common law writ of certiorari. The

chancellor reversed the panel's decision and held that, pursuant to section 27-9-114 of the Tennessee Code, proceedings before the panel are subject to the contested case procedures set forth in the Tennessee Uniform Administrative Procedures Act. In addition, the chancellor held that, pursuant to section 27-9-114 of the Tennessee Code, judicial review of the panel's decision is neither by common law or statutory writ, but review must be conducted in accordance with section 4-5-322 of the Tennessee Code. The city appealed the chancery court's ruling to this Court arguing that the chancellor erred in applying section 27-9-114 of the Tennessee Code to the panel. We reverse the chancery court's ruling.

Facts and Procedural History

The Appellees (hereinafter "the Appellees" or "the Employees") consist of thirteen firefighters currently or previously employed with the City of Memphis Fire Services Division and one police officer employed with the City of Memphis Police Department (hereinafter collectively referred to as "the City"). During the course of their employment with the City, each Employee was diagnosed with an illness or disease each Employee claimed was caused by his or her employment with the City. The City has elected to not be subject to the Tennessee Workers' Compensation Law pursuant to section 50-6-106(5) of the Tennessee Code.[1] Instead, the City, pursuant to its personnel manual, established an On the Job Injury ("OJI") Program setting forth the policies and procedures governing application for OJI b(enefits, an employee's entitlement to OJI benefits, and appeals of the City's denial of OJI benefits.

Each Employee at issue filed an application for OJI benefits with the City.[2] All of the claims but two were filed pursuant to section 7-51-201 of the Tennessee Code, known as the Tennessee Heart and Lung Act.[3] The City has adopted a special procedure for dealing with OJI claims for benefits filed by law enforcement officers and firefighters under this statute. Pursuant to the City's OJI policy, the City's Risk Manager, upon receiving an employee's application for benefits, is tasked with the responsibility of compiling the employee's medical history for a period of ten years preceding the application date, results of the pre-employment physical examination, and a copy of the official job description for the employee's position. These records are then forwarded to a panel consisting of three physicians, one of whom performs a physical examination of the employee. The panel of physicians seeks "to determine within a reasonable degree of medical certainty the primary cause of the Employee's illness." The panel submits its written findings to the City's Risk Manager who either approves or denies the employee's application for OJI benefits. In the instant case, the City denied each Employee's application for OJI benefits.

Pursuant to the City's OJI Program policy, each Employee filed an appeal to the OJI Appeals Panel to contest the City's denial of benefits. The OJI Appeals Panel consists of the City's Risk Manager, the City's Director of Finance or designee, and the City's Attorney or designee. The Employees were permitted to have their union representative present at the hearing before the OJI Appeals Panel, but OJI Program policy did not permit the Employees to have legal

counsel represent them at the hearings. The OJI Appeals Panel affirmed the City's denial of OJI benefits to each of the Employees.

The Employees subsequently filed individual Petitions for Writ of Certiorari with the Chancery Court of Shelby County seeking a review of the decision of the OJI Appeals Panel in their respective cases.[4]. In each case, the Employees sought review of the decision of the OJI Appeals Panel under a statutory writ of certiorari or, in the alternative, a common law writ of certiorari. The chancery court issued a writ in each case ordering that the administrative record be produced for review. The City filed an answer to each petition contesting that the proper method of review in the chancery court was by statutory writ of certiorari. The City also filed a motion in response to each petition seeking partial dismissal of the petitions to the extent they sought review under a statutory writ of certiorari. For purposes of the City's motions, the chancery court consolidated the Employees' petitions and held a hearing on September 18, 2003. At the conclusion of the hearing, the chancellor ordered the parties to submit proposed Findings of Fact and Conclusions of Law for review. The chancellor subsequently granted the City's motions excluding review under the statutory writ of certiorari.

On December 11, 2003, the chancellor entered judgments in favor of the firefighters incorporating the Findings of Fact and Conclusions of Law submitted by the firefighters. Likewise, on December 12, 2003, the chancellor entered a judgment in favor of the sole police officer incorporating his proposed Findings of Fact and Conclusions of Law into the judgment. The chancery court, by incorporating the findings proposed by the Employees, made the following conclusions of law: (1) Section 27-9-114 of the Tennessee Code, governing review of the rulings of boards and commissions, applies to the decisions of the City's OJI Appeals Panel; (2) The proper method of review of the OJI Appeals Panel decisions, therefore, is neither by common law or statutory writ of certiorari, but review must be conducted in conformity with section 4-5-322 of the Uniform Administrative Procedures Act ("UAPA"); and (3) Proceedings before the OJI Appeals Panel must be conducted in accordance with the contested case procedures set forth in the Uniform Administrative Procedures Act, section 4-5-301 *et seq.* of the Tennessee Code. Since the OJI Appeals Panel did not conduct the proceedings in accordance with the procedures outlined in the UAPA, the chancery court reversed the decision of the OJI Appeals Panel in each case and ordered the City to grant each Employee OJI benefits associated with their respective claims.

The City subsequently filed timely notices of appeal in each case to this Court. Pursuant to Rule 16 of the Tennessee Rules of Appellate Procedure, this Court granted the Joint Motion for Consolidation of Appeals filed by the parties after finding that the individual appeals presented common issues of law. (Order, Jan. 21, 2004). Accordingly, we are presented, by all parties to the present appeal, with the following issues for review:

I. Whether the chancery court erred in ruling that section 27-9-114 of the

Tennessee Code applies to the OJI Appeals Panel of the City of Memphis, specifically:

A. Whether the OJI Appeals Panel is a Civil Service Board, and

B. Whether the OJI Appeals Panel sits as a Civil Service Board because its decisions affect "employment status"; and

II. Should this Court find that the contested case procedures of the Uniform Administrative Procedures Act do apply to the OJI Appeals Panel, whether the chancery court erred in entering judgment for the Employees rather than remanding for hearings conducted in accordance with the applicable procedural standards.

For the reasons set forth herein, we reverse the decision of the chancery court.

Standard of Review

On appeal, the facts in these consolidated cases are not in dispute since both the City and Employees agree that the procedures used by the OJI Appeals Panel did not comply with the contested case procedures found in the UAPA. This Court is confronted in this case with issues involving the interpretation of statutory language. "Construction of a statute is a question of law which we review *de novo,* with no presumption of correctness." *Gleaves v. Checker Cab Transit Corp., Inc.*, 15 S.W.3d 799, 802 (Tenn. 2000) (citing *Myint v. Allstate Ins. Co.*, 970 S.W.2d 920, 924 (Tenn. 1998)); *Union Carbide Corp. v. Huddleston,* 854 S.W.2d 87, 91 (Tenn. 1993) (citing *Estate of Adkins v. White Consol. Indus., Inc.*, 788 S.W.2d 815, 817 (Tenn. Ct. App. 1989)); *ATS, Inc. v. Kent,* 27 S.W.3d 923, 924 (Tenn. Ct. App. 1998).

In construing statutory language, we are mindful of the following standards adopted by the courts of this state which aid us in this task:

A "basic rule of statutory construction is to ascertain and give effect to the intention and purpose of the legislature." *Carson Creek Vacation Resorts, Inc. v. State Dep't of Revenue,* 865 S.W.2d 1, 2 (Tenn. 1993). In determining legislative intent and purpose, a court must not "unduly restrict[ ] or expand[ ] a statute's coverage beyond its intended scope." *Worley v. Weigel's, Inc.*, 919 S.W.2d 589, 593 (Tenn. 1996) (quoting *Owens v. State,* 908 S.W.2d 923, 926 (Tenn. 1995)). Rather, a court ascertains a statute's purpose from the plain and ordinary meaning of its language, *see Westland Community Ass'n v. Knox County,* 948 S.W.2d 281, 283 (Tenn. 1997), "without forced or subtle construction that would limit or extend the meaning of the language." *Carson Creek Vacation Resorts, Inc.*, 865 S.W.2d at 2.

When, however, a statute is without contradiction or ambiguity, there is no need to force its interpretation or construction, and courts are not at liberty to

depart from the words of the statute. *Hawks v. City of Westmoreland,* 960 S.W.2d 10, 16 (Tenn. 1997). Moreover, if "the language contained within the four corners of a statute is plain, clear, and unambiguous, the duty of the courts is simple and obvious, `to say *sic lex scripta,* and obey it.'" *Id.* (quoting *Miller v. Childress,* 21 Tenn. (2 Hum.) 320, 321—22 (1841)). Therefore," if the words of a statute plainly mean one thing they cannot be given another meaning by judicial construction." *Henry v. White,* 194 Tenn. 192, 250 S.W.2d 70, 72 (1952).

Finally, it is not for the courts to alter or amend a statute. *See Town of Mount Carmel v. City of Kingsport,* 217 Tenn. 298, 306, 397 S.W.2d 379, 382 (1965); *Richardson v. Tennessee Bd. of Dentistry,* 913 S.W.2d 446, 453 (Tenn. 1995); *Manahan v. State,* 188 Tenn. 394, 397, 219 S.W.2d 900, 901 (1949). Moreover, a court must not question the" reasonableness of a statute or substitute [its] own policy judgments for those of the legislature." *BellSouth Telecomms., Inc. v. Greer,* 972 S.W.2d 663, 673 (Tenn. Ct. App. 1997). Instead, courts must" presume that the legislature says in a statute what it means and means in a statute what it says there." *Id.* Accordingly, courts must construe a statute as it is written. *See Jackson v. Jackson,* 186 Tenn. 337, 342, 210 S.W.2d 332, 334 (1948).

Gleaves, 15 S.W.3d at 802—03. We also presume that the legislature has "knowledge of the state of the law on the subject under consideration at the time it enacts legislation." *Hise v. State,* 968 S.W.2d 852, 854—55 (Tenn. Ct. App. 1997) (citing *Jenkins v. Loudon County,* 736 S.W.2d 603, 608 (Tenn. 1987); *Equitable Life Assurance Co. v. Odle,* 547 S.W.2d 939, 941 (Tenn. 1997)).

Writs of Certiorari and the UAPA

Our analysis in this case must begin with an examination of the progression of the law which led to the current conflict. The Employees sought review of the decision of the OJI Appeal Panel by filing a "Petition for Writ of Certiorari" in the chancery court below. The Employees asserted in their petitions that the chancery court had jurisdiction over the cases "pursuant to Tenn. Code Ann. § 27-8-104,[5] and certiorari is authorized by Tenn. Code Ann. §§ 27-8-101, 27-8-102 and 27-9-114."

"In Tennessee, two types of certiorari exist." *Fairhaven Corp. v. Tenn. Health Facilities Comm'n,* 566 S.W.2d 885, 886 (Tenn. Ct. App. 1976). Section 27-8-101 provides for review under the common-law writ of certiorari, stating:

The writ of certiorari may be granted whenever authorized by law, and also in all cases where an inferior tribunal, board, or officer exercising judicial functions has exceeded the jurisdiction conferred, or is acting illegally, when, in the judgment of the court, there is no other plain, speedy, or adequate remedy. This section does not apply to actions governed by the Tennessee Rules of Appellate Procedure.

TENN. CODE ANN. § 27-8-101 (2003). Section 27-8-102 provides for review under the statutory writ of certiorari and is not at issue in this case.[6]

"Common law certiorari is available where the court reviews an administrative decision in which that agency is acting in a judicial or quasi-judicial capacity." *Davison v. Carr,* 659 S.W.2d 361, 363 (Tenn. 1983); *Case v. Shelby County Civil Serv. Merit Bd.*, 98 S.W.3d 167, 171 (Tenn. Ct. App. 2002). The scope of judicial review under the common law writ is limited to the following:

Generally, under common law certiorari, the scope of review is limited to the record to determine as a question of law whether there is any material evidence to support the agency's findings. However, new evidence is admissible on the issue of whether the administrative body exceeded its jurisdiction or acted illegally, capriciously or arbitrarily.

Id. Thus, the trial court may reverse or modify the action of the administrative agency when that agency "acted in violation of constitutional or statutory provisions or in excess of its own statutory authority; has followed unlawful procedure or been guilty of arbitrary or capricious action; or has acted without material evidence to support its decision." *Watts v. Civil Serv. Bd. for Columbia,* 606 S.W.2d 274, 277 (Tenn. 1980); *Gross v. Gilless,* 26 S.W.3d 488, 492 (Tenn. Ct. App. 1999). "The scope of review by the appellate courts is no broader or more comprehensive than that of the trial court with respect to evidence presented before the Board." *Watts,* 606 S.W.2d at 277.

