Circuit Court for Baltimore County
Case No. 03-C-16-000756

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 309

September Term, 2017

JOYCE M. WILD

v.

BALTIMORE COUNTY PERSONNEL AND SALARY ADVISORY BOARD

Kehoe,
Beachley,
Fader,

JJ.

Opinion by Kehoe, J.

Filed: October 29, 2018

After a workplace incident that we will describe later, Joyce M. Wild was terminated from her employment with the Baltimore County government. Her supervisor's decision was upheld by the Baltimore County Personnel and Salary Advisory Board (the "Board"), and Wild filed a petition for writs of mandamus and administrative mandamus in the Circuit Court for Baltimore County. The court initially remanded the matter to the Board for further proceedings, but eventually affirmed an amended decision of the Board. Ms. Wild has appealed that judgment to this Court. The nominal appellee is the Board, but, as it points out in its brief, the real party in interest is Baltimore County. Wild presents two issues on appeal, which we have reworded:

> (1) Did the Board err as a matter of law when it concluded that the principle of self-defense was inapplicable to Wild's case?
>
> (2) Was the Board's decision arbitrary, capricious, or factually erroneous?

We will vacate the decision of the Board and remand this matter to it for further proceedings.

Background

The evidence before the Board can be summarized as follows.

Ms. Wild was an employee of the Department of Environmental Protection and Sustainability ("DEPS") for 15 years. On Tuesday, March 4, 2014, and as part of her job responsibilities, Wild prepared a schedule allocating receptionist duties for the day among her co-workers, including Angela Medley. In Medley's view, the receptionist assignment conflicted with another of her job duties, namely, preparing attendance records for payroll purposes. Medley viewed the latter function as time-critical, and she went to Wild's

cubicle to discuss the matter. The tone of the conversation became increasingly acrimonious and, unfortunately for both participants, degenerated into a physical confrontation that ended when Medley bloodied Wild's nose. The only witnesses to the confrontation were the two participants. Their testimony to the Board presented starkly different versions as to what happened.

Medley testified that shortly after she arrived at Wild's cubicle,

> [Wild] got a little aggressive with me and a little dismissive, and I said to her, and she cursed—she curses at me quite a bit, and I don't talk to her like that, so I said to her, I said to you before about the way you talk to me, and cursing at me. You're not going to be doing that to me.
>
> She told me well, I can't tell her what to do. . . . And she asked me what was I going to do about it? And I said, I'm going to start to be just as disrespectful to you as you are to me. And she told me, whatever. And I said, no, it really isn't whatever, Joyce.
>
> So at that point, there was another exchange of words, and I shook my head, because I [saw that] I was getting nowhere with her; and she shook her head and she said, yeah, whatever, Angela, and smacked me upside my head, whatever. And when she did that, my hand instantly went forward. . . .
>
> Unfortunately, I connected with her nose, which made her nose bleed.

In other words, Medley claimed that Wild struck first, and did so unexpectedly and without any physical provocation.

Wild's version of the altercation was very different. Initially, on direct examination, Wild was asked if there had been "any clear way of your getting away from" the confrontation with Medley. She answered "No. The cubicle is set up — when you come in, it's very small. . . . No." Wild testified that, after Medley came into her cubicle:

> [Medley] came – when she got up to me and she was like – and I was leaning back like this and she was leaning up and she stood and she nudged me with her hip and she hit me here and I went like this the back of my hand hit her cheek and that's when — and she pulled backed and punched me with — she

> and when she pulled back and punch me with when she reared back and punched me.
>
> And I was stunned and dazed, and I was, like, trying to hold my balance, and I could feel something, and I looked down and there was blood everywhere.

