Circuit Court for Baltimore City
Case Nos. 24-C-16-003542; 3602

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2024

September Term, 2016

BRADLEY LEVAR BURTON

v.

MARYLAND INSURANCE ADMINISTRATION

Eyler, Deborah S.
Friedman,
Wilner, Alan M.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Friedman, J.

Filed: January 12, 2018

The Commissioner of the Maryland Insurance Administration ("the MIA") found that Appellant Bradley Levar Burton committed insurance fraud by knowingly giving false information when applying for life and disability insurance. Burton appeals, contesting the sufficiency of the evidence supporting the Commissioner's decision. We affirm.

BACKGROUND

In August of 2014, Burton applied for life and disability insurance through the Northwestern Mutual Insurance Company. As part of the application process, Burton was required to complete a medical questionnaire and provide blood and urine samples. A paramedical examiner, Patricia Collins, met Burton at his Baltimore home. She collected the samples and conducted the questionnaire by asking Burton questions and recording the answers on her laptop computer. Collins marked the following questions with the notation that Burton had answered "no":

> 4(a) Have you ever sought, received, or been advised to seek treatment, counseling, or participation in a support group for the use of alcohol or drugs?
>
> 4(b) Have you ever been advised to reduce or discontinue the use of alcohol?

These answers were false. In March of 2010, Burton had pleaded guilty in the United States District Court for the District of Maryland to driving under the influence of alcohol. The federal District Court accepted his guilty plea and, as a condition of his probation, ordered Burton to complete an alcohol addiction treatment program in which he had preemptively enrolled.

In a follow-up telephone interview with Northwestern, Burton was asked again

whether he had received treatment for abuse of alcohol. Burton disclosed the 2010 arrest and the alcohol treatment program to the interviewer, who made the following note:

> Recom[m]endation by attorn[e]y *but not a court order*. Treatment program- weekly group session for a few mo[nth]s

(emphasis added). This, too, was false, as described above.

When Northwestern discovered the falsehood, it referred the matter to the MIA. The MIA investigated and concluded that Burton, by answering falsely, had committed insurance fraud. Burton requested a hearing before the Commissioner. At the hearing, Burton asserted his rights against self-incrimination and refused to testify. After the two-day hearing, the Commissioner found that Burton had committed insurance fraud by answering "No" to each of the two questions and fined him $3,250. Burton sought judicial review in the Circuit Court for Baltimore City, which affirmed the Commissioner's finding. Burton noted this timely appeal.

DISCUSSION

> It is a fraudulent insurance act for a person … knowingly or willfully to make a false or fraudulent statement or representation in or with reference to an application for insurance.

Md. Code Insurance ("IN") § 27-406(1). An individual may be subject to a civil penalty if the Insurance Commissioner finds by clear and convincing evidence that he or she has committed insurance fraud. IN § 27-408. [1]

[1] At oral argument, Burton's attorney asserted for the first time that there was no subject matter jurisdiction because the statute did not apply to individuals. Burton supported this assertion by citing a list found in the same subtitle that did not include

When reviewing the decision of an administrative agency, "we look through the decision of the circuit court and review that agency action directly." *Garrity v. Md. State Bd. of Plumbing*, 447 Md. 359, 368 (2016). We review the agency's findings for whether there is substantial evidence in the record to support the agency's action. *Id.* Our review of the MIA's factfinding is highly deferential, and "we construe the evidence … in a light most favorable to the agency." *Armstrong v. Mayor and City Council of Baltimore*, 410 Md. 426, 444 (2009).

Burton challenges the Commissioner's finding on the grounds that there was insufficient evidence to support it. Burton argues specifically that there was no evidence to prove that he actually was asked questions 4(a) and 4(b) of the questionnaire, or that he knowingly or willfully provided the false answers. He further argues that the Commissioner erred by relying solely on the negative inference of his refusal to testify when there was no other substantial evidence against him.

