UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 0748

September Term, 2014

STEPHEN KINGMAN

v.

PERSONNEL BOARD FOR PRINCE GEORGE'S COUNTY, MARYLAND

Zarnoch,
Berger,
Nazarian,

JJ.

Opinion by Zarnoch, J.

Filed: June 10, 2015

Appellant Stephen Kingman was terminated from the Prince George's County Police Department ("PGPD") after a traffic stop in Washington, D.C. that resulted in the search and arrest of his passenger. Kingman sought judicial review of the decision of the Personnel Board for Prince George's County's ("the Board") that he made a false statement to investigators and that he engaged in conduct unbecoming a police officer. For the following reasons, we agree with the Circuit Court for Prince George's County and affirm its decision in favor of the Board.

FACTS AND LEGAL PROCEEDINGS

After graduating from the Prince George's County Police Academy on January 5, 2012, Stephen Kingman was employed by the PGPD as a police officer. Kingman began his twelve-month probationary period on that date. On April 27, 2012, Kingman, while off-duty, was driving through Washington D.C. with the stated purpose of visiting a friend, Officer Andre Persaud, a police officer for the District of Columbia Metropolitan Police Department ("MPD"). On his way to meet Officer Persaud at the 6th District office, Kingman stated that he got lost and stopped to ask a pedestrian, LaQuisha Brown, for directions. Brown asked Kingman to give her a ride to a convenience store and then to her residence. Kingman agreed to give Brown a ride and she got into his car, but did not give him directions to the 6th District Office.

On the way to her residence, Brown requested that Kingman turn onto "a paved service roadway" near the building. Shortly after, at about 8:00 p.m., Kingman was stopped by Officer Jeffrey Buchanan of the MPD "for driving his motor vehicle on a paved walkway around the 5300 block of Fitch Street, Washington, D.C., SE." This particular

region was known to Officer Buchanan as a high prostitution and narcotics area. When the car stopped, Brown jumped out of the vehicle and attempted to flee from Officer Buchanan. She eventually returned to the vehicle after repeated verbal requests from Officer Buchanan. While Officer Buchanan performed a routine traffic stop, Kingman opened his driver's side door due to the inoperability of his windows and Officer Buchanan "immediately detected a strong PCP odor" coming from the vehicle. Kingman was asked to step out of the vehicle and Officer Buchanan began to question him. He asked Kingman how he knew Brown, to which Kingman stated that he did not know her, but that he was just giving her a ride. Another MPD police officer, Sergeant Brett Parson also responded to the scene. He informed Kingman that there would be an investigation involving the drugs and that Kingman may be subject to arrest. Brown was searched by police and a cigarette package "containing cigarettes suspected of having been dipped in PCP" was found "wrapped in plastic, inside of a cigarette box" in her purse. She was subsequently arrested and gave a statement to Sergeant Parson that Kingman had given her the PCP.[1] At Kingman's hearing before the Board, Sergeant Parson testified to the statement: "she said, 'Are you going to lock him up?' I said, 'Why would I lock him up?,' and she said 'He gave me the PCP.'"

MPD Officer Frantz Fulcher also responded to assist Officer Buchanan with the traffic stop. Kingman proceeded to tell Officer Fulcher about his intention to meet Officer

[1] The criminal charges against Brown were later dropped by prosecutors in the District of Columbia. Evidence regarding any test conducted on the cigarettes was not introduced before the Board to confirm the presence of PCP.

Persaud. Officer Fulcher was confused by this story, so he contacted Officer Persaud for verification of his relationship with Kingman. Officer Persaud did not immediately recall knowing Kingman, but then remembered him from a prior job at a CVS Pharmacy. Officer Persaud viewed Kingman as an acquaintance and had not arranged to meet with Kingman on April 27, 2012, a fact which Kingman acknowledged.

