

Circuit Court for Prince George's County
Case No. C-16-CV-23-002952

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 117

September Term, 2024

IN THE MATTER OF DORLISA
MONTAGUE-DUNNINGTON

Wells, C.J.
Nazarian,
Zarnoch, Robert A.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Nazarian, J.

Filed: August 11, 2025

* This is an unreported opinion. This opinion may not be cited as precedent within the rule of stare decisis. It may be cited for persuasive value only if the citation conforms to Maryland Rule 1-104(a)(2)(B).

Dorlisa Montague-Dunnington is a middle school teacher who has endured chronic pain since 2016. Sciatica and herniated spinal discs compelled her to take medical leave during the 2016-17 and 2017-18 school years. Not long after she returned to work, a student assaulted her, hitting the left side of her head and body. She applied to the Maryland State Retirement and Pension System (the “Agency”) for accidental disability retirement benefits. The Agency denied her application and she appealed. After a hearing, the Maryland Office of Administrative Hearings (“OAH”) issued a final Agency decision that denied her application. The Circuit Court for Prince George’s County affirmed the Agency’s decision, and Ms. Montague-Dunnington appeals from that ruling. We affirm.

I. BACKGROUND

On October 17, 2018, a middle school student punched Ms. Montague-Dunnington on the left side of her neck, head, and shoulder while she was teaching at Imagine Foundations at Morningside, a public charter school. Afterwards, she applied to the Agency for accidental disability retirement benefits. Her application stated that she has “Myofascial Pain Syndrome . . . caused by three herniated discs” in her neck and that continuous pain and weakness in her neck and back radiates down her arms, wrist, and hand, affecting her ability to keep teaching.

The Agency’s Medical Board recommended denial of the application to the Agency’s Board of Trustees, stating that Ms. Montague-Dunnington’s medical records didn’t “support a conclusion that [she] is permanently incapacitated or unable to perform her job duties.” The Medical Board found that she had a prior history of back and knee

pain and had suffered “a contusion of the shoulder and an acute strain of [her] neck muscle” from the assault, but hadn’t “sustained any disabling injury”

Ms. Montague-Dunnington then asked the Medical Board to reconsider its recommendation. Under that process, she participated in an independent medical evaluation performed by Dr. Sarah White on October 12, 2021. The Medical Board upheld its original decision and recommended that the Board of Trustees deny Ms. Montague-Dunnington’s application. The Board of Trustees accepted the recommendation and denied her application based on “all of the additional records [she] provided [on reconsideration,] . . . the records filed on the first review of [her] case,” and Dr. White’s medical report. She requested a hearing before an Administrative Law Judge of the OAH.

A. Facts from the Administrative Record Submitted to OAH

Ms. Montague-Dunnington started working for Prince George’s County Public Schools (“PGCPS”) in August 2014. After two years, she took a medical leave of absence for part of the 2016-17 school year and the entire 2017-18 school year. A radiology report dated September 20, 2016 revealed herniated discs in the lumbar region of her spine. Six days later, she complained to her provider at the National Spine & Pain Centers (“NSPC”) about right back and leg pain due to her sciatica, which she rated at nine out of ten. She reported that “sitting, standing, walking, driving and coughing/sneezing” aggravated her pain, and that her pain levels changed daily but on average measured six out of ten. Her patient record indicated a diagnosis of lumbosacral disc disorder with radiculopathy.

Ms. Montague-Dunnington went back to NSPC the next month, reporting pain in

her right leg and weakness and numbness in her left foot. Right leg pain was her chief complaint on December 22, 2016, and NSPC added a diagnosis of sacroiliitis to her patient record. She saw NSPC on March 13, 2017 for right knee pain, and they discovered a cyst and fluid in her right knee. She received treatment for right knee pain on July 17, 2017 and for left leg pain on October 2, 2017. At an initial physical therapy (“PT”) examination on March 27, 2018, she reported difficulty with “walking/standing/sitting for long periods of time, stair negotiation, bending, squatting.” On May 18, 2018, she asked to stop PT after four visits.

Ms. Montague-Dunnington returned to teach at PGCPs during the 2018-19 school year, but a student assaulted her shortly after, on October 17, 2018. She went to the emergency room at Providence Hospital six days later for pain in her left neck, shoulder, arm, and side. She presented normal range of motion in her extremities and tenderness in her left neck and shoulder. An X-ray of her left shoulder showed no acute fracture or dislocation but did show mild joint distortion due to “degenerative disease.” The hospital determined that she had sustained a contusion in her left shoulder and an acute strain of her neck muscle. Her departure forms from the hospital included one for returning to work, but she didn’t resume work after the assault.