The legislature promulgated the UAPA "to clarify and bring uniformity to the procedure of *state* administrative agencies and judicial review of their determination." TENN. CODE ANN. § 4-5-103(a) (2003) (emphasis added). The legislature also provided that the UAPA's provisions "shall not apply to . . . county and municipal boards, commissions, committees, department or officers." TENN. CODE ANN. § 4-5-106(a) (2003). "A person who is aggrieved by a final decision in a contested case is entitled to judicial review under [the UAPA]." TENN. CODE ANN. § 4-5-322(a)(1) (2003). A "Contested case" is defined by the UAPA as "a proceeding . . . in which the legal rights, duties or privileges of a party are required by any statute or constitutional provision to be determined by an agency after an opportunity for a hearing." Tenn. Code Ann. § 4-5-102(3) (2003). A person can request judicial review "by filing a petition in the chancery court of Davidson County, unless another court is specified by statute[,] . . . within sixty (60) days after the entry of the agency's final order thereon." TENN. CODE ANN. § 4-5-322(b)(1) (2003). When reviewing an agency's decision, the chancery court is bound by the following standard of review:

(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:

(1) In violation of constitutional or statutory provisions;

(2) In excess of the statutory authority of the agency;

(3) Made upon unlawful procedure;

(4) Arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion; or

(5) Unsupported by the evidence which is both substantial and material in light of the entire record.

In determining the substantiality of evidence, the court shall take into account whatever the record 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) (2003).

At issue in this case is the present statutory language found in section 27-9-114 of the Tennessee Code. Prior to 1989, however, section 27-9-114 provided that:

No court of record of this state shall entertain any proceeding involving the civil service status of a county or a municipal employee when such proceeding in the nature of an appeal *from a ruling of city or county official or board which affects the employment status of a county or city employee,* except such proceeding be one of *common law certiorari.* Any such proceeding shall be heard by a judge or chancellor without the intervention of a jury. This section shall supersede any displaced provisions of city charters to the contrary.

TENN. CODE ANN. § 27-914 (1984) (emphasis added). Our supreme court held that section 27-9-114, "dealing exclusively with the employment status of city and county employees, is the exclusive remedy for judicial review of administrative determinations respecting the employment status of such employees." *Huddleston v. City of Murfreesboro,* 635 S.W.2d 694, 696 (Tenn. 1982); *Gaston v. Civil Serv. Merit Bd. of Shelby County,* 1986 WL 9964, at *1 (Tenn. Ct. App. Sept. 15, 1986).

Accordingly, this Court applied the pre-1989 language of section 27-9-114 of the Tennessee Code and held that decisions of a municipality's civil service commission were to be judicially reviewed under a common law writ of certiorari. *See City of Memphis Civil Serv. Comm'n v. Eulls,* 1988 WL 119291, at *2 (Tenn. Ct. App. Nov. 10, 1988); *Moore v. Civil Serv. Comm'n for the City of Memphis,* No. 41, 1988 WL 1730, at *1 (Tenn. Ct. App. Jan. 12, 1988); *Smith v. City of Memphis,* 1986 WL 9698, at *1 (Tenn. Ct. App. Sept. 8, 1986). During the same period, the courts of this state, also relying on the language in section 27-9-114 of the Tennessee Code, reviewed the decisions originating from other

entities under a common law writ of certiorari as well. *See Huddleston v. City of Murfreesboro,* 635 S.W.2d 694, 695 (Tenn. 1982) (holding that judicial review of the decision of a city council regarding an employee's discharge under section 27-9-114 of the Tennessee Code was by common law certiorari); *Love v. Ret. Sys. of the City of Memphis,* No. 27, 1987 WL 17246, at *1 (Tenn. Ct. App. Sept. 21, 1987) (reviewing the city's denial of pension benefits to an employee under a common law writ of certiorari); *State v. City of Linden,* No. 86-303-II, 1986 WL 13641, at *2 (Tenn. Ct. App. Nov. 19, 1986) (addressing a petition to rehear and stating that review of a decision of the board of mayor and alderman was by common law writ of certiorari); *Cunningham v. Bd. of Educ. for Grundy County,* No. 85-302-II, 1986 WL 10692, at *2 (Tenn. Ct. App. Oct. 1, 1986) (stating that the applicable standard of review of a decision by the board of education terminating a school employee was by common law writ of certiorari); *Whitten v. Tucker,* 1986 WL 4599, at *2 (Tenn. Ct. App. Apr. 18, 1986) ("We hold that a review of the City of Knoxville Board of Education's decision to fire, or not to fire, a teacher tenured under that system is governed by the provisions of T.C.A. Sec. 27-9-114."); *Goodwin v. Metro. Bd. of Health,* 656 S.W.2d 383, 386 (Tenn. Ct. App. 1983) (reviewing the decision of a health board to terminate an employee under a common law writ of certiorari).

In 1988, the legislature amended section 27-9-114 of the Tennessee Code to provide, in relevant part, as follows:

Proceedings involving certain public employees.

(a)(1) Contested case hearings *by civil service boards of a county or municipality which affect the employment status of a civil service employee* shall be conducted in conformity with contested case procedures under the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, part 3.

(2) The provisions of this subsection pertaining to hearings by civil service boards shall not apply to municipal utilities boards or civil service boards of counties organized under a home rule charter form of government.

(b)(1) Judicial review of decisions *by civil service boards of a county or municipality which affects the employment status of a county or city civil service employee* shall be in conformity with the judicial review standards under the Uniform Administrative Procedures Act, § 4-5-322.

(2) Petitions for judicial review of decisions by a city or county civil service board affecting the employment status of a civil service employee shall be filed in the chancery court of the county wherein the local civil service board is located.

TENN. CODE ANN. § 27-9-114 (2003) (emphasis added); *see also* 1988 TENN. PUB. ACTS Ch. 1001; *City of Knoxville v. Popejoy,* No. 03A01-9104-CH-00148, 1991 WL 276796, at *2 n.1 (Tenn. Ct. App. Dec. 31, 1991).

Subsequent to the statutory amendment of section 27-9-114, this Court continued to apply the language of section 27-9-114 of the Tennessee Code to the decisions of civil service boards, but we reviewed those decisions under the standard of review found in section 4-5-322 of the Tennessee Code. *See Hughey v. Metro. Gov't of Nashville & Davidson County,* No. M2002-02240-COA-R3-CV, 2003 WL 21849628, at *3 (Tenn. Ct. App. Aug. 8, 2003); *Lien v. Metro. Gov't of Nashville & Davidson County,* 117 S.W.3d 753, 757 (Tenn. Ct. App. 2003); *Howell v. City of Columbia,* No. M2001-00620-COA-R3-CV, 2002 WL 31322529, at *2 n.2 (Tenn. Ct. App. Oct. 16, 2002); *Robbins v. City of Johnson City,* No. E2000-02952-COA-R3-CV, 2001 WL 767020, at *4—5 (Tenn. Ct. App. July 3, 2001); *Mack v. Civil Serv. Comm'n of the City of Memphis,* No. 02A01-9807-CH-00215, 1999 WL 250180, at *2 (Tenn. Ct. App. 1999); *Knoxville Utilities Bd. v. Knoxville Civil Serv. Merit Bd.,* No. 03A01-9301-CH-00008, 1993 WL 229505, at *9 (Tenn. Ct. App. June 28, 1993); *City of Memphis v. Owens,* No. 02A01-9109CH00202, 1992 WL 227561, at *6 n.1 (Tenn. Ct. App. Sept. 18, 1992); *City of Knoxville v. Popejoy,* No. 03A01-9104-CH-00148, 1991 WL 276796, at *2 (Tenn. Ct. App. Dec. 31, 1991); *Lockridge v. Metro. Gov't of Nashville & Davidson County,* No. 01-A-019103CH00097, 1991 WL 153316, at *1 (Tenn. Ct. App. Aug. 14, 1991); *Lewis v. Metro. Gov't of Nashville & Davidson County,* No. 01-A-01-9006CH00220, 1990 WL 205223, at *2 (Tenn. Ct. App. Dec. 18, 1990); *State v. Civil Serv. Comm'n of the Metro. Gov't of Nashville & Davidson County,* No. 01-A-01-9002-CH00061, 1990 WL 165073, at * 3 (Tenn. Ct. App. Oct. 31, 1990).

Conversely, many decisions rendered by this Court subsequent to the statutory amendment of section 27-9-114 of the Tennessee Code referenced the statute when discussing the judicial review of decisions rendered by other municipal entities not specifically designated a civil service board. *See Yates v. City of Chattanooga,* No. E2000-02064-COA-R3-CV, 2001 WL 533351, at *2 (Tenn. Ct. App. May 21, 2001) (applying the amended statutory language to the review of a decision by a city council to terminate an employee); *Bullard v. City of Chattanooga Firemen's and Policemen's Ins. & Pension Fund,* No. 03A01-9705-CH-00193, 1998 WL 90834, at *1 (Tenn. Ct. App. Mar. 3, 1998) (stating that the amended language in section 27-9-114 applies to the denial of pension benefits to civil service employees); *Stephenson v. Town of White Pine,* No. 03A01-9705-CH-00185, 1997 WL 718974, at *1 (Tenn. Ct. App. Nov. 13, 1997) (reviewing a decision by the town council to terminate a city employee under section 27-9-114); *Paris v. City of Lebanon Pers. Review Bd.,* No. 01A01-9702-CH-00054, 1997 WL 607519, at *6 (Tenn. Ct. App. Oct. 3, 1997) (applying the amended language to the review of the decision of a city personnel board); *Holder v. City of Chattanooga,* 878 S.W.2d 950, 952 (Tenn. Ct. App. 1993) (rejecting the argument of the appellant that a city council did not qualify as a "civil service board" under the language in section 27-9-114); *Kendrick v. City of Chattanooga Firemen's & Policemen's Ins. & Pension Fund,* 799 S.W.2d 668, 669 (Tenn. Ct. App. 1990) (referencing our decision in *Love* when discussing review of a pension benefit board's denial of pension benefits to an employee); *Jones v. Pers. Merit Bd. of the City of Dyersburg,* No. 5, 1998 WL 104697, at *4 (Tenn. Ct. App. Oct. 10, 1988) (reviewing the city's termination of a fireman

following an on-the-job injury under section 27-9-114).

Our research has also identified decisions by this Court, subsequent to the 1988 amendment to section 27-9-114 of the Tennessee Code, holding that the proper standard of review of the decisions by agencies not expressly identified as a civil service boards is by common law certiorari. *See Pardue v. Metro. Gov't of Nashville & Davidson County,* No. 01A01-9707-CH-00312, 1998 WL 173208, at *1 (Tenn. Ct. App. Apr. 15, 1998) (stating that the Metropolitan Benefit Board "is an agency of the Metropolitan Government of Nashville and Davidson County, and the Administrative Procedures Act does not cover `county and municipal boards, commissions, committees, departments or offices.'"); *Davis v. Hamilton County Bd. of Educ.,* No. 03A01-9504-CH-00135, 1995 WL 507796, at * 3 (Tenn. Ct. App. Aug. 29, 1995) (reviewing a decision by the board of education to terminate a bus driver, and alluding to the proper standard of review being by common law writ of certiorari).

In several instances, this Court stated that review of decisions falling under section 27-9-114 of the Tennessee Code are no longer by common law writ of certiorari, but the proper method of appeal is by filing a petition for judicial review pursuant to section 4-5-322 of the Tennessee Code. *See Maasikas v. Metro. Gov't of Nashville & Davidson County,* No. M2002-02652-COA-R3-CV, 2003 Tenn. App. LEXIS 889, at *3 (Tenn. Ct. App. Dec. 22, 2003); *Woods v. Metro. Gov't of Nashville & Davidson County,* No. M2001-03143-COA-R3-CV, 2003 Tenn. App. LEXIS 858, at *4—5 (Tenn. Ct. App. Dec. 10, 2003); *Stephenson v. Town of White Pine,* No. 03A01-9705-CH-00185, 1997 Tenn. App. LEXIS 787, at *3—4 (Tenn. Ct. App. Nov. 13, 1997); *Knoxville Util. Bd. v. Knoxville Civil Serv. Merit Bd.,* No. 03A01-9301-CH-00008, 1993 Tenn. App. LEXIS 438, at *24 (Tenn. Ct. App. June 28, 1993); *City of Memphis v. Owens,* No. 02A01-9109-CH-00202, 1992 Tenn. App. LEXIS 784, at *1 n.1 (Tenn. Ct. App. Sept. 18, 1992); *City of Knoxville v. Popejoy,* No. 03A01-9104-CH-00148, 1991 WL 276796, at *2 n.1 (Tenn. Ct. App. Dec. 31, 1991).

Whether section 27-9-114 of the Tennessee Code applies to the OJI Appeals Panel

Having set forth the legal landscape which led to the current dispute, we now turn our attention to the issues presented on appeal. We begin by noting that we agree with the chancery court in that, by amending section 27-9-114 of the Tennessee Code, the legislature made proceedings before a "civil service board," and judicial review of those decisions, subject to the provisions of the UAPA. Therefore, review of the decisions of a civil service board is no longer by common law writ of certiorari, but by filing a petition for review under section 4-5-322 of the Tennessee Code. *See Stephenson v. Town of White Pine,* No. 03A01-9705-CH-00185, 1997 WL 718974, at *1 (Tenn. Ct. App. Nov. 13, 1997); *Paris v. City of Lebanon Pers. Review Bd.,* No. 01A01-9702-CH-00054, 1997 WL 607519, at *5—6 (Tenn. Ct. App. Oct. 3, 1997); *City of Memphis v. Owens,* No. 02A01-9109CH00202, 1992 WL 227561, at *6 n.1 (Tenn. Ct. App. Sept. 18, 1992).

