

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 811

September Term, 2016

JASON MONN

v.

BALTIMORE CITY POLICE DEPARTMENT
ADMINISTRATIVE TRIAL BOARD

Graeff,
Berger,
Thieme, Raymond G., Jr.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Thieme, J.

Filed: May 1, 2017

*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.

Jason Monn, a Baltimore City police officer, was charged with violating five provisions of the General Orders of the Baltimore City Police Department. Each of the five charges included numerous alleged violations. After a hearing pursuant to the Law Enforcement Officers’ Bill of Rights (“LEOBR”)¹, the Baltimore City Police Department’s Administrative Trial Board (“the Board”) found Monn guilty of all of the charges, with the exception of one specific violation alleged in the second charge. The Board recommended that Monn’s employment with the Baltimore City Police Department (“the Department”) be terminated. Kevin Davis, the Commissioner of the Baltimore City Police Department (“the Commissioner”), terminated Monn’s employment. Thereafter, Monn filed a petition for judicial review in the Circuit Court for Baltimore City. On May 24, 2016, the circuit court affirmed the Board’s decision. This timely appeal followed.

ISSUE PRESENTED

The sole issue presented for our consideration is whether the Board erred in determining that the disciplinary matrix set forth in the Department’s General Orders was mandatory and not a guideline. Finding no error, we shall affirm.

FACTUAL BACKGROUND

The parties do not dispute the following factual findings of the Board:

On or about March 24, 2014 Police Officer Jason Monn was on-duty working at his assignment at the Central Booking and Intake Facility (CBIF). Officer Monn was working in a light-duty capacity as a result of a previously documented line-of-duty injury. Officer Monn was working the 2:00 P.M. to 10:00 P.M. shift. At approximately 1400 hours Officer Monn received a

¹ See generally, Md. Code (2003, 2011 Repl. Vol.), §3-101 *et seq.* of the Public Safety Article.

telephone call on the office landline from Lt. Douglas Baumgarten. Lt. Baumgarten was Officer Monn's permanent rank supervisor, but was physically located at the Juvenile Detention Facility. During the phone conversation, with Officer Monn, Lt. Baumgarten advised Officer Monn that he had [a]n order for Officer Monn to submit to a random urinalysis test. Lt. Baumgarten ordered Officer Monn to respond to the Juvenile Detention facility to obtain the Police Department Form PS/323, "Order to submit to Urinalysis" and to report to Mercy/PSI for the test. Officer Monn failed to respond to the Juvenile Detention Facility to obtain the Form PE/323, failed to submit for Urinalysis, and failed to properly report an injury while working and left his work assignment without permission.

Officer Monn was charged with numerous specific violations of five of the Department's General Orders. The first charge alleged eight specific violations of General Order C-2, Rule 1, which provided:

Any breach of the peace, neglect of duty, misconduct or any conduct on the part of any member of the department, either within or without the City of Baltimore, which tends to undermine the good order, efficiency or discipline of the department, or which reflects discredit upon the department or any member thereof, or which is prejudicial to the efficiency and discipline of the department, even though these offenses may not be specifically enumerated or laid down, shall be considered conduct unbecoming a member of the Baltimore Police Department, and subject to disciplinary action by the Police Commissioner.

Charge 2 alleged eight specific violations of General Order C2, Rule 1, Section 13, which provided that "[n]o member of the Department shall at any time be insubordinate or disrespectful to a superior." Charge 3 alleged six specific violations of General Order C2, Rule 1, Section 14, which provided that "[n]o member of the Department shall willfully disobey any lawful command or order, either verbal or written, of any superior or other member designated to command." Charge 4 alleged five specific violations of General Order Q-20, which governed random urinalysis tests for controlled dangerous substances. Lastly, Charge 5 alleged five specific violations of General Order Q-13, which governed

compensable illness, injury or recurring compensable illness and injuries sustained while on duty.

