UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1206

September Term, 2015

CECIL COUNTY PUBLIC SAFETY
PENSION PLAN, BOARD OF TRUSTEES

v.

ROBERT MICHAEL DAVIS

Graeff,
Reed,
Sharer, J. Frederick
(Senior Judge, Specially Assigned),

JJ.

Opinion by Reed, J.

Filed: August 10, 2017

In 2012, unable to continue further service as a Deputy First Class with the Cecil County Sheriff's Office as a result of complications from Reynaud's phenomenon,[1] Robert Michael Davis, appellee, filed an Application for Non-Service Connected Disability Benefits (the "Application") under the Cecil County Pension Plan for Public Safety Employees (the "Pension Plan"). After the Pension Plan's Board of Trustees ("board of Trustees" or "Board"), appellant, ultimately denied his Application, appellee filed a Petition for Judicial Review in the Circuit Court for Cecil County. Following a hearing, the circuit court found the record insufficient to properly examine the claim and remanded the matter for a *de novo* hearing on the merits. Aggrieved, the Board of Trustees appealed the decision and presents the following questions for our review, which we have reordered:

> 1. Did the [c]ircuit [c]ourt err in vacating the administrative agency decision and remanding it to the Medical and Disability Review Board ("DRB") for a *de novo* hearing on the merits?
>
> 2. Is the administrative agency's decision to deny non-service connected disability benefits to the [a]ppellee supported by substantial evidence in the record, and did the hearing examiner correctly apply the law?

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

FACTUAL AND PROCEDURAL HISTORY

In January 2012, appellee was referred to physicians at Johns Hopkins Scleroderma Center for an evaluation of Reynaud's after he noticed a progressively worsening "pallor

[1] According to the Mayo Clinic, "Raynaud's (ray-NOHZ) disease causes some areas of your body — such as your fingers and toes — to feel numb and cold in response to cold temperatures or stress. In Raynaud's disease, smaller arteries that supply blood to your skin narrow, limiting blood circulation to affected areas (vasospasm)." *Reynaud's disease*, MAYO CLINIC (March 4, 2015), http://www.mayoclinic.org/diseases-conditions/raynauds-disease/basics/definition/con-20022916.

of his distal fingers with cold exposure" for the prior two years. As a canine handler for the Sheriff's Office, appellee was having "significant difficulty performing his job" after he "noticed difficulty holding onto his dog's leash due to [the] numbness in his fingertips."

On November 1, 2012, two separate treating physicians sent letters to the County Department of Human Resources on behalf of appellee, explaining his condition and requesting certain accommodations, such as providing him with a space heater for him to use if the temperature of his work environment dropped below 70 degrees Fahrenheit and allowing his use of "heated gloves" that "may allow him to qualify with a weapon." Four days later, Donna M. Nichols, the Director of the County's Department of Human Resources, replied to appellee as follows:

> Dear Mr. Davis:
>
> We have received the attached medical notes from both your specialist (Ami A. Shah, MD, MHS) and also from Occupational Medicine (Denise Jeandell, PA-C) indicating that you will need permanent accommodation in order to continue in your position of Deputy First Class in the Sheriff's Office. Specifically the notes indicate that you require an environment not less than 70 degrees Farenheit [*sic*], and/or the ability for you to wear heated gloves during weather colder than 70 degrees.
>
> Unfortunately based on the nature of your position, we would be unable to permanently accommodate you in a position that could guarantee a 70 degree environment. However, we are willing to accommodate your use of heated gloves, as long as you can qualify at the shooting range with the gloves on. If you would like to pursue this option, please let us know when you have purchased the gloves, so that we can schedule the appointment at the range.
>
> Another option that we have discussed is offering you a voluntary transfer to the Detention Center as a Correctional Officer. The environment in the detention center would allow a greater opportunity for you to be in the controlled temperature that you require, although it is impossible to guarantee that the temperature will always remain at or about 70 degrees Farenheit [*sic*]. If you were to choose that option, you would need to give us