There was sufficient evidence to support the Commissioner's finding that Burton had given false answers to questions 4(a) and 4(b). At the hearing, the Commissioner heard testimony from Collins, her supervisor, the MIA investigator, and Northwestern's investigator, and received 27 exhibits regarding Burton's interview. We defer to the finder of fact, here, the Commissioner, in weighing the credibility and weight of evidence. *Finucan v. Md. State Bd. of Physician Quality Assur.*, 151 Md. App. 399, 420-21 (2003).

individuals. IN § 27-402. The cited-to list, however, is a list of entities that are analogous to insurers for the purposes of insurance fraud law, and not insureds or potential insureds. IN § 27-406, the statute Burton was charged with violating, refers to "persons," the definition of which includes individuals. IN § 1-101(dd).

The Commissioner found Collins to be a credible witness and relied heavily on her testimony in forming his decision that Burton was asked questions 4(a) and 4(b), and that Burton gave false answers to them. Collins testified about the standard course of these interviews, and specifically recalled interviewing Burton. This testimony was supported by the testimony of Collins' supervisor. The Commissioner found, based on Collins' testimony and the documentation of the questionnaire and subsequent telephone interview, that Burton had electronically signed the questionnaire and thus ratified the false answers. *See* Md. Code Commercial Law § 21-108(b) (whether an e-signature is attributed to a person is based on the "context and surrounding circumstances at the time of its creation"). This evidence is more than sufficient to support the Commissioner's conclusion.

This evidence similarly supports the Commissioner's finding that Burton gave the false answers knowingly or willfully. Burton knew his own history when answering the questionnaire. The Commissioner noted that Burton provided a different, though similarly false, answer during the telephone interview. The Commissioner believed that this showed Burton knew his answers to be false, and there is nothing in the record to indicate that this was an unreasonable conclusion.

Moreover, in such a quasi-judicial civil proceeding, an agency may draw a negative inference when a party refuses to testify, even when that party is asserting his or her rights against self-incrimination. *Whitaker v. Prince George's County*, 307 Md. 368, 386 (1986). Here, the Commissioner did draw a negative inference from Burton's refusal to testify and Burton concedes that the Commissioner was entitled to do so. While Burton argues that the Commissioner's decision was based solely on this negative inference, the record shows

that the Commissioner considered other evidence along with the inference:

> [B]ased on the *documentary evidence presented, the testimonial evidence*, and the inference afforded me by Respondent's refusal to testify about his treatment program, I find by clear and convincing evidence that Respondent knowingly made false representations.

(emphasis added). The Commissioner did not err in drawing the inference.

Although Burton urges us to adopt his interpretation of the evidence, we construe evidence "in a light most favorable to the agency." *Armstrong*, 410 Md. at 444. Doing so, the record contains sufficient evidence to support the Commissioner's finding that Burton gave false answers to questions 4(a) and 4(b), and that he did so knowingly, and Burton has not convinced us that any mistake was made.[2] That Burton may not have appreciated the consequences of his answers does not change this result. We affirm.

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

[2] Burton raises several arguments that the Commissioner wrongly interpreted the evidence. For example, Burton's counsel makes much of a time stamp that shows that the questionnaire was e-signed at 2:02 pm Central Daylight Time, or 3:02 pm Eastern Daylight Time. Collins testified that she believed the interview began at 1 pm, and that the interviews normally took one hour. This being the case, Burton argues, it is likely that Collins never asked the questions and simply filled the questionnaire out herself later, not in the presence of Burton, at 3 pm. The Commissioner considered this theory and determined that the evidence proved no such thing. Timestamps from other parts of the interview show that the specimen samples, taken at the beginning of the interview, were taken at 2:10 pm Eastern Daylight Time. It appears that Collins simply misremembered the time the interview started, which was likely 2 pm. In any event, it was perfectly within the Commissioner's competence to resolve this, or any, factual dispute.