After a hearing, the Board found Officer Monn guilty of all charges with the exception of the specific allegation that, on or about March 24, 2014, he had been disrespectful to his superior, Lt. Baumgarten. The Board recommended termination of employment as the punishment for Charges 1 through 4 and a severe letter of reprimand for Charge 5. In its decision, the Board included a “Justification of Punishment,” which provided:

At the conclusion of this administrative hearing, the Board reviewed and considered evidence that was presented and submitted. It should be noted that the Board’s decisions were unanimous on all counts. Board was also unanimous in its opinion that the punishment of Officer Monn should not rise to the level of termination, but was forced to hand down a punishment of termination because it lacked the authority to impose punishment outside guidelines of the General Order Discipline Matrix. The Board does however, believe that the Police Commissioner does have that authority to use discretion. The following statement was placed on the record at sentencing by the Board:

The matter before this administrative hearing is very serious. The deliberations and findings by this Board have not been taken lightly. At the start of this administrative hearing it was presented to this Board that the key facts of this case are NOT in dispute. The Board agreed and was unanimous in its verdict. The Board is also unanimous in its belief that, while Officer Monn is guilty of the charges against him, we do not believe that his punishment should rise to the level of termination. It should be noted that while Officer Monn disobeyed orders he did not do so in a disrespectful or malicious way. Furthermore, the Board recognizes that Officer Monn has sustained a debilitating injury while on-duty in the service of the Department and the City of Baltimore. With that said the General Order is clear that only the Police Commissioner has the authority to issue punishment outside the guidelines outlined within General Order/Policy 310. The General Order is also clear that the only punishment option available to the Board for a violation of an “F Category” policy is termination. Having been found guilty of an “F [C]ategory policy the Board has no choice but to hand down a

punishment of termination. It should be noted, however, that the board in its final report will recommend to the Police Commissioner that he exercise his discretion and hand down a punishment of less than termination.

The Board therefore requests that the Police Commissioner issues a punishment of less than termination.

The Commissioner approved the Board’s recommendation and terminated Officer Monn’s employment.

DISCUSSION

I.

Monn argues that although the Board did not want to recommend the punishment of termination of employment, it did so because it believed, erroneously, that the disciplinary matrix included in General Order 310 was mandatory and not a set of discretionary guidelines. We disagree and explain.

The scope of judicial review in an LEOBR case is the same as that generally applicable to administrative appeals. *Baltimore Police Dep’t v. Ellsworth*, 211 Md. App. 198, 207-08 (2013), *aff’d*, 438 Md. 69 (2014). We look at the underlying administrative agency decision, not the circuit court’s decision, for the limited purpose of “determining if there is substantial evidence in the record as a whole to support the agency’s findings and conclusions, and to determine if the administrative decision is premised upon an erroneous conclusion of law.” *Mehrling v. Nationwide Ins. Co.*, 371 Md. 40, 57 (2002) (internal quotation marks omitted)(and cases cited therein).

When reviewing findings of fact, we apply the “substantial evidence test,” and look only to whether a reasoning mind reasonably could have reached the factual conclusion the

agency reached. *Ellsworth*, 211 Md. App. at 207-08. We may not make independent findings of fact or substitute our judgment for that of the agency. *Blackburn v. Bd. of Liquor License Comm'rs for Baltimore City*, 130 Md. App. 614, 623-24 (2000). We are not bound, however, by the agency's interpretation of law, which is reviewed *de novo*. *Coleman v. Anne Arundel County Police Dep't*, 369 Md. 108, 122 (2002). An agency's "interpretations and applications of statutory or regulatory provisions 'which the agency administers should ordinarily be given considerable weight by reviewing courts [and] the expertise of the agency in its own field should be respected.'" *Maryland Aviation Administration v. Noland*, 386 Md. 556, 573 n. 3 (2005)(quoting *Bd. of Physician Quality Assurance v. Banks*, 354 Md. 59, 69 (1999)). Where an administrative decision is premised upon a pure question of law, "we must 'determine if the administrative decision is premised upon an erroneous conclusion of law.'" *Bray v. Aberdeen Police Dep't*, 190 Md. App. 414, 424 (2010)(quoting *Noland*, 386 Md. at 573 n.3)).

