

Circuit Court for Baltimore City
Case No. 24-C-17-000808

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 1307

September Term, 2017

KWASI RAMSEY

v.

MARYLAND RECEPTION DIAGNOSTIC
CLASSIFICATION CENTER

Graeff,
Leahy,
Wilner, Alan M.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Graeff, J.

Filed: February 26, 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.

In this appeal, Kwasi Ramsey, appellant, challenges his termination with the Department of Public Safety and Correctional Services (“DPSCS” or the “Department”) at the Maryland Reception, Diagnostic, and Classification Center (“MRDCC”), appellee.¹ Mr. Ramsey’s employment was terminated following his convictions on two counts of second degree assault involving two inmates in the custody of DPSCS and one count of misconduct in office.

On June 30, 2016, Mr. Ramsey was given a Notice of Disciplinary Charges, recommending termination of his employment. Mr. Ramsey appealed to a hearing board, which found him guilty of violating DPSCS Standards of Conduct. The hearing board recommended that Mr. Ramsey be demoted, transferred to another facility, and suspended without pay for fifteen days. On January 26, 2017, following a hearing, Warden Tina Stump elected to increase Mr. Ramsey’s penalty, and she issued a Final Disciplinary Notice terminating his employment.

Mr. Ramsey filed a petition for judicial review in the Circuit Court for Baltimore City, asserting that Warden Stump failed to comply with the Correctional Officer’s Bill of Rights (“COBR”), specifically Md. Code (2017 Repl. Vol.), § 10-910(b)(6)(iv) of the Correctional Services Article (“COR”). This statute allows the appointing authority, in this case Warden Stump, to increase the recommended penalty of a hearing board if she

¹ Mr. Ramsey was employed by the Department of Public Safety and Correctional Services and assigned to work at the Maryland Reception, Diagnostic, and Classification Center (“MRDCC”). Although MRDCC is named as the appellee, when we refer to Mr. Ramsey’s employer, we will refer to the Department.

“states on the record the substantial evidence on which [she] relied to support the increase of the hearing board’s recommended penalty.” Although the circuit court acknowledged that Warden Stump had stated at the hearing before the hearing board her reasons in support of a penalty of termination, it was “not satisfied” that this statement satisfied the requirement of COR § 10-910(b)(6)(iv). Accordingly, the court remanded the matter to DPSCS for further proceedings, ordering Warden Stump to state on the record, in the presence of Mr. Ramsey, the substantial evidence on which she relied to support the increase of the recommended penalty.

On appeal, Mr. Ramsey presents two questions for this Court’s review:

1. Did the Department violate Mr. Ramsey’s rights under the Correctional Officers’ Bill of Rights by failing to state on the record the substantial evidence on which the Department relied to support the increase in penalty?
2. Did the circuit court err in remanding the case for the Warden to state on the record the substantial evidence on which it relied to support the increase of penalty?

For the reasons set forth below, we shall affirm the judgment of the circuit court.

FACTUAL AND PROCEDURAL BACKGROUND

On September 17, 2014, criminal charges were filed against Mr. Ramsey, who, at the time, was working as a correctional officer sergeant for DPSCS at MRDCC. The charges alleged that, on September 30, 2013, Mr. Ramsey assaulted two inmates in the custody of DPSCS.

On April 1, 2016, a jury convicted Mr. Ramsey of two counts of second degree assault and one count of misconduct in office. The court sentenced him to concurrent terms of seven years' imprisonment, all suspended, and five years of supervised probation.

On June 30, 2016, Warden Stump issued a Notice of Disciplinary Charges, which recited the facts relating to the inmate assaults and his criminal convictions. The notice then stated that, based on these convictions, "Sergeant Kwasi Ramsey engaged in conduct that if publicized would bring disrepute upon the Department and the State." It charged Mr. Ramsey with violating the following two DPSCS Standards of Conduct:

CHARGE #1: DPSCS' Standards of Conduct and Internal Administrative Disciplinary Process, Section B(1) and (10) – Personal Conduct:

1. Each employee shall conduct him/herself at all times, both on and off duty, in such a manner as to reflect most favorably on the Department. Any breach of the peace, *neglect of duty*, misconduct or any conduct on the part of any employee of the Department, either within or outside of his/her place of employment, which *tends to undermine the good order, efficiency, or discipline of the department*, or which reflects discredit upon the Department or any employee thereof, or which is *prejudicial to the efficiency and discipline of the Department*, even though these offenses may not be specifically enumerated or stated, shall be considered conduct unbecoming an employee of the Agency, and subject the employee to disciplinary action by the Agency.