Wild further testified that she interpreted Medley's statement that she was "going to f--- [Wild] up" as a "threat of violence." She continued:

> And she said, I'm sick of your shit. And then – and I just said, like what? And she says, I'm about to cuss you out. And to me that was something I thought was kind of humorous. Like, go ahead. So, I said, well, I might cuss you back. I might cuss you right back. You know, just being lighthearted, and she says, I'm going to f--- you up! . . . . And I said, really; and she said it again. And she said, and you know that I can.
>
> And I started to back up. And she—that's when she—all the filler conversation that [Medley] says happened, didn't happen. We didn't have any kind of light conversation back about with me shaking my head and saying whatever. It didn't happen. It all happened so fast.

Wild also testified that she was "cornered" in her cubicle because Medley "was pretty much standing between half" of the entryway. The County's attorney returned to this issue on cross-examination:

> [Question]: Did you not want to leave and then talk to somebody about what just happened at that point?
>
> [Wild]: No, because I didn't think it was going to escalate. I made light of it and I said, you know, I'll just give it back. And it was all and just light hearted – but as soon as she said, I'm sick of your shit and I'm going to F you up and you know I can, and I saw the anger and her and I saw the threat or felt the threat.
>
> [Question]: Did you leave the room at that point?
>
> [Wild] I couldn't leave the room I was cornered into my cubicle. She was pretty much standing between half of the opening of – and like I said, it happened so fast, then when she started and she said I'm going to F you up, and started leaning into

me with the nudge and the hit here,[1] and me doing this, I don't know that I would have been able to get around her.

* * *

[Question]: When she first came in, you were how far apart?

[Wild]: Maybe a foot or so apart.

* * *

[Question] And [when she began to address you in an angry tone], you could have left the room correct?

[Wild]: I guess so.

In other words, Wild initially testified that she was "cornered" in her cubicle by Medley, that Medley twice uttered what Wild took to be threats of physical harm, that Wild "took a step back," that Medley bumped her in the hip, and struck her in the ear, and then, and only then, did Wild strike Medley. On cross-examination, Wild conceded that she could have left her cubicle.

Medley and Wild were in agreement as to what then occurred. Vincent Gardina, the Director of DEPS, entered the scene and saw Wild in her cubicle. Wild was holding a towel to her bloody nose, and Medley appeared to be helping her. He asked them what happened, and they told him that there had been a fight. Gardina requested assistance for Wild and told Medley to leave Wild's cubicle.

Gardina instructed Wild and Medley to give him written statements about what happened. After receiving their statements, Gardina ordered both to go home. On March 5, 2014, after reviewing both Wild and Medley's statements and consulting with the County's

[1] We gather from the transcript that Ms. Wild was gesturing to her ears.

Human Resources Director, Gardina suspended each employee for ten days, followed by their termination from employment. Gardina testified that he terminated Wild for violating Baltimore County Personnel Rule 15.04 O(7), which forbids employees from engaging "in fighting or creating any disturbance while engaged in County business."

Wild filed a grievance appealing her dismissal to the County's Office of Administrative Hearings. After an evidentiary hearing in which Wild was represented by counsel, a Baltimore County administrative law judge issued recommended findings of fact and conclusions of law upholding Wild's termination. Shortly thereafter, Wild filed an appeal to the Board.

After a *de novo* hearing, the Board affirmed the County's decision to terminate Wild. The Board's decision (the "original decision") stated in pertinent part (emphasis added):

> B. On March 4, 2014, Grievant had a verbal disagreement with a co-worker that escalated to a physical altercation.
>
> C. There were no third-party eye witnesses to the chain of events that lead to the physical altercation.
>
> D. Both parties to the physical altercation admitted to making physical contact with the other employee.
>
> E. Baltimore County has a zero tolerance Workplace Violence policy, which has no exemptions or exceptions, and therefore self defense, if applicable, is not an exception.
>
> F. The Board finds that employees engaging physically in the escalation of a conflict is unacceptable, regardless of the circumstances and cannot be tolerated, as either a matter of handling office conflict or as a precedent among employees in the event of future conflicts.
>
> G. The Board finds that Baltimore County has an obligation to provide a safe and respectful work environment, and policies aimed at that goal must be interpreted consistent with that goal.