In those instances where section 27-9-114 of the Tennessee Code is applicable, our supreme court has provided that this statute "is the exclusive remedy for judicial review of administrative determinations respecting the employment status of such employees." *Huddleston v. City of Murfreesboro,* 635 S.W.2d 694, 696 (Tenn. 1982). As a threshold matter, we are asked to determine whether the chancery court erred in applying the applicable statute to the OJI Appeals Panel. The City argues that the OJI Appeals Panel does not constitute a "civil service board" as that term is used in section 27-9-114 of the Tennessee Code, therefore, section 27-9-114 of the Tennessee Code is inapplicable to the OJI Appeals Panel. Accordingly, the City asserts that the proper method of judicial review is to review decisions by the OJI Appeals Panel under the common law writ of certiorari.

"The primary rule of statutory construction is that the intention of the legislature must prevail." *Lucchesi v. Alcohol & Licensing Comm'n of the City of Memphis,* 70 S.W.3d 49, 55 (Tenn. Ct. App. 2001). When presented with issues of statutory construction, we begin in the first instance by examining the language employed by the legislature as follows:

Courts are restricted to natural and ordinary meaning of the language used by the legislature in the statute, unless an ambiguity requires resort elsewhere to ascertain legislative intent." *Austin v. Memphis Pub. Co.,* 655 S.W.2d 146, 148 (Tenn. 1983). A statute is ambiguous if it is capable of conveying more than one meaning. *In re Conservatorship of Clayton,* 914 S.W.2d 84, 90 (Tenn. App. 1995). We must consider the language employed in context of the entire statute without any forced or subtle construction which would extend or limit its meaning. *Wilson v. Johnson County,* 879 S.W.2d 807, 809 (Tenn. 1994). Furthermore, we are to assume that the legislature used each word in the statute purposely, and that the use of these words conveys some intent and has a meaning and purpose. *Locust,* 912 S.W.2d at 718. Where words of the statute are clear and plain and fully express the legislature's intent, there is no room to resort to auxiliary rules of construction, *Roberson v. University of Tennessee,* 912 S.W.2d 746, 747 (Tenn. App. 1995), and we need only enforce the statute as written, *Clayton,* 914 S.W.2d at 90.

Browder v. Morris, 975 S.W.2d 308, 311 (Tenn. 1998). This Court is not authorized to amend a statute, *Limbaugh v. Coffee Medical Center,* 59 S.W.3d 73, 83 (Tenn. 2001), nor is it our province to impose our own judgment over that of the legislature, *BellSouth Telecommunications, Inc. v. Greer,* 972 S.W.2d 663, 673 (Tenn. Ct. App. 1997).

The City correctly identifies the absence of a definition of "civil service board" in section 27-9-101 *et seq.* of the Tennessee Code. *Holder v. City of Chattanooga,* 878 S.W.2d 950, 952 (Tenn. Ct. App. 1994). The City urges this Court to apply the meaning of that term as described in section 6-54-114, which provides:

Municipal civil service board— Members—Qualifications—

Appointment.

. . . .

(b) Notwithstanding any provision of any municipal charter or ordinance to the contrary, all members of any municipal civil service board in any county with a population greater than three hundred thousand (300,000), created by ordinance or charter, shall be appointed by the mayor of the municipality which the board serves. Such appointments shall be subject to confirmation by the municipal legislative body. At least one (1) member shall be a woman and one (1) member shall be a minority citizen. The provisions of this section shall not apply to municipalities with a mayor-alderman form of government.

TENN. CODE ANN. §6-54-114(b) (2003). When the legislature amended section 27-9-114 of the Tennessee Code, it chose to remove the broad language "city or county official or board" and replace it with the specific phrase "civil service board." *See* 1988 TENN. PUB. ACTS Ch. 1001. "When approaching statutory text, courts must . . . presume that the legislature says in a statute what it means and means in a statute what it says there." *BellSouth Telecomm., Inc. v. Greer,* 972 S.W.2d 663, 673 (Tenn. Ct. App. 1997) (citations omitted).

Both parties agree that the OJI Appeals Panel does not comply with section 6-54-114 of the Tennessee Code. The OJI Appeals Panel was not created by city charter, and its members are not appointed by the mayor and confirmed by the city council. When construing statutory language, we must seek to avoid a construction which would be repugnant to another section of the Tennessee Code and thereby create a conflict. *See Williams v. Thomas Jefferson Ins. Co.,* 385 S.W.2d 908, 910—11 (Tenn. 1965) (citations omitted). Accordingly, we find that the OJI Appeals Panel is not a "civil service board," as that term was intended to be used by the legislature, under section 27-9-114 of the Tennessee Code.

The Employees, in arguing that decisions of the OJI Appeals Panel are subject to section 27-9-114 of the Tennessee Code and, in turn, the UAPA, point to our decision in *Love v. Retirement System of the City of Memphis,* No. 27, 1987 WL 17246, at *1 (Tenn. Ct. App. Sept. 21, 1987), and its progeny. In *Love,* the city's Board of Retirement denied pension benefits to a city judge, and the judge filed a petition for writ of certiorari with the chancery court. *Love,* 1987 WL 17246, at *1. The chancery court conducted a *de novo* review of the proceedings before the Board of Retirement finding that the petitioner's application for benefits should have been granted by the board. *Id.* The city appealed, asking this Court to address whether the chancery court erred by not applying the more restrictive common law writ of certiorari standard of review. *Id.* In reversing the decision of the chancery court, we held that the proper standard of review, pursuant to the pre-1989 language in section 27-9-114, was by common law certiorari. *Id.* The Employees also point to our decisions in *Kendrick v. City of Chattanooga Firemen's and Policemen's Insurance and Pension Fund,* 799 S.W.2d 668 (Tenn. Ct. App. 1990), and *Bullard v. City of*

Chattanooga Firemen's and Policemen's Insurance and Pension Fund, No. 03A01-9705-CH-00193, 1998 WL 90834 (Tenn. Ct. App. Mar. 3, 1998), as instances where this Court has applied the current language in section 27-9-114 of the Tennessee Code to municipal boards similar to the OJI Appeals Panel at issue in this case.[7]

After examining the statutory language of section 27-9-114 of the Tennessee Code and reviewing the applicable case law, we conclude that the Employee's argument is misguided. We begin by noting that our decision in *Love* was premised upon the pre-amendment language in section 27-9-114 of the Tennessee Code, which the legislature made applicable to "an appeal from a ruling *of a city or county official or board* which affects the employment status of a county or city employee." *See Love,* 1987 WL 17246, at *1 (emphasis added). As stated previously, when the legislature amended section 27-9-114 of the Tennessee Code in 1988, the legislature removed this broad terminology and inserted the more specific language "civil service boards of a county or municipality." *See* TENN. CODE ANN. § 27-9-114 (2003). Therefore, our decision in *Love,* applying section 27-9-114 of the Tennessee Code to a retirement board, was consistent with the statutory language present at the time.

In *Kendrick,* the chancery court, reviewing the case under a statutory writ of certiorari and employing a *de novo* standard of review, reversed the city's decision denying an employee pension benefits. *Kendrick,* 799 S.W.2d at 668. In reversing the chancery court, this Court held that "[t]he action of the Board was subject to review by common law writ of certiorari since the agency was acting in a judicial or quasi-judicial capacity." *Id.* (citing *Davison v. Carr,* 659 S.W.2d 361 (Tenn. 1983); TENN. CODE ANN. § 27-8-101). The Employees correctly point out that in *Kendrick* we cited to our decision in *Love* as an example where this Court applied section 27-9-114 of the Tennessee Code to a municipal body's denial of pension benefits. *Id.* at 669. Our citation to *Love,* however, constitutes *obiter dictum* not binding upon the Court in the present case. *See Shepherd Fleets, Inc. v. Opryland USA, Inc.*, 759 S.W.2d 914, 921 (Tenn. Ct. App. 1988). We reach this conclusion by noting that, in *Kendrick,* when stating the proper manner of review was by common law certiorari, we cited to section 27-8-101 of the Tennessee Code governing the common law writ of certiorari as authority for that conclusion. *See Kendrick,* 799 S.W.2d at 668. Our decision to review the case under the standards applicable to a common law writ of certiorari was warranted given the recent amendment to the statute.

The Employees also assert that our decision in *Bullard* is factually similar to the undisputed facts set forth in the present case. In *Bullard,* the city's pension fund board denied an employee disability benefits after he suffered a heart attack he attributed to his duties as a fireman. *Bullard,* 1998 WL 90834, at *1. Citing to *Kendrick,* we stated that the proper method of reviewing the board's decision, pursuant to section 27-9-114, was in accordance with section 4-5-322(h) of the Tennessee Code. *Id.* The Employee's reliance on our decision in *Bullard* is flawed. It was incorrect for the Court in *Bullard* to say that we

applied the language in section 27-9-114 of the Tennessee Code in *Kendrick* to the denial of pensions to civil servants.[8] *See id.* As we expressly stated in *Kendrick,* "[t]he action of the Board was *subject to review by a common law writ of certiorari* since the agency was acting in a judicial or quasi-judicial capacity." *Kendrick,* 799 S.W.2d at 668 (citing TENN. CODE ANN. § 27-8-101) (emphasis added).

Finally, the City asserts that, even if we determine that the OJI Appeals Panel is not a civil service board, our inquiry does not end there. The City directs our attention to this Court's decision in *Holder v. City of Chattanooga,* 878 S.W.2d 950, 951 (Tenn. Ct. App. 1993), where we were asked to determine the appropriate standard of review when reviewing the decision of a city council in discharging a police officer. In applying the provisions of section 27-9-114 of the Tennessee Code to the city council's decision, we stated:

Appellant insists that the application of the statute is restricted to decisions of "civil service boards" and points out that the [term] "civil service boards" is not defined in the statute. We are of the opinion, however, that there is no merit in this insistence. It is clear that the City Council of Chattanooga was sitting as a civil service board rather than as a legislative body insofar as the proceedings involved here are concerned.

Id. at 952. The City contends that it is necessary for this Court to decide whether the OJI Appeals Panel "was sitting as a civil service board" by rendering a decision which "affect[ed] the employment status of a civil service employee." *See State v. Odom,* 137 S.W.3d 572, 581 (Tenn. 2004); *City of Memphis v. Overton,* 392 S.W.2d 98, 100 (Tenn. 1965) ("[I]t is axiomatic that this State has long approved the doctrine of stare decisis.").

The Employees once again rely on our decisions in *Love, Kendrick,* and *Bullard* to argue that this Court has expressly held that "employment status" includes benefits associated with employment. As stated above, the Employees' reliance on *Kendrick* and *Bullard* is misplaced. The Employees' argument that, in *Kendrick,* this Court held section 27-9-114 of the Tennessee Code applied to the decision of a municipal pension board is incorrect. To the contrary, we reiterate that in *Kendrick* we held that "[t]he action of the Board was subject to review by a common law writ of certiorari since the agency was acting in a judicial or quasi-judicial capacity." *Kendrick v. City of Chattanooga Firemen's & Policemen's Ins. & Pension Fund,* 799 S.W.2d 668, 668 (Tenn. Ct. App. 1990) (citing TENN. CODE ANN. § 27-8-101). Likewise, for reasons already discussed, the Employee's reliance on our decision in *Bullard* is misplaced as well. *See Bullard v. City of Chattanooga Firemen's & Policemen's Ins. & Pension Fund,* No. 03A01-9705-CH-00193, 1998 WL 90834, at *1 (Tenn. Ct. App. Mar. 3, 1998) (*citing Kendrick,* 799 S.W.2d at 668).

The overriding contention between the parties, however, is this Court's statement in *Love* to the effect that:

Although most of the cases arising under T.C.A. § 27-9-114 have to do with employee discharges and suspensions, *see, e.g., Wheeler v. City of Memphis,* 685 S.W.2d 4 (Tenn. App. 1984), and *Burns v. Johnson,* 636 S.W.2d 441 (Tenn. App. 1982), we are of the opinion that the statute is not limited to those situations. The term "employment status" encompasses the entire legal relation of the employee to the employer. An employee's eligibility for the retirement benefits is an important aspect of that relation. We therefore hold that the trial court erred in not restricting its scope of review to that applicable to a common law writ of certiorari.

Love v. Ret. Sys. of the City of Memphis, No. 27, 1987 WL 17246, at *1 (Tenn. Ct. App. Sept. 21, 1987), *perm. to appeal denied* (Dec. 28, 1987). Given the fact that *Love* was decided under the pre-amendment language of section 27-9-114 of the Tennessee Code and the subsequent decisions by this Court applying the amended language have typically limited the statutes application to discharges, demotions, and the like,[9] our decision in *Love* has become less significant in recent years. *See Holder,* 878 S.W.2d at 951 (addressing a city employee's *discharge*); *see also Pardue v. Metro. Gov't of Nashville & Davidson County,* No. 01A01-9707-CH-00312, 1998 WL 173208, at *1 (Tenn. Ct. App. Apr. 15, 1998) (holding that review of benefit board's decision denying an employee pension benefits is by common law certiorari and not under the UAPA). In addition, when the legislature amended the statute by limiting its application to "civil service boards," it also impliedly limited the nature of the decisions falling under the statute.[10] Therefore, the decisions of the OJI Appeals Panel did not affect the "employment status" of the Employees as we have interpreted that term subsequent to the statutory amendment of section 27-9-114 of the Tennessee Code.