Kingman was taken to the MPD station to await the arrival of the PGPD Internal Affairs Division's Special Investigation Response Team. This department investigates "major acts of misconduct by PGPD officers, arrests, or departmental shootings." At 1:00 a.m. on April 28, 2012, Sergeant Joseph Ghattas and Sergeant Paul Mack arrived at the MPD station to interview Kingman. Sergeant Ghattas advised Kingman that PGPD was investigating him for his conduct on April 27, 2012. Kingman acknowledged that he was informed of his rights and that his status as a probationary employee did not afford him the "additional protections provided under the Law Enforcement Officer Bill of Rights [Md. Code (2003, 2011 Repl. Vol.), Public Safety Article ("PS"), § 3-101 *et seq.* (hereinafter "LEOBR")]." This interview was conducted to evaluate Kingman's "performance of duties, actions, and/or fitness for office." Officer Ghattas ordered Kingman to give a statement about the events of April 27, 2012 and acknowledged that this would be considered a "duress statement." Following the interview, Kingman submitted to a drug test, the results of which were not introduced at his hearing.

Kingman was subsequently suspended with pay and placed on administrative leave. The PGPD completed its investigation on July 23, 2012. Sergeant Mack's investigatory file concluded that Kingman:

> (1) made a false statement to PGPD investigators when he stated that he was on his way to visit a friend (MPD Officer Persaud); and (2) that he also engaged in unbecoming conduct when he had someone in [his] vehicle who [was] in possession of PCP and happened to be arrested for drugs.

On September 19, 2012, Chief of Police Mark A. Magaw of PGPD issued Kingman a "Notice of Intent" informing him of Magaw's intent to terminate Kingman for the April 27 incident. Following this letter, on October 17, 2012, Chief Magaw sent Kingman a written notice of dismissal. Chief Magaw explained "that he had considered the specific grounds, circumstances, and charges outlined in his Notice of Intent to initiate disciplinary action" and provided the same two reasons for Kingman's termination as Sergeant Mack's investigatory file. As a result, Kingman was immediately terminated.

Kingman appealed Chief Magaw's decision to the Board, which scheduled a pre-hearing conference for January 30, 2013 and held a full hearing on February 27, 2013. Kingman testified at the hearing that his meeting with Officer Persaud was not a confirmed meeting:

> [L]ike I said before, I had tried to call him, text message him. He – he did never really call me back or – or respond back to any of my text – text messages or calls, so I decided, let me just go out – go by there and see if he's – if he's actually working.

He also indicated to the Board that he was aware of the concerns about his decision to pick up Brown:

> MS. MASON: Mr. Kingman, this woman was a stranger to you?
>
> THE WITNESS: That's right.
>
> MS. MASON: You had a gun that she could see?
>
> THE WITNESS: Yes, ma'am.

MS. MASON: And she got in the car with you, and this is the year 2012 in America, and –

MR. BOULWARE: . . . In Southeast D.C.

MS. MASON: – hey, anywhere at this point, Connecticut, anyplace, and – and – it didn't seem strange to you that a woman alone would get into a car with a man she didn't know who had a gun, even if he claimed to be a policeman and had a badge . . . so the thought of being able to protect the general public would really come into question . . .

THE WITNESS: Yes, ma'am. I – I can – I will certainly agree with you and I'm sure that all of your – this is a dumb choice and – and I – no – no – no bones about it. I – I think it was a – a very poor choice on my behalf.

Kingman also acknowledged his status as a probationary employee and his understanding of his rights under this status:

MR. BOULWARE: But you – you understand that you are in a probationary status, correct?

THE WITNESS: Yes, sir.

MR. BOULWARE: That you were in a probationary status, and so some of the protections afforded to you are quite different than what it would have been for someone who's not on a probationary status, correct?

THE WITNESS: That's correct.