Wild filed a civil action seeking writs of mandamus and administrative mandamus in order to obtain a review of the Board's decision. The circuit court dismissed the request for a writ of mandamus. Addressing Wild's request for administrative mandamus review, the court ruled that the Board's conclusion that the County workplace violence policy contained no exception for actions taken in self-defense rendered the Board's decision arbitrary and capricious. The court remanded the case back to the Board "solely for consideration of whether self-defense is applicable to uphold [Wild's] termination[.]"

Pursuant to the court's directive, the Board issued a revised decision (the "amended decision"), which stated in relevant part (emphasis added)":

> The Board finds that although self-defense would be a mitigating factor in determining whether to suspend or terminate an employee in response to their involvement in a physical altercation, it does not apply to this incident as both employees involved in the altercation had sufficient opportunity to avoid the altercation, lessen the intensity of the altercation, or seek supervisor intervention, but failed to do so. The Board finds that the Grievant's actions demonstrated that she willingly chose to engage in mutual combat and did not act in self-defense. Therefore, Grievant's conduct is in violation of Baltimore County's Personnel Rule 15.04 O(7) and its zero tolerance for work place violence.

On March 20, 2017, the court affirmed the Board's amended order. On April 21, 2017, Wild filed her notice of appeal to this Court.

1. The Standard of Review

Wild does not have a statutory right to obtain judicial review of the Board's decision. However, "[a]n action for a writ of administrative mandamus is available for 'review of a quasi-judicial order or action of an administrative agency where review is not expressly authorized by law.'" *Headen v. MVA*, 418 Md. 559, 567 n.4, (2011) (quoting Md. Rule 7-

401). The County does not dispute that a writ of administrative mandamus is available to Wild. In an administrative mandamus action, a court may reverse or modify an agency decision if the decision is prejudicial to a party's substantial right and:

> (A) is unconstitutional,
>
> (B) exceeds the statutory authority or jurisdiction of the agency,
>
> (C) results from an unlawful procedure,
>
> (D) is affected by any error of law,
>
> (E) is unsupported by competent, material, and substantial evidence in light of the entire record as submitted,
>
> (F) is arbitrary or capricious, or
>
> (G) is an abuse of its discretion.

Md. Rule 7-403.

In deciding whether Wild is entitled to relief, we apply the standard of review developed in judicial review proceedings. *Armstrong v. Mayor & City Council of Baltimore*, 169 Md. App. 655, 668 (2006) (The standard of review is "essentially the same" in judicial review and administrative mandamus proceedings.). Our focus is on the Board's decision. Therefore, the issue before us "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) (citing *Consumer Prot. Div. v. Morgan*, 387 Md. 125, 160 (2005)) (citations, internal quotation marks, and brackets omitted). For that reason, we "look through" the circuit court's decision, to "evaluate the decision of the agency" itself. *People's Counsel for Baltimore County v. Loyola College*, 406 Md. 54, 66 (2008).

Reviewing courts accept an agency's factual findings if they are supported by substantial evidence, that is, there is relevant evidence in the record that logically supports the agency's factual conclusions. *Bayly Crossing*, 417 Md. at 139. A reviewing court is not bound by the agency's legal conclusions, although some deference should be accorded to an agency interpretation of a statute, ordinance, or regulation that falls within its delegated responsibilities. *See, e.g. Young v. Anne Arundel County*, 146 Md. App. 526, 568-69 (2002). Often an agency's decision will involve application of the law to the evidence. If the agency has correctly identified the applicable legal standard, reviewing courts defer to the agency's application of the law to the facts before it, if the findings are supported by substantial evidence. *See, e.g., Baltimore Lutheran High School Assoc. v. Employment Security Admin.*, 302 Md. 649, 662 (1985).

