

Circuit Court for Prince George's County  
Case No. CAL19-36458

UNREPORTED  
IN THE COURT OF SPECIAL APPEALS  
OF MARYLAND

No. 0633

September Term, 2020

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JOSEPH PEREZ

v.

PRINCE GEORGE'S COUNTY POLICE  
DEPARTMENT

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Arthur,  
Shaw Geter,  
Gould,

JJ.

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Opinion by Arthur, J.

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Filed: May 19, 2021

\*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.

An Administrative Hearing Board (“the Board”) found appellant Joe Perez (“Perez”), a police captain with the Prince George’s County Police Department (“the Department”), guilty of three violations of the ethics and loyalty provisions of the Department’s General Order Manual. As a result of his misconduct, the Board recommended that Perez’s rank be reduced from captain to lieutenant, with no eligibility for a promotion, for one year. On judicial review, the Circuit Court for Prince George’s City affirmed the Board’s decision.

Perez appeals to this Court, presenting the following issues:

1. Whether the Board’s finding that Perez used his official position to access members of the Seat Pleasant Police Department for personal reasons was supported by substantial evidence.
2. Whether the Board’s finding that Perez acted in an intimidating or threatening manner towards Sergeant Ploof was supported by substantial evidence.
3. Whether the Board erred in denying Perez’s motions to dismiss the charges.

For the reasons that follow, we hold that the Board’s findings were supported by substantial evidence and that the Board did not err in denying Perez’s motions to dismiss. Accordingly, we shall affirm the decision of the circuit court.

### **FACTUAL AND PROCEDURAL BACKGROUND**

At the administrative hearing, the Board found the following facts:

On April 10, 2017, Perez’s son, Jose Perez, a police corporal with the Seat Pleasant Police Department (“SPPD”), informed his father that the SPPD had denied his request for leave. Jose Perez had filed a request for leave on April 7, 2017, to be taken

from April 14-16, 2017. As the SPPD’s policy requires leave requests to be submitted at least 14 days in advance, Sergeant Robert Ploof denied Jose Perez’s request.<sup>1</sup>

Captain Perez called Devin Martin, the chief of the SPPD, to discuss the Department’s denial of his son’s leave request. Perez had a preexisting professional relationship with Chief Martin, which began when both Perez and Chief Martin were involved with a “Police Explorer Program.” When Chief Martin became chief of the SPPD, Perez reintroduced himself and encouraged Chief Martin to join several fraternal organizations.

Chief Martin informed Perez that he was unable to speak at that time, but that he would return his call.

Instead of awaiting Chief Martin’s call, Perez drove to the SPPD station in his unmarked Department vehicle. Perez entered the station wearing his “professional work attire” and asked the civilian administrative assistant, Tameeka Brinson, if he could speak with a supervisor. Perez stated that he had talked to a supervisor on the phone, but could not remember the supervisor’s name. Perez identified himself to Ms. Brinson as a police captain with the Department by stating his position and by showing Ms. Brinson his identification card.

Ms. Brinson asked Sergeant Ploof, the supervisor on duty, to come to the lobby, where an “officer” wished to speak to him. Sergeant Ploof went to the lobby, where

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<sup>1</sup> During the pendency of these proceedings, Sergeant Ploof was promoted to Lieutenant. We refer to him as Sergeant Ploof because that was his rank at the time of the events in question in this case.

Perez introduced himself as a captain with the Department and showed Sergeant Ploof his identification card. Perez asked if he could speak with Sergeant Ploof in private.

Sergeant Ploof acquiesced. Once in Sergeant Ploof's office, Perez crossed his arms and continued to stand while Sergeant Ploof sat. Perez informed Sergeant Ploof that he was Jose Perez's father and stated that he understood that Sergeant Ploof had denied his son's leave request. Perez informed Sergeant Ploof that he needed his son "for an important out of state matter" and that it was "essential" that Jose Perez have the requested days off. Sergeant Ploof agreed to look at the schedule again. Before leaving, Perez told Sergeant Ploof that he would "be speaking with [his] chief." Sergeant Ploof testified that he felt threatened by Perez's statement. He rescinded his earlier denial and granted Jose Perez's leave request.

Chief Martin, unaware that Sergeant Ploof had granted the leave request, returned Captain Perez's call. Perez answered the phone by asking "[w]hat's the problem you have with my son?" and "[w]hy did you deny my son's leave request?" Perez then stated, "You heard about the complaint I made at the County," referring to his involvement in an ongoing civil lawsuit against the Department. Perez said, "You know, [you have] got some issues over there[,] some unfair practices and I'd hate to have to come over and make a complaint around there."

