Circuit Court for Montgomery County
Case No. 482281-V

UNREPORTED

IN THE APPELLATE COURT OF

MARYLAND*

No. 156

September Term, 2021

ROCKVILLE CITY POLICE DEPARTMENT

v.

RITA MICHELLE TROTTER

Berger,
Nazarian,
Kehoe,**
JJ.

Opinion by Kehoe, J.

Filed: September 25, 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 Md. Rule 1-104(a)(2)(B).

** Kehoe, Christopher B., now retired, participated in the hearing of this case while an active member of this Court; after being recalled pursuant to the Constitution, Article IV, Section 3A, he also participated in the decision and the preparation of this opinion.

After an internal investigation, Sergeant Rita Trotter of the Rockville City Police Department[1] was charged with violating several provisions of the Department's standing orders. She invoked her right to an administrative hearing pursuant to the Law Enforcement Officer's Bill of Rights.[2]

The hearing board concluded that Sergeant Trotter was guilty of all but one of the charges brought against her. The Department argued that she should be demoted. The Board looked to the Department's established policy regarding sanctions for various sorts of misconduct and concluded that demotion was unwarranted. Instead, the Board recommended that she be suspended for seven days and fined $1,000. The Board's recommendation notwithstanding, the chief of the Department demoted Sergeant Trotter and additionally prohibited her from applying for a promotion for two years. Sergeant Trotter filed a petition for judicial review.

The Circuit Court for Montgomery County concluded that none of the guilty findings against Sergeant Trotter were supported by substantial evidence. The court reversed the

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[1] In its briefs, appellant refers to itself as the "City" or the "City of Rockville." In this opinion, we will refer to appellant as the "Department." Appellee's brief uses the terms "she" and "her" in reference to Sergeant Trotter. We will do the same in this opinion.

[2] The LEOBR was codified as Md. Code, Pub. Safety §§ 3-101–13. The General Assembly repealed the LEOBR effective July 1, 2022. *See* 2021 Maryland Laws, ch. 59 § 2. However, the repeal was prospective, and the enacting legislation provides that the LEOBR applies to "a disciplinary matter against a law enforcement officer based on alleged misconduct occurring before July 1, 2022." See 2021 Maryland laws ch. 59 § 8(2). All statutory references to the LEOBR are to the former versions of Pub. Safety §§ 1-101–113.

Board's decision, thus rendering moot the sanctions imposed by the chief. The Department has appealed and presents two issues, which we have reworded:

> 1. Were the findings of the Board supported by substantial evidence and not otherwise arbitrary or capricious?
> 2. Was the penalty imposed by the Chief arbitrary and capricious?[3]

We will affirm the judgment of the circuit court.

BACKGROUND

The Facts

The Rockville City Police Department sworn personnel involved in this case were: Sergeant *Rita Michelle Trotter*; Lieutenant *Jan Seilhamer*, who was Sergeant Trotter's immediate supervisor as well as a counselor in the Department's Peer Support Team; Major *Eric Over*, who was in charge of the Department's Administrative Services Bureau; and Lieutenant *Andy Taglienti*, who conducted the Department's internal affairs investigation into the events that we are about to relate. Also involved was *Theresa Broad,* the Department's office manager and the Department's quartermaster. Finally,

[3] The Department articulates the issues as follows:

1. Did substantial evidence support the findings and conclusions of the administrative board and the Chief of Police?
2. Did the Circuit Court err in reversing the decisions of the administrative board and the Chief of Police where both were supported by substantial evidence?

Miriam Zoole, an employee of the United States Department of Homeland Security ("DHS"), played a role in the events that gave rise to this appeal.

In February of 2019, Sergeant Trotter was chosen by the Department to attend an eleven-day training program sponsored by DHS at its Federal Law Enforcement Training Center ("FLETC") in Glynco, Georgia, from April 30, 2019 through May 10, 2019. FLETC did not charge tuition for the course and the agency both arranged for and paid for airline tickets for attendees, like Sergeant Trotter, who flew to and from the Glynco campus. FLETC also provided for reimbursement to attendees or their employers for hotel room charges, parking, and other miscellaneous expenses. But, unlike airline tickets, FLETC did not pay these charges upfront. FLETC's policy was to provide reimbursement after the attendee or the attendee's department paid the bill and then filed a request for reimbursement together with supporting documentation. At the administrative hearing, Ms. Broad testified that FLETC would not process dual reimbursement requests, that is, one from the attendee and another from the employer, and that Sergeant Trotter knew this.[4]

Sergeant Trotter was planning to be married in June 2019 and was worried that a large payment made to an out-of-state payee could result in her bank freezing her account as a security measure. This would interfere with her ability to timely pay bills associated

[4] Sergeant Trotter's version of events was different. We will discuss the relevant parts of her testimony in part A of our analysis.

with her wedding and reception. She expressed these concerns to Ms. Broad and the Department decided to pay Sergeant Trotter's hotel expenses up-front through use of a departmental credit card.

On the day that Sergeant Trotter registered at the hotel in Glynco, she learned that the Department had not made arrangements for the payment of her hotel room charges. This resulted in two exchanges of text messages between Sergeant Trotter and Ms. Broad.

The first was (formatting in original):

> [Sergeant Trotter]: [N]o one paid for my room in advance. They just charged me $1800.
>
> [Ms. Broad]: WHAT?? I was going to pay tomorrow before check in. Is that the total or for a deposit?
>
> [Sergeant Trotter]: I checked in today.
>
> [Ms. Broad]: [Exclamation deleted]!!! If you can get me the phone number [of the hotel,] I'll call them either tonight or in the morning to get your card credited and [the Department's card] charged.

The second was:

> [Ms. Broad]: Done!! They did not charge [your] card. It was an authorization. You MUST bring the receipt upon check out, please. [The hotel registration clerk] didn't even ask my name or any of my info to be able to send me a receipt.
>
> [Sergeant Trotter]: Thank you!! I had a panic attack cause there's so much coming out for the wedding this week/weekend too[.]
>
> [Ms. Broad]: I understand, sorry, I dropped the ball on that. I had tomorrow in my head for some reason as [your] check in date.

Ms. Broad also testified that the Department had decided that it was "going to pay for the hotel upfront and not get reimbursed," but that Sergeant Trotter would be reimbursed

by FLETC for any other expenses incurred by her in attending the course. Ms. Broad explained that basis for the Department's decision:

> I looked at our budget and I decided that we could incur that [hotel] expense and we could afford not to be reimbursed for it. We had the money in our budget. You know, it was springtime. We were getting in the second half of the budget, and I conferred with my supervisor at the time.

In its brief to this Court, the Department acknowledges that it "did not intend to seek reimbursement for the hotel expense; rather, [the Department] spent the money without expectation of reimbursement."

On June 5, 2019, Sergeant Trotter submitted a reimbursement request to FLETC for her out-of-pocket expenses, which totaled $530. She did not request reimbursement for the hotel room charges. Along with her request for reimbursement, Sergeant Trotter informed FLETC that the Department's "quartermaster has the hotel receipt since the Department funded the hotel cost and not me. She is supposed to be sending it over." But, consistent with its decision not to seek reimbursement for the room charges, the Department never requested FLETC to reimburse the Department. Nor did anyone from the Department ask Sergeant Trotter to request reimbursement from FLETC on the Department's behalf.

