Circuit Court for Frederick County
Case No. C-10-CV-20-000084

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 199

September Term, 2021

IN THE MATTER OF TRACEY M. INGRAM

Beachley,
Wells,
Adkins, Sally D.,
(Senior Judge, Specially Assigned)

JJ.

Opinion by Wells, J.

Filed: January 21, 2022

Appellant, Tracey M. Ingram, appeals from the ruling of the Circuit Court for Frederick County which affirmed the decision of the Board of Appeals ("the Board") of the Maryland Department of Labor ("the Department"). The Board found that Ingram had been discharged from employment with KFHP Mid-Atlantic States, Inc. ("KFHP")[1] for gross misconduct under § 8-1002 of the Labor and Employment Article ("L.E.") of the Maryland Code Annotated, and thus was disqualified from receiving unemployment benefits for the statutorily prescribed time period. Ingram presents approximately thirteen issues, which we consolidate and rephrase into two questions:[2]

1. Did the circuit court err in not finding fraud in the administrative hearings, thus erring in applying the substantial evidence test as the standard of review for the Board's factual findings?

2. Does the Board's determination that Ingram was terminated due to gross misconduct under L.E. § 8-1002 fail to withstand scrutiny under the appropriate standard of review?

[1] Although the parties did not mention it, and it is never explained in the proceedings below, we point out that "KFHP" stands for Kaiser Health Foundation Plan. The legal name of the business entity is KFHP Mid-Atlantic States, Inc. https://about.kaiserpermanente.org. Permalink: https://k-p.li/3pNuI2n.

[2] We will not be addressing several issues that Ingram raises. *First*, Ingram asks that this Court reverse and remand to the circuit court, with instructions to admit KFHP as a necessary party, and *second*, require KFHP, "as an initial matter of equitable relief," to prepare an analysis of the terminations of employees similarly situated to Ingram, who were not given written determinations for denying leave applications but instead terminated for "fraud." Neither request is properly within this Court's authority nor are they relevant to resolving the issues raised in this appeal. We decline to act or address these issues.

Finally, Ingram also raises several issues regarding a class action. She prefaces the "Issues Presented" portion of her brief by saying that "time and expense does not allow a full exposition upon even the most evident matters. But a listing of the potential issues begging for class resolution would encompass the following[.]" This is not a class action, nor does the record indicate Ingram made any attempt to bring her claims before the circuit court as a class action under Rule 2-231. All of Ingram's issues that refer to a class action are not before us and we will not address them.

For the reasons that follow, we answer "no" to both questions and affirm.

PROCEDURAL AND FACTUAL BACKGROUND

Ingram began working at KFHP on April 1, 2015 as an "appointment radiology representative," and held that position when the issues raised in this appeal transpired. On the morning of Monday, July 1, 2019, Ingram called her shop steward (a union representative), Joy Simmons, and told her that due to a family matter, she would be late for work. A few hours later, Ingram called Simmons again to say that she would not be coming into work at all because she was leaving for a funeral in Ohio that evening or the following morning.

At some point during the second conversation, Simmons sent Ingram a copy of the bereavement policy contained in the union handbook, which stated that employees could receive five days of leave for funerals occurring 250 miles or more out-of-town, so long as the deceased was closely related to the employee. Ingram informed Simmons that the funeral she would be attending was that of a sister-in-law.

Upon Ingram's return to work on Tuesday, July 9, she provided her supervisor, Gilbert Asamoah, with an "exception sheet," a type of timesheet that KFHP employees submitted every pay period indicating the days they have been absent from work and the type of leave used. Ingram's exception sheet stated that she had taken five days off work to attend a funeral. On the form, Ingram did not state that the deceased was a sister-in-law

but provided Asamoah with an obituary.[3] The Wednesday before her next payday, Ingram viewed her check online and noticed it was short her bereavement pay. On Simmons' advice, Ingram informed Asamoah about the discrepancy and he immediately submitted a form to have Ingram's paycheck corrected so that the bereavement pay would be included in her upcoming paycheck. The bereavement pay was directly deposited into Ingram's account on Friday, July 12, 2019.