Chief Martin informed Perez that he was "welcome to share his ideas to improve the improper employment actions that he alleges have occurred" and ended the conversation. Perceiving Perez's statement to be a threat, Chief Martin then wrote to the Department Chief Stawinski to report Perez's "troublesome and alarming" behavior.

Chief Martin wrote that Perez had “demonstrated an intent to use his official position to induce a special benefit for his son, which represents an obvious conflict of interest.” He “rebuke[d] Captain Perez’s vailed [sic] threats of civil litigation[,] which were made while he represented [the Department].” Chief Martin concluded by requesting that Perez “refrain from any further interference or contact with [the SPPD] unless it relates directly to his official duties.” Chief Martin informed Seat Pleasant Mayor Eugene Grant of his conversation with Perez, and the Mayor wrote to Chief Stawinski as well.

Chief Stawinski assigned Captain Watkins, a police captain with the Department, to investigate Perez’s actions. Based on Captain Watkins’s investigative report, the Department charged Perez with three violations of the Department’s General Order Manual:

Charge #1 (“Ethics”), for “us[ing] the prestige of his office as Captain with the Prince George’s County Police Department by referencing his position or rank, and using his official identification to gain access to Chief Devan Martin of the Seat Pleasant Police Department for personal matter and subsequently threaten Chief Martin with retaliatory civil action . . . [which have] no connection to [his] official duties and were undertaken purely for personal gain.”

Charge #2 (“Ethics”), for “us[ing] the prestige of his office as a Captain with the Prince George’s County Police Department to gain access to supervisors and administrators of the Seat Pleasant Police Department for a personal matter regarding an employment leave decision for his son, Jose Perez, who was a Seat Pleasant Police Department employee.”

Charge #3 (“Loyalty”) as “while on-duty, [he] disregarded his loyalty to his oath of service as a Captain with the Prince George’s County Police Department, when he used his position to seek employment leave for his son, Jose Perez, from the Seat Pleasant Police Department.”

The Department informed Perez that, as a result of his violations, his rank and salary as captain would be reduced to the rank and salary of lieutenant for one year and he would be removed from the promotional cycle for captain for one year. The Department also informed Perez of his right to request a hearing before the Board under the Maryland Law Enforcement Officers’ Bill of Rights (“LEOBR”), Maryland Code (2003, 2018 Repl. Vol., 2020 Supp.), § 3-101, *et seq.*, of the Public Safety Article (“P.S.”).<sup>2</sup>

Perez requested that the Board review the proposed disciplinary actions. In response to his request, the Board convened a hearing on August 13, 2019.

At the hearing, the Department called four witnesses to testify: Sergeant Ploof, Chief Stawinski, Chief Martin, and Captain Watkins. After the Department presented its case, Perez moved to dismiss the charges, arguing that “all three charges [were] for on-duty violations of official duties,” but that he was not on duty at the time. Rather, he argued, his conduct was of a “personal nature and not in the performance of official duties.” The Board denied his motion.

Perez called five witnesses: himself, Ms. Brinson, Lieutenant Steward of the Department, Captain Wayne Jackson of the Glenarden Police Department, and Lieutenant

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<sup>2</sup> P.S. § 3-107(a)(1) provides: “if the investigation or interrogation of a law enforcement officer results in a recommendation of demotion, dismissal, transfer, loss of pay, reassignment, or similar action that is considered punitive, the law enforcement officer is entitled to a hearing on the issues by a hearing board before the law enforcement agency takes that action.”

Earl Ivey of the Fairmont Heights Police Department. After presenting his case, Perez again moved to dismiss the charges. The Board denied his motion.

The Board found Perez guilty of all three charges. As to charge #1 (“Ethics”), the Board found that Perez was on duty when he called Chief Martin and that he “failed to execute official duties when he used his position to gain access to Chief Martin for personal reasons.” The Board further found that Perez “did not maintain exemplary traits of courtesy and self-restraint” and that he “failed to display professional ethics surmounting personal feelings while communicating with Chief Martin on the telephone . . . when he stated that he could bring court action against the [SPPD] as he had previously brought against the [Department].”

As to charge #2 (“Ethics”), the Board found that Perez was on duty when he entered the SPPD station and used “deception to gain access to Sergeant Ploof for a personal matter” by identifying himself only as a captain with the Department and not as Jose Perez’s father. The Board further found that Perez “used intimidation, and failed to demonstrate self-restraint during his interaction with Sergeant Ploof by the threatening manner in which he spoke to him.”

