UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 385

SEPTEMBER TERM, 2015

FRANCIS SCHMIDT

v.

TOWN OF CHEVERLY POLICE DEPARTMENT

Eyler, Deborah S.,
Meredith,
Kehoe,

JJ.

Opinion by Eyler, Deborah S., J.

Filed: March 2, 2016

*This is an unreported opinion and therefore may not be cited either as precedent or as persuasive authority in any paper, brief, motion, or other document filed in this Court or any other Maryland court. Md. Rule 1-104.

The Town of Cheverly Police Department ("the Department"), the appellee, brought administrative disciplinary charges against Officer Francis Schmidt, the appellant, alleging that he failed to report that he was in an accident while operating his police cruiser and later made false statements about his knowledge of damage caused by the accident. The charges were tried before a three-member hearing board ("the Hearing Board") convened under the Law Enforcement Officers' Bill of Rights ("LEOBR"), Md. Code (2003, 2011 Repl. Vol.), section 3-101 *et seq.* of the Public Safety Article ("PS"). The Hearing Board found Schmidt guilty of the two charges premised on a failure to report an accident and not guilty of six charges premised on false statements. It recommended that he be fined an amount equal to the cost to repair the vehicle, suspended from the Department's personal car program for one year, and reduced in rank for six months.

Police Chief Harry Robshaw issued the final agency decision, accepting the Hearing Board's findings and the recommended fine and suspension from the personal car program as sanctions, but rejecting the sanction of demotion. On judicial review, the Circuit Court for Prince George's County upheld the final agency decision.

Schmidt presents five questions for review,[1] which we have combined and rephrased:

---

[1] The questions as posed by Schmidt are:

> I. Did the Hearing Board act unlawfully or in an arbitrary or capricious manner when it unilaterally changed the dates at issue, finding that Officer

(Continued…)

I. Was the final agency decision legally correct, supported by substantial evidence in the record, and not arbitrary or capricious?

II. Did the Hearing Board err by denying Schmidt's motions to dismiss the charges?

III. Did the Hearing Board err by denying Schmidt's request to present evidence of the Chief of Police's animus or bias against him?

For the following reasons, we shall affirm the judgment of the circuit court.

FACTS AND PROCEEDINGS

(…continued)

Schmidt was involved in an accident between July 28, 2011 and August 15, 2011, when Officer Schmidt was charged with having an accident between July 28, 2011 and August 18, 2011?

II. Did the Hearing Board make an error of law and violate Officer Schmidt's due process rights when it accepted defective charges levied against Officer Schmidt by the Department, which illegally reduced the Department's burden of proof by alleging that Officer Schmidt was involved in an accident, "that he knew or should have known about"?

III. Did the Hearing Board make an error of law when it denied Officer Schmidt's Motion to Dismiss at the conclusion of the Department's case because the Hearing Board's decision was not supported by competent, material, and substantial evidence when the Department failed to introduce any evidence of their General Orders and policies, as well as the Town Code of Cheverly, during the course of the hearing, and thereby failing to show the applicable standards that Officer Schmidt was accused of violating?

IV. Did the Hearing Board err as a matter of law and/or act in an arbitrary or capricious manner when it deprived Officer Schmidt of his right to present evidence under LEOBR by preventing Officer Schmidt from presenting evidence regarding the Chief's bias and animus against him?

V. Did the Hearing Board act in an arbitrary or capricious manner when it disregarded and ignored testimony from a defense witness, who presented testimony that another individual was driving Vehicle 827, despite the fact that the Hearing Board acknowledged said defense witness was credible?

At the relevant time, Schmidt had been employed as a law enforcement officer with the Department for more than a decade. Around 2009, pursuant to the Department's "Personal Car Policy," Schmidt was assigned a 2006 Chevrolet Impala—designated as "Vehicle 827"—as his police cruiser. He was permitted to drive Vehicle 827 while on duty and off-duty, including on his commute to and from his home in Charles County.