Given the legislature's decision to amend section 27-9-114 of the Tennessee Code by removing the broad language "city or county official or board" and substituting the specific language "civil service boards of a county or municipality," we find that the OJI Appeals Panel does not qualify as a civil service board. In addition, we find that the decision by the OJI Appeals Panel to deny disability benefits to the Employees did not affect their "employment status" as that term is used in the statute and defined by our case law. Accordingly, the chancery court erred by applying section 27-9-114 of the Tennessee Code to the OJI Appeals Panel, thereby making the procedural and judicial review provisions of the UAPA applicable to the OJI Appeals Panel. In this instance, proper judicial review of the decision by the OJI Appeals Panel is by common law writ of certiorari. *See Kendrick v. City of Chattanooga Firemen's & Policemen's Ins. & Pension Fund Bd.,* 799 S.W.2d 668, 668 (Tenn. Ct. App. 1990). Since we have determined that section 27-9-114 of the Tennessee Code does not apply to the OJI Appeals Panel, it is not necessary for this Court to reach the remaining issue.

Conclusion

For the reasons contained herein, we reverse the decision of the chancery

court and find that the City's OJI Appeals Panel is not subject to the provisions of section 27-9-114 of the Tennessee Code. Accordingly, it was error for the chancery court to grant benefits to the Employees based upon the OJI Appeals Panel's perceived failure to comply with the provisions of the UAPA and necessitates our reinstating the decision of the OJI Appeals Panel. Costs of this appeal are taxed against the Appellees, for which execution may issue if necessary.

Notes:

1. Section 50-6-106(5) provides:

The state of Tennessee, counties thereof and municipal corporations; provided, that the state, any county or municipal corporation may accept the provisions of this chapter by filing written notice thereof with the division under the administrator, at least thirty (30) days before the happening of any accident or death, and may at any time withdraw the acceptance by giving like notice of the withdrawal. The state, any county or municipal corporation may accept the provisions of this chapter as to any department or division of the state, county or municipal corporation by filing written notice thereof with the division under the administrator at least thirty (30) days before the happening of any accident or death and may, at any time, withdraw acceptance for the division or department by giving like notice of the withdrawal, and such acceptance by the state, county or municipal corporation for any department or division thereof shall have effect only of making the department or division designated subject to the terms of this chapter[.]

TENN. CODE ANN. § 50-6-106(5) (2003); *see also Brown v. City of Memphis,* No. 02A01-9803-CV-00069, 1998 WL 742385, at *1 n.1 (Tenn. Ct. App. Oct. 22, 1998).

2. The claims filed by the firefighters consist of the following: (1) In March 2000, Wayne Moseley was diagnosed with post traumatic stress disorder; (2) In April 2000, Robert Franks was diagnosed with hypertension; (3) In May 2000, Kim Stout was diagnosed with post traumatic stress disorder, depression, generalized anxiety disorder, and hyperventilation syndrome; (4) In October 2000, Columbus Echols was diagnosed with hypertension; (5) In October 2000, Richard Coggins was diagnosed with hypertension and heart disease; (6) In November 2000, Martin Roberts suffered a myocardial infarction and was diagnosed with heart disease; (7) In November 2000, Roy Gookin was diagnosed with heart disease; (8) In July 2001, Terry Wynne was diagnosed with hypertension; (9) In August 2001, Andrew Hart was diagnosed with hypertension; (10) In August 2001, Lynn Patterson was diagnosed with atherosclerotic coronary artery disease; (11) From January 2002 to August 2002, John Fralich, Jr. has experienced heart problems and hypertension; (12) On March 19, 2002, Randy Jeanes died after experiencing complications with his blood pressure, and he is represented by his wife, Laura Jeanes, in the present suit; and (13) Bethany Turner has experienced heart problems she attributes to her employment with the City. Roy Tidwell, a police officer with the City, suffered a stroke in October 2000 and has been diagnosed with hypertension.

3. The claims filed by Wayne Moseley and Kim Stout were submitted to the City's Risk Manager under separate provisions of the OJI policy and were subsequently denied.

4. Two of the petitions were filed in 2000, six were filed in 2001, four were filed in 2002, and two were filed in 2003.

5. Section 27-8-104 provides:

Power of circuit and chancery courts.

(a) The judges of the inferior courts of law have the power, in all civil cases, to issue writs of certiorari to remove any cause or transcript thereof from any inferior tribunal, on sufficient cause, supported by oath or affirmation.

(b) The chancellors shall have concurrent jurisdiction with the judges of the circuit courts of this state in granting writs of certiorari and supersedeas removing causes from general sessions courts to the circuit courts.

TENN. CODE ANN. § 27-8-104 (2003).

6. "Review under a statutory writ is by trial *de novo.*" *McCallen v. City of Memphis,* 786 S.W.2d 633, 638 (Tenn. 1990) (citing *Roberts v. Brown,* 310 S.W.2d 197, 206—08 (Tenn. 1957)). Review under a statutory writ of certiorari is appropriate where a statute provides "the scope and method of review of an action of an administrative body." *Cooper v. Williamson County Bd. of Educ.,* 746 S.W.2d 176, 178 (Tenn. 1987). Although the Employees sought, in the alternative, review under the statutory writ of certiorari, the chancery court properly recognized that it could not undertake a review of the decision of the OJI Appeals Panel in these cases under the statutory writ. The Employees apparently realized the error of seeking review under a statutory writ of certiorari when their proposed Findings of Fact and Conclusions of Law omitted as an option review of the OJI Appeals Panel decisions under a statutory writ of certiorari. Regardless of the resolution of the dispositive issues in this case, it is clear that the statutory writ of certiorari was an improper vehicle to use when seeking review of the OJI Appeals Panel decisions. *See Davis v. Hamilton County Bd. of Educ.,* No. 03A01-9504-CH-00135, 1995 Tenn. App. LEXIS 559, at *7 (Tenn. Ct. App. Aug. 29, 1995); *Cunningham v. Bd. of Educ for Grundy County,* No. 85-302-II, 1986 Tenn. App. LEXIS 3331, at *4—5 (Tenn. Ct. App. Oct. 1, 1986).

7. During oral argument, the Employees also cited to our decision in *Lockridge v. Metropolitan Government of Nashville,* No. 01-A-019103CH00097, 1991 WL 153316 (Tenn. Ct. App. Aug. 14, 1991), where we held that section 4-5-322 of the Tennessee Code applied to the decision of the city's *civil service board* in failing to promote minority employees, as additional support for their position. We find our holding in *Lockridge,* as it relates to the issue of whether the OJI Appeals Panel qualifies as a civil service board, inapplicable to the present case because we were dealing specifically with a civil service board in that case. *See Lockridge,* 1991 WL 153316, at *1.

8. In a recent decision, this Court correctly identified and applied the holding in *Kendrick* by reviewing the decision of a pension board under the common law writ of certiorari. *Pardue v. Metro. Gov't of Nashville & Davidson County,* No. 01A01-9707-CH-00312, 1998 WL 173208, at *1 (Tenn. Ct. App. Apr. 15, 1998).

9. *See Hughey v. Metro. Gov't of Nashville & Davidson County,* No. M2002-02240-COA-R3-CV, 2003 WL 21849628, at *3 (Tenn. Ct. App. Aug. 8, 2003); *Lien v. Metro. Gov't of Nashville & Davidson County,* 117 S.W.3d 753, 757 (Tenn. Ct. App. 2003); *Howell v. City of Columbia,* No. M2001-00620-COA-R3-CV, 2002 WL 31322529, at *2 n.2 (Tenn. Ct. App. Oct. 16, 2002); *Robbins v. City of Johnson City,* No. E2000-02952-COA-R3-CV, 2001 WL 767020, at *4—5 (Tenn. Ct. App. July 3, 2001); *Mack v. Civil Serv. Comm'n of the City of Memphis,* No. 02A01-9807-CH-00215, 1999 WL 250180, at *2 (Tenn. Ct. App. 1999); *Knoxville Utilis. Bd. v. Knoxville Civil Serv. Merit Bd.,* No. 03A01-9301-CH-00008, 1993 WL 229505, at *9 (Tenn. Ct. App. June 28, 1993); *City of Memphis v. Owens,* No. 02A01-

9109CH00202, 1992 WL 227561, at *6 n.1 (Tenn. Ct. App. Sept. 18, 1992); *City of Knoxville v. Popejoy,* No. 03A01-9104-CH-00148, 1991 WL 276796, at *2 (Tenn. Ct. App. Dec. 31, 1991); *Lockridge v. Metro. Gov't of Nashville & Davidson County,* No. 01-A-019103CH00097, 1991 WL 153316, at *1 (Tenn. Ct. App. Aug. 14, 1991); *Lewis v. Metro. Gov't of Nashville & Davidson County,* No. 01-A-01-9006CH00220, 1990 WL 205223, at *2 (Tenn. Ct. App. Dec. 18, 1990); *State v. Civil Serv. Comm'n of the Metro. Gov't of Nashville & Davidson County,* No. 01-A-01-9002-CH00061, 1990 WL 165073, at * 3 (Tenn. Ct. App. Oct. 31, 1990).

10. We note, and our case law has established, that the decisions presented for review under the broader language "city or county official or board" will necessarily produce a more divergent array of factual circumstances than the more narrow language "civil service board." By limiting review under section 27-9-114 of the Tennessee Code to decisions of a "civil service board," the legislature, in effect, narrowed the meaning of "employment status."

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Derek DAVIS
v.
SHELBY COUNTY SHERIFF'S DEPARTMENT.

Supreme Court of Tennessee, at Memphis.

November 4, 2008 Session.

February 20, 2009.

Martin W. Zummach, Assistant Shelby County Attorney, for the appellant, Shelby County Sheriff's Department.

William M. Monroe (at trial), Memphis, Tennessee, and Leslie A. Miller (on appeal), Somerville, Tennessee, for the appellee, Derek Davis.

OPINION

CORNELIA A. CLARK, J., delivered the opinion of the court, in which JANICE M. HOLDER, C.J., and GARY R. WADE, WILLIAM C. KOCH, JR., and SHARON G. LEE, JJ., joined.

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The issue in this appeal is whether the Shelby County Civil Service Merit Board had cause to terminate Derek Davis' employment for violating the Department's drug-free workplace program. Upon review, we find that: (1) the Court of Appeals applied the incorrect standard of review in reviewing the Board's decision; (2) the positive urine specimen test result was admissible evidence for the Board to consider; and (3) the Board's decision to terminate Mr. Davis' employment was not arbitrary or capricious and was supported by evidence that is both substantial and material. Accordingly, we reverse the decision of the Court of Appeals and reinstate the trial court's judgment.

Factual & Procedural History

Derek Davis was a patrol officer for the Shelby County Sheriff's Department ("Department"). On or about July 25, 2001, the Department instituted the Drug Free Workplace Program ("Program"). On August 17, 2001, Mr. Davis signed an "Acknowledgment of Receipt of Drug Free Workplace Program — Policy and Procedure" form, acknowledging that he received, read, and understood the Program's policies and procedures.[1] As part of the Program, Department employees are randomly chosen to provide urine samples, from which use of illegal drugs can be detected.

On August 20, 2002, Mr. Davis and other Sheriff's deputies were randomly chosen to be drug tested. That morning, during "roll call," Mr. Davis was informed that he needed to go to "Jail-East at 3 p.m." for a drug screening. The drug screening was conducted by MedLab, Incorporated ("MedLab").[2] After arriving at "Jail-East," Mr. Davis testified that he was directed into the lobby, where he noticed Suzanne Renfroe, a human resources officer for the Department, "checking off names."[3] Mr. Davis informed Ms. Renfroe that he was "here to take a drug test." She directed him to stand in a line "against the wall." Mr. Davis testified that he was in uniform during the test and that his name is embroidered on his uniform shirt.

The testimony indicates that the "usual procedure" for drug testing is as follows.[4] A collector accompanies a donor to the bathroom where a specimen is taken. The donor is observed supplying the specimen. After the collector receives the urine specimen cup from the donor, a lid is placed on the cup, and a tamper-proof adhesive label is placed across the top of the lid. The designations "donor's initials" and "date" appear on the tamper-proof adhesive label. The donor affixes his or her initials and the date on the label. Also on the specimen container is a label that contains a bar code and chain of custody number. The chain of custody number and bar code are used to link the specimen to the donor; specifically the chain of custody number and bar code link the specimen to the donor's paperwork, which contains the identical chain of custody number and bar code. After the container has been properly labeled and initialed, the container is placed in a sealed bag and prepared for transportation to the laboratory for testing. On the container at issue in this case,

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the initials "DD" and the date "8-20" appear on the tamper-proof adhesive label.