Following the hearing, the Board issued a written decision, ruling in favor of the PGPD on both the false statement and unbecoming conduct charges. The Board relied on Prince George's County Code § 16-171, *et seq.* (2010) (hereinafter "County Code") to

determine that Kingman, as a probationary employee, had the burden to prove by a preponderance of the evidence that PGPD's termination of his employment was unlawful. The Board, applying County Code § 16-171, found that progressive disciplinary procedures were not appropriate in a case involving a probationary employee. Additionally, the Board concluded that Chief Magaw gave Kingman "an opportunity to respond to the notice of intent, an opportunity [Kingman] did not exercise." The Board concluded that Kingman's explanation regarding the events of April 27 was false and that his "actions on the evening of April 27, 2012 fell short of the integrity expected of police officers." Two hundred and seventeen days later, on October 2, 2013, the Board dismissed Kingman's appeal with prejudice.

Kingman promptly filed a petition for judicial review in the Circuit Court for Prince George's County. Oral arguments were held on May 16, 2014 in the circuit court and on May 20, 2014, the circuit court affirmed the Board's ruling without a written opinion. On June 19, 2014, Kingman noted his appeal to this Court. Additional facts will be provided below as necessary.

QUESTIONS PRESENTED[2]

Appellant presents five questions for our review, which we have consolidated into the following question:

Did the Personnel Board for Prince George's County err or abuse its discretion when it concluded that Kingman's termination was lawful under the Prince George's County Code?

[2] Appellant's original questions to this Court were: (continued…)

Our answer to the above question is no and we affirm the judgment of the Circuit Court for Prince George's County.

STANDARD OF REVIEW

When we review the decision of an administrative agency, we review "the agency's decision, not the circuit court's decision[, making it our goal] to determine whether the agency's decision is in accordance with the law or whether it is arbitrary, illegal, and capricious." *Long Green Valley Ass'n v. Prigel Family Creamery*, 206 Md. App. 264, 273-74 (2012) (Citations omitted). We do not substitute our judgment for that of the

(…continued)

1. Did the Board violate Officer Kingman's fundamental due process rights and clearly abuse its discretion when it upheld the PGPD's stated grounds for Officer Kingman's termination, which were impermissibly vague and did not state any lawful grounds for termination pursuant to the County Code?

2. Did the Board err as a matter of law and clearly abuse its discretion when it found, without any substantiation, that Officer Kingman had waived his rights under the County Employees' Bill of Rights, *County Code* § 16-234 *et seq.*, and specifically *County Code* § 16-241, when the evidence before the Board clearly showed that he did not waive his rights and he made his statements to PGPD investigators under extreme duress?

3. Did the Board make an error of law when it concluded that *County Code* § 16-192 (requiring progressive discipline) was inapplicable because it did not apply to probationary employees?

4. Did the Board violate Officer Kingman's fundamental rights when it allowed the PGPD to present its case first, while placing the burdens of production and persuasion upon Officer Kingman?

5. Did the Board violate Officer Kingman's substantial rights and his statutory rights under *County Code* § 16-203(a)(2)(B), which explicitly requires a written decision within 45 days, when instead the Board took 217 days?

administrative panel unless our review of the agency's findings of law determines that there were errors "caused by arbitrary or capricious actions of the hearing board." *Vandevander v. Voorhaar*, 136 Md. App. 621, 628 (2001).

We "will not disturb an administrative decision on appeal if substantial evidence supports factual findings and no error of law exists." *Long Green Valley Ass'n*, 206 Md. App. at 274 (Citations and quotations omitted). Substantial evidence is defined as "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." *Catonsville Nursing Home, Inc. v. Loveman*, 349 Md. 560, 569 (1998) (Citation and quotations omitted). We are, however, "obligated to 'review [agency decisions] in the light most favorable to the agency,' since their decisions are *prima facie* correct and carry with them the presumption of validity." *Id.* (Citations omitted).