On July 28, 2011, Schmidt dropped Vehicle 827 off for routine maintenance at the Department of Public Works ("DPW") for the Town of Cheverly ("the Town"). DPW mechanic Dana Willis checked the fluid levels, the lights and emergency equipment, and replaced the two front tires on the vehicle because both had worn out. After the new tires were installed, Willis used "considerable force" to shake each tire to make sure that there were no "loose front-end parts." The car was returned to Schmidt that day.

On Sunday, August 14, 2011, Schmidt noticed that Vehicle 827's emergency lights and siren were malfunctioning. He replaced a fuse, but the lights and siren continued to fail intermittently. The next day, Schmidt drove Vehicle 827 to DPW and reported that his lights were not functioning properly.[2] Ricardo Benitez, a DPW mechanic, replaced another fuse and returned the vehicle to Schmidt. Later that day, the emergency lights and siren stopped working again. Schmidt reported this issue to Lieutenant Joseph Frolich, the second in command in the Department. Consequently,

[2] He did not report that the siren was malfunctioning.

late that afternoon, Schmidt was directed to park Vehicle 827 in the Department parking lot and give the keys to Sergeant Matthew McGuire, his then supervisor. He did so.

Sergeant McGuire arranged to have Vehicle 827 inspected at Brekford's, an electrical automotive repair shop in Hanover. On August 18, 2011, Sergeant McGuire drove Vehicle 827 from the Department parking lot to Brekford's. He traveled on I-495 at normal highway speeds, but noticed that it was very difficult to keep the vehicle in its lane and that "[i]t felt like it needed a front end alignment." Sergeant Jason Lamb followed closely behind Sergeant McGuire and gave him a ride back to the Department.

That same day, a mechanic from Brekford's contacted Sergeant McGuire and advised him that the wiring harness in Vehicle 827 would need to be removed and replaced in order to fix the problem with the emergency lights.[3] Because the cost of that repair would exceed the value of the vehicle, Sergeant McGuire advised that the Department did not want the vehicle repaired and that he would return to pick it up.

Milton Robinson, a mechanic with Brekford's, was directed to move Vehicle 827 from the elevated repair bay to the parking lot. As he was driving the vehicle in reverse down a concrete ramp, it began shaking. He heard a "loud bang." The front end of the vehicle collapsed on the ramp. Robinson got out and looked at the underside of the

[3] Brekford's did not put Vehicle 827 on the lift. It inspected the wiring from under the hood of the car.

vehicle. He noticed that the "tie rod"[4] had snapped and the two front wheels were pointing in opposite directions.

Vehicle 827 was towed to the DPW lot. Benitez made basic repairs to the vehicle, sufficient to make it driveable, and drove it to Scanlan Auto Body, in Bladensburg. On August 30, 2011, George Scanlan, the owner and himself a mechanic, put the vehicle on the lift and inspected its undercarriage. He observed that the metal "ear"—a circular mount built into the body of the vehicle—had broken off of the rack and pinion mechanism, allowing the front passenger-side wheel to move freely. This had resulted in the steering rack being "jamm[ed] right up into the [wiring] harness," causing electrical shortages such as those experienced by Schmidt. Scanlan concluded that the damage to the steering mechanism had been caused by a recent and significant impact. He advised the Department of his finding.

The Department elected not to have the vehicle repaired at that time. Benitez drove Vehicle 827 back to DPW,[5] where Willis inspected its undercarriage. Willis observed that the front passenger-side wheel moved freely and that the metal mount that he called the "bushing," and that Scanlan had called the "ear," was broken. Willis had

[4] A tie rod is a metal rod that connects a wheel to the steering rack and pinion mechanism.

[5] Willis testified that Benitez drove Vehicle 827 extremely slowly with the hazard lights on while he (Willis) followed behind.

not seen any damage to the steering mechanism of Vehicle 827 when he had performed maintenance on the vehicle on July 28, 2011.

Sergeant McGuire also was present to inspect the undercarriage of Vehicle 827. He previously had worked for 12 years as a police officer with the Prince George's County Police Department specializing in accident reconstructions. He concluded that Vehicle 827 had been involved in a recent collision involving concrete.