> a formal written request, and as part of that move your salary and job title would change from DFC – Law Enforcement $53,976 (Grade 3 LU Step 9) to Deputy – Corrections $51,106 (Grade 2C Step 16), and you would need to complete the Correctional Academy.
>
> If none of the above options are viable, we could then offer to discuss your applying for a non-service connected disability retirement under the Public Safety Pension Plan. If this option becomes something you would like to pursue, please contact our office and we will schedule a meeting to discuss this process with you.
>
> We certainly hope that we can reach an agreeable accommodation that will enable you to continue to be a productive member of County Government, and we look forward to meeting with you on Thursday at 1:00 p.m. in the Sheriff's [O]ffice to discuss these options further.

Following that meeting, Ms. Nichols memorialized their discussion in the following letter, dated December 14, 2012:

> Dear Mr. Davis:
>
> As you are aware, we met with you on November 8th 2012 to discuss accommodations relative to your medical condition and physician's recommendations. At that meeting we discussed an alternate work assignment at the Detention Center as well as you trying to satisfy the State's weapons qualifications for law enforcement officers while wearing gloves. To date, the gloves that you have tried have not worked for you to successfully qualify with a weapon, which is a requirement of the position of deputy sheriff. You have also indicated that you are not interested in transferring to the Detention Center.
>
> This letter is to notify you that we will allow you up to December 28th 2012 to schedule and qualify at the range (if you can find another pair of gloves that you believe will work as you have indicated), but due to the fact that we do not have any other reasonable alternatives to accommodate your medical restrictions, if you are unable to qualify, we will be terminating your employment effective that date.
>
> This decision in no way will affect your ability to apply for non-service connected disability under the Public Safety Pension Plan.

Prior to receiving that letter, however, appellee filed the paperwork to officially apply for disability retirement under the Pension Plan on November 27, 2012, explaining that the numbness he experienced placed him in "extremely dangerous situations" where he was "unable to protect [him]self, [his] coworker[s], or citizens," because he was unable to use his standard issued equipment, including his gun, handcuffs, and Taser. Approximately one month later, unable to qualify with his firearm, appellee formally tendered his resignation on December 21, 2012, which was accepted by the County Sheriff on December 26, 2012, and was effective December 28, 2012.

Medical Advisory Board Proceedings

On September 19, 2013, Ms. Nichols, in her capacity as Secretary to the Board of Trustees, sent a "Medical Advisory opinion request" regarding appellee's Application to the Board of Trustees' appointed Medical Advisory Board ("MAB")—the first step in the administrative review process. In that letter, the MAB was told, "[a]s a reminder," of the following "rights and responsibilities," which tracks, verbatim, the pertinent language of Pension Plan § 3.4(b)(1):

> The Medical Advisory Board shall be composed of three (3) physicians appointed by the Board of Trustees. The Medical Advisory Board may consult with specialists from time to time as it deems necessary. The Medical Advisory Board shall conduct such inquiry as it deems necessary and proper under the circumstances, including a medical examination of the Participant by one or more members of the Medical Advisory Board, or by a physician or physicians selected for that purpose by the Medical Advisory Board, as the Medical Advisory Board deems necessary in order to give the Disability Review Board a written opinion with regard to the nature, cause, degree of permanence and effect of the alleged impairment.

According to the Board of Trustees, attached to that letter was (1) appellee's Application, (2) appellee's job description, and (3) appellee's medical records, which consisted of a series of four clinical notes from the specialists from Hopkins that documented the doctors' examinations, diagnosis, and treatment of appellee's condition in the year leading up to his request for accommodations.

On October 5, 2013, Dr. Ashok Subramanian, writing on behalf of the other two members of the MAB, issued the following statement, recommending denial of appellee's Application:

> Dear Board of Trustees:
>
> Upon review of the documentation provided regarding the application for permanent disability benefits for Robert M. Davis, we are unanimous in our denial of the request. While Mr. Davis surely experiences discomfort from his Reynaud's syndrome, there exists no evidence to suggest the presence of more systemic rheumatologic disease. Furthermore, it is evident that alternate work arrangements that optimize environmental variables for his condition are available.

