

Circuit Court for Baltimore City
Case No.: 24-C-17-005896

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 1000

September Term, 2018

HOWARD ROLLINS

v.

MARYLAND DEPARTMENT OF HUMAN
RESOURCES

Kehoe,
Reed,
Salmon, James P.
(Senior Judge, Specially Assigned),
JJ.

Opinion by Salmon, J.

Filed: December 17, 2019

* This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

On November 17, 2016, the Maryland Department of Human Resources (“the Department”) issued a Notice of Disciplinary Action to appellant, Howard Rollins (“Rollins”), suspending him for five workdays for alleged violations of Code of Maryland Regulations (“COMAR”) sections 17.04.05.04B(3), (4), and (12), which permit an employee to be disciplined for:

(3) Being guilty of conduct that has brought or, if publicized, would bring the State into disrepute;

(4) Being unjustifiably offensive in the employee’s conduct toward fellow employees, wards of the State, or the public;

* * *

(12) Violating a lawful order or failing to obey a lawful order given by a superior, or engaging in conduct, violating a lawful order, or failing to obey a lawful order which amounts to insubordination[.]

Rollins challenged the disciplinary sanction pursuant to Maryland Code (1993, 2015 Repl. Vol.), § 11–109 of the State Personnel and Pensions Article. The appeal was referred to the Office of Administrative Hearings (“OAH”), which held a hearing before Administrative Law Judge (“ALJ”) Ann C. Kehinde. The ALJ affirmed the five-day suspension in a written decision issued on November 1, 2017. Rollins filed a petition for judicial review of the ALJ’s decision in the Circuit Court for Baltimore City. Following a hearing, the court affirmed the ALJ’s ruling in a three-page memorandum and order dated May 16, 2018.

On appeal to this Court, Rollins presents one issue for our review, which we have recast as follows:

Whether there was substantial evidence from which the ALJ could reasonably conclude that appellant engaged in “unjustifiably offensive” conduct in violation of COMAR 17.04.05.04B(4).^[1]

We answer in the affirmative and affirm.

BACKGROUND FACTS

The relevant first-level facts as found by the ALJ are set forth below.

At all times here relevant, Rollins was employed as a Licensing Coordinator with the Department’s Office of Licensing and Monitoring (“OLM”). In that capacity, he was responsible for monitoring and supervising agencies that had contracted with the Department to promote the out-of-home placement and care of vulnerable children.

¹ As phrased by Rollins, the question presented was:

Whether the ALJ erred in denying the Employee’s appeal, where the decision below was not based on substantial evidence and was affected by error of law?

At first blush, Rollins appears to challenge each of the COMAR violations he was found to have committed. He has, however, waived any appellate challenge to the ALJ’s conclusions that he violated either COMAR 17.04.05.04B(3) or COMAR 17.04.05.04B(12). He does not so much as address the former COMAR provision and makes only passing mention of the latter. By failing to present an argument in his brief contesting these violations, Rollins waived the issues and we therefore will decline to address them. *See Klauenberg v. State*, 355 Md. 528, 552 (1999) (“[A]rguments not presented in a brief or not presented with particularity will not be considered on appeal.”); *Boston Scientific Corp. v. Mirowski Family Ventures, LLC*, 227 Md. App. 177, 209 (“An appellate court is not required to address an argument on appeal when the appellant has failed to adequately brief his argument.”), *cert. denied*, 448 Md. 724 (2016); *Higginbotham v. Public Serv. Comm’n of Maryland*, 171 Md. App. 254, 268 (2006) (“Because [appellant] made no factual averments and fails to cite any legal authority in support of that proposition, we are not obliged to consider his argument. It ‘is not our function to seek out the law in support of a party’s appellate contentions.’”) (citation omitted).

On July 13, 2015, Andre Thomas, Rollins's immediate supervisor, sent Rollins a Memorandum of Counseling (the purpose of which is to improve work performance). That memorandum advised Rollins to refrain from further deviating from the chain of command and to adopt a more respectful tone in his emails.

On November 15, 2016, Mr. Thomas issued Rollins a second Memorandum of Counseling directing him to use agency forms when interviewing residential child care agency staff members rather than merely distributing the forms to those staff members for them to complete and return by mail. Rollins protested by refusing to sign the memorandum, argued with Mr. Thomas, pointed his finger in Mr. Thomas's face, and yelled at him.² Though Mr. Thomas asked Rollins to stop yelling, he continued to do so. The exchange concluded when Mr. Thomas asked Rollins to leave his office; Rollins complied.

