Circuit Court for Prince George's County
Case No. CAL21-16214

UNREPORTED

IN THE APPELLATE COURT

OF MARYLAND*

No. 2130

September Term, 2022

STEVEN DURITY

v.

PRINCE GEORGE'S COUNTY POLICE DEPARTMENT

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

JJ.

Opinion by Sharer, J.

Filed: December 12, 2023

*This is an unreported opinion. This opinion may not be cited as precedent within the rule of stare decisis. It may be cited for its persuasive value only if the citation conforms to Rule 1-104(a)(2)(B).

The Prince George's County Police Department ("PGPD") Administrative Hearing Board ("Board") found appellant, Steven Durity, guilty of violating provisions of the PGPD General Order Manual. After a meeting with Durity and his counsel, the PGPD Chief of Police ("Chief") issued a Final Disciplinary Action that increased Durity's penalty to employment termination. Durity petitioned for judicial review in the Circuit Court for Prince George's County, which affirmed the Chief's decision. Durity timely appeals to this Court and presents one question for our review:[1]

> Did the Chief's penalty increase comply with the procedural requirements in former Md. Code, PUB. SAFETY § 3-108(d)(5)(ii) and (iv)?[2]

For the reasons to follow, we conclude that the Chief did not err in increasing the penalty to employment termination. Thus, we shall affirm the judgment of the circuit court.

BACKGROUND

On April 24, 2020, Durity shared a social media post that contained a racial epithet on his Facebook page.[3] At that time, Durity was employed by PGPD as a police officer,

[1] Rephrased from:

> Did the Chief's decision to increase the AHB's disciplinary recommendation comply with the procedural requirements set forth in MD Code Ann., Public Safety § 3-108(d)?

[2] Unless otherwise noted, all references in this opinion to Md. Code, PUB. SAFETY §§ 3-101 to -113 are to the now repealed Law Enforcement Officers' Bill of Rights ("LEOBR"). The LEOBR was in effect at the time of the conduct at issue in this case. The General Assembly repealed and replaced the LEOBR with the "Maryland Police Accountability Act," effective July 1, 2022. *See* 2021 Md. Laws, ch. 59.

[3] Because Durity does not challenge the sufficiency of the evidence, we find that it is unnecessary to quote or otherwise reproduce the social media post that contained the racial epithet.

holding the rank of Corporal. Retired PGPD Captain Anthony Mills saw the post that Durity shared and reported Durity's conduct to PGPD. The matter was then forwarded to PGPD's Internal Affairs Division, and Sergeant Winston Wilson investigated the matter.

On June 2, 2020, Sergeant Wilson interviewed Durity. During the interview, Durity admitted that he was the owner of the Facebook account that contained the post at issue.

PGPD issued a Disciplinary Action Recommendation ("DAR") on September 28, 2020. The DAR administratively charged Durity with three violations of the PGPD General Order Manual: (Charge 1) Social Media Prohibitions, (Charge 2) Unbecoming Conduct, and (Charge 3) Use of Language. The DAR recommended termination of Durity's employment. On October 8, 2020, Durity elected to exercise his right to an administrative hearing under PUB. SAFETY § 3-107.

Following a hearing on September 20, 2021, the Board found Durity guilty of all three charges. After Durity presented evidence at a character hearing on September 28, 2021, the Board issued written findings of fact, conclusions of law, and a disciplinary recommendation for the Chief's consideration. The Board recommended that Durity receive a written reprimand for Charge 1, a demotion to the rank of Police Officer for Charge 2, and a $100 fine for Charge 3.

On October 22, 2021, the Chief sent a memorandum to Durity, which notified Durity that the Chief was "considering increasing the discipline recommendation" to termination of employment for all three charges. The Chief wrote to Durity: "I want to extend to you and your representative the opportunity to present in person, any facts, legal

arguments, or other information that you want me to consider prior to determining the final action to be taken."

On November 12, 2021, the Chief met with Durity and Durity's attorney. On November 16, 2021, the Chief issued a Final Disciplinary Action, which terminated Durity's employment effective at the close of business on November 19, 2021.

STANDARD OF REVIEW

The scope of judicial review of an administrative proceeding initiated by a county police department pursuant to the former Law Enforcement Officers' Bill of Rights is the scope of review that is '"generally applicable to administrative appeals."' *Coleman v. Anne Arundel Cnty. Police Dep't*, 369 Md. 108, 121 (2002) (further quotation marks and citation omitted) (quoting *Montgomery Cnty. v. Stevens*, 337 Md. 471, 482 (1995)). "When an administrative agency's decision is before this Court, we review the agency's decision; we do not review the circuit court's decision." *J.H. v. TidalHealth Peninsula Reg'l, Inc.*, 253 Md. App. 111, 119 (2021). When the appellant challenges the agency's findings of fact, our review is limited to determining whether the findings of fact were supported by substantial evidence in the administrative record. *Coleman*, 369 Md. at 121. Here, because there is no dispute of fact, we are faced with a "purely legal question." *Id*. at 122. Thus, we review this matter *de novo*. *Id*.