Miriam Zoole was the Department's point of contact at FLETC. Even though Sergeant Trotter had informed her that the Department had paid the hotel bill and no request for reimbursement for hotel expenses had been submitted to FLETC, and for reasons that are unclear from the record, Ms. Zoole contacted the hotel, obtained a copy of Sergeant

Trotter's hotel bill, which was $1,837, and added that amount to the sum electronically transferred to Sergeant Trotter's bank account [5]

For reasons equally unclear from the record, at no time did Ms. Zoole contact Sergeant Trotter or the Department about the hotel bill. Nor did Ms. Zoole inform Sergeant Trotter or the Department that FLETC was reimbursing Sergeant Trotter for the hotel expenses.

On June 24, 2019, Sergeant Trotter received a direct deposit into her bank account in the amount of $2,361. The payor was identified as "ACH DHS TREAS-310." The amount of the payment was $1,837 (the amount of the hotel charges) in excess of the amount that Sergeant Trotter had requested as reimbursement from FLETC. She testified that initially, she thought the transfer represented a refund on her federal income taxes. At this point, the timeline becomes important to the Department's case.

On July 31, 2019, that is 37 days after Sergeant Trotter received the reimbursement, she identified the credit of $2,367 in her bank account as coming from FLETC and that it included $1,837 as reimbursement for the room charges.

On August 6, 2019, that is 43 days after FLETC made the electronic funds transfer, and six days after she recognized the overpayment, Sergeant Trotter spoke with her immediate supervisor, Lieutenant Seilhamer, regarding the issue. August 6th was the first

[5] Ms. Zoole did not testify at the administrative hearing, but the parties do not disagree about the actions that she took, and didn't take, in this matter.

occasion when Lieutenant Seilhamer's shift coincided with Sergeant Trotter's after she realized that she had been reimbursed for the hotel expenses. Lieutenant Seilhamer instructed Sergeant Trotter to discuss the issue with Major Over because he was the head of the Department's Administrative Services Bureau and Ms. Broad worked under his supervision.

Two days later, on August 8, 2019, that is 45 days after she received the reimbursement and eight days after she first recognized the overpayment, Sergeant Trotter spoke with Major Over. He instructed her to not spend any of the money because the "money's not yours" and that she should "be ready to write a check." Major Over also instructed Sergeant Trotter to send him an email explaining the whole situation in detail, and he would decide what should be done.

But Sergeant Trotter never sent the email. After her meeting with Major Over, Sergeant Trotter began to feel ill, and her symptoms included severe abdominal pain. She eventually sought medical treatment and was told by a physician that she had suffered a miscarriage. Major Over testified that he didn't initially expect the email to be sent to him "for at least two or three days," which was extended even further once he learned of Sergeant Trotter's health problems.

On August 13, 2019, which was her first day back to work after her health issues, Sergeant Trotter was presented with a "Form 10," that is, a formal notice that she was the subject of an internal investigation regarding her handling of the reimbursement issue, as

well as a "Confidentiality/Do Not Disclose Order" signed by Lieutenant Tagliente. The order stated in pertinent part:

> You are hereby ordered to keep confidential all aspects of this on-going investigation, such that you may only discuss this matter with your attorney, me, the assigned investigator or the Chief of Police. . . . Use or disclosure of said confidential information for any purpose other than that stated or other than attorney client privileged information, shall constitute insubordination and subject you to administrative charges, which may result in dismissal from the Rockville Police Department.

After receiving these documents, Sergeant Trotter emailed Lieutenant Seilhamer in the early hours of August 14, 2019: "Urgent. Call me as soon as you get this." Lieutenant Seilhamer returned the call as soon as she woke up in the morning. We will discuss what occurred during their conversation later in this opinion.

On August 15, 2019, that is 52 days after she received the reimbursement and 15 days after she first recognized the overpayment, Sergeant Trotter placed a memorandum explaining the situation together with a check for $2,361, which was the total amount of the FLETC reimbursement, in Ms. Broad's mailbox.[6] The memorandum notified Ms. Broad that Sergeant Trotter received a total reimbursement from FLETC into her personal account and stated that Sergeant Trotter promptly notified Lieutenant Seilhamer and

[6] At the administrative hearing, the Department asserted that it was significant that although Sergeant Trotter had received the reimbursement from FLETC by means of an electronic transfer into her *savings* account, she wrote a check to the Department from her *checking* account. According to Lieutenant Tagliente, this showed that the amount transferred by Sergeant Trotter's check "wasn't the same money that was reimbursed." The Department does not make this contention in this appeal.

Major Over of the overpayment upon her discovery of it. Ms. Broad did not process Sergeant Trotter's check; instead, she told Sergeant Trotter that the actual amount Sergeant Trotter owed to the Department was $1,837 and not $2,361. That same day, Sergeant Trotter delivered a check for this amount to Ms. Broad.

The Administrative Charges

As a result of Lieutenant Taglienti's investigation, Sergeant Trotter was charged with violating five separate sections of the Department's rules and regulations. As required by the LEOBR, the charging document also included a statement of the "particulars," i.e., the factual premise, for each charge. The charges were:

(1) General Order 8-3 § IV.D, Performance of Duty:

> All employees shall perform their duties as required or directed by law, Departmental rule, policy, or order, or by order of a superior officer. All lawful duties required by competent authority shall be performed promptly as directed notwithstanding the general assignment of duties and responsibilities.

The factual premise for the charge was:

> On 24 of June 2019 Sergeant Michelle Trotter received an overpayment, to her personal bank account, hotel reimbursement funds from an out-of-state training course in the amount of $1,837.00 owed to the City of Rockville. Sergeant Michelle Trotter waited forty-three (43) days after receiving the overpayment to make notification to a supervisor. The actual funds of $l,837.00 were not reimbursed back to the City of Rockville until 21 of August 2019. The notification to supervisor and the return of funds were not completed in a timely manner.

(2) General Order 8-3, Section IV.G, Conduct Unbecoming an Officer/Employee:

> Employees shall not engage in any action, which constitutes unbecoming conduct, neglect of duty, or any other act on or off duty, which is likely to bring discredit upon the Department.

The factual premise was:

> On 24 of June 2019 Sergeant Michelle Trotter received an overpayment, to her personal bank account, [of] hotel reimbursement funds from an out-of-state training course in the amount of $ l,837.00 owed to the City of Rockville. Sergeant Michelle Trotter waited forty-three (43) days after receiving the overpayment to make notification to a supervisor. The actual funds of $l,837.00 were not reimbursed back to the City of Rockville until 21 of August 2019. On 08 of August 2019 Sergeant Michelle Trotter had a meeting with Major Eric Over to discuss the overpayment but made no effort to return the money.

(3) General Order 8-3, Section IV.J, Obligation to Duty:

> Officers of the Department are always subject to duty, but are periodically relieved from its routine performance. They shall at all times respond to the lawful orders of superior officers and other proper authorities as well as requests for police assistance from citizens. Proper police action must be taken whenever required. Officers assigned to special duties are not relieved from taking proper action outside the scope of their specialized assignment when necessary.

The factual premise was (emphasis added):

> On 24 of June 2019 Sergeant Michelle Trotter received an overpayment, to her personal bank account, hotel reimbursement funds from an out-of-state training course in the amount of $1,837.00 owed to the City of Rockville. Sergeant Michelle Trotter waited forty-three (43) days after receiving the overpayment to make notification to a supervisor. The actual funds of $1,837.00 were not reimbursed back to the City of Rockville until 21 of August 2019. Sergeant Michelle Trotter failed to take the proper actions to ensure the overpayment was returned to the City of Rockville. Notifications were not properly made.

