

UNREPORTED  
IN THE COURT OF SPECIAL APPEALS  
OF MARYLAND

No. 1869

September Term, 2014

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PAMELA PHILLIPS

v.

BALTIMORE CITY SHERIFF'S OFFICE

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Wright,  
Nazarian,  
Eyler, James R.  
(Retired, Specially Assigned),

JJ.

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Opinion by Nazarian, J.

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Filed: November 20, 2015

\* This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

Pamela Phillips (“Employee”) had been a deputy sheriff in the Baltimore City Sheriff’s Office (“BCSO”) for over ten years, but failed her annual qualification test with her departmental firearm in July 2013. After offering her remedial training and additional (unsuccessful) opportunities to take the test, the BCSO terminated Employee, reasoning that without the firearms certification, she no longer was qualified to carry out her duties. Employee appealed her termination, first to Baltimore City Sheriff John W. Anderson, and then to the Department of Budget and Management (“DBM”). DBM delegated the matter to the Office of Administrative Hearings (“OAH”), and an Administrative Law Judge (“ALJ”) upheld her termination. Employee sought judicial review in the Circuit Court for Baltimore City, and the circuit court agreed with the ALJ’s decision. We affirm.

## **I. BACKGROUND**

Employee, whose duties as a deputy included law enforcement activity, was required to carry and use a firearm. She also was required to maintain a certification from the Maryland Police and Correctional Training Commission (“MPCTC”), to attend annual firearms training, and to pass an annual firearms qualifying test. As of May 2013, Employee held a certification from MPCTC that was valid until December 2013. And because she had passed the annual firearms qualification test in October 2012, she was qualified to carry a firearm at that point.

On May 9, 2013, as directed by her supervisor, Employee attended an Annual Firearms Training and Qualification Program at the MPCTC facility in Sykesville. After the training, she attempted and failed the firearms qualification test, so the BCSO took her

firearm and assigned her to work in civilian clothing at the door of the Circuit Court for Baltimore City. The next day, May 10, 2013, Employee returned to MPCTC to receive remedial firearms training and to retake the qualification test. She again was unable to pass, and she began going to the shooting range twice a week to practice on her own time.

After the failed shooting tests, Employee suggested that her vision might be contributing to her performance, so the BSCO referred her for a medical exam on May 29, 2013. The physician found her medically fit for duty.

Employee returned to MPCTC on July 9, 2013 for further remedial training. Her instructor observed that she was anticipating when the gun would go off and “jerk[ing] the trigger pull,” which altered the bullet’s intended target. He assigned drills to correct the problem, but Employee was still unable to pass the qualification test. The next day, July 10, 2013, Employee returned to MPTC for yet another remedial training session. Her fourth and final attempt to pass firearms qualification test was unsuccessful.

On August 7, 2013, Sheriff Anderson terminated Employee, without prejudice, from her position as deputy sheriff, citing Md. Code (1993, 2009 Repl. Vol), Title 11 of the State Personnel and Pensions Article (“SPP”).<sup>1</sup> Her Notice of Termination stated that “Employee is not currently qualified for the position” under Code of Maryland Regulations

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<sup>1</sup> BCSO employees are assigned by statute to the State Personnel Management System; therefore, her termination was governed by Title 11 of the State Personnel and Pensions Article. *See* Md. Code (1974, 2013 Repl. Vol), § 2-309(d)(2) of the Courts and Judicial Proceedings Article.

(“COMAR”) 17.04.05.03B(3). Employee appealed her termination to the Department of Budget and Management (“DBM”), who referred the appeal back to Sheriff Anderson for an appeal within her unit pursuant to SPP § 11-109. Sheriff Anderson upheld the termination, and notified Employee that she had the right to file an appeal of his decision to DBM under SPP § 11-110. Employee did so, and on September 20, 2013, DBM transmitted the matter to OAH.

After an evidentiary hearing, the ALJ found that “although her certification did not expire until December 31, 2013, the Employee’s authorization to carry and use a firearm ended when she failed to successfully pass the qualification test.” The ALJ found that BCSO’s decision to terminate Employee was not arbitrary and capricious because without a firearms qualification, she was no longer qualified for the position of deputy sheriff. Employee sought judicial review in the Circuit Court for Baltimore City. The circuit court affirmed, and Employee filed a timely notice of appeal.

## II. DISCUSSION

The sole question for us is whether the Sheriff’s decision to terminate Employee was arbitrary and capricious.<sup>2</sup> We look through the circuit court’s ruling to review the agency’s decision, and our review is narrow and deferential. *See Spencer v. Md. St. Bd. of*

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<sup>2</sup> Employee’s brief phrases the issue as follows:

“Whether the Employee’s termination is supported by substantial evidence, and whether the sanction of termination itself was an abuse of discretion, arbitrary and capricious, and effected [sic] by other error of law?”

*Pharmacy*, 380 Md. 515, 523-24 (2004). We review the agency’s findings of fact in the light most favorable to it, and consider only “whether substantial evidence exists to support the agency’s findings and conclusions.” *United Parcel v. People’s Counsel*, 336 Md. 569, 577 (1994) (citations omitted). Put differently, we determine “whether a reasoning mind reasonably could have reached the factual conclusion the agency reached.” *Bulluck v. Pelham Wood Apts.*, 283 Md. 505, 512 (1978) (citations omitted). We do not “substitute [our] judgment for that of the agency,” and we disrupt the agency’s sanction decision only “if any substantial right of the petitioner may have been prejudiced because a finding, conclusion, or decision . . . is arbitrary and capricious.” Md. Code (1984, 2014 Repl. Vol.), § 10-222(h)(3) of the State Government Article. As long as the sanction falls within the agency’s authority, is lawful, and is supported by material and substantial evidence, we will uphold the agency’s decision. *Md. Transit Auth. v. King*, 369 Md. 274, 291 (2002).