On Monday July 15, Tyrone Simpson, a labor relations consultant at KFHP, called Ingram and Simmons to a meeting to discuss Ingram's taking of bereavement leave Simpson initiated the meeting because he found the age discrepancy between the deceased sister-in-law, who was 85-years old according to the obituary, and Ingram, who was 48-years old, to be suspicious. Simmons' suspicions were also aroused because Ingram had previously used all of her other leave and the week of the funeral included the Independence Day holiday.

In the meeting, Ingram described the particulars of her relationship to the deceased. After a discussion, all three attendants agreed the deceased was not, in fact, Ingram's sister-in-law but rather, a sister-in-law of Ingram's sister-in-law.[4] Ingram acknowledged this relationship was not covered under KFHP's leave policy and said that she would be willing

[3] According to Asamoah's testimony, he suggested that Ingram provide him with an obituary after she texted him stating that she would be missing work because of a funeral. It seems likely from the sequence of events that Ingram texted Asamoah after her second conversation with Simmons.

[4] Ingram's sister was married to another woman. The wife's brother's wife was the person who had died.

to return the bereavement pay. Ingram testified that when the meeting concluded, she thought they "were all on the same page and . . . in agreement of that."

By the end of the week, Friday, July 19, Simpson called another meeting with Ingram and Simmons after he had performed additional research on the internet, including Facebook. Simpson believed he had found information indicating the deceased was actually Ingram's aunt (another relationship not covered by the bereavement policy), rather than the sister-in-law of Ingram's sister-in-law.[5] Although the record does not make clear exactly how the meeting concluded, Simpson later testified that Ingram denied that the deceased was her aunt, and Simmons asked for leniency since this was Ingram's first incident of misconduct.

KFHP saw it differently and fired Ingram on August 6, 2019 for filing a fraudulent timecard. Ingram then filed for unemployment benefits. A claims specialist from the Maryland Department of Labor conducted separate fact-finding interviews with Ingram and KFHP employees and issued a decision on September 12, 2019 denying Ingram's application for unemployment benefits based on the specialist's finding that Ingram was discharged for gross misconduct under L.E. § 8-1002. Under such a finding, Ingram was statutorily disqualified from receiving unemployment benefits until she was reemployed and had earned wages equal to at least 25 times the weekly benefit amount. L.E. § 8-

[5] We decline to delve into the web of posts and profiles Simpson explored that led him to this conclusion. Both the hearing examiner in the Lower Appeals Division and the Board of Appeals appeared to have accepted Ingram's testimony explaining away this possibility, as they both found the deceased was the sister-in-law of Ingram's sister-in-law, and not her aunt.

1002(c). Ingram appealed the decision to the Lower Appeals Division of the Maryland Department of Labor.

On October 3, 2019, a hearing examiner from the Lower Appeals Division conducted an evidentiary hearing by telephone. Both Ingram and KFHP were present and represented by counsel. Both parties testified and had the opportunity to cross-examine opposing witnesses, to offer and object to documentary evidence, and to present closing statements. Ingram did not present any witnesses other than herself. Witnesses for KFHP included Asamoah and Simpson.

At the hearing, Ingram continued to assert that when she requested bereavement leave, she was unaware, or at least not mindful of the fact that the deceased was not a sister-in-law and thus her leave request was not covered by KFHP's or the union's leave policies. When pressed by the hearing examiner to understand Ingram's relationship to the deceased, Ingram again claimed that the deceased was her sister-in-law, because the deceased was the sister-in-law of Ingram's own sister-in-law. To this, the hearing examiner responded, "So your testimony, if I get this straight is, if, if – anybody that you're a sister-in-law to, then you're a sister-in-law to everybody in the family?" Ingram responded, "By law. That, that's how I've always believed it to be, yes." Shortly thereafter, the hearing examiner asked Ingram if the daughter of the deceased was also Ingram's sister-in-law, saying "Well, I think you've said everyone was your sister-in-law. Is she your sister-in-law?" Ingram responded, "I guess, if we were to break it down, I guess she would be." The hearing examiner responded, "Ms. Ingram, you're really stretching it, here."