(4) General Order 8-3, Section IV.K, Incompetence:

> Employees of this agency shall be held strictly responsible for the proper performance of their duties. Employees shall maintain sufficient competency to properly perform their duties and assume the responsibility of their positions. Employees shall perform their duties in a manner that will maintain the highest standards of efficiency in carrying out the functions and objectives of the agency.

The factual premise was:

> On 24 of June 2019 Sergeant Michelle Trotter received an overpayment, to her personal bank account, hotel reimbursement funds from an out-of-state training course in the amount of $1,837.00 owed to the City of Rockville. Sergeant Michelle Trotter waited forty-three (43) days after receiving the overpayment to make notification to a supervisor. The actual funds of $l,837.00 were not reimbursed back to the City of Rockville until 21 of August 2019. Sergeant Michelle Trotter failed to take the proper actions to ensure the overpayment was returned to the City of Rockville. Sergeant Michelle Trotter failed to realize that the overpayment was deposited into her account in a timely manner. Sergeant Michelle Trotter failed to notify Theresa Broad regarding the overpayment, when all financial details involving the training involved Theresa Broad.

(5) General Order 8-3, Section VI.F., Security of Departmental Business:

> Departmental employees shall treat the official business of the Department as confidential. They shall not impart it to anyone except those for whom it is intended, as directed by their Supervisor, or as required by law.

The factual premise for the charge was:

> On 24 of June 2019 Sergeant Michelle Trotter received an overpayment, to her personal bank account, hotel reimbursement funds from an out-of-state training course in the amount of $1,837.00 owed to the City of Rockville. Sergeant Michelle Trotter waited forty-three (43) days after receiving the overpayment to make notification to a supervisor. The actual funds of $l,837.00 were not reimbursed back to the City of Rockville until 21 of August 2019. On l3 of August 2019 Sergeant Michelle Trotter received a

> Rockville City Police Department Internal Investigation Notification (Form 10), accompanied by a Rockville City Police Department Confidentiality/Do Not Discuss Order. Sergeant Michelle Trotter had a conversation with Lieutenant Jan Seilhamer on the morning of 14 of August 2019, where she discussed the internal investigation and specific charges, therefore violating the Do Not Discuss Order.

The Hearing Board's Findings of Fact and Conclusions of Law

On March 11 and 12, 2020, the Board held a hearing on the charges relating to Sergeant Trotter's alleged misconduct. After hearing testimony from Lieutenant Taglienti, Ms. Broad, Major Over, Lieutenant Seilhamer, and Sergeant Trotter, as well as argument by counsel, the Board reached the following conclusions:

The Board found that Sergeant Trotter was guilty of violating General Order 8-3 § IV, D*,* which pertains to timely performance of duties. The Board explained (emphasis added):

> Sergeant Trotter did not notify a supervisor of the overpayment in a timely manner. It doesn't seem reasonable that Sergeant Trotter didn't look at her bank account for 43 days, especially after admitting to being a victim of financial fraud. Even if we were to believe that, Sergeant Trotter admitted she first saw the overpayment on July 31, 2019 and didn't report it to a supervisor until August 6, 2019. It still took her six days to report it, which is not considered "in a timely manner" and is unacceptable, especially [for] a first line supervisor. *Sergeant Trotter held on to money that didn't belong to her* for an unreasonable amount of time. Both Retired Major Over and Lieutenant Seilhamer both testified that they would define "in a timely manner" as being the very next business day, which is a reasonable response.

Second, the Board found that Sergeant Trotter was not guilty of violating General Order 8-3, § IV, G, which prohibits conduct unbecoming an officer or employee. The Board reasoned as follows:

> The Board felt the Agency did not meet the burden of proof for this charge. The Agency argued the actions of Sergeant Trotter brought discredit to the department; however, FLETC was prepared to reimburse the hotel costs whether it was to Sergeant Trotter or to the City of Rockville.

Third, the Board found that Sergeant Trotter was guilty of violating General Order 8-3, § IV, J, which in pertinent part requires officers to obey "lawful orders of superior officers and other proper authorities[.]" The Board explained:

> The Board believes Sergeant Trotter had an obligation to duty [to] report this overpayment in a timely manner, which was not done by evidence produced and testimony given by Sergeant Trotter, Retired Major Over and Lieutenant Seilhamer.

Fourth, the Board concluded that Sergeant Trotter was guilty of General Order 8-3, § IV, K, which states that employees of the Department "shall be held strictly responsible for [and to perform them] in a manner that will maintain the highest standards of efficiency in carrying out the functions and objectives of the agency." The Board reasoned as follows:

> The Board agrees that Sergeant Trotter's actions were deemed incompetent. She did not notify a supervisor of the overpayment in a timely manner. It doesn't seem reasonable that Sergeant Trotter didn't look at her bank account for 43 days, especially after admitting to being a victim of financial fraud. Even if we were to believe that, Sergeant Trotter admitted she first saw the overpayment on July 31, 2019 and didn't report it to a supervisor until August 6, 2019. It still took her six days to report it, which is not considered "in a timely manner" and is unacceptable, especially that from a

> first line supervisor. Sergeant Trotter held on to money that didn't belong to her for an unreasonable amount of time. Furthermore, she waited until August 15, 2019 to refund the money back to the City of Rockville which is fifteen (15) days after she first saw the overpayment in her account on July 31st.

Fifth and finally, the Board concluded that Sergeant Trotter was guilty of violating General Order 8-3, § VI, F, which requires officers to maintain security of departmental business. The Board explained:

> On August 13, 2019 Sergeant Trotter received and signed a Rockville City Police Department Internal Investigation Notification (Form 10), accompanied by a Rockville City Police Department Confidentiality/Do Not Discuss Order. Sergeant Trotter had a conversation with Lieutenant Seilhamer on the morning of August 14, 2019, where she discussed the internal investigation and specific charges, therefore violating the Do Not Discuss Order. This was proven by both Lieutenant Seilhamer and Sergeant Trotter's testimony.

Following its disposition of the charges, The Board considered sanctions. It recommended separate periods of suspension (totaling seven days) for the performance of duty, obligation to duty, and following lawful orders charges. The Board recommended a fine of $1,000 for the failure to maintain Departmental security charge.

The Board sent its findings and recommendations to the chief of the Department, who exercised his authority to consider enhancing the recommended penalties.[7] He did so and demoted Sergeant Trotter from sergeant to corporal and additionally prohibited her from applying for a promotion for two years.

[7] *See* former Pub. Safety § 3-108.

The judicial review proceeding

Sergeant Trotter filed a petition for judicial review. The circuit court reversed the Board's decision. It concluded that there was no substantial evidence to support the Board's findings that Sergeant Trotter was guilty of any of the charges filed against her. Based on these rulings, the court concluded that Sergeant Trotter's challenge to the enhanced penalty imposed by the chief was moot. The Department timely filed a notice of appeal.

After oral argument in this case, we invited the parties to file supplemental briefs to address whether and, if so, how, the principles of unjust enrichment and restitution apply to the Department's claim that it had a legally enforceable right to the $1,837 payment to Sergeant Trotter. We will discuss this issue in part C of our analysis.

THE STANDARD OF REVIEW

In a judicial review proceeding, the issue before an appellate court "is not whether the circuit . . . court erred, but rather whether the administrative agency erred." *Bayly Crossing, LLC v. Consumer Protection Division*, 417 Md. 128, 136 (2010) (cleaned up). For that reason, we "look through" the circuit court's decision in order to review the decision of the agency itself. *People's Counsel for Baltimore County v. Loyola College*, 406 Md. 54, 66 (2008). Additionally, "An agency's decision is to be reviewed in the light most favorable to it and is presumed to be valid." *Assateague Coastal Trust v. Schwalbach*, 448 Md. 112, 124 (2016).

