

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 1702

September Term, 2017

RICARDO HINSON

v.

PERSONNEL BOARD OF PRINCE
GEORGE'S CO.

Fader, C.J.,
Meredith,
Reed,

JJ.

Opinion by Meredith, J.

Filed: April 9, 2020

*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.

Ricardo Hinson, appellant, was a volunteer firefighter and emergency medical technician in Prince George's County whose membership in his volunteer fire company was terminated by Fire Chief Marc A. Bashoor. Hinson filed a notice of appeal with the Personnel Board for Prince George's County ("the Personnel Board"), appellee, asserting that the appeal was being filed "in accordance with the Public Local Laws of Prince George's County [hereafter referred to as the "County Code"], § 16-203." Prince George's County (the "County") filed a motion to dismiss Hinson's appeal to the Personnel Board, arguing that the Personnel Board did not have jurisdiction to hear an appeal of a volunteer firefighter's termination. The Personnel Board granted the motion to dismiss Hinson's appeal, and explained that it was doing so "on the grounds that volunteer firefighters are not employees and therefore have no right to appeal personnel decisions to the Personnel Board." Hinson then filed a petition for judicial review in the Circuit Court for Prince George's County, asking that court to conduct "judicial review of the final decision and order of the Personnel Board." After briefing and oral argument, the circuit court entered a succinct order, ruling that "the decision of the Personnel Board of Prince George's County be, and is hereby, AFFIRMED." This appeal followed.¹

¹ Section 16-204(a) of the County Code provides for judicial review of decisions of the Personnel Board in the Circuit Court for Prince George's County, and Section 16-204(c) authorizes appeals to the Court of Special Appeals, stating: "Any party to the proceeding in the Circuit Court aggrieved by the decision of the said Court may appeal from such decision to the Court of Special Appeals."

QUESTIONS PRESENTED

Hinson has presented four questions in his brief, but he concludes his Statement of the Case by acknowledging: “Ultimately, [the Personnel Board’s] error is one of jurisdiction because they improperly dismissed [volunteer firefighter] Hinson’s appeal on this ground.” We agree that jurisdiction is the dispositive issue; indeed, the issue of whether the Personnel Board had jurisdiction to hear Hinson’s administrative appeal is the only question that is properly before us.²

² Appellant presented the following questions in his brief:

1. Did the Board err as [a] matter of law when it relied solely on *Kensington Volunteer Fire Dep’t v. Montgomery County*, 163 Md. App. 278 (2005), for the proposition that volunteer firefighters in Prince George’s County are not employees with rights to appeal personnel decisions to the Personnel Board? Furthermore, did the Board err as a matter of law when it found that volunteer firefighters are not employees, and further, did the Board abuse its discretion when it failed to make evidentiary findings and properly consider the relevant factors when deciding whether volunteer firefighters have an employer-employee relationship with the County?
2. Did the Board err as a matter of law when it held that volunteer firefighters in Prince George’s County are not “appointed to and occupying a duly authorized position in the classified service” with rights to appeal personnel decisions to the Personnel Board?
3. Did the Board err as [a] matter of law and violate V/FF Hinson’s due process rights when it denied him any legal remedy to appeal or review his termination, and moreover when it refused to address the unlawful procedure used in said termination?
4. Did the Board err as a matter of law by deciding that volunteer firefighters can be discriminated on the sole basis of occupation, in violation of County Code §§ 2-185(a) and 2-186(a)(3)?

We conclude that a volunteer firefighter in Prince George's County does not have a right to appeal the Fire Chief's disciplinary action to the Personnel Board. Therefore, we shall affirm the judgment of the Circuit Court for Prince George's County.