To reiterate, Ingram's sister was married to another woman. As it happens, that woman's brother's wife was the deceased. At the hearing, Ingram also disclosed that her sister and the sister's wife had divorced years before. Simpson testified that even if the deceased had been a sister-in-law, a divorce would have voided that relationship for purposes of the leave policy.

Additionally, Simpson testified, and Ingram confirmed that the KFHP internet site "My HR" makes the company's bereavement policy available, that the company bereavement policy is the same as the union policy, neither of which covers the sister-in-law of a sister-in-law. The union policy is contained in the collective bargaining agreement ("the CBA"). The bereavement policy provision of the CBA, however, was not introduced into evidence at the hearing and thus did not become part of the record.[6]

At the end of the hearing, before closing arguments, Ingram stated:

> I'm not saying that I made the best judgment call at that time. You know, maybe I should have . . . taken a moment to sit back and think about, is this person really related to me? But in my belief and in my heart, she was related to me, and that's all I saw, and that's what I believed . . . It wasn't about, how can I get over on [KFHP] so that they can pay me for bereavement? It was not that at all.

The hearing examiner issued a written decision on October 10, 2019, reversing the claims specialist's finding of "gross misconduct," on the ground that Ingram's testimony credibly showed that she did not intentionally violate KFHP's bereavement policy. Instead, the examiner found that Ingram had committed only "misconduct" under L.E. § 8-1003

[6] The events surrounding the non-admission of the provision in the CBA are discussed in more detail below, as they are relevant to Ingram's claim of fraud by KFHP.

and imposed the statutorily prescribed 10-week disqualification from receiving unemployment benefits. Ingram appealed that decision to the Board.[7]

On December 30, 2019, the Board reversed the hearing examiner's decision and concluded, like the claims specialist before, that Ingram had committed gross misconduct under § 8-1002. Ingram filed a timely petition for judicial review in the Circuit Court for Frederick County, seeking reversal of the Board's decision and granting of full unemployment benefits against KFHP. The circuit court affirmed the Board's decision on February 26, 2021. Ingram filed a motion to alter or amend judgment, which the circuit court denied. Ingram then filed this timely appeal.

Additional relevant facts will be discussed below.

DISCUSSION

I. The Applicable Standard of Review Is the Substantial Evidence Test Because There Was No Fraud in the Administrative Hearings

Before we address the substance of Ingram's claim we must first address a preliminary issue that she raises, namely, that the administrative hearings were tainted by fraud. As we explain, this claim is without merit.

A. Parties' Contentions

Ingram asserts that our standard of review for whether she committed gross misconduct should be *de novo*, because there was fraud in the administrative hearings.

[7] Notably, although not material to the outcome of this appeal, counsel for Ingram stated before the circuit court that he did not recall filing the appeal to the Board of Appeals. Nonetheless, when opposing counsel and the court pointed out where in the record the appeal he filed was located, he stated he had been "a little mixed up," but that "that's probably accurate."

Ingram contends that KFHP's witnesses committed fraud at the hearing before the Lower Appeals Division hearing examiner when they failed "to disclose [KFHP's] requirement to determine in writing and so inform the employee of entitlement or no entitlement to the requested type of leave" under Article 9.8(a) of the CBA.

The Department counters that the appropriate standard of review is the substantial evidence test, since there was no fraud below. The Department asserts that the issue of fraud is not properly before this Court since it was not raised before the Board. According to the Department, Ingram's failure to raise the issue below constitutes waiver. Moreover, statements made by Ingram's counsel at the hearing show that she was in possession of the CBA at that time. The Department adds that even if the issue of fraud is properly before this Court, neither KFHP's failure to follow the letter of Article 9.8(a)[8], nor its failure to introduce the CBA into evidence at the hearing, amount to fraud. We agree with the Department.