Upon leaving Mr. Thomas's office, Rollins proceeded to the office of Darlene Ham, the Executive Director of the OLM. Because Ms. Ham was busy, she asked Rollins to return that afternoon. When Rollins did so, he complained that the second memorandum was unwarranted and claimed that he was being treated differently than other employees. During the meeting, Rollins became agitated and his voice grew increasingly loud. Though Ms. Ham repeatedly asked that Rollins lower his voice, he did not do so. To make matters worse, Rollins spoke while Ms. Ham was speaking, questioned her credentials, and

² Though Rollins concedes having expressed his disagreement with the Memorandum of Counseling, he denies (i) having refused to sign the memorandum and (ii) having pointed his finger at, argued with, or yelled at Mr. Thomas.

denigrated her capabilities by opining that she was incapable of passing the social work licensing examination. When it became apparent that Mr. Rollins would not heed her requests to lower his voice, Ms. Ham instructed him to leave her office.³ Before leaving, Rollins told Ms. Ham that he was going to make sure she would lose her job.

During the meeting with Ms. Ham, Rollins's voice was so loud that it alarmed other OLM employees. When Ms. Ham's administrative assistant heard Rollins through Ms. Ham's closed door, she called Ms. Ham to ensure that she was safe.

Adele Black, an OLM licensing coordinator, heard Rollins while working in her office. She was so concerned for Ms. Ham's safety that she approached Ms. Ham's office and monitored the situation from the hallway. Although initially inclined to call security, Ms. Black refrained from doing so upon learning that Ms. Ham's administrative assistant had already confirmed that Ms. Ham was safe.

In formulating an appropriate sanction for Rollins's behavior, Ms. Ham considered (i) the duration of his service, (ii) his performance appraisals, and (iii) prior disciplinary action against Rollins. Ms. Ham also met with Rollins to determine if he wanted to produce any mitigating evidence. This last-mentioned action was required by COMAR 17.04.05.02B. Based on those considerations, Ms. Ham imposed a five-day suspension.

³ Rollins neither denies having spoken over Ms. Ham, nor denies having disregarded her requests that he lower his voice; he claims, however, that it was he who asked to adjourn the meeting with her.

STANDARD OF REVIEW

In an administrative appeal, we review the decision of the agency, not the decision of the circuit court. *Cosby v. Department of Human Res.*, 425 Md. 629, 637 (2012).

We first determine whether “the administrative decision is premised upon an erroneous conclusion of law.” *Id.* at 638 (quotation marks and citation omitted). While we review such legal conclusions *de novo*, “[w]e frequently give weight to an agency’s experience in interpretation of a statute that it administers[.]” *Colburn v. Department of Pub. Safety & Corr. Servs.*, 403 Md. 115, 128 (2008) (quoting *Schwartz v. Maryland Dep’t of Natural Res.*, 385 Md. 534, 554 (2005)). Second, we apply the “substantial evidence test,” and assess whether “there is substantial evidence in the record . . . to support the agency’s findings [of fact].” *Colburn*, 403 Md. at 128 (quoting *Board of Physician Quality Assurance v. Banks*, 354 Md. 59, 67-68 (1999)). In so doing, we defer to an agency’s factual findings provided that the record, viewed in the light most favorable to the administrative agency, contains sufficient evidence that “a reasonable mind might accept as adequate to support” those findings. *Stover v. Prince George’s Cnty.*, 132 Md. App. 373, 382 (2000) (citations omitted). We likewise defer to the agency’s (i) assessment of witness credibility, (ii) resolution of conflicting evidence, and (iii) inferences drawn from the evidence. *Schwartz*, 385 Md. at 554 (2005).

Finally, we review the agency’s application of the law to its factual findings. *Stover*, 132 Md. App. at 382. In doing so, we again apply the “substantial evidence test.”

DISCUSSION

I.

Rollins takes issue with the ALJ's having found that:

[Appellant] was smiling or laughing to himself during Ms. Ham's testimony that [appellant] loudly questioned her credentials and implied she could not pass the social work licensing test. When [appellant] saw that I was looking in his direction, he put his hand over his mouth. During his testimony, [appellant] was constantly moving in his seat in an agitated fashion.