The PGCPs description for a middle school classroom teacher lists the duties, responsibilities, and physical demands for the position:

Establishes clear goals and objectives related to the School Improvement Plan; Plans and prepares lessons, assignments, instructional materials; Establishes learning objectives . . . ; Prepares, administers and corrects evaluations

and assessments, and records results; Selects and uses appropriate instructional strategies . . . ; Evaluates student progress . . . ; Maintains order and discipline in the classroom . . . and takes all necessary safety precautions to protect students, equipment, materials and facilities; Creates a classroom environment that provides for student involvement . . . ; Counsels pupils . . . ; Confers with parents and students . . . ; arranges and participates in . . . conferences as necessary; Maintains accurate and complete records . . . ; Monitors appropriate use and care of equipment . . . ; Attends and actively participates in staff/faculty meetings . . . ; Improves skill and knowledge base . . . ; Plans and supervises purposeful assignments

While performing the duties of this job, the employee is frequently required to stand, talk, hear, walk, sit, and use fingers, tools or controls. The employee is occasionally required to reach with hands and arms and stoop, kneel, crouch, or crawl. . . . While performing the duties of this job, the employee may occasionally push or lift up to 25 lbs.

Ms. Montague-Dunnington went back to NSPC on December 5, 2018, complaining of chronic pain, spine and left shoulder pain, “arm numbness, arm pain, finger pain, finger numbness, and ankle pain left.” She reported difficulty standing, walking, and an inability to work. Her provider, Dr. Arthur Barletta, found that she had limited ability to lower and lift her chin, but her ability to rotate her head and bend her neck from side to side was normal.¹ He also found that she had limited ability to raise her left arm sideways, but otherwise showed normal strength in her shoulders, arms, wrists, hands, and fingers. He ordered a magnetic resonance imaging (“MRI”) test of her cervical spine that took place about a week later. The MRI revealed disc herniations and mild spinal stenosis in her neck

¹ NSPC observed the same cervical range of motion on September 23, 2019, April 23, 2021, and July 21, 2021.

and an abnormally narrow diameter of her spinal canal that was congenital. A follow-up visit a few days later gave Dr. Barletta the impression that she had cervical radiculopathy and a cervical herniated disc.

On February 4, 2019, Ms. Montague-Dunnington re-engaged with PT. The report of her initial examination indicated that she had normal range of motion in her neck, shoulders, wrist, and hand; at the same time, it said she had “significant limitations” in her cervical and shoulder range of motion. At the initial examination, she reported sitting, standing, walking, and lying down as aggravating factors, and the report stated that she hadn’t had imaging done of her left shoulder. After a second visit, the provider discharged her from PT for non-compliance.

On March 22, 2019, Ms. Montague-Dunnington went back to NSPC, this time to see Dr. Vipul Mangal. She reported “spine, right knee, and left knee pain” at an eight out of ten that was “aggravated by all movement.” This time, she presented normal range of motion in both shoulders. She couldn’t point her chin upwards, but she could touch her chin to her chest and turn her head left and right normally. Strength in her shoulders, arms, wrists, fingers, and hands was normal. Dr. Mangal certified that she could resume work but would need restrictions until April 16, 2019. She returned to NSPC on April 23, 2019, rating her pain at a nine out of ten. That visit gave Dr. Barletta the impression that she had cervical radiculopathy, myofascial pain, and cervical spondylosis. A few months later, he

ordered a functional capacity evaluation (“FCE”)² in connection with her workers’ compensation claim.

The FCE took place on September 17, 2019. Ms. Montague-Dunnington reported a routine of waking up at 6:00 a.m., attending appointments, doing housework, shopping, stretching, and walking four times a week. The FCE concluded that she could “walk, sit and stand up to 15 minutes continuously on a frequent basis. She can squat, bend and reach forward on a frequent basis. Kneeling and crawling are not recommended.” The FCE found that she “demonstrated the ability to work full time within the LIGHT Physical Demand Level with restrictions,” which would not meet “the regular duty requirements [of a PGCPs teacher,] and therefore . . . she would [] require[] modified or alternative employment within these capabilities.” The physical therapist who did the assessment noted that Ms. Montague-Dunnington’s representations and efforts limited the reliability of the FCE report:

Ms. Montague . . . presented with 3 out of 8 indicators positive of low Reliability of Pain and Disability Reports . . . suggest[ing] that she is not fully reliable and accurate regarding subjective reports of Pain and Associated Functional Limitations. Ms. Montague presented with 1 out of 6 positive indicators of Low Physical Effort. She did not demonstrate appropriate body mechanic changes and accessory muscle recruitment patterns to indicate maximum physical effort due to subjective pain complaints. Her demonstrated abilities should be considered an accurate representation of her willingness to perform within her

² At the administrative hearing, Dr. Barletta testified as Ms. Montague-Dunnington’s expert in pain management. He described FCEs as “a thermometer of a patient’s capabilities” and a tool for objectively quantifying their subjective reports of functional capacity.

subjective symptom threshold.

On September 23, 2019, Dr. Barletta reviewed the FCE results with her, noting that it “put her at the light level of physical exertion which unfortunately does not allow her to return to work at her current position,” which requires “the medium level of physical exertion.”

On February 14, 2020, Ms. Montague-Dunnington participated in an independent medical evaluation with Dr. Mark Rosenthal, an orthopedic surgeon, for her workers’ compensation claim. His report found that she lacked a complete understanding of her medical conditions, which would be an essential first step to her treatment, and that she could return to work after PT:

Treatment is not reasonable. Trigger point injections are not going to be helpful for this individual. Repeated testing is not going to [be] helpful and care certainly not necessary.