According to appellee, the MAB came to this conclusion without an actual examination by either one of its members or a selected physician on its behalf. No other member signed or initialed the letter, other than Dr. Subramanian. The only record of the other members' decisions appears in an unsigned check-box review form, with the binary options of non-service connected disability benefits being "Recommended" or "Denied," which was provided to the MAB by Ms. Nichols.

Disability Review Board Proceedings

Later that month, the Disability Review Board ("DRB") convened on October 30, 2013, regarding appellee's application. Following the meeting, the DRB issued a written opinion, signed by all three members of the DRB, that stated, in pertinent part:

> Following a review of the recommendations of the Medical [Advisory] Board it was determined by the Disability Review Board that the disability is not service connected. Therefore, it is the [Disability Review] Board's recommendation that the applicant's application for non-service connected disability is hereby denied.

Based on that recommendation, the Chairman of the Board of Trustees, Craig W. Whiteford, sent appellee a letter on November 5, 2013, informing him of the Board of Trustees' decision to deny his Application, and his right to appeal that decision and to designate an "authorized representative" to act on his behalf in those proceedings. Appellee exercised these rights two weeks later.

Appeal Proceedings in Front of the Board of Trustees

A hearing on the appeal was eventually held on June 11, 2014, in front of all nine members of the Board of Trustees and a Board-appointed hearing examiner. Rather than arguing the merits of the case, the majority of the hearing was spent discussing the adequacy of the record itself, which was reflected in the hearing examiner's June 20, 2014, written recommendations to the Board of Trustees, wherein he recommended to the Board that the appeal be denied:

> The central issue in this case appeared to be the County's offer to Mr. Davis to transfer him to a position in the Sheriff's [O]ffice as a correctional officer. It was alleged that this position would be largely indoors and relieve Mr. Davis of the problems arising out of work in a cold environment. As far as can be gleaned from the record in this case, Mr. Davis rejected this

transfer. At the hearing, Mr. Davis disputed whether or not the correctional officer position would, at all times, be performed in a warm environment. However, this was not in the record that the Disability [Review] Board considered in making its determination. In addition, there was no reliable evidence establishing exactly what the pros and cons of the correctional officer might be. The record simply supported the conclusion that [a] transfer to this position was offered by the [C]ounty and rejected by Mr. Davis.

Unfortunately, the record upon which [the] Disability [Review] Board relied in making their determination to accept the recommendation of the Medical Advisory Board was not rich in detail or explanation, perhaps because Mr. Davis was unrepresented during that part of the process. Unfortunately for Mr. Davis, the dearth of record evidence does not make the Disability [Review] Board's determination arbitrary and capricious. The Board followed their legally established procedure and justifiably put their trust in the unanimous findings of the Medical Advisory Board. In retrospect, it would have been better had the details regarding Mr. Davis's inability to qualify with his service weapon and Mr. Davis's reasons for not accepting the correctional officer [position] been more fully explored. However, Mr. Davis could have offered these details himself to the Board and urged further investigation. Regrettably, this never happened.

After review of the record as a whole, the Hearing Examiner believes the Disability [Review] Board appropriately relied upon the findings of the Medical Advisory Board in denying Mr. Davis's application for disability retirement. The Hearing Examiner believes it is unfortunate that more vigorous efforts were not made to determine whether the use of some accommodation could have permitted Mr. Davis to remain in the Sheriff's position, or whether or not Mr. Davis's condition would have permitted him to fulfill the duties of a correctional officer. The Examiner is left with a record that simply establishes that Mr. Davis declined to transfer to the correctional officer position, which seemed a reasonable option. Left with that decision, the Board reasonably relied on the record before them to decide the matter.

The Hearing Examiner believes that the Disability [Review] Board has it within its power to reopen this proceeding to obtain more evidence regarding the issues which this decision highlights. However[,] the Hearing Examiner cannot find the Board's decision in this matter to be arbitrary or capricious based on the record as a whole. Accordingly, it is the recommendation of the undersigned that Mr. Davis's appeal be denied.

