

Circuit Court for Anne Arundel County
Case No. C-02-CV-16-2097

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 1855

September Term, 2016

JASON THOMAS, et al.

v.

MICHAEL PRISTOOP, et al.

Wright,
Arthur,
Friedman,

JJ.

Opinion by Friedman, J.

Filed: November 13, 2017

*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.

This appeal concerns Officer Jason Thomas’s dismissal from employment as a police officer by the Annapolis Police Department. Thomas argues that the Circuit Court for Anne Arundel County erred in ruling that Thomas was not entitled to a hearing under the Law Enforcement Officer’s Bill of Rights (“LEOBR”) prior to his dismissal. For the reasons that follow, we affirm the circuit court.

BACKGROUND

Thomas was employed by the Annapolis Police Department (“APD”) as a sworn police officer when he sustained an injury in the line of duty that required left-knee surgery. Thomas then applied for disability retirement through the Annapolis Department of Human Resources, which the City denied, and Thomas appealed. Over a year later, Thomas transitioned from light duty to full-duty police work. Thomas served only a few hours, however, before reporting that he had re-injured his knee while entering his squad car, and APD again placed him on light duty.

APD management held a conference call in which they discussed Thomas’s status, including the fact that independent medical examinations revealed that he could perform full-duty police work. Regardless, APD offered Thomas a position as a Police Records Specialist, a full-time clerical position at a lower pay-grade, which Thomas declined. APD then sent Thomas home on unpaid administrative leave pending the results of his disability retirement appeal.

Thomas remained on unpaid leave while his appeal proceeded, during which time he made no efforts to contact or communicate with APD regarding his work status.

Ultimately, the Public Safety Disability Retirement Board of the City of Annapolis affirmed the denial of Thomas’s application for disability retirement. Thomas again made no efforts to contact APD to discuss returning to work. After several months with no contact, the Chief of APD terminated Thomas, explaining that Thomas’s “unwillingness to return to work as a police officer under these circumstances constitutes unsatisfactory work performance and warrants termination.”

Thomas, through his union, filed a Petition for Show Cause Order and Stay Under the Law Enforcement Officers’ Bill of Rights in the Circuit Court for Anne Arundel County.¹ In his petition, Thomas alleged that he was entitled to the procedural safeguards of the LEOBR before APD took any punitive action—*i.e.*, termination—against him. APD filed an opposition to Thomas’s Petition, arguing that Thomas’s rights under the LEOBR had not been implicated. The circuit court concluded that Thomas was not entitled to a hearing and therefore denied Thomas’s Petition for Show Cause Order. Thomas noted this timely appeal.

DISCUSSION

Thomas challenges the ruling of the circuit court on the ground that he was improperly denied a hearing pursuant to the LEOBR prior to his dismissal from APD. Thomas contends that he was entitled to a hearing under the LEOBR because he was the subject of an investigation and interrogation and because APD’s decision to dismiss him was punitive in nature. Because we conclude that Thomas was not under investigation or

¹ This Show Cause procedure is created by Section 3-105 of the Public Safety (“PS”) Article of the Maryland Code.

interrogation by APD and that his dismissal was not a punitive action, we affirm the ruling of the circuit court that Thomas had no right to a hearing under the LEOBR.

When an appeal concerns the interpretation and application of Maryland constitutional, statutory, or case law, we review the circuit court’s legal conclusions *de novo*. *Schisler v. State*, 394 Md. 519, 535 (2006). Here, we consider the interpretation and application of the LEOBR, codified in PS § 3-101, *et seq.*, which we review *de novo*. *Id.*

The LEOBR provides: “if the *investigation* or *interrogation* of a law enforcement officer results in a recommendation of ... [an] action that is considered *punitive*, the law enforcement officer is entitled to a hearing on the issues by a hearing board before the law enforcement agency takes that action.” PS § 3-107(a)(1) (emphasis added). Under the LEOBR, therefore, the right to a hearing is governed by a two prong test: first, an officer must prove that he or she has been the subject of an investigation or interrogation, and second, that investigation or interrogation must subject the officer to some punitive action. *Id.*; *Cancelose v. City of Greenbelt*, 75 Md. App. 662, 666–67 (1988). We will discuss each prong in turn.

I. Investigation and Interrogation

Thomas alleges that he was the subject of an “investigation” by APD because APD relied on medical reports from his disability retirement application to determine whether he could perform full-duty police work and discussed his medical status during a conference call. Thomas also contends that he was subjected to an “interrogation” when APD asked him whether and when he could return to work. We conclude that Thomas was

neither under investigation nor subject to interrogation by APD, and therefore he had no right to a hearing under the LEOBR.