In addition to providing a urine sample, Mr. Davis also filled out paperwork. Either before or after providing a urine sample,[5] Mr. Davis signed a MedLab "chain of custody" document. In the top left and bottom right corners of the document appears the collection identification number "0312131." Part one of the document contains the contact person for and location of the Department. Part two of the document, titled "TO BE COMPLETED BY COLLECTOR OR EMPLOYER REPRESENTATIVE," contains: the reason for the drug test — "random"; the type of drug screen — "volume"; and the condition of the drug screen — "observed." Additionally, the box "photo I.D." is checked after the statement "Donor Identification Verified By:."

Part three of the document, titled "DONOR SECTION," contains the following:

I authorize the collection of this specimen for the purpose of a drug screen. I acknowledge that the specimen container(s) was/were sealed with tamper-proof seal(s) in my presence; and that the information provided on this

form and on the label(s) affixed to the specimen container(s) is correct. I authorize to release the results of the test to the company identified on this form or its designated agents.

Beneath this clause are three spaces: one space for "(PRINT) DONOR'S NAME (FIRST, MI, LAST)," one space for "DONOR SS# OR EMP. ID#," and one space for "SIGNATURE OF DONOR." On the document appears Mr. Davis' printed name, his employee identification number, and his signature. Mr. Davis does not dispute that he signed this document. He does dispute, however, that he wrote his printed name and identification number.

Part four of the document is titled "TO BE COMPLETED BY COLLECTOR." In this section appears the name (in print), date, and signature of the collector of the specimen. A second signature of the same collector appears in the same part after the statement "Sealed Specimen, Placed In Security Pouch Immediately After Collection, and Transferred to Courier For Transport To Laboratory By:." The name of the collector, however, is unclear from the record.[6]

Approximately one week after the drug test, on August 26, 2002, a medical review officer from MedLab notified Mr. Davis that his urine specimen tested positive for THC[7] or marijuana. At this time, Mr. Davis requested that his back-up sample be tested.[8] The back-up sample was sent

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to a different laboratory, American Medical Laboratories, for testing. This second sample also came back positive.

After being notified of Mr. Davis' positive drug test, the Department relieved Mr. Davis of duty "with pay, pending a review by the ADO."[9] Two days later, on August 28, Mr. Davis had a second, independent test conducted at his own expense. This test came back as neither positive nor negative for THC because the urine had been either intentionally or unintentionally diluted.[10]

On September 10, 2002, an administrative Loudermill[11] (due process) hearing was conducted. David Wing, Chief Inspector for the Department, presided over the hearing. During the hearing, Mr. Wing heard testimony from Ms. Renfroe and Mr. Davis. Mr. Davis asserted that the positive urine specimen was not his. Mr. Davis argued that MedLab erred in labeling his specimen. To support this argument, Mr. Davis testified, "[The collector] gave me a cup, I walked over and peed; handed [the cup] to him and left. I didn't watch anything else after that. I left and went back to work." Mr. Davis asserted that he did not remember initialing "DD" on the specimen container, that he did not read the chain of custody form, and that he signed the chain of custody form before, not after, providing his urine sample. After considering this testimony,[12] Mr. Wing determined that it was Mr. Davis' urine that tested positive for marijuana, and as such, his employment should be terminated for violating the Program's

policies. Mr. Davis' employment was terminated effective September 12, 2002. On September 13, 2002, Mr. Davis submitted

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to another drug test through his second employer, Kroger Corporation. Mr. Davis "passed" the drug test.[13]

Mr. Davis appealed to the Shelby County Civil Service Merit Board ("Board"). A hearing before the three-member Board was held on December 3, 2002. During the hearing, Mr. Davis again asserted that the positive urine specimen in question was not his. In addition to arguing that he did not remember initialing the tamper-proof adhesive label on the specimen container and did not read the chain of custody form before signing it, Mr. Davis asserted that the chain of custody number located on the container might not match the chain of custody number found on the chain of custody form. Specifically, Mr. Davis asserted that the chain of custody number on his paperwork is 0312131. Concurrently, he asserted that the xerox copy of the label containing the chain of custody number and bar code, entered into evidence during the Board's hearing, did not conclusively show that the chain of custody number was 0312131. Instead, as Mr. Davis argued, the number on the copy could be either "0312121" or "0312131."[14]

When questioned about the xerox copy of the chain of custody number, Gary Houston, the MedLab manager, acknowledged that, given the quality of the copy, the second to last digit could be either a "2" or a "3." He continued: "But, however, you are looking at a copy. You're not looking at the original bottle. You're not looking at the original specimen." Additionally, Chief Wing, who presided over Mr. Davis' Loudermill hearing, testified during the Board's hearing that he examined the actual specimen container, including the chain of custody number, prior to making his recommendation to terminate Mr. Davis' employment.[15]

Mr. Davis further argued that he never presented photo identification when he reported for his drug test. Mr. Davis did agree, however, that his name appeared on the uniform he wore during the test. Finally, Mr. Davis argued that the Department never explained the discrepancy between the fact that Mr. Davis asserted that his collector was a male yet the collector's signature on the chain of custody form appeared to be that of a female, "Michelle Swain or Swan." Mr. Davis argued that, because the Department never presented Ms. Swain or Swan and never identified which MedLab collector actually signed the chain of custody form, there were "serious flaws" with the chain of custody of the positive urine specimen, such that the test result should be inadmissible evidence, and without which the Board would have no evidence to support a decision to terminate Mr. Davis' employment.

On or about December 18, 2003, the Board issued its findings, upholding Chief Wing's determination that Mr. Davis' employment should be terminated for

violating the Department's drug policies.[16] Mr.

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Davis appealed to the Chancery Court for Shelby County, filing for a Petition for Writ of Certiorari Statutory Appeal, and Complaint for Deprivation of Civil Rights. A hearing was held on April 6, 2006, and the court ruled orally from the bench. Determining that it was constrained by the standard of review provisions found in Tennessee Code Annotated section 4-5-322(h)(1)-(5), the trial court stated that "[i]f there's any basis on which th[e opinion of the Board] can be upheld . . . then I really feel like my hands are tied." On June 28, 2006, the trial court entered an order denying Mr. Davis' petition, thus affirming the Board's decision.

Mr. Davis filed an appeal to the Court of Appeals on May 17, 2007,[17] arguing, as his sole issue, that the Board's decision to terminate Mr. Davis' employment was not based on substantial and material evidence because the decision was "based upon an inadmissible drug test result." He asserted that the standard of review is that afforded by the common law writ of certiorari. Relying on the same arguments raised in the trial court, Mr. Davis asserted that the Department failed to show the necessary chain of custody that would allow the urine specimen test result to be admissible evidence and thus, that there was no material evidence to support the Board's decision.

In its December 17, 2007, opinion, the Court of Appeals agreed with Mr. Davis as to both the standard of review and the outcome. It determined "that the decision to terminate [Mr. Davis'] employment was arbitrary where the Department was unable to present any evidence to establish that the specimen at issue in this case belonged, in fact, to Mr. Davis." Davis, 2007 WL 4374028, at *4. The Court of Appeals continued:

We are not insensitive to the chancellor's determination that, to a large extent, the Board's decision was based on a determination of credibility with respect to the "D" initials on the specimen. Additionally, Mr. Davis' contention that he did not read the MedLab form before signing it is not, without more, sufficient to excuse him from its representations. However, the Department's inability to establish that the specimen [chain of custody number] matched the MedLab form signed by Mr. Davis, coupled with the complete absence of any testimony or evidence regarding the procedures followed on August 20 and the unknown identity of the mysterious Michelle Swan or Swani or Swuni or Seeuni, simply renders the [Board's] decision based on the evidence of the record arbitrary.

Id. Accordingly, the Court of Appeals reversed the Board and trial court. The Department timely filed an application for permission to appeal to this Court on January 24, 2008, arguing that the Court of Appeals applied an inappropriate standard of review in reversing the Board's decision to terminate.

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Analysis

Standard of Review

We accepted this case primarily to reiterate the applicability of the UAPA standard of review in cases involving the Shelby County Civil Service Merit Board. In its opinion, entered December 17, 2007, the Court of Appeals stated that "[t]he court's review . . . is limited to whether the inferior board or tribunal exceeded its jurisdiction or acted illegally, arbitrarily, or fraudulently." Davis, 2007 WL 4374028, at *1 (citing McCallen v. City of Memphis, 786 S.W.2d 633, 640 (Tenn.1990) (addressing the appropriate standard of review of the Memphis City Counsel's approval of a zoning ordinance)). This standard of review has been defined as "review under the common law writ of certiorari." Tidwell v. City of Memphis, 193 S.W.3d 555, 559-60 (Tenn.2006). Under common law writ of certiorari review, a board's determination is arbitrary and void if it is unsupported by any material evidence. Watts v. Civil Serv. Bd. for Columbia, 606 S.W.2d 274, 276-77 (Tenn.1980).

Prior to January 1, 1989, Tennessee Code Annotated section 27-9-114[18] provided, in pertinent part:

No court of record of this state shall entertain any proceeding involving the civil service status of a county or municipal employee when such proceeding is in the nature of an appeal from a ruling of a city or county official or board which affects the employment status of a county or city employee, except such proceeding be one of common law certiorari.

Accordingly, under this section, review of administrative determinations affecting the employment status of county employees, including Board decisions, would have been under common law writ of certiorari review. Huddleston v. City of Murfreesboro, 635 S.W.2d 694, 695-96 (Tenn. 1982) (holding that section 27-9-114 is the "exclusive remedy for judicial review of administrative determinations respecting the employment status of such employees").

However, in 1988, the General Assembly amended the language of section 27-9-114 to read, in pertinent part, "Judicial review of decisions by civil service boards of a county or municipality which affects the employment status of a county or city civil service employee shall be in conformity with the judicial review standards under Tennessee Code Annotated, Section 4-5-322, of the [UAPA]." 1988 Tenn. Pub. Acts, ch. 1001. Thus, the legislature deleted the provision requiring common law writ of certiorari review and replaced it with the current provision providing for judicial review under the UAPA. See Tenn.Code Ann. § 27-9-114(b)(1) (Supp.2008). This subsection has not been subsequently amended.

In our view, no doubt should ever have existed that the Shelby County Civil Service Merit Board is just that — a "civil service board." Accordingly, since January 1, 1989, the Board's decisions should have been reviewed in accordance with Tennessee Code Annotated section 4-5-322. In most cases the correct standard of review has been applied. E.g., City of Memphis v. Civil Serv. Comm'n of Memphis, 216 S.W.3d 311, 315-16 (Tenn.2007); County of Shelby v. Tompkins, 241 S.W.3d 500, 505 (Tenn.Ct.App.2007); Gleaves v. Shelby County, No. W2007-02259-COA-R3-CV, 2008 WL 4648354, at *5 (Tenn.Ct.App. Oct.21, 2008); Logan v. Civil Serv.

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Comm'n of Memphis, No. W2007-00324-COA-R3-CV, 2008 WL 715226, at *5 (Tenn.Ct.App. Mar.18, 2008); King v. Shelby County Gov't Civil Serv. Merit Bd., No. W2006-02537-COA-R3-CV, 2007 WL 1695404, at *3 (Tenn.Ct.App. June 13, 2007). There have been cases, however, where the intermediate appellate court has reverted to the old common law writ of certiorari review. E.g., Case v. Shelby County Civil Serv. Merit Bd., 98 S.W.3d 167, 172 (Tenn.Ct.App.2002) (applying common law writ of certiorari review in accordance with Tennessee Code Annotated section 27-8-101); Hollimon v. Shelby County Gov't, No. W2004-01111-COA-R3-CV, 2005 WL 736725, at *2 (Tenn.Ct.App. Mar. 31, 2005) (applying common law writ of certiorari review in accordance with Tennessee Code Annotated section 27-8-101). These cases do not reflect the correct standard of review. We therefore take this opportunity to reiterate that, because the Board's decision "affects the employment status of a county or city civil service employee," judicial review "shall be in conformity with the judicial review standards under . . . § 4-5-322." Tenn.Code Ann. § 27-9-114(b)(1).

In clarifying the application of Tennessee Code Annotated section 27-9-114 to this Board, a final issue needs to be addressed. In Shelby County Sheriff's Dep't v. Lowe, No. W2008-00433-COA-R3-CV, 2008 WL 5191295, at *3 (Tenn.Ct.App. Dec.11, 2008) (appl. perm. appeal filed, Jan. 21, 2009), the Court of Appeals posed this question: "Whether section 4-5-322 governs judicial review of civil service boards not governed by section 27-9-114(a)(1)"? Although this Court has not previously addressed this issue, upon review we find that section 4-5-322 does apply.

Pursuant to Tennessee Code Annotated section 27-9-114(a)(1) (Supp.2008):

Contested case hearings by civil service boards of a county or municipality which affect the employment status of a civil service employee shall be conducted in conformity with contested case procedures under the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, part 3.

In contrast, Tennessee Code Annotated section 27-9-114(a)(2) (Supp.2008) states:

The provisions of subdivision (a)(1) pertaining to hearings by civil service boards shall not apply to municipal utilities boards or civil service boards of counties organized under a home rule charter form of government.

