Circuit Court for Prince George's County
Case No. CAL18-23091

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 822

September Term, 2019

AEISHA HAYNES

v.

DISABILITY REVIEW BOARD OF PRINCE GEORGE'S COUNTY CORRECTIONAL OFFICERS' PENSION PLAN

Beachley,
Gould,
Woodward, Patrick L.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Beachley, J.

Filed: July 22, 2020

On September 28, 2015, appellant Aeisha Haynes witnessed a violent incident while working as a correctional officer in the Prince George's County Department of Corrections. In late 2016, Ms. Haynes filed a Statement of Disability claiming that she could no longer work at her place of employment and requesting retirement disability benefits pursuant to the Prince George's County Correctional Officers' Pension Plan (the "Pension Plan"). Following a formal hearing and the Hearing Examiner's favorable recommendation to Ms. Haynes, the Disability Review Board of Prince George's County Correctional Officers' Pension Plan ("DRB") issued its final determination concluding that Ms. Haynes was not disabled as defined by the Pension Plan.

Ms. Haynes filed a petition for writ of mandamus in the Circuit Court for Prince George's County requesting that the court reverse the DRB's decision and grant her a service-connected disability. Following a hearing, the circuit court issued an order affirming the decision of the DRB. Ms. Haynes timely appealed to this Court and presents two issues for our review, which we have consolidated into one:

> Whether there is substantial evidence in the record to support the DRB's decision to deny Ms. Haynes's request for a service-connected disability.[1]

[1] Ms. Haynes presented the following two questions for review in her brief:

> 1. Whether the [DRB's] determination that [a]ppellant is not disabled as a result of a service-connected condition, pursuant to the definition of a service-connected disability contained in the Pension Plan, was unsupported by the substantial evidence and was arbitrary and capricious?
>
> 2. Whether the [DRB] was arbitrary and capricious in rejecting Hearing Examiner Sharnoff's findings and recommendations and disregarding the testimony of [a]ppellant's treating physician and expert, Dr. Patrick Sheehan, and basing its decision solely upon the discredited testimony of its expert, Dr. Cynthia Major Lewis?

Prior to oral argument, this Court issued an Order for Supplemental Briefing wherein we instructed the parties to brief whether we have jurisdiction to consider the appeal in light of our recent decision in *Gray v. Fenton*, 245 Md. App. 207 (2020). Both parties timely complied, and we commend them for their supplemental briefs.

We conclude that we have jurisdiction to consider Ms. Haynes's appeal, and hold that there was substantial evidence in the record to support the DRB's decision. Accordingly, we affirm.

FACTUAL AND PROCEDURAL BACKGROUND

On September 28, 2015, while working at the Prince George's County Department of Corrections, Ms. Haynes witnessed an inmate violently attack the officer who had been assigned as her partner that day. For the week following the incident, Ms. Haynes continually replayed the incident in her mind; she suffered from loss of appetite and an inability to sleep, and did not return to work. When she did return to work, Ms. Haynes began to suffer from increasingly severe chest pains.

After three months, when Ms. Haynes still continued to suffer from stress, fatigue, and loss of appetite, she visited her nurse practitioner, Tamika Jones Ware. NP Ware's December 22, 2015 patient summary indicated that Ms. Haynes wished to avoid pharmacotherapy, and instead preferred to speak with a therapist. In a follow-up appointment on February 16, 2016, NP Ware indicated that Ms. Haynes had recently been "seen in the ER for chest pain/panic attack." Apparently, while at work, Ms. Haynes experienced an increased heartrate and difficulty breathing, both allegedly as a result of the

September 2015 incident.[2] At the February 16, 2016 appointment, NP Ware prescribed Xanax and other medications for Ms. Haynes's symptoms. On March 31, 2016, NP Ware saw Ms. Haynes again and noted that Ms. Haynes claimed the medications she was taking had worked at first, but seemed to be losing their efficacy. Ms. Haynes indicated that she had been working "on light duty" at work, and that this arrangement seemed to be "working out ok at the moment."

At the referral of her attorney, Ms. Haynes began seeing psychiatrist Dr. Patrick Sheehan on April 6, 2016. As Ms. Haynes continued to visit with Dr. Sheehan, he authored numerous reports wherein he diagnosed Ms. Haynes with chronic post-traumatic stress disorder ("PTSD") and major depressive disorder. The reports documented Ms. Haynes's trouble with sleeping, her gradual increase in alcohol consumption, her belief that "there was a 95 percent chance an inmate [would] have someone attack her and kill her[,] and her feelings of guilt and responsibility for her partner's injuries." Dr. Sheehan placed Ms. Haynes out of work on May 6, 2016, believing that she was unable to perform her work responsibilities.