As to charge #3 (“Loyalty”), the Board found that Perez “did not exercise reasonable discretion in the performance of his duties when he entered Sergeant Ploof’s office seeking leave for his son[.]” The Board further found that Perez “did not professionally and personally exercise proper judgments within the confines of loyalty to the oath of service when he spoke to Sergeant Ploof in a threatening manner.”

The Board agreed with the Department’s proposed penalty and recommended that Perez’s rank and salary be reduced to lieutenant for one year and that he be ineligible for a promotion for one year.<sup>3</sup> The Assistant Chief of Police concurred with the Board’s conclusion and implemented the recommended disciplinary action.

Perez sought judicial review in the Circuit Court for Prince George’s County, which affirmed the Board’s decision. Thereafter, Perez filed this timely appeal.

### **STANDARD OF REVIEW**

The scope of review in a LEOBR case is the standard “generally applicable to administrative appeals.” *Coleman v. Anne Arundel Cty. Police Dep’t*, 369 Md. 108, 121 (2002). “[T]his Court reviews the agency’s decision, not the circuit court’s decision.” *Baltimore City Police Dep’t v. Robinson*, 247 Md. App. 652, 670 (2020). Accordingly, “we bypass the judgment of the circuit court and look directly at the administrative decision.” *Baltimore City Police Dep’t v. Ellsworth*, 211 Md. App. 198, 207 (2013) (quoting *Salisbury Univ. v. Joseph M. Zimmer, Inc.*, 199 Md. App. 163, 166 (2011)); accord *Baltimore City Police Dep’t v. Antonin*, 237 Md. App. 348, 359 (2018).

Our review of an administrative agency’s factual findings “is not an independent decision on the evidence.” *Travers v. Baltimore Police Dep’t*, 115 Md. App. 395, 420 (1997). We consider whether there is “substantial evidence in the administrative record

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<sup>3</sup> P.S. § 3-108(b)(1) provides: “After a disciplinary hearing and a finding of guilt, the hearing board may recommend the penalty it considers appropriate under the circumstances, including demotion, dismissal, transfer, loss of pay, reassignment, or other similar action that is considered punitive.”



as a whole to support the agency’s findings and conclusions.” *Coleman v. Anne Arundel Cty. Police Dep’t*, 369 Md. at 121.

“Substantial evidence” exists if “a reasoning mind reasonably could have reached the factual conclusion the agency reached.” *Dickinson-Tidewater, Inc. v. Supervisor of Assessments of Anne Arundel County*, 273 Md. 245, 256 (1974) (quoting *Insurance Comm’r v. National Bureau of Cas. Underwriters*, 248 Md. 292, 309 (1967)); accord *Bulluck v. Pelham Wood Apartments*, 283 Md. 505, 512 (1978). As the agency’s decision carries a “presumption of validity[,]” we “may not substitute our judgment for that of the agency concerning the appropriate inferences to be drawn from the evidence.” *Travers v. Baltimore Police Dep’t*, 115 Md. App. at 420; see *Bulluck v. Pelham Wood Apartments*, 283 Md. at 513 (citing *NLRB v. Nevada Consolidated Copper Corp.*, 316 U.S. 105, 106-07 (1942)) (“where inconsistent inferences from the same evidence can be drawn, it is for the agency to draw the inferences”). However, “we owe no deference to agency conclusions based upon errors of law.” *Coleman v. Anne Arundel Cty. Police Dep’t*, 369 Md. at 121 (quoting *State Ethics Comm’n v. Antonetti*, 365 Md. 428, 447 (2001)).

## DISCUSSION

### I. Substantial Evidence

Perez argues that the Board’s findings as to charges #1 and #2 (“Ethics”) are not supported by substantial evidence. The Department disagrees, contending that the Board, with its expertise to enforce “its own General Orders,” reached a reasonable conclusion that was supported by the evidence. See *Travers v. Baltimore Police Dep’t*, 115 Md.

App. at 423 (stating that that a reviewing court should be “[m]indful of the board’s expertise in determining what conduct undermines the Department’s interest”). We agree with the Department’s assertion that the Board had substantial evidence to support its finding of Perez’s guilt.

In considering whether there is substantial evidence in the record to support the Board’s findings, we ordinarily begin by reviewing the administrative record as a whole. Here, however, Perez did not submit the hearing transcript for our review. Thus, in considering whether a reasonable mind could have reasonably reached the Board’s factual conclusions, we are forced to rely on the Board’s findings of fact, the Department’s investigative reports, and the written witness statements. We conclude that the Board’s factual findings are supported by substantial evidence.