DISCUSSION

I. The Parties' Contentions

Kingman contends that the Board violated his due process rights by upholding the PGPD's stated basis for his termination, which he describes as impermissibly vague. He further contends that it was an abuse of discretion for the Board to conclude that the County Employees' Bill of Rights under County Code § 16-234 and its progressive discipline policy did not apply to him. Finally, Kingman argues that the Board's delay in rendering its written decision was prejudicial and in direct violation of his statutory rights under the Prince George's County Code.

The County responds that because of Kingman's status as a probationary employee, he was not entitled to all of the protections of the Prince George's County Personnel Law.

Additionally, the County responds that the Board's decision was supported by substantial evidence to uphold Kingman's termination as a PGPD officer. According to the County, the Board's failure to comply with County Code § 16-203(a)(2)(B)'s forty-five day guideline for written decisions is harmless error because the statute's use of the word "shall" is directory, rather than mandatory.

II. Probationary Employee Status

Subtitle 16 of the Prince George's County Code provides County employees specific rights under the county's comprehensive personnel system. Certain employees upon appointment to a position may be subject to a probationary period of employment. County Code § 16-169(a). During the probationary period, the employee's supervisor "shall closely observe and review the work of each such employee for the purpose of determining whether each such employee demonstrates the ability and aptitude to satisfactorily perform the duties, tasks, and responsibilities of the position on a routine and continual basis." *Id.*

Within the organization of the PGPD, the Chief of Police is tasked with establishing "written rules and regulations for the administration and discipline of the members of the Police Department." County Code § 18-143. The Chief of Police is also required to create a "General Order Manual" which contains these rules and regulations. *Id.* Within the General Order Manual, the PGPD has certain requirements for interrogations of "sworn employees" which includes probationary police officers. During administrative investigations, "all interrogations shall be conducted under duress and in accordance with LEOBR." Prince George's County Police Department, *General Order Manual*, Vol. I,

Chapter 22, Internal Investigations Procedures, § V: Procedures, Subsection 3. However, this provision states that "[p]robationary sworn employees are not afforded the opportunity to delay the providing of a statement, unless the incident involves a use of force." *Id.* Additionally, probationary employees are not included within the definition of law enforcement officers under the LEOBR.[3] As a result, Kingman, as a probationary police officer, is not afforded the protections set forth in the LEOBR or more importantly, the General Order Manual, and therefore, it was not an abuse of discretion for the Board to conclude that the PGPD's interrogation of Kingman was appropriate.[4]

The disciplinary procedures applicable to County employees are contained within County Code § 16-192, which provides that: "[I]t shall be the general policy of Prince George's County to follow a pattern of progressive discipline which provides employees with notice of deficiencies and an opportunity to improve both performance and conduct problems." County Code § 16-241(a) states that "[w]henever an employee is subject to investigation for any reason which could lead to the imposition of conduct-related disciplinary action pursuant to County Code § 16-193," certain procedures apply.

[3] "Law enforcement officer does not include: an officer who is in probationary status on initial entry into the law enforcement agency except if an allegation of brutality in the execution of the officer's duties is made." PS § 3-101(2)(iv). At oral argument before this Court, both parties conceded that if the LEOBR applied to Kingman, than this proceeding would have occurred in front of a hearing board, not the Prince George's County Personnel Board. *See* PS § 3-107.

[4] Additionally, we see no error with respect to the duress statement taken from Kingman during the investigation. It was made clear to Kingman that this statement could not be used against him in criminal proceedings and would only be used in the administrative proceedings relating to the investigation into Kingman's conduct or fitness for his position as a PGPD police officer.

However, when a probationary employee is subject to discipline during his or her probationary period, "an appointing authority may remove an employee if in the opinion of the appointing authority such employee is unable or unwilling to perform the duties of the position satisfactorily or the employee's conduct does not merit continued employment with the County." County Code § 16-171(c).[5] The Board noted that "[b]ecause the employee is on probation, the employee is not provided the full panoply of rights afforded to those who are converted to permanent status [and that] the appointing authority is given broad discretion in disciplining probationary employees." The Board correctly concluded that the additional rights set forth in County Code § 16-241 did not apply to Kingman.