BACKGROUND AND PROCEDURAL HISTORY

On September 19, 2015, a house fire broke out in Upper Marlboro, Maryland. One of the responding units was Engine 828 from the West Lanham Hills Volunteer Fire Department, of which Hinson was then a long-time member. By chance, Hinson was in the neighborhood at the time of the fire. He saw smoke and drove his personal vehicle to the burning house. When Hinson arrived at the scene of the fire, he did not report in to the Incident Commander. Instead, he took firefighting gear that belonged to the driver of Engine 828, and partially donned it. Hinson then grabbed a charged hose line, and began using it within the burning structure. Hinson was not wearing a breathing apparatus; his coat was never fastened; and he was not wearing a flame-resistant Nomex hood (even though there was one in a pocket of the coat he was wearing). While working on the second floor of the structure without authorization to do so, Hinson suffered burns. He then caused a disturbance by resisting orders that he be transported to the Washington Regional Burn Center.

On December 13, 2015, County Fire Chief Bashoor issued a notice of discipline to Hinson. Pursuant to General Order 11-24, the Volunteer Disciplinary Review Board held a hearing, at which Hinson pled guilty to the statement of charges. He indicated that he accepted full responsibility for his actions, but he asked that mitigating factors be

considered. Hinson explained that, when he arrived on the scene of the fire, he could see that Engine 828 was understaffed, and so, he acted with the intent to assist. The Volunteer Disciplinary Review Board made recommendations to Chief Bashoor. (The recommendations of the Volunteer Disciplinary Review Board do not appear in the record of the circuit court case that is the subject of this appeal.)

On October 13, 2016, Chief Bashoor issued a Final Disciplinary Notice to Hinson. In this notice, Chief Bashoor explained that he was terminating Hinson for the following reasons:

On September 19, 2015, at 1326 hours, Public Safety Communications dispatched a call for a report of a house fire at 3806 Endicott Place in Upper Marlboro, Maryland. Units arrived on the scene and encountered heavy fire conditions coming from the roof of a two story single family dwelling. Units that were dispatched, and had arrived on the scene included Engine 828 (E-828), from West Lanham Hills Volunteer Fire Department and Safety Officer 800 (Captain Michael Glaubitz).

Moments after units had arrived on the scene, you were observed approaching the incident in your personally owned vehicle (POV). You were also observed taking the structural firefighting gear, belonging to the driver of E-828. After partially donning the gear you had taken from the driver of E-828, you took a charged hose line and proceeded to operate within the structure. You were observed partially wearing personnel protective equipment (PPE) that consisted of a helmet, coat, gloves, running pants, and boots, as you operated on the second floor of the structure. While you were involved in this extremely unsafe operation, the entire roof of the structure was engulfed in flames. You were not wearing a Self-Contained Breathing Apparatus (SCBA), your coat was never fastened and you did not have a [N]omex hood on.

You did not follow Departmental General Orders regarding the use of a POV on an emergency incident, you did not use your Departmental issued gear that you were fitted for, and you violated Departmental General Orders on personnel accountability by not reporting to the Incident Commander (IC). Your unsafe actions directly resulted in serious burns to

your upper body and it was at this time the IC became aware that you had been operating within the structure. Captain Glaubitz, who was outside the structure at the time, saw you and attempted to get your attention, but was unable to reach you before you suffered injuries. Your injuries were a direct result of your decision to enter the structure without the proper protection of your PPE as is specified in Departmental General Orders.

After your injuries had occurred, an inspection of the gear you were wearing was conducted, at which time the [N]omex hood was found folded up in an inside pocket of the running coat. As emergency medical services personnel were attempting to attend to your injuries, you demonstrated blatant disrespect rising to the level of insubordination to the personnel charged with ensuring proper care and transportation to the Washington Regional Burn Center. Your behavior required intervention by several personnel to resolve and ensure that you received the care that was warranted for the degree of injuries you had suffered. You demonstrated a lack of regard for Departmental rules and regulations, as well as your own safety and the safety of your co-workers. Your actions were unacceptable and will not be tolerated.

On February 23, 2016, a Disciplinary Review Board met and provided recommendations. During the hearing you ple[d] guilty to the Statement of Charges. You said you were in the neighborhood when you saw the smoke and when you got on the scene, you saw a house fire. You said you got on the scene, you saw that your engine was understaffed and you went to assist. You said you've learned a lot since the incident and were very apologetic for your past behavior.