Rollins contends that, absent the ALJ's consideration of his off-the-stand demeanor, the testimony at the hearing established only that he spoke loudly on November 15, 2016. He maintains that "volume does not equate with offensiveness." This contention overlooks the fact that witnesses testified that Rollins yelled at Ms. Ham and the ALJ believed that testimony. Under such circumstances, yelling did "equate with offensiveness"; so did talking while Ms. Ham was speaking and steadfastly refusing to lower his voice when directed to do so.⁴

In our view, it was entirely appropriate to take into consideration how Rollins acted in the hearing room prior to taking the witness stand. The actions by Rollins, as observed by the ALJ, were rude and disrespectful to Ms. Ham and were relevant because it made it more likely that Ms. Ham was telling the truth when she testified, in effect, that Rollins was rude and disrespectful toward her at the November 15, 2016 meeting.

⁴ In his brief, Rollins fails to address the other bases on which the ALJ found his conduct toward Ms. Ham to have been unjustifiably offensive, to wit, his having talked over Ms. Ham, and questioned both her credentials and her ability to pass a licensing exam.

Where, as here, witness “credibility is pivotal to the agency’s final order,” an ALJ’s “findings based on the demeanor of witnesses are entitled to substantial deference[.]” *Department of Health and Mental Hygiene v. Shrieves*, 100 Md. App. 283, 302 (1994). We afford such deference because it is the ALJ who ““sees the witnesses and hears them testify, while the Board and the reviewing court look only at cold records.”” *Id.* at 300 (quoting *Penasquitos Village, Inc. v. National Labor Relations Bd.*, 565 F.2d 1074, 1078 (9th Cir. 1977)). In making such demeanor-based credibility findings, an ALJ may properly consider “[a]ll aspects of the witnesses[’] demeanor—including the expression of his countenance, how he sits or stands, whether he is inordinately nervous, his coloration during critical examination, the modulation or pace of his speech and other non-verbal communication[.]” *Id.* (quoting *Penasquitos Village, Inc.*, 565 F.2d at 1078-79). In our view, the ALJ’s consideration of Rollins’s testimonial demeanor—to wit, his having “constantly mov[ed] in his seat in an agitated fashion”—was entirely proper; this is precisely the sort of “demeanor evidence” upon which an ALJ ought to assess witness credibility. The same is true for his non-verbal actions during Ms. Ham’s testimony.

II.

Having dispensed with Rollins’s claim that the ALJ’s ruling was erroneously predicated on his demeanor while not testifying, we proceed to our review of the ALJ’s decision itself. Rollins neither alleges that the ALJ adopted an erroneous legal principle

nor contests the factual findings underlying the ALJ’s legal conclusion.⁵ Our review of the ALJ’s decision, therefore, is limited to her application of the law to the facts of the case. The narrow question before us is whether a reasoning mind could conclude that (i) raising one’s voice and refusing to lower it when ordered to do so, (ii) questioning the credentials of, (iii) talking over, and (iv) impugning the intellect of a fellow employee (a supervisor, no less) constitutes “unjustifiably offensive” conduct.

When considering such behavior in aggregate, a reasoning mind could reasonably conclude that such behavior would offend a reasonable person’s sense of personal dignity. We therefore hold that his conduct toward Ms. Ham was unjustifiably offensive in violation of COMAR 17.04.05.04B(4).

**JUDGMENT OF THE CIRCUIT COURT
FOR BALTIMORE CITY AFFIRMED;
COSTS TO BE PAID BY APPELLANT.**

⁵ In his Statement of Facts, Rollins concedes, for purposes of this appeal: the correctness of the ALJ’s finding that “[a]fter approximately ten minutes” in Ms. Ham’s office, he “began talking in a very agitated manner and his voice became louder and louder” or that he “spoke over Ms. Ham and would not lower his voice despite Ms. Ham[’]s requests [that he] lower the volume of his voice.” Finally, Rollins does not take issue with the ALJ’s finding that “[h]e began to question her credentials and accuse her of not being able to pass the licensing test for social workers.” These are the very facts upon which the ALJ based her conclusion that Rollins’s conduct was unjustifiably offensive in violation of COMAR 17.04.05.04B(4). The ALJ stated in her finding of facts that “The Employee raised his voice, talked over Ms. Ham, and questioned her credentials and her ability to pass a licensing exam.”