Based on that recommendation, the Board of Trustees decided to uphold the DRB's denial of benefits and informed appellee of its decision in a letter dated July 2, 2014.

Circuit Court Proceedings

After appellee petitioned for judicial review, a hearing was held in the circuit court on July 7, 2015. After hearing arguments from both sides, the circuit court decided to "vacate the decision of the Disability [Review] Board and remand this matter to the Disability and Medical Boards for further proceedings consistent with the Pension Plan." The court based its decision on two main findings.

First, the court noted that, "reading [Ms. Nichols' November 5, 2013 letter and the Pension Plan], it doesn't seem to be – his ability to apply for this non-service related disability doesn't seem to be dependent on him accepting or attempting either of these options that are laid out by the [C]ounty," and therefore the County likely erred in denying him benefits for not pursuing either accommodation. Second, the circuit court noted that Dr. Subramanian's October 5, 2013, letter "does not meet the requirements of [Pension Plan] Section 3.4(b)(1), which requires a written opinion outlining the nature, cause, degree of performance and effect of the alleged impairment from the Medical Advisory Board."

Accordingly, the circuit court remanded the matter to the DRB, explaining that it

> just [didn't] see any findings of fact in here by either the doctors and/or the Disability Review Board for the court to be able to say for sure why they denied this gentleman's application.
>
> So for those reasons the court's going to remand it back, and hopefully we can have findings of fact to even – to support their decision – whatever they support – and decision [*sic*] may be on remand.

That same day, the circuit court entered an order consistent with those findings, vacating the denial of the Application and remanding to the "[County's] Disability Board and Medical Board for further proceedings consistent with this [c]ourt's opinion." The following day, appellee sent a letter to the court with a proposed "Amended Order that is more consistent with the opinion [it] rendered from the bench at [the] hearing yesterday in this matter than the Order submitted with the [appellee]'s Memorandum." On July 9, 2015, the court filed the Amended Order, which was identical to the first, but added that the case was being remanded to the "[County]'s Disability Board and Medical Board *for a de novo hearing on the merits and* further proceedings consistent with this [c]ourt's opinion." (Emphasis added). The Board of Trustees subsequently noted a timely appeal to this Court.

DISCUSSION

I. CIRCUIT COURT'S DECISION TO VACATE AND REMAND FOR *DE NOVO* HEARING

A. Parties' Contentions

The Board of Trustees argues that the circuit court erred in remanding the matter for a *de novo* hearing on the merits because the court "not only may not evaluate the evidence in the record seeking support for a different conclusion, but also may not reach back for more factual investigation [*sic*] when, logically, the only reason for such an inquiry would be to reconsider the correctness of the Board of Trustees' decision . . . ." The Board of Trustees contends that "[i]t is clear from the transcript that [the court] believed that the [appellee] must simply prove that he was disabled as a Deputy Sheriff First Class[] . . . ." However, according to the Board of Trustees, "that is not supported by the record," because the Board believes the Pension Plan "calls for permanent disability within a class of

employees, public safety, under the plan." Rather, the Board of Trustees insists that the MAB's decision was sound, and that the DRB "may reasonably rely upon and incorporate the MAB's decision into the basis for denial [*sic*]." The Board concludes that the court's decision to vacate and remand the matter was "legal error" and an "abuse [of] discretion" because "when viewing the record in its entirety," the Board of Trustees' decision was supported by substantial evidence.

In its reply brief, the Board of Trustees briefly argues that "[t]he [a]ppellee not only desires this Court to take judicial notice of a job description which [*sic*] is not contained in the record, but implores this Court to make inferences of fact from it which is [*sic*] beyond the scope of this Court's discretion under Maryland Rule 2-501."

Appellee argues that the Board of Trustees cites no authority for its interpretation of the Pension Plan's application to either every public safety job or just the participant's current job, and further argues that, in any event, the Board's interpretation of the circuit court's reasoning is incorrect. Appellee next asserts that the Board of Trustees has erected a "strawman" regarding appellee's failure to apply for the correctional officer job because, while not in the record, the correctional officer job qualifications are "the very same ones the [a]ppellee failed to meet . . . in his current position." Appellee concludes by arguing, generally, that the circuit court did not err in remanding the matter because the Board of Trustees' decision was "not only not supported by substantial evidence, but [was] premised on erroneous conclusions of law."