10. An employee may not violate any state, federal or local law. . . . An employee arrested or criminally charged shall notify or cause to be notified, in writing, his/her appointing authority via the immediate supervisor on his/her next scheduled work day, but in no case later than five calendar days following the employee's arrest or criminal summons. Upon adjudication of the criminal case, the employee shall notify or cause to be notified, in writing, his/her appointing authority via the immediate supervisor of the Court's disposition. This shall be done on the employee's next scheduled work day, but in no case later than five (5) calendar days following such action.

The Notice of Disciplinary Charges further stated that, by his criminal convictions, Mr. Ramsey “violated the Personal Conduct Standards” and was “subject to disciplinary action.” It stated that Mr. Ramsey’s “failure to obey the criminal laws of this State” made him “unsuitable for continued employment as a correctional professional,” and therefore, the punishment recommended by Warden Stump was termination.

Mr. Ramsey exercised his rights under the COBR to seek an appeal before a hearing board (“the Hearing Board”), which convened on November 22, 2016. Because there is no challenge on appeal regarding the Hearing Board’s finding that Mr. Ramsey was guilty of misconduct in office, we will only briefly summarize the testimony at the hearing, as reflected in the Hearing Board’s January 3, 2017, written decision.

Detective Johannan Wright, a detective with the Internal Investigative Division of DPSCS, testified that, in 2013, he had been assigned to investigate an incident at MRDCC. In lieu of admitting his entire investigative file, the parties agreed to the following stipulation:

Two Inmates Raymond Lee and Kevin Younger alleged that they were assaulted on September 30, 2013, by Sgt. Ramsey and other officers in retaliation for an assault that occurred against CO [correctional officer] Ganyu on September 29, 2013. The inmates were housed in separate cells on the same floor at MRDCC. They allege serious injuries and both testified during a trial in the Circuit Court for Baltimore City against Sgt. Ramsey. At the end of the trial, Sgt. Ramsey was convicted of two counts of 2nd degree Assault and one count of Misconduct in Office.

The parties then stipulated that “Warden Stump reviewed the entire investigative file and all reports associated with this case and Sgt. Ramsey’s disciplinary history. As a result of this review, Warden Stump recommended that discipline be imposed.”

Mr. Ramsey also testified before the Hearing Board. In its written opinion, the Hearing Board summarized his testimony, in part, as follows:

Sgt. Ramsey testified that witnesses were subpoenaed to appear to testify at his criminal trial on his behalf as it related to the [charges on which he was convicted]; however, he testified that those witnesses were ordered by Lt. Carolyn Murray to go back to their institution to work. Had those witnesses been allowed to testify, Sgt. Ramsey believes the remaining charges would have been dismissed. Sgt. Ramsey believes he was denied due process and opportunity by DPSCS. Sgt. Ramsey stated that it wasn't until August 2016 that he learned from one of the possible alibi witnesses [sic] was told by Lt. Murray to return to work. He learned all of this after his appellate rights had expired. Sgt. Ramsey is still trying to vacate the convictions against him.

The Hearing Board made the following findings of facts, which it included in its written decision:

1. Sgt. Ramsey appeared before the Circuit Court for Baltimore City on multiple assault and conspiracy charges stemming from an incident that occurred at MRDCC on September 20, 2013.
2. Sgt. Ramsey was found guilty after a jury trial of two counts of 2nd degree Assault and one count of Misconduct in Office.
3. Sgt. Ramsey was sentenced to a seven year suspended sentence with five years supervised probation and 200 hours of community service.

The Hearing Board found Mr. Ramsey guilty of Charge #1, as set forth in the Notice of Disciplinary Charges. "The Board concluded that there was credible evidence to believe that Sgt. Ramsey's [sic] was guilty of misconduct in office," noting that he "violated state laws and was found guilty in a court of law of these violations."

After finding Mr. Ramsey guilty of violating DPSCS Standards of Conduct, the Hearing Board reconvened to consider the appropriate penalty. Warden Stump testified that the criminal charges involved Mr. Ramsey's actions in assaulting inmates who were

involved in an assault on other staff. She recommended that Mr. Ramsey be terminated “based on the fact that [Mr. Ramsey] had been convicted in a criminal court for assault on inmates – actually several inmates, and it’s a violation of the Maryland State law.” When asked if she believed Mr. Ramsey was “capable of performing the duties and responsibilities of a sergeant in a correctional facility,” she responded: “Absolutely not.” She explained that the assault did not involve a “response to a code,” or a response “in the heat of the moment,” but rather, Mr. Ramsey responded to more than one cell of inmates “hours after the assault on staff had occurred.” As a sergeant, one of his “responsibilities was to provide an example to [his] staff,” and his “actions did not do that.”

