

Administrative Appeals

Chancellors' Luncheon & CLE

October 16, 2024

Chancellor Anne C. Martin
Chancellor Patricia Head Moskal

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Types of Judicial Review of Administrative Decisions

- ▶ Uniform Administrative Procedures Act (UAPA), Tenn. Code Ann. §§ 4-5-322, et seq.
- ▶ Writs of Certiorari: both common law and statutory, Tenn. Code Ann. §§ 27-8-101 et seq., §§ 27-9-101, et seq.
 - Review of local government agency decisions
 - Where no other avenue of appeal is provided
See Arnold v. Tenn. Bd. of Paroles, 956 S.W.2d 478 (Tenn. 1997)

See generally Brundage v. Cumberland Cnty., 357 S.W.3d 361 (Tenn. 2011)

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Common Law Writ of Certiorari: Tenn. Code Ann. § 27-8-101

- ▶ Extraordinary judicial remedy
- ▶ Scope of review is "quite limited"
- ▶ Not available as a matter of right; within trial court's discretion to grant writ
- ▶ Used where no other appeal avenue is provided
- ▶ Review limited to determining whether the lower governmental entity
 - (1) exceeded its jurisdiction
 - (2) followed an unlawful procedure
 - (3) acted illegally, arbitrarily, or fraudulently
 - (4) acted without material evidence to support its decision

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Common Law Writ of Certiorari (con't)

- ▶ Must be filed by verified petition within 60 days of lower entity's decision
- ▶ Court may not redetermine facts, evaluate intrinsic correctness of the decision, reweigh evidence, or substitute their judgment
- ▶ Decisions of local government officials accompanied by a presumption they were made in good faith.

See Heyne v. Metropolitan Nashville Bd. of Educ., 380 S.W.3d 715 (Tenn. 2012) (internal citations omitted)

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Statutory Writ of Certiorari: Tenn. Code Ann. §§ 27-9-101, et seq.

- ▶ Petition may be filed by any party aggrieved by a final order or judgment following a hearing of an board or commission functioning under the law of this state, where not otherwise specifically provided.
- ▶ Can be filed in circuit or chancery court
- ▶ Must be verified an filed within 60 days of final decision
- ▶ *De Novo* Standard of Review: Court shall weigh evidence and determine the facts by a preponderance of the evidence, Tenn. Code Ann. § 27-9-111(d); *except where statute provides for a different (deferential) standard of review*

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Statutory Writ of Certiorari: Tenn. Code Ann. (con't)

- ▶ Court shall reduce all findings of fact and conclusions of law to writing and make them part of the record
- ▶ If final decision of board or commission revokes, denies, or suspends license or permit required to engage in conduct protected by 1st Amend., any party can request expedited hearing

See City of Chattanooga v. Cinema 1, Inc., 150 S.W.3d 390 (Tenn. Ct. App. 2004).

Examples of Statutory Writs:

- Disciplinary decisions regarding tenured teachers (TCA § 49-5-513(a))
- Revocation or suspension of beer permit (TCA § 57-5-108(d))
- Decisions by Board of Veterinary Examiners (TCA § 63-12-128(c))
- Land use permits (e.g., TCA § 68-211-704 (landfills))

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**UAPA:
Judicial Review
of Contested
Cases
Tenn. Code Ann.
§ 4-5-322**

General Requirements:

- ▶ Initiated by petition for review in chancery court
- ▶ By aggrieved person or state agency
- ▶ Within 60 days of entry of final decision of agency in contested case
- ▶ Limited circumstances allow judicial review of preliminary or intermediary agency action
- ▶ If filed in wrong venue, can be transferred
- ▶ Filing does not stay enforcement of the agency's decision; but the agency or reviewing court may order a stay
- ▶ Administrative record to be filed within 45 days or such additional time as allowed by court

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**Standard of
Judicial Review
under UAPA:
Tenn. Code Ann.
§ 4-5-322**

- ▶ Deferential and narrow standard of review of factual findings; *de novo* review of questions of law See *StarLink Logistics, Inc. v. ACC, LLC*, 494 S.W.3d 659, 669 (Tenn. 2016); Tenn. Code Ann. §4-5-326
- ▶ Agency decision given considerable deference See *Metropolitan Gov't of Nashville v. Shacklett*, 554 S.W.2d 601 (Tenn. 1977)
- ▶ The Court may not substitute its judgment for that of the agency, even when the evidence could support a different result See *Wayne County v. Tenn. Solid Waste Disposal Control Bd.*, 756 S.W.2d 274, 279 (Tenn. Ct. App. 1988).