B. Analysis

Maryland Code Annotated, Labor and Employment Article ("L.E."), section 8-5a-12(d) defines the scope of judicial review of a decision of the Board:

[8] Article 9.8(a) of the CBA, captioned OTHER LEAVE PROVISIONS, states:

> Requests for leaves of absences and renewals shall be in writing on a form provided by the Employer, and employees shall be provided with a copy of such form with the determination stated thereon. Such determination or written answer must be received within ten working days except in unusual circumstances.

> In a judicial proceeding under this section, findings of fact of the Board of Appeals are conclusive and the jurisdiction of the court is confined to questions of law if:
>
> (1) findings of fact are supported by evidence that is competent, material, and substantial in view of the entire record; and
>
> (2) there is no fraud.

This section was derived without substantive change from provisions of the former Unemployment Compensation Law ("the Act"), Md. Code Ann., Art. 95A. 1991 Md. Laws Ch. 8 (H.B. 1). This Court previously provided a brief history of the Act, explaining it

> became necessary upon the passage of federal legislation, which required each State to create an unemployment insurance program in order to receive federal funds. 29 U.S.C.A. § 49(c) (1933). At this emergency session, Governor Harry W. Nice addressed the Legislature and described the proposed law as "a plan to prevent the pauperization of men who have been laid off jobs because of economic conditions." House and Senate Journals, Extraordinary Session, December, 1936, Proceedings of the House of Delegates 19. In accordance with this theme, the declaration of State policy appearing in the Act concluded that "the compulsory setting aside of unemployment reserves [are] to be used for the benefit of persons unemployed through no fault of their own." 1936 Md. Laws 4 (Extraordinary Session).
>
> The Act provided for judicial review of agency proceedings in a section that dealt with claims for benefits. Art. 95A § 6(i), 1936 Md.Laws 12–13 (Extraordinary Session). This portion specified the procedure for bringing an appeal to the circuit court and explained the scope of review:
>
> > "[T]he findings of the Board of Review as to the facts, if supported by evidence and in the absence of fraud, shall be conclusive, and the jurisdiction of said court shall be confined to questions of law."

Juiliano v. Lion's Manor Nursing Home, 62 Md. App. 145, 151–52 (1985).

Juiliano is the only case we have found that discusses the "absence of fraud" requirement. There, we observed that the elements of fraud, as delineated by the Court of

Appeals, are "(1) representation of a false material fact; (2) knowledge or reckless disregard of the falsity; (3) the statement was intended to defraud plaintiff; (4) reliance by plaintiff on the false representation, and the right of plaintiff to so rely; (5) damage resulting to plaintiff." *Id.* at 153 (citing *Appel v. Hupfield*, 198 Md. 374, 378 (1951)). We noted that "[w]hen arising in proceedings before a court or an agency, fraud could include perjury, which 'consists of swearing falsely and corruptly, without probable cause of belief.'" *Id.* at 153–54 (quoting *State v. Devers and Webster*, 260 Md. 360, 372 (1971)). We also laid out the procedural requirements for raising a fraud claim: "particular facts must be stated," and "no mere allegations . . . are sufficient." *Id.* at 154 (quoting *Wooddy v. Wooddy*, 256 Md. 440, 451 (1970); *Jenifer v. Kincaid*, 191 Md. 120, 131 (1948)).

Regarding timeliness, we explained

> In administrative law, the agency functions as the trier of fact, and the circuit court reviews the law on appeal. Because an allegation of fraud is factual in nature, a party must raise it before the agency. If fraud was or should have been discovered during those proceedings, failure to assert the issue acts as a waiver. In the rare instance in which the fraud could not be ascertained until after the conclusion of the agency proceedings, it may present a basis for remand to consider the issue.

Id. Accordingly, where the employer in *Juiliano* did not mention fraud until its appeal to the circuit court, stating only that the Board's findings (which consisted of evidence presented to the hearing examiner below) were based on "fraudulent testimony," this Court deemed the pleading "too little, too late." *Id.* at 155. We explained that because "[n]o specific facts were stated to support the claim of fraud," the issue was not sufficiently raised, and "[b]ecause the Employer knew of what it denominated as 'fraudulent testimony'

when it sought review by the Board of Appeals, and did not assert fraud in that proceeding, it waived the issue." *Id.* at 155–56.