B. Standard of Review

We review a circuit court's decision to remand a case to the administrative agency for additional fact-finding under an abuse of discretion standard. *See Johnson v. Criminal Injuries Comp. Bd.*, 145 Md. App. 96, 116 (2002) ("We are therefore persuaded that Judge Byrnes neither erred nor abused his discretion when he remanded the case to the Board for additional fact finding."); *Juiliano v. Lion's Manor Nursing Home*, 62 Md. App. 145, 156-57 (1985) (holding that the circuit court's remand order was an abuse of discretion because "it had not yet determined whether the evidence supported the agency findings."). "A trial court only 'abuses its discretion when it acts without reference to any guiding principles or rules of law or where no reasonable person would take the view adopted by the court.'" *Bartlett v. Portfolio Recovery Assocs., LLC*, 438 Md. 255, 273 (2014) (citation omitted).

C. Analysis

Neither party disputes that the core issue in this case is the sufficiency, *vel non*, of the record used by the hearing examiner and the Board of Trustees in rendering the decision to deny disability benefits to appellee. Every other issue—such as the availability (and details) of the correctional officer position, appellee's reasons for apparently not pursuing it, and the circumstances surrounding appellee's supposed inability to qualify at the shooting range with the warming gloves—stems from the dearth of evidence before each reviewing body, from the hearing examiner to this Court. In pursuit of a resolution, the hearing examiner and the circuit court took two contrasting routes. The hearing examiner, like the Board of Trustees, lamented the situation and sympathized with appellee, but felt obligated to make a finding on the record as presented. The circuit court, like appellee, felt

the lack of evidence ipso facto demonstrated the need for a remand for additional fact-finding. However well-intentioned the circuit court's reasoning may be, we believe the circuit court's decision to remand was in error.

In this case, judicial review of the agency's decision is governed by § 10-222 (1984, 2014 Repl. Vol.) of the State Government Article ("SG").[2] Section 10-222 enables the reviewing court to remand the case in two situations, both of which generally depend on the timing of the order. The first, § 10-222(f), provides:

> (f) *Additional evidence before agency*.—(1) Judicial review of disputed issues of fact shall be confined to the record for judicial review supplemented by additional evidence taken pursuant to this section.
>
> (2) The court may order the presiding officer to take additional evidence on terms that the court considers proper if:
>
> (i) before the hearing date in court, a party applies for leave to offer additional evidence; and
>
> (ii) the court is satisfied that:
>
> 1. the evidence is material; and
>
> 2. there were good reasons for the failure to offer the evidence in the proceeding before the presiding officer.
>
> (3) On the basis of the additional evidence, the final decision maker may modify the findings and decision.
>
> (4) The final decision maker shall file with the reviewing court, as part of the record:
>
> (i) the additional evidence; and
>
> (ii) any modifications of the findings or decision.

[2] Unless otherwise noted, all statutory references that follow refer to the State Government Article.

The other, § 10-222(h), provides:

> (h) *Decision*.—In a proceeding under this section, the court may:
>
> (1) remand the case for further proceedings;
>
> (2) affirm the final decision; or
>
> (3) reverse or modify the decision if any substantial right of the petitioner may have been prejudiced because a finding, conclusion, or decision:
>
> (i) is unconstitutional;
>
> (ii) exceeds the statutory authority or jurisdiction of the final decision maker;
>
> (iii) results from an unlawful procedure;
>
> (iv) is affected by any other error of law;
>
> (v) is unsupported by competent, material, and substantial evidence in light of the entire record as submitted; or
>
> (vi) is arbitrary or capricious.