During the hearing you said your engine was understaffed[;] however, Engine 828 reported a staffing of four which is considered adequate staffing. You said you have been to all of your doctor's appointments, when in fact[,] the Department was notified that you were noncompliant with your doctor's visits. You said you were hitting hot spots[;] however[,] Assistant Fire Chief James testified that you were operating under a roof that was fully involved with fire. In reference to you not being properly dressed in your PPE while operating in an IDLH atmosphere, you said you were "hot dogging it."

Assistant Fire Chief Finamore testified that on September 19, 2015, you failed to comply with several direct orders to have yourself evaluated. He said you did not comply until you were told to do so by your company chief, who was not on the scene of the incident nor was he in anyway

involved with the incident. You said you have changed, yet you continue to display the same level of defiance that has brought you to this place.

This is not the first time that you have failed to comply with Departmental policies and procedures. A three year review of your history with the Department revealed the following information:

1. On May 13, 2014, you were disciplined for your unprofessional conduct towards a resident who had her child with her in her car.
2. On November 5, 2014, you were disciplined for riding the back step of Engine 828 on Route 50.
3. On February 2, 2015, you were disciplined for pushing an employee during an emergency incident.
4. During the September 19, 2015, incident you were defiant with personnel attempting to check on your wellbeing.
5. On November 6, 2015, you failed to report for your scheduled doctor's appointment.
6. A review of your information discovered that during the time of your injury, you were operating on an emergency incident and your fit test had expired on June 2, 2015.
7. On incident 14-141-0164, you were removed from operations for violation of the grooming policy.

As a member of the Prince George's County Fire/Emergency Medical Services Department, you are expected to conduct yourself in a manner that reflects positively on the Department. Your continued disregard for Departmental policies and procedures will not be tolerated. I have considered the request by your legal counsel for issuance of a Last Chance Agreement. However, after a review of all of the facts in this case, I will not issue you a Last Chance Agreement.

Therefore, in accordance with the Prince George's Fire/Emergency Medical Services Department General Orders, Division 11: Personnel Management, Chapter 24: Volunteer Disciplinary Process, it is my final decision to dismiss you from the Department, effective October 13, 2016.

On December 13, 2016, Hinson filed a Notice of Appeal with the Personnel Board for Prince George's County, stating that the appeal was being filed "in accordance with the Public Local Laws of Prince George's County, § 16-203." Section 16-203 is a lengthy

provision in the Personnel subtitle of the County Code captioned “Hearings before the Personnel Board.” In § 16-203(a)(1), the provision states, in part: “Pursuant to Section 907 of Article IX of County Charter, the Personnel Board shall be the final administrative appeal authority for Prince George’s County, Maryland, relating to any appeal filed with the Board under the provisions of Sections 16-200 through 16-202 of this Subtitle [16 – PERSONNEL].” The County filed a motion to dismiss the appeal to the Personnel Board because, it argued, Hinson was not a County employee, and the Personnel Board’s only statutory authority is to hear appeals from County employees.

Hinson opposed the motion to dismiss, contending that the County “failed to state how volunteer employees are not employees under the Prince George’s County Code, which makes no distinction between paid and unpaid personnel.”

On February 28, 2017, the County filed a reply to Hinson’s opposition to the County’s motion to dismiss. The County reiterated its argument that neither the Prince George’s County Charter nor the County Code provides that volunteers who serve the County are to be treated the same as employees in all respects with regard to disciplinary matters, and only employees are granted a right of appeal to the Personnel Board. The County argued that the language of the County Code is plain and unambiguous, and explained:

The County Code pertaining to the appeals before the Personnel Board is clear in that it pertains to employees, former employees, and applicants of employment.[] The County Council could have easily provided the right to appeal to the Personnel Board in §§ 11-304 [to] 11-330 [in the Fire Safety Subtitle] of the County Code, which provide[]

regulations and benefits for volunteer fire companies and their members[;] however, this section of the County Code is silent as to an appeal right.

