

Circuit Court for Allegany County
Case No. C-01-CV-20-000074

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 768

September Term, 2020

CHRISTOPHER PRESTON

v.

CRIMINAL INJURIES COMPENSATION
BOARD

Nazarian,
Beachley,
Salmon, James P.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Beachley, J.

Filed: June 25, 2021

*This is an unreported opinion, and it may not be cited in any paper, brief, motion or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

The General Assembly established the Criminal Injuries Compensation Board (the “Board”) for the purpose of providing monetary relief to victims of certain crimes. Because victim compensation derives from public funds, however, the statute limits who may receive such relief. One such limitation is at the heart of this case. Md. Code (2001, 2018 Repl. Vol.), § 11-810(d)(3)(i) of the Criminal Procedure Article (“CP”) provides: “A claimant may not receive an award if: (i) the victim initiated, consented to, provoked, or unreasonably failed to avoid a physical confrontation with the offender[.]”

The Board denied appellant Christopher Preston’s claim based on its conclusion that he “provoked, consented to and unreasonably failed to avoid a physical confrontation.” Preston argues that this conclusion is arbitrary and capricious. We shall affirm the Board’s decision.

FACTUAL AND PROCEDURAL BACKGROUND

On the night of September 2, 2018, Carl Jones stabbed Preston multiple times. Although the Board did not make specific findings regarding the events leading up to the stabbing, there appears to be little controversy as to these events: Preston was questioning people near his apartment building about his missing wallet. At that time, Jones approached Preston with a baseball bat, and some type of negative interaction short of physical contact occurred between them. Preston then went inside his apartment, where he stayed for “some time.” Preston eventually put on a glove, wrapped a chain around his hand, grabbed a large pipe wrench, and left his apartment to stand in the outside doorway of his apartment building. What transpired between Preston and Jones immediately prior

to the stabbing is less than clear, but there is no dispute that Jones and Preston engaged in an altercation that resulted in Jones stabbing Preston. We shall provide additional facts as necessary to inform our analysis.

In December 2018, Preston requested the Board to award him compensation for his medical expenses and lost income as a result of the stabbing. An examiner assigned by the Board reviewed the claim and determined that Preston was not eligible for an award.¹ On February 1, 2019, the Board notified Preston that his claim was denied. Preston then filed a request for reconsideration. The Board held a hearing on December 18, 2019. After the hearing, the Board again denied the claim, notifying Preston of the denial on January 24, 2020.² We reprint the Board’s decision:

FINDINGS OF FACT

- (1) This claim was filed with the Maryland Criminal Injuries Compensation Board on December 7, 2018.
- (2) On September 2, 2018, the Claimant was stabbed during an altercation in Allegany County.
- (3) The Claimant is seeking compensation for loss of earnings from the date of the crime to the present.

¹ Under COMAR 12.01.01.04B(1), “[u]pon receipt of a claim application, the Board shall assign an examiner to verify the eligibility of the claim by reviewing” various documents provided by the claimant, including the claimant’s statement, reports made to police, and medical reports.

² The Board’s decision is first reviewed by the Secretary of Public Safety and Correctional Services, who may affirm, modify, or reverse the decision. The Board thereafter notifies the claimant of the Secretary’s final decision. COMAR 12.01.01.04B(9), (10).

- (4) Police investigation revealed that the Claimant, who was intoxicated, was confronting people on the street about the theft of his wallet.
- (5) The Claimant went to his apartment, put on a glove, wrapped his hand in a chain, and armed himself with a pipe wrench.
- (6) The Claimant thereupon returned [to] the foyer of the apartment building and confronted the suspect.
- (7) During the ensuing altercation, the Claimant was stabbed.

CONCLUSIONS OF LAW

The Maryland Criminal Injuries Compensation Board, having conducted a hearing on December 18, 2019, after review of the claim, evidence provided by the Claimant, and after due deliberation concludes that the Claimant provoked, consented to and unreasonably failed to avoid a physical confrontation. Pursuant to Md. Code Ann., Crim. Proc. § 11-810(d)(3), the Claimant is ineligible for an award.

On judicial review, the Circuit Court for Allegany County affirmed the Board’s decision.