As the Court of Appeals has noted, the critical distinction between the two provisions is that the former, § 10-222(f), is triggered upon motion by a party *before* the court has conducted any judicial review, and the latter, § 10-222(h), is triggered *after* the court conducted judicial review and assessed the agency's decision. *See, e.g.*, *Metro Maint. Sys. South, Inc. v. Milburn*, 442 Md. 289, 305-07 (2015).

The difficulty presented by the circuit court's remand in this case is that the court remanded the case for taking additional evidence *after* considering the merits of the case, which means the remand was ordered pursuant to § 10-222(h), but essentially for the purposes of § 10-222(f). Were the remand to have been ordered before the hearing,

pursuant to the procedures enumerated in § 10-222(f), this appeal likely would have been dismissed as a non-final, non-appealable judgment, because the circuit court would not have been "divested of its continuing jurisdiction over the case." *Anne Arundel Cty v. Rode*, 214 Md. App. 702, 715 (2013). However, because no motion was made before the hearing and the court remanded the matter *after* considering the merits, we examine this case through the lens of a decision rendered pursuant to § 10-222(h).

While the circuit court obviously made a concerted effort to avoid explicitly rendering a decision in favor of either party, we believe the decision it made was in error because it does not appear that the circuit court was reviewing the correct agency's decision. "[I]t is the function of the court on judicial review of an agency's action to review the 'final decision' in a contested case." *Mehrling v. Nationwide Ins. Co.*, 371 Md. 40, 60 (2002) (quoting § 10-222(a)(1)). Based on its remarks at the hearing and its subsequent order, the circuit court was clearly evaluating the decisions of the MAB and the DRB, but for the purposes of this case, the "final decision" was that of the Board of Trustees denying appellee's appeal based on the recommendations of the hearing examiner.

Put another way, the circuit court should have decided whether the Board of Trustees' final decision was supported by the evidence provided to its two subordinate decision making bodies, rather than independently evaluating those bodies' decisions themselves. A reviewing court is tasked with deciding whether an agency's decision is supported by substantial evidence, and, in so doing, "[i]t is the function of the reviewing court to review only the materials that were in the record before the agency at the time it made its final decision." *Dept. of Labor v. Boardley*, 164 Md. App. 404, 415 (2005). Here,

the court was presented with the record that was before both the hearing examiner and the Board of Trustees, and, while imperfect, the record still contained *some* evidence. As a result, the court attempted to draw its own inferences and substituted its judgment for that of the Board of Trustees, thus abusing its discretion in remanding the matter to the DRB for a *de novo* hearing.

II. CORRECTNESS OF THE BOARD'S DECISION TO AFFIRM THE DENIAL OF BENEFITS

A. Parties' Contentions

The thrust of the Board of Trustees' argument is that the Board's decision was supported by substantial evidence and that the hearing examiner correctly applied the law. Therefore, the Board asserts the circuit court overstepped its authority by disturbing that decision. The Board of Trustees contends that the burden was on appellee to prove that he qualified for disability benefits under the plan, so any deficiency in the record must be attributed to him. The Board asserts that it "should not be forced to re-visit this issue," because it provided appellee with a reasonable accommodation, and appellee had "sufficient opportunity" to accept that accommodation and to later supply evidence to support his claim for benefits. Essentially, the Board of Trustees concedes, albeit implicitly, that the record may be wanting, but, based on the record as it was presented to the Board, argues there was sufficient evidence to support its decision to deny appellee disability benefits.

In response, appellee first argues that the DRB's denial was premised upon an erroneous conclusion of law because "[t]here is no dispute that the [a]ppellee's disability was a non-service connected disability." The appellee contends that, "[s]ince the [DRB]'s

denial of the . . . Application was based upon the sole finding that his disability was 'non-service connected,' the denial is not sustainable on the [DRB]'s findings or stated reasons." Appellee next argues that the MAB's decision was premised on an erroneous conclusion of law because its recommendation "contains no opinion regarding the nature, cause, degree of permanence[,] . . . [or] effect of the [a]ppellee's impairment," which was statutorily required. Appellee then examines Dr. Subramanian's letter in great detail, arguing that it did not provide substantial evidence for the denial of appellee's benefits, and that "a reasoning mind could not have reasonably denied . . . the Application" based on that letter. Appellee discusses, also at great length, the alternative work arrangements offered by the County, and argues that, "[e]ven though judicial notice was mandated by Maryland Rule 5-201(d), the lower court refused to take notice of the [correctional officer] job description," which he believes would show that the accommodation was not a reasonable alternative.

