Circuit Court for Prince George's County
Case No. CAL17-22779

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 929

September Term, 2018

SHIRLEY I. WILLIAMS

v.

PRINCE GEORGE'S COUNTY GOVERNMENT CORRECTIONAL OFFICERS' PENSION PLAN

Leahy,
Gould,
Kenney, James A.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Leahy, J.

Filed: August 16, 2019

Appellant Shirley Williams was a correctional officer in Prince George's County for 10 years before the workplace accident at issue on appeal, she claims, rendered her disabled and unable to work. The accident occurred on November 3, 2014, when Williams, inspecting an inmate's cell for contraband, flicked a light switch to turn out the light. Williams was shocked; sparks flew and her glove was burned. She appeared disoriented to her coworkers and was transported by ambulance to the emergency room.

Suffering from continuing psychological ailments, on July 15, 2015, Williams applied for service-connected disability, triggering Medical Advisory Board ("MAB") review. Although the Worker's Compensation Commission found, under a separate worker's compensation claim, that her psychiatric issues were causally connected to the accident, on March 3, 2016, the MAB decided that Williams was disabled by her psychiatric conditions but that her disability was unrelated to the accident. The MAB recommended a non-service related disability retirement and submitted its opinion to the Disability Review Board ("DRB").[1]

Williams exercised her right to a formal hearing, which took place on May 16, 2017. The hearing examiner found that Williams was disabled, but that she failed to prove by the

[1] As explained in the DRB Rules of Administrative Procedure contained in the record, the MAB is responsible for reviewing medical evidence related to disability retirement applications submitted by participants of the Prince George's County Government Correctional Officers' Pension Plan for Employees ("PGCOA Plan"), and then providing a written opinion to the Disability Review Board. The PGCOA Plan explains that the MAB is comprised of nine physicians of various specialties, all appointed by the County Executive. PRINCE GEORGE'S CTY., MD., PRINCE GEORGE'S CTY. PENSION PLAN FOR EMPS. PRESENTED BY THE PRINCE GEORGE'S CORRECTIONAL OFFICERS' ASSOC., INC. 21 (2010) [hereinafter "THE PENSION PLAN"], https://perma.cc/PM4K-C7CL.

preponderance of the evidence, as was her burden, that her disability was "directly and substantially caused" by the accident. The examiner's final report was issued on June 23, 2017. On August 14, 2017, the DRB adopted the hearing examiner's findings in its "Final Determination," and the Prince George's County Government Correctional Officers' Pension Plan for Employees ("PGCOA Plan"), the appellee in this case, refused Williams's application for service-connected disability retirement benefits.[2] Williams appealed to the Circuit Court for Prince George's County, which affirmed the PGCOA Plan's denial of Williams's application for service-connected disability retirement benefits based on the DRB's final determination that her disability was not service-connected. The court entered its written order on June 1, 2018.

Williams noted her timely appeal to this Court on June 28, 2018. She contests the circuit court's conclusion that substantial evidence supports the DRB's final determination, and phrases the issue in her brief as:

> Whether the DRB's decision denying [] Williams service-connected retirement disability benefits is supported by substantial evidence when the specific reasons stated by the agency are erroneous and inconsistent with the

[2] The PGCOA Plan defines a disabled employee as (1) "so disabled, mentally or physically, that he is unable to fill any position then available to him;" (2) afflicted with a disability that "is likely to be of long duration;" and (3) afflicted by a disability not caused by substance abuse, military service, or a criminal or deliberate act. THE PENSION PLAN 21.

A service-connected disability is one "directly and substantially caused by an employment[-]related accident, occurrence, or condition." *Id.* at 22. A service-connected disabled retiree is entitled to a benefit 1/12 of 60% of his or her average annual compensation, whereas a non-service-connected disabled retiree is entitled to 1/12 of 30%. *Id.* at 22-23; *see also Cicala v. Disability Review Bd. for Prince George's Cnty.*, 288 Md. 254, 256-57 (1980) (explaining the difference between service-connected and non-service-connected benefits in the context of a police pension plan).

record and when the DRB's medical opinions do not establish evidence that her condition was not caused by the accident?

We hold that substantial evidence supports the DRB's final determination that Williams's disability is not service-connected, and thus we affirm the judgment of the circuit court.

BACKGROUND

I. The Incident

On November 3, 2014, Williams was shocked by a light switch while conducting a "shakedown" search for contraband. In her testimony before the hearing examiner, Williams described touching the prison cell light switch with her left hand and immediately seeing white light and sparks. The glove she wore was burned and discolored, although her skin was unharmed. Her colleagues claimed that Williams was unresponsive to their questions, so she was rushed to the emergency room by ambulance. She testified to not remembering what happened immediately after the shock, and that she "came to" only later, at which point she felt "a buzzing feeling, being nervous[,] [] shaky, [and] disoriented. . . [her] blood pressure went up, dizzy." Pain radiated across the left side of her body.

According to the emergency room records from the day of the injury, an accompanying correctional officer related that the "incident lasted a few seconds and [Williams] had on [a] rubber glove[] that had smoke coming from it." At the emergency room, Williams described feeling "numbness and tingling" in her arm, leg, and hand, and a pain level of six on a zero to ten scale, although triage notes reported "no obvious burn" on Williams's skin. Her physical exam revealed no abnormalities. Williams was sent

home with a diagnosis of "[e]lectric shock" and instructions to follow up with her primary care provider.

A. Dr. Lilly and Dr. Sheehan

Ten days later, on November 13, 2014, Williams sought treatment from her workers' compensation physician, Dr. Lilly. The records from that visit further described the incident:

> On the date of the accident on a shakedown in the housing unit 12 doors were being secured by other officers and the patient attempted to turn off [a] light in a cell. She felt a loud buzzing sound and sparks shot out of the cells several feet and the patient screamed. She then removed her glove and she was transported to the . . . emergency room following the incident. It was determined that she had suffered an electric shock.

The medical record went on to state that Williams "attempted to go back to work several days ago but there is weakness and tingling in her left hand and a loss of sensation [so] she was unable to return to work." Dr. Lilly noted that Williams's left arm had a limited flex and extension range, its movement slow and weak. He stated that Williams's "[a]ffect [wa]s flat." He recommended that Williams remain in "nonworking status" and referred her to a physical therapist.