The first step in treatment would be to take time to explain to the patient the actual nature of her injuries and a normal natural history. She has unrealistic concerns and expectations. Proper treatment would be time spent explaining her condition followed by a short course of exercising in physical therapy. No other treatment has any chance of helping this individual.

After four to six weeks of exercising, she should be considered at maximum medical improvement. From an orthopedic perspective, she would be able to return to work fulltime, full duty at that time. In the interim, she could be working in a light duty position with no heavy lifting, no bending or twisting.

Ms. Montague-Dunnington saw Dr. Barletta for pain management on April 27, 2020. At that time, she showed limited ability to bend forward and backward, could bend from side to side normally, and had normal strength in her hips and legs. She continued to see medical providers until July 21, 2021.

B. The Administrative Hearing

On February 27, 2023, Ms. Montague-Dunnington, with counsel, Dr. Barletta, with counsel, and the Agency, through counsel, appeared for a hearing at OAH. She testified about the October 2018 assault and said she didn't receive a diagnosis of her condition until January 2019, after she had gotten approval to see NSPC in relation to her workers' compensation claim. She denied receiving treatment for her condition before then. She said that she wore a neck and back brace every night, that after the assault she had "severe pain in the back of [her] neck going down [her] shoulder [that] ran down the back of [her] arm past [her] elbow, down [her] arm to [her] wrist and to [her] fingers," and that the pain started moving recently to her right arm. On direct examination, she said that the assault prevented her from driving, turning her neck, handling materials, or even passing out papers to students:

I know that I would not be able to function in the classroom, because first of all I know that I move too slow, I know that's hard for me to turn my neck to the left to see what is going on behind me My ability to carry things, to lift, my dexterity to pass out papers, my ability to stand and walk for long periods, the ability to sit. I have to regulate my standing and sitting. The pain, and I have severe pain that runs to my back. Just getting back and forth to work could pose an issue at times, because I can't drive. My husband was driving for me. . . . My peripheral vision on the left side, and I move so slow—and the pain in turning my neck to look into my mirrors.

Ms. Montague-Dunnington said the pain would leave her "sedentary in the bed at times," sometimes for days. She claimed that her herniated disc and sciatica were re-injured in the assault and that she experienced "swelling in [her] left knee" afterwards. She said she took

medical leave before the assault because of back pain from her sciatica and herniated disc, and that she returned to PGCPs in September 2018 “healed and ready to work.”

On cross-examination, Ms. Montague-Dunnington indicated that she couldn’t perform any of the duties listed in the PGCPs job description because they all involved some element of physicality:

[COUNSEL FOR THE AGENCY]: Okay. And these were all things that you could do before October 17th, 2018?

[MS. MONTAGUE-DUNNINGTON]: Yes, ma’am.

[COUNSEL FOR THE AGENCY]: Okay. And you—and it’s your contention that you could no longer prepare and administer evaluations and assessments?

[MS. MONTAGUE-DUNNINGTON]: Yes, ma’am.

[COUNSEL FOR THE AGENCY]: And why is that?

[MS. MONTAGUE-DUNNINGTON]: Did I say—I said plan and prepare lessons, assignments and instructional materials.

[COUNSEL FOR THE AGENCY]: Okay. Why can’t you do that?

[MS. MONTAGUE-DUNNINGTON]: Because instructional materials sometimes includes technology, and I cannot lift over 15 pounds. Also, to copy the—make copies for the students to take packs of paper and copy before classes is very heavy, including the teacher’s guides are cumbersome and heavy.

[COUNSEL FOR THE AGENCY]: Let me ask you this, Ms. Montague. Is there—is there a cart available at the school?

[MS. MONTAGUE-DUNNINGTON]: Pushing and pulling is a problem for me due to my arm injury.

[COUNSEL FOR THE AGENCY]: Right. I understand that. Is there a cart available at the school?

[MS. MONTAGUE-DUNNINGTON]: I’m not sure, but I wouldn’t be able to push it or pull it. I would be very fatigued.

[COUNSEL FOR THE AGENCY]: Have you ever asked?

[MS. MONTAGUE-DUNNINGTON]: I would be extremely

fatigued after pushing or pulling.

[COUNSEL FOR THE AGENCY]: Okay. It's fair to say you don't have to crouch or crawl very often, is that right?

[MS. MONTAGUE-DUNNINGTON]: Well, you do, because you have to get down to materials that are in low places, especially in storage rooms.

[COUNSEL FOR THE AGENCY]: Okay. And could you ever ask anybody for assistance?

[MS. MONTAGUE-DUNNINGTON]: I don't know who I would be able to ask on a consistent basis who doesn't have their own work responsibilities, you know, in the building.

[COUNSEL FOR THE AGENCY]: Did you tell your physicians that you are unable to do those things?

[MS. MONTAGUE-DUNNINGTON]: Yes, it's painful, very painful, and it leaves me in the bed for three days afterwards which means I would need to call into work after performing those duties.

