Circuit Court for Harford County
Case No. 12-C-16-1481

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2453

September Term, 2016

PAMELA DUNCAN GREEN

v.

MARYLAND STATE POLICE

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

JJ.

Opinion by Thieme, J.

Filed: February 20, 2018

On September 8, 2015, Pamela Duncan-Green, appellant, received notice that her employment with the Maryland State Police had been terminated. Appellant appealed that termination to the Office of Administrative Hearings, which, following a hearing, affirmed the termination. Appellant then noted an appeal in the Circuit Court for Harford County, which also affirmed. In this appeal, appellant presents the following question for our review, which we rephrase[1]:

> Did the Office of Administrative Hearings err in affirming the termination of appellant's employment?

For reasons to follow, we answer appellant's question in the negative and affirm the judgment of the circuit court.

BACKGROUND

At all times relevant, appellant was employed by the Maryland State Police ("MSP") as a Police Communications Officer. That employment was ultimately terminated following an incident that occurred at appellant's home on August 6, 2015. As a result of that incident, which will be discussed in greater detail *infra*, the MSP determined that appellant had violated several provisions of the Code of Maryland Regulations ("COMAR"), specifically, § 17.04.05.04.B(3) (bringing the State into disrepute); § 17.04.05.04.B(8) (engaging in conduct involving dishonesty, fraud, deceit, misrepresentation, or illegality); and, § 17.04.05.04.B(12) (insubordination). Appellant

[1] Appellant phrased the question as: "Whether the ALJ erred in failing to recognize that the Agency did not provide substantial, credible evidence such as to justify the instant termination, and whether the termination was effected by error of law such as to require reversal?"

noted an appeal of the termination to the Office of Administrative Hearings (the "Agency"), which held a hearing on that appeal on April 12, 2016.

At that hearing, Harford County Sheriff's Deputy Scott Rowe testified that, on August 6, 2015, he was tasked with serving a Writ of Body Attachment on appellant's adult son, Trayvon Lamont Duncan, whose address, according to the writ, was 3012 Trellis Lane in Abingdon, Maryland. That address, it was later determined, was appellant's home address. At approximately 1:30 p.m. on that date, Deputy Rowe went to appellant's residence to execute the writ and take her son Trayvon into custody.

Upon arriving at appellant's residence, Deputy Rowe knocked on the door. Deputy Rowe testified that he waited several minutes for someone to answer the door, during which he heard movement and voices emanating from inside the house and observed someone peeking out of a window. Although Deputy Rowe was not in uniform at the time, he did have his badge displayed and was wearing a vest with the word "sheriff" on it. Appellant eventually opened the door, at which time Deputy Rowe observed another individual, later identified as appellant's other adult son, Travis Duncan, standing "kind of in the background" behind appellant.

From his position on the home's front porch, Deputy Rowe informed appellant that he was there to execute a Writ of Body Attachment on her son, Trayvon, and that he needed to come inside and search the residence for him. Deputy Rowe asked appellant if Trayvon lived at the residence, and appellant responded that he had not lived there in over a year. Appellant, who remained inside of the home, also informed the officer that she was an employee of the Maryland State Police and that he "didn't have a right to come in and

search." Deputy Rowe testified that the conversation, which began as "cordial," ultimately "escalated" and that appellant became "very agitated" and "uncooperative." Deputy Rowe also testified that he did not believe appellant when she stated that her son Trayvon did not live at her residence.

At some point during the conversation, Deputy Rowe, believing that Trayvon was inside of the house, placed his foot on the top of the threshold of the front door. Appellant then "started to push the door shut," causing Deputy Rowe to be "kind of wedged." As she continued to push the door against Deputy Rowe, appellant "motioned" towards her other son, Travis, to "help her push the door shut." Travis responded by running into the front door, which caused the front door to close and Deputy Rowe to fall off the porch. According to Deputy Rowe, appellant then locked both locks of the front door.