Warden Stump explained:

. . . I do not feel that if he came back into the facility, he could come back in a capacity where he would be trusted by his staff, where he would be trusted by supervision. There would be—any time that he was involved in a use of force or any hands on with an inmate, there would be a potential of the inmate going back to this case and saying, you know, that he was assaulted. He was, you know, beat up. None of those things would put him in a position where I feel that he could carry out the duties as a correctional officer.

The Hearing Board summarized Warden Stump’s reasons for recommending termination in its written decision, as follows:

Warden Stump testified that Sgt. Ramsey cannot perform the duties of his position after being convicted of these types of offenses. As a sergeant, one of Sgt. Ramsey’s key responsibilities is to his staff members. Sgt. Ramsey has put the department and his staff in a bad position. Sgt. Ramsey cannot be trusted by the staff and supervision as a result of his convictions. There is always the potential for an inmate to claim a use of force incident against Sgt. Ramsey as a result of his conviction.

Mr. Ramsey again testified on his own behalf during the penalty phase of the hearing. The Hearing Board provided the following summary of his testimony:

Sgt. Ramsey indicated that he cannot make this up. He is not going to destroy another officer's credibility for a job. He indicated that motive and means were not there. There was no proof and no evidence. He had no control over who would speak up on his behalf. He indicated that witnesses were ordered not to appear on his behalf. He is aware that Lt. Murray and the Department do not want him in the Department. Sgt. Ramsey has two children. He indicated that values and trust work both ways. He is asking for discipline short of termination.

During cross-examination, Sgt. Ramsey agreed that if he had an officer under his employ who had been convicted of similar offenses that officer would be a security risk. However, Sgt. Ramsey indicated that he was not a threat and had he received a fair trial he never would have been convicted.

In making its recommendation of penalty, the Hearing Board "weighed the serious nature of the offenses, the facts of the offense as provided, the lack of prior disciplinary record (no prior record was discussed during the hearing), [and] the fact that Sgt. Ramsey has a family." It ultimately recommended the following disciplinary action: "**DEMOTION TO CORRECTIONAL OFFICER II, TRANSFER TO ANOTHER FACILITY AND SUSPENSION WITHOUT PAY FOR FIFTEEN DAYS.**"²

On January 3, 2017, the same day the Hearing Board issued its written decision and penalty recommendation, Warden Stump sought approval from the Secretary of Public Safety and Correctional Services, Stephen Moyer, to increase Mr. Ramsey's penalty. In a written memorandum, she offered the following explanation for an increase in punishment:

² At the time, Mr. Ramsey was classified as a "Correctional Officer III (Sergeant)."

The COBR Board acknowledged that Sgt. Ramsey had been convicted of second degree assault in court, and was serving a court imposed punishment of probation. However, they seemed to base their decision to grant leniency on the fact [that] he had no prior disciplinary record PRIOR to his conviction of second degree assault in court and that he was a family man. It is still the appointing authority's opinion that due to this conviction and court imposed sanction of probation Sgt. Ramsey should not be allowed to continue to act in the capacity of a correctional officer. Termination is the only appropriate sanction based on his conviction and sentence of probation.

The nature of Sgt. Ramsey's misconduct, specifically a conviction for an assault on an inmate, renders him unsuitable for a position as a Correctional Officer. A Correctional Officer Sergeant, convicted of such an egregious act, simply cannot maintain employment with the Department of Public Safety and Correctional Services. As such, it is my intention to increase the penalty recommendation by the COBR Board to termination.

The record reflects that, at some point, Secretary Moyer approved the increase in penalty.

On January 13, 2017, pursuant to COR § 10-908, Warden Stump held a hearing to allow Mr. Ramsey to be heard regarding "why [DPSCS] should not proceed with any . . . increase in penalty." Mr. Ramsey's counsel argued against an increase, noting that Mr. Ramsey had "no disciplinary history in his relevant working file" and stating that the Hearing Board's recommendation was "fair given the circumstances and previous dealings with other correctional officers and other correctional facilities in a similar set of circumstances." Counsel asserted that a finding of second degree assault in a criminal matter "very rarely" resulted in a recommendation to terminate, but rather, it usually called for suspension or a reprimand.