Dr. Lilly saw Williams three more times in 2014, on November 25, December 1, and December 8. Records from these visits note that Williams was receiving physical therapy from a chiropractor and working "light duty" because of weakness, tingling, and tenderness on the left side of her body. Dr. Lilly made no mention of any psychological ailment.

In 2015, Williams consulted with Dr. Lilly six times. In his records from the February 9 visit, Dr. Lilly wrote that Williams "continue[d] to have some anxiety associated with light switches." Although she had discontinued physical therapy, he recommended that she resume it. Dr. Lilly noted that, although Williams had suffered from migraines prior to the accident, afterward, one of her migraines had become so severe that she "considered emergency room attention." He first mentions PTSD and depression in the records from this visit, relating Williams's reticence to seek treatment for psychological ailments: "[r]elative to posttraumatic stress she question[ed] any further treatment." He referred her to Dr. Sheehan, a psychiatrist whom Dr. Lilly described as having "expertise with posttraumatic stress disorder."

Williams first met with Dr. Sheehan on March 2. In an omnibus report, which summarized many of his visits with Williams, Dr. Sheehan wrote that during the March 2 visit, Williams's "[c]hief complaint" was that she "d[id]n't like the way [she was] feeling." She tearfully told Dr. Sheehan that she felt "hopeless" and that she "d[id]n't care." Dr. Sheehan reported that Williams was depressed since the incident and that she had "no history of psychiatric problems" before it. A week later, on March 9, Dr. Sheehan described Williams's trouble falling asleep, staying asleep, and her persistent nightmares. At work, he noted, she "ha[d] involuntary recurrent intrusive thoughts of the incident[,]" and when she counted inmates, she asked a coworker to turn the light on and off because she "[wa]s frightened to do it" herself. She felt "useless, helpless," "detached," and had a "constant emotional state of depression and fear." She would "rather just sleep, do

nothing[,]" and was "more easily startled." At that time, Dr. Sheehan instructed Williams to increase the dosage of Zoloft "to treat the [PTSD] and Major Depressive Disorder."

Records from an April 20 visit with Dr. Sheehan show that Williams's diagnoses had not changed. Dr. Sheehan noted that Williams was "depressed[-]appearing, slow[-]talking," and that she suffered from sleep troubles, including falling asleep, staying asleep, and nightmares. Williams voiced "feelings of worthlessness" and Dr. Sheehan characterized her affect as "depressed." He again increased the dosage of her medication, and prescribed Ambien to treat her sleep issues. Dr. Sheehan concluded his omnibus report by stating, "[w]ith a reasonable degree of medical certainty, the proximate cause of [Williams's] [PTSD], Chronic, Major Depressive Disorder was the incident on November 3, 2014."

Williams returned to Dr. Lilly in the summer of 2015.[3] During a June 17 appointment, Williams reported that her PTSD had not improved, and following a July 1 visit, Dr. Lilly noted that her PTSD "remain[ed] unchanged."

B. Application for Disability Retirement Benefits

Williams applied for disability retirement benefits on July 15, 2015. Under the "describe your disability or medical condition" field, she listed PTSD, chronic major depressive depression disorder, cognitive disorder non-specified, migraines, bilateral carpal tunnel, hypertension, and right finger and right hand injuries. Under the "[d]escribe how your disability affects your job performance" field, Williams stated that she

[3] Also that summer, Williams saw her neurologist, Dr. Alkaitis for migraines, the onset of which predated the accident.

experienced pain, side effects from her multiple prescriptions, muscle spasms, anxiety, difficulty focusing, difficulty opening and closing cell doors, a phobia of using light switches at work, and migraines requiring visits to the emergency room.

Regarding what occurred on the day of the accident, Williams reported an "[e]lectrical shock by [a] faulty light switch in H-12 cell #113 on left hand, left side/body. Witnesses state[d] electric current shot several feet with [a] buzzing sound, [and a] blaze of fire and smoke across the room." Attached to the application was Dr. Lilly's medical report which listed five diagnoses: PTSD, bilateral carpal tunnel syndrome, ongoing muscle spasm, preexisting hypertension, and chronic back pain.

On August 19, 2015, Dr. Sheehan submitted a report to the MAB, focused more on the psychological, articulating five diagnoses: chronic PTSD, major depressive disorder, non-specified cognitive disorder, electrocution, and pain in Williams's "left upper arm, left leg and hand[.]" He noted that Williams would "turn light switches on and off, except those in the jail." She "had only marginal response [to] treatment" and had lost her job. Dr. Sheehan concluded that "[w]ith a reasonable degree of medical probability, [Williams] [wa]s unable to perform duties of her job, due to fear." "The prognosis," he averred, "[wa]s guarded."

In the fall, during a September 16, 2015 appointment, Dr. Lilly reported under "impression/diagnoses" that Williams suffered from "persistent unresolved" PTSD. At a November 18 appointment, Dr. Lilly stated that "because of [PTSD] associated with the electrical shock, [Williams wa]s under the care of Dr. [] Sheehan." Nevertheless, Williams felt that her PTSD "[wa]s not making the progress that she had hoped for." She had lost

her job as a correctional officer "because of her injury," and her "unemployed and uninsured" status "added to her anxiety and daily stress."

II. MAB Review and IMEs

Williams requested service-connected disability benefits on July 15, 2015, which initiated MAB review. The MAB reviewed the medical records from her treating physicians, Dr. Lilly and Dr. Sheehan, as well as records from other doctors who had conducted independent medical examinations ("IME").

A. Orthopedic IME

On March 10, 2015, Williams was evaluated by Dr. Mark Rosenthal, an orthopedist. Dr. Rosenthal noted that Williams had engaged in physical therapy for pain after the accident. When she discontinued therapy, the pain returned, so she began physical therapy again. He described her as having a "somewhat depressed affect."

Dr. Rosenthal's overall impression was that Williams had "suffered a mild electric shock," and that there was "no evidence of any orthopedic injury," and "no evidence of any ongoing pathologies." He concluded that "[n]o further treatment is needed, now nor in the future." In his letter to the DRB accompanying his exam notes, Dr. Rosenthal confirmed that Williams suffered "0% impairment of the left upper extremity and 0% impairment of the left hand."