After recovering from his fall, Deputy Rowe went back to the front door and advised appellant that her son, Travis, was under arrest. When appellant did not answer the door, Deputy Rowe radioed for several other units to respond to the scene to assist in a "barricade situation." According to Deputy Rowe, approximately ten officers, including several Maryland State Troopers, responded to the scene. Deputy Rowe also testified that "some people across the street" witnessed at least some part of the incident, although he did not specify when or for how long those witnesses were watching.

Eventually, one or more of the State Troopers who had responded to the scene went to the front of the home, and appellant opened the door and permitted the police to enter. Deputy Rowe then placed appellant's son, Travis, under arrest. The police then searched the home for appellant's other son, Trayvon, but he was not found to be inside of the home.

Although appellant was not arrested at that time, she was ultimately charged with, but not prosecuted for, several criminal offenses related to the incident.

Following the incident, Maryland State Police Detective Sergeant William McFarland was assigned to investigate. Detective McFarland testified that he spoke with Deputy Rowe, who informed the detective that, during his conversation with appellant on August 6, she identified herself as a member of the Maryland State Police. Detective McFarland explained that, because appellant was representing herself as a member of the State Police, she was expected to conduct herself "in a favorable manner."

Donald Lewis, the director of Human Resources for the Maryland State Police, testified that he was responsible for "disciplinary decisions" for the MSP and that, as part of that duty, he reviewed the case file compiled by Detective McFarland regarding the August 6th incident. Lewis testified that he became concerned about the incident because appellant identified herself as a member of the MSP and because her behavior ultimately led to criminal charges being filed against her.

Lewis further testified that, as part of his investigation, he reviewed two prior notices of disciplinary action issued by the MSP against appellant. In the first notice, which was issued on October 23, 2013, appellant was cited for insubordination after she ignored a direct order from her supervisor to stop placing "NCIC message stickers" on agency computers at the police barrack where she worked. In the other notice, which was issued on March 4, 2014, appellant was cited for several administrative violations after she used her personal vehicle to initiate a traffic stop of a police vehicle that she believed had been speeding and operating in an unsafe manner. Lewis testified that he made the decision to

terminate appellant's employment based on her actions on August 6 and her disciplinary and work history.

Appellant testified to the events of August 6, explaining that she had arrived home from work around 7:30 a.m. and was asleep by 1:30 p.m., at which time she was awoken by her 15-year-old son, who informed her that someone was at the front door. Appellant eventually answered the door and encountered Deputy Rowe, who asked appellant if her son Trayvon was home. When appellant told the officer that Trayvon was not there and that he had not lived there "for some time," Deputy Rowe stated that he had a warrant and that he needed to search the premises. After Deputy Rowe showed appellant the warrant, appellant informed the officer that she did not believe the warrant gave him the right to search her home. Appellant then told the officer: "You're not going to search my home."

Appellant testified that, when she tried to close the front door, Deputy Rowe "proceeded to try and prevent [her] from closing the door by pushing [the] door back open," so she asked her other son, Travis, to help her close the door, which he did. Appellant then locked the door and phoned the police. After a "few minutes," in which time the Maryland State Police had arrived on the scene, appellant opened her front door and permitted the Harford County police to enter her home and search for her son. Appellant admitted that, while she was waiting for the Maryland State Police to arrive at her door, there was another officer at her door "yelling at [her] to open the door or he would kick the door down."

Following the hearing, the Agency issued a written decision, finding that the MSP had failed to prove that appellant had violated either COMAR § 17.04.05.04.B(8) (engaging in conduct involving dishonesty, fraud, deceit, misrepresentation, or illegality)

or § 17.04.05.04.B(12) (insubordination). Regarding the former, the Agency found that appellant had not engaged in any "illegality" because the criminal charges against her were ultimately *nol prossed* by the State. As for the latter, the Agency found that appellant did not engage in insubordination because appellant was never given, nor did she fail to obey, a direct order.

