

Circuit Court for Baltimore City
Case No. 24-C-17-005536

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 2232

September Term, 2018

TAMARA SOLLERS

v.

MARYLAND DEPARTMENT OF LABOR,
LICENSING, AND REGULATION

Nazarian,
Leahy,
Raker, Irma S.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: November 6, 2019

*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.

Tamara Sollers, appellant, was fired by her employer, Johns Hopkins Health Systems Corporation (Johns Hopkins), for violating the company’s policy on disruptive conduct. Initially, a claims specialist for the Maryland Department of Labor, Licensing, and Regulation (DLLR), appellee, determined that Ms. Sollers was entitled to unemployment benefits. Johns Hopkins appealed that decision and DLLR mailed a written notice to the parties at their respective addresses of record informing them that an evidentiary hearing would be conducted by telephone on May 31, 2017. Ms. Sollers failed to call in for that hearing as instructed in the notice. Based on the evidence presented by Johns Hopkins, the hearing examiner determined that Ms. Sollers had engaged in gross misconduct, as defined in § 8-1002 of the Labor & Employment Article, and therefore, that she was not entitled to unemployment benefits.

Ms. Sollers appealed the hearing examiner’s decision to the Board of Appeals (the Board); however, in that appeal, she did not address her failure to participate in the May 31 hearing. The Board affirmed the decision of the hearing examiner and specifically found no reason for a new evidentiary hearing or additional argument because appellant had “offer[ed] no explanation for her non-appearance at the Lower Appeals Division Telephone Hearing.” Ms. Sollers then filed a petition for judicial review in the Circuit Court for Baltimore City, wherein she claimed for the first time that she had not received the written notice of the May 31 hearing. The court affirmed the Board’s decision, finding that it was precluded from determining whether Ms. Sollers had good cause for not appearing at the May 31 hearing because she did not raise that issue before the Board. This appeal followed.

On appeal, Ms. Sollers asserts that her due process rights were violated because she did not receive sufficient notice of the May 31 hearing.¹ Our task in reviewing an administrative decision “is precisely the same as that of the circuit court: [] we must review the administrative decision itself.” *Wisniewski v. Dep’t. of Labor, Licensing and Regulation*, 117 Md. App. 506, 515 (1997) (citations omitted). In doing so, we only consider “the materials that were in the record before the agency at the time it made its final decision.” *Dep’t of Labor v. Boardley*, 164 Md. App. 404, 415 (2005) (internal citation omitted). Therefore, we “may not pass upon issues presented [] for the first time on judicial review that are not encompassed in the final decision of the administrative agency.” *Heath v. Campbell*, 364 Md. 108, 123 (2001).

When Ms. Sollers appealed to the Board, she never asserted that her failure to participate in the May 31 hearing was due to a lack of notice. Therefore, the Board did not have an opportunity to consider that claim before affirming the decision of the hearing examiner. Consequently, we will not address this issue for the first time on appeal. *See Boardley*, 164 Md. App. at 415-16 (holding that the circuit court erred in considering the appellant’s contention that he had good cause for failing to attend a DLLR hearing because he had not raised that claim in his appeal before the Board).

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

¹ Ms. Sollers does not contend that the Board’s finding of gross misconduct was not supported by substantial evidence. Therefore, we do not address that issue on appeal. *See Diallo v. State*, 413 Md. 678, 692-93 (2010) (“[A]rguments not presented in a brief . . . will not be considered on appeal.” (citation omitted)).