"In order that a court may 'perform properly its examination function, an administrative decision must contain factual findings on all the material issues of a case and a clear, explicit statement of the agency's rationale.'" *Maryland Real Est. Comm'n v. Garceau*, 234 Md. App. 324, 349 (2017) (quoting *Fowler v. Motor Vehicle Admin*., 394 Md. 331, 342 (2006)). A reviewing court "'may not uphold the agency order unless it is sustainable on the agency's findings and for the reasons stated by the agency.'" *Maryland State Bd. of Dental Examiners v. Tabb*, 199 Md. App. 352, 379 (2011) (quoting *United Steelworkers of Am. v. Bethlehem Steel Corp*., 298 Md. 665, 679, (1984)). For this reason, if the agency "fail[s] to articulate an explanation for its decision, there is no analysis for this Court to review" *Id.*

Courts accept an agency's factual findings if they are supported by substantial evidence, that is, if there is relevant evidence in the record that logically supports the agency's factual conclusions. *Bayly Crossing*, 417 Md. at 138-39. Reviewing courts review a hearing board's legal conclusions *de novo*, that is, without deference to the hearing board's legal conclusions. *Id.* at 137.

There standards apply to cases that arose under the Law Enforcement Officers' Bill of Rights. *See, e.g., Coleman v. Anne Arundel County. Police Dep't*, 369 Md. 108, 121 (2002); *Baltimore City Police Dep't v. Robinson*, 247 Md. App. 652, 670 (2020).

ANALYSIS

As we have related, we "look through" the judgment of the circuit court to review the administrative agency's decision. Although our reasoning as to discrete parts of this complicated case differs from the circuit court's, we will affirm its judgment.

Our analysis is divided into three parts. In part A, we consider the Board's findings and conclusions regarding the allegations that Sergeant Trotter committed misconduct regarding her handling of the $1,837 transferred to her bank account by FLETC. We will refer to this group of charges as the "breach of duty charges."

In part B, we will discuss the remaining charge, which is that Sergeant Trotter violated a Departmental order to keep the fact that she was charged as well as all facts pertaining to the Department's investigation confidential. We will refer to this as the "confidentiality charge."

In part C, we will address whether the Department had a cognizable equitable or legal claim to the $1,837 room reimbursement in light of the fact that it paid for the hotel room "without expectation of reimbursement," never intended to seek reimbursement, and never requested reimbursement. This issue is relevant to whether this case should be remanded to the hearing board for further proceedings.

A. The Breach of Duty Charges

1. The performance of duty charge

The Board concluded that Sergeant Trotter violated General Order 8-3 § IV.D (Performance of Duty) because she "did not notify a supervisor of the overpayment in a

timely manner" and "held on to money that didn't belong to her" for an unreasonable time.

There are problems with the Board's reasoning. We will start with the language of the order itself.

General Order 8-3, § IV.D states (emphasis added):

> Performance of Duty
>
> All employees shall perform their duties as required or directed by *law, Departmental rule, policy*, or *order*, or by *order of a superior officer*. All lawful duties required by competent authority shall be performed promptly as directed notwithstanding the general assignment of duties and responsibilities.

We equate the Department's general orders as being the legal equivalent of an agency regulation. In deciding what a regulation means, we focus on the plain language of the regulation (or general order as the case may be) because "a regulation's plain language is the best evidence of its own meaning." *Board of Liquor License Commissioners v. Kougl*, 451 Md. 507, 515 (2017). Courts "conduct this plain language inquiry within the context of the regulatory scheme, and our approach is a commonsensical one designed to effectuate the purpose, aim, or policy of the enacting body." *Id.* at 516.[8]

[8] Courts generally defer to an agency's interpretation of its own regulations. *See, e.g., Blue Buffalo Company, Ltd. v. Comptroller of Treasury*, 243 Md. App. 693, 702 (2019). In this case, because the hearing board did not "administer" the regulation in the sense that the term was used in *Blue Buffalo* and similar cases, we exercise *de novo* review over

As the circuit court pointed out in its memorandum opinion, there is nothing in General Order 8-3, § IV.D that can possibly be interpreted as imposing a duty upon police officers to monitor their bank accounts on a daily basis (or, for that matter, on any basis), much less setting standards for how frequently officers should do so. The same problem exists with the second basis for the Board's conclusion that Sergeant Trotter violated § IV.D—at the administrative hearing, the Department did not identify a "Departmental rule, policy, or order, or by order of a superior officer" directing officers to report errors in their bank accounts to anyone within the Department. Finally, and although there was evidence before the Board from which the Board could find that Ms. Broad communicated to Sergeant Trotter that she should be on the lookout for a room charge reimbursement from FLETC, the Department presented no evidence that Ms. Broad, a civilian employee of the Department, was Sergeant Trotter's "superior officer."

We agree with the circuit court that the Board read into § IV.D "requirements on how officers are to conduct their personal lives" that have no basis in the language of the order itself. We hold that the Board's guilty finding on the General Order 8-3, § IV.D charge was legally erroneous and unsupported by substantial evidence.

2. The obligation of duty charge

General Order 8-3, Section IV.J states:

> Obligation to Duty:

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the Board's interpretation of the Department's standing orders. *Merryman v. Univ. of Baltimore,* 246 Md. App. 544, 554 (2020), *aff'd on other grounds,* 473 Md. 1 (2021).

> Officers of the Department are always subject to duty, but are periodically relieved from its routine performance. They shall at all times respond to the lawful orders of superior officers and other proper authorities as well as requests for police assistance from citizens. Proper police action must be taken whenever required. Officers assigned to special duties are not relieved from taking proper action outside the scope of their specialized assignment when necessary.

The Board found that

> Sergeant Trotter had an obligation to duty [to] report this overpayment in a timely manner, which was not done by evidence produced and testimony given by Sergeant Trotter, Retired Major Over and Lieutenant Seilhamer.

Again, we start with the language of the rule. By its plain terms, General Order 8-3 § IV.J does not impose substantive duties on officers. Instead, § IV.J sets out standards for when duties must be discharged. First, the rule states that officers are "always subject to duty, but are periodically relieved from its routine performance."[9] Second, § IV.J requires officers to:

> respond to the lawful orders of superior officers and other proper authorities as well as requests for police assistance from citizens. Proper police action must be taken whenever required.

Section IV.J draws a distinction between categories of duties. The first category consists of "lawful orders of superior officers and other proper authorities as well as

[9] Section IV.J also states that "[o]fficers assigned to special duties are not relieved from taking proper action outside the scope of their specialized assignment when necessary." The Department does not suggest that Sergeant Trotter was assigned to a "special duty."

requests for police assistance from citizens." These must be responded to "at all times," that is, the duty created by the order or the citizen's request for assistance must be performed regardless of whether the officer is on duty or not. The second category are duties from which officers are "periodically relieved" from performing, which can only mean that the officer is required to discharge the duty at the very earliest on the next day that they are scheduled to work.

Sergeant Trotter's obligation to report an overpayment in her bank account does not fall into the category of "orders of superior officers and other proper authorities," because, at least as the record discloses, there were no such orders. Nor was Sergeant Trotter confronted with a request for police assistance from a citizen.

In its § IV.J analysis, the Board identified two possible starting dates for Sergeant Trotter's obligation to report the overpayment:

The first was June 24, 2019, which was when Sergeant Trotter's account was credited with payment from FLETC. For the reasons that we have explained, General Order 8-3, § IV.D did not impose a duty on Sergeant Trotter to monitor her bank account.