Shelby County is a home rule jurisdiction, and as such, Tennessee Code Annotated Section 27-9-114(a)(2) exempts the Board from the UAPA's contested case hearing procedures. See id. However, reading subsections 27-9-114(a) & (b) in pari materia, we do not find that subsection 27-9-114(a)(2) changes or affects judicial review of the Board's decisions under subsection 27-9-114(b)(1), which provides: "Judicial review of decisions by civil service boards of a county or municipality which affects the employment status of a county or city civil service employee shall be in conformity with the judicial review standards under the Uniform Administrative Procedures Act, § 4-5-322." Unlike subsection 27-9-114(a), where the General Assembly clearly expressed its intent to exclude "civil service boards of counties organized under a home rule charter form of government" from compliance with the contested case procedures of the UAPA, the same exclusion does not appear in subsection 27-9-114(b). Therefore, applying the plain and ordinary meaning of Tennessee Code Annotated section 27-9-114(b)(1), this case clearly involves review of a civil service merit board decision which "affects the employment status of a

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county . . . civil service employee." Accordingly, even though the Board did not have to conduct its hearing "in conformity with [the] contested case procedures under the [UAPA]," id. § 27-9-114(a)(1), the Board's decision must be reviewed "in conformity with the judicial review standards under the [UAPA], § 4-5-322." Id. § 27-9-114(b)(1).

Having determined that the Court of Appeals applied the incorrect standard of review in this case, however, does not resolve all of the issues. Instead, we must address, under the UAPA standard of review, the issue Mr. Davis raised before the Court of Appeals: whether the Board erred in finding that Mr. Davis violated the Department's drug policy when the only evidence presented to support this finding was a contested drug test result? Although our review of the Board's factual findings is confined to the provisions of Tennessee Code Annotated section 4-5-322, our review of matters of law is de novo with no presumption of correctness. Tenn. R.App. P. 13(d); Cumulus Broad. Inc. v. Shim, 226 S.W.3d 366, 373 (Tenn. 2007).

The Board's Decision to Terminate Mr. Davis

Through the UAPA, Tennessee Code Annotated section 4-5-322 (2005) provides, in pertinent part:

(a)(1) A person who is aggrieved by a final decision in a contested case is entitled to judicial review under this chapter, which shall be the only available method of judicial review.

. . .

(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:

(1) In violation of constitutional or statutory provisions;

(2) In excess of the statutory authority of the agency;

(3) Made upon unlawful procedure;

(4) Arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion; or

(5)(A) Unsupported by evidence that is both substantial and material in light of the entire record.

(B) In determining the substantiality of evidence, the court shall take into account whatever in the record 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.

Applying this standard of review, a reviewing court may reverse the Board's decision only if one or more of the five enumerated grounds for reversal is present. Id. § 4-5-322(h). This scope of review is the same for the trial court, intermediate appellate court, and this Court. Gluck v. Civil Serv. Comm'n, 15 S.W.3d 486, 490 (Tenn.Ct.App. 1999).

On appeal, Mr. Davis actually attacks the sufficiency of the evidence relied upon by the Board based on his belief that the positive urine specimen test result is inadmissible. As this Court recently stated in City of Memphis, 216 S.W.3d at 316, "only the last two [statutory grounds for reversal, Tennessee Code Annotated subsections 4-5-322(h)(4)-(5),] relate to the sufficiency of the evidence." Therefore, in order to resolve the issue raised by Mr. Davis, we must determine whether the Board's findings were "(4) [a]rbitrary or capricious or characterized by abuse of discretion or clearly unwarranted excise of discretion [,] or (5)(A) [u]nsupported by evidence that is both substantial and material

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in the light of the entire record." Tenn.Code Ann. § 4-5-322(h)(4)-(5). In reviewing the Board's findings, we take into account whatever in the record fairly detracts from the weight of the evidence, but we may not substitute our own judgment on questions of fact by re-weighing the evidence. See id. § 4-5-322(h)(5)(B). We may reject the Board's decision only if a reasonable person would necessarily reach a different conclusion based on the evidence. Martin v.

Sizemore, 78 S.W.3d 249, 276 (Tenn.Ct.App.2001). It is not enough that the facts could support a different conclusion. Id.

Mr. Davis contends that the positive urine specimen test result was inadmissible evidence for the Board to consider. Without the test result, Mr. Davis believes the Board had no cause to terminate his employment for violating the Program's policies, thus making the Board's decision "arbitrary and capricious" and "[u]nsupported by evidence that is both substantial and material." Tenn.Code Ann. § 4-5-322(h)(4)-(5). Before this Court, Mr. Davis' attorney agreed, however, that if the Court finds that the positive urine specimen test result was admissible then the Board's decision was neither arbitrary nor capricious and was supported by substantial and material evidence. Accordingly, if this Court determines that the positive urine specimen test result was admissible, our analysis ends there and the decision of the Board will be affirmed.

Admissibility of the Positive Urine Specimen Test Result

Notwithstanding which standard of review the Court of Appeals should have utilized, the real issue in this case is the admissibility of the results of the August 20, 2002, urine test. To support its introduction of the test result, the Department offered: (1) a chain of custody form containing the chain of custody number 0312131; (2) the signature of Mr. Davis certifying that the "specimen container(s) was/were sealed with tamper-proof seal(s) in my presence; and that the information provided on this form and on the label(s) affixed to the specimen container(s) is correct;" (3) a photocopy of the tamper-proof label, with the initials "DD," that was affixed to the lid of the specimen container; (4) the testimony of Chief Wing that he inspected the label on the specimen container containing the chain of custody number prior to recommending termination; and (5) the positive drug test result. On the other side, Mr. Davis testified that: (1) he did not read the chain of custody document before signing it; (2) he signed the document before he provided a urine specimen; (3) he did not remember writing the initials "DD" on the tamper-proof adhesive label; (4) he did not observe how the specimen was handled after he gave the specimen to the collector; (5) the number that appears on the xerox copy of the label containing the chain of custody number could be either 0312131 or 0312121; and (6) the name of the collector who signed the chain of custody document was unknown. Mr. Davis also offered the results of two other drug tests. One test, taken eight days after the original test, was deemed inconclusive because of dilution of the sample. The second test, taken twenty-four days after the original test, showed that Mr. Davis "passed" a non-DOT drug screen.

After considering the testimony of Mr. Davis, Mr. Houston, and Chief Wing, and the exhibits presented, the Board determined that Mr. Davis was fired for cause in accordance with the Civil Service Merit Act.[19] Given that Mr. Davis' testimony directly

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conflicted with the evidence presented by the Department, the Board clearly resolved issues of credibility against Mr. Davis. Issues of credibility are for the trier of fact, and this Court must give considerable deference to the trier of fact's factual findings. Seals v. England/Corsair Upholstery Mfg. Co., 984 S.W.2d 912, 915 (Tenn.1999).

Mr. Davis, however, argues that the issue before the Board was not one of credibility, but instead, one of admissibility of evidence. As Mr. Davis argues, the chain of custody of the urine specimen is "so inherently flawed as to render the test results inadmissible." Mr. Davis argues that had the Board correctly applied the rules of evidence and the general rules regarding the admissibility of evidence, the urine specimen test result would have been deemed inadmissible.

As support for his argument, Mr. Davis relies upon the legal principles set forth in Tennessee's Rules of Evidence relevant to the admission of physical evidence. See Tenn. R. Evid. 901. Strict adherence to the Tennessee Rules of Evidence, however, is not required in proceedings before the Board. By their own terms, the Tennessee Rules of Evidence do not apply to administrative hearings, but rather to court appearances. Tenn. R. Evid. 101 ("These rules shall govern evidence rulings in all trial courts of Tennessee except as otherwise provided by statute or rules of the Supreme Court of Tennessee."). Therefore, the Tennessee Rules of Evidence do not apply unless the Board enacted a rule to adopt them. Goodwin v. Metro. Bd. of Health, 656 S.W.2d 383, 388 (Tenn.Ct.App.1983) ("[N]either the technicalities of the Civil Rules of Procedure nor the common law[20] rules of evidence necessarily apply before nonjudicial bodies unless the rules of that body so require.") (emphasis added) (citing Big Fork Mining Co. v. Tenn. Water Quality Control Bd., 620 S.W.2d 515 (Tenn.Ct.App.1981); L & N Railroad Co. v. Fowler, 197 Tenn. 266, 271 S.W.2d 188 (1954)). In this instance, the Civil Service Merit Act does not provide that Board hearings are subject to the Tennessee Rules of Evidence.[21] 1971 Tenn. Priv. Acts, ch. 110, § 23. Accordingly, in reviewing decisions from these "less than legally formal hearings," appellate courts are guided, not by the Rules of Evidence, but instead "by a sense of fair play and the avoidance of undue prejudice to either side of the controversy and [must determine] whether . . . the action of the hearing Board in admitting or excluding evidence was unreasonable or arbitrary." Goodwin, 656 S.W.2d at 388.

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In this case, Mr. Davis was provided the opportunity to attack the positive test result and to proffer evidence supporting his argument that the sample was not his and that he did not have marijuana in his system at the time the test was administered. The Board, however, did not find Mr. Davis' argument credible and admitted the sample. We cannot say that the admission of the sample was unduly prejudicial, unreasonable, or arbitrary.

Even if the Tennessee Rules of Evidence were applicable during the Board's hearing, we find the necessary chain of custody was sufficiently, if

minimally, established to justify admission of the positive urine specimen. "The chain of evidence method of identification is a widely recognized concept in both civil and criminal law." Shell v. Law, 935 S.W.2d 402, 409 (Tenn.Ct.App.1996) (quoting Ritter v. State, 3 Tenn.Crim.App. 372, 462 S.W.2d 247, 249 (1970)). "In most cases it is not possible to establish the identity of an exhibit in question by a single witness. Several persons have usually handled the specimen before its analysis." Ritter, 462 S.W.2d at 249 (citing 21 A.L.R.2d 1216; 29 Am.Jur.2d Evid. § 830; 32 C.J.S. Evid. § 588(2)). Specimens "should be handled with the greatest of care and all persons who handle the specimen should be ready to identify it and testify to its custody and unchanged condition." Shell, 935 S.W.2d at 409. Whether the requisite chain of custody has been established to justify admission, however, is "a matter committed to the discretion of the trial judge and [t]his determination will not be overturned in the absence of a clearly mistaken exercise thereof." Id.;see Woods v. Metro. Gov't of Nashville & Davidson County, No. M2001-03143-COA-R3-CV, 2003 WL 22938947, at *3 (Tenn.Ct.App. Dec.10, 2003). "The identity of [the] . . . sample [] need not be proved beyond all possibility of doubt or that all possibility of tampering with [it] be excluded. The circumstances need only establish reasonable assurance of the identity of the sample." Shell, 935 S.W.2d at 409 (quoting Patterson v. State, 224 Ga. 197, 160 S.E.2d 815 (1968)).

In this case, we find that the facts reasonably establish that Mr. Davis supplied the positive urine specimen. Although the collector of the specimen did not testify, this is not enough to render the evidence incompetent. See Shell, 935 S.W.2d at 409-10 (noting that "the failure to have the phlebotomist available to testify did not render the evidence incompetent" and that "the circumstances under which the samples were taken and the tests conducted[] are matters affecting the credibility of the evidence rather than the admissibility"). Mr. Houston provided testimony regarding the chain of custody number, the bar code, and the chain of custody form signed by Mr. Davis. The chain of custody form contained the signatures of the three individuals who handled the specimen once it arrived at the toxicology lab; one of those individuals being Mr. Houston.[22] Moreover, notwithstanding his later attempt to disavow his actions, Mr. Davis signed the chain of custody form verifying the procedures used during the drug test and acknowledging that the chain of custody number on the sample and the form were identical. Based on

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these facts, the Board had a reasonable assurance that the positive urine sampled belonged to Mr. Davis, and as such, the Board, in its discretion, determined that the positive urine sample was admissible. We find no error in this determination.

Having determined that the positive urine specimen test result was admissible evidence in the Board's hearing, the Board's decision to terminate Mr. Davis' employment was supported by substantial and material evidence and was neither arbitrary nor capricious. Accordingly, we reinstate the trial court's

decision to deny Mr. Davis' Petition for Writ of Certiorari.

CONCLUSION

For the reasons stated above, the judgment of the Court of Appeals is reversed, and the judgment of the trial court is reinstated in all respects. Costs of this appeal are taxed to Derek Davis for which execution may issue if necessary.

Notes:

1. The actual policies and procedures of the Program are not contained in the record.

2. "MedLab" is the toxicology lab for Methodist Healthcare.

3. Mr. Davis testified that he had never met Ms. Renfroe before August 20.

4. MedLab's processes for conducting drug screens were not easily discernible from the record. Therefore, the "usual procedures" are a patchwork of the sparse record provided.

5. The Department contends that Mr. Davis signed the document after providing the sample. The language of the document clearly intends this to be the case. Mr. Davis, however, argues that he signed the document before giving a urine sample.

6. In the Court of Appeals' opinion, discussion of this issue is addressed this way:

> Mr. Davis . . . submits that the testing form which is required to be signed by the collector of the urine sample appears to have been signed by a Michelle Swan, and that Mr. [Gary] Houston[, the MedLab manager,] testified that no one named Michelle Swan was working for [MedLab] in August 2002 and that he did not know a person by that name. It appears to us . . . that the form was signed not by a "Michelle Swan," but by a "Michelle Swuni" or "Michelle Seeuni, ..."
>
> Davis v. Luttrell, No. W2007-01077-COA-R3-CV, 2007 WL 4374028, at *2-3 (Tenn.Ct.App. Dec. 17, 2007).