DISCUSSION

I. Standard of Review

Preston argues that *Opert v. Criminal Injuries Comp. Bd.*, 403 Md. 587 (2008), fundamentally changed the law concerning the Board’s obligations in cases before it, as well as the standard of review on appeal. He bases this argument on a single paragraph in *Opert*:

[I]t is clear from the statement of legislative policy in CP § 11–802 that the law is remedial in nature, and remedial statutes are to be liberally construed. The Legislature has recognized and articulated that “there is a need for government financial assistance for these victims” and that “[t]he policy of the State is that help, care, and support be provided by the State, as a matter of moral responsibility, for these victims.” CP § 11–802. That

objective, that policy, is advanced by construing ambiguous language in favor of eligibility.

Id. at 602. Preston suggests that this passage from *Opert* (1) creates a presumption of victim eligibility for compensation; (2) creates a requirement that the Board make eligibility determinations by viewing the evidence in the light most favorable *to the claimant*; and (3) similarly changes the standard of review on appeal, requiring that the reviewing court “independently examin[e] the facts” and view the record and the Board’s decision in the light most favorable to the claimant. We find no merit in this argument.

The paragraph Preston quotes from *Opert* is an unremarkable statement of statutory interpretation of remedial statutes. Maryland courts have used similar language when discussing other remedial statutes. *See, e.g., Lockett v. Blue Ocean Bristol, LLC*, 446 Md. 397, 424 (2016) (landlord/tenant anti-retaliation statute); *Washington Suburban Sanitary Comm’n v. Phillips*, 413 Md. 606, 620 (2010) (anti-discrimination ordinances); *Coburn v. Coburn*, 342 Md. 244, 256 (1996) (protective orders); *Greer v. Montgomery Cty.*, 246 Md. App. 245, 249 (2020) (workers’ compensation); *Brzowski v. Md. Home Improvement Comm’n*, 114 Md. App. 615, 633 (1997) (Home-Improvement Guaranty Fund). None of these cases altered the burden of proof or standard of review in the way Preston suggests.

Moreover, we see nothing in *Opert* to suggest that the Court of Appeals intended to alter the burden of proof or the accepted standard of review in Criminal Injuries Compensation Board cases.³ *Opert* involved a question of law—statutory interpretation—

³ Indeed, COMAR 12.01.01.08C(2) expressly states that “[a] claimant has the burden of proof” at a hearing before the Board.

and thus made no mention of the long-standing “substantial evidence” standard of review. Additionally, two years after *Opert*, this Court issued *Marks v. Criminal Injuries Comp. Bd.*, 196 Md. App. 37 (2010), where we expressly applied the “substantial evidence” review standard. We therefore reject Preston’s argument that *Opert* carved out a special exception for victim compensation cases decided by the Board.

Accordingly, we shall review this case using the standard commonly applicable to administrative agency decisions. “An appellate court, [w]hen reviewing the decision of an administrative agency . . . review[s] the agency’s decision directly, not the decision of the circuit court.” *Marks*, 196 Md. App. at 55 (alterations in original) (quoting *Comptroller v. Sci. Applications Int’l Corp.*, 405 Md. 185, 192 (2008)). We review issues of law *de novo*, but give “considerable weight” to the agency’s interpretation of statutes it is charged with applying. *Opert*, 403 Md. at 593–94 (citing *Montgomery Cty. v. Glenmont Hills*, 402 Md. 250, 271 (2007)). “We are obliged ‘to review the agency’s decision in the light most favorable to the agency, since their decisions are *prima facie* correct and carry with them the presumption of validity.’” *Marks*, 196 Md. App. at 56 (quoting *Grasslands Plantation, Inc. v. Frizz-King Enters., LLC*, 410 Md. 191, 204 (2009)).

Judicial review “does not involve an independent decision on the evidence.” Instead, “[w]e are limited to determining whether there is substantial evidence in the record as a whole to support the agency’s findings and conclusions, and to determine if the administrative decision is premised upon an erroneous conclusion of law.”

Id. at 57 (citations removed) (first quoting *Johnson v. Criminal Injuries Comp. Bd.*, 145 Md. App. 96, 107 (2002), then quoting *Neal v. Criminal Injuries Comp. Bd.*, 191 Md. App.