The Agency did, however, find that the MSP had proven a violation of COMAR § 17.04.05.04.B(3) (bringing the Department into disrepute):

> [Appellant] did not deny telling DFC Rowe that she was an employee of the MSP. By making that statement, [appellant] transformed actions that might have been merely part of her personal life into actions by a state employee with employment consequences.
>
> [Appellant] forcibly closed her front door on a Sheriff's deputy who was attempting to carry out a warrant for her son, and locked the deputy out of the house. I find that it was predictable that this behavior would result in a call for backup and the arrival of numerous law enforcement officers, and it was predictable that some of [appellant's] neighbors would witness this show of disrespect for law enforcement. Her conduct brought the State into disrepute and, if it had been publicized further, would bring the State into further disrepute.
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> [Appellant] argues that she was exercising her constitutional right to resist an unlawful search. That argument is misplaced. The issue in this case is not the validity of the search. [Appellant's] opinion on the application of the constitution to the warrant in question did not give her the right – as an MSP employee – to publicly and physically resist a Sheriff's deputy attempting to carry out a search.

As a result of that finding, the Agency upheld the MSP's decision to terminate appellant:

> Although I do not uphold two of the three charges in the Notice of Termination, I must evaluate whether the sanction of termination is appropriate for [appellant's] conduct that brought, and, if publicized, would bring the State into disrepute. In reviewing the sanction, I am guided by

> COMAR 17.04.05.02.C, which provides that I may not change the discipline unless it was clearly an abuse of discretion and clearly unreasonable under the circumstances. The circumstances in this case include several prior disciplinary actions.
>
> In October 2013, [appellant] was given a written reprimand for insubordination because she ignored directives by the Acting Barrack Commander about placing stickers on MSP computers that did not belong on the computers.
>
> In March 2014, [appellant] was given a three-day forfeiture of annual leave because while in her MSP uniform, she used her personal vehicle to pull over a trooper on I-95 who she thought was not driving properly. In the incident she drove over 80 miles per hour, flashed her headlights, and she performed a traffic stop without authority. The discipline, which resulted from charges including insubordination and conduct bringing the State into disrepute, was upheld on September 29, 2014, by an Administrative Law Judge who noted that members of the public expect MSP personnel to honor the laws for the safety of the public. The incident in this case was less than a year after the issuance of the Administrative Law Judge's decision.
>
> The two prior instances of discipline showed a misplaced determination by [appellant] to take matters into her own hands, even when her actions constituted insubordination or brought disrepute to the State. On August 6, 2015, [appellant's] actions showed a continuation of this pattern of impermissible behavior. Termination is the appropriate sanction.

Appellant appealed the Agency's decision to the circuit court, which affirmed. This timely appeal followed.

STANDARD OF REVIEW

"The overarching goal of judicial review of agency decisions is to determine whether the agency's decision was made 'in accordance with the law or whether it is arbitrary, illegal, and capricious.'" *Sugarloaf Citizens Ass'n v. Frederick County Bd. Of Appeals*, 227 Md. App. 536, 546 (2016) (citations omitted). In so doing, "we [assume] the same posture as the circuit court…and limit our review to the agency's decision."

Anderson v. Gen. Cas. Ins. Co., 402 Md. 236, 244 (2007) (citations omitted). Moreover, "we 'review the agency's decision in the light most favorable to the agency' because it is 'prima facie correct' and entitled to a 'presumption of validity.'" *Sugarloaf*, 227 Md. App. at 546 (citations omitted).

Generally, "if we determine that the agency's decision is based on an erroneous conclusion of law, no deference is given to those conclusions." *Kenwood Gardens Condominiums*, *Inc.*, *v. Whalen Properties*, *LLC*, 449 Md. 313 (2016). Nevertheless, "an administrative agency's interpretation and application of the statute which the agency administers should ordinarily be given considerable weight by reviewing courts." *Board of Physician Quality Assur. v. Banks*, 354 Md. 59, 69 (1999).