On March 21, 2017, the Personnel Board dismissed Hinson’s appeal, and provided this explanation for concluding that volunteer firefighters do not have a right to appeal personnel decisions to the Personnel Board:

The Fire Department . . . maintains that the Personnel Board does not have jurisdiction to hear and adjudicate appeals of voluntary firefighters under the enabling legislation that created the Personnel Board, namely Section 917 [sic] of Article IX of the County Charter and Section 16-105 of the Personnel Code.^[3]

. . . Appellant argues that he must be covered by the Personnel Law of Prince George’s County since the Personnel Code makes no distinction between paid and unpaid personnel. Appellant further argues that it is discriminatory to treat volunteers different than paid employees.

* * *

The Board has considered the arguments of counsel on the issue of whether the Personnel Board has jurisdiction to consider appeals of volunteer firefighters. It is a question of first impression in Prince George’s County and the Board has found no case law interpreting the Prince George’s County Code on the issue. However, a literal reading of the Personnel Code leads to the conclusion that volunteer firefighters are not “employees” as that term is defined in the Prince George’s County Code. . . .

* * *

The Prince George’s County Code does not define volunteers as employees nor [provide] that they are to be treated as if they are employees. Section 16-102(a)(22) of the Personnel Code defines an employee as “a

³ The citation to Section “917 of Article IX of the County Charter” appears to have been a typographical error. We cannot locate a Charter section with that number, and the County states in its brief that “Section 907 sets forth the powers and duties of the Personnel Board.”

person legally appointed to and occupying any duly authorized and allocated position in the classified service” . . . Volunteer firefighters are not “appointed to and occupying a duly authorized position in the classified service.”

. . . Volunteer firefighters do not receive wages. Simply stated, voluntary firefighters are not in the classified service of the County.

If the County Council had intended to give volunteer firefighters the same rights as employees, then it would have provided for it in the County Charter and the Personnel Code just as Montgomery County Council did in providing that volunteers are to be treated “as if” employees. Accordingly, the Board finds that volunteer firefighters are not employees with rights to appeal personnel decisions to the Personnel Board.

On April 11, 2017, Hinson filed a petition for judicial review in the Circuit Court for Prince George’s County. The circuit court affirmed the decision of the Personnel Board of Prince George’s County. This appeal followed.

STANDARD OF REVIEW

When reviewing the final decision of an administrative agency, this Court looks through the circuit court’s decision, and we evaluate the decision of the agency, here, the Personnel Board. The Personnel Board’s conclusion that it lacked jurisdiction to hear an appeal from a volunteer firefighter was a legal conclusion. In *Maryland Department of the Environment v. County Commissioners of Carroll County*, 465 Md. 169, 202-04 (2019), Judge Robert McDonald described the standard of appellate review applicable to an agency’s legal conclusions as follows:

With respect to an agency’s legal conclusions, a reviewing court accords the agency less deference than with respect to fact findings or discretionary decisions. In particular, a court will not uphold an agency action that is based on an erroneous legal conclusion. However, in construing a law that the agency has been charged to administer, the

reviewing court is to give careful consideration to the agency's interpretation.

In construing a statute, a reviewing court applies the oft-stated approach to statutory construction. That is, the court seeks to ascertain legislative intent – whether that of the General Assembly or of Congress. That endeavor begins with the plain meaning of the text, keeping in mind that the plainest language is controlled by the context in which it appears. . . . [T]he court must be mindful that the purpose is not to discern purely judicial notions of public policy, but rather legislative intent.

When a party challenges the agency's interpretation of the statute the agency administers, the court must assess how much weight to accord that interpretation, keeping in mind that it is always within [the court's] prerogative to determine whether an agency's conclusions of law are correct. The weight given an agency's interpretation of a statute it administers depends on several factors. More weight is appropriate when the interpretation resulted from a process of reasoned elaboration by the agency, when the agency has applied that interpretation consistently over time, or when the interpretation is the product of contested adversarial proceedings or formal rule making.

(Citations and internal quotation marks omitted.)