In addition to seeing Dr. Sheehan, at the request of the Prince George's County Attorney's Office, Ms. Haynes received what the parties characterized as an "independent

[2] The record is devoid of any medical documentation for this incident aside from Ms. Haynes's having reported that it occurred.

medical examination" ("IME") from psychiatrist Dr. Cynthia Major Lewis.[3] Dr. Lewis first evaluated Ms. Haynes on April 14, 2016, and reported many of the symptoms found in Dr. Sheehan's reports, including: Ms. Haynes's gradual increase in alcohol consumption, her trouble sleeping, her feelings of guilt related to the attack, and her shortness of breath and chest pain during the February 2016 incident. In the "Diagnostic Impression" of her report, however, Dr. Lewis diagnosed Ms. Haynes with an adjustment disorder with mixed depression and anxiety. Dr. Lewis concluded her April 14, 2016 report by suggesting that although Ms. Haynes could not resume full work duties and responsibilities at that time, Dr. Lewis believed Ms. Haynes would improve enough to return to full work responsibilities after four to six weeks of psychotherapy and continued light duty work.

Dr. Lewis evaluated Ms. Haynes for the second and final time on August 23, 2016, and authored a report dated August 28, 2016, wherein she reaffirmed her diagnosis of an adjustment disorder with mixed anxiety and depressed mood. Notably, the August 2016 report cast doubt on Ms. Haynes's reliability in reporting her symptoms, stating, "It was difficult to determine the reliability of her reported symptoms and what other factors were contributing to her functioning and presentation." Dr. Lewis expressed concern that Ms. Haynes had been inconsistent in taking her medication, and that she was still drinking alcohol on a daily basis despite Dr. Sheehan's admonishments that she avoid alcohol. In concluding that Ms. Haynes was able to resume normal work responsibilities at the

[3] According to Ms. Haynes's brief, the Prince George's County Attorney's Office requested that she receive an IME from Dr. Lewis for a separate workers' compensation claim not related to the instant case.

Department of Corrections, Dr. Lewis asserted that Ms. Haynes's "desire to not return to work is being driven by choice and not from a medical disability." Dr. Lewis also noted that Ms. Haynes's "strong desire to not return to work can be a factor in her report of worsening symptoms and lack of reported improvement."

Although still her treating physician, in September 2016 Dr. Sheehan performed his own "independent psych evaluation" in order to author a report critiquing Dr. Lewis's diagnosis and opinion. The critique claimed that Dr. Lewis had "minimize[d] the extent of the assault Mrs. Haynes witnessed." Dr. Sheehan also claimed that Dr. Lewis had "minimize[d] the extent of [Ms. Haynes's] injuries." Specifically, Dr. Sheehan suggested that Dr. Lewis seemed reluctant to make any PTSD diagnosis generally, even where the patient exhibited many of the symptoms associated with that disorder. Additionally, Dr. Sheehan claimed that Dr. Lewis's IME was inadequate because she failed to interview someone other than Ms. Haynes, which he characterized as a breach in the standard of care. Dr. Sheehan explained that in performing his own IME, he interviewed Ms. Haynes's husband on September 13, 2016, by telephone. In summary, Dr. Sheehan asserted that Dr. Lewis "failed to properly evaluate Mrs. Haynes."

In late 2016, Ms. Haynes submitted her application for service-connected disability retirement, stating that she had last worked in early May 2016, and that she did not feel safe returning to her place of employment. Section 3C of the Pension Plan governs Disability Retirement Benefits. Section 3C.1 of the Pension Plan provides, in relevant part:

3C.1 Retirement at Disability Retirement Date.

(a) Definition of Disability.
A Comprehensive Participant shall be retired on a Disability Retirement Date if [she] meets all of the following conditions:

(1) The Comprehensive Participant is so disabled, mentally or physically, that [she] is unable to fill any position then available to [her] as a Covered Employee.

(2) [Her] disability is likely to be of long duration.

(3) [Her] disability has not resulted from service in the armed forces of any country for which [she] receives a military pension, was not caused or connected with chronic alcoholism or addiction to narcotics or use of drugs prohibited by law, or resulted from [her] engaging in a criminal act or an effort to bring about the injury of [herself] or any other person.

(b) Determination of Disability.

(1) All determinations of disability shall be made by the [DRB] . . . in accordance with the rules of procedure of the [DRB] as shall be adopted by the [DRB] and be in effect from time to time.

A disability determination shall commence upon written application of a Comprehensive Participant, the Retirement Administrator, or the appointing authority, filed with the Medical Advisory Board. The Medical Advisory Board shall be composed of nine (9) physicians selected by the County Executive, and there shall be one (1) position from each of the following specialists: Cardiologist, Psychiatrist, Neurosurgeon, Orthopedist, Physiatrist, Radiologist and two physicians from the specialty of general medicine. In addition, the President of the Prince George's Correctional Officers' Association or his designee, shall serve as a non-voting member of the Medical Advisory Board in cases involving Comprehensive Participants who are represented for purposes of collective bargaining by the Prince George's Correctional Officers' Association. The Medical Advisory Board shall conduct such inquiry as it deems necessary and proper under the circumstances, including a medical examination of the Comprehensive Participant by one or more members of the Medical Advisory Board, or by a physician or physicians selected for that purpose by the Medical Advisory Board, as the Medical Advisory Board deems necessary in order to give the [DRB] a written opinion with regard to the nature, cause, degree of permanence and effect of the alleged disability. The preliminary