Here, the circuit court entertained Ingram's argument on the fraud claim and seemed to make a factual finding ("no proof of fraud in this regard"). However, because we look through the circuit court's decision to consider only what happened at the administrative level,[9] we are constrained to make our own independent review of the administrative record to determine: 1) whether fraud was properly raised during the administrative proceedings, and 2) if raised, whether fraud was shown.

After a review of the record, we conclude that Ingram did not specifically plead fraud until she got to the circuit court. To the extent that Ingram argues that she pleaded fraud in her letter of appeal to the Board, we reject that contention. The closest Ingram's letter comes to making such a claim is when she wrote that KFHP's actions "most certainly have been made in less than good faith," and her prayer for "attorney's fees and costs commensurate with the degree of dishonesty demonstrated by the false administrative pleadings herein," and for "investigation into the actual motivations of [KFHP's] actions as demonstrated to be incorrect and indeed, false reasons." Notably, she uses neither the word "fraud" nor "perjury" to describe KFHP's actions. Ingram cites no specific lies or omissions by KFHP. These statements hardly constitute "specific facts" that "support the claim of fraud." *Juiliano*, 62 Md. App. at 155–56.

[9] See *Employees' Retirement Sys. of Balt. v. Dorsey*, 430 Md. 100, 110 (2013).

But as noted, Ingram did raise the argument of fraud before the circuit court. Her argument is convoluted but can be summarized as follows: The evidence proves she lacked the requisite intent for fraud, which means that KFHP's "charge of fraud was itself a fraud." She "suggests" KFHP's representatives gave false testimony and intentionally withheld "newly discovered" and "exculpatory" evidence—Article 9.8(a) of the CBA—from the hearing examiner.

Ingram's attempt to salvage her claim by asserting that the existence of Article 9.8(a) of the CBA constitutes "exculpatory" and "newly discovered evidence," is unavailing. The record strongly indicates that Ingram's attorney had the CBA in his possession during the hearing before the examiner and knew of KFHP's requirements to its employees regrading leave, thus undercutting the very basis of Ingram's fraud claim. We explain.

Toward the end of the hearing before the examiner, Ingram's attorney said he "would like to make sure a couple of exhibits are in the record." He identified the first exhibit only as "page nine, section 3.4, regarding the definition of involuntary termination."[10] We observe from the record, that page nine, section 3.4 of the CBA, is titled "Involuntary Termination." Next, counsel for Ingram asked to introduce "the definition on page 19 of the same book. It's the definition that, that Ms. Ingram has regarding bereavement leave." We observe from the record that page 19 of the CBA, which

[10] The hearing examiner did not allow this exhibit to be introduced, deeming it irrelevant. It is similarly immaterial to this appeal, other than its corroboration of Ingram's possession of the CBA at that early stage of proceedings.

is included in full, contains an Article 9.7, which provides the bereavement leave policy. Immediately below that is Article 9.8, "Other Leave Provisions," which includes the language, verbatim, that counsel for Ingram quoted before the circuit court, as the "newly discovered evidence."

In light of Ingram's counsel's possession and review of the CBA—and page 19 in particular—at the time of the Lower Appeals Division hearing, and certainly at the time of Ingram's subsequent appeal to the Board, Ingram knew or should have known of Article 9.8(a) of the CBA and the procedure therein before her appeal to the circuit court. Although Ingram unsuccessfully sought to have page 19 introduced as an exhibit at that first hearing, it was not for the purpose of demonstrating KFHP's failure to abide by Article 9.8(a), or fraud perpetrated by KFHP in not mentioning the provision in the hearing. Given that Ingram had possession of the CBA and knowledge of this specific provision but did not raise KFHP's withholding of it as fraud until her appeal to the circuit court, we find the issue was not timely raised.