Here, the Chief of Police, as an appointing authority, was authorized to discipline Kingman after the completion of PGPD's investigation. The Chief of Police was allowed to discipline probationary employees, such as Kingman, under County Code § 16-171(c) instead of the progressive disciplinary policy described in County Code § 16-192. County Code § 16-171(c) allows for the dismissal or termination of a probationary employee if "in the opinion of the appointing authority" certain employee conduct has occurred -- therefore, termination is at the discretion of the appointing authority. *See Philip Morris v. Glendening*, 349 Md. 660, 678 (1998) ("Whenever a statute gives a discretionary power to any person to be exercised by him upon his own opinion of certain facts, it is sound rule of construction that, the statute constitutes him [the] sole and exclusive judge of the existence

[5] An appointing authority is defined as "a person or persons authorized by law to select, remove, and otherwise discipline and direct employees and shall include . . . the heads of agencies [and] departments." County Code § 16-102(a)(5).

of those facts"); *Blanton v. Griel Memorial Psychiatric Hospital*, 758 F. 2d 1540, 1543-44 (11th Cir. 1985) ("The discretion given the appointing authority under this section indicates that although he could discharge a probationary employee only for the stated reasons, the appointing authority is the person who determines if these reasons exist"). The Chief of Police afforded Kingman all of the rights proscribed by the County Code applicable to probationary employees and provided him with sufficient notice and warnings. It is apparent to this Court that Kingman was clearly notified of the nature of the investigation and the possible disciplinary actions that he faced.

Moreover, it was not improper for the Board to require Kingman to prove by a preponderance of the evidence that his termination was unlawful. *See Smack v. Dept. of Health*, 134 Md. App. 412, 426 (2000), *aff'd* 378 Md. 298 (2003) ("The issue is whether the ALJ was correct in concluding that the evidence was insufficient to meet [the probationary employee's] burden of proving that her termination was illegal or unconstitutional"); *Blanton*, 758 F. 2d at 1544 (A probationary employee "did not possess a property right in his employment, and was not entitled to the procedural safeguards designed to protect such rights"). Under County Code § 16-203(a)(8)(A), "the Board shall not substitute its judgment for that of the official who had taken the action, but shall attempt to ascertain, based on the preponderance of the evidence presented to the Board, whether there is any reasonable basis to support the action taken by the official." This was the exact procedure followed by the Board, which considered all of the testimony and evidence and concluded that Kingman "failed to meet his burden of proof that his dismissal was unlawful."

III. Kingman's Termination

In order to terminate Kingman's employment as a police officer, the Board's factual findings must have been based on substantial evidence, in "the form either of direct proof or permissible inference, in the record before the agency." *Liberty Nursing Ctr., Inc. v. Dep't of Health & Mental Hygiene*, 330 Md. 433, 442 (1993). To challenge termination, a probationary employee must allege "that the basis of removal or acts of an appointing authority constituting the basis of a grievance as the case may be, were illegal or that a written statement as required under County Code § 16-171(c) (3) was not provided [to] the employee." There is no requirement for the Chief of Police to show cause in order to justify the termination of a probationary employee. *See Small v. Sec'y of Pers.*, 267 Md. 532, 535 (1973) ("During that ensuing probationary period, [the employee] can be discharged without reason and without cause"). In reaching its decision, the Board heard testimony regarding the two charges against Kingman: making a false statement and engaging in conduct unbecoming a police officer.