> determination of the [DRB] shall be communicated to the Comprehensive Participant. If the Comprehensive Participant disagrees with the preliminary determination of the [DRB], [she] may request a formal hearing which shall be held before the [DRB] or a hearing examiner appointed by the [DRB]. Following this formal hearing, the [DRB] will render a final determination. If no formal hearing is requested, the preliminary determination shall become final.
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> (2) At the formal hearing, if so requested, the Comprehensive Participant whose disability is being determined shall be given the opportunity to examine any evidence presented to or otherwise obtained by, the [DRB] in connection therewith, to comment on such evidence, and to introduce further evidence with respect thereto.
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> (3) A disability determination shall include, in all cases where the [DRB] finds that a Comprehensive Participant is disabled within the definition of disability in Section 3C.1(a)(1), a determination by the [DRB] whether said disability was or was not caused by an injury or sickness suffered as a result of [her] performance of [her] duties as a Covered Employee. Such determination shall be based on all of the evidence presented to the [DRB], or otherwise obtained by it, in connection with its determination of disability.
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> In determining whether an injury or illness is service-connected, the Participant must show that the injury or illness was directly and substantially caused by an employment related accident, occurrence or condition. A pre-existing physical or mental condition found in the Participant which is aggravated by an employment related accident, occurrence or condition and renders the Participant disabled, does not give rise to a service-connected disability. [Added 4/10/01; effective 5/25/01]

In response to Ms. Haynes's claim, on March 2, 2017, the Medical Advisory Board ("MAB") issued its findings of fact, recounting the observations of NP Ware, Dr. Sheehan, and Dr. Lewis. The MAB concluded that Ms. Haynes's injuries were not causally related to the September 28, 2015 incident, and that she was not disabled and could return to full duty. The MAB denied Ms. Haynes's disability retirement application.

On March 9, 2017, the DRB issued its initial determination, agreeing with the MAB that Ms. Haynes was "not disabled as a result of her psychiatric condition[,]" and was "not disabled within the meaning of the Correctional Officers' Comprehensive Pension Plan." As stated above in Section 3C.1(b)(1) of the Pension Plan, a claimant may request a formal hearing before a hearing examiner, and Ms. Haynes did so. The Hearing Examiner held a hearing on November 6, 2017, and, on May 14, 2018, submitted his findings of fact and recommendations to the DRB. The Hearing Examiner determined that Ms. Haynes suffered from PTSD as diagnosed by Dr. Sheehan, that she was disabled within the meaning of Section 3C.1 of the Pension Plan, and that she was consequently entitled to a service-connected disability retirement benefit. On June 21, 2018, however, the DRB, having reviewed the relevant materials, disagreed with the Hearing Examiner's conclusion and found that Dr. Lewis's diagnosis and opinions were more reliable than Dr. Sheehan's. The DRB's "Final Determination" concluded that Ms. Haynes was not disabled for purposes of the Pension Plan.

Ms. Haynes then filed a complaint for writ of mandamus in the circuit court, seeking reversal of the DRB's Final Determination. Following a hearing, the court affirmed the DRB's ruling. Ms. Haynes timely appealed, and we shall provide additional facts as necessary.

JURISDICTION

As stated above, prior to oral argument, we issued an Order for Supplemental Briefing, ordering the parties to brief whether we have jurisdiction to consider the appeal

in light of *Gray*, 245 Md. App. 207. Although Ms. Haynes's case is somewhat similar to *Gray*, we conclude that we have jurisdiction because Ms. Haynes filed a "complaint for writ of mandamus" in the circuit court rather than a petition for judicial review pursuant to enabling statutory authority.

In *Gray*, the City of Takoma Park Commission on Landlord-Tenant Affairs (the "Commission") ordered Ms. Gray to reimburse a tenant for improperly collecting fees. *Id*. at 208. Ms. Gray sought judicial review of the Commission's decision, and filed a petition for judicial review in the Circuit Court for Montgomery County. *Id*. at 210. Following an unfavorable decision in the circuit court, Ms. Gray attempted to appeal to this Court, but we dismissed the appeal for lack of jurisdiction. *Id*. at 208-09.

In explaining why dismissal was proper, we began by noting that in Maryland, the right to appeal "is not a right required by due process of law, nor is it an inherent or inalienable right. Rather, [a]n appellate right is entirely statutory in origin and no person or agency may prosecute such an appeal unless the right is conferred by statute." *Id*. at 211 (alteration in original) (internal quotation marks omitted) (quoting *Reese v. Dep't of Health & Mental Hygiene*, 177 Md. App. 102, 144 (2007)).

We then explained that Md. Code (1973, 2013 Repl. Vol.) § 12-301 of the Courts and Judicial Proceedings Article ("CJP") permits parties to appeal "from a final judgment entered by a court in the exercise of original, special, limited, statutory jurisdiction, unless in a particular case the right of appeal is expressly denied by law." *Id*. at 211 (quoting CJP § 12-301). Notably, CJP § 12-302(a) expressly disallows appeals from "a final judgment

of a court entered or made in the exercise of appellate jurisdiction in reviewing the decision of the District Court, an administrative agency, or a local legislative body."

Turning to Ms. Gray's appeal, we explained that "the circuit court's decision was a final judgment made in the exercise of what, for these purposes, was 'appellate jurisdiction in reviewing the decision' of the Commission."[4] *Id*. at 211. Accordingly, under CJP § 12-302(a), that decision was not appealable unless "expressly granted by law." *Id*. (citing *Prince George's Cty. v. Beretta U.S.A. Corp*., 358 Md. 166, 176 (2000)).