Finally, to the extent that Ingram might have raised the issue of fraud at the administrative level, we reject that argument. Since, as we have shown, the evidence demonstrates Ingram was in possession of the CBA in the administrative proceedings, even if KFHP intentionally withheld the policy, Ingram did not rely on that omission. Without reliance, there can be no fraud. *Juiliano*, 62 Md. App. at 153.

Having concluded that the issue of fraud was not timely raised, and to the extent it was raised, the elements of fraud are lacking, we will apply the substantial evidence test as the standard of review of the Board's decision.

II. There is Substantial Evidence to Support the Board's Finding of Gross Misconduct

A. Parties' Contentions

While Ingram does not expressly argue in terms of substantial evidence, she contends that the omission of provision Article 9.8(a) was "totally exculpatory in effect by eliminating the possibility of any intent to mislead or misinform the employer." The Department counters that there is substantial evidence in the record before the Board to support its finding of gross misconduct.

Specifically, the Department asserts that the case came down to the Board's assessment of the credibility of the witnesses and resolving competing inferences. According to the Department, the Board properly did these things, and found in favor of KFHP, primarily on the strength of the following facts:

- Ingram had no accrued leave at the time she wanted to take off from work, ostensibly to attend a funeral.
- She did not disclose the precise relationship with the deceased to KFHP before requesting leave, but instead asked only about whether a "sister-in-law" was covered.
- She did not utilize the option of requesting unpaid leave to attend the funeral of a person not otherwise covered by the bereavement leave policy.

From these facts, the Board concluded that Ingram obtained five days of paid leave from her employer when she knew that she did not qualify for it under her employer's or her union's leave policy.

B. Analysis

Under the substantial evidence test, we cannot disturb factual findings made by the Board, such as the determination that Ingram was discharged from employment with KFHP due to gross misconduct, if they "are supported by substantial evidence and are reasonable." *Dep't of Econ. & Emp. Dev. v. Taylor*, 108 Md. App. 250, 262 (1996), *aff'd sub nom. Dep't of Lab., Licensing & Regul. v. Taylor*, 344 Md. 687 (1997). We do not assess whether the factual findings of the Board are "right." *Id.* (citing *Bulluck v. Pelham Wood Apartments*, 283 Md. 505, 515 (1978)). Likewise, we do not "engage in our own fact finding," *id.* (citing *Board of Trustees of the Employees' Ret. Sys. of the City of Baltimore v. Novik*, 87 Md. App. 308, 312 (1991), *aff'd*, 326 Md. 450 (1992)), or "substitute [our] judgment for the expertise of the Board." *Id.* (citing *Westinghouse Elec. Corp. v. Callahan*, 105 Md. App. 25, 34 (1995)). "The tasks of drawing inferences from the evidence and resolving conflicting evidence are exclusively the province of the Board." *Id.* (citing *Prince George's Doctors' Hospital, Inc. v. Health Servs. Cost Review Comm'n*, 302 Md. 193, 200–02 (1985)). Essentially, we must ask "in light of the record as a whole . . . whether a reasoning mind could have made those findings from the evidence adduced." *Parham v. Dep't of Lab., Licensing & Registration*, 189 Md. App. 604, 613 (2009) (quoting *Singletary v. Maryland State Dep't of Public Safety and Corr. Servs.*, 87 Md. App. 405, 416 (1991)). Implicit in all of this is that our review is of the Board's decision—not that of the circuit court's.

Labor and Employment § 8-1003 concerns a finding of "misconduct," which is simply defined as:

> …behavior that the Secretary finds is misconduct in connection with employment but that is not:
>
> (1) aggravated misconduct, under § 8-1002.1 of this subtitle; or
>
> (2) gross misconduct under § 8-1002 of this subtitle.

L.E. § 8-1003(a). An individual found to have been terminated due to misconduct under § 8-1003 is disqualified from receiving unemployment benefits, but for a time period lasting "for a total of at least 10 but not more than 15 weeks, as determined by the Secretary, based on the seriousness of the misconduct." L.E. § 8-1003(b).