Based on this information, the Department opened an investigation into whether Schmidt had failed to report an accident involving Vehicle 827. Lieutenant Mark Roski from the City of Hyattsville Police Department was appointed as the investigating officer. As part of the investigation, Vehicle 827 was examined at McDonald's Auto Repair. John Brady, a mechanic there, observed white discoloration on the undercarriage of the vehicle, in the vicinity of the damage. He opined that the damage likely was caused by a collision with a concrete curb or median.

On February 22, 2012, Schmidt was interrogated as part of the investigation. He was asked if on August 15, 2011, there was any damage to Vehicle 827, aside from the malfunctioning emergency lights. He replied, "Not that I can think of." He was shown photographs of the undercarriage of the vehicle that depicted the damaged steering rack. When asked whether he had been aware of the damage, he replied, "I'm unaware of this damage."

On April 23, 2012, the Department served Schmidt with eight administrative charges. It alleged that he had been in an accident while driving Vehicle 827, sometime

between July 28, 2011, and August 18, 2011, and that he had violated a Department General Order (Charge 1) and the Town Code (Charge 2) by failing to report the accident. In Charges 3 through 8, the Department alleged that Schmidt had violated General Orders governing ethics and integrity and a Town Code provision governing conduct when, during his interrogation, he denied knowledge of any damage to the undercarriage of Vehicle 827.

A Hearing Board was convened on July 16, 2012 ("the 2012 Hearing Board") and took evidence over two days. One member of the 2012 Hearing Board was a police chief from another jurisdiction. The 2012 Hearing Board found Schmidt guilty of all eight charges and recommended that he be fined $1,000 and suspended for forty hours without pay. On August 28, 2012, Chief Robshaw issued the final agency decision, adopting the 2012 Hearing Board's findings, but imposing termination as a sanction for the false statement charges.[6]

Schmidt filed an action for judicial review in the Circuit Court for Prince George's County. On October 15, 2013, the circuit court vacated the final agency decision on the ground that it had been improper to include a police chief as a member of a Hearing Board.[7]

[6] Pursuant to PS section 3-108(d)(5), Chief Robshaw had given Schmidt notice of his intention to increase the recommended penalty and had held a hearing on the penalty prior to issuing the final decision.

[7] The Department noted an appeal to this Court, but then voluntarily dismissed it.

On remand from the circuit court, the Department filed a revised statement of charges against Schmidt. The failure to report charges are the only ones relevant to the issues on appeal. In Charge 1, the Department alleged that Schmidt had violated General Order Volume 1, Chapter 6,[8] Section V, which states: "When an employee is involved in a Departmental accident, he or she shall immediately notify Public Safety Communications (PSC) and request that a supervisor respond to the scene." In Charge 2, the Department alleged that Schmidt had violated section 21-14(f)(4) of the Town Code, which prohibits "[w]illful or repeated negligence in performing duties." In support of both of these charges, the Department alleged that "between July 28, 2011, and August 18, 2011, the police vehicle assigned to Officer Francis Schmidt . . . was involved in a Departmental accident that he knew or should have known about and he failed to report it."

A Hearing Board was convened from February 17 to February 19, 2014. The Department called nine witnesses, including Sergeant McGuire; Robinson (the Brekford mechanic); Willis (the DPW mechanic); Scanlan (the Scanlan Auto Body mechanic); Brady (the McDonald's mechanic); and Schmidt. It introduced 35 exhibits into evidence, including 29 photographs of the undercarriage of Vehicle 827; a report prepared by Scanlan; a report prepared by McDonald's; and the July 28, 2011 DPW preventative maintenance invoice.

[8] The statement of charges mistakenly stated that the General Orders governing "Departmental Accidents" were in Chapter 8.

Schmidt testified that he had not been in any accidents while driving Vehicle 827, including bottoming out, between July 28, 2011, and August 15, 2011. He said that, in the summer of 2010, he had "hit a concrete dip" while driving Vehicle 827 on I-495.