7. Tetrahydrocannabinol ("THC") is a marijuana metabolite that is stored in fat cells and can be detected in the body up to thirty days after smoking marijuana. Interstate Mech. Contractors, Inc. v. McIntosh, 229 S.W.3d 674, 677 (Tenn.2007).

8. At some point in the drug screening process, the urine sample is separated into two different plastic specimen containers: one container to be tested immediately and a second, back-up container to be used if a recheck is requested or needed to verify the results of the first test. It is unclear from the record whether the sample is separated in front of the donor or whether this separation occurs after the sample has been transported to the laboratory for testing. As Mr. Davis has not challenged the means by which the sample was separated or that it was separated incorrectly, it is unnecessary for this Court to know when the usual separation procedure occurs.

9. It is unclear from the record what "ADO" stands for.

10. Mr. Houston testified: "A diluted specimen means that the specimen has been tested and has been determined to be diluted, whether it's intentional or unintentional. This means that the drugs, if there w[ere] drugs present, [they] could possibly be diluted down to under the cut-off levels to where they're not detected."

11. The term "Loudermill hearing" derives from the United States Supreme Court decision Cleveland Board of Education v. Loudermill, 470 U.S. 532, 105 S.Ct. 1487, 84 L.Ed.2d 494 (1985). The Loudermill Court held that a public employee who can be discharged only for cause must be given notice and an opportunity to respond to the charges against him prior to termination. Loudermill, 470 U.S. at 546, 105 S.Ct. 1487.

12. As set forth in the transcript of Mr. Davis' Loudermill hearing, the standard of proof and rules of evidence applicable to this hearing are as follows:

Standard of Proof — The presumption of innocence applicable in a criminal prosecution is not applicable in an administrative hearing. Nevertheless, in bringing the charges the department has the burden of presenting it's [sic] case prior to the defense stating its case. In order to be upheld on appeal, any disciplinary actions imposed must be supported by at least substantial evidence. The usual standard in criminal cases is that guilt must be proved beyond a reasonable doubt. In an administrative hearing, however, the standard is lower. Preponderance of evidence is the minimal standard in internal cases.

The Rules of Evidence — In general strict adherence to the rules of evidence is not required in an administrative hearing. Therefore, a departmental hearing board is free to consider hearsay evidence and/or expert testimony, and need not require the laying of any foundation for receipt of the evidence.

13. On the paperwork used by Kroger and the testing laboratory, it states: "Non-DOT Test result: PASS."

14. The xerox copy of the label at issue is included in the record. Given the poor quality of the copy, it is impossible to determine whether the second to last digit in the seven-digit chain of custody number is a "2" or a "3."

15. Importantly, we note that neither party presented evidence concerning a potential alternative owner of the sample in question. Thus nothing in the record identifies to whom, if anyone, the chain of custody number 0312121 was assigned on August 20, 2002. Neither does the record reflect whether anyone else with the initials "DD" was tested on the same day as Mr. Davis.

16. A copy of the Board's findings is not included in the record. In Mr. Davis' petition for writ of certiorari to the Shelby County Chancery Court he asserted, "The Civil Service Merit Board issued a finding on or about December 18, 2002, a copy of which is attached hereto as Exhibit A." "Exhibit A" is also not included in the record on appeal.

17. On August 19, 2003, Mr. Davis filed a Motion to Amend Complaint in the trial court. The Department responded to this motion on September 3, 2003. The trial court did not address this motion before denying Mr. Davis' petition for writ of certiorari on June 28, 2006. After Mr. Davis filed a notice of appeal to the Court of Appeals, the Court of Appeals dismissed the appeal for failure to appeal a final judgment or order. Subsequently, on April 23, 2007, the trial court entered an order "Reinstating Case for Entry of Order Denying [Mr. Davis'] Motion to Amend." Subsequently, Mr. Davis filed a second notice of appeal to the Court of Appeals on May 17, 2007.

18. This section was originally codified as Tennessee Code Annotated section 27-914. See Tenn.Code Ann. § 27-914 (1956).

19. One of the express provisions of the Civil Service Merit Act is that employees may only be terminated for just cause. 1971 Tenn. Priv. Acts ch. 110, § 22.

20. The Tennessee Rules of Evidence "were ratified and approved in 1989 House Resolution 10 and Senate Resolution 4" and became effective January 1, 1990. Tenn. R. Evid. Compiler's Notes.

21. 1971 Tenn. Priv. Acts, ch. 110, § 23 ("The board shall . . . commence a hearing thereon and shall thereupon fully hear and determine the matter and shall either affirm, modify, or revoke such order of discipline. The appellant shall be entitled to appear personally, produce evidence, and to have counsel and to a public hearing."). Cf. Metropolitan Government of Nashville & Davidson County, Tennessee, Civil Service Commission, Civil Service Policies, Policy 6.8A-1(L) Disciplinary & Grievance Appeal Proceedings, 88, available at http://www.nashville.gov/civil_service/civil_ service_policies.pdf (explicitly stating what standards for admissibility apply in hearings before the Davidson County Civil Service Commission) ("At all contested case hearings, the testimony of witnesses shall be taken in open hearings. At the discretion of the Commission, or at the motion of any party, witnesses may be excluded prior to their testimony. The standard for admissibility is set forth in T.C.A. 4-5-313.").

22. On the bottom of the chain of custody form, in a section designated, "FOR LAB USE ONLY," appears the signature of the lab technician who "Received In Toxicology from Courier, Removed From Pouch And Placed in Locked Room Temp. Storage By:." Additionally, on the back of the form appears the signatures of two additional "Lab Associates" who handled the positive urine specimen. With each signature appears the "Reason For Handling" and a space for "Date/Time."

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**style= 'background-color: #b5d0e0'>Richard A. DEMONBREUN
 v. METROPOLITAN BOARD OF ZONING APPEALS of the Metropolitan Government of Nashville and Davidson County, Tennessee.**

>Court of Appeals of Tennessee, Middle Section, at Nashville.

>October 10, 2005 Session.

>December 7, 2005.

>Permission to Appeal Denied by Supreme Court June 26, 2006.

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;Karl F. Dean, Director of Law, J. Brooks Fox and John L. Kennedy, Metropolitan Attorneys, Nashville, Tennessee, for the appellant, The Metropolitan Board of Zoning Appeals of The Metropolitan Government of Nashville and Davidson County.

;Robert W. Rutherford, Nashville, Tennessee, for the appellee, style= 'background-color: #b5d0e0'>Richard A. Demonbreun.

>OPINION

;CHARLES D. SUSANO, JR., J., delivered the opinion of the court, in which HERSCHEL P. FRANKS, P.J., and D. MICHAEL SWINEY, J., joined.

;The Metropolitan Davidson County Board of Zoning Appeals (";the BZA") granted style= 'background-color: #b5d0e0'>Richard A. Demonbreun (";the Landowner") a special exception permit to use his residentially-zoned property as a special event site. The Landowner filed a petition for writ of certiorari and supersedeas, challenging the validity of several restrictions<SMALL>>1 imposed upon the permit. The trial court held that several of the restrictions were unsupported by material evidence, and thus, according to the trial court, were arbitrarily imposed by the BZA. The BZA appeals the trial court's determination with respect to the conditions found to be arbitrary. We affirm in part and reverse in part.

>I.

;The Landowner owns a half-acre piece of property located at 746 Benton Avenue in southeast Nashville. The property lies within an R6, residentially-zoned district and specifically in the Woodland-in-Waverly residential neighborhood. Woodland-in-Waverly is a historic urban neighborhood showcasing houses built as early as the 19th century. The Landowner's property, which he bought in 1995, includes a house built in 1906 and one of the

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>few functioning original carriage houses in Davidson County.

;In 1999, the Landowner petitioned the BZA for a special exception permit to use his newly renovated property as a ";Historic Home Events" site, which permit would enable him to accommodate weddings, parties, and other special event functions on the property. The BZA granted the Landowner the permit but included the following conditions: (1) the permit would expire in one year, in order to give the BZA a chance to review the permit and see how the conditions were working; (2) the permit was for the Landowner's use only; (3) valet parking was required if more than 25 people attended an event; (4) large buses were not allowed on the street, but shuttle buses were permitted; (5) the number of people attending an event was subject to a maximum of the number of parking spaces times two with a 150-person cap; (6) a maximum of two events were permitted each week; (7) each event had to end and cleanup had to >commence by 9:00 p.m. on weeknights and by 11:00 p.m. on Friday and Saturday nights; and (8) no tents were allowed in the front yard. In 2000, the BZA again granted the Landowner's permit with the same conditions; however, in 2001, the BZA unanimously denied the Landowner's third permit application because of testimony from Woodland-in-Waverly residents regarding his noncompliance with certain permit conditions. Pursuant to the rules of the BZA, the Landowner reapplied for the permit six months after the 2001 denial. The latter application is the one presently before us.

;On July 3, 2002, the BZA held a public hearing on the Landowner's new application. The BZA heard from numerous witnesses, both in support of and in opposition to the application. The record before the BZA also includes numerous letters and emails, which were sent to the BZA by supporting and opposing residents living in the Woodland-in-Waverly neighborhood. At the conclusion of the hearing, the BZA, by a vote of four-to-one, granted the Landowner's application, noting that he had satisfied the necessary criteria for a special exception permit to operate ";Historic Home Events" on his property. This time the BZA imposed the following set of slightly-different conditions on the permit: (1) the permit was issued for a period of time not to exceed one year; (2) the permit was for the Landowner's use only; (3) valet parking was required for all events with more than 25 people in attendance; (4) large buses were not allowed on the street, but shuttle buses were permitted; (5) the maximum number of people allowed at each event was not to exceed the number of parking spaces under contract times two with a 150-person maximum; (6) a

maximum of two events were permitted each week; (7) events >and event cleanup had to be >completed by 9:00 p.m. on weeknights and by 11:00 p.m. on Friday and Saturday nights; (8) no social business/activity of any kind could be conducted in the front yard; and (9) no other residential property could be used in conjunction with the permit.

;The Landowner subsequently filed a petition for writ of certiorari and supersedeas, asserting that the evidence failed to justify certain aspects of conditions (1), (4), (5), (6), (7), and (8). The trial court granted the Landowner's petition. In its memorandum opinion filed August 31, 2004, the trial court held that most of the conditions challenged by the Landowner ";were not based on material evidence but on opinions, beliefs and other matters not a part of the record." Specifically, the trial court found that the one-year time limit on the permit, the 150-person maximum per event, the limit on two events per week, the time-of-day limitation by which completion

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>of event cleanup was required, and the prohibition on activities in the front yard were unsupported by material evidence. The BZA appeals the trial court's determination with respect to these five conditions. It claims that there was ample material evidence to support all of the restrictions imposed by it on the Landowner's permit.

>II.

;The dispositive issue on this appeal is whether the trial court erred in finding that five of the BZA's conditions were unsupported by material evidence. The question of whether there is sufficient evidence to sustain a zoning action is a question of law. >MC Props., Inc. v. City of Chattanooga, 994 S.W.2d 132, 134 (Tenn. Ct.App.1999). Hence, appellate review is >de novo with no presumption of correctness. >Id.

>III.

;Judicial review of an action by an administrative body is by way of the common law writ of certiorari. >See Tenn.Code Ann. § 27-8-101 (2000); >see also McCallen v. City of Memphis, 786 S.W.2d 633, 639 (Tenn.1990). In such a review, the action of the administrative body may be reversed or modified only upon a determination that the action was: (1) in violation of constitutional or statutory provisions; (2) in excess of statutory authority; (3) an unlawful procedure; (4) arbitrary or caprious; or (5) unsupported by material evidence. >Massey v. Shelby County Retirement Bd., 813 S.W.2d 462, 464 (Tenn.Ct. App.1991).

;Our scope of review of this matter is no broader than that of the trial court. ";Whether [an] action by [a] local governmental body is legislative or administrative in nature, the court should refrain from substituting its judgment

for the broad discretionary authority of the local governmental body." >McCallen, 786 S.W.2d at 641-42. Courts are not permitted to reweigh the evidence or scrutinize the intrinsic correctness of the decision. >Lafferty v. City of Winchester, 46 S.W.3d 752, 759 (Tenn.Ct.App.2000). However, a court should invalidate a decision that is clearly illegal, arbitrary, or capricious. >McCallen, 786 S.W.2d at 642.

;If there is no evidence to support an action of an administrative board, it is arbitrary. >Sexton v. Anderson County, 587 S.W.2d 663, 667 (Tenn.Ct.App. 1979). The board's determination must be supported by ";more than a scintilla or glimmer of evidence. . . . It must be of a substantial, material nature." >Pace v. Garbage Disposal Dist., 54 Tenn.App. 263, 390 S.W.2d 461, 463 (1965). The ";material evidence" standard requires ";such relevant evidence as a reasonable mind might accept as adequate to support a rational conclusion and such as to furnish a reasonably sound basis for the action under consideration." >Id. We are further mindful that ";mere beliefs, opinions and fears of neighborhood residents do not constitute material evidence." >Mullins v. City of Knoxville, 665 S.W.2d 393, 396 (Tenn.Ct. App.1983).