When asked how she would have spent her day if she wasn't at the hearing, she said she would be "trying to get some things accomplished in the house" and that her ability to do household chores depended on her pain levels that day because sometimes she "cannot move at all." Further, she said she "cannot function without the help of [her] husband" and that the pain in her left shoulder and arm "could be exacerbated just from a child running up to [her] giving [her] a hug"

While testifying, Ms. Montague-Dunnington mentioned seeing Dr. Barletta the week before. Agency counsel asked that the administrative record include his note of the appointment, and OAH admitted it into evidence without objection. Once admitted, the note revealed that she was currently employed by the Washington D.C. Public Schools ("DCPS"). On re-cross examination, she said that her job came out of a settlement from a

wrongful termination lawsuit she had filed in 2014, and that she returned to DCPS in September 2022. She said that she is a teacher in job title only, suggested that her salary is comparable to what she earned as a PGCPs teacher, but insisted that her only job function is to answer the phones:

[COUNSEL FOR THE AGENCY]: And the job you were restored to was one of teacher; is that right?

[MS. MONTAGUE-DUNNINGTON]: Yes.

[COUNSEL FOR THE AGENCY]: Okay. And then it is your contention that they accommodated you by giving you a desk job; is that right?

[MS. MONTAGUE-DUNNINGTON]: Yes, ma'am.

[COUNSEL FOR THE AGENCY]: What is your job? Where are you working and what are you doing?

[MS. MONTAGUE-DUNNINGTON]: D.C. Public Schools, answering phones.

[COUNSEL FOR THE AGENCY]: Where? Do you work in the front office? Where are you working?

[MS. MONTAGUE-DUNNINGTON]: The front office.

* * *

[COUNSEL FOR THE AGENCY]: Okay. . . . do you also have to do some filing?

[MS. MONTAGUE-DUNNINGTON]: No. I just answer the phones for right now. It is an ADA position. I don't even know how long it's going to last.

* * *

[COUNSEL FOR THE AGENCY]: And it's your testimony that the only thing that you do in that office is answer the phone?

[MS. MONTAGUE-DUNNINGTON]: I answer the phone and greet the guests; yes, ma'am.

[COUNSEL FOR THE AGENCY]: Do you ever escort a guest somewhere? Show them where to go?

[MS. MONTAGUE-DUNNINGTON]: No, ma'am. They have

security do that.

[COUNSEL FOR THE AGENCY]: You never take any papers and work with paper at all?

[MS. MONTAGUE-DUNNINGTON]: No. The registrar deals with the papers.

[COUNSEL FOR THE AGENCY]: And how many days a week do you work there?

[MS. MONTAGUE-DUNNINGTON]: Monday through Friday for right now.

[COUNSEL FOR THE AGENCY]: . . . [I]s it a 40-hour work week?

[MS. MONTAGUE-DUNNINGTON]: Yeah, for right now.

[COUNSEL FOR THE AGENCY]: And so you had to take off today in order to be here today; is that right?

[MS. MONTAGUE-DUNNINGTON]: Yes, ma'am.

[COUNSEL FOR THE AGENCY]: And you drive to work?

[MS. MONTAGUE-DUNNINGTON]: My husband drops me sometimes, I Uber sometimes, and I drive sometimes. It depends on how I feel in the morning, the extent of the pain. I am still working through everything.

[COUNSEL FOR THE AGENCY]: Okay. When I first asked . . . how you spend your days you didn't tell me that you were employed; is that right?

[MS. MONTAGUE-DUNNINGTON]: Yes, I thought you were just talking about randomly.

After that exchange, Ms. Montague-Dunnington stepped down and Dr. Barletta testified as her expert in pain management. He opined that the FCE report was “the only objective measurement to give to a patient” and, therefore, reasonable. He described her February 2023 appointment as a “collegial encounter” rather than a “usual evaluation and management charged visit” and testified that, before that day, he hadn't seen her as a patient since July 21, 2021. On that day, he observed that pain limited her ability to lower (flexion)

and lift up her chin (extension), but she could turn her neck to the right and left (rotation) and bend her ears to her right and left shoulders normally.

Dr. White testified next as the Agency’s expert in physical medicine and rehabilitation with a subspecialty in electrodiagnostic medicine.³ She explained the difference between objective findings, which are objectively measurable and given more evidentiary weight, and subjective complaints, which are not. She described how loss of muscle mass (atrophy) happens when patients have significant cervical or lumbar radiculopathy (pinched nerve in the neck or back) due to disruption in the neural pathway connecting the brain and the affected muscle:

[DR. WHITE]: [F]or instance, if the C5 and C6 nerve roots in the cervical spine are pinched, then you would see abnormalities in the deltoid muscle, which is the muscle in your upper shoulder, which is enervated by the C5 and C6 nerve roots, and then you would also see a loss of sensation in the C6 dermatome, which is the thumb. You would see a loss of sensation in that specific area along the outside of the arm.

She testified that severe weakness would be a typical symptom of having a pinched nerve, and that pinched nerves can be diagnosed through imaging techniques that detect abnormalities in muscles, such as MRIs and computed axial tomography (“CAT”) scans.

Dr. White explained that a sprain or strain is a soft tissue injury—an injury to a person’s muscles, ligaments, or tendons—that resolves generally within four to six weeks.