Against this backdrop, Ms. Gray conceded that the ordinance she relied upon in appealing the Commission's decision to the circuit court only provided for judicial review to the circuit court, and that she could not identify any other statutory authority for her appeal to our Court. *Id*. at 212. Nevertheless, Ms. Gray argued that her petition could be characterized as either an administrative or a common law mandamus action—both of which constitute exceptions to the restriction in CJP § 12-302(a). *Id*.

We first concluded that Ms. Gray could not avail herself of administrative mandamus in the context of judicial review. *Id*. We explained that "Administrative mandamus provides 'for judicial review of a quasi-judicial order or action of an administrative agency *where review is not expressly authorized by law*.'" *Id*. at 211-12 (citing Md. Rule 7-401(a)). Because the ordinance in *Gray* provided for review to the

[4] In a footnote, we explained that the word "appellate" in the context of the circuit court exercising "appellate jurisdiction" was a misnomer because a circuit court's review of an administrative agency is not an appeal, but an original action for judicial review. *Gray*, 245 Md. App. at 211 n.2 (quoting *Kant v. Montgomery Cty*., 365 Md. 269, 274 (2001)).

circuit court, "there [wa]s already a statutory path for judicial review," and administrative mandamus was not available. *Id*. (alteration in original) (quoting *Hughes v. Moyer*, 452 Md. 77, 91 (2017)).

We next rejected Ms. Gray's attempt to characterize her action as one for common law mandamus. *Id*. at 213. We noted that "A common law writ of mandamus is one where the relief sought involves the traditional enforcement of a ministerial act (a legal duty) by recalcitrant public officials." *Id*. (quoting *S. Easton Neighborhood Ass'n v. Town of Easton*, 387 Md. 468, 477 n.3 (2005)). Because Ms. Gray's petition for judicial review requested the circuit court to essentially exercise its discretion, we concluded that her petition could not be classified as an action for common law mandamus. *Id*. at 213-14. Noting that Ms. Gray's action did not constitute a writ of mandamus (either administrative or common law), we held that "the statutory authority for Ms. Gray's petition for judicial review to the circuit court does not permit further review in this Court, and she has not identified any other basis for this Court to exercise jurisdiction over her appeal." *Id*. at 214.

In her supplemental brief, Ms. Haynes correctly distinguishes *Gray* from her own case. She asserts that, whereas *Gray* involved a petition for judicial review expressly provided in a local ordinance, here there was no statute or ordinance granting her authority to appeal from the DRB's final determination. Ms. Haynes relies on *Madison Park N. Apartments, L.P. v. Comm'r of Hous. & Cmty. Dev*., 211 Md. App. 676, *cert. granted*, 434 Md. 311 (2013), *appeal dismissed*, 439 Md. 327 (2014), to argue that this Court has

jurisdiction to consider the appeal from her petition for a writ of mandamus. We agree that *Madison Park* controls, and that we have jurisdiction.

In *Madison Park*, Madison Park Partnership ("Madison Park") sought to reverse a decision by the Commissioner of the Baltimore City Department of Housing and Community Development (the "Department"). *Id*. at 680. Madison Park unsuccessfully filed a petition for writ of mandamus in the Circuit Court for Baltimore City, and then appealed to this Court. *Id*. As a threshold issue, we addressed whether Madison Park had the right to appeal. *Id*. at 689.

We began our discussion by noting that "Maryland law provides for divergent paths of review [of agency decisions]—statutory judicial review and review based on the writ of mandamus." *Id*. We explained that, under the statutory judicial review path,

> This Court has no jurisdiction under CJP § 12-301 "when a circuit court proceeding in substance constitutes ordinary judicial review of an adjudicatory decision by an administrative agency or local legislative body, pursuant to a statute, ordinance, or charter provision, and the circuit court renders a final judgment within its jurisdiction." Put another way, if the circuit court reviews an administrative agency decision based on a statutory right to review, [CJP] § 12-302(a) applies. The Court of Appeals has held that because CJP
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> > § 12-301 does not authorize an appeal from a circuit court judgment in a statutory action for judicial review of an adjudicatory administrative decision, any right of appeal in such a case must be found in some other statute. Where no other statute authorizes an appeal in the type of case covered by [CJP] § 12-302(a), the Court of Special Appeals is not authorized to entertain the appeal and must dismiss it.

Id. at 691 (citations omitted) (first quoting *Rogers v. Eastport Yachting Ctr., LLC*, 408 Md. 722, 732 (2009); then quoting *Murrell v. Mayor & City Council of Balt*., 376 Md. 170, 185

(2003)). In other words, where a statute or ordinance provides the basis for judicial review of an administrative decision to the circuit court, CJP § 12-302(a) precludes appellate review following the circuit court's decision.

We noted, however, that if there is no statutory basis for judicial review, we must then determine "if a common law right to judicial review exists. If the common law provides for judicial review, 'the principle embodied in [CJP] § 12-302(a) has no application' and we may exercise jurisdiction under CJP § 12-301." *Id*. at 693 (alteration in original) (quoting *Murrell*, 376 Md. at 194). Because the Baltimore City ordinance did not contain any provision for judicial review, we considered the other path for appellate review—an appeal from a petition for writ of mandamus. *Id*. at 692-93.