Employee contends that BCSO’s decision to terminate her after she failed to qualify with her firearm was arbitrary and capricious for two reasons. *First*, and although it is not entirely clear what this claim would get her, she argues that her existing MPCTC certification remained in force until December 31, 2013. *Second*, Employee claims that MPCTC regulations do not call for termination where an officer fails firearms qualification, but require only that an officer’s firearm be taken away. We agree with the Sheriff that when Employee failed the qualification test, she could no longer fulfill her duties as a deputy sheriff, and that the Sheriff did not act arbitrarily or capriciously in terminating her.

**A. Employee Could No Longer Fulfill Her Duties After She Failed the Qualification Test in May and July 2013.**

Employee argues that her termination was arbitrary and capricious because the Sheriff had no basis for finding that “[E]mployee is currently not qualified for her position.” COMAR 17.04.05.03B(3). She admits that she failed firearms qualification tests in May and July 2013, but seems to contend that because her then-existing certification from MPCTC was not set to expire until December 2013, she was qualified for the deputy sheriff position at least through year-end.<sup>3</sup> But the ALJ found, and the Sheriff agreed, that Maryland regulations required “firearm qualification [as] a subset of certification,” and that “the Employee’s authorization to carry and use a firearm ended when she failed to successfully pass the qualification test.” We agree with them.

Police officers must be certified by the MPCTC. COMAR 12.04.01.06A. Certification requires the individual to satisfy a list of selection standards, including age, citizenship, education, health, and fitness requirements; to complete an entry-level training program; and to complete a field training program. *Id.* 12.04.01.06, .04, .09, .17. An officer’s certification is valid for a limited period of time, and can be renewed only if the

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<sup>3</sup> Again, we have struggled to understand what Employee contends should have happened here. She concedes, as she must, that the Sheriff provided her the remedial training and testing opportunities the MPCTC’s regulations required, and seemed to acknowledge at argument that she would not be able to renew her certification if she couldn’t pass the firearms test anew. We still cannot discern, though, whether she contends that this meant she was entitled to remain on the job through the end of 2013 or if it had some other significance. But ultimately, the duration of her certification is a red herring. She wasn’t terminated for lacking certification—she was terminated for lacking the ability to bear and use a firearm, which in turn left her unqualified to remain certified and, more to the point, to fulfill her job duties.

officer continues to meet the Commission’s selection and training standards. *Id.* 12.04.01.06C(3). Among the training standards, officers must “qualify annually with each firearm the law enforcement agency authorizes the police officer to use or carry.” *Id.* 12.04.01.12B(2); *see also id.* 12.04.02.08A. Passing the annual firearms qualification test, then, is one of the prerequisites for obtaining and maintaining one’s certification to serve as a police officer.

When a police officer fails the annual firearms qualification test, MPCTC regulations provide that the officer must complete it within 30 consecutive calendar days of the initial attempt. *Id.* 12.04.02.08E(2)(ii). In this case, Employee initially, and unsuccessfully, attempted the firearms qualification test on May 9 and 10, 2013. Employee again failed to qualify in July 2013, although she was given sixty days—thirty more than prescribed by MPCTC regulations—to retake the test. At this point, Employee had exhausted her opportunities to pass the test, and was not qualified, as her job required, to bear a firearm, nor could she have renewed her certification. The Sheriff did not err in finding her unqualified to serve as a deputy at that point.

**B. BCSO Acted Within its Statutory Authority in Terminating Employee.**

Employee also argues that the sanction of termination was too severe, because MPTC regulations require only that an officer’s firearm be taken away when the officer fails firearms qualification. But an agency is not required to justify its choice of sanction. So long as the sanction chosen was within an agency’s statutory power, we defer to its discretion. *Md. Aviation Admin. v. Noland*, 386 Md. 556, 581 (2005); *Pautsch v. Md. Real*

*Estate Comm'n*, 423 Md. 229, 252-54 (2011) (citations omitted). Rather, “the burden in a judicial review action is upon the party challenging the sanction to persuade the reviewing court that the agency abused its discretion and that the decision was so extreme and egregious that it constituted arbitrary or capricious agency action.” *Noland*, 386 Md. at 581 (internal quotations and citations omitted). Employee has not met that burden.

When Employee failed the firearms qualification test, she lost her authorization to carry a weapon, and therefore no longer was qualified to perform her duties as a deputy sheriff. As a result of her unsatisfactory performance, Employee was subject to disciplinary action. *See* COMAR 17.04.05B(3) (“The appointing authority may discipline an employee for reasons related to the employee’s performance [including] that the employee is not currently qualified for the position.”). Termination without prejudice falls within the range of disciplinary actions that the applicable regulations authorize the Sheriff to take in response to an employee’s unsatisfactory performance. *See id.* at 17.04.05B; SPP § 11-104(6)(i).

It may be true, as Employee claims, that the BCSO had never previously terminated a deputy for failing to qualify with a firearm. However, a decision is arbitrary or capricious only if it is made “impulsively, at random, or according to individual preference rather than motivated by a relevant or applicable set of norms.” *Harvey v. Marshall*, 389 Md. 243, 299 (2005). BCSO had a range of sanctions that it could impose upon an employee who failed to meet the training standards required to perform the duties of deputy sheriff. It chose to



terminate her, as Maryland law authorized it to do, and we discern nothing arbitrary and capricious in that decision.

**JUDGMENTS OF THE CIRCUIT  
COURT FOR BALTIMORE CITY  
AFFIRMED. COSTS TO BE PAID BY  
APPELLANT.**