But a claims specialist, and later the Board, terminated Ingram for violating L.E. § 8-1002(a), citing "gross misconduct," which is defined as:

> . . . conduct of an employee that is:
>
> (i) deliberate and willful disregard of standards of behavior that an employing unit rightfully expects and that shows gross indifference to the interests of the employing unit; or
>
> (ii) repeated violations of employment rules that prove a regular and wanton disregard of the employee's obligations; and
>
> (2) does not include:
>
> (i) aggravated misconduct, as defined under § 8-1002.1 of this subtitle; or
>
> (ii) other misconduct, as defined under § 8-1003 of this subtitle.

L.E. § 8-1002(a). As this Court observed in *Department of Labor v. Muddiman*, 120 Md. App. 725 (1998), subsections § 8-1002(a)(1)(i) and § 8-1002(a)(1)(ii) "set forth separate definitions of gross misconduct that require different levels of intent. Additionally, subsection (i) may be implicated by a single violation, while subsection (ii) requires

repeated violations." *Id.* at 737. As for what constitutes "deliberate and willful" misconduct under (a)(1)(i), this Court has explained that "[t]here are no hard and fast rules." *Id.* (citing *Dep't of Econ. & Emp. Dev. v. Propper*, 108 Md. App. 595, 611 (1996)). "In the context of unemployment insurance benefits, the wrongness of the conduct must be judged in the particular employment context." *Id.* (quoting *Hider*, 349 Md. 85). "The important element to be considered is the nature of the misconduct and how seriously it [a]ffects the claimant's employment or the employer's rights." *Id.* A finding of mere negligence will not amount to gross misconduct. *Hernandez v. Dep't of Labor*, 122 Md. App. 19, 26–27 (1998). In *Department of Economic and Employment Development v. Propper*, this Court recounted that

> Maryland courts have sustained findings of gross misconduct in a variety of fact situations. *See, e.g.*, [*Dep't of Econ. and Emp. Dev. v. Hager*, 96 Md. App. 362 (1993)] (claimant refused, without meaningful explanation, to accept a transfer to a night shift); [*Dep't of Econ. and Emp. Dev. v. Jones*, 79 Md. App. 531 (1989)] (claimant was repeatedly absent from work and tested positive for drugs after promising to remain drug-free); [*Dep't of Econ. and Emp. Dev. v. Owens*, 75 Md. App. 472 (1988)] (claimant was discharged after he threatened to kill his supervisor); *Painter v. Department of Economic and Employment Development*, 68 Md. App. 356, 511 A.2d 585 (1986) (claimant, while on sick leave, failed to notify her employer that her physician had released her to return to work); *Employment Security Board v. LeCates*, 218 Md. 202, 145 A.2d 840 (1958) (claimant used a company truck without permission, was involved in an accident, and did not report the accident until being confronted by his employer and the police).

108 Md. App. at 610. An individual found to have been discharged or suspended from employment for behavior the Department deems gross misconduct is disqualified from receiving unemployment benefits from the first week the individual is discharged or suspended, "until the individual is reemployed and has earned wages in covered

employment that equal at least 25 times the weekly benefit amount of the individual." L.E. § 8-1002(b), (c).

The record before the Board included the October 3, 2019 telephonic hearing in the Lower Appeals Division, where testimony was given by both KFHP and Ingram, and during which the KFHP Human Resource policy, Facebook pages demonstrating (or perhaps, confusing) the relation between Ingram and the deceased, a Pre-Grievance Termination Case Summary completed by KFPH detailing a timeline of events, and a "Fact-Finding Report," were among the exhibits entered into evidence.[11] The Board adopted the hearing examiner's findings of fact and conclusions of law, finding there was substantial evidence to support them. But, significantly, after making a few additional findings of fact, the Board concluded that the evidence did not support a finding of mere misconduct. Like the claims specialist, the Board concluded that KFHP demonstrated by a preponderance of credible evidence that Ingram demonstrated gross indifference to KFHP's interests, satisfying a finding of gross misconduct.

Based on our review of the record, the Board was correct to treat this situation as one implicating L.E. § 8-1002(a)(1)(i) and not L.E.§ 8-1002(a)(1)(ii), as the parties agreed only one violation by Ingram, and not a series of violations, were at issue. The Board based its decision on the following factual findings:

- Ingram said she wanted to travel to Ohio to attend the funeral of the deceased.