Maryland case law interpreting what constitutes an “investigation” or “interrogation” sufficient to trigger the LEOBR right to a hearing is clear and well-developed. *See e.g., Leibe v. Police Dep’t. of Annapolis*, 57 Md. App. 317 (1984); *Calhoun v. Comm’r, Balt. City Police Dep’t*, 103 Md. App. 660 (1995). An investigation or interrogation for purposes of the LEOBR has been defined as “something more than counseling sessions, but ... less than formal complaints.” *Leibe*, 57 Md. App. at 323. Routine or periodic evaluations of an officer’s work performance do not amount to an investigation under the LEOBR, even when an officer’s performance is compared to that of his colleagues. *Id.* at 322; *Cancelose v. City of Greenbelt*, 75 Md. App. 662, 668 (1988). Further, questioning an officer as part of general supervision or regular review does not constitute an interrogation under the LEOBR. *Calhoun v. Comm’r, Balt. City Police Dep’t*, 103 Md. App. 660 (1995) (mandatory, routine polygraph tests are not interrogations).

Any inquiry into Thomas’s medical status to determine whether he could return to work full-duty by APD was conducted as part of routine, departmental practice, and did not amount to an investigation or interrogation under the LEOBR. *First*, while APD discussed Thomas’s light duty status and assessed his physical recovery, this evaluation was conducted as part of a routine review, wherein APD discussed every officer on medical leave or light duty at that time. *Liebe*, 57 Md. App. at 322 (tracking use of sick leave is routine, not an investigation); *Cancelose*, 75 Md. App. at 668 (monthly evaluations of an officer’s unsatisfactory performance are not investigations under the LEOBR). *Second*,

while APD relied on medical reports generated from Thomas's disability application, APD played no role in the official review or determination of Thomas's eligibility. That process was undertaken solely by the City of Annapolis Department of Human Resources, an entity completely outside of the APD. *Finally*, though APD asked Thomas several times to provide updates on his recovery and timeline to return to full-duty work, this questioning was conducted for scheduling reasons and to assess the personnel needs of the department. Thomas was not suspected of wrongdoing. *Widomski v. Chief of Police*, 41 Md. App. 361 (1979) (questioning or interviewing an officer does not rise to interrogation until the officer becomes a suspect of particular misconduct). Because APD's review of Thomas's medical and work status was routine and managerial, it does not constitute an investigation or interrogation under the LEOBR.

II. Punitive Action

Even if we were to conclude that APD conducted an investigation of Thomas, we are not persuaded that Thomas's dismissal from APD, in itself, constitutes a punitive action. Thomas contends that by permanently dismissing him, APD penalized Thomas for breaking departmental rules—namely, the failure to return to work as ordered—and therefore that action was punitive in nature. He further argues that the LEOBR's procedural safeguards exist to protect law enforcement officers from *all* dismissals, and he therefore deserved a hearing prior to his termination. We disagree.

Not every dismissal of a police officer is punitive. *See, e.g. Cancelose*, 75 Md. App at 668. The LEOBR affords broad discretion to the police chief to “regulate the competent and efficient operation and management of a law enforcement agency by any reasonable

means” so long as “that action is not punitive in nature and ... the chief determines that action to be in the best interests of the internal management of the law enforcement agency.” Md. Code PS § 3-102(c). Ensuring that an officer’s work performance conforms to certain minimum standards is a fundamental part of the “competent and efficient operation and management” of a police department. When officers fail to meet the expectations of their position or demonstrate continued unsatisfactory performance, the LEOBR does not limit the Chief’s authority to make personnel adjustments, including termination when that will best serve the Department. *Cancelose*, 75 Md. App. at 668 (a decision to dismiss an officer after seven months of poor performance evaluations was not administrative and not punitive). Dismissals under those circumstances are not punitive.

Here, APD’s decision to dismiss Thomas was not punitive because it fell squarely within the chief’s discretion to take personnel action to address an officer’s subpar attendance and thus to promote the efficient operation of the department. After multiple doctors certified Thomas as medically capable to perform full-duty work, Thomas made no effort to contact APD and did not return to work in any capacity for several months. The failure to show up for work—or even to communicate with an employer for months—would almost certainly result in an employee’s dismissal in *any* line of work. APD’s decision to terminate Thomas had no unique connection to his status as a sworn police officer. Instead, it was a routine personnel decision, the type of which is made all the time, across industries, when an employee demonstrates a continued refusal to perform work duties as expected. Thomas’s contention that he deserves a hearing under these circumstances trivializes the important protections of the LEOBR, which are reserved for

law enforcement officers facing serious investigations with the potential for real, grave consequences. We, therefore, affirm the ruling of the circuit court that Thomas is not entitled to a hearing under the LEOBR.

**JUDGMENT OF THE CIRCUIT COURT
FOR ANNE ARUNDEL COUNTY
AFFIRMED. COSTS TO BE PAID BY
APPELLANT.**