664, 668 (2010)). An agency’s findings are based on substantial evidence when “‘a reasoning mind’ could have reached those conclusions on the record before the agency,” without regard to whether we would have reached the same conclusions. *Id.* at 57–58 (quoting *Schwartz v. Dep’t of Nat. Res.*, 385 Md. 534, 554 (2005)). “[N]ot only is it the province of the agency to resolve conflicting evidence, but where inconsistent inferences from the same evidence can be drawn, it is for the agency to draw the inferences.’ . . . We give great deference to the agency’s assessment of the credibility of the witnesses.” *Id.* at 58 (second alteration in original) (quoting *Schwartz*, 385 Md. at 554).

II. The Board’s Decision Is Supported by Substantial Evidence

The legislature placed several limitations on victim compensation awards, including the limitation relevant in this case: “A claimant may not receive an award if . . . the victim initiated, consented to, provoked, or unreasonably failed to avoid a physical confrontation with the offender[.]”⁴ CP § 11-810(d)(3)(i). Evidence the Board may consider in determining the eligibility of a claim includes, among other things, “The victim’s or claimant’s statement,” “Reports made to a law enforcement agency or other appropriate authority,” and “Court documents.” COMAR 12.01.01.04B(1). After the initial determination of eligibility, the Board may hold a hearing if the Board “is unable to arrive

⁴ In his reply brief, Preston seemingly raises for the first time an argument that this statutory language is ambiguous. Because this argument had not been raised in his opening brief, we decline to consider it. *Anderson v. Burson*, 196 Md. App. 457, 476 (2010) (citing *Strauss v. Strauss*, 101 Md. App. 490, 509 n.4 (1994)). We further note that Preston did not argue before the Board that the language in CP § 11-810(d)(3)(i) was ambiguous.

at a decision based on the examination and memorandum” or if the claimant challenges the Board’s decision. COMAR 12.01.01.08A. At the hearing, the claimant may produce additional evidence, including witness testimony and documentary evidence. COMAR 12.01.01.08C.⁵

Here, Preston challenged the Board’s initial denial of his claim and was afforded a hearing. The record before the Board in this case included police reports containing statements from Preston, Jones, and several witnesses; testimony from Preston; and various documents related to Preston’s claimed medical expenses and lost wages. Preston, Jones, and others conveyed various accounts of the tenor and context of the events prior to the stabbing. As we shall explain, either Preston’s or Jones’s account of the incident supported the Board’s decision that Preston unreasonably failed to avoid a physical confrontation.

Preston gave two accounts of the events that conflicted in certain respects. In Preston’s statement to Detective Roger Plummer the day of the attack, he acknowledged that “he went into his apartment and put on a black glove, wrapped his hand in a chain and grabbed a large red pipe wrench” before proceeding down to the foyer. In his statement to Detective Plummer, Preston failed to mention anything about Jones threatening him with

⁵ Preston argues in his reply brief that the Board should not have considered the “double hearsay” statements from witnesses in the police report. Preston did not raise this argument before the Board, the circuit court, or in his opening brief. Indeed, Preston relied on statements from the police report in his opening brief. This argument is therefore unpreserved, and we decline to consider it. We note, however, that “hearsay evidence can be the sole basis for an administrative agency’s decision,” provided the evidence is “at least as reliable as the kind of hearsay that is admissible at a sentencing proceeding.” *Johnson*, 145 Md. App. at 113–14.

a baseball bat or about being concerned for his girlfriend’s safety, allegations that he later raised at the hearing before the Board. Detective Plummer also reported that Preston stated that: (1) he had been “confronting people” about his missing wallet; (2) Jones was arguing with him in the foyer before stabbing him; and (3) he did not “get a chance to hit” Jones or “to raise the pipe wrench.”

Preston provided a different version of the events in his testimony before the Board, more than a year later. He testified that he “asked” the people sitting outside his apartment building “if they happened to find [his] wallet.” In response to a question from one of the Board Commissioners, Preston testified that Jones swung the baseball bat at him. He stated that he armed himself and went downstairs because he was “worried for [his] girlfriend.” He did not mention any argument with Jones before Jones “slam[med him] up against the wall.” Finally, he stated that he was “able to swing the pipe wrench one time for self defense measurements.”