B. Standard of Review

As the Court of Appeals has explained, our scrutiny following judicial review of an administrative agency decision is "well-known":

> Each reviewing court must "look through" the judgments of the preceding reviewing courts, and examine the agency's decision. The reviewing court's role is narrow, as "it is limited to 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." *Maryland Aviation Admin. v. Noland,* 386 Md. 556, 571, 873 A.2d 1145 (2005) (quoting *Bd. of Physician Quality Assurance v. Banks,* 354 Md. 59, 67–69, 729 A.2d 376 (1999)) (internal quotation mark omitted). In applying the test for substantial evidence, the reviewing court "decides whether a reasoning mind reasonably could have reached the factual conclusion the agency reached." *Id.* (internal quotation mark omitted). The

> reviewing court defers to the agency's factual findings, if supported by the record. *Id.* The reviewing court, moreover, "must review the agency's decision in the light most favorable to it; . . . the agency's decision is prima facie correct and presumed valid, and . . . it is the agency's province to resolve conflicting evidence and to draw inferences from that evidence." *Id.* (alteration in original) (internal quotation mark omitted).
>
> With respect to the agency's conclusions of law, a certain amount of deference may be afforded when the agency is interpreting or applying the statute the agency itself administers. *Dep't of Human Resources v. Hayward,* 426 Md. 638, 650, 45 A.3d 224 (2012) (quoting *Marzullo v. Kahl,* 366 Md. 158, 172, 783 A.2d 169 (2001)); *Dep't of Natural Resources v. Heller,* 391 Md. 148, 166, 892 A.2d 497 (2006). "We are under no constraint, however, 'to affirm an agency decision premised solely upon an erroneous conclusion of law.'" *Thomas v. State Ret. & Pension Sys.,* 420 Md. 45, 54–55, 21 A.3d 1042 (2011) (quoting *Ins. Comm'r v. Engelman,* 345 Md. 402, 411, 692 A.2d 474 (1997)); *see Marsheck v. Board of Trustees of the Fire & Police Employees' Ret. Sys.,* 358 Md. 393, 402, 749 A.2d 774 (2000).

Employees' Ret. Sys. of the City of Baltimore v. Dorsey, 430 Md. 100, 110-11 (2013).

C. Analysis

As an initial matter, we pause to reiterate which of the several decisions that were made in this case we are now reviewing, as well as the proper scope of that review. Rather than engage in a step-by-step analysis of each of the County medical boards' decisions to determine their correctness, as appellee would have us do, our job is instead to review the "final" decision in this case—again, the decision of the Board of Trustees to deny appellee's appeal based on the recommendations of the hearing examiner—to determine (1) whether that decision was based on substantial evidence found solely in the record as it appeared before the Board of Trustees on the day of the hearing, June 11, 2014, and (2) whether the Board of Trustees' determination was arbitrary and capricious. *See Washington Suburban Sanitary Com'n v. Lafarge North America, Inc.*, 443 Md. 265, 284

(2015) ("A court reviewing an agency decision must decide, based on whatever the record reveals, whether the agency's decision is supported by 'substantial evidence' and whether the discretionary determinations of the agency may be maintained in the face of the 'arbitrary and capricious' standard."). While the circuit court declined to make such a determination, we hold that, based on the record before it, the decision of the Board of Trustees to deny appellee's disability benefits was supported by substantial evidence and was not made arbitrarily or capriciously. We explain.