B. Neurologic IME

Williams saw Dr. Michael Sellman, a neurologist, who, in a letter dated March 18, 2015, rendered his opinion that she had reached maximum medical improvement for neurologic injury sustained from the accident. He ascribed "ten percent [] impairment"

due to Williams's headache disorder, and "0% impairment . . . due to her November 3, 2014 injury." He further apportioned "one hundred percent [] of this impairment rating to be due to her pre-existing headache disorder."

C. Psychiatric IME

On June 30, 2015, Williams saw Dr. Cynthia Major Lewis for a psychiatric IME. Dr. Lewis reviewed Williams's medical records. She described Williams's complaints of "poor mood," "lack of energy," and "lack of motivation." Williams recounted an anxiety attack, and stated that she felt "overwhelmed, esp[ecially] when having to juggle her multiple medical appointments, work[,] and being a single mother." Williams was "hopeful that things w[ould] get better." Dr. Lewis noted that Williams "did not spontaneously bring up the experience of any nightmares, flashbacks, depersonalization or numbing experience[,]" but did mention "continu[ing] to avoid turning on light switches [] at work" and "tak[ing] a flashlight into the bathroom as opposed to turning on the light switch." Williams "appeared tired and worn," and "was tearful at times." She exhibited "mild psychomotor retardation" and "mild [speech] latency." Williams "d[id] not spontaneously describe any symptoms that m[]et criteria for [PTSD]."

Dr. Lewis concluded that Williams suffered from a "Depressive Disorder Not Otherwise Specified." The complaints of depression, however, did "not appear to be causally related to the 11/3/14 date of injury. There [wa]s no mention of any psychiatric complaints as [they] directly relate[] to the date of injury in the medical records provided. . . [i]t [wa]s not until February 2015 when [] Williams present[ed] as depressed."

Williams saw Dr. Lewis again on July 3, 2015. Williams complained of "poor energy and a lack of motivation," although at the time of the appointment, she was able to "work in a modified capacity and manage her household." She did not feel "mentally sharp enough to be around inmates." Dr. Lewis concluded that Williams's "activities of daily living," "social functioning," "concentration," and "adaptation" were mildly impaired due to "mental and behavioral disorders." Williams's "non-work related Depressive Disorder, Not Otherwise Specified," qualified as a "[m]ild [i]mpairment [r]ating, corresponding to 14% impairment." Of that impairment, Dr. Lewis apportioned "0% [] to [the] November 3, 2014 date of injury," and "100% [] to factors not related to [the] November 3, 2014 date of injury[.]"

Dr. Lewis saw Williams again on January 29, 2016. Her notes from this visit described Williams's symptoms and diagnosis on the day of her June 30 appointment, and also rebutted Dr. Sheehan's assessment of Williams.[4] At the January 29 visit, Williams complained of feeling "irritable and depressed," experiencing poor sleep and having a fear of light switches. Dr. Lewis described Williams's mood as "dysphoric and depressed," and her affect as "restricted with no brightening." Dr. Lewis augmented her diagnosis to that of "[m]ajor [d]epressive [d]isorder, moderate to severe without psychotic features,"

[4] Dr. Lewis's January 29, 2016 IME notes make clear that her previous IME notes were provided to Dr. Sheehan, and that Dr. Sheehan critiqued them in writing submitted to the MAB/DRB. Dr. Lewis rebutted those critiques in her January 29 IME notes. Dr. Sheehan's critique of Dr. Lewis's notes is not included in the record before us, though Dr. Lewis's IME states: "Dr Sheehan disagreed with my formulation; stating that I attempted to ascribe [] Williams' problems to anything but the obvious, being 'electrocuted' at the jail."

and increased Williams's level of impairment to 20% permanency. She attributed 0% to the accident, and 20% as "subsequent and not related to [the] 11/3/14 date of injury, but rather to the loss of her job and financial stability, and a recent motor vehicle accident that rendered her unable to ambulate without assistance."

D. MAB Initial Findings and Addendum

On March 3, 2016, the MAB issued its Findings of Fact in which it stated that it had reviewed Williams's psychiatric records and found "that Ms. Williams is disabled by her major depressive disorder which is unrelated to the November 3, 2014 incident." The MAB recommended that Ms. Williams should be retired on non-service connected disability retirement. On April 7, 2016, at the request of the DRB, the MAB reviewed additional records, including two reports from Dr. Sheehan dated March 8, 2016. After reviewing those records, the MAB requested another independent psychiatric medical evaluation of its own, by Dr. Bruce M. Smoller.

On September 1, 2016, the MAB reviewed Dr. Smoller's report and issued an addendum to its Findings of Fact, maintaining its earlier recommendation to the DRB, and quoting Dr. Smoller, who examined Williams on August 3, 2016, wrote:

> Williams is depressed. . . . The dissociative flashbacks and the spectrum of symptoms necessary for a diagnosis [of PTSD are] not present. . . .
>
> It is difficult to assign this depression to an event occurring [two] years ago. There is affective disease in the family.[5] She is of an involutional

[5] In his report, Dr. Smoller notes, for example, that one family member is bipolar. Also in his report, Dr. Smoller discussed the medical records of Dr. Sheehan and Dr. Lewis, as well as Dr. Ghazala Kazi, a specialist in occupational medicine. On March 23, 2016, Williams saw Dr. Kazi, who reviewed Williams's medical records and conducted a physical examination. She noted that Williams experienced "reduced sensation on the left

> age, which is a risk factor in depression, and it is these factors, rather than a work-related factor, which I think is at the present time operating to continue the depression.
>
> Thus a disability exists. It is episodic and not permanently disabling but I do believe . . . she does not have the critical faculties necessary for her to work with inmates[,] and [I] would question [whether] she has the ability to act to preserve the safety of her charges and her fellow officers. The cause of this, however, is an affective illness which I believe is endemic to the patient's clinical picture and biology and not [] [PTSD] emanating from the light switch incident.