**A. Used Position to Gain Access to Chief Martin for a Personal Matter**

Perez argues that the Board erred in finding that he used his position to “gain access” to Chief Martin. Perez argues that he did not need to use his position to gain access to Chief Martin; instead, he says, he could rely on their preexisting professional relationship. Perez argues the parties were “open and available to one another on a routine basis” and that he could contact Chief Martin “at-will.” Thus, he contends, there was no evidence that he needed to rely on his position as a captain with the Department to gain access to Chief Martin.

The Department contends that the Board could reasonably conclude that Perez relied on his position as captain to gain access to Chief Martin to discuss a personal matter.

The Department is correct. The Board found that Perez and Chief Martin had a professional, not a personal, relationship. The Board further found that Perez had called Chief Martin in the past to discuss police-related matters, such as offering his assistance to the newly appointed chief. As the Department contends, it was reasonable for the Board to infer that Chief Martin would respond to Perez’s call because he believed that Perez was calling as a commanding officer with the Department and not to request a personal favor. Furthermore, the Board could reasonably consider that when the captain of another department calls the chief, it is a normal professional courtesy for the chief to answer *because* of the professional relationship. Therefore, a reasonable mind could conclude that Perez used his position to gain access to Chief Martin to discuss a personal matter.<sup>4</sup>

**B. Used Deception to Gain Access to Sergeant Ploof for a Personal Matter**

Perez argues that the Board lacked substantial evidence for its finding that he used “deception” to gain access to Lieutenant Ploof. Perez contends that he gained access to Sergeant Ploof by identifying himself as a law enforcement officer and displaying his badge. He argues that his actions were not deceptive because it was “truthful and accurate” that he was a captain with the Department.

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<sup>4</sup> Perez does not address the Board’s additional ground for a finding of guilt under charge #1: its finding that Perez “did not maintain exemplary traits of courtesy and self-restraint” and that he “failed to display professional ethics surmounting personal feelings while communicating with Chief Martin on the telephone . . . when he stated that he could bring court action against the [SPPD] as he had previously brought against the [Department].” In failing to address that ground, Perez tacitly concedes that the Board had substantial evidence for that finding.

While it is “true and accurate” that Perez was a captain with the Department, the record is replete with evidence that Perez used deception to gain access to Sergeant Ploof. The record confirms that Perez entered the SPPD station and informed Ms. Brinson that he had talked to a supervisor on the phone, but that he “could not remember” the supervisor’s name. In actuality, Perez had just spoken to Chief Martin and knew that Chief Martin was not currently available. Perez then introduced himself as a captain with the Department, both verbally and by displaying his identification badge.

After Ms. Brinson called for Sergeant Ploof, Perez again introduced himself as a captain with the Department. Perez did not inform the employees of the SPPD that he was Jose Perez’s father until he had entered Sergeant Ploof’s office. Based on his appearance and identification, Sergeant Ploof reasonably believed that Perez had a police matter to discuss and granted his request to speak privately. Thus, the Board had substantial evidence on which to base its conclusion that Perez used deception to gain access to Sergeant Ploof.<sup>5</sup>

**C. Used Intimidation and Acted in a Threatening Manner while Interacting with Sergeant Ploof**

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<sup>5</sup> Echoing the sixth Robert de Brus in *Braveheart* (“You let yourself be deceived”), Perez argues that Sergeant Ploof is responsible for being deceived, as he should have “vetted” Perez before inviting him to enter his office. We find it difficult to envision a scenario in which a municipal police sergeant would find it appropriate to interrogate a county police captain in the lobby of a police station before granting the captain’s request for a private meeting, especially after the captain confirmed his rank and department with his identification badge. Either way, the question is whether the Board’s finding that Perez used deception to gain access to Sergeant Ploof was based on substantial evidence, not whether some factfinder might conclude that Sergeant Ploof unreasonably allowed himself to be deceived.

Perez argues that the Board erred in finding him guilty of charge #2 (“Ethics”) because “no reasoning mind could have reached the conclusion that Perez intimidated and/or threatened Ploof.”

The Department responds that, if Perez used deception to gain access to Sergeant Ploof, we can uphold charge #2 without considering whether Perez used intimidation or acted in a threatening manner. The Department contends that the Board considered Perez’s threatening and intimidating manner as a factor in finding that Perez “failed to professionally execute his official duties when he used deception to gain access to Sergeant Ploof[.]” Thus, the Board’s finding that Perez acted in an intimidating and threatening manner is not a “condition precedent” to the charge.