The second possible date was July 31, 2019, which is when Sergeant Trotter realized that the credit included reimbursement for hotel expenses. Six calendar days expired between the time that Sergeant Trotter realized that FLETC had transferred an extra $1,837 into her account and the time that she notified Lieutenant Seilhamer of the problem. The Board found that this was not timely, based on the testimony of "Sergeant Trotter, Retired Major Over and Lieutenant Seilhamer."

There are two problems with the Board's reasoning. The first is that the Board's focus on the number of calendar days is misplaced. This is because, as we have explained, an officer's duty to report an overpayment is one that can be discharged on the next day that the officer is on duty. The relevant metric is duty days and not calendar days. The Board failed to apply the correct test.[10]

Additionally, the Board's finding is not consistent with the actual testimony of Sergeant Trotter and Major Over.

For her part, Sergeant Trotter testified that Ms. Broad's testimony that she and her supervisor, who was Major Over, had made a conscious decision not to seek reimbursement for the room charges was inaccurate. Sergeant Trotter asserted that Ms. Broad had told her that she intended to do so.[11]

Sergeant Trotter further testified that, because she herself was in a supervisory position, Department protocols required her to speak to Ms. Broad's supervisor, who was Major Over, instead of to Ms. Broad directly. Finally, she testified that she thought it was

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[10] As we will explain, the Board made the same error in its analysis of the other performance of duty charges.

[11] There is some support in the record for Sergeant Trotter's version of events. Lieutenant Tagliente testified that among the findings in his report was that:

> Theresa Broad asked Sergeant Michelle Trotter to obtain a receipt upon checkout from the hotel and return it to her so that she can provide proper documentation for the charge on the City's credit card statement, *seek reimbursement from FLETC DHS LA*.

(Emphasis added.)

advisable for her to discuss this matter with Lieutenant Seilhamer, her immediate supervisor, before communicating with Major Over. She wanted her discussion with Lieutenant Seilhamer to be in person and the first day that their shifts coincided after she realized that she had the $1,837 was August 6, 2019. It was after that conversation that Sergeant Trotter spoke to Major Over.

For his part, Major Over testified that he and Sergeant Trotter were at a meeting on an unrelated matter and, when it concluded, she asked him if she could speak to him about another matter. Major Over related that Sergeant Trotter then told him that she had received "an overpayment from FLETC, and she wasn't quite sure what to do." He testified that he told her:

> it's not your money. Don't spend it. Be prepared to write the City a check and . . . send me an email with all of the details and we will look into it and get back to [you].

He further testified that he "didn't expect to get anything from [Sergeant Trotter] for at least two or three days" because he knew that she was "coming up" on a period of days off.

For her part, Lieutenant Seilhamer testified that an officer who received an overpayment should report it on their "the next working day" after the officer became aware of the problem.

The Board's conclusion that the testimony of these witnesses showed that Sergeant Trotter had violated General Order 8-3, § IV.D is not consistent with the actual testimony

of the three officers when that testimony is considered in its totality. This is not the end of the analysis, however.

A fact-finder is "free to believe all, part, or none" of a witness's testimony. *Barton v. Advanced Radiology P.A.*, 248 Md. App. 512, 537 (2020). This precept is applicable to administrative proceedings. *Pickert v. Maryland Bd. of Physicians*, 180 Md. App. 490, 505 (2008). The Board was entitled to conclude that parts of the testimony of the three relevant witnesses were credible and that other parts were not. But the Board was required to explain the basis of its decision and this the Board failed to do. *See Maryland State Bd. of Dental Examiners v. Tabb*, 199 Md. App. at 379.

3. The incompetence charge

General Order 8-3, Section IV.K states in pertinent part:

> Incompetence:
>
> Employees of this agency shall be held strictly responsible for the proper performance of their duties. Employees shall maintain sufficient competency to properly perform their duties and assume the responsibility of their positions. Employees shall perform their duties in a manner that will maintain the highest standards of efficiency in carrying out the functions and objectives of the agency.

Again, we start with the plain language of the rule. Section IV.K articulates two concepts that are relevant to the charges against Sergeant Trotter:

The first is that officers are "strictly responsible for the proper performance of their duties. The second is that duties are to be performed in a manner "that will maintain the

highest standards of efficiency in carrying out the functions and objectives of the agency."

The Board concluded that

> The Board agrees that Sergeant Trotter's actions were deemed incompetent. She did not notify a supervisor of the overpayment in a timely manner. It doesn't seem reasonable that Sergeant Trotter didn't look at her bank account for 43 days, especially after admitting to being a victim of financial fraud. Even if we were to believe that, Sergeant Trotter admitted she first saw the overpayment on July 31, 2019 and didn't report it to a supervisor until August 6, 2019. It still took her six days to report it, which is not considered "in a timely manner" and is unacceptable, especially that from a first line supervisor. Sergeant Trotter held on to money that didn't belong to her for an unreasonable amount of time. Furthermore, she waited until August 15, 2019 to refund the money back to the City of Rockville, which is fifteen (15) days after she first saw the overpayment in her account on July 31st.

We have already explained that Sergeant Trotter was under no duty to monitor her bank account to make sure that FLETC did not pay her money that she hadn't asked for. There was evidence before the Board that Sergeant Trotter had been the victim of fraudulent withdrawals from her account. She testified for that reason she monitored *withdrawals* from her account. There was no evidence before the Board as to what steps a person should take to monitor *deposits* to her account in light of the fact that she had been the victim of fraudulent withdrawals. The Board's views as to what might have been prudent for someone in Sergeant Trotter's situation were not supported by any evidence in the record.

As we explained in our discussion of the Board's finding as to the obligation of duty charge, the relevant timeline began on July 31, 2019, when Sergeant Trotter realized that FLETC had deposited the room charges in her account. The Board concluded that Sergeant Trotter was incompetent because she waited six calendar days before reporting the overpayment. As we have explained, the Board's focus on calendar days as opposed to duty days was misplaced.

The Board made no finding as to how often Sergeant Trotter was on duty between July 31st and August 5th. We assume that evidence of her work schedule is readily obtainable. In situations such as this, the usual appellate remedy is to remand the case to the agency to take additional evidence and make additional fact-finding. However, as we will explain, in part C of our analysis, a remand is not appropriate in the present case.

B. The confidentiality charge

This brings us to the remaining charge, namely, whether Sergeant Trotter violated General Order 8-3, § VI,F, which requires officers to maintain security of departmental business.

As we have related, when Lieutenant Tagliente delivered a notice of an internal investigation to Sergeant Trotter, he also delivered to her an order that stated in pertinent part:

> You are hereby ordered to keep confidential all aspects of this on-going investigation, such that you may only discuss this matter with your attorney, me, the assigned investigator or the Chief of Police. . . . Use or disclosure of said confidential information for any purpose other than that stated or other than attorney client privileged information, shall constitute

> insubordination and subject you to administrative charges, which may result in dismissal from the Rockville Police Department.

After receiving these documents, Officer Trotter emailed Lieutenant Seilhamer in the early hours of August 14, 2019, "Urgent. Call me as soon as you get this." Lieutenant Seilhamer returned the call as soon as she woke up in the morning. At the hearing, and in response to questions from the Department's counsel, Lieutenant Seilhamer testified that, during their conversation, Sergeant Trotter was "rather upset and distraught and told me [that] she had been served with the IA." The following exchange ensued:

> Q. Did she go into the details of the IA?
>
> A. She had mentioned the charges, but she did not discuss the details of the investigation.
>
> * * *
>
> However, I had just woken up, so I was still a little foggy brained. I do remember there were charges mentioned. I don't remember specific charges.
>
> Q. And what did you do when she did this?
>
> A. I told her, "Don't tell me anymore," and I just talked to her because she was rather distraught.
>
> Q. Did you talk to her about the Internal Affairs investigation?
>
> A. No further about the investigation, just kind of listening to her because she was upset.