>IV.

;Our analysis of whether the trial court erred in its findings begins with a review of the authority under which the BZA was operating in the instant case. Local governmental entities are specifically authorized to prescribe guidelines and standards for zoning boards to follow in issuing special exception permits. >See Tenn.Code Ann. §§ 13-7-206(a), -207(2).>2 The zoning

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>law for Nashville and Davidson County provides the following with respect to the BZA's issuance of such permits:

;A. Burden of Proof. A special exception permit shall not be considered an entitlement, and shall be granted by the board of zoning appeals only after the applicant has demonstrated to the satisfaction of the board that all of the required standards are met.

;B. Ordinance Compliance. The proposed use shall comply with all applicable regulations, including any specific standards for the proposed use set forth in this title, unless circumstances qualify the special exception for a variance in accordance with Chapter 17.40, Article VIII. Any accessory use to a special exception must receive express authorization from the board of zoning appeals.

;C. Integrity of Adjacent Areas. A special exception use permit shall be granted provided that the board finds that the use is so designed, located and proposed to be operated that the public health, safety and welfare will be protected. The board shall determine from its review that adequate public

facilities are available to accommodate the proposed use, and that approval of the permit will not adversely affect other property in the area to the extent that it will impair the reasonable long-term use of those properties. The board may request a report from the metropolitan planning commission regarding long-range plans for land use development.

;D. Design and Architectural Compatibility. The operational and physical characteristics of the special exception shall not adversely impact abutting properties, including those located across street frontages. Site design and architectural features which contribute to compatibility include, but are not limited to, landscaping, drainage, access and circulation, building style and height, bulk, scale, setbacks, open areas, roof slopes, building orientation, overhangs, porches, ornamental features, exterior materials and colors.

;E. Natural Features. Special exception uses in residential zone districts must comply with the nonresidential tree protection regulations and other natural site features shall be preserved to the greatest extent possible so as to minimize the intrusion of nonresidential structures and parking areas.

;F. Historic Preservation. Features of historical significance shall not be adversely affected by the granting of any special exception. The metropolitan historic zoning commission shall be consulted regarding those features essential to preserve the historical integrity of a building or site of historical significance.

;G. Traffic Impact. The applicant shall demonstrate how the proposed use will not adversely affect the safety and convenience of vehicular and pedestrian circulation in the area. The board of zoning appeals may require a traffic impact study for any special exception land use.

* * *

;I. Hazard Protection. The proposed use shall reasonably protect persons and

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>property from erosion, flooding, fire, noise, glare or similar hazards.

>J. Special Conditions. Notwithstanding a finding by the board of zoning appeals that a special exception application satisfies the minimum development standards of this article, the board may restrict the hours of operation, establish permit expiration dates, require extraordinary setbacks and impose other reasonable conditions necessary to protect the public health, safety and welfare.

;Metro Code of Laws (";M.C.L.") § 17.16.150 (emphasis added). The grant of a special exception permit to operate ";Historic Home Events" is further subject to the following set of standards and limitations:

;C. Historic Home Events.

;1. Lot Size. The minimum bulk standard for the zone district shall apply.

;2. Location. The events shall be within a historically significant structure, as determined by the historic zoning commission.

;3. Parking. Where the minimum parking space standard requires additional parking area to be constructed, such area shall comply with the perimeter parking lot landscaping according to Chapter 17.24 of this code. In urban settings, the board of zoning appeals may consider on-street parking to satisfy the minimum parking standard, provided there is a finding of sufficient available public space.

;4. Signs. Signs for advertising shall not be permitted.

;5. Meals. Meal service shall be restricted to patrons of the special event only, and not to the general public.

;6. Owner-Occupied. The owner of the property must reside permanently in the historic home. Where there is more than one owner of the home, or where an estate, corporation, limited partnership or similar entity is the owner, a person with controlling interest, or possessing the largest number of outstanding shares owned by any single individual or corporation, shall reside permanently in the historic home. If two or more persons own equal shares that represent the largest ownership, at least one of the persons shall reside permanently in the historic home.

;7. >Frequency of Events. The board of zoning appeals may limit the number and frequency of events to minimize disturbance to surrounding properties.

;M.C.L. § 17.16.160.C. (emphasis added). As noted earlier, the BZA found that the Landowner satisfied the criteria for the special exception permit, but, as authorized by the above-emphasized provisions, the BZA also chose to impose certain conditions on the permit. Our focus is, therefore, upon whether the evidence supports the BZA's imposition of the conditions, which were challenged by the Landowner and found to be arbitrary by the trial court.

;The first condition we address is the BZA's limitation of the permit to ";a period of time not to exceed one year." The Landowner agrees with the trial court's conclusion that the record contains no justification for this condition. He argues that this condition is in the nature of >enforcement and beyond the jurisdiction of the BZA. We agree with the BZA's argument that there is material evidence to support this restriction on the Landowner's permit. The governing ordinance authorizes the BZA to establish permit expiration dates. M.C.L. § 17.16.150.J. The BZA has an interest in ascertaining whether a permit holder is abiding by its standards and conditions. Furthermore, nothing in the applicable

zoning law precludes

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>the BZA's establishment of a permit expiration date solely for the purpose of review and enforcement purposes.

;While acknowledging the BZA's authority to impose an expiration date on the permit, the trial court held that the record was devoid of evidence justifying the BZA's imposition of a one-year expiration. We do not agree. In addition to presenting evidence regarding noise, traffic, and parking problems caused by the Landowner's events, the opposition testified to, and presented charts, letters, and emails reflecting, the Landowner's previous noncompliance with permit conditions and his continued operation after the BZA's denial in 2001. Evidence also established that the Landowner continued to operate after he was served with a cease-and-desist notice in April, 2002. The Landowner admitted certain violations of the permit and also acknowledged that, for a period of time, he had operated his facility without a permit. In light of the Landowner's documented history of noncompliance and the continued complaints by neighboring residents, the BZA could reasonably conclude that a review of the permit within twelve months was necessary and appropriate. Thus, we hold that the condition providing that the permit is ";for a period of time not to exceed one year" is supported by material evidence.

;We next consider the BZA's capping of the maximum number of guests allowed to attend an event at 150 people. The trial court ";was unable to find any evidence whatsoever upon which this condition was based." We disagree. The evidence before the BZA included the testimony, emails and letters of numerous Woodland-in-Waverly residents stating their opposition to the Landowner's continued use of his property for ";Historic Home Events" because of noise and other disturbances caused by the events. One neighbor testified that the noise had kept his child up at night, and that he and his two-year-old had encountered intoxicated guests while walking in the neighborhood one day. Another neighbor emailed a complaint to the BZA noting a particular event with many cars and people in attendance, the presence of a ";VERY loud" band, and the use of a microphone in the front yard. (Capitalization in email). Yet another neighbor testified to witnessing a line of event traffic make U-turn after U-turn on a narrow neighborhood street. The opposition's complaints and statements regarding specific disturbances and the fact that the residents of the Woodland-in-Waverly neighborhood live in such close proximity to one another supports the BZA's imposition of this condition. The BZA had evidence from which it could reasonably conclude that events tended to disturb the surrounding residents; and logic would reflect that there is a natural relationship between the number of people at an event and the magnitude of the disturbance.

;The BZA argues that there is material evidence to support the restriction limiting the Landowner to two events per week. The rationale behind the Landowner's challenge to this condition was that, because the evidence

suggested that smaller events (>i.e., retreats and luncheons) had no adverse impact on the neighborhood, the BZA's failure to differentiate between >small events and >large events was arbitrary. The trial court determined that the evidence did not support the condition limiting the Landowner to two events per week, and that ";the evidence would more reasonably sustain a contrary position." Given our limited scope of review in this case, we cannot agree with the trial court's determination that this condition was unsupported by material evidence. The BZA's condition

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>limiting the Landowner to two events per week is not rendered arbitrary or unsupported by material evidence simply because the record also would have supported two different approaches, one for small events and one for large events. All that must exist for this condition to be upheld is ";such relevant evidence as a reasonable mind might accept as adequate to support" the two events per week limitation. >Pace, 390 S.W.2d at 463. The opposition's testimony and evidence regarding general, and specific, disturbances caused by the Landowner's events could lead the BZA to reasonably conclude that a limit on the number of events held each week was appropriate. >See M.C.L. § 17.16.160.C.7. (noting that the BZA can limit the number and frequency of events to minimize disturbance to surrounding properties).

;We next consider the BZA's condition requiring the completion of events >and event cleanup by 9:00 p.m. on weeknights and 11:00 p.m. on weekends. The Landowner argues that there is no material evidence to support this condition. The trial court found ";that some evidence exists in the record which would justify limiting the time for events, but that no evidence exists regarding the clean up afterward." Thus, the trial court held that ";the totality of that portion of the [BZA's permit] regarding time limits on clean up" was unsupported by material evidence. We agree with the trial court's conclusion regarding this condition. Testimony and emails note instances of late night noise caused by loud music and the like on the Landowner's property; however, the record is devoid of testimony or documented complaints suggesting that event cleanup activities were the cause of any such disturbances. We hold there is material evidence to support the BZA's time restriction on the actual events, but not on event cleanup activities.

;The final challenged condition is the BZA's prohibition on ";social business/activity of any kind to be conducted in the front yard." The trial court was not ";persuaded that material evidence was presented to the [BZA] which would support such a condition." The only evidence in the record which relates to this condition is as follows: most weddings held at the Landowner's property occur in the front yard; the Landowner's 1999 and 2000 special exception permit included a prohibition on ";tents in the front yard"; the Landowner admitted that he violated this condition on at least one occasion; testimony and pictures establish that the Landowner placed a large white curtain around the perimeter of the front yard for one event; and there were complaints regarding

crowds, chairs, and microphone use in the front yard. While there is evidence from which the BZA could have reasonably concluded that activities in the front yard should be restricted,>3 we find a lack of evidence supporting a >blanket prohibition of activities, regardless of type or size, on this valuable part of the Landowner's property. Accordingly, we affirm the trial court's judgment with respect to this blanket prohibition.

;The BZA further argues that, because the Landowner promised, during the BZA's hearing, to ";walk the chalk" and ";comply with any conditions" imposed by the BZA, he is required to comply with the

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>challenged conditions. It is true that the Landowner personally pledged to abide by any conditions if the BZA would again grant him a special exception permit; but the Landowner's pledge cannot be construed as carte blanche to impose any and all restrictions as may seem appropriate to the BZA regardless of whether there is material evidence to support them. His pledge certainly cannot be seen as an agreement to abide by arbitrarily-imposed restrictions.

>V.

;The BZA also raises the issue of whether the trial court erred in issuing its writ of supersedeas at the outset of this case. The trial court's writ ordered the BZA to desist from enforcing the conditions challenged by the Landowner until the trial court determined the merits of the challenged conditions. The BZA moved to dissolve the writ of supersedeas in August, 2002, and in February, 2004, but the trial court denied both motions. The BZA argues that the trial court's writ exceeded the court's authority to maintain the status quo when it gave the Landowner the right to conduct his events without several of the conditions imposed by the BZA. >See McKee v. Bd. of Elections, 173 Tenn. 276, 116 S.W.2d 1033, 1037 (1938) (stating that the writ of supersedeas does not have authority ";beyond that of a stay order, maintaining the status quo as of the time of its issuance, . . ."). The issue of whether the writ of supersedeas was too expansive is now moot. Accordingly, we decline to address it.

>VI.

;The judgment of the trial court finding no material evidence to support the requirement of the completion of event cleanup activities by a certain time and the prohibition on the Landowner's ";social business/activity" use of his front yard is affirmed. The judgment of the trial court finding no material evidence to support the one-year limitation on the Landowner's special exception permit, the 150-person limitation on the number of guests allowed to attend an event at the Landowner's property, and the two-event limitation per week is reversed. This case is remanded to the trial court for such further proceedings, if any, as may be required, consistent with this opinion. Exercising our discretion, we tax the costs on appeal one-half to the appellant, the BZA,

and one-half to the appellee, style= 'background-color: #b5d0e0'>Richard A. Demonbreun.

>Notes:

>1. We will use the terms ";restriction" and ";condition" interchangeably in this opinion.

>2. Tenn.Code Ann. § 13-7-206(a)(1999) states that

[t]he zoning ordinance may provide that the board of appeals may, in appropriate cases and subject to the principles, standards, rules, conditions and safeguards set forth in the ordinance, make special exceptions to the terms of the zoning regulations in harmony with their general purpose and intent. . . .

;Tenn.Code Ann. § 13-7-207(2) (1999) further provides that the local zoning board of appeals has the power to "[h]ear and decide, in accordance with the provisions of any such ordinance, requests for special exceptions. . . ."

>3. We decline to state what we think those restrictions might be. It is not for us to impose new conditions not imposed by the BZA. The only question for us is whether there is material evidence to support a given condition. We do not find material evidence to support a condition absolutely forbidding the Landowner to use his front yard in connection with all events, regardless of type or size.