Willis testified that as of July 28, 2011, when he performed routine maintenance on Vehicle 827, there was nothing wrong with the vehicle's "steering mechanism." He opined that the damage to the vehicle's steering mechanism that he later observed was the result of a "significant impact."

Sergeant McGuire testified that the damage to Vehicle 827's steering mechanism appeared to have been caused by a recent accident. He noted that there was no rust on the broken metal and that there were "bits of concrete" stuck to the bottom of the vehicle.

Scanlan testified that the damage to Vehicle 827 had been caused by a "fairly recent" "impact." He explained that once the ear "cracked," it would "give [the driver] an issue" "[f]airly quickly." He did not believe the damage could have been caused by an accident in 2006-2007 or from an accident in the summer of 2010.

Based on the damage he observed, Brady testified that Vehicle 827 "definitely hit something on the undercarriage . . . something that was a solid base, and . . . that had concrete on it," like a concrete median or curb. He explained that he had observed "white discoloration" on the "engine cradle and on the lower control arm" and that both were consistent with the vehicle's undercarriage having collided with concrete. The discoloration was fresh, in his view, because it would not remain on the undercarriage of a vehicle for "very long."

At the conclusion of the Department's case, Schmidt's lawyer moved for judgment. He argued that the evidence was legally insufficient to prove by a preponderance of the evidence that Schmidt had been in a Departmental accident between July 28, 2011, and August 18, 2011, because the Department's witnesses had offered conflicting testimony about how much time could have passed between a collision that cracked the "ear" of the steering mechanism and the ear breaking completely. Schmidt's counsel argued, moreover, that the Department had failed to establish any violation of the Department General Orders or the Town Code because it had not moved the orders and code provisions into evidence. The motion was denied.

In his case, Schmidt testified and called eight witnesses, including DPW mechanics Benitez and Willis; Lieutenant Roski; former Sergeant James Cathcart; Corporal Earl Stone; and Corporal Edmund Gizinski. He attempted to call his wife and Chief Robshaw as witnesses, but the Hearing Board ruled that neither witness's testimony would be relevant to the charges being tried. Schmidt moved 15 exhibits into evidence, including prior repair reports for Vehicle 827 and photographs of the undercarriage of Vehicle 827 taken by his private investigator.

Sergeant Cathcart testified that he had been assigned Vehicle 827 as his personal car for approximately 10 months in 2007 and had possibly driven it again later when it was a "pool vehicle."

Corporal Stone testified that he had worked in the same squad with Schmidt for several years, under the supervision of Sergeant Cathcart. According to Corporal Stone,

during the time that Sergeant Cathcart was assigned to drive Vehicle 827, Cathcart had been involved in three accidents. Corporal Stone could not recall the year that any of the accidents occurred. In one accident, Sergeant Cathcart hit a snowbank, causing a flat tire on the front passenger side wheel. In another, Sergeant Cathcart hit a curb with the front passenger side wheel, also causing a flat tire. In the third, Sergeant Cathcart "r[a]n the car up on the concrete median" in front of a gas station. The vehicle was stuck on the median and had to be dragged off with a cable attached to the undercarriage. According to Corporal Stone, none of these accidents was reported and Sergeant Cathcart paid for the repairs himself.

Corporal Gizinski also testified about Sergeant Cathcart's three accidents while driving Vehicle 827. Like Corporal Stone, he could not recall the dates of any of these accidents. He stated that it had "been so long" that he "couldn't say."

The parties moved Lieutenant Roski's report of investigation into evidence as a joint exhibit.

On March 7, 2014, the Hearing Board issued its written decision. It found all of the witnesses to be "credible" with the exception of Schmidt, who was "non-credible" because his "testimony varied from the evidence presented." The Hearing Board found as a fact that Vehicle 827 was Schmidt's assigned personal car between July 28, 2011, and August 15, 2011, and that "no one other than . . . Schmidt drove [that vehicle in that time frame.]" It was persuaded by the testimony of Sergeant McGuire, Scanlon, Brady, and Willis that the damage to the steering rack of Vehicle 827 "was the result of a recent

and substantial impact." It found Willis's testimony that he did not observe any damage to the steering rack when he performed routine maintenance on July 28, 2011, to be credible.