Mr. Ramsey stated that his conviction was unjust, resulting from a lot of factors, including tampering with his witnesses. He stated that he knew that Warden Stump was

“going to recommend termination,” and he disagreed with that recommendation “across the board” and intended to “fight it all the way.”

The hearing then concluded. No other statements were made.

On January 26, 2017, Warden Stump issued a letter advising that Mr. Ramsey’s employment with the Department was terminated, effective that day. The letter stated, in pertinent part, as follows:

After the COBR Hearing Board issued its decision, I reviewed the entire record of the proceedings and sought and obtained the approval of Secretary Stephen T. Moyer to increase the penalty to termination from State service. Therefore, you are hereby notified that your employment with this Department will be terminated, effective the date of this Final Order.

On February 21, 2017, Mr. Ramsey filed a Petition for Judicial Review. In a subsequently filed memorandum in support of his petition, Mr. Ramsey argued that Warden Stump inappropriately increased the recommended penalty to termination because she failed to comply with all of the mandatory steps set forth in COR § 10-910(b)(6).³

³ Md. Code (2017 Supp.) § 10-910(b)(6) of the Correctional Services Article (“COR”) permits the appointing authority, in this case, Warden Stump, to increase the recommended penalty of a hearing board, with the approval of the Secretary of Public Safety and Correctional Services, if the appointing authority:

- (i) reviews the entire record of the proceedings of the hearing board;
- (ii) meets with the correctional officer and allows the correctional officer to be heard on the record;
- (iii) at least 10 days before the meeting, discloses and provides in writing to the correctional officer any oral or written communication not included in the record of the hearing on which the decision to consider increasing the penalty is wholly or partly based; and
- (iv) states on the record the substantial evidence on which the appointing authority relied to support the increase of the recommended penalty.

Specifically, he asserted that Warden Stump “entirely ignored” the requirement to place “on the record the substantial evidence [she] relied on to support the increase in penalty,” and therefore, she “failed to satisfy the necessary preconditions to increase [his] punishment.” Moreover, he argued that, because Warden Stump failed to comply with the necessary statutory preconditions, the window to enhance his penalty closed, and the penalty recommended by the Hearing Board was the only penalty DPSCS was able to impose.

The Department argued that Warden Stump fully complied with the statutory requirements to increase Mr. Ramsey’s penalty, asserting that her reasons for recommending termination were stated on the record during the hearing before the Hearing Board on November 22, 2016. The Department also argued that, under the Administrative Procedures Act (“APA”), Md. Code (2017 Supp.), § 10-222(h) of the State Government Article (“SG”), an agency decision may be reversed only where a substantial right of a petitioner may have been prejudiced, and Mr. Ramsey did not argue that he was prejudiced by Warden Stump’s failure to “articulate *again*, as she had done during the penalty phase hearing and on the final termination notice, that the decision to terminate was based upon the finding of guilt in the criminal case.”

On August 1, 2017, the circuit court held a hearing on Mr. Ramsey’s Petition for Judicial Review. Both parties reiterated their respective arguments. Counsel for Mr. Ramsey further asserted that Warden Stump’s testimony before the Hearing Board at the penalty phase “cannot be the[] statement of substantial evidence to increase the penalty

because at that point there [was] no penalty to be increased.” The Department maintained, however, that “the record contain[ed] a clear statement by the appointing authority supporting the rationale for the sanction imposed,” which “complie[d] with the plain language of the statute.” It further noted that “the actual notice of termination[] . . . again state[d] the reason for the sanction is because of the guilty findings of the COBR board on all of the charges.”

The court issued its ruling from the bench. The court stated that, pursuant to COR § 10-910(b)(1), Warden Stump was authorized to increase the recommended penalty of the Hearing Board, with the approval of the Secretary, if she did “four things.” It summarized these “four things” as follows:

One, reviews the entire record of the proceedings of the hearing board; meets with the correctional officer and allows the correctional officer to be heard on the record; at least 10 days before the meeting, discloses and provides in writing to the correctional officer any oral or written communication not included in the record of the hearing board on which the decision to consider increasing the penalty is wholly or partly based; and states on [the] record the substantial evidence on which the appointing authority relied to support the increase of the recommending penalty.