III. Hearing Before Hearing Examiner

On September 8, during its administrative session, the DRB found by majority vote, and after "consideration of the medical documentation submitted together with the Findings of Fact dated September 1, 2016," that Williams was disabled but that her disability was not service-connected. The DRB notified Williams of its determination that she was eligible for a "[n]on-service connected disability with a 30% benefit" that same day. Williams subsequently requested a formal hearing, as permitted pursuant to Section 3C(b)(1) of the pension plan rules. PRINCE GEORGE'S CNTY., MD., PRINCE GEORGE'S CTY. PENSION PLAN FOR EMPS. PRESENTED BY THE PRINCE GEORGE'S CORRECTIONAL OFFICERS' ASSOC., INC. 21-22 (2010), https://perma.cc/PM4K-C7CL.

upper extremity which d[id] not follow any dermatomal pattern." Dr. Kazi concluded that Williams had zero impairment of the left hand and "left upper extremity." She also determined that Williams had zero impairment of her "[w]hole body/electric shock injury[.]"

A. Hearing

The parties met before hearing examiner M. David Vaughn on May 16, 2017 for a formal hearing. Dr. Sheehan testified on behalf of Williams, who also took the stand. Dr. Lewis testified on behalf of the PGCOA Plan. The September 1 DRB report was admitted as evidence.

Williams testified first. She described her duties as a correctional officer:

> Supervising up to 100, sometimes more, inmates within a facility, a unit. Escorting them at times, doing a physical count, going from cell to cell checking on their wellbeing in the morning and again at the end of the day. Walking around a unit doing security observations, handing out newspaper[s], razors, anything that inmates need. Supervising them in the rec yard when they're out there playing basketball.
>
> Writing—logging in any and every detailed thing that I do. Escorting them to the gym, to [the] barbershop, other places when an escort is not available. Escorting them to and from the attorney booth.

Williams recounted the details of the accident: when she touched the light switch, she saw a white light and sparks, which burned and discolored the glove on her left hand. She could not remember what happened immediately after the accident. Her coworkers, who observed the accident, told her that she did not respond to their questions, and that she later "kind of came to." Her first memory was of "[b]eing nervous, shaky, disoriented, and [her] blood pressure went up, dizzy. And then it felt like the pain just radiated—was on the left side of [her] body, [her] leg, arm, hand, then it kind of radiated across." She felt that she could have been killed by exposure to such high voltage.

Since the accident, she suffered "[m]ood swings, crying spells, appetite up and down, lack of energy," depression, irritability, poor sleep, nightmares, poor memory, and panic attacks. She sought psychiatric treatment from Dr. Lilly and Dr. Sheehan. She took

a sedative to sleep. Whenever mildly shocked, such as by static electricity, and when confronted by the prospect of turning a light on or off, she experienced flashbacks. Since the accident, she had a strong startle response to loud noises.

Her poor memory led to difficulty multitasking, and at work, she feared accidentally opening and closing the attorney booth at the wrong times and "inadvertently letting an inmate out." She did not feel that it was safe for her to do her job. After the accident, she went to light duty. Then, she was pressured to come off light duty, and was eventually given an ultimatum: to come off light duty or apply for disability. She reiterated that she had never sought behavioral health care, nor suffered from PTSD or depression prior to the accident. During cross-examination, Williams stipulated that her application for disability was based solely on her psychological conditions.

Dr. Sheehan testified next. He reiterated Williams's account of the accident but added that some other records reported that Williams was "frantically trying to take the glove off" immediately after the shock. He also referenced the prison's incident report, which was not admitted into evidence. In it, Dr. Sheehan testified, correctional officer Sergeant Martin described "a blaze of fire coming out of the switch with smoke." Sergeant Martin also noted that the cell had not been in operation since August 28, 2014 because of the faulty light switch. Dr. Sheehan described Williams's symptoms of "involuntary intrusive thoughts of the incident," "psychological distress and physiological reactivity," and "exaggerated negative beliefs that she was useless, helpless." She experienced "a constant negative emotional state of fear, anxiety, [and] depression." To treat Williams's PTSD, Dr. Sheehan gradually increased the dosage of her prescription, prescribed Ambien

for sleep, and later Trazodone, which aids both sleep and depression. He prescribed Wellbutrin to augment the effects of Zoloft.

When asked whether, based on his review of the history Williams gave him and the prison incident report, it was his opinion that the electric shock was a life-threatening event, counsel for the PGCOA Plan objected to the introduction of and any opinion testimony on the police incident report, arguing that it had not had time to review the report, which was provided to it only the morning of trial. The hearing examiner opined that the report itself could not "add more than that [Williams] was subjected to an electric shock from a defective light switch[,]" which was undisputed. The examiner then stated, "I take notice that light switches are wired at 110 volts AC, and that a contact with 110 volts AC will be, at the very least, extremely painful and potentially—people die from coming in contact with 110-volt electrical circuits."

The examiner permitted Dr. Sheehan to be further questioned about the report, including the statements of coworkers within, which described Williams's reaction to the shock. Dr. Sheehan recalled the report stating that a Sergeant Martin described Williams as "staggering coming out of the cell," and that Williams did not respond when a Corporal Dunn asked her "[a]re you okay?" Dr. Sheehan testified that he believed the shock was life-threatening based on Williams's "perception that it could kill her[,]" as well as his experience treating patients who had been struck by lightning and patients employed by Pepco who had seen two people die on the job from electrocution.

Regarding Williams's depression, Dr. Sheehan testified that of the nine signs and symptoms under the DSM-5 that a physician uses to diagnosis a patient with depression,

Williams exhibited eight: "decreased mood, loss of energy, . . . inability to perform everyday activities, problems with sleep, concentration, appetite, feelings of worthlessness," and "[in]ability to experience pleasure and interest in everyday life."

Dr. Sheehan opined that Williams also met the DSM-5 criteria for PTSD. First, she experienced a stressor: a near-death experience or serious injury. She also experienced intrusive symptoms of involuntary, recurrent thoughts of the accident, such as flashbacks; nightmares; and severe psychological stress and physiological activity, such as heart-racing. Williams also avoided stimuli associated with the trauma: she avoided light switches. Lastly, she experienced negative alterations in cognition and had "persistent and exaggerated negative beliefs." All in all, Dr. Sheehan concluded, Williams exhibited the criteria necessary to diagnose her with PTSD.