The Hearing Board drew a reasonable inference from this evidence that Vehicle 827 "was involved in an accident [while being driven by Schmidt] between July 28, 2011 and August 15, 2011." Schmidt did not report having been in an accident during that time frame. The Hearing Board found that Schmidt "knew or should have known" that the accident had occurred. Consequently, it found Schmidt guilty of Charges 1 and 2, for failing to report a Departmental accident. It found Schmidt not guilty of the six charges arising from alleged false statements. As to each such charge, it concluded that the questions asked and the answers given were "of such an ambiguous nature that a finding of guilt could not be sustained."

On Charge 1, the Hearing Board recommended that Schmidt be sanctioned with suspension from the personal car program for 1 year and a fine of $3,281 (the cost to repair Vehicle 827). On Charge 2, it recommended that Schmidt receive a reduction in rank for a period of six months.

On March 20, 2014, Chief Robshaw issued the final agency order disciplining Schmidt. He adopted the Hearing Board's findings with respect to Charges 1 and 2 and its recommended sanction for Charge 1. He rejected the recommended sanction on Charge 2 as not being in the Department's best interest.

On April 16, 2014, Schmidt filed a petition for judicial review in the Circuit Court for Prince George's County. Just over a year later, on April 22, 2015, the circuit court entered an order affirming the final agency order. This timely appeal followed. We shall include additional facts in our discussion of the issues.

STANDARD OF REVIEW

"[T]he scope of judicial review in a LEOBR case '"is that generally applicable to administrative appeals."'" *Coleman v. Anne Arundel Cnty. Police Dep't*, 369 Md. 108, 121 (2002) (quoting *Montgomery Cnty. v. Stevens*, 337 Md. 471, 482 (1995), in turn quoting *Younkers v. Prince George's Cnty.*, 333 Md. 14, 17 (1993)). Thus, 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." *United Parcel Serv., Inc. v. People's Counsel*, 336 Md. 569, 577 (1994). "In applying the substantial evidence test, a reviewing court decides whether a reasoning mind reasonably could have reached the factual conclusion the agency reached." *Bd. of Physician Quality Assurance v. Banks*, 354 Md. 59, 68 (1999) (internal quotations omitted). In doing so, we "defer to the agency's fact-finding and drawing of inferences if they are supported by the record." *Id.* "While 'an administrative agency's interpretation and application of the statute which the agency administers should ordinarily be given considerable weight by reviewing courts,' . . . *Banks*, 354 Md. [at] 69 . . . , 'we owe no deference to agency conclusions based upon

errors of law.'" *Coleman*, 369 Md. at 121 (quoting *State Ethics v. Antonetti*, 365 Md. 428, 447 (2001)).

DISCUSSION

I.

Schmidt contends the Hearing Board erred and/or acted arbitrarily and capriciously when it "unilaterally changed the dates at issue," finding that he was involved in an unreported Departmental accident between July 28, 2011, and August ***15***, 2011, rather than the charged date range of July 28, 2011 to August ***18***, 2011. He maintains that this had the effect of "reducing the burden of proof required to find [him] guilty" and "*completely* eliminating" his defense that the damage to Vehicle 827 may have occurred between August 15, 2011, and August 18, 2011. (Emphasis in original.) Relatedly, he argues that the Hearing Board erroneously ignored testimony by Benitez that he observed someone other than Schmidt driving Vehicle 827 between August 15, 2011, and August 18, 2011.

The Department responds that the Hearing Board's finding that Schmidt was involved in a Departmental accident between July 28, 2011, and August 15, 2011, was supported by substantial evidence in the record. That finding was fully consistent with the charges because those dates were "within the period of time charged." We agree.