William Younger was the only person other than Preston and Jones to witness both the incident with the baseball bat and the altercation in the foyer before Jones stabbed Preston. He told Detective Harold Dixon that, during the initial encounter, Jones swung the baseball bat at Preston. He stated that later, “Preston was standing in the common area door threshold when [Jones] approached [Preston], pushed [Preston] back against the right wall and was yelling ‘we good now? we good.’” Jones then began to stab Preston.⁶

⁶ Anita Bradshaw, Preston’s girlfriend, told police that Preston was “accosting people about stealing his wallet.” Although she saw Jones stab Preston, she did not see what transpired between Preston and Jones immediately prior to the stabbing.

The day after the incident, Detective Dixon interviewed Jones. Jones stated that, when he was in “the area of [Preston’s] house” with the baseball bat,

[Preston] said something which Mr. Jones took to be confrontational. At that point things were only verbal.

Jones indicated that he then walked around a bit and then waited for [Preston] to come back downstairs, at which time he confronted [Preston] again verbally asking him “what was the problem?” He said that [Preston] then pushed him and he pushed [Preston] back. Mr. Jones indicated that he knew that he was struck in the head with an unknown object first. He said he heard later that he had been hit with a bottle. He said when he was struck a second time is when he “just went off.”

Jones emphasized that Preston “hit [him] first.” Detective Dixon “observe[d] what appeared to be some swelling on the top of Mr. Jones[’s] head.”

The Board’s findings that Preston was intoxicated and that he armed himself with a chain and pipe wrench are uncontroverted. Preston’s main point of disagreement is with the Board’s finding that, after arming himself, he “returned [to] the foyer of the apartment building and *confronted the suspect.*” (Emphasis added). By all accounts, Jones approached Preston a very short time after Preston opened the door of his apartment building. Jones stated to police that, when he approached Preston, he asked “what was the problem?” at which point Preston “pushed” Jones. Jones pushed back, and Preston then struck Jones in the head two times with an object.⁷ After being struck a second time, Jones

⁷ Jones stated first that he had been hit in the head with a bottle. He later said that he was hit in the head with an unknown object and was later told by someone that the object was a bottle. In no other part of the record is a bottle mentioned. That the pipe wrench was found on the sidewalk outside the apartment building provided some evidence that the unknown object was the pipe wrench, despite Preston’s statement that he did not step outside the building.

became enraged, shoved Preston against a wall, and began stabbing him.⁸ Although Jones implicitly acknowledged that his use of a knife was an inappropriate response, Jones’s recounting of the incident identified Preston as initiating physical force in the altercation. Indeed, Detective Dixon confirmed that Jones had “some swelling on the top of [his] head.”

We conclude that a reasoning mind could have reached the same conclusion as the Board, *i.e.* that Preston unreasonably failed to avoid a physical confrontation. First, it is within the Board’s province to find Jones’s statements more credible than Preston’s. Determinations of the credibility of witnesses are within the exclusive domain of the fact-finder. The Board is “free to accept or reject” the statements and testimony of parties and witnesses “in whole or in part.” *Marks*, 196 Md. App. at 73. “It is the ‘agency’s province to resolve conflicting evidence and where inconsistent inferences can be drawn from the same evidence it is for the agency to draw the inferences.” *Id.* (quoting *Sci. Applications Int’l Corp.*, 405 Md. at 193).

Moreover, even if the Board did not rely on Jones’s version of the incident, other evidence in the record supports a finding that Preston unreasonably confronted Jones. As previously noted, Preston told Detective Plummer that “he went into his apartment and put on a black glove, wrapped his hand in a chain and grabbed a large red pipe wrench.” That Preston was intoxicated and “was confronting people on the street about the theft” of his

⁸ Preston argues that the Board should have considered Jones’s guilty plea, but the plea hearing was not in the record before the Board. Preston did indicate that Jones was convicted of assault, but that conviction would not necessarily undermine the Board’s conclusion that Preston unreasonably failed to avoid a confrontation.

wallet provided evidence of Preston’s state of mind shortly before the altercation. Finally, Preston told Detective Plummer that he and Jones “began to argue” in the foyer before Jones stabbed him, which provided plausibility to Jones’s account that Preston struck first.