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**Standard of
Judicial Review
under UAPA:
Tenn. Code Ann.
§ 4-5-322(g), (e)**

- ▶ Review limited to administrative record, Tenn. Code Ann. § 4-5-322(g)
- ▶ Under specific circumstances, party can request leave of reviewing court to present additional evidence under . § 4-5-322(e), if . . .
 - application is made before the date set for the final review hearing
 - moving party shows additional evidence is *material* and there are *good reasons* for failure to present it to the agency
 - if allowed, reviewing court should remand to agency to receive additional proof
 - agency may modify its findings and decision based on additional evidence
 - additional evidence and any modifications to agency decision must be filed with reviewing court

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Court Options on Judicial Review

- ▶ Affirm the agency's decision
- ▶ Remand for further proceedings
 - Usually with instructions
- ▶ Reverse or modify decision
 - Only if petitioner's rights are prejudiced by the administrative proceeding

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Bases for Reversal or Modification: Tenn. Code Ann. § 4-5-322(h)

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 and capricious or characterized by an abuse of discretion or clearly unwarranted exercise of discretion; or . . .

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Bases for Reversal or Modification: Tenn. Code Ann. § 4-5-322(h) (con't)

(5)(A)(i) Unsupported by evidence that is both *substantial and material* in light of the entire record (except as provided in subsection (h)(5)(B))

(5)(A)(ii) In determining *substantiality of evidence*, the court shall take in account whatever fairly detracts from its weight, but shall not substitute its judgment for that of the agency as to the weight of the evidence on questions of fact;

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Bases for Reversal or Modification: Tenn. Code Ann. § 4-5-322(h) (con't)

(5)(B)(i) Unsupported by a *preponderance of the evidence* in light of the entire record if agency decision made by a board, council, committee, agency, or regulatory program created pursuant to Title 63, Chapters 3-14, 16-19, and 22-31 [Professions of the Healing Arts, such as dentists, physicians, nurses, etc.]

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

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Limitation on Reversal, Remand or Modification: Tenn. Code Ann. § 4-5-322(i)

No agency decision in a contested case shall be reversed, remanded or modified *unless for errors which effect the merits of the decision*

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Decision In Excess of Statutory Authority of the Agency

Agency does not act outside of its authority when it utilizes the processes set out in the Tenn. R. Civ. P. See *Yokley v. State Bd. of Ed.*, 305 S.W.3d 523 (Tenn. Ct. App. 2009)

- Grant of summary judgment appropriate even though process not built into UAPA
- Tenn. R. Civ. P. may be used as guidance including allowing dispositive motions

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Agency Decision Made Upon Unlawful Procedure

Review agency's own procedures to evaluate if the procedure it used in the contested case was unlawful
See Mack v. Civ. Serv. Comm'n of City of Memphis, No. 02A01-9807-CH-00215, 1999 WL 250180 (Tenn. Ct. App. Apr. 28, 1999)

- Some Examples:
- Number of board members or adjudicators participating in hearing
 - Time limits associated with hearings and decision making
 - Respective roles of board members and ALJ - ensuring they are only acting in that capacity
 - Applying correct considerations for imposing penalties if set out by rule/regulation/statute

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Moss v. Shelby Cnty. Civil Serv. Merit Bd., 665 S.W.3d 433 (Tenn. 2023)

- Challenge to Civil Service Board affirming public employee termination for off duty actions (writ of cert case)
- Three bases for appeal - adequacy of notice of charges; substantial and material evidence; and exclusion of evidence of other non-terminated employee bad acts
- Court of Appeals found notice of charges were inadequate and remanded with instructions to reinstate; Supreme Court reversed on that issue
- On remand, Court of Appeals upheld agency on notice and substantial and material evidence issues; sole issue before Supreme Court was evidentiary question
- Court upheld exclusion of evidence because Employee was not claiming an Equal Protection violation based upon a protected class and could not argue he was a "class of one"

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"Arbitrary and Capricious"

Jackson Mobilephone Co. v. Tenn. Pub. Serv. Comm'n, 876 S.W.2d 106 (Tenn. Ct. App. 1993)

- ▶ An agency's decision is "arbitrary and capricious" if it is not supported by substantial and material evidence or if there is a clear error in judgment.
- ▶ An "arbitrary" decision is one not based upon any course of reasoning or exercise of judgment or is one that disregards "the facts or circumstances of the case without some basis that would lead a reasonable person to reach the same conclusion."
- ▶ Evidence is sufficient "if it furnishes a reasonably sound factual basis for the decision being reviewed."

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Taylor v. Bd. of Admin, City of Memphis Retirement Sys., 681 S.W.3d 751 (Tenn. 2023)

- ▶ Police officer appealed city decision to deny application for line-of-duty pension benefits (another writ of cert case)
- ▶ Trial court upheld denial; Court of Appeals reversed; Supreme Court reversed Court of Appeals
 - Although an administrative decision with adequate evidentiary support can still be invalidated under the UAPA as arbitrary and capricious, the decision must “amount[] to a clear error in judgment.”
 - Courts must accept reasonable inferences from the record in evaluating whether a decision is supported by substantial and material evidence.
 - Because an equally valid competing factual theory is not legally sufficient to render an administrative decision arbitrary and capricious under the UAPA, the panel majority mistakenly reversed the ALJ’s findings on this ground.