"With regard to the agency's factual findings, we do not disturb the agency's decision if those findings are supported by substantial evidence." *Sugarloaf*, 227 Md. App. at 546. We also apply the "substantial evidence" standard when a party raises a mixed question of law and fact – that is, "[w]hen a party challenges how an agency applied, as opposed to interpreted, a statute[.]" *CashCall*, *Inc. v. Maryland Com'r of Financial Regulation*, 448 Md. 412, 426 (2016). "Substantial evidence is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." *Board of School Com'rs of Baltimore City v. James*, 96 Md. App. 401, 419 (1993). "In applying the substantial evidence test, a court is not to substitute its judgment for the expertise of the agency, rather the test is a deferential one, requiring restrained and disciplined judicial judgment so as not to interfere with [the agency's] factual conclusions." *Id.* (citations and quotations omitted).

DISCUSSION

Appellant argues that the Agency erred in finding "that there was substantial record evidence to support the one charge of three that was sustained." Appellant maintains that she reasonably believed that she had the right to deny Deputy Rowe entrance to her home on August 6 and that the Agency erred in finding that, as an MSP employee, she did not have "the right to decline to consent to a search of [her] home." Appellant also maintains that the MSP's decision to terminate her employment was "clearly an abuse of discretion and clearly unreasonable under the circumstances" given that the MSP failed "to meet its burden on the bulk of the charges."

COMAR § 17.04.05.04 provides, in relevant part, that an employee in the "skilled and professional services" may be disciplined for engaging in several enumerated actions, including "[b]eing guilty of conduct that has brought or, if publicized, would bring the State into disrepute[.]"[2] COMAR § 17.04.05.04.B(3). In such instances, the employee may appeal the disciplinary decision to the Office of Administrative Hearings, which, following a hearing, may uphold, rescind, or modify the disciplinary action. Md. Code, State Pers. & Pens. §§ 11-110 (c) and (d). Except in cases involving automatic terminations governed by statute, none of which are applicable here, the Office of Administrative Hearings "shall consider mitigating circumstances when determining the appropriate discipline." COMAR § 17.04.05.02.B. Nevertheless, "[t]he Office of Administrative

[2] Appellant does not dispute that her employment with MSP was in the skilled and professional services.

Hearings may not change the discipline imposed by the appointing authority, as modified by the head of the principal unit or Secretary, unless the discipline imposed was clearly an abuse of discretion and clearly unreasonable under the circumstances." COMAR § 17.04.05.02.C.

Here, the Agency found that the MSP met its burden of showing that appellant had engaged in actions that brought or, if publicized, would bring the State into disrepute. The agency based its decision on the fact that appellant, during her interaction with Deputy Rowe, identified herself as an employee of the MSP, which "transformed actions that might have been merely part of her personal life into actions by a state employee with employment consequences." The Agency then noted that appellant, after identifying herself as an MSP employee, "forcibly closed her front door on a Sheriff's deputy who was attempting to carry out a warrant for her son" and then "locked the deputy out of the house." The Agency concluded that appellant's actions constituted a violation of COMAR § 17.04.05.04.B(3) because appellant should have known that such behavior "would result in a call for backup and the arrival of numerous law enforcement officers" and that some of her neighbors "would witness this show of disrespect for law enforcement."

Based on the record before this Court, we are persuaded that the Agency's findings and conclusions were supported by substantial evidence and were not arbitrary or capricious. Each of the Agency's findings, including its finding that appellant had violated COMAR § 17.04.05.04.B(3), were supported by evidence adduced at appellant's hearing, either in the form of testimony by witnesses, such as Deputy Rowe and Detective

McFarland, or in the form of documentary evidence, such as the notices of disciplinary action sent to appellant regarding her prior instances of misconduct.