A. False Statement

Under County Code § 18-160(b), "no member of the Police Department, under any circumstances, shall make any false official statement or intentional misrepresentation of facts." Kingman cites to *Vandevander*, 136 Md. App. 621, to support his argument that the PGPD failed to present enough evidence to prove that he made a false statement. In *Vandevander*, an off-duty officer was charged with making a false official statement. *Id.* at 625. The definition in that case required that a clear distinction "be made between [verbal and written] reports which contain false information and those which contain

inaccurate or improper information." *Id.* at 625-26. The Sheriff's Department was required to prove by a preponderance of the evidence that the officer had made a false statement by presenting evidence "that such report is designedly untrue, deceitful, or made with the intent to deceive the person to whom it was directed." *Id.* at 626.

Kingman argues that based on this standard his statement could only be considered false if the PGPD could show definitive proof that his subjective intent was false. He claimed that it "would be very difficult, if not impossible, to prove that a person misrepresented a thought or a future plan or intention." However, the language of the County Code does not require that the Board find "intent to deceive" as was required in *Vandevander*. Therefore, it was not necessary for the Board to find his intent was false, only that the police authorities believed his statement to be false. The Board, as the fact finder, was in the best position to evaluate the witnesses and to make credibility determinations about the testimony presented. Here, the Board's decision and its factual findings explained that Kingman "was terminated for giving a false statement about meeting up with Officer Persaud which the Board concludes was false." Kingman's explanation that it was normal in his hometown of Miami to drop by unannounced did not convince the Board. The Board did not credit Kingman's explanation, stating that it "simply did not make sense." This conclusion was based on substantial evidence and we cannot disagree with the Board's finding of the falsity of Kingman's statement.

B. Conduct Unbecoming a Police Officer

Kingman's termination was also supported by a charge of "unbecoming conduct." "Conduct unbecoming an officer" is a general provision, but it has been administratively

limited, clarified, and defined by the PGPD. Within the PGPD's General Order Manual, the charge of unbecoming conduct is described as the requirement for employees to "display unblemished professional conduct. To that end, employees are duty bound to avoid excessive, unwarranted, or unjustified behavior that would reflect poorly on themselves, the Department or the County government, regardless of duty status." *General Order Manual*, Vol. I, Chapter 32, § V, Subsection 3.[6] The basis of this charge was that Kingman had a passenger in his car, who possessed a controlled dangerous substance, specifically PCP. Obviously, this would reflect badly on the police department.

Additionally, the Board did not believe Kingman's testimony that he did not smell PCP, which two MPD officers testified that they smelled emanating from his vehicle. Kingman had acknowledged that he had been exposed to the smell of PCP in training and should have been able to recognize the odor. The Court of Appeals has determined that the smell of PCP, similar to the smell of ether, a lawful chemical, is not enough to constitute criminal activity or warrant a search. *Bailey v. State*, 412 Md. 349, 378 (2010). However, the "smell of ether alone is justification for further investigation." *Id.* (Citation omitted). Here, any further investigation by MPD would be justified based on the smell that the MPD officers noticed coming from Kingman's vehicle. Moreover, Kingman was not subject to

[6] In our view, this narrowing construction blunts Kingman's vagueness challenge of the "unbecoming conduct" language. *Montgomery Cnty. v. Walsh*, 274 Md. 502, 522 (1975) (Regulations can weaken vagueness attack on statute). Such generalized terms are common to public employee discipline provisions. *See e.g.* COMAR 17.04.05.04B(3) (disciplining conduct that "would bring the State into disrepute"). Moreover, Kingman's vagueness claim "must be determined strictly on the basis of the [provision's] application to the particular facts at hand." *Bowers v. State*, 283 Md. 115, 122 (1978). Here, the events of April 27, 2012 would justify this description of Kingman's conduct.

an unlawful search and seizure as a result of the suspected PCP. He was only subject to further investigation, which was aimed at determining whether PCP was present in his vehicle. At Kingman's hearing, Sergeant Parson testified that after Brown told him that Kingman had given her the PCP, he informed his watch commander that "there's an allegation now that [Kingman] may have been involved in distributing the PCP to the woman who had it." Sergeant Parson requested additional personnel in order to do a "deeper investigation into" the allegations.