In our view, the hearing examiner perfectly summed up both the record before him and the problems it posed in the following paragraph of his written recommendations:

> Unfortunately, the record upon which [the] Disability [Review] Board relied in making their determination to accept the recommendation of the Medical Advisory Board was not rich in detail or explanation, perhaps because Mr. Davis was unrepresented during that part of the process. Unfortunately for Mr. Davis, the dearth of record evidence does not make the Disability [Review] Board's determination arbitrary and capricious. The Board followed their legally established procedure and justifiably put their trust in the unanimous findings of the Medical Advisory Board. In retrospect, it would have been better had the details regarding Mr. Davis's inability to qualify with his service weapon and Mr. Davis's reasons for not accepting the correctional officer [position] been more fully explored. However, Mr. Davis could have offered these details himself to the Board and urged further investigation. Regrettably, this never happened.

The record showed that the MAB, based on its statutorily mandated procedure in Plan § 3.4(b)(1), "conduct[ed] such inquiry as it deem[ed] necessary and proper under the circumstances," which, in this case, involved reviewing the documentation provided with appellee's application, including his own doctors' notes, and not conducting an actual physical examination. From its inquiry, the MAB concluded that, "[w]hile Mr. Davis surely experiences discomfort," the Application should be denied because "there exist[ed] no

evidence to suggest the presence of a more significant systemic rheumatologic disease." Put differently, the MAB acknowledged the condition and its likely effect on appellee, but, in its members' medical opinions, appellee's Reynaud's was not the type of "disability" contemplated by the Plan, be it service- or non-service related. In turn, the DRB relied on that opinion, which it was entitled to do. Thus, on the record it was presented with, it cannot be said that the Board of Trustees' decision was made in error.[3]

We also disagree with appellee's interpretation of the judicial notice rule. Appellee requests that this court take judicial notice of the job description for the Deputy-Corrections position that was offered to him as an alternate work arrangement. Judicial notice is governed by Maryland Rule 5-201, under which an appellate court is given discretion, not mandated, to take judicial notice of a fact. Md. Rule 5-201(a). Rule 5-201(b) provides:

> (b) Kinds of Facts. A judicially noticed fact must be one not subject to reasonable dispute in that it is either (1) generally known within the territorial jurisdiction of the trial court or (2) capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned.

Appellee argues that the job description, which is readily accessible through the county's website, provides this Court with the basis for finding that the MRB's conclusion regarding alternative work arrangements is not supported by substantial evidence. We find this argument problematic. The Court of Appeals has opined that while the court may travel

[3] To be sure, we do not dispute that both the Medical Advisory Board's and Disability Review Board's opinions certainly left something to be desired. The Medical Advisory Board's opinion could have tracked the statutory language more closely (*i.e.*, explaining the "nature, cause, degree of permanence and effect of the alleged impairment"), and the Disability Review Board could have avoided potential ambiguity with a more artfully worded opinion. But that does not by itself render the Board's decision void.

outside the record and take judicial notice, an appellate court should reserve that discretion for the exceptional case. *Dashiell v. Meeks*, 396 Md. 149 (2006). The Court noted:

> While we understand Dashiell's strategic desire to have the matter resolved with finality before the State's highest Court, we are not a trial court. Were we to go outside the record of the malpractice claim in the name of justice and decide factual matters that could have been before the trial court, we would be circumventing the judicial system and, in so doing, denying the very justice the parties seek.

Id. at 179. We find this reasoning to be incredibly applicable to the present case. Therefore, it is not appropriate for this court to take notice of the correctional officer job description.

CONCLUSION

In summation, we find that the circuit court erred in remanding the Board of Trustees' final decision to deny appellee's appeal to the DRB for a *de novo* hearing. While we acknowledge that the record presented to the circuit court was imperfect, we believe that the circuit court had sufficient evidence upon which to review the Board's decision without remanding the matter for additional fact finding. Further, we hold that, based on the record before it, which contained the MAB members' medical opinions, the Board's final decision was supported by substantial evidence and was not made arbitrarily or capriciously.

JUDGMENT OF THE CIRCUIT COURT FOR CECIL COUNTY VACATED. CASE REMANDED TO THE CIRCUIT COURT FOR CECIL COUNTY WITH INSTRUCTIONS TO AFFIRM THE ADMINISTRATIVE DECISION. COSTS TO BE PAID BY APPELLEE.