³ Dr. White explained that her field “involves the nonoperative treatment of musculoskeletal and neurological conditions, such as neck pain, back pain, shoulder, elbow, wrist, hand, hip, knee and foot pain.” She also stated that she is board certified in electrodiagnostic medicine involving “tests that are used to diagnose conditions such as cervical and lumbar radiculopathy, carpal tunnel syndrome, myopathy and myositis.”

She explained further that myofascial pain syndrome is pain involving soft tissues, muscles, and connective tissues, that chronic pain is pain that lasts more than three months, and that acute pain occurs within a few weeks of an injury. She testified that the cause of pain isn't determined simply from its absence before an incident and presence afterwards. Instead, she said, assessing functional capacity to perform a job depends generally on the person's history, the type of injury, a physical examination, testing, the job description, and the person's ability to perform activities of daily living. She explained that degenerative spine disease is common and doesn't necessarily make one incapable of working, and that a physical examination and imaging tests to look for neurologic deficits would tell her if the degeneration was significant enough to keep one from working.

Dr. White reviewed the results of Ms. Montague-Dunnington's December 2018 MRI. She explained that Ms. Montague-Dunnington was born with a "narrower diameter of the spinal canal than the average person," resulting in mild spinal stenosis (narrowing of the spinal canal) in her cervical spine. She opined that herniated discs on three levels of Ms. Montague-Dunnington's spine indicated a degenerative rather than a traumatic finding, and conveyed the MRI's findings of degeneration and arthritis on the lower part of her cervical spine. She noted that the MRI report didn't make any acute findings.

Dr. White testified next about the October 2018 X-ray of Ms. Montague-Dunnington's left shoulder. She said that the report didn't reveal any acute findings and showed a distorted collarbone joint due to "mild degenerative disease." She talked about the X-ray of Ms. Montague-Dunnington's cervical spine from that day.

According to the x-ray, she testified, Ms. Montague-Dunnington had bone spurs in her cervical spine, which are degenerative, but the report showed no other significant or acute findings.

Dr. White described FCEs as “subjective test[s] used to identify an individual’s abilities at a certain point in time” because the patient directs “what they can and cannot do.” Then, she testified about her own neuromusculoskeletal examination of Ms. Montague-Dunnington on October 12, 2021, where she examined her “range of motion, her strength, her reflexes, sensation gait[,] . . . asked her to walk on her toes and walk on her heels[,] . . . [and] tested her pulses and . . . her straight leg raise.” From that examination, Dr. White found that she showed sufficient functional capacity to work as a classroom teacher, presented normally in many respects, and displayed functional range of motion even in the areas where she was assaulted:

[DR. WHITE]: I found that she had functional range of motion of her cervical and lumbar spine and left shoulder. She has normal reflexes, normal strength, no atrophy, minimal sensory loss, negative straight leg raise, normal toe walk, normal heel walk, and normal tandem gait, all of which did not support an inability to perform her job as a classroom teacher. I also reviewed the imaging studies, which demonstrated evidence of preexisting degenerative changes in the cervicolumbar spine and left shoulder. Her lumbar spine MRI on 9/20/16 showed a . . . disk herniation She underwent shoulder x-rays on 10/23/18, which showed no acute findings with mild degenerative disease. . . . [O]n 12/11/18 . . . she underwent an MRI of the cervical spine which showed very small disk herniations and mild spinal stenosis as well as degenerative changes.

* * *

[T]he final diagnosis [from the emergency room visit] was acute strain of the neck muscle, which again is a soft tissue

injury that you would expect to resolve in four to six weeks, and they also mention that she had a contusion, and again, contusions generally resolve in about two to three weeks.

Dr. White disagreed with Dr. Barletta's diagnosis that Ms. Montague-Dunnington had a pinched nerve in her cervical spine, reasoning that she couldn't find objective evidence in either her medical records or Dr. Barletta's treatment notes to support the diagnosis:

[COUNSEL FOR THE BOARD]: Okay. Did Ms. Montague suffer from cervical radiculopathy?

[DR. WHITE]: There is no evidence on physical examination or on imaging studies or EMG and nerve conduction studies to support the diagnosis of cervical radiculopathy and, therefore, it is my opinion that she does not have cervical radiculopathy.

[COUNSEL FOR THE BOARD]: And what evidence is lacking?

[DR. WHITE]: There is no evidence on physical examination such as severe weakness, atrophy, significant sensory loss, reflex changes. There's no evidence on the MRIs. There are no EMG or nerve conduction studies to support that diagnosis.

* * *

[COUNSEL FOR THE BOARD]: Okay. So, is there any objective basis for Dr. Barletta's diagnosis of radiculopathy?

[DR. WHITE]: No, there's no objective basis.

From Dr. White's assessment, Ms. Montague-Dunnington may not have displayed a full range of motion, but she did demonstrate functional motions and normal strength in her shoulders, elbows, wrists, hands, back, and knee. She said that Ms. Montague-Dunnington showed no loss of muscle mass, no indication of arthritis in her shoulder, and no indication of significant degenerative or joint disease in her knee. Dr. White found that her injuries prior to the assault were more serious than the injuries that emerged afterwards, which led her to believe that if Ms. Montague-Dunnington could

return to work in 2018, she could have returned to work after the more minor injuries sustained from the assault.