He testified further that Williams had been confronted with tremendous stressors before the accident, and had dealt with them very well, never requiring psychological care. Williams graduated from the police academy while going through a divorce, and then was hired as a correctional officer. She took care of her four children as a single mother. Williams "handled all [of] these situations," and attended her children's "wrestling, track, [and] other school things . . . [she h]ad no problems dealing with this. She was able to function well on her job." Her behavioral health problems did not begin until the accident.

Dr. Sheehan challenged Dr. Lewis's assertion that Williams did not have PTSD because she did not spontaneously describe the symptoms of PTSD during her appointments with Dr. Lewis. A psychologist must ask a patient leading questions, he opined, because "[t]here's no blood test for [PTSD] or major depressive diagnoses. . . .

You have to ask the questions." He found preposterous the notion that a condition does not exist if a plaintiff does not volunteer the symptoms of that condition.

Dr. Sheehan testified that Williams still had PTSD and major depressive disorder as of the date of the hearing, and that about 20% of the patients that he treated suffered from those diagnoses. He is familiar with treating and identifying those diseases because of his long history of treating victims of trauma. His other patients consist of police officers, shooting victims, people who have been in industrial accidents or car accidents, and he also trained as a military psychiatrist during Vietnam, serving at Walter Reed from 1972 to 1973.

Dr. Sheehan also addressed the issue of when Williams's psychological symptoms manifested and whether it was unusual for patients to take three or four months after a traumatic event, like the one at issue, to report symptoms of depression. He testified that Williams experienced symptoms immediately following the accident, "but she did not recognize them to be depression until the neurologist said that she was depressed." Interviewing Williams's brother to get a greater sense of her history helped Dr. Sheehan to diagnose her. He emphasized that "[i]f you're focusing on the physical things, such as your arms or shoulders, you're focused on that. . . . So that's what she was focusing on with Dr. Lilly, her physical injuries." Thus Dr. Lilly's initial focus on Williams's physical symptoms is not evidence that Williams lacked psychological symptoms earlier on.

The hearing examiner then asked Dr. Sheehan a few questions, focused generally on Williams's change in conditions over time. Dr. Sheehan described her progress: she was able to turn light switches on and off at home "with a lot of anxiety," and in his office,

if he turned the lights on and off himself, first. Her psychological condition overall had worsened because of additional stressors, particularly financial. She was no longer able to support herself, moved in with a friend, and "one of her children went to another residence." Dr. Sheehan testified that Williams would not have had such stressors were it not for the accident because she would have still been working fulltime as a correctional officer and would have been financially stable.

The PGCOA Plan then called Dr. Lewis to testify. Dr. Lewis recalled that Williams seemed "depressed" and "dysphoric, she was slowed[-]down, her eye contact was poor." Dr. Lewis explained that at first she diagnosed Williams with depressive disorder not otherwise specified because she was concerned she was not "getting the full picture. . . [and] wasn't sure about some of the reporting" on Williams's part, because of her "guardedness." At a later visit, Dr. Lewis re-diagnosed Williams with major depressive disorder, but determined that it was not directly related to the accident. She explained:

> I opined that it wasn't directly related because getting shocked by a light switch doesn't cause a major depressive disorder. To me, [Williams] had many complaints in multiple body parts and in cognitive functioning. She mentioned that she's having to do a lot of—kind of running around with doctors' appointments and missing work, and she admitted to being overwhelmed.
>
> So I didn't attribute it to the actual incident of the light switch shock. I attributed it to, like, multifactorial reasons.

Dr. Lewis did testify that Williams "looked even more depressed" at later visits, and that Williams "had significant psychosocial stressors[.]"

Regarding PTSD, Dr. Lewis also explained that she did not believe Williams suffered from PTSD because "she did not mention any of the usual symptoms." Although,

"[s]he did mention [] some avoidance of wanting to turn on light switches, some increased anxiety[.]" Dr. Lewis explained that at the time of the appointment, she was unsure, if she had suggested other symptoms of PTSD, such as "nightmares or flashbacks or reliving or hypervigilance and things like that," whether Williams would have answered affirmatively. Dr. Lewis was concerned that Williams might be "highly suggestible[.]"

Dr. Lewis also explained that she did not believe the type of accident suffered by Williams could lead to PTSD:

> So I still didn't believe that turning on the light switch caused a depression. I felt like there were several risk factors and psychosocial stressors that were occurring[,] that were contributing.
>
> * * *
>
> [T]he actual stressor itself does not meet criteria to even diagnose a post-traumatic stress disorder.
>
> In order to make the true diagnosis of [PTSD], the criteria of the actual incident has to be a significant traumatic incident, where either, you know, bodily harm, like severe or witnessed a severe injury or witnessing death or having an incident that almost caused death or a violent sexual assault.

Dr. Lewis acknowledged that she had recently learned that the DRB had commissioned another IME of Williams by Dr. Smoller, who had come to a similar conclusion. The major difference between her opinion and Dr. Smoller's was that Dr. Smoller believed that Williams's depression was biologically-motivated.

On cross-examination, Dr. Lewis testified that she conducts between one and four IMEs per week, and of those, "85 to 90 percent" are for insurance companies. She earns between $1,500 and $2,000 per IME. She admitted that she makes anywhere from $80,000 to $120,000 per year "from insurance companies and defendants[.]" Dr. Lewis expressed her belief that the accident did not cause Williams's psychological problems "directly" or

"indirectly." She could not ascertain what else may have contributed to Williams's depressed mood, however, because Williams was not "forthcoming" during the appointment. The hearing examiner chimed in on the issue of forthcomingness, and noted that he doubted that he would be forthcoming if an appointment began with "I'm not going to treat you, I'm not going to be confidential in terms of the results of our discussion. . . Now tell me everything about your life." Dr. Lewis acknowledged that beginning the appointment in that fashion made it difficult to fully understand the patient. She conceded that a shock from a light switch could cause depression if a person perceived it would seriously injure him or her. She also acknowledged that any potential other causes of Williams's depression would be purely speculative, as Williams "admitted that she was not going to be that forthcoming."

The parties then gave closing arguments and the hearing concluded.