DISCUSSION

Durity claims that the Chief failed to comply with the procedural requirements in PUB. SAFETY § 3-108(d)(5)(ii) and (iv) when the Chief increased the penalty and ordered Durity's termination. PGPD argues that the procedural requirements of the statute were

satisfied because the Chief met with Durity before increasing the penalty and the Chief stated on the record the substantial evidence that he relied upon to increase the penalty.

First, Durity asserts that the Chief violated PUB. SAFETY § 3-108(d)(5)(ii) by improperly increasing the recommended penalty before meeting with Durity. In other words, he suggests that the Chief predetermined the outcome. We consider that assertion to be mere speculation as to the Chief's state of mind and find no support in the record. PUB. SAFETY § 3-108(d)(5)(ii) provided as follows:

> (5) The chief may increase the recommended penalty of the hearing board only if the chief personally:
>
> * * *
>
> (ii) meets with the law enforcement officer and allows the law enforcement officer to be heard on the record[.]

The Chief's October 22, 2021, memorandum to Durity stated that the Chief was merely "considering" increasing the recommended penalty of the hearing board. Indeed, the Chief "extend[ed] to [Durity] and [his] representative the opportunity to present in person, any facts, legal arguments, or other information" for the Chief "to consider prior to determining the final action to be taken." After that meeting with the Chief on November 12, 2021, the Chief issued the Final Disciplinary Action on November 16, 2021. Nothing in the record indicates that the Chief had determined the Final Disciplinary Action before he met with Durity and Durity's attorney. The plain language of PUB. SAFETY § 3-108(d)(5)(ii) did not prohibit the Chief from "considering" increased punishment before the meeting. Indeed, were the Chief not considering an increase in the sanction, a meeting would have been superfluous.

Next, Durity argues that the Chief violated PUB. SAFETY § 3-108(d)(5)(iv) because "the record is bereft of any mention of the substantial evidence that [the Chief] relied upon in reaching his decision to terminate Durity." PUB. SAFETY § 3-108(d)(5)(iv) provided as follows:

> (5) The chief may increase the recommended penalty of the hearing board only if the chief personally:
>
> * * *
>
> (iv) states on the record the substantial evidence relied on to support the increase of the recommended penalty.

On four occasions, the Chief stated on the record the substantial evidence that he relied on to increase the penalty. First, the Chief's October 22, 2021, memorandum to Durity noted as follows: "I have fully reviewing [sic] your past job performance, the entire record of the proceeding of the Administrative Hearing, the Board Report and considering all the facts surrounding the charges in which you were found guilty." Second, at Durity's meeting with the Chief on November 12, 2021, the Chief stated as follows:

> After reviewing your past job performance, the entire record of the proceedings from an administrative hearing board and the board report, and considering the facts surrounding the charges in which you were found guilty, the Chief is considering increasing the disciplinary recommendation as to Charge 1, Social Media Prohibitions, Charge 2, Unbecoming Conduct and Charge 3, Use of Language.

Third, during Durity's meeting with the Chief, the Chief noted that Durity's sharing of the social media post at issue "propagate[d]" the message in the social media post. Fourth, in the Final Disciplinary Action, the Chief stated as follows:

> I have fully reviewing [sic] your past job performance, the entire record of the proceeding of the Administrative Hearing, the Board Report and

> considering all the facts surrounding the charges in which you were found guilty, as well as met personally with you and your Attorney . . . on November 12, 2021.

Durity's reliance on *VanDevander v. Voorhaar*, is unpersuasive. 136 Md. App. 621 (2001), *abrogated on other grounds by Baltimore City Det. Ctr. v. Foy*, 461 Md. 627 (2018). In *VanDevander*, the Sheriff increased the hearing board's recommended penalty for a deputy's excessive force "so as to discharge the deputy from employment." 136 Md. App. at 624, 627. This Court held that the Sheriff failed to comply with all four requirements in the predecessor provision to PUB. SAFETY § 3-108(d)(5). *Id*. at 628-32.

Relevant here, we determined in *VanDevander* that the Sheriff violated the predecessor provision to PUB. SAFETY § 3-108(d)(5)(iv) because he failed to state on the record the substantial evidence relied on to support the increase of the recommended penalty. *Id*. at 631. We noted that the Sheriff expressed "his reliance on the administrative hearing board's finding of guilt[.]" *Id*. However, because we concluded that the hearing board's finding of guilt was not based on substantial evidence and was "otherwise contrary to law," the Sheriff's reliance on the hearing board's finding of guilt was insufficient to support an enhanced penalty. *Id*. *Cf. Rivieri v. Baltimore Police Dep't*, 204 Md. App. 663, 672 (2012) (holding that "*VanDevander* provides little guidance for determining whether a [chief's] decision to increase a punishment is based upon substantial evidence if the underlying findings of the trial board are uncontested"). By contrast, here, Durity is not challenging the Board's findings or conclusions. On this record, the Chief's decision to rely, in part, on the Board's findings was not erroneous. As outlined above, the Chief stated on the record the substantial evidence that he relied on to increase the penalty.

For all these reasons, the Chief complied with PUB. SAFETY § 3-108(d)(5)(ii) and (iv) when he increased Durity's penalty to employment termination.

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