We agree that the finding of guilt on charge #2 was not contingent on a finding that Perez threatened or intimidated Sergeant Ploof. However, as Perez’s behavior towards Sergeant Ploof is additional evidence that he violated the ethics provision, we consider it briefly in further holding that the Board had substantial evidence to find Perez’s guilt.

Here, Perez argues that no evidence in the record supports the Board’s finding that he acted in an intimidating or threatening manner towards Sergeant Ploof. Perez contends that he “simply requested a private meeting with Ploof,” and that “Ploof obliged without question or hesitation.” Perez further contends that his statement to Sergeant Ploof—that he would be talking to his chief—could not be considered a threat “without any further context.”

We have further context in which to contextualize Perez’s statement. The limited record reflects the following facts: Perez entered Sergeant Ploof’s office, crossed his arms, and stood while Sergeant Ploof sat. Ploof informed the Board that he felt intimidated by Perez’s tone and demeanor. After questioning Sergeant Ploof’s decision to deny Jose Perez’s leave request, Perez stated he would be “speaking with your chief.” Sergeant Ploof perceived this statement to be a threat. In this context, the Board could reasonably conclude that Perez acted in a threatening and intimidating manner.

Furthermore, the Board, as the finder of fact, was able to assess Sergeant Ploof’s credibility when he testified at the hearing. *See Tippery v. Montgomery Cty. Police Dep’t*, 112 Md. App. 332, 340 (1996) (“[t]he weighing of the evidence and the assessment of witness credibility is for the finder of fact, not the reviewing court”) (quoting *Terranova v. Board of Trs. of the Fire & Police Empls. Ret. Sys.*, 81 Md. App. 1, 13 (1989)); *Anderson v. Dep’t of Public Safety and Correctional Services*, 330 Md. 187, 217 (1993) (quoting *General Dynamics v. OSHRC*, 599 F.2d 453, 463 (1st Cir. 1979)) (“the credibility findings of the person who sees and hears the witnesses . . . is entitled to considerable deference”). Based on this assessment, the Board concluded that Sergeant Ploof was credible in stating that he felt intimidated and threatened by Perez. From a finding that Sergeant Ploof felt intimidated and threatened by Perez, it is not a long leap to the conclusion that Perez intimidated and threatened Sergeant Ploof.

Perez also argues that his statement could not be considered a threat because, immediately after the confrontation, Sergeant Ploof rescinded his prior denial and granted Jose’s request. We disagree. Sergeant Ploof’s immediate response is substantial

evidence that he believed there would be consequences if he did not accede to Perez's demand. Thus, the Board reasonably found that Sergeant Ploof reconsidered Jose's request because of Perez's threatening statements.

## **II. Denial of Motions to Dismiss**

Finally, Perez argues that the Board erred in denying his motion to dismiss charge #3 ("Loyalty"). At the hearing, Perez requested that the Board dismiss all charges, claiming that the alleged violations apply only to on-duty officers and that he was not on duty when the allegations occurred. Now, Perez argues that he was wrongfully charged with violating the loyalty provision of the Department's General Order Manual.

Perez contends that the loyalty provision, which states that "[e]mployees will exercise reasonable discretion in the performance of their duties," is inapplicable because the alleged misconduct "was of a strictly personal nature and, as a result, falls outside the scope of the loyalty policy." Perez claims that the Board could not have found that he was on duty when the alleged violations occurred, because advocating for his son is not part of his official duties.

However, Perez could be on duty while he was attending to a personal matter. As the Department contends, it was reasonable for the Board to find that Perez "inappropriately disregarded and/or abandoned his duties" when he "used his work time to take care of a personal matter."

The Board could, and did, reasonably conclude that Perez was on duty while attending to a personal matter based on the substantial evidence in our limited record: Perez arrived at the SPPD station in his Department vehicle; Perez was dressed in his

professional work attire; and Perez stated that he was a captain with the Department and showed his Department-issued identification card. Thus, while on duty, Perez used his prestige and position as a police captain to attempt to resolve a personal matter. There is substantial evidence in the record to conclude that he did so in a manner that violated his duty of loyalty. Therefore, the Board did not err in denying Perez’s motions to dismiss.

**JUDGMENT AFFIRMED. COSTS TO BE PAID BY APPELLANT.**