Dr. White testified that there was no medical condition that could explain the inappropriate body mechanics that Ms. Montague-Dunnington showed during her FCE or account for the type of pain she was reporting. She noted how other providers had observed low effort and inconsistent pain reports from her:

[DR. WHITE]: [T]he [physical] therapist wrote that she did have three of the indicators positive for low reliability, which indicates there was some evidence that the functional capacity evaluation was not completely reliable when they did reliability testing. . . . And it is saying that the person was not engaging her muscles, indicating maximum physical effort, so that the patient was not putting out maximum effort.

* * *

Dr. Rosenthal noted that the tension of the skin was positive, which is an inconsistent finding. Generally pinching someone's skin is not going to cause severe pain. He also noted pseudorotation was positive in most areas. That's a test you use to determine whether or not someone is exaggerating their pain. So, you ask them to, you know, look over to the right, but they think they're rotating their body but they're not, and in this case, she really wasn't rotating, but was reporting pain. . . . It indicates that there is some—she may be exaggerating her symptoms. And again he wrote on here when distracted there's no tenderness. So, again you would not expect that. You would expect if someone had real pain, they would be having tenderness at all times, even if they were distracted.

* * *

And he wrote on here the left shoulder has no range of motion at all because of severe pain. And that again is inconsistent with some of the other examinations. When I examined her, she did have fairly functional range of motion of her left shoulder. And I also noted when Dr. Mangau examined her . . . on March 22nd, 2019, she had normal range of motion of the left

shoulder. So, it seemed inconsistent that on March 22nd, 2019 Dr. Mangau found normal left shoulder range of motion, and then about a year later when Dr. Rosenthal saw her, she had zero range of motion, and then when I saw her in 2021, she had functional range of motion. So, the physical examinations are not consistent.

During cross-examination, Dr. White opined that there was no evidence from her “physical examination, imaging studies, EMG[,] or nerve conduction studies” that the assault exacerbated Ms. Montague-Dunnington’s prior injuries. And she emphasized that there were no new anatomical findings in the medical record that could explain why Ms. Montague-Dunnington couldn’t return to work. She concluded within a reasonable degree of medical certainty that Ms. Montague-Dunnington is not permanently disabled from working as a classroom teacher and that any disability she has is not the natural and proximate result of the October 2018 assault.

C. Final Agency Decision

OAH issued its decision on May 26, 2023 in favor of the Agency, concluding that Ms. Montague-Dunnington had not met her burden of proving entitlement to benefits. OAH didn’t find her credible because her testimony was inconsistent and conflicted with her medical records and because she concealed her job with DCPS when asked to describe her typical day. As a result, OAH didn’t credit her testimony of constant excruciating pain. OAH didn’t find that Dr. Barletta’s testimony supported Ms. Montague-Dunnington’s claim of total and permanent disability because, as he testified, an FCE is “a thermometer that is subject to change over time.” It also found Dr. Barletta’s testimony unhelpful on the question of her current physical abilities because he hadn’t treated her since July 21, 2021.

And even then, OAH reasoned, Dr. Barletta noted that she had range of motion in her neck, an observation that contradicted her own hearing testimony that she was unable to turn her neck. OAH credited Dr. White's expert qualifications and testimony. Based on its review of the administrative record and the expert testimony, OAH concluded that the evidence did not support a finding that Ms. Montague-Dunnington has injuries permanently disabling her from working as a classroom teacher.

Ms. Montague-Dunnington petitioned for judicial review before the Circuit Court for Prince George's County and appeared before the court for a hearing on February 16, 2024. The court ruled in the Agency's favor, and she noted this appeal.

II. DISCUSSION

Ms. Montague-Dunnington presents four questions⁴ for our consideration which we

⁴ Ms. Montague-Dunnington lists the following Questions Presented:

1. Did the trial judge err in not recognizing the gross perjury and obstruction of justice, in the record regarding material facts from the MSRB Hearing that were presented as the unanswered question to the circuit court (CV-23-00-2953)?
2. Did the MSRB Medical Board err when denying my application for accidental retirement benefits despite objective medical evidence, MRI, FCE, and Dr. Whites final sentence in her IME report, that supports my inability to return to the teaching profession?
3. Does the gross perjury and obstruction of justice by Dr. White, on behalf of MSRB (#RPS-PGCPS-02E-22-16835), provide legal grounds to have the unfavorable, biased decision reversed?
4. Did Attorney Lenier violate The Md. Rules of Professional Conduct when offering the tribune evidence regarding material facts that she

Continued . . .

condense into one: whether the Agency’s denial of her application for accidental disability retirement benefits was supported by substantial evidence in the administrative record?⁵ We hold that the administrative record contained evidence amply supporting the Agency’s decision and affirm the decision of the Agency (and thus the judgment of the circuit court).

When reviewing the decision of an administrative agency, we look past the circuit court’s ruling to examine the agency’s decision directly. *Milliman, Inc. v. Md. State Ret. & Pension Sys.*, 421 Md. 130, 152 (2011) (citing *Motor Vehicle Administration v. Shea*, 415 Md. 1, 15 (2010)). We review the decision in a confined capacity, however, and on questions of fact, like those raised in the instant appeal, we consider whether substantial evidence in the overall record supports the agency’s findings and conclusions. *Id.* at 151

knows to be false and not immediately disclosing the false character to neither the tribunal nor the circuit court?