In *Frey v. Comptroller of Treasury*, 422 Md. 111, 138 (2011), the Court of Appeals noted that appellate deference to an agency's interpretation of a statute the agency administers does not extend to the agency's interpretation of caselaw:

Just as we defer to an agency's factual findings, we afford great weight to the agency's legal conclusions when they are premised upon an interpretation of the statutes that the agency administers and the regulations promulgated for that purpose. *Surina*, 400 Md. at 682, 929 A.2d at 911; *Noland*, 386 Md. at 572, 873 A.2d at 1154. This deference, however, "extends only to the application of the statutes or regulations that the agency administers." *Loyola College*, 406 Md. at 67, 956 A.2d at 174. When an agency's decision is necessarily premised upon the "application and analysis of caselaw," that decision rests upon "a purely legal issue uniquely within the ken of a reviewing court." *Id.* at 67-68, 956 A.2d at 174.

Here, the agency’s decision to dismiss Hinton’s appeal because it concluded it did not have jurisdiction to hear appeals from disciplinary actions the Fire Chief imposed on a volunteer firefighter was based upon the Personnel Board’s analysis of the County Code. Its view is entitled to some weight and consideration, but we nevertheless review its ruling for legal error. *See Maryland Aviation Admin. v. Noland*, 386 Md. 556, 572 (“On the other hand, when a statutory provision is entirely clear, with no ambiguity whatsoever, ‘administrative constructions, no matter how well entrenched, are not given weight.’” (quoting *Board of Physician Quality Assurance v. Banks*, 354 Md. 59, 69 n.2)). In that respect, we shall determine if the administrative decision is premised upon an erroneous conclusion of law. *Noland*, 386 Md. at 573-74 n.3.

“In interpreting a statute, a court first considers the statute’s language, which the court applies where the statute’s language is unambiguous and clearly consistent with the statute’s apparent purpose.” *McCree v. State*, 441 Md. 4, 9 (2014) (brackets, citation, and internal quotation marks omitted). We “do not read statutory language in a vacuum, nor do we confine strictly our interpretation of a statute’s plain language to the isolated section alone.” *State v. Johnson*, 415 Md. 413, 421 (2010). We will look at the plain language in relation to the statutory scheme to which it belongs because we “presume that the Legislature intends its enactments to operate together as a consistent and harmonious body of law.” *Id.* We “neither add nor delete language so as to reflect an intent not evidenced in the plain and unambiguous language of the statute, and we do not construe a

statute with ‘forced or subtle interpretations’ that limit or extend its application.” *Johnson*, 415 Md. at 421 (quoting *Lockshin v. Semsker*, 412 Md. 257, 275 (2010)).

DISCUSSION

Pursuant to Prince George’s County Charter § 907, the Personnel Board has the “power and duty . . . to hear **appeals from employees in the classified service concerning any action of the . . . appointing authority of the employee, . . .**” (Emphasis added.) Despite Hinson’s efforts to persuade us that volunteers like him are actually employees in the Prince George’s County “classified service,” we are not persuaded that the Personnel Board has any authority to hear appeals filed by volunteer firefighters.

Article IX of the Prince George’s County Charter addresses “Personnel,” and states in § 902 that all “positions shall be either in the classified or the exempt services.” A position “means a group of duties, tasks, and responsibilities allocated by the Director of Human Resources Management to a class of work established in the Classification Plan and requiring the full- or part-time employment of one (1) or more persons.” County Code § 16-102(a)(33). The Classification Plan is the law “setting forth, by schematic listings, each established class of work in the classified and exempt services and the grade, except as otherwise provided by law.” *Id.* at § 16-102(a)(13). The Classification Plan is available on the website of the Prince George’s County Office of Human Resources. *See* Prince George’s County Office of Human Resources Management, *Classification Plan* (Rev. 6/2019), *available at*

<https://www.princegeorgescountymd.gov/DocumentCenter/View/17109/Classification-Plan-12-2017?bidId=>. The Classification Plan spans thirty-seven pages and lists every classified position in the County.