Unlike the statutory path of judicial review, we determined that we had jurisdiction to review the circuit court's decision concerning a writ of mandamus. We stated that, "Where 'the substance of the circuit court action was a common law mandamus action' and not a statutory action for judicial review, the decision is 'appealable to the Court of Special Appeals under § 12-301 of the Courts and Judicial Proceedings Article.'" *Id*. at 694 (quoting *Murrell*, 376 Md. at 196-76). We repeated the concept, "where the code is silent on judicial review, this Court, in a mandamus action, has the authority to review the administrative body's decision to determine if the decision was supported by substantial evidence and was not arbitrary or capricious." *Id*. at 696 (citing *Murrell*, 376 Md. at 194). Because Madison Park's circuit court filing was a petition for writ of administrative mandamus, *id*. at 688-89, we proceeded to consider the merits of the appeal, *id*. at 697-98.

As in *Madison Park*, Ms. Haynes filed a petition for writ of mandamus. Her mandamus action was appropriate because there is no statutory authority granting Ms. Haynes judicial review in the circuit court. Indeed, the DRB concedes in its supplemental brief that "it is true that, in this case, there is no code, statute or law that provides for review of the decisions made by the [DRB]." Because Ms. Haynes sought an order from the circuit court requiring the DRB to reverse its decision, her requested relief clearly constitutes an action for administrative mandamus.[5] *Madison Park* makes clear that this Court has jurisdiction to consider this appeal.

STANDARD OF REVIEW

The parties agree on our standard of review.

> We review an administrative agency's decision under the same statutory standards as the [c]ircuit [c]ourt. Therefore, we reevaluate the decision of the agency, not the decision of the lower court. We, however, may always determine whether the administrative agency made an error of law. Therefore, ordinarily, the court reviewing a final decision of an administrative agency shall determine (1) the legality of the decision and (2) whether there was substantial evidence from the record as a whole to support the decision. Substantial evidence is defined as such relevant evidence as a reasonable mind might accept as adequate to support a conclusion[.] Additionally, purely legal questions are reviewed *de novo* with considerable weight [afforded] to an agency's experience in interpretation of a statute that it administers[.]

[5] At oral argument, Ms. Haynes's appellate counsel candidly admitted that the Complaint for Writ of Mandamus filed in the circuit court wrongly invoked Maryland Rule 15-701, which governs common law mandamus actions. Despite this error, both parties and the circuit court treated the complaint as an action for administrative mandamus. Regardless, *Madison Park* makes clear that both common law and administrative mandamus actions are appealable to this Court. *Madison Park*, 211 Md. App. at 694.

Comm'r of Labor & Indus. v. Whiting-Turner Contracting Co., 462 Md. 479, 490 (2019) (alterations in original) (internal citations and quotation marks omitted). "Under the substantial evidence test, we may not substitute our own judgment" for that of the agency. *Dakrish, LLC v. Raich*, 209 Md. App. 119, 142 (2012) (quoting *Bd. of License Comm'rs for Prince George's Cty. v. Global Express Money Orders, Inc*., 168 Md. App. 339, 345 (2006)). Put simply, our task on appeal is to ensure that the DRB's decision is supported by substantial evidence, and we may not substitute our own judgment for that of the DRB.

Regarding the "substantial evidence test," our task is to "determine 'whether a reasoning mind reasonably could have reached the factual conclusion the agency reached.'" *Singley v. Cty. Comm'rs of Frederick Cty*., 178 Md. App. 658, 675 (2008) (quoting *Marzullo v. Kahl*, 366 Md. 158, 171-72 (2001)). Additionally, "We will affirm an agency's ruling on a factual matter if the issue is fairly debatable and the ruling 'is supported by substantial evidence, such that a reasonable mind might accept as adequate to support a conclusion, even if there is substantial evidence to the contrary.'" *Id*. (quoting *Bowman Grp. v. Moser*, 112 Md. App. 694, 699 (1996)).

DISCUSSION

In the DRB's June 21, 2018 Final Determination, the DRB made the following "Findings of Fact":

1) Incorporates and adopts all the findings of fact by MAB prepared by Marcellus Cephas, M.D., board certified psychiatrist, dated March 2, 2017

2) Incorporates and adopts all the findings of fact by DRB dated March 9, 2017

3) Dr. Sheehan's testimony in opposition to Dr. Major Lewis was flawed because he didn't apply the same standard to his own evaluation that he accused Dr. Major Lewis of failing to do, i.e. he accused Dr. Major Lewis of failing to interview a family member but he did not interview a family member until after he had completed his evaluation and diagnosis

4) Dr. Major Lewis'[s] evaluation, report and testimony was more credible
   - Participant referred to desire not to go back to work as opposed to discussing symptoms
   - Dr. Major Lewis testified that most patients would have shown improvement
   - Participant suffers from lesser psychological disorder which doesn't prevent her from being able to perform duties

Based on these findings, the DRB concluded that Ms. Haynes was not disabled pursuant to the Pension Plan.