The Agency presents one question in its brief:

1. Did the ALJ correctly conclude that Ms. Montague was not entitled to disability retirement benefits where substantial evidence, which included her medical records and the testimony of an expert in physical pain and rehabilitation, supported the finding she did not suffer from a permanently incapacitating medical condition preventing her from performing the normal duties of her job as a teacher?

⁵ Because this Court lacks the authority to rule on allegations of attorney misconduct in the first instance, we decline to consider Ms. Montague-Dunnington’s fourth question. Similarly, we will not consider her requests for compensatory or punitive damages based on her allegations of perjury, obstruction of justice, and intentional infliction of emotional distress, among others, nor will we stray into the realm of alleged criminal or professional misconduct she asserts in her third question. On all issues, we will stay within the boundaries of review set by the Maryland Administrative Procedure Act and focus on whether the Agency’s decision met its requirements. *See* Md. Code (1984, 2021 Repl. Vol.), § 10-222(h) of the State Government Article.

(citing *Maryland Aviation Administration v. Noland*, 386 Md. 556, 571 (2005)); see *Crawford v. Cnty. Council of Prince George’s Cnty.*, 482 Md. 680, 693 n.16 (2023) (“We review questions of fact, determinations by the agency supported by evidence in the record, under the substantial evidence standard.” (cleaned up)).

Ms. Montague-Dunnington argues that her December 2018 MRI, FCE, and medical records show that she is eligible for accidental disability retirement benefits. She contends that the Agency erred by considering the FCE a subjective finding that has less evidentiary weight and maintains that she has cervical radiculopathy, myofascial pain syndrome, and three herniated discs in her neck from the assault. The Agency asserts that she failed to produce sufficient, objective medical evidence of her permanent incapacity to continue working as a teacher. The Agency argues that OAH relied on substantial evidence and credited and weighed the parties’ respective testimony and evidence reasonably in making its decision. We agree with the Agency.

To be eligible for accidental disability retirement benefits, an applicant must demonstrate that they are “totally and permanently incapacitated for duty as the natural and proximate result of an accident that occurred in the actual performance of duty at a definite time and place without willful negligence” Md. Code (1993 2024 Repl. Vol.), § 29-109 of the State Personnel & Pensions Article. Substantial evidence supports an agency decision when it relies on “such evidence as a reasonable mind might accept as adequate to support a conclusion.” *Milliman*, 421 Md. at 152 (quoting *People’s Counsel for Baltimore County v. Surina*, 400 Md. 662, 681 (2007)). “The test is reasonableness, not

rightness.” *Mayor & Alderman of City of Annapolis v. Annapolis Waterfront Co.*, 284 Md. 383, 399 (1979) (citation omitted). When we review an agency decision, we defer to its factual findings and the inferences drawn if the record contains evidence amply supporting its decision. *See Milliman*, 421 Md. at 152 (*citing Shea*, 415 Md. at 14). We review the contested decision in the light most favorable to the agency because, on its face, the agency’s decision is ““correct and presumed valid.”” *Id.* (*quoting Noland*, 386 Md. at 571).

In this case, the record contains more than substantial evidence supporting the Agency’s decision to deny Ms. Montague-Dunnington’s application for accidental disability retirement benefits. As pointed out by OAH, there are curious inconsistencies throughout her hearing testimony, her representations to others, and her medical records. For instance, in her benefits application, she indicated having continuous pain and weakness in her neck and back that radiates down her arms, wrist, and hand. But on December 5, 2018—a day when she reported “arm numbness, arm pain, finger pain, finger numbness, and [left] ankle pain” to NSPC—Dr. Barletta observed normal strength in her shoulders, arms, wrists, hands, and fingers. She presented like strength in those areas on March 22, 2019, when she saw Dr. Mangal, and on October 12, 2021, when Dr. White examined her. Yet at the OAH hearing, she testified to having “severe pain in the back of [her] neck going down [her] shoulder [that runs] down the back of [her] arm past [her] elbow, down [her] arm to [her] wrist and to [her] fingers.” And she claimed to lack the dexterity to pass out papers to students.

On December 5, 2018 and February 4, 2019, she represented that walking was a

problem for her and described it as an essential part of teaching at the OAH hearing. But when interviewed for her FCE, she reported a routine of walking four times a week. At the hearing, she testified that her ability to rotate her neck was so limited that she couldn't drive and wouldn't be able to keep an eye on her students. But she displayed normal range of motion in rotating and bending her neck from side to side on September 23, 2019, April 23, 2021, July 21, 2021, and October 12, 2021. Additionally, even though she claims to have a permanent disability in her left shoulder, she demonstrated normal range of motion in both of her shoulders on October 23, 2018—six days after the assault—and on March 22, 2019, and displayed functional range of motion on October 12, 2021. The record reveals many other inconsistencies, and OAH found her testimony to not be credible.