Regarding the first two requirements, the court determined that Warden Stump had reviewed the entire record of the proceedings of the Hearing Board and allowed Mr. Ramsey an opportunity to be heard on the record regarding an increase in penalty, as required. It noted that Mr. Ramsey was aware that Warden Stump wanted to increase the penalty to termination based on her statements at the November 22 hearing.

With respect to the third requirement, that the appointing authority provide in writing any oral or written communication not included in the record on which the decision

to increase a penalty is based, the court stated that no evidence was presented that there was any such communication on which Warden Stump relied. Indeed, the court noted that Warden Stump indicated at the November 22, 2016, hearing that the recommendation of a sanction of termination was based on Mr. Ramsey's criminal convictions, which would be detrimental to his ability to serve.

The court next addressed the final requirement, at issue in this appeal, which requires the appointing authority to "state on the record the substantial evidence on which [Warden Stump] relied to support the increase of the recommended penalty." COR § 10-910(b)(6)(iv). The court stated that it was "satisfied that on November 22nd, 2016 . . . the warden clearly articulated her reasons for the decision to impose a penalty of termination, and that was on the record."⁴

The court went on to state, however, that it was "not satisfied that stating on the record on November 22nd satisfie[d] the requirement of [COR § 10-910(b)(6)(iv)]." It explained:

The definition of on the record could mean on that date, or it could mean on the date of the meeting with the correctional officer after the decision of the board was officially imposed. Statute is silent as to when the substantial evidence must be placed on the record. Given the possible ambiguity, the Court will remand the matter back for further proceedings, ordering that the warden state on the record with [Mr. Ramsey] present the substantial

⁴ The court noted that, during the November 22, 2016, hearing, before the Hearing Board made a penalty recommendation, Warden Stump stated that the reasons for her recommendation of termination were "due to the fact that [Mr. Ramsey] had been found guilty of assaulting inmates and that his continued employment as a correctional officer would be detrimental to inmates and staff members alike." She further "said a number of other reasons as to why she believed that termination would be appropriate."

evidence on which the appointing authority relied to support the increase of the recommended penalty.

The court stated that it did “not find that the penalty enhancement was outside of the law,” and it did “find that termination under the facts presented where [Mr. Ramsey] was convicted of committing assault on inmates can be an appropriate penalty.” It then stated that, “under the specific facts of this case,” it “would not be appropriate to find that the time for increasing the penalty ha[d] passed.”

On August 4, 2017, the court issued a written order, ordering “that this matter be **REMANDED** to the Department of Public Safety and Correctional Services through Warden Tina Stump to state on the record with [Mr. Ramsey] present the substantial evidence on which the appointing authority relied to support the increase of the recommended penalty, pursuant to MD Code, Correctional Services § 10-910(b)(6)(iv).” Mr. Ramsey subsequently filed a motion to alter or amend the court’s ruling, reasserting his position that the “window to increase the penalty ha[d] closed.” The court denied the motion.

This appeal followed.

STANDARD OF REVIEW

When reviewing an administrative agency’s decision, “this Court reviews the agency’s decision, not the circuit court’s decision.” *Belfiore v. Merch. Link, LLC*, 236 Md. App. 32, 43 (2018). “[O]ur primary goal is to determine whether the agency’s decision is in accordance with the law or whether it is arbitrary, illegal, and capricious.” *Rojas v. Bd. of Liquor License Comm’rs for Balt. City*, 230 Md. App. 472, 481 (2016) (quoting

Matthews v. Hous. Auth. Of Balt. City, 216 Md. App. 572, 582 (2014)). To this end, we “apply a limited standard of review and will not disturb an administrative decision on appeal if substantial evidence supports factual findings and no error of law exists.” *Belfiore*, 236 Md. App. at 43 (quoting *Long Green Valley Ass’n v. Prigel Family Creamery*, 206 Md. App. 264, 273–74 (2012)). If, however, the case “involves an interpretation and application of Maryland statutory and case law, [we] must determine whether the lower court’s conclusions are legally correct under a *de novo* standard of review.” *Motor Vehicle Admin. v. Smith*, 458 Md. 677, 686 (2018) (quoting *Nesbit v. Gov’t Employees Ins. Co.*, 382 Md. 65, 72 (2004)).