We hold that there is substantial evidence in the record to support the DRB's Final Determination. Although the DRB specifically mentioned that it considered the MAB's March 2, 2017 findings, as well as its own March 9, 2017 initial findings, the record reveals that both the MAB and DRB relied on Dr. Lewis's diagnosis and opinion in reaching their decisions. In our view, because the evidence shows that Dr. Lewis's diagnosis and ultimate opinion are neither arbitrary nor capricious, the DRB was entitled to rely on her evaluation in rendering its Final Determination.

We begin by addressing Ms. Haynes's argument that the DRB erred in disregarding Dr. Sheehan's testimony concerning a criticism he lodged against Dr. Lewis. As stated above, on September 13, 2016, Dr. Sheehan authored a critique of Dr. Lewis's diagnosis. Notably, Dr. Lewis commented that all of Ms. Haynes's symptoms were self-reported and therefore were subjective in nature. In his critique, Dr. Sheehan attempted to discredit Dr. Lewis's observation by stating that "Part of the standard of care of doing an Independent

Forensic Evaluation is to interview someone else beside the person being evaluated, which could be a family member. Dr. Major Lewis failed the standard of care by failing to interview anyone other than Mrs. Haynes."

First, Dr. Lewis disagreed with Dr. Sheehan's characterization of the standard of care for IMEs. Specifically, Dr. Lewis testified, "Per the MD guidelines and per the protocol for what an independent medical examination is, if you bring other people other than the person that you are evaluating, then it can be influenced. So you're really trying to get the information from the person that you are seeing." Dr. Lewis explained that the "MD guidelines" are "an evidence-based data driven reference . . . . It's just a reference that physicians can use where they look at diagnoses, causality, risk factors, do people get better."

Furthermore, Dr. Lewis apparently saw no need to corroborate Ms. Haynes's reported symptoms at the second visit when that discussion simply revolved around her desire not to return to work:

> So in August, I was a little bit struck. When Ms. Haynes came back in August, she was a lot more irritable, she was a lot more guarded. She wasn't as cooperative. . . .
>
> The majority of the conversation, which I thought was interesting, was, I'm not going back to work. Even making statements about, and if I go back to work, you know -- I almost thought she was kind of putting me on notice that -- and again, this was just my opinion, but like if I am sent back to work then, you know, my family, we might have to file suit and things like that.

Dr. Lewis was skeptical about the reliability of Ms. Haynes's reported symptoms, believing that Ms. Haynes's decision not to return to work was a "personal choice as opposed to any

disabling condition." In light of Dr. Lewis's opinion that Ms. Haynes made a "personal choice" not to return to work, irrespective of her reported symptoms, the DRB could properly reject Dr. Sheehan's claim that the standard of care required Dr. Lewis to corroborate Ms. Haynes's symptoms.[6] We now turn to the bases for Dr. Lewis's diagnosis and opinion.

At the formal hearing before the Hearing Examiner, Dr. Lewis testified that she spent approximately an hour and fifteen minutes to an hour and thirty minutes with Ms. Haynes during the first evaluation in April 2016. Dr. Lewis explained that, at this evaluation, she obtained Ms. Haynes's personal and medical history, including her psychiatric history.

Dr. Lewis testified that Ms. Haynes appeared "stressed, depressed, [and] irritable." At this evaluation, Ms. Haynes reported a "poor mood, irritability, difficulty sleeping. . . . poor frustration tolerance, . . . daily crying spells." Dr. Lewis testified that "One thing that struck [her] was [Ms. Haynes's] guilt." Although what Ms. Haynes had witnessed was distressing, Dr. Lewis "was more concerned about [Ms. Haynes's] guilt and her depression and irritability, which is what she was complaining of." Following this initial evaluation, Dr. Lewis diagnosed Ms. Haynes with "an Adjustment Disorder with mixed depression and anxiety that has occurred in the context of a witnessed traumatic event. Prognosis is good."

[6] We note that the Hearing Examiner, whose findings Ms. Haynes urges us to adopt, criticized this particular aspect of Dr. Sheehan's critique, stating that it appeared to be "an afterthought."

Dr. Lewis's August 23, 2016 evaluation reinforced her initial diagnosis of an adjustment disorder. At this visit, Ms. Haynes indicated that, "if anything[,] . . . she was worse." Dr. Lewis found it "interesting," however, that "The majority of the conversation . . . was, [Ms. Haynes saying] I'm not going back to work." In fact, regarding Ms. Haynes's apparent worsening of symptoms, Dr. Lewis reported, "Mrs. Haynes['s] continued alcohol use and noncompliance with medication could be impacting her lack of improvement. Mrs. Haynes['s] strong desire to not return to work can be a factor in her report of worsening symptoms and lack of reported improvement." As in April 2016, Dr. Lewis diagnosed Ms. Haynes with an adjustment disorder, but concluded that she was now "able to return to her full duty work responsibilities."