On cross-examination, counsel for Sergeant Trotter returned to this conversation:

> Q. Okay. I'd like to talk a little bit about the phone call that you received from my client after you had woken up. In fact, I think you said you were a bit foggy brained at the time. Is that right?
>
> A. Yes.

Q. Now, when she first contacted you, in what capacity did you think she was contacting you in?

A. Due to the fact that I received a departmental email, I thought initially she was contacting me as her direct supervisor. Once I spoke with Major England and he told me that I needed to notify Lieutenant Taglienti because Sergeant Trotter wasn't supposed to talk about it, I said -- I told him, "Wait because maybe she was talking to me as Peer Support" because I'm also a trained Peer Support member.

Q. So, in your initial fog in the conversation, the idea that my client was reaching out to you as Peer Support really hadn't entered your mind?

A. At that time, it did not.

Q. Okay. But you readily acknowledge that when you spoke to her that she was upset. She was distraught.

A. Yes.

Q. And would it be fair to say that you tried to talk her through her emotions or, you know, provide counsel in some way to get her to calm down?

A. The whole purpose of Peer Support is to help officers process their emotions. We don't offer advice. We don't get involved in the IA, per se. It's -- we are trying to help them deal with that stressor by processing the emotion and directing them toward resources.

* * *

Q. As you sit here today and testify, do you now believe when you conversed with Sergeant Trotter she was reaching out to you as Peer Support?

[Department's Counsel]: Objection.

[Board Chair]: Overruled.

A: Looking back now and having time to reflect, I do believe Sergeant Trotter was reaching out to me as Peer Support.

On direct examination, Sergeant Trotter testified that she contacted Lieutenant Seilhamer for peer support counseling because she was "hysterical" and "it felt like

suddenly my whole world was falling apart [and] I knew that [Lieutenant Seilhamer] was somebody that I could talk to" for peer support. However, she conceded that she did not explicitly say to Lieutenant Seilhamer that she was calling her for peer support counseling.

As a result of this conversation, Sergeant Trotter was charged with violating General Order 8- 3, § VI.F which states:

> Security of Departmental Business:
>
> Departmental employees shall treat the official business of the Department as confidential. They shall not impart it to anyone except those for whom it is intended, as directed by their Supervisor, or as required by law.

The Board concluded that Sergeant Trotter was guilty of violating § VI.F. The Board stated:

> On August 13, 2019 Sergeant Trotter received and signed a Rockville City Police Department Internal Investigation Notification (Form 10), accompanied by a Rockville City Police Department Confidentiality/Do Not Discuss Order. Sergeant Trotter had a conversation with Lieutenant Seilhamer on the morning of August 14, 2019, where she discussed the internal investigation and specific charges, therefore violating the Do Not Discuss Order. This was proven by both Lieutenant Seilhamer and Sergeant Trotter's testimony.

We hold that the Board's finding of guilt as to the confidentiality charge must be reversed because the confidentiality order violated Maryland public policy.[12]

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[12] In this regard, we are in agreement with the circuit court. In its memorandum opinion, the court explained:

> This Court's reading of the Do Not Discuss Order finds that the Department's order is inappropriately restrictive because an Officer, like

The doctrine of public policy "is that principle of the law which holds that no [person] can lawfully do that which has a tendency to be injurious to the public, or against the public good, which may be termed, as it sometimes has been, the policy of the law, or public policy in relation to the administration of the law." *Adler v. American Standard Corp*., 291 Md. 31, 45 (1981) (quoting *Egerton v. Earl Brownlow*, 4 H. L. Cas. 1, 196 (1853)). Because "recognition of an otherwise undeclared public policy as a basis for a judicial decision involves the application of a very nebulous concept to the facts of a given case, . . . declaration of public policy is normally the function of the legislative branch." *Yuan v. Johns Hopkins Univ.*, 452 Md. 436, 451 (2017). In Maryland, the General Assembly has enacted legislation to protect "certain communications and relationships" by providing that those communications and relationships are privileged. *Doe v. Maryland Board of Social Workers*, 154 Md. App. 520, 528, *aff'd sub nom*. *Doe v. Maryland Board of Social Work Examiners*, 384 Md. 161 (2004)).

The non-disclosure order prohibited Sergeant Trotter from discussing "all aspects of this on-going investigation," with three exceptions: Lieutenant Tagliente, the Chief of the Department, and Sergeant Trotter's legal counsel. The order does not except other

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> Sergeant Trotter, upon receipt of such an order cannot discuss a career threatening allegation with a spouse, family member, or even therapist without risking further sanctions. The Department has not and cannot articulate a reason for such a restriction in this case.

(Citation omitted.)

communications that are confidential as a matter of law. According to the order, Sergeant Trotter was prohibited from discussing any aspect of the investigation, which would include the fact that there was an investigation in the first place, with her spouse. Confidential spousal communications are privileged.[13] The order prohibited her from discussing the investigation for purposes of treatment with a psychiatrist, a psychologist, or a mental health nursing specialist. Such communications are privileged.[14] If Sergeant Trotter sought "spiritual advice or consolation" regarding the pending investigation from a priest, minister, rabbi, imam, or other cleric of an established religion, she would have violated the order. But it is the law of Maryland that communications of this nature are privileged.[15] Lieutenant Tagliente's order did not contain an exception for the Department's own peer counseling program, even though the program provides that statements made by an officer to a counselor are confidential.

To be sure, the Department has a legitimate interest in preventing collusion among possible witnesses who are interviewed in internal investigations. But the Department did not contend to the Board that the conversation between Sergeant Trotter and Lieutenant Seilhamer resulted in collusion between them or otherwise affected Lieutenant Tagliente's investigation. Nor did the Board make such a finding.

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[13] Md. Code, Courts & Jud. Proc. § 9-105.

[14] Courts & Jud. Proc. §§ 9-109 and 9-109.1.

[15] Courts & Jud. Proc. § 9-111.

The Department has no legitimate interest in prohibiting an officer who is subject to such an investigation from informing their spouses of that fact. Nor does the Department have a legitimate interest in preventing an officer from seeking counseling and treatment from mental health professionals to alleviate the stress created by an internal investigation, or from seeking spiritual guidance or comfort from a spiritual advisor or a member of the clergy. At best, the Department's do not disclose order was overbroad and needlessly intrusive into the private lives of officers without any corresponding benefit to the Department. At worst, the open-ended and expansive language of the order was a trap for the unwary or the distraught.[16] And that was precisely how the order was utilized by the Department in the present case. We reach this conclusion because the Department did not argue to the Board that the conversation between Sergeant Trotter and Lieutenant Seilhamer resulted in any collusion or had any effect whatsoever on Lieutenant Tagliente's investigation.

For these reasons, we hold that the order violates public policy and the Board's finding that Sergeant Trotter violated it is reversed.

[16] At the circuit court, counsel for the Department conceded that "it would not violate [Lieutenant Tagliente's] order if one was in therapy." Counsel's concession notwithstanding, the plain language of the order did indeed prohibit disclosure in therapy.