B. Findings and Recommendations

Hearing Examiner Vaughn issued his findings and recommendations on June 23, 2017. He found that Williams did not meet her burden to qualify for service-connected disability retirement benefits. "[T]he evidence fails to establish[] that there is a causal connection between [Williams's] psychological condition and the minor accident she incurred in November 2014." Her depression and nightmares began "almost four months after the initial electric shock occurred." The examiner noted that Williams's startled response, anxiety, and nervousness "when she is shocked by static electricity [] does not demonstrate clinical depression." He took "notice that such reactions to static electricity shocks are typical."

Hearing Examiner Vaughn disputed Dr. Sheehan's opinion that Williams was "'seriously injured' by the electric shock and that, in her mind, 'she was concerned about being electrocuted, felt it almost happened, it could happen again.'" He continued: "[i]n fact, [Williams] was not 'seriously injured' by the electric shock[] and I am not persuaded by Dr. Sheehan's testimony that an electrical shock from a light switch—the alleged cause of [Williams's] depression and PTSD—can cause death or serious bodily harm."

He recommended that Williams's appeal be denied: "[Williams] proved that she is disabled but failed to prove that her disability is directly and substantially caused by an employment-related accident, occurrence or condition."

IV. Disability Review Board Final Determination

The following month, on July 13, 2017, the DRB issued its final determination by majority vote. The DRB "adopt[ed] the Hearing Examiner's Findings and Recommendations" that Williams proved that she was disabled, "but failed to prove that her disability [wa]s directly and substantially caused by an employment-related accident, occurrence, or condition."

V. Appeal to the Circuit Court

On September 13, 2017, Williams petitioned for judicial review of the DRB decision. The parties met before Judge Robin D. Gill Bright on April 6, 2018 for oral argument. The PGCOA Plan's attorney argued that "while in hindsight we have the ability to go through and pick certain things because we're looking at it," the role of the court was merely to assess whether evidence supported the DRB's determination. Williams retorted that the PGCOA Plan's insistence that her depression began four months after the accident

mischaracterized Dr. Lilly and Dr. Sheehan's notes. The DRB's conclusion, resting on that faulty premise, was wrong.

The circuit court issued its written opinion on May 29, 2018, and entered an order on June 1, 2018, affirming the DRB's final determination. According to the court, Williams established that she was disabled, "but failed to meet the burden of proof establishing a direct and substantial causation between the November 3, 2014 accident and her disability." The MAB's finding that Williams was "disabled by her major depressive disorder, which [wa]s unrelated to" the accident, was supported by the IMEs performed by four physicians: Dr. Rosenthal, Dr. Lewis, Dr. Kazi, and Dr. Smoller. The court emphasized Dr. Smoller's conclusion that Williams's depression was attributable to her "involutional age, a risk factor in depression," as well as the tendency toward depression endemic to her "biology." The DRB agreed with these physicians' assessment of the evidence and did so again on appeal. As "[d]eference must be accorded to the administrative agency in its interpretation and application of its statutes[,]" and finding "no constitutional or procedural defects" and that the agency's finding was supported by substantial evidence, the court concluded that Williams "was not entitled to service-connected disability retirement benefits."

DISCUSSION

Williams argues that the hearing examiner's factual findings must be supported by substantial evidence in order to withstand appellate review, and that inconsistent findings—specifically, that the hearing examiner took notice that electric shock from a light switch can cause death or serious injury but concluded later that such a shock *cannot*

do so—precludes our holding that the hearing examiner's findings are supported by substantial evidence. She also contests the hearing examiner's finding that Williams did not become depressed until more than three months after the accident, because her medical records reflect that she exhibited a symptom of depression—a "flat affect"—a mere ten days after the accident. Her "flat affect," she states, is "flatly inconsistent" with such a finding. Finally, she takes issue with the examiner's finding that Dr. Sheehan's "primary criterion" for diagnosing PTSD was the existence of a precipitating serious bodily injury. She argues that the evidence and testimony presented at the hearing indicate that mere apprehension of death or serious injury can precipitate PTSD.

The PGCOA Plan counters that the DRB's determination was reasonably supported by testimony and evidence. It argues that Williams's injury was minor, and that all physiological testing indicated that "she did not sustain any injuries as a result of the incident consistent with exposure to electricity[.]" While psychiatric specialists disagreed regarding the PTSD diagnosis, the PGCOA Plan asserts that the credibility findings by the hearing examiner "have almost conclusive force," and thus this Court should defer to the examiner's finding. The PGCOA Plan also sees no contradiction between the hearing examiner's judicial notice that "*exposure* or *contact with* 110 volts can cause death or serious bodily injury" and his finding that Williams's "mild electric shock" did not cause her disability. In support of this contention, it differentiates "expos[ure] to electricity" from "electric shock" and opines that Williams "was NOT exposed to electricity but was exposed at most to a mild electric shock." Further, the DRB's conclusion that Williams does not have PTSD "is not unreasonable solely because it is contrary" to Williams's

treating physician's opinion. Regarding depression, the PGCOA Plan argues that substantial evidence exists to support the diagnosis, and specifically, Williams's claim of a "flat affect" is insufficient to establish such a diagnosis.

Williams replies that the PGCOA Plan's assertion that her injury was minor "is simply not true." The fact that diagnostic equipment (*e.g.*, an EKG study) "showed normal results does not mean that [] Williams did not sustain any injury . . . or that the electrical shock was only 'minor.'" Regardless, she argues, her belief that she could have died from the injury is sufficient to establish a diagnosis of PTSD. According to Williams, the physicians who testified that Williams was not suffering from PTSD and depression did not support their diagnoses with substantial evidence. Regarding the distinction between electricity and electrical shock, Williams states that "[i]t is not clear how being exposed to electricity is any different than being exposed to an electrical shock from a light switch wired at 110 volts AC."

Standard of Review

Appellate review of an administrative agency's decision is guided by "the same statutory standards as the circuit court." *Comm'r of Labor & Indus. v. Whiting-Turner Contracting Co.*, 462 Md. 479, 490 (2019) (quotation marks, brackets, and citation omitted). "Therefore, we reevaluate the decision of the agency, not the decision of the lower court." *Id.* (citation omitted). When reviewing the agency's decision, "we consider '(1) the legality of the decision and (2) whether there was substantial evidence from the record as a whole to support the decision.'" *E. Outdoor Advert. Co. v. Mayor & City*

Council of Balt., 146 Md. App. 283, 300 (2002) (quoting *State Highway Admin. v. David A. Bramble, Inc.*, 351 Md. 226, 238 (1998)).