Each “position” has a corresponding EEO (Equal Employment Opportunity) code. The eight EEO codes in the Classification Plan identify the status of the employee in the position and are listed as follows: (1) Officials and Administrators; (2) Professionals; (3) Technicians; (4) Protective Service Workers; (5) Para-Professionals; (6) Office and Clerical; (7) Skilled Craft Workers; and (8) Service-Maintenance. *Id.* at 37. No EEO Code exists for volunteers. There are three *paid* firefighter positions listed in the Classification Plan: Fire Fighter I, Fire Fighter II, and Fire Fighter III. *Id.* at 17. And each firefighter “position” in the Classified Plan receives *a salary*. See The Maryland Association of Counties, *Report of County Employee Salaries, Health Benefits & Pensions Fiscal Year 2018*, at 119, available at <http://www.Mdcountiesorg/DocumentCenter/View/1906/2018-CompleteReport?bidId=>.

But volunteer firefighters are not mentioned in any discernible way in the Prince George’s County’s Classification Plan. This supports the County’s position, and the Personnel Board’s conclusion, that volunteer firefighters are not County employees. In the Personnel Code (Subtitle 16 of the County Code), § 16-102(a)(22) provides this statutory definition of the term employee: “**Employee** means a person legally appointed

to and occupying any duly authorized and allocated position in the classified service”⁴ There is no statutory definition for “volunteer” in Subtitle 16.

Similarly, Prince George’s County Code § 16-201(e) provides: “The Personnel Board shall hear and decide any such employee appeal of an adverse action in accordance with the provisions of Section 16-203.” But Subtitle 16 is entirely devoted to the topic of personnel, and the term “employee” is limited to those persons defined in § 16-102(a)(22), quoted above. Subtitle 16 makes no mention of volunteers. We agree with the County’s assertion that “the fact that the Code does not reference volunteers in the Personnel Section, at all, but handles the rights and benefits of volunteer members [of the volunteer fire companies] in an entirely separate section of the Code [namely, Subtitle 11 Fire Safety] speaks volumes as to the Council’s intent to treat County volunteers separate from County employees.”

Subtitle 11 states in § 11-101(a): “The provisions of this Subtitle shall constitute and shall hereafter be known as ‘The Fire Safety Law of Prince George’s County, Maryland.’” That Subtitle sets forth extensive provisions applicable to volunteer firefighters and volunteer fire companies in Division 6, §§ 11-324 through 11-329. But

⁴ The full text of § 16-102(a)(22) is:

Employee means a person legally appointed to and occupying any duly authorized and allocated position in the classified service, but shall not include any person occupying a position in the classified service under the terms of a temporary/provisional, temporary emergency or limited-term appointment, or a person appointed to and occupying any position in the exempt service, unless expressly stated otherwise.

there is no provision in Subtitle 11 that grants a volunteer firefighter the right to appeal a personnel decision to the Personnel Board. And the Fire Department has adopted General Order 11-24 that prescribes a Volunteer Disciplinary Process that is separate from the disciplinary process applicable to classified employees.

Hinson cites federal cases that have considered whether a volunteer firefighter qualifies for the protections afforded to employees under certain federal statutes. *See Haavistola v. Community Fire Co. of Rising Sun, Inc.*, 6 F.3d 211 (4th Cir. 1993); *Goldstein v. Chestnut Ridge Volunteer Fire Co.*, 218 F.3d 337 (4th Cir. 2000); and *Garrett v. Phillips Mills, Inc.*, 721 F.2d 979 (4th Cir. 1983). But those cases are not helpful in deciding the question of whether the Prince George's County Code authorizes the Prince George's County Personnel Board to hear appeals from volunteer firefighters. The dispositive question in this case is whether the County Code has granted volunteer firefighters the right to appeal disciplinary actions to the Personnel Board. We agree with the County and the Personnel Board that Hinson, as a volunteer firefighter, was not a County employee who had the right to appeal a personnel decision to the Personnel Board. Consequently, the Personnel Board did not commit legal error in dismissing Hinson's appeal.

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