C. The Request for Additional Briefing

As we have explained, the conceptual cornerstone of the Department's case against Sergeant Trotter was that the $1,837 deposited in her account by FLETC was the Department's property. The Department's counsel repeatedly asserted to the Board that Sergeant Trotter delayed in transferring money that was owned by the Department. These contentions were not challenged by Sergeant Trotter's counsel. As a result, the Board's analysis of the breach of duty charges was based on the premise that Sergeant Trotter was wrongfully withholding the Department's property.

After oral argument in this case, research by the panel called into question the validity of the Department's assertion and the Board's assumption that the $1,837 reimbursement for room charges was the Department's property. On April 21, 2022, this panel invited the parties to file supplemental briefs to address the following issues:

> (1) Was the payment of $1,837 by DHS to Sergeant Trotter "induced by [an] invalidating mistake"? *See* American Law Institute RESTATEMENT (THIRD) OF RESTITUTION AND UNJUST ENRICHMENT (2011) ("Restatement") § 5 and § 6 and accompanying comments.
>
> (2) If the payment by DHS to Sergeant Trotter was by "mistake"—as the term is used in the Restatement—did appellant have an enforceable legal right to the $1,837 that was superior to one that could be asserted by DHS?
>
> (3) In light of the facts, including that appellant deliberately decided not to seek reimbursement from DHS, did appellant have a claim to the $1,837 that could be enforced in law or equity? If appellant did, was its claim to the $1,837 superior to a claim that could be asserted by appellee? *See* Restatement § 48 and accompanying comments, especially comments a. and i.
>
> (4) If this Court concludes that appellant did not have "a right in the disputed asset[] that is both recognized, and accorded priority over the

> interest of the defendant, under the law of [Maryland]," Restatement § 48, comment i., and assuming that a remand is not otherwise required, is a remand to the hearing board necessary? *Compare Board of Public Works v. Hovnanian's Four Seasons*, 425 Md. 482, 522 (2012) ("The error committed by the Board was one of law—applying the wrong standard in formulating its decision. The appropriate remedy in such a situation is to vacate the decision and remand for further proceedings designed to correct the error."), *with County Council of Prince George's County. v. Zimmer Development. Co.*, 444 Md. 490, 581 (2015) (Even if a reviewing court concludes that the agency's decision was based on an incorrect legal premise, the court "need not remand [the case], if the remand would be futile.").

The parties' responses

In its supplemental brief, the Department contends that the principles of restitution and unjust enrichment do not apply to the determination as to whether Sergeant Trotter violated general orders. According to the Department,

> [t]here is no dispute between the [Department] or the DHS as to who has a superior claim to the money at issue. DHS made the payment for the express purpose of reimbursing the party that had paid training-related expenses on the front end. Appellee, understanding that the money did not belong to her, belatedly returned it to the [Department].
>
> * * *
>
> At no point during these proceedings did [Sergeant Trotter] take the position that the $1,837.00 did not belong to the [Department] or that she was not duty-bound to pay the [Department] upon discovering the overpayment to her bank account.

As to the second question, the Department contends that the payment from FLETC to Sergeant Trotter was not induced by an invalidating mistake, and that "no invalidating mistake occurred because DHS bore the risk of any potential mistake." As to the third question, the Department contends that it has an equitable right to the $1,837, even

though it decided not to seek reimbursement from FLETC, because "the [Department] conferred upon [Sergeant Trotter] a benefit in the amount of $1,837.00." Finally, the Department asserts that if any of these contentions are unavailing, a remand to the Board would "be appropriate so that the parties could offer evidence and make arguments with respect to the unjust enrichment issue now raised."

Unsurprisingly, Sergeant Trotter disagrees with each of these contentions. She asserts that the Department did not seek reimbursement until Sergeant Trotter reported to her supervisor that she had received the payment. Therefore, "DHS's transfer of the $1,837 to [Sergeant Trotter] was not induced by an invalidating mistake because [the Department] assumed the risk of the transfer." Sergeant Trotter points to the fact that because the Department deliberately decided not to seek reimbursement, its claim to the money must be inferior to that of FLETC. Finally, Sergeant Trotter asserts that we should affirm the trial court's decision without remanding the case for further proceedings because "the charges sustained by the hearing board . . . lack evidentiary support."

We begin our analysis by noting that one aspect of the Department's argument is correct—it is generally inappropriate for a reviewing court to reverse or vacate a decision of an administrative body on a ground not raised at the administrative level. But it would also be inappropriate to remand a case for additional decision-making by an administrative board when doing so would be an exercise in futility.

Unjust Enrichment and Restitution

Unjust enrichment is "[t]he receipt of property conferred by another not as a gift, but instead in circumstances where compensation is reasonably to be expected." *Black's Law Dictionary* 1849 (11th ed. 2019). Restitution is the legal remedy available to those who believe that another has been unjustly enriched at their expense. At their conceptual core, the doctrines of unjust enrichment and restitution are based on everyday notions of fairness and common sense, coupled with the recognition that the legal system does not supply a remedy for everyone who is disappointed by the behavior of another.

The relevant legal principles, together with extensive commentary on how the principles should be applied in specific situations, can be found in the American Law Institute RESTATEMENT (THIRD) OF RESTITUTION AND UNJUST ENRICHMENT (2011) ("Restatement").[17]

The basic legal principles are set out in Restatement §§ 6 and 48. Section 6 states (emphasis added):

[17] Neither party has cited a Maryland appellate decision that is precisely on point, and our own research hasn't uncovered any. For this reason, the legal principles espoused in the Restatement are our guide.

> Payment of Money Not Due
>
> Payment by mistake gives the *payor* a claim in restitution against the *recipient* to the extent payment was not due.

In the context of the case before us, the "payor" was FLETC and the "recipient" was Sergeant Trotter. Because neither Sergeant Trotter nor the Department asked for reimbursement for the room charges, FLETC's payment was made by mistake. As a general rule, payments made by mistake by a government agency are recoverable by the payor. See § 6 comment c illustration 8. Section 6 means that FLETC had the right to recover the $1,837 from Sergeant Trotter. Section 6 does not address whether the Department had a right to that money.

The conceptual basis for the Department's claim to the $1,837 is explained in Restatement § 48, which states (emphasis added):

> Payment to Defendant to Which Claimant Has a Better Right
>
> If a *third person* makes a payment to the *defendant* to which (as between claimant and defendant) the *claimant* has a better legal or equitable right, the claimant is entitled to restitution from the defendant as necessary to prevent unjust enrichment.

In the present case, for the purposes of § 48, FLETC was the "third person," Sergeant Trotter was the "defendant," and the Department was the "claimant." Whether the Department had a "better legal or equitable right" to the $1,837 than did Sergeant Trotter or FLETC is the issue.

Two of the American Law Institute's comments to Restatement § 48 are particularly pertinent. This first is comment g, which states (emphasis added):

> As used in [§ 48], the words "better legal or equitable right" refer to a paramount interest of a kind *recognized in law or equity*—not to the personal merit or desert of the persons involved, or to considerations of fairness independent of preexisting entitlements. See Comment i.