Our review of the agency's decisions on issues of law is not deferential. *Dep't of Econ. & Emp't Dev. v. Taylor*, 108 Md. App. 250, 262 (1996) (citation omitted), *aff'd sub nom.*, 344 Md. 687 (1997). Our review of the agency's factual findings, in contrast, is very deferential. *Taylor*, 108 Md. App. at 261. Particularly, we afford credibility findings great deference: "[c]redibility findings of hearing officers who themselves have personally observed the witnesses have almost conclusive force." *Geier v. Md. State Bd. of Physicians*, 223 Md. App. 404, 431 (2015) (internal quotations omitted). We are thus careful not to substitute our own judgment regarding facts and inferences for the expertise of the Board. *Westinghouse Elec. Corp. v. Callahan*, 105 Md. App. 25, 34 (1995). "In the absence of fraud, our inquiry is whether the findings are supported by substantial evidence and are reasonable, not whether they are right." *Taylor*, 108 Md. App. at 261-62 (citing *Bulluck v. Pelham Wood Apartments*, 283 Md. 505, 515 (1978)).

We apply the substantial evidence test to the agency's factual findings. Substantial evidence is "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." *Whiting-Turner*, 462 Md. at 490 (internal quotations omitted). The test "requires us to affirm an agency decision, if, after reviewing the evidence in a light most favorable to the agency, we find a reasoning mind reasonably could have reached the factual conclusion the agency reached." *Geier*, 223 Md. App. at 430-31 (internal quotations omitted). In essence, "substantial evidence review is a 'reasonableness'

review[.]" *Balfour Beatty Const. v. Md. Dep't of Gen. Servs.*, 220 Md. App. 334, 363 (2014) (citation omitted). We do not review for "rightness." *Id.* (citation omitted).

Our review, then focuses on whether the DRB's final determination adopting the Hearing Examiner's Findings and Recommendations is legal and, whether the findings of facts and the reasons stated by the agency for its determination are supported by substantial evidence. We shall focus our analysis on Williams's contention on appeal that the DRB's final determination is not supported by substantial evidence.

Substantial Evidence

The Court of Appeals' application of the substantial evidence test in its recent case, *Whiting-Turner*, 462 Md. at 496, is controlling. Whiting-Turner, a construction company, contracted to expand a parking garage at a shopping mall. *Id.* at 483. Subcontractor Safway Services ("Safway") provided materials and an assembly manual to help Whiting-Turner expand and shore the gooser braces needed to "connect the legs of scaffolding" that would "ensure the stability and structural integrity of the scaffolding/shoring tower." *Id.* at 486. Whiting-Turner never used the gooser braces. *Id*. At some point, a foreman noticed that a beam had bent. *Id.* When the workers attempted to replace the beam, the construction "collapsed, resulting in the death of one employee and the pinning and severe injury of another." *Id.* The Maryland Occupational Safety and Health Unit ("MOSH") instigated an investigation, enlisting expert engineers to determine what had gone wrong. *Id.* The engineers' reports concluded that Whiting-Turner's failure to use gooser braces and its use of an undersized spacer contributed to the accident. *Id.* at 486-87. MOSH

fined Whiting-Turner for failing to comply with federal and Maryland statutes governing workplace safety. *Id.* at 487.

Whiting-Turner contested the citations and the case was referred to the Office of Administrative Hearings. *Id.* An Administrative Law Judge ("ALJ") issued a proposed decision finding that Whiting-Turner violated the relevant laws and recommended affirming the proposed penalty. *Id*. at 488-89. Whiting-Turner petitioned the Commissioner of Labor and Industry for review of the ALJ's proposed decision. *Id.* The Commissioner affirmed the violation and citation with regard to Maryland law only and concluded that Whiting-Turner's actions constituted "a recognized hazard." *Id.* at 489. Whiting-Turner petitioned for judicial review in the Circuit Court for Baltimore County, which affirmed the Commissioner's decision, holding that "it was legally correct and supported by substantial evidence in the record." *Id.* at 489-90. Whiting-Turner appealed the circuit court's decision to this Court and we reversed. *Id.* at 490. We held that the circuit court's decision "lacked substantial evidence to support the conclusion that the hazards were 'recognized.'" *Id.* We reasoned that the manual accompanying the gooser braces merely explained how to set up the shoring system and did not warn that gooser braces were mandatory or that a failure to use them could cause injury. *Id.* Regarding the spacer beams, the engineers' reports, we reasoned, were "not enough to establish that Whiting-Turner had actual knowledge of the hazard." *Id.*

The Court of Appeals reversed our decision, holding that "there was substantial evidence to prove that Whiting-Turner's failure to use gooser braces and use of an undersized spacer beam both constitute recognized hazards in violation of" Maryland law.

Id. at 492. The Court proceeded through the evidence reviewed by the agency to establish that it was substantial. First, with regard to the Commissioner's finding that Whiting-Turner's failure to use gooser braces was a recognized hazard, the Court observed that the plain language of the assembly manual provided by Safway, as well as reports and testimony on industry standards, mandated the use of gooser braces for assemblies greater than a certain height. *Id.* at 492-94. Next, the Court concluded that an expert's opinion and Whiting-Turner's own engineering plan for the shoring system "provides sufficient evidence that the hazard of using an undersized, eight-inch spacer beam was recognized." *Id.* at 495-96. In sum, the Court concluded that "[t]he record clearly include[d] such relevant evidence as a reasonable mind might accept as adequate to support a conclusion that Whiting-Turner violated" the relevant Maryland law by failing to install gooser braces and using undersized beams. *Id.* at 496 (internal citation omitted).

Returning to the case on appeal, we must ascertain whether substantial evidence existed before the DRB, such that "a reasonable mind might accept as adequate to support a conclusion" that Williams's depression was not connected to the November 3, 2014 accident. *See id*. at 496. On factual findings, we must defer to the expertise of the agency, for which we may not substitute with our own judgment. *Id*. In short, the test we apply is one of reasonableness, not of rightness. *Balfour Beatty*, 220 Md. App. at 363; *Taylor*, 108 Md. App. at 261-62. The role of this Court is not to reweigh the evidence before the hearing examiner and the DRB. *See Bulluck*, 283 Md. at 515. At the outset, then, we must reject Williams's arguments that require us to reweigh evidence—her insistence that her "flat affect" pointed to an earlier date of onset, and that the IME physicians underestimated

the severity of the shock. Instead, we begin with the examiner's finding and take stock of the evidence he cites in support of it.

