STATE OF MICHIGAN

COURT OF APPEALS

JERRY T. GOODRIDGE,

Plaintiff-Appellant,

v

YPSILANTI TOWNSHIP BOARD,

Defendant-Appellee.

FOR PUBLICATION
December 23, 1997
9:10 a.m.

No. 195973
Washtenaw Circuit Court
LC No. 87-34442-AA

AFTER REMAND

Before: Taylor, P.J., and Griffin and Hoekstra, JJ.

TAYLOR, P.J.

Plaintiff's employment as Ypsilanti Township's fire chief was terminated by defendant Ypsilanti Township Board as a result of a finding of misconduct.[1] The circuit court affirmed the termination of plaintiff's employment. This Court,[2] over Judge Griffin's dissent, reversed the termination of plaintiff's employment because the charges of misconduct had not been filed within the ninety-day statutory period. *Goodridge v Ypsilanti Township Bd*, 209 Mich App 344; 529 NW2d 665 (1995). The Supreme Court reversed, stating that charges are timely if they are filed within ninety days of the time the employer learned, or reasonably should have learned, of the alleged misconduct. *Goodridge v Ypsilanti Township Board*, 451 Mich 446, 456; 547 NW2d 668 (1996). The Supreme Court remanded the case to us for further consideration in light of its opinion. *Id*.

The Supreme Court's remand required us to determine whether charges were filed against plaintiff within ninety days of the time the employer learned or reasonably should have learned of the alleged misconduct. Our original opinion stated that the fraud occurred in April of 1986 and that it was discovered in July of 1986. Plaintiff was charged with misconduct via an October 16, 1986, letter. Ninety days before October 16, 1986, was July 18, 1986. Thus, we have been instructed to determine whether plaintiff's employer had actual knowledge on or before July 18, 1986, or reasonably should have learned of the alleged misconduct on or before July 18, 1986.

To facilitate answering this question, we remanded this matter, while retaining jurisdiction, so that the Ypsilanti Township Civil Service Commission (commission) could apply the new test announced by the Supreme Court in the first instance. *Goodridge v Ypsilanti Township Board*, unpublished opinion per curiam, issued September 3, 1996 (Docket No. 195973). Thereafter, the commission

issued a unanimous opinion dated August 5, 1997 holding that the principal executive

officer of Ypsilanti Township reasonably should have known of plaintiff's misconduct before July 18, 1986. We now, pursuant to the instruction in the Supreme Court's remand, affirm the commission's recent opinion because it is adequately supported in the record.[3] Because the charges cited as the basis for terminating plaintiff's employment were not filed within the ninety-day period, the charges were void. MCL 38.514; MSA 5.3364 (All charges shall be void unless filed within 90 days of the violation).

In our original opinion, we ordered plaintiff reinstated if he was otherwise qualified and further held that plaintiff was not entitled to back pay. *Id.* at 354. Nothing in the Supreme Court's opinion changed these holdings. The commission's most recent opinion "subject to guidance from the Court of Appeals" ordered plaintiff to undergo testing under the supervision of the Institute of Public Safety Personnel to determine whether he is "otherwise qualified" to act as fire chief for Ypsilanti Township. We approve of this directive, our original opinion indicated that plaintiff was to be reinstated if "otherwise qualified" *Id.* at 354, and find it reasonable given the fact that plaintiff has not been fire chief for almost ten years. Plaintiff shall be reinstated upon the Institute's finding that plaintiff is qualified.

The August 5, 1997, opinion of the commission is affirmed.

/s/ Clifford W. Taylor
/s/ Joel P. Hoekstra

[1] Criminal charges were never filed against plaintiff.

[2]Judge Hoekstra has been substituted for Judge Schma for purposes of post-remand purposes.

[3]Contrary to the dissent, we find enough evidence, at least by inference, to sustain the commission's decision. The commission's decision satisfies the deferential review standard, *In re Payne*, 444 Mich 679; 514 NW2d 121 (1994), and does not permit the extensive fact-finding that is at the heart of the dissent.