Ultimately, the evidence showed that Kingman was stopped in an area known for narcotics and prostitution and that he was illegally driving on a paved walkway. Kingman acknowledged that he made a "poor decision" in choosing to pick up Brown. The Board concluded that this behavior "fell short of the integrity expected of police officers" and that Kingman's actions "reflected poorly on the integrity of the police department and appellant Kingman's judgment." As the finder of fact, it was reasonable for the Board to be persuaded by PGPD's evidence and not by Kingman's testimony. When coupled with the additional facts presented by the MPD officers, it was reasonable for the Board to have concluded that Kingman was engaging in conduct unbecoming a police officer.

IV. The Board's Delay in Issuance of its Decision

County Code § 16-203(a)(2)(B) states that "[w]ithin forty-five (45) days after the close of the hearing record, the Personnel Board shall issue to the parties a written decision." In Kingman's case, the Board did not issue a written decision until 217 days after the close of testimony and 161 days "after the parties had filed memoranda in support

of their closing arguments." We do not agree that this delay was illegal or prejudicial to Kingman.

This Court has explained that the ordinary use of the word "shall" is "presumed to be mandatory." *G & M Ross Enterprises, Inc. v. Bd. of License Comm'rs of Howard Cnty., Md.*, 111 Md. App. 540, 543 (1996) (Citation omitted). However, there are situations where it should be "interpreted as directory and not mandatory." *Id.* (Citation omitted). In *G & M Ross*, we concluded that because the statute did not contain a sanction for delay, the word "shall" was directory, not mandatory. *Id.* The lack of a sanction can present many issues:

> Were we to have held this delay to be a prejudicial violation of a mandatory limitation, appellant does not suggest to us either a remedy or a sanction, and, indeed, none of a judicial nature occur to us. We were not asked to reverse the Secretary's factual finding that Ms. Pope was incompetent, and thus we could hardly do so; nor could we reinstate an incompetent employee at public expense to punish administrative neglect. . . . The absurdity of the alternative sanction and the absence of a more reasonable solution enforces our view that the provision was intended as directory by the Legislature, not only because it specified no meaningful sanction but also because none was readily apparent.

Pope v. Sec'y of Pers., 46 Md. App. 716, 721-22 (1980). As with these other cases, Kingman has not presented us with a suggested remedy from the statutory language for the delay. The purpose of this provision "is clearly to encourage the Board expeditiously to render its decisions, although a violation of this directive carries no sanction [which leads us to the conclusion that the deadline] was intended to be directory rather than mandatory."

G & M Ross, 111 Md. App. at 545.[7] Therefore, we conclude that the use of the word "shall" in this instance is directory and the delay in the Board's written decision does not constitute reversible error.

For the above stated reasons, we affirm Kingman's termination.[8]

JUDGMENT OF THE CIRCUIT COURT FOR PRINCE GEORGE'S COUNTY AFFIRMED. COSTS TO BE PAID BY APPELLANT.

[7] Furthermore, the Court of Appeals has employed the directory use of the word "shall" for its own time requirements. Specifically, the requirement in the Maryland Constitution that the Court of Appeals file its decisions within three months has been determined to be "merely directory, and not mandatory, and hence the court has not hesitated when circumstances required it to file opinions after the three months." *McCall's Ferry Power Co. v. Price*, 108 Md. 96 (1908).

The requirement that circuit court judges render their decisions within two months has also been determined to be a directory use of the word "shall." *See Pressley v. Warden, Md. House of Correction*, 242 Md. 405, 406 (1966)("While the word 'shall' is used in the Constitution and in the Maryland Rules, and while Judge Carter did not render his decision within two months after the hearing, it has been held that § 23 of Art. IV of the Maryland Constitution is not mandatory, but directory.").

[8] Kingman's Motion to Assess the Costs of Procuring the Circuit Court Transcript is denied. The transcript was helpful in resolving this appeal.