We are likewise persuaded that the Agency's decision to uphold the sanction of termination was supported by substantial evidence and was not arbitrary or capricious. In addition to appellant's conduct on August 6, 2015, the Agency found that the "circumstances" that contributed to the MSP's decision to terminate appellant's employment included "several prior disciplinary actions," namely, the action from October 2013, when appellant was disciplined for insubordination, and the action from March 2014, when appellant was disciplined for using her personal vehicle to perform a traffic stop without authority. The Agency explained that those actions "showed a misplaced determination by [appellant] to take matters into her own hands, even when her actions constituted insubordination or brought disrepute to the State." The Agency then concluded that appellant's actions on August 6, 2015, "showed a continuation of this pattern of impermissible behavior" and that, as a result, termination was the appropriate sanction. Again, based on the record before this Court, we cannot say that the Agency's decision was erroneous, nor can we say that the discipline imposed by the MSP was clearly an abuse of discretion and clearly unreasonable under the circumstances, such that modification of that sanction by the Agency was warranted.

Appellant argues that the Agency erred in concluding that, as an MSP employee, she "forfeit[ed] her right to deny an unlawful search by the police of her residence" and "lost the right to decline to consent to a search of [her] home." We disagree, as the Agency never made any such findings, nor did it conclude that appellant's assertion of her "rights"

was the basis for its decision. Rather, the Agency found that appellant brought or, if publicized, would have brought the State into disrepute when she identified herself as an MSP employee and then forcibly closed and locked her front door while Deputy Rowe was lawfully attempting to serve a warrant on her son. That appellant may have been exercising her "right" to deny an unlawful search did not, as the Agency noted, "give her the right – as an MSP employee – to publicly and physically resist a Sheriff's deputy attempting to carry out a search."

Appellant also argues that the Agency "failed to acknowledge that the discipline imposed – termination – was clearly unreasonable since the [MSP] had failed to sustain the overwhelming bulk of the charges against [her]." Appellant maintains that the Agency also erred in finding that "the instant case showed a pattern of 'insubordination' even as [it] found the [MSP] had failed to prove insubordination." Appellant avers, therefore, that the Agency "clearly held that termination is appropriate not because of the conduct charged, but because of some 'pattern' of insubordination – a charge wholly outside the four-corners of the Notice of Termination."

Again, appellant's arguments are misplaced and not supported by the record. Although the Agency did find that the MSP had failed to prove violations of COMAR § 17.04.05.04.B(8) and § 17.04.05.04.B(12), those findings had nothing to do with the Agency's conclusions regarding COMAR § 17.04.05.04.B(3). The Agency determined that the MSP failed to establish a violation of § 17.04.05.04.B(8) because appellant was never prosecuted in relation to the incident. The Agency found that the MSP had failed to establish a violation of § 17.04.05.04.B(12) because appellant was never given, nor did she

disobey, a direct order. Those findings were separate from and unrelated to the Agency's conclusions regarding COMAR § 17.04.05.04 B(3), which, as previously discussed, were based on the fact that appellant publicly and physically resisted a Sheriff's deputy attempting to carry out a search.

Furthermore, the Agency did not, as appellant suggests, sustain the termination based on "some pattern of insubordination." Rather, the Agency, in evaluating the circumstances of appellant's dismissal, properly considered appellant's prior instances of discipline, which the Agency characterized as "a misplaced determination by [appellant] to take matters into her own hands, even when her actions constituted insubordination **or brought disrepute to the State."** The Agency then found that termination was the appropriate sanction in light of appellant's past behavior and her actions on August 6, 2015, which, according to the Agency, "showed a continuation of this pattern of impermissible behavior." Thus, it was appellant's pattern of impermissible behavior, not any instance (or instances) of insubordination, on which the Agency based its decision.

In sum, we hold that the Agency's decision in upholding the termination of appellant's employment was supported by substantial evidence and not arbitrary or capricious. Accordingly, we affirm the judgment of the circuit court.

JUDGMENT OF THE CIRCUIT COURT FOR HARFORD COUNTY AFFIRMED. COSTS TO BE PAID BY APPELLANT.