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“Substantial and Material” Evidence Standard

- ▶ “Substantial and material” evidence is described as “less than a preponderance of the evidence, but more than a scintilla or glimmer.” *StarLink Logistics*, 494 S.W.3d at 669.
- ▶ Court must determine if record contains “such relevant evidence as a reasonable mind might accept to support a rational conclusion.” See *Clay County Manor v. State Dep’t of Health & Env’t*, 849 S.W.2d 755, 759 (Tenn. 1993)
- ▶ Court may not reweigh the evidence or second-guess the agency as to the weight; the commission’s decision need not be supported by a preponderance of the evidence. See *Humana of Tenn. v. Tenn. Health Facilities Comm’n*, 551 S.W.2d 664, 667 (Tenn. 1977); *Street v. State Bd. of Equalization*, 812 S.W.2d 583, 585-86 (Tenn. Ct. App. 1990)

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“Preponderance of the Evidence” Standard under the UAPA

- ▶ Title 63, Professions of the Healing Arts
Tenn. Code Ann. § 4-5-322(h)(5)(B)(i)
- ▶ Asset Forfeiture Appeals
Tenn. Code Ann. § 40-33-213(a) replaces “substantial and material evidence” with “preponderance of the evidence” standard otherwise § 4-5-322(h) applies
See *McEwen v. v. Tenn. Dep’t of Safety*, 173 S.W.3d 815 (Tenn. Ct. App. 2005)

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Examples of Other Standards of Review

- ▶ **State Board of Equalization Appeals**
Tenn. Code Ann. § 67-5-1511(b) provides for judicial review under the UAPA, but subject to *de novo* standard, with no presumption of correctness of the lower tribunal, with a new hearing in chancery court based upon the administrative record and any additional or supplemental evidence that either party wishes to adduce relevant to any issue. See
- ▶ **State Contract Procurement/Protests**
Tenn. Code Ann. § 12-3-514(l) provides for judicial review of final decisions of the State Protest Committee by common law certiorari, with limited scope of review under common law writ of certiorari standard. See *Guidesoft, Inc. v. State Protest Comm.*, 642 S.W.3d 388 (Tenn. Ct. App. 2021).

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Judicial Review Analysis under the UAPA

- In conducting review of an agency decision, the reviewing court must determine:
- ▶ **First,**
 - Did the agency identify the relevant legal principles?
 - ▶ **Second,**
 - Is there substantial and material evidence [or preponderance of the evidence] in the record to support the agency's fact finding?
 - ▶ **Third,**
 - Did the agency appropriately apply the law to the facts?
- See *McEwen v. Tenn. Dep't of Safety*, 173 S.W.3d 815 (Tenn. Ct. App. 2005).

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Court Must Issue Findings and Conclusions: Tenn. Code Ann. § 4-5-322(j)

The reviewing court shall reduce its findings of fact and conclusion of law to writing and make them parts of the record.

Remember: Judicial review is limited to the administrative record, Tenn. Code Ann. § 4-5-322(g)

But if record is incomplete (such as no transcript of hearing), reviewing court can order the agency to file supplemental record.

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No Deferral to State Agency's Interpretation of Statutes or Rules:
Tenn. Code Ann. § 4-5-326

On judicial review of a contested case, the reviewing court "shall not" defer to a state agency's interpretation of the statute or rule and "shall" interpret the statute or rule *de novo*.

After applying all customary tools of interpretation, the court "shall" resolve any remaining ambiguity against increased agency authority. (eff. April 14, 2022)

Cf. StarLink, 494 S.W.3d 659, 669(2016) (confirming general principle when reviewing questions of fact that court should defer to state agency's decisions when they are acting within their area of specialized knowledge, experience, and expertise)

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Can an original action be combined with a petition for judicial review?

Poursaid v. Tenn. Bd. Of Nursing, 643 S.W.3d 157 (Tenn. Ct. App. 2021). Former registered nurse filed petition for review of revocation of her license by Tennessee Board of Nursing. Trial court dismissal affirmed by appellate courts because petitioner tried to join her administrative appeal with an original action for damages against the agency.

Tennessee appellate courts have held that a trial court should not exercise its original jurisdiction and its appellate jurisdiction simultaneously in the same case. See *Tennessee Env't. Council v. Water Quality Control Bd.*, 250 S.W.3d 44, 58-59 (Tenn. Ct. App. 2007); *Goodwin v. Metropolitan Bd. of Health*, 656 S.W.2d 383, 386 (Tenn. Ct. App. 1983).

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Declaratory Orders:
Tenn. Code Ann. §§ 4-5-223, -225

Right to obtain declaratory relief in Chancery Court of Davidson County, unless otherwise specified by statute, by a party challenging the legal validity or applicability of a statute, rule or order of an administrative agency

Right is conditioned on the party first petitioning the agency for a declaratory order and the agency refusing to do so

Agency must set contested case within 60 days or petitioner is considered to have exhausted the administrative remedy and can seek declaratory relief from chancery court

Example of otherwise specified: 3-Judge Panel statute, Tenn. Code Ann. § 20-18-101, *et seq.*

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