Here, the hearing examiner found that Williams "did not meet her burden to prove a direct and substantial causation between the November 3, 2014 accident [and her disability]." Three factual points supported his finding: (1) anxiety associated with electrical switches "does not demonstrate clinical depression," (2) the four-month lapse in time from the accident to the onset of the depression, and (3) the lack of a causal connection between Williams's "psychological condition and the minor accident she incurred in November 2014."

Regarding the first point, the examiner "note[d] that [Williams]'s testimony—that she is startled, anxious and nervous when [] shocked by static electricity—does not demonstrate clinical depression" and is "typical." This, in our view, is a credibility determination: the examiner was unconvinced by Williams's testimony pathologizing her reaction to static electricity. On this point, we defer to Hearing Examiner Vaughn's credibility findings, as he personally observed the witnesses. *See Geier*, 223 Md. App. at 431. Moreover, the hearing examiner's conclusion was supported by the independent examination records of Dr. Lewis and Dr. Smoller. Dr. Lewis opined that Williams's "inability to perform her full duty work responsibilities was not because of her fear of turning on light switches," and Dr. Smoller attributed Williams's depression to other "factors, rather than a work-related factor[.]"

Next, Hearing Examiner Vaughn addressed the timeline: Williams became depressed on February 26, 2015, "almost four months after the initial electric shock

occurred." As such, he found that the depression "did not result from the work-related incident that occurred on November 3, 2014." He supported his finding with excerpts from Dr. Smoller's report, which specifically addressed the gap between diagnosis and onset and attributed Williams's depression to her genetic proclivity, "involutional age," and "other factors[.]" Examiner Vaughn also cited occupational physician Dr. Kazi's report, which described Williams as "0% impair[ed]." The inference that Williams's depression could not have been caused by the accident because too much time had passed between its onset and the accident was "exclusively [within] the province of the Board" to make, *Taylor*, 108 Md. App. at 262; and again, we do not review such an inference for "rightness." *Balfour Beatty Const.*, 220 Md. App. at 363. We may not draw a different inference and substitute our judgment for that of the administrative agency. *See Callahan*, 105 Md. App. at 34. Viewing the examiner's conclusion "in a light most favorable to the agency, we conclude a reasoning mind reasonably could have reached the factual conclusion" that the time of onset belied causation. *See Geier*, 223 Md. App. at 430-31.

Additionally, the hearing examiner emphasized the insignificance of the accident. The shock was too mild to inflict injury requisite to cause depression: it was "apparent from the medical record that [Williams] was not 'seriously injured' from the shock," as the shock merely "discolored" her glove and "no hole resulted," and she did "not suffer any burns[.]" The glove evidence cited by Examiner Vaughn was "relevant evidence as a reasonable mind might accept as adequate to support a conclusion that" Williams's depression was not caused by her workplace accident. *See Whiting-Turner*, 462 Md. at 496.

Williams's argument on appeal that Examiner Vaughn's statement that 110 volts of electricity can be deadly, and his later disavowal of that statement, does not change our substantial evidence assessment.[6] Certainly, had this been the examiner's only finding in support of the denial of service-connected disability, our substantial evidence assessment may have been different. But, as we have explained, the hearing examiner based his finding on other factual support.

Indeed, when we tally the evidence cited by Examiner Vaughn, we find that it is substantial. Faced with competing psychological diagnoses, it was the hearing examiner's prerogative to decide which he found more convincing. *See Taylor*, 108 Md. App. at 262 ("[T]he tasks of drawing inferences from the evidence and resolving conflicting evidence are exclusively the province of the [agency]."). The examiner was persuaded by the combined weight of evidence from Dr. Lewis's testimony and the IME records of Dr. Smoller and Dr. Kazi over the testimony of Dr. Sheehan. Record evidence that affective

[6] We are not persuaded by the PGCOA Plan's argument that a difference between "expos[ure] to electricity" and "electric shock"—an assertion entirely unsupported by facts in the record, Maryland jurisprudence, and basic science—somehow reconciles the possible contradiction in the hearing examiner's two statements. "When a person receives a shock, electricity flows between parts of the body or through the body to a ground or the earth." Controlling Electrical Hazards, U.S. DEP'T LABOR, https://perma.cc/LY9H-JWQK. This is true of any shock. *Id.*

We are also unpersuaded by the PGCOA Plan's assertion during oral argument that reading the passages in their greater contexts reveals that the examiner found only that *Williams's* personal exposure to electricity, rather than electrical shock generally, could not cause death or serious bodily harm. The PGCOA Plan implausibly suggests that the expanded context indicates that the examiner's statement, plainly stating that "*a* contact with 110 volts" will be painful and can cause death, really "meant . . . in terms of her exposure," and that "[Williams] was not exposed." (Emphasis added). As we noted during oral argument, expanded context simply does not help reconcile anything because the examiner plainly iterated *a* contact, not *Williams's* contact.

disease runs in Williams's family and that she is of an involutional age—risk factors for depression—supported the conclusion that Williams's "psychological state was not caused by a service-related injury or illness," as did evidence that Williams was not diagnosed until significant time had passed. Examiner Vaughn's findings, then, "clearly include such relevant evidence as a reasonable mind might accept as adequate to support a conclusion" that Williams's depression was not caused by the accident. *See Whiting-Turner*, 462 Md. at 496.

Lastly, we evaluate whether the agency's order is sustainable "for the reasons stated by the agency"—that is, whether the DRB actually relied on the evidence that supports its decision. *Frey*, 422 Md. at 136-37. The DRB's Final Determination explicitly accepted Hearing Examiner Vaughn's findings of fact, which, as we have discussed, relied on substantial evidence supported by facts in the record.

Accordingly, we affirm the judgment of the Circuit Court, affirming the final determination of the DRB, as well as the recommendation of the MAB, that Williams's disability is not connected to her work as a correctional officer, and that she should be retired on non-service connected disability retirement.

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