[11] Under L.E.§ 8-5A-10(d), the Board need not conduct a new evidentiary hearing but may "affirm, modify, or reverse the findings of fact or conclusions of law of the hearing examiner on the basis of 1) evidence submitted to the hearing examiner, or 2) evidence that the Board of Appeals may direct to be taken."

- At that time, Ingram was aware that she had no personal or annual leave left to use, "so she opted to explore bereavement leave and represented to the employer it was her sister-in-law's passing."

- Ingram spoke with her shop steward and inquired *only* about the bereavement policy's coverage for the death of a sister-in-law.

- Ingram testified it was not until July 15, 2019, the first meeting with her employer, that she realized the deceased was not her sister-in-law, and at that time she offered to refund the bereavement pay.

- Ingram stipulated that she was aware of the company's bereavement policy—including that it permitted a supervisor discretion to grant leave for the death of close family friends not otherwise covered.

- She admitted that she "'didn't make the best judgment call' in terms of thinking through her relationship" with the deceased.

From these facts, the Board concluded that Ingram opted not to pursue the course of discretionary leave for a close family friend, and instead, "chose, in her judgment, to mischaracterize the relationship at issue," and sought to "collect[] benefits for bereavement leave to which she was not otherwise entitled and even checked to make sure those benefits were included in her paychecks."

The Board's factual findings do not include direct evidence—a smoking gun—that Ingram knew the deceased was not actually her sister-in-law at the time she requested leave. This, of course, does not invalidate the Board's decision. "A claimant's intent or 'state of mind is a factual issue for the Board to resolve,'" and this Court has "acknowledge[d], of course, that one's intent cannot be proven directly." *Taylor*, 108 Md. App. at 274 (quoting *Hager*, 96 Md. App. at 371). "Rather, 'the matter is determined by drawing reasonable inferences from admitted conduct.'" *Id.* Accordingly, in this case, the Board resolved competing testimony to infer Ingram knowingly mischaracterized her

relationship with the deceased, and the Board determined she was not credible when testifying otherwise. We reiterate that the issue before us is "whether a reasoning mind could have made those findings from the evidence adduced." *Parham*, 189 Md. App. at 613 (quoting *Singletary*, 87 Md. App. at 416).

This case comes down to a credibility determination by the factfinder. We conclude that a reasoning mind could find that Ingram knew the deceased was not her sister-in-law but chose to obtain paid leave under the bereavement policy anyway. A reasoning mind could infer Ingram's intent to deceive from: 1) her failure to disclose her true relationship to the deceased with her shop steward; 2) she knew she had no leave; 3) she admitted that she reviewed the leave policy and knew she could have asked for discretionary leave but chose not to do so; and 4) her testimony about what constitutes a "sister-in-law" was simply not credible. In her testimony before the hearing examiner Ingram characterized someone as far-removed as the daughter of the deceased as a sister-in-law.

In sum, we conclude that there is nothing in the record that would lead us to conclude that the Board's findings were unreasonable. We treat the Board's factual findings as conclusive so long as they are supported by substantial evidence and there is no fraud. L.E. § 8-5a-12(d). Moreover, because the resolution of competing inferences and credibility determinations are the province of the Board, this Court has expressly recognized the right of the Board to reverse the findings and conclusions of a lower appeals forum, with or without a hearing, even on the sole basis of credibility determinations. *Board of Appeals v. Mayor and City Council of Baltimore*, 72 Md. App. 427, 432 (1987).

Because a reasoning mind could conclude from the record that Ingram deliberately violated the bereavement policy, thus committing gross misconduct under L.E. § 8-1002, this finding is supported by substantial evidence. Therefore, we do not disturb the Board's decision and affirm the judgment of the circuit court.

JUDGMENT OF THE CIRCUIT COURT FOR FREDERICK COUNTY AFFIRMED. APPELLANT TO PAY THE COSTS.