The Hearing Board had evidence before it that on July 28, 2011, Vehicle 827 was not damaged, except for minor scrapes and gouges on the undercarriage. On August 15, 2011, Schmidt reported that the emergency lights and siren were not working on Vehicle

827. Inspection of the undercarriage of the vehicle later revealed that the metal mount connecting the steering rack to the front passenger wheel had severed, allowing the wheel to operate freely *and causing the steering rack to be jammed into the wire harness*. This was evidence from which the Hearing Board reasonably could infer that the electrical problems Schmidt reported on August 15, 2011, were caused by *already existing* damage to the steering rack. It is undisputed that Schmidt was the only person who operated Vehicle 827 between July 28, 2011, and August 15, 2011. Willis, Scanlan, and Brady all testified that the broken metal mount resulted from a recent, significant impact to the undercarriage of Vehicle 827. This evidence amply supported the Hearing Board's finding that Schmidt was in an accident while operating Vehicle 827 between July 28, 2011, and August 15, 2011.[9]

Schmidt offers no legal authority for his position that the Hearing Board was required to hew to the precise dates in the revised statement of charges in making its finding as to when the alleged accident occurred. The date range used in the statement of charges reflected the period of time from the last maintenance on Vehicle 827 (July 28, 2011) through the date the vehicle quite literally fell apart on the ramp at Brekford's (August 18, 2011). Thus, this was the period of time in which the Department alleged that the damage must have occurred. The Department asserted, however, that the

[9] It is worth noting that Schmidt's counsel argued during his motion for judgment at the close of the Department's case that the Department was required to prove that "[Schmidt] had an incident [*i.e.*, a departmental accident] between July 28, 2011, and [August] ***15th***, 2011." (Emphasis added.)

accident had to have occurred before Schmidt dropped Vehicle 827 off for service, because the electrical issues were caused by the damage that resulted from the accident and because there was no evidence that Vehicle 827 was in an accident while it was being transported to and from Brekford's for service. The Hearing Board was persuaded by this argument and found that the damage to Vehicle 827 occurred within the charged timeframe at some point before Schmidt dropped it off for service on August 15, 2011. As already discussed, this finding was supported by substantial evidence.

As mentioned, Benitez was a mechanic for DPW. He testified that he was present when Schmidt dropped Vehicle 827 off at DPW with electrical problems, although he could not recall the precise date that this occurred. According to Benitez, Schmidt told him that he (Schmidt) was going on vacation and that the Department was going to send Vehicle 827 to the "electric shop to [be] fix[ed]." About "three or four days" later, Benitez observed what he believed to be Vehicle 827 parked "in front of the police station." He could not be sure it was Vehicle 827, however, because there were two departmental vehicles that looked "alike." On two occasions around this time, he had seen two different police officers drive the vehicle that looked like Vehicle 827. One of those officers was Sergeant McGuire. Benitez could not identify the other officer. Benitez did not know where Sergeant McGuire or the other officer took the vehicle. Because he "didn't see the tag numbers," he could not be sure that the vehicle he was seeing was Vehicle 827 and not the other vehicle.

The Hearing Board found Benitez to be a credible witness, but did not otherwise address his testimony in its written decision. It was the province of the Hearing Board to determine the relevance of and the weight to be given to Benitez's testimony. The Hearing Board plainly did not err in assigning little or no weight to Benitez's vague and inconclusive testimony that on an unknown date three or four days after Schmidt dropped Vehicle 827 off for electrical work he observed Sergeant McGuire and another officer he could not identify driving a vehicle that looked like Vehicle 827, but might have been another vehicle, to an unknown location for an unknown purpose.[10]

II.

As discussed, the statement of charges accused Schmidt of violating General Order Vol. 1, Chapter 6, Part V (Charge 1), by failing to report a Departmental accident, and section 21-14(f)(4) of the Town Code (Charge 2), by engaging in willful or repeated negligence in performing duties. In the "To wit" section of both charges, the Department stated: "It is alleged that between July 28, 2011, and August 18, 2011, the police vehicle assigned to Officer Francis Schmidt . . . was involved in a Departmental accident that *he knew or should have known about* and he failed to report it." (Emphasis added.)