DISCUSSION

Mr. Ramsey contends that the Department violated his rights under the COBR when Warden Stump, the appointing authority, increased the recommended punishment without stating on the record the substantial evidence upon which she relied in support of the increase in penalty. He asserts that, pursuant to the structure of COR § 10-910(b)(6), the warden has to make such a statement after the Hearing Board makes its recommendation, and the warden’s failure to do so renders his termination “invalid and unlawful.” Accordingly, he argues that “[h]e must be reinstated, then demoted and transferred, as recommended by the hearing board.”

I.

Correctional Officers’ Bill of Rights

Before we address Mr. Ramsey’s specific contentions on appeal, we briefly will discuss the COBR. The COBR took effect on October 1, 2010. *Balt. City. Detention Center v. Foy*, 461 Md. 627, 632 (2018). “The General Assembly modeled the COBR after the Law Enforcement Officers’ Bill of Rights (‘LEOBR’),” which provides “‘certain procedural safeguards[, including notice and an opportunity to be heard,] to law enforcement officers during any investigation . . . that could lead to disciplinary action, demotion, or dismissal.’” *Id.* at 632 n.2 (quoting *Coleman v. Anne Arundel Cty. Police Dep’t*, 369 Md. 108, 122 (2002)). Accordingly, this Court has found that “disciplinary cases decided under the LEOBR have instructive value” on issues arising under the COBR. *Kearney v. France*, 222 Md. App. 542, 544 (2015).

The COBR “‘establish[es] exclusive procedures for the investigation and discipline of a correctional officer for alleged misconduct.’” *Id.* at 549 (quoting COR § 10-902). *Accord Foy*, 461 Md. at 632. The statute provides that, when the appointing authority, in this case, Warden Stump, brings charges recommending “termination, demotion, or suspension without pay of 10 days or greater,” the correctional officer may, among other things, request “a hearing by a hearing board.” COR § 10-908(c).⁵

⁵ Under the Correctional Officer’s Bill of Rights (“COBR”), the “[a]ppointing authority’ has the meaning stated in § 1-101 of the State Personnel and Pensions Article [(“SPP”)],” COR § 10-901(b), which defines the term as “an individual or a unit of

If the Hearing Board “makes a finding of guilty,” it then reconvenes the hearing to receive evidence and “consider the correctional officer’s past job performance, the relation of the contemplated disciplinary action to any prior disciplinary action, and other relevant mitigating information as factors before deciding a penalty.” COR § 10-910(a)(6). The Hearing Board then recommends “the penalty it considers appropriate under the circumstances.” COR § 10-910(a)(7).

The Hearing Board’s penalty recommendation is not binding on the appointing authority, and the appointing authority must, “[w]ithin 30 days after receipt of the recommendations of the hearing board, . . . (i) review the findings, conclusions, and recommendations of the hearing board; and (ii) issue a final order.” COR § 10-910(b)(1), (3). The statute provides that the appointing authority may increase the recommended penalty under the following conditions:

With the approval of the Secretary, the appointing authority may increase the recommended penalty of the hearing board if the appointing authority:

- (i) reviews the entire record of the proceedings of the hearing board;
- (ii) meets with the correctional officer and allows the correctional officer to be heard on the record;
- (iii) at least 10 days before the meeting, discloses and provides in writing to the correctional officer any oral or written communication not included in the record of the hearing board on which the decision to consider increasing the penalty is wholly or partly based; and
- (iv) states on the record the substantial evidence on which the appointing authority relied to support the increase of the recommended penalty.

government that has the power to make appointments and terminate employment.” SPP § 1-101(b). Here, there is no dispute that Warden Stump was the appointing authority.

Id. at 10-910(b)(6).

The Court of Appeals recently held that compliance with these steps is mandatory. *Foy*, 461 Md. at 640. It held that the four steps listed in § 10-910(b)(6) “constitute a condition precedent for increasing the Board’s recommended penalty, and only when that condition precedent is satisfied, does the Commissioner possess the authority to increase the penalty.” *Id.* at 642.

With this background in mind, we turn now to the parties’ contentions.

II.

Noncompliance with COR § 10-910(b)(6)(iv)

Mr. Ramsey concedes, appropriately, that the Hearing Board’s recommended penalty was not binding on Warden Stump. He asserts, however, that the warden’s increase in penalty to termination was unlawful because Warden Stump “increased the recommended punishment without stat[ing] on the record the substantial evidence upon which [she] relied to support the increase in penalty.”