The administrative record also contains Ms. Montague-Dunnington's reports that her pain levels (and functional abilities) varied from day to day. Unfortunately, her reports did little to resolve the ultimate question of permanent disability because OAH didn't find her testimony credible. This doubt about her reliability as a narrator is understandable given the inconsistencies in her testimony, the observations of the physical therapist who performed the FCE and of Dr. Rosenthal, and the fact that she didn't disclose her new job at DCPS even after Agency counsel asked directly what she would have been doing if she hadn't been at the hearing and how she spends a typical day.

Ms. Montague-Dunnington places a great deal of emphasis on the FCE's conclusion that she could only work a light-duty job. But because the FCE results relied on her subjective reports of pain and functional ability, which the OAH didn't find credible, and

the report only provides a snapshot in time relative to her functional ability, as Dr. Barletta testified, a reasonable person could readily have found that the FCE, by itself, doesn't satisfy her burden of proving permanent disability. *See Fire and Police Employees' Retirement System of City of Baltimore v. Middleton*, 192 Md. App. 354, 359 (2010) ("We have no power to substitute our assessment of credibility for that of the agency if there was evidence to support the findings of fact in the record before the agency."). Further, a reasonable person could find the utility of Dr. Barletta's testimony limited because he hadn't seen her since July 2021. His only input on the issue of permanent disability was his opinion that FCEs are an objective measurement of a patient's functional capacity, but here, Ms. Montague-Dunnington's lack of credibility undermined the reliability and evidentiary value of the FCE report.

We can understand why the Agency found Dr. White's testimony useful and persuasive given her expertise in physical medicine and rehabilitation, her knowledge of electrodiagnostic medicine, her review of Ms. Montague-Dunnington's medical records, and her neuromusculoskeletal examination of her in October 2021, which was the most recent physical assessment. Based on her expertise, Dr. White educated OAH about the typical symptoms that would present if one had a pinched nerve, like atrophy and severe weakness, and the absence of those indicators on any of Ms. Montague-Dunnington's imaging tests. It's true that Dr. White's opinion conflicted with Dr. Barletta's impression that Ms. Montague-Dunnington has cervical radiculopathy. But OAH had the discretionary authority to weigh each medical view, judge its reliability, and accept Dr. White's

conclusions over Dr. Barletta’s impression. *See Courtney v. Bd. of Trs. of Md. State Ret. Sys.*, 285 Md. 356, 362 (1979) (“[N]ot only is it the province of the agency to resolve conflicting evidence, but where inconsistent inferences from the same evidence can be drawn, it is for the agency to draw the inferences”); *Annapolis Waterfront*, 284 Md. at 399 (“The court may not substitute its judgment on the question whether the inference drawn is the right one or whether a different inference would be better supported” (citation omitted)); *Board of Trustees of Employees’ Retirement System of City of Baltimore v. Novik*, 87 Md. App. 308, 316 (1991) (When there are “conflicting inferences that can be drawn from the evidence, we must defer to the decision of the [Agency].”), *aff’d*, 326 Md. 450 (1992).

Dr. White also talked about soft tissue injuries (sprains and strains) and how they generally resolve within four to six weeks, a healing period also projected by Dr. Rosenthal after he examined Ms. Montague-Dunnington. Dr. White testified that degenerative spine disease, which Ms. Montague-Dunnington has presented in imaging studies, is common, and that its existence alone doesn’t mean a person can’t work. Dr. White’s testimony squares with Ms. Montague-Dunnington’s own medical history, as she showed signs of spinal degeneration in September 2016, worked for part of that school year, took medical leave, then returned to work in September 2018 “healed.”

Dr. White reviewed October 2018 imaging of Ms. Montague-Dunnington’s left shoulder and cervical spine, conveyed Providence Hospital’s findings, and explained that neither X-ray made any acute findings. To the extent that Ms. Montague-Dunnington’s

X-ray identified a density in her cervical spine that Providence Hospital considered to be “of no significance” at that time and she believes otherwise, she has offered no expert opinion to support that claim. She also hasn’t met her burden of proving that her disability was the natural and proximate result of the assault rather than her medical history of degeneration in her collarbone joint and her cervical and lumbar spine. *See Courtney*, 285 Md. at 357, 364–65 (concluding that there was substantial evidence that claimant had a preexisting mental health condition and his employment as a librarian didn’t cause subsequent nervous breakdown); *Middleton*, 192 Md. App. at 365 (affirming agency’s finding that police officer was discharged from hospital immediately after work accident with full range of motion and agency’s conclusion that recurrence of her pain six months later wasn’t attributable to the work accident).

From her physical examination, Dr. White found that Ms. Montague-Dunnington demonstrated functional range of motion, an impression shared by Dr. Mangal in March 2019. In October 2021, she presented normal strength and no loss of muscle mass. And at the OAH hearing in February 2023, Dr. White provided extensive testimony about the lack of an objective medical basis for her inability to work. On this administrative record, it was reasonable for OAH to accept Dr. White’s conclusion within a reasonable degree of medical certainty that she is not permanently disabled from teaching and that any disability she has is not the natural and proximate result of the assault.

Because substantial evidence supported the Agency's final decision, we affirm that decision and the judgment of the circuit court.

**JUDGMENT OF THE CIRCUIT COURT
FOR PRINCE GEORGE'S COUNTY
AFFIRMED. APPELLANT TO PAY
COSTS.**