2. The Issues with the Board's Amended Decision

Wild takes issue with the Board's Amended Decision on two grounds. First, she points out that, although the circuit court had remanded the case to the Board for it to decide how self-defense applied to Wild's termination, the Board did not clearly articulate what it meant by that concept. Second, Wild argues that the result reached by the Board was arbitrary, capricious, and not based upon the evidence. For its part, the County argues that there is substantial evidence in the record to support the Board's finding that Wild was not acting in self-defense in the altercation with Medley.[2]

[2] The County is correct—there is certainly ample evidence to support the Board's conclusion—but that evidence was sharply controverted at the hearing and the Board never resolved the conflicts in the testimony.

We agree with Wild, but only up to a point. The Board did not identify what it considered to be the elements of the principle of self-defense. Nor did the Board explain the evidentiary basis for its conclusion that Wild "willingly chose to engage in mutual combat and did not act in self-defense." The Board was required to do so in light of the sharply conflicting evidence that was before it because it must make the basis of its decision clear to the parties and reviewing courts.

3. The Concepts of Self-Defense and Its Relationship to the County's Workplace Violence Policy

Wild correctly points out that the Board did not explain what it meant by the term "self-defense" in its amended decision. For the convenience of the Board and the parties, we will provide some guidance.

The concept that an individual may lawfully use reasonable force to protect him or herself against injury at the hands of another is common to both civil and criminal law. *Baltimore Transit Co. v. Faulkner*, 179 Md. 598, 600 (1941) ("The law of self-defense justifies an act done in the reasonable belief of immediate danger. If an injury was done by a defendant in justifiable self-defense, he can neither be punished criminally nor held responsible for damages in a civil action." (citing *New Orleans & Northeastern R. Co. v. Jopes*, 142 U.S. 18, 23-24 (1891)). The way that the concept is articulated and applied in specific cases depends upon a variety of factors. The most important one in the context of the present case is the type of force used by the defendant. If, as in the present case, the force used was non-deadly, the elements of self-defense are:

> (1) the defendant actually believed that he or she was in immediate or imminent danger of bodily harm;
>
> (2) the defendant's belief was reasonable;
>
> (3) the defendant must not have been the aggressor or provoked the conflict; and
>
> (4) the defendant used no more force than was reasonably necessary to defend himself or herself in light of the threatened or actual harm.

Jones v. State, 357 Md. 408, 424 (2000); *Bynes v. State*, 237 Md. App. 439, 442 (2018). *Jones* and *Bynes* are criminal cases, but the elements of self-defense are the same in the civil context.[3] Moreover, in a civil case, the party asserting self-defense has the burden of proof. *Sellman v. Wheeler*, 54 A. 512, 515, 95 Md. 751 (1902); *Stephens v. Dixon*, 30 Md. App. 56, 60 (1976). Finally, where non-deadly force was used, a party asserting self-defense is under no duty to retreat. *Saba v. Darling*, 72 Md. App. 487, 492 (1987), *aff'd on other grounds*, 320 Md. 45 (1990).

Of course, this is neither a criminal nor a tort action, and the County certainly has the right to require a standard of conduct of its employees (at least while working) that rises above merely not violating criminal laws or committing actionable torts. Thus, the Board's task was, and remains, to reconcile the concept of self-defense with the requirements of the

[3] *See Baltimore Transit Co. v. Faulkner*, 197 Md. at 601 ("One who seeks to justify an assault on the ground that he acted in self-defense must show that he used no more force than the exigency reasonably demanded. The belief of a defendant in an action for assault that the plaintiff intended to do him bodily harm cannot support a plea of self-defense unless it was such a belief as a person of average prudence would entertain under similar circumstances."); and *Zell v. Dunaway*, 115 Md. 1, 5 (1911) (An instruction that the plaintiff could not recover if "the jury . . . finds that the plaintiff first assaulted the defendant," "fairly instructed the jury as to the law upon the case.").