The Board’s factual findings, in turn, support its legal conclusion that Preston unreasonably failed to avoid a physical confrontation with Jones. Preston, intoxicated and having been “confronting people on the street about the theft of his wallet,” armed himself and “returned [to] the foyer of the apartment building,” where he “confronted” Jones. A reasoning mind could have reached the same conclusion as the Board—that Preston’s actions constituted an unreasonable failure to avoid a physical confrontation as prescribed by CP § 11-810(d)(3).

III. The Board’s Decision Did Not Violate Statutory Policy

Preston argues that the Board’s decision was contrary to the legislative policy stated in CP § 11-802:

- (a) The General Assembly finds:
 - (1) that many innocent persons suffer personal physical or psychological injury or die because of crimes or delinquent acts or in their efforts to prevent them or apprehend persons committing or attempting to commit them;
 - (2) that these persons or their dependents may as a result suffer disability, incur financial hardships, or become reliant on public assistance; and
 - (3) that there is a need for government financial assistance for these victims.
- (b) The policy of the State is that help, care, and support be provided by the State, as a matter of moral responsibility, for these victims.

Preston bases his “violation of legislative policy” argument primarily on facts that he alleges were admitted in Jones’s guilty plea, as well as some facts that were in the record before the Board:

Jones[] had been relocated to Cumberland from Baltimore City by agents of the State prosecution service who would have known that Jones was a violent felon, and that this violent felon within a month of stabbing 150-pound [Preston], also beat to unconsciousness one victim and brutally beat and threatened numerous other victims in [Preston’s] community.

Preston argues that “the Board’s failure to acknowledge” these facts, which were “admitted in the companion criminal case, . . . amounts to the Board failing to take ‘moral responsibility.’”

Preston did not raise this argument before the Board, and the issue was not decided by the Board. The issue is therefore not preserved for appeal. *See Motor Vehicle Admin. v. Lytle*, 374 Md. 37, 53 (2003) (“[I]n an action for judicial review of an agency’s decision, ordinarily, a reviewing court may not pass upon issues presented to it for the first time on judicial review and that are not encompassed in the final decision of the administrative agency.” (quoting *Brodie v. MVA*, 367 Md. 1, 3–4 (2001))).

Even if the issue had been preserved, Preston’s argument would nonetheless fail. A similar argument to the one Preston makes was made in *Marks*, 196 Md. App. at 79–80.

We reiterate here what we stated in that case:

[A]n award is not made by default solely because a crime victim has filed a claim. Because “the funds to be disbursed under the Act were public funds, the Act was adopted with statutory prerequisites for monetary awards.” *Johnson*, [145 Md. App. at 108]. Appellant’s insistence on entitlement thus overlooks Section 11–810 of the Act, which places conditions on an award. Thus, as noted above, an award may be reduced, or denied outright, if the

victim’s conduct played a role in the infliction of his injuries. *See* [CP] § 11–810(d). Had the General Assembly intended that the mere filing of a claim by a victim, without qualification, would conclusively establish entitlement to an award, it clearly would not have enacted CP § 11–810.

Marks, 196 Md. App. at 80 (footnote omitted). We note that none of the facts Preston relies upon for this argument concern whether Preston unreasonably failed to avoid the physical confrontation with Jones. The compensation barriers imposed by CP § 11-810(d)(3) concern the actions of the *claimant*, not the offender. An offender may have any number of marks against his or her character, but if a claimant has unreasonably failed to avoid a physical confrontation with that individual, the claimant must be denied compensation under CP § 11-810.

In summary, the Board’s factual findings were supported by substantial evidence, and its decision denying Preston’s victim compensation claim did not violate legislative policy.⁹ We therefore affirm.

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

⁹ Preston also argues that the Board’s decision violated Article 47 of the Maryland Declaration of Rights. Not only was this argument not raised before or decided by the Board, but Preston’s discussion of the issue in his brief was conclusory, without providing further argument. *See Abdullahi v. Zanini*, 241 Md. App. 372, 418 n.29 (2019). We therefore decline to consider this issue.