Comment i., states in pertinent part (emphasis added):

> Although the rule of § 48 is stated very broadly, *its scope is much narrower than the language of the provision might suggest to a nonlawyer*. Properly interpreted, the requirement that the claimant demonstrate "a better legal or equitable right" to the benefit in question *is actually highly restrictive*. The requirement is satisfied in some instances . . . by proof of a clear legal entitlement. In other cases the claimant's entitlement is drawn from equity jurisprudence. But the requirement, in either case, is that *the claimant identify a right in the disputed assets that is both recognized, and accorded priority over the interest of the defendant, under the law of the jurisdiction.* Proof merely that the defendant has received a windfall, that the claimant has been ill-treated, and that the third party's payment to the defendant (or the defendant's retention of payment as against the claimant) violates rules of good faith, basic fairness, or common decency, does not suffice to make out a claim in restitution under § 48 or any other provision of this Restatement[.]
>
> If the defendant has received a payment to which neither party has a legally protected entitlement, *the mere fact that the claimant's position is superior to that of the defendant when measured by need, merit, or desert will not support a claim in restitution.* A legal conclusion to this effect is frequently expressed in the observation that while the defendant may have been unjustly enriched, he has not been enriched at the expense of the claimant.

Returning to the case before us, if the payment of the $1,837 by FLETC to Sergeant Trotter had been the result of a mistake on the agency's part, then the agency would have a claim in restitution against Sergeant Trotter of the amount of the payment. And it is clear to us that the payment had been made by mistake. Neither Sergeant Trotter nor the Department asked for reimbursement for the room charges. The Department does not

assert that it was the policy of FLETC to reimburse costs when not asked to do so. However, FLETC's error was not an "invalidating mistake" because, as a general rule, a government entity may recover payments made in error by means of a restitution action. *See* Reporter's Note to Restatement § 6 comment c illustration 8 (citing *United States v. Wurts*, 303 U.S. 414, 415 (1938) ("The Government by appropriate action can recover funds which its agents have wrongfully, erroneously, or illegally paid".)).

But the scope of Sergeant Trotter's obligations to FLETC played no role in the Department's case against Sergeant Trotter. The Department did not argue that FLETC had any claim to the money or that Sergeant Trotter had any duty to FLETC; the premise of the Department's case to the Board was that Sergeant Trotter was under a legal duty to pay the $1,837 to it because the $1,837 was the Department's property.

As support for its position that it has a claim to the $1,837 that is enforceable in law or equity, the Department cites *Hill v. Cross Country Settlements*, 402 Md. 281, 295–96 (2007). Its reliance is misplaced. *Hill* involved the application of the "officious payor doctrine," which bars recovery in cases where the plaintiff voluntarily pays an obligation of the defendant and then seek to recover from the defendant. *Id.* at 301–02. In *Hill*, the Court held that the officious payor doctrine does not apply in cases in which the plaintiff:

> acts under a legal compulsion or duty, acts under a legally cognizable moral duty, acts to protect his or her own property interests, acts at the request of the defendant, or acts pursuant to a reasonable or justifiable mistake as to any of the aforementioned categories.

Id. at 305.

In the present case, the Department made an informed, conscious decision to forego reimbursement that it indisputably had the right to receive. Its decision to relinquish reimbursement from FLETC was not based on any moral duty. Its decision was also completely at variance with the Department's own fiscal, i.e., property, interests. Although Sergeant Trotter asked the Department to pay the room costs upfront, there was no evidence that she asked the Department to forgo reimbursement.

Hill does not directly apply to this case because the Department does not assert that Sergeant Trotter was under an obligation to pay the hotel room charges herself. But *Hill* does provide insight as to some of the applicable equitable considerations. And application of these considerations undercuts the Department's position that the $1,837 was its property.[18]

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[18] In its supplemental brief, the Department asserts that Ms. Zoole's payment to Sergeant Trotter was made with "the expectation that she would then reimburse the agency if it had advanced any of the costs associated with the training." To support this contention, the Department cites to the following portion of Ms. Broad's testimony:

> The woman at FLETC told us they could not reimburse more than one person. It was either the student or the agency. And then she told us what they had done in the past, you know, like what our options were. You know, you could either reimburse the agency and then the agency could reimburse the student their part, or the student could get everything and then have to reimburse us our part.

One problem with this argument is that Sergeant Trotter voluntarily paid the money to the Department, an act completely consistent with the Department's conceptualization of FLETC's expectations. Additionally, the Department acknowledges that it paid the room charges "without expectation of reimbursement" and that the Department "did not intend to seek reimbursement for the hotel expense[.]" Under these circumstances, it is

In this context, it is immaterial whether Sergeant Trotter was aware of the possibility that FLETC had a claim to the $1,837. The standard for assessing an individual's conduct is objective, not subjective, and individuals are presumed to know the law. *See, e.g., Rice v. State*, 136 Md. App. 593, 605 (2001) ("Everyone is presumed to know the law regardless of conscious knowledge or lack thereof, and is presumed to intend the necessary and legitimate consequences of [their] actions in its light." (quoting *Benik v. Hatcher*, 358 Md. 507, 532 (2000)).

Because the Department had no legal or equitable right to the $1,837 that was superior to Sergeant Trotter's or FLECT's, its argument that the $1,837 was its property fails. Nor can the Department credibly assert that the result is unfair to it. This is so because it paid the room charges gratuitously and without expectation of reimbursement.

CONCLUSION

We hold that:

(1) The Board's finding that Sergeant Trotter violated the Department's performance of duty order (General Order 8-3, § IV.D) was erroneous as a matter of law.

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difficult to understand how the Department has an interest in the $1,837 that is superior to that of FLETC.

Finally, the Department also places weight on what it asserts was a statement by Sergeant Trotter's counsel in his opening statement: "FLETC doesn't do split reimbursements." The Department takes the statement out of context. In fact, what counsel said was "*Unbeknownst to Sergeant Trotter*, FLETC doesn't do split reimbursements[.]" (Emphasis added.)

(2) The Board's finding that Sergeant Trotter violated the Department's security of departmental business order (General Order 8-3, § VI.F) must be reversed because the non-disclosure order issued to Sergeant Trotter violated public policy.

(3) The Board's findings that Sergeant Trotter violated the obligation to duty (General Order 8-3 § IV.J) and was incompetent (General Order 8-3 § IV.K) must be reversed because the Board applied incorrect legal standards to assess Sergeant Trotter's conduct. Additionally, the Board's factual analysis was flawed because it relied on Sergeant Trotter's, Lieutenant Seilhamer's, and Major Over's testimony without addressing the differences between Lieutenant Seilhamer's testimony on the one hand and Sergeant Trotter's and Major Over's on the other. The Board was entitled to resolve the testimonial differences but was required to articulate its reasoning in its decision. It failed to do so. A reviewing court may not uphold an administrative board's decision "unless it is sustainable on the agency's findings and for the reasons stated by the agency." *Maryland State Bd. of Dental Examiners v. Tabb*, 199 Md. App. 352, 379 (2011).

As a general rule, when an administrative agency's decision is flawed by incorrect legal reasoning, "the appropriate remedy in such a situation is to vacate the decision and remand for further proceedings designed to correct the error." *County Council of Prince George's County v. Zimmer Dev. Co*., 444 Md. 490, 581 (2015). However, "the court need not remand . . . if the remand would be futile." *Id.*

In the present case, remanding the Board's decision as to the performance of duty charge would be futile because General Order 8-3, § IV.D cannot be construed to require police officers to monitor their bank accounts. Remanding the Board's decision as to the security of a departmental business charge would be an exercise in futility because the Department's confidentiality order violates public policy and is therefore unenforceable.

The remaining guilty findings were premised on the Department's and the Board's assumption that the $1,837 transferred to Sergeant Trotter's bank account by FLETC was the Department's property. Another way of expressing this concept is that the Board's decision was based on the assumption that the Department had a legal and equitable claim to the $1,837 that was superior to the rights of Sergeant Trotter and FLETC. As we have explained, this is incorrect. For all of these reasons, a remand to the hearing board would be a pointless exercise.

We affirm the well-reasoned judgment of the circuit court.

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