County's workplace violence policy. In the original decision, the Board concluded that the concept of self-defense had no place at all in an employee disciplinary proceeding. Application of that approach in every case without consideration of context would require, for example, termination of an employee who used physical force to disarm an armed intruder into the workplace. The circuit court did not err when it concluded that such a rigid approach could lead to arbitrary and capricious results. In the amended decision, the Board applied a more nuanced analysis and concluded that, although self-defense might be relevant in some cases, it was not in Wild's because she "had sufficient opportunity to avoid the altercation, lessen the intensity of the altercation, or seek supervisor intervention, but failed to do so"; and that she "willingly chose to engage in mutual combat and did not act in self-defense." The difficulty with the Board's analysis is that it did not identify the evidentiary basis for any of these conclusions. The Board's failure to do this requires us to vacate the amended decision for reasons that we now explain.

4. Dealing With the Conflicting Evidence

As a general rule, an administrative agency in a quasi-judicial proceeding (such as Wild's appeal to the Board) must identify the evidence which it believes supports its conclusion. *See, e.g.*, *Critical Area Comm'n v. Moreland*, 418 Md. 111, 134 (2011) ("When the Board of Appeals merely states conclusions, without pointing to the evidentiary bases for those conclusions, such findings are not amenable to meaningful judicial review and a remand is warranted[.]").

We applied this principle in *Blackburn v. Bd. of Liquor License Comm'rs for Baltimore City*, 130 Md. App. 614, 624-25 (2000). In that case, we stated that, although Maryland administrative agencies are not explicitly required to "set forth specific findings of fact and conclusions of law" in their decisions, their decisions must "at least informally" include findings of fact so that courts to can conduct a "meaningful review" of the administrative decision. *Id.* at 624. In *Blackburn*, in ruling against the Board of Liquor License Commissioners' decision against liquor licensees, the Court of Special Appeals held that "[t]he statement reveals what the Board believes the law to be, but does not suggest a finding as to any particular violation . . . the Board failed to set forth the basis for its decision." *Id.*

In the present case, the Board upheld Wild's termination because it concluded that Wild "had [a] sufficient opportunity to avoid the altercation, [to] lessen the intensity of the altercation, or [to] seek supervisor intervention, but failed to do so." The Board did not identify what evidence supported these conclusions. It is not at all clear to us what that evidence might be, but it wasn't contained in the testimony of either Medley or Wild. Similarly, the Board found that Wild and Medley "willingly chose to engage in mutual combat and did not act in self-defense" without identifying the evidence that supported this conclusion. Identifying this evidence will require the Board to untangle the divergent testimony presented by Wild and Medley and to explain, what portions—all, part, or none—that the Board found credible in each.

The Court of Appeals has suggested the following format to resolve such a situation:

> We suggest that an acceptable format for the Board's findings and conclusions upon the remand would be to set out its finding that the particular requirement had, or had not, in its opinion, been established by the applicants and then add 'because the Board finds the following facts to be true:'
>
> (Insert the facts here)
>
> 'and does not accept as true the following testimony:'
>
> (Insert the rejected testimony here).
>
> In this way, a court on appeal will be able to ascertain whether there was sufficient evidence to support the Board's findings and conclusions.

Redden v. Montgomery County, 270 Md. 668, 685-86 (1974); *see also Sweeney v. Montgomery County*, 107 Md. App. 187, 199 (1995).

In conclusion, the amended decision does not provide sufficient detail for a reviewing court to follow the Board's reasoning. The law requires such specificity and the circuit court erred in affirming the Board's amended decision.[4]

THE JUDGMENT OF THE CIRCUIT COURT FOR BALTIMORE COUNTY IS REVERSED AND THIS CASE REMANDED TO IT FOR FURTHER PROCEEDINGS CONSISTENT WITH THIS OPINION. APPELLEE TO PAY COSTS.

[4] We cannot address Wild's argument that the Board's decision was arbitrary, capricious, or not based on substantial evidence, because the Board has yet to identify the specific evidence that supports its conclusions. Until we have that information, any effort on our part to further analyze the Board's reasoning would be an exercise in speculation.