The Department disagrees. It contends that Warden Stump “made multiple statements on the record of the substantial evidence supporting her penalty recommendation” of termination. The Department points to Warden Stump’s statement in the January 26, 2017, Final Disciplinary Action Notice that the Hearing Board found Mr. Ramsey “guilty of the charge filed against [him],” as well as her “thorough explanation of the reason she recommended termination on the record before the hearing board.”

Mr. Ramsey argues that Warden Stump’s statement made on November 22, 2016, to the Hearing Board, prior to the Hearing Board’s penalty recommendation, did not “satisfy the requirements of [COR § 10-910](b)(6)(iv) regarding what must be done *after* the hearing board’s decision is issued in order to increase the recommended penalty.” And he asserts that nothing in the January 26, 2017, Final Disciplinary Action Notice provided a statement regarding the substantial evidence relied upon to increase the penalty. Instead, he asserts that the notice simply recited the facts, including the Hearing Board’s finding of guilt, and terminated his employment.

As indicated, the statute states, in relevant part, that the appointing authority may increase the recommended penalty of the Hearing Board if it “meets with the correctional officer and allows [him] to be heard *on the record*” and “states *on the record* the substantial evidence on which the appointing authority relied to support the increase of the recommended penalty.” COR § 10-910(b)(6)(ii) and (iv) (emphasis added).

In *Foy*, 461 Md. at 646, the Court of Appeals explained that the “ordinary understanding of the phrase ‘on the record’ is in writing or recorded so as to be capable of being reduced to writing.” In that case, the court construed the requirement that the penalty-meeting be “on the record” to require a stenographer or a recording “that allows for precise and contemporaneous dictation of the meeting’s substance.” *Id.* The Court held that a “post-hoc memorandum does not satisfy the requirement that the penalty-increase meeting be conducted “on the record.” *Id.*

Here, there is no question that the penalty-increase meeting was conducted “on the record.” The question here is whether Warden Stump stated “on the record” the evidence on which she “relied to support the increase” of the Hearing Board’s recommended penalty. Given the language of the statute, Warden Stump’s initial explanation to the Hearing Board why she recommended termination is not sufficient to satisfy the statute’s requirement. The statute requires a statement “on the record” of the evidence on which she relied to *increase* the recommended penalty. Because an increase can only happen *after* the Hearing Board gives its recommendation, the “on the record” statement must occur after that time.

Nor did the January 26, 2017, Final Disciplinary Action Notice satisfy the requirement that Warden Stump state the substantial evidence on which she relied to increase the penalty. This notice, in its entirety, stated as follows:

Pursuant to the Correctional Officers’ Bill of Rights (COBR) under Title 10, Subtitle 9 of the Annotated Code of Maryland, Correctional Services Article, § 10-908, Warden Tina Stump, the appointing authority for MRDCC issued and served you with a Notice of Disciplinary Charges that recommended your disciplinary termination from State service. You filed a timely appeal of your proposed disciplinary termination and elected to have a hearing on your appeal before a Correctional Officers’ Bill of Rights Hearing Board.

On November 22, 2016, a hearing on your appeal of the proposed termination was convened before a COBR Hearing Board. On that date, the COBR Hearing Board rendered its decision after you pleaded not guilty and [were] *found guilty of the charge filed against you*.[.] The COBR Hearing Board recommended the following penalty:

Demotion to COII, 15 Day Suspension Without Pay, and a
Transfer to Another Facility

After the COBR Hearing Board issued its decision, I reviewed the entire record of the proceedings and sought and obtained the approval of

Secretary Stephen T. Moyer to increase the penalty to termination from State service. Therefore, you are hereby notified that your employment with this Department will be terminated, effective the date of this Final Order.

If you disagree with this decision, you have the right to appeal pursuant to Md. Code Ann., Correctional Services Article, § 10-911. An appeal from a decision made under § 10-910 of this subtitle shall be taken to the circuit court for the county in accordance with Maryland Rule 7-202.

(Emphasis added.)