In diagnosing Ms. Haynes with an adjustment disorder, Dr. Lewis stated that she used the Diagnostic and Statistical Manual of Mental Disorders ("DSM"), specifically the DSM-5 to perform a diagnostic evaluation. The DSM-5 defines adjustment disorders as follows:

> A. The development of emotional or behavioral symptoms in response to an identifiable stressor(s) occurring within 3 months of the onset of the stressor(s)
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> B. These symptoms or behaviors are clinically significant, as evidenced by one or both of the following:
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> 1. Marked distress that is out of proportion to the severity or intensity of the stressor, taking into account the external context and the cultural factors that might influence symptom severity and presentation.
>
> 2. Significant impairment in social, occupational, or other important areas of functioning.

C. The stress-related disturbance does not meet the criteria for another mental disorder and is not merely an exacerbation of a pre-existing mental disorder.

D. The symptoms do not represent normal bereavement.

E. Once the stressor or its consequences have terminated, the symptoms do not persist for more than an additional 6 months.

Dr. Lewis explained that the DSM-5 provided new clarifications for adjustment disorder diagnoses, whereas in the DSM-4, "it kind of had a life of its own." She testified that she thought "the DSM-5 did a good job of putting [adjustment disorders] . . . under the trauma-related disorders, because there is a spectrum." At the formal hearing, Dr. Lewis explained why she diagnosed Ms. Haynes with an adjustment disorder, stating,

> As I was formulating her and listening to the way she experienced things, I thought it was more of an adjustment to she witnessed something at work, it was distressing, she was having guilt feelings, she was reliving it, and you know, having some intrusive thoughts and intrusive dreams. But it was my opinion that this adjustment to that, that with proper treatment that she would eventually -- with therapy, with even some possible medication management, that eventually this adjustment would resolve itself and she would be able to get back to work.

Dr. Lewis then explained why she rejected a PTSD diagnosis:

> I didn't diagnose her with PTSD because several things, it's -- one, I was struck by the fact that when she had got to her primary care doctor it was in the context of a panic attack. Again, I didn't have the records.
>
> Now that I have the records, when I was looking at what her primary care doctor -- what she was having the symptoms, it was more again decreased mood, poor sleeping. She mentioned this incident that happened at work, but she wasn't mentioning the -- like the flashbacks. There was avoidance.
>
> It's difficult when you're looking at the spectrum of these things because with Ms. Haynes, I would have thought that she would -- the panic

> attack seemed to be what led her to her primary care doctor. When she came to me, it wasn't the flashing back of the actual incident that usually, you know, assaults the brain so much that they start looking at the trauma of what happened. She is a correctional officer, she has probably witnessed things, usually in these contexts when we look at people who are at most risk for developing a post traumatic stress disorder, usually it's a life[-]threatening event with women whether it's rape, sexual assault or an attack on them. It can be witnessing someone else's attack. *But again, I was less struck by her reliving the actual trauma versus reliving the guilt, the poor mood, the irritability, you know, from that trauma*.
>
> *So I didn't think she was really meeting full diagnostic criteria for it. I did think, again, adjustment disorder. I've got, according to the guidelines, psychological distress following the exposure to a traumatic or stressful event can often be understood with an anxiety or fear-based context.* However, some individuals exhibit symptoms that are anodynic dysphoric, externalizing angry and aggressive symptoms or dissociative symptoms which are seen in PTSD. *Because of these variable responses to catastrophic or adverse events adjustment disorders have been included in this section of trauma and stressor related disorders in DSM-5*, together with reactive attachment disorder, disinhibited social engagement disorder, post traumatic stress disorder, acute stress disorder.

(Emphasis added). Accordingly, Dr. Lewis reasonably substantiated why she concluded that Ms. Haynes suffered from an adjustment disorder as opposed to PTSD, and why she was able to return to work.[7]

[7] Relying on Dr. Sheehan's testimony at the formal hearing, Ms. Haynes claims that Dr. Lewis improperly used the DSM-4 rather than the DSM-5. Specifically, Dr. Sheehan noted that the DSM-5 has moved away from the use of axes in documenting a diagnosis, but that Dr. Lewis's April and August 2016 reports improperly referenced these axes. We are unpersuaded. The change in the use of axes and the change in the criteria for a PTSD diagnosis are two different things. Dr. Sheehan did not testify that Dr. Lewis relied on the wrong DSM's criteria in diagnosing Ms. Haynes with an adjustment disorder. Instead, Dr. Sheehan acknowledged that "adjustment disorder with mixed anxiety and depression" is the same under both the DSM-4 and DSM-5. Moreover, Ms. Haynes has failed to show us whether the criteria to diagnose PTSD substantively changed in the DSM-5.

We are further bolstered in our view that Dr. Lewis's diagnosis of an adjustment disorder is supported by the record because one of Ms. Haynes's own treating psychologists similarly diagnosed her with an adjustment disorder. Psychologist Christine Mason, who treated Ms. Haynes from March 28, 2017, to June 27, 2017, stated in a September 16, 2017 report that Ms. Haynes's "working diagnosis is (F43.23) Adjustment Disorder with Mixed Emotions of Anxiety and Depressed Mood and symptoms of Post [T]raumatic Stress Disorder (F43.1)."