Schmidt contends that, for two reasons, the Hearing Board erred by denying his motion for judgment and/or to dismiss these charges. First, including the "knew or

[10] As the Department points out in its brief, Benitez's testimony actually was consistent with his having observed Sergeant McGuire transporting Vehicle 827 to Brekford's on August 18, 2011.

should have known" language in the "To wit" section of each charge impermissibly lowered the Department's burden of proof. Second, the evidence was legally insufficient to support either charge because it did not include the relevant General Order and Town Code provision.

The Department responds that Schmidt failed to preserve for review his first argument because he did not raise it before the Hearing Board. It maintains that the issue has no merit in any event because the "objective standard of what a reasonable person would have known under similar circumstances is the appropriate standard" for an administrative charge for failure to report an accident. As to the second argument, the Department asserts that it was not obligated to move the relevant General Order and Town Code provision into evidence at the Hearing Board trial; and the Hearing Board had copies of the relevant laws and regulations anyway.

We agree with the Department that Schmidt failed to preserve for review his argument that the wording of the administrative charges improperly lowered the burden of proof. At the outset of the Hearing Board trial, Schmidt's counsel noted a preliminary objection to the statement of charges, arguing that the charges were "impermissibly vague" and charged the same conduct in "multiple different ways" under different General Orders and Town Code provisions. He also objected to certain evidence that he maintained was not timely disclosed to him. He did not move to dismiss the charges based upon the "knew or should have known" language.

Nor did Schmidt's lawyer raise this issue in his closing argument before the Hearing Board, as Schmidt now argues. Schmidt's lawyer stated as follows in closing:

> That's moving to my last issue, is that the charges cannot be sustained on their face. . . . . The charge is – and it's interesting, they're saying to him it has to be – charge 1 is a departmental accident, not damage, not departmental damage, it's a departmental accident. There has to be an accident. When an employee's involved in a departmental accident, he shall immediately notify [PSC] and request that the supervisor respond to the scene. The allegation is interesting. Check this out. This is very important: It is alleged that between these two dates . . . the police vehicle assigned to Officer Schmidt was involved in a departmental accident. They're saying that he – you've got to think like a lawyer sometimes, maybe, in this particular situation. They're saying that he had it, and so the allegation, the violation that they have here, the general order said that he had an accident and he failed to – well, the standard is when you're involved in an accident you have to report it. *The allegation, though, is not that he was involved in an accident*. *The allegation* was, *is that the vehicle assigned to him was involved in an accident* that he knew or should have known about. They can't even prove either of those. So, actually, their to wit section doesn't even match the standard.
>
> Town Code Section – on [charge] number two says it has to be willful or repeated negligence. And the reason they're saying that he was negligent was because the police vehicle was involved in a departmental accident that he knew or should have known about. *Again . . . there's no evidence to prove that an accident actually occurred*. . . . They don't match the charges. That's the other legal, technical issue here.

(Emphasis added.)

The gravamen of this argument was that there was no direct evidence that *Schmidt* was in an accident in Vehicle 827 at all between July 28, 2011, and August 18, 2011 (as opposed to the vehicle being in an accident when Schmidt was not in it) and circumstantial evidence of damage to the undercarriage of Vehicle 827 was insufficient to support a reasonable inference that *Schmidt* was in an accident during that timeframe and failed to report it. This is not the same argument being advanced on appeal. Now,

Schmidt is arguing that the Department should have been required to prove that he was in an accident and knew he was in an accident, and that it was not sufficient to show that he should have known that he was in an accident. This argument never was made before the Hearing Board and therefore is not properly before this Court for review.