The Department asserts that the statement in the Notice that the Hearing Board rendered its decision after Mr. Ramsey was found “guilty” satisfies the statutory requirement. The statement, however, in context, was merely a recitation of the facts, i.e., the procedural steps that had occurred to that point. As Mr. Ramsey notes, the termination letter does not state the reason that Warden Stump sought approval to increase the penalty to termination.⁶ No such explanation was given in the January 26, 2017, Final Disciplinary

⁶ In the January 3, 2017, memorandum to Secretary Moyer, by contrast, Warden Stump did give a reason, stating:

The COBR Board acknowledged that Sgt. Ramsey had been convicted of second degree assault in court, and was serving a court imposed punishment of probation. However, they seemed to base their decision to grant leniency on the fact that he had no prior disciplinary record PRIOR to his conviction of second degree assault in court and that he was a family man. *It is still the appointing authority’s opinion that due to this conviction and court imposed sanction of probation Sgt. Ramsey should not be allowed to continue to act in the capacity of a correctional officer. Termination is the only appropriate sanction based on his conviction and sentence of probation.*

The nature of Sgt. Ramsey’s misconduct, specifically a conviction for an assault on an inmate, renders him unsuitable for a position as a Correctional Officer. A Correctional Officer Sergeant, convicted of such an egregious act, simply cannot maintain employment with the Department of

Action Notice. Accordingly, the January 26, 2017, Final Disciplinary Action Notice did not contain a statement “on the record” of the substantial evidence relied upon in support of the increased penalty.

Under these circumstances, the circuit court properly concluded that the record did not reflect that Warden Stump complied with the requirement that she state “on the record the substantial evidence on which “[she] relied to support the increase of the recommended penalty,” as required by COR § 10-910(b)(6). We next address the proper remedy for the failure of Warden Stump to comply with this “condition precedent” for increasing the penalty to termination. *Foy*, 461 Md. at 642. Specifically, did the circuit court properly exercise its discretion in remanding for the warden to state, on the record, with Mr. Ramsey present, the substantial evidence on which she relied to support the increase of the recommended penalty.

III.

Propriety of the Remand

Mr. Ramsey contends that “[t]he circuit court erred in remanding the case to conduct another penalty increase hearing.” He argues that Warden Stump should not have a “second chance” to comply with the procedural requirement in COR § 10-910(b)(6)(iv), asserting that, “[w]here an appointing authority fails to follow the statutory process for

Public Safety and Correctional Services. As such, it is my intention to increase the penalty recommendation by the COBR Board to termination.

(Emphasis added.)

enhancing a disciplinary penalty against an officer, the window for enhancing . . . [the] penalty is closed.” Accordingly, he argues that “[h]e must be reinstated, then demoted and transferred, as recommended by the hearing board.”

The Department contends that, under the APA, SG § 10-222(h), “[t]he circuit court correctly exercised its discretion by remanding for the warden to state on the record the substantial evidence relied upon in increasing the penalty because there was no prejudice to [Sergeant] Ramsey.” It asserts that, “[i]n an action for judicial review of an administrative agency, a reviewing court may reverse an agency’s decision only if ‘a *substantial* right of the petitioner may have been prejudiced,’” (quoting SG § 10-222(h)(3)), and Mr. Ramsey “has not argued that he was prejudiced by [the] failure of Warden Stump to articulate *again*” the reasons for her decision to terminate.

After the briefs were filed in this case, and oral argument occurred, the Court of Appeals issued its decision in *Foy*, which is instructive in addressing this issue. In that case, the appointing authority failed to make a record of the penalty-increase meeting, in violation of COR § 10-910(b)(6)(ii). *Foy*, 461 Md. at 646. The correctional officer argued, as does Mr. Ramsey, that a remand was inappropriate because any increase in the Hearing Board’s penalty recommendation had to occur within 30 days and the “window of opportunity for curing the” defect had closed. *Id.* at 647.

The Court of Appeals disagreed. Although it concluded that the COR § 10-910(b)(6) requirements were obligatory and had to be satisfied within 30 days of the Hearing Board’s recommendation, it held that the failure to timely comply with those

requirements, absent a showing of prejudice to the officer, could be cured by conducting a new penalty increase hearing. *Id.* at 649. Since there was no evidence that Foy was prejudiced by the commissioner's noncompliance with COR § 10-910(b)(6)(iv), a remand was appropriate. *Id.* at 649.

Similarly, here, Mr. Ramsey was not prejudiced by Warden Stump's noncompliance.⁷ He was found guilty of misconduct, and he stated at the penalty-increase hearing that he knew that Warden Stump was "going to recommend termination," and he was going to "fight it all the way." Under these circumstances, we conclude that the circuit court did not err in finding that the proper remedy was to have another hearing where Warden Stump could state on the record the substantial evidence on which she relied to support the increase in the recommended penalty.

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

⁷ The record does not reflect that Warden Stump ignored, rather than misunderstood, her obligation under COR§ 10-910(b)(6)(iv) or otherwise acted in bad faith.