In the case at hand, Monn does not dispute that the Commissioner's final administrative order was supported by substantial evidence. Rather, he contends that the Commissioner's decision was effected by an error of law, specifically, the Board's erroneous belief that the disciplinary matrix set forth in General Order 310 was mandatory.

The General Orders of the Baltimore City Police Department were promulgated by the Commissioner pursuant to § 16-7 of the Baltimore City Code of Public Local Laws, which sets forth the powers and duties of the Commissioner. *See* Code of Public Local Laws of Baltimore City § 16-7 (2016); *Mayor and City Council of Baltimore v. Hart*, 395 Md. 394, 404 (2006). General Order 310, which was renamed Policy 310 in April 2015,

governs the punishment members of the Department may receive in the disciplinary process. The purpose of Policy 310, as expressed in the policy itself, is “to establish a standardized recommended process for discipline. The Disciplinary Matrix will ensure that the disciplinary recommendations are fundamentally fair and applied uniformly. It is emphasized that the Disciplinary Matrix is a guideline.” (E. 31)

With regard to the final disposition in disciplinary cases such as the one before us, it is important to recognize that the Board is not the controlling authority. Section 3-108(b)(1) of the Public Safety Article makes clear that the role of the Board is to make a recommendation regarding discipline to the Commissioner. Md. Code (2003, 2011 Repl. Vol.), § 3-108(b)(1) of the Public Safety Article (“PS”).² The final administrative decision rests with the Commissioner. PS § 3-108(d)(1).³

² Section 3-108(b)(1) of the Public Safety Article provides:

(b)(1) After a disciplinary hearing and a finding of guilt, the hearing board may recommend the penalty it considers appropriate under the circumstances, including demotion, dismissal, transfer, loss of pay, reassignment, or other similar action that is considered punitive.

³ Section 3-108(d)(1) of the Public Safety Article provides:

(d)(1) Within 30 days after receipt of the recommendations of the hearing board, the chief shall:

(i) review the findings, conclusions, and recommendations of the hearing board; and

(ii) issue a final order.

(2) The final order and decision of the chief is binding and then may be appealed in accordance with § 3-109 of this subtitle.

(3) The recommendation of a penalty by the hearing board is not binding on the chief.

The Court of Appeals has held that “when the discretionary sanction imposed upon an employee by an adjudicatory administrative agency is lawful and authorized, the agency need not justify its exercise of discretion by findings of fact or reasons articulating why the agency decided upon the particular discipline.” *Noland*, 386 Md. at 581. We are “not authorized to overturn a lawful and authorized sanction unless the ‘disproportionality [of the sanction] or abuse of discretion was so extreme and egregious’ that the decision was arbitrary or capricious. *Id.*”

The disciplinary matrix set forth in Policy 310 provides a range of penalties for specific infractions beginning with Category A, for less serious infractions, up to Category F, for the most serious offenses. Monn was found guilty of a number of Category F infractions. The Board recognized that the only prescribed penalty for a Category F infraction was termination of employment. Although the Board expressed its opinion that termination of employment was too harsh a punishment for Monn’s offenses, the Commissioner disagreed and imposed the penalty of termination of employment. The

(4) The chief may increase the recommended penalty of the hearing board only if the chief personally:

(i) reviews the entire record of the proceedings of the hearing board;

(ii) meets with the law enforcement officer and allows the law enforcement officer to be heard on the record;

(iii) discloses and provides in writing to the law enforcement officer at least 10 days before the meeting, 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 relied on to support the increase of the recommended penalty.

Commissioner’s decision was consistent with the discipline set forth in the disciplinary matrix and was not contrary to the law. We have long held that an agency is best able to discern its intent in promulgating a regulation and that the agency’s interpretation of an administrative regulation is controlling unless it is plainly erroneous or inconsistent with the regulation. *Maryland Transp. Authority v. King*, 369 Md. 274, 288-89 (2002). The termination of Monn’s employment was not disproportionate or an abuse of discretion that was so extreme and egregious as to be arbitrary or capricious. *See Noland*, 386 Md. at 581. Thus, we conclude that the Commissioner’s decision was not an error of law.

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