Finally, there is no merit in Schmidt's argument that the Department was obligated to introduce the General Order and the Town Code into evidence before the Hearing Board. Schmidt does not cite to any legal authority to support his argument and concedes that, ordinarily, the applicable law is not introduced into evidence in a judicial or quasi-judicial proceeding. *See* Broun, Kenneth, 2 *McCormick on Evidence*, § 335 (7th ed. 2013) (judge takes judicial notice of the applicable law). In the instant case, the statement of charges cited and quoted the language of the pertinent General Orders and Town Code provisions and the Hearing Board quoted the pertinent law in its written decision. The Department was not obligated to introduce the law into evidence and the Hearing Board did not err by denying Schmidt's motion for judgment on that basis.

III.

On three occasions during the course of the Hearing Board trial, Schmidt sought to elicit evidence about what he contended was Chief Robshaw's bias or animus toward him. The first instance happened during the cross-examination of Lieutenant Frolich, who was the second in command under Chief Robshaw. Schmidt's lawyer asked Lieutenant Frolich if he had told Officer Stone that he had "never seen anyone treated like [Schmidt was being treated] . . . before." Lieutenant Frolich replied that he had made

that statement. He also was asked if he ever had heard Chief Robshaw say prior to the alleged Departmental accident that he wanted Schmidt to be terminated. Lieutenant Frolich replied in the affirmative. The Department objected to further questioning about statements made by Chief Robshaw, and the Hearing Board sustained the objection, ruling that the evidence was not relevant.

Second, Sergeant Cathcart was asked on direct examination whether he ever had heard Chief Robshaw make disparaging remarks about Schmidt. The Department objected and the Hearing Board sustained the objection and disallowed further questioning about Chief Robshaw.

Third, Schmidt sought to call Chief Robshaw as a witness. The Department objected and the Hearing Board sustained the objection.[11]

Schmidt contends the Hearing Board's rulings were in error because, pursuant to PS section 3-107(e), he was entitled to be afforded "ample opportunity to present evidence and argument about the issues involved." He asserts that evidence that Chief Robshaw was biased against him was "relevant and probative to the issue whether or not [he] was guilty of the Department's allegations."

The Department responds that the Hearing Board did not err or abuse its discretion in its regulation of the questioning of witnesses or by prohibiting Schmidt from calling

[11] As mentioned, Schmidt also sought to call his wife as a witness and proffered that she also could testify as to Chief Robshaw's bias. Schmidt does not challenge on appeal the Hearing Board's ruling to exclude her as a witness.

Chief Robshaw as a witness because there was no evidence that bias played any role in the charges against Schmidt or that Chief Robshaw had any knowledge about the facts relevant to the charges against Schmidt.

PS section 3-107(e) governs the conduct of a trial before a Hearing Board. It provides, in relevant part, that the Hearing Board "shall give the law enforcement agency and law enforcement officer ample opportunity to present evidence and argument *about the issues involved*." (Emphasis added.) In the instant case, the issues before the Hearing Board were whether Schmidt had been involved in an accident while operating Vehicle 827 between July 28, 2011, and August 18, 2011; whether he failed to report that accident; and whether he lied about his knowledge of damage to Vehicle 827 caused by that accident. Chief Robshaw's bias against Schmidt, *vel non*, was not relevant to the "issues involved," and the Hearing Board did not err or abuse its discretion by regulating the cross-examination of witnesses on that topic or by precluding Chief Robshaw from being called as a witness.[12]

[12] Schmidt's reliance on *Sewell v. Norris*, 148 Md. App. 122 (2002), is misplaced. In that case, this Court held that a Baltimore City police officer was denied due process of law when he was tried before a Hearing Board composed of three members of that department despite evidence that the police commissioner and the mayor had made numerous public statements disparaging the officer. We held that the officer was entitled to a new Hearing Board with officers selected from other police departments. In the instant case, Schmidt makes no argument that the Hearing Board was biased against him and, in fact, all three members of the Hearing Board were selected from other law enforcement agencies and were not under Chief Robshaw's command. Schmidt also does not argue that any alleged bias infected the final agency decision, likely because Chief Robshaw reduced the recommended sanction for the charges that were sustained.

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