We reject Ms. Haynes's argument that Dr. Lewis had no basis for her conclusions. Dr. Lewis clearly considered the significance of Ms. Haynes's reported symptoms; her interpretation of those symptoms simply differed from Dr. Sheehan's interpretation. In fact, Dr. Lewis cast doubt on Ms. Haynes's reliability in reporting those symptoms, stating that "It was difficult to determine the reliability of her reported symptoms and what other factors were contributing to her functioning and presentation." The fact that Dr. Lewis did not attribute the same significance to Ms. Haynes's reported symptoms as Dr. Sheehan does not mean that Dr. Lewis's diagnosis is unsupported by the evidence. Rather, as her testimony at the formal hearing makes clear, Dr. Lewis relied on her clinical experience to interpret the significance of Ms. Haynes's self-reported symptoms in rendering her diagnosis.

Ms. Haynes also argues that "Section C of the DSM-5 regarding Adjustment Disorders permits a diagnosis of Adjustment Disorder only if '[t]he stress-related disturbance does not meet the criteria for another mental disorder.'" In other words, Ms.

Haynes claims that Dr. Lewis incorrectly diagnosed her with an adjustment disorder under the DSM-5 because her symptoms met the criteria for another disorder. At the formal hearing, however, Dr. Lewis explained that she *could have* diagnosed Ms. Haynes with PTSD based on the *reported* symptoms, but nevertheless chose not to, stating:

> But when I read Dr. Sheehan's notes, now that she is coming to him for treatment, the burden -- she was saying a lot of things she was saying to me, but I think I was looking at -- I was formulating the case looking at all perspectives. *And I got a sense that if someone is coming in to you saying they're not sleeping, they're having intrusive thoughts, I think she's already -- if they're saying all of these things then you can just document that and then say what we're going to do, then you could easily tick off the box and come up with post traumatic stress disorder per DSM-5.*
>
> *So again, I wasn't shocked because she was saying the same things to me, but I was formulating it in looking at different perspectives as well. My conclusion was it's a trauma related spectrum, but I put it more on the -- kind of the adjustment disorder based off of the symptoms she is describing, what she seems to be focusing on more*. And [Dr. Sheehan] put her on the other end of the spectrum which is post traumatic stress disorder.

(Emphasis added).

In sum, this case presented the classic "battle of the experts." The DRB's decision to credit Dr. Lewis's testimony rather than Dr. Sheehan's testimony does not equate to error. *Singley*, 178 Md. App. at 675.

In an effort to overturn the DRB's Final Determination, Ms. Haynes argues that the DRB erred in stating that she suffers from a "lesser psychological disorder" because there was no evidence showing that an adjustment disorder is "any less of a psychological disorder" than PTSD, and that neither Dr. Lewis nor any other witness testified that she was not disabled from working as a correctional officer. We summarily reject this

argument because, regardless of whether an adjustment disorder is "a lesser psychological disorder" compared to PTSD,[8] the DRB was only tasked with determining whether Ms. Haynes was eligible for a disability retirement benefit pursuant to the Pension Plan. As stated above, to qualify for such a benefit under Section 3C.1(a)(1) of the Pension Plan, Ms. Haynes needed to prove that she was "so disabled, mentally or physically, that [she would be] unable to fill any position then available to [her] as a Covered Employee." In her August 2016 report, however, Dr. Lewis unequivocally stated that Ms. Haynes

> is able to return to her full duty work responsibilities. If Mrs. Haynes continues to complain of symptoms that would impact her ability to return to work[,] her lack of return should be considered due to personal choice as opposed to any disabling condition related to the 9/28/15 date of injury.

Because, as explained above, Dr. Lewis's findings were amply supported, the DRB was permitted to rely on that opinion in denying Ms. Haynes's request for disability retirement benefits.

Finally, Ms. Haynes argues that the DRB should have adopted the Hearing Examiner's recommendation. At oral argument, counsel correctly acknowledged that, pursuant to the Pension Plan, the DRB, rather than the Hearing Examiner, renders the final decision and that the DRB need not follow the Hearing Examiner's recommendation. Our task, however, is not to substitute our judgment for that of agency, but only to determine whether there is substantial evidence in the record to support the DRB's Final

[8] Dr. Lewis testified that PTSD and adjustment disorders lie on opposite ends of the trauma diagnosis spectrum, implicitly suggesting that an adjustment disorder is a less severe diagnosis than PTSD.

Determination. *Comm'r of Labor & Indus.*, 462 Md. at 490. Here, the DRB credited Dr. Lewis's testimony concerning Ms. Haynes's psychiatric disorder as well as Dr. Lewis's opinion that Ms. Haynes was able to resume her normal work responsibilities as a correctional officer.

In summary, the DRB was permitted to rely on Dr. Lewis's diagnosis and opinion. Dr. Lewis opined that, pursuant to the DSM-5, Ms. Haynes appeared to be suffering from an adjustment disorder. Dr. Lewis found Ms. Haynes's reporting of symptoms to be unreliable, and further found it "interesting" how, by their second meeting, Ms. Haynes focused on her desire not to return to work. Dr. Lewis ultimately concluded that Ms. Haynes was able to return to work, and any lack of return was a "personal choice as opposed to any disabling condition related to the 9/28/15 date of injury." The DRB was entitled to rely on Dr. Lewis's opinion. Accordingly, there is substantial evidence in the record to support the DRB's conclusion that Ms. Haynes is not disabled for purposes of the Pension Plan.

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