UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 0807

September Term, 2014

DEBORAH CLARIDY

v.

SHERIFF'S OFFICE OF BALTIMORE CITY

Krauser, C.J.,
Woodward,
Wright,

JJ.

Opinion by Krauser, C.J.

Filed: December 23, 2015

After a hearing, in accordance with the Law Enforcement Officers' Bill of Rights ("LEOBR"),[1] appellant Deborah Claridy, a lieutenant in the Sheriff's Office of Baltimore City, appellee, was found guilty of eight violations of the Sheriff's Office's "general orders." Those violations included her failure to report to work as ordered on October 29 and 30, 2012, her failure to submit a signed "certification of illness" to her supervising officer on April 16, 2013, and the commission of insubordinate acts on that date. Based on those findings, the hearing board recommended dismissal, and the Sheriff accepted that recommendation and terminated her employment. Claridy thereafter filed a petition for judicial review in the Circuit Court for Baltimore City, contesting the termination of her employment. After that court affirmed the Sheriff's decision, Claridy noted this appeal, presenting three questions. Rephrased to facilitate review, they are:

I. Did substantial evidence support the factual findings of the board?

II. Was the sanction recommended by the board and imposed by the Sheriff an abuse of discretion?

III. Did the board rely on "impermissible documentation" in Claridy's personnel file when making its recommendation of sanctions?

Finding neither error nor an abuse of discretion, we affirm.

Background

In March of 1990, Claridy was hired by the Baltimore City Sheriff's Office. More than twenty years later, in 2012 and 2013, the incidents that lead to disciplinary charges being filed against Claridy occurred. Our recitation of the facts regarding those incidents

[1] Md. Code (2003, 2011 Repl. Vol., 2015 Supp.) §§ 3-101–113 of the Public Safety Article ("P.S.").

is drawn "primarily [from] those portions of testimony and evidence supporting the [b]oard's . . . decision[], despite the presence of contrary or contradictory evidence." *Tippery v. Montgomery Cnty. Police Dep't.*, 112 Md. App. 332, 335 (1996). The hearing board, in this case, received twenty-four exhibits and heard testimony from eight witnesses.

Events of October 29 and 30, 2012

On Friday, October 26, 2012, aware that Hurricane Sandy was forecasted to hit the Baltimore City area, Major[2] Samuel Cogen, Claridy's direct supervisor, informed Claridy and other employees, under his command, that they would be dismissed early that afternoon so that they could "conduct personal storm preparation activities." He specifically ordered Claridy, both in person and by e-mail, to report for work on Monday, October 29th, regardless of whether the Baltimore City courts were closed that day.

On her way home from work that afternoon, Claridy's truck broke down and was towed to a repair shop. Because the repair shop could not complete the repairs to her truck before Wednesday, October 31st, Claridy planned to use public transportation to travel to work on Monday, October 29th. But, on the morning of that day, Claridy learned that, as a result of Hurricane Sandy's impact, Maryland was operating under a state of emergency and all public transportation services were suspended. She would therefore have to find other means to get to work.

[2] We refer to Major Cogen by his rank at the time of the hearing before the board. At the time these events took place, however, his rank in the Sheriff's Office was that of Captain.

In any event, Claridy did not report to work on October 29th and she did not request leave from either of her supervising officers, Captain Therman Reed or Major Cogen. She, however, telephoned Captain Reed and told him that "she was having vehicle problems and there was no way that she could get to work because she had no means of transportation." After reminding her that it was "her duty and responsibilit[y] to come to work," he offered to "modify [her] schedule" when she arrived at work to "accommodate [her] eight hours based on [her] arrival time" but, apparently, received no response from Claridy to that offer.

Claridy also telephoned Major Cogen that morning and informed him she "needed a ride to work," as public transportation was suspended. When Cogen asked why she was not driving herself to work as she usually did, Claridy told him she did not "want to drive in the weather." No mention was made to him that her vehicle was in the repair shop. Then, Cogen, who was about to attend a briefing with the mayor on storm conditions, told Claridy that he did not have time to discuss the matter any further and that she needed to come in to work as ordered.

Yet Claridy failed to report for work the following day, October 30th, and, once again, did not request leave. Major Cogen instructed Sergeant Christopher Gruzs to call her and let her know that he, Cogen, had just driven to work, the rain was "not blowing the way it had" the day before, and the roads were clear.[3] He further instructed the sergeant

[3] From 6:00 p.m. on October 29th to 12:00 p.m. on October 30th, mandatory travel restrictions on Baltimore City roads were in place. Those travel restrictions did not apply, however, to "uniformed personnel."

to tell Claridy that the weather would not prevent her from driving to work and that she "needed to come to work." Later that day, Sergeant Gruzs advised Major Cogen that he had relayed this message to Claridy, that Claridy was not "receptive to what he said," and that, when she had asked to "speak to a Captain or above," the phone call was transferred to Captain Reed.

During the telephone conversation with Captain Reed that followed, Claridy informed him that "she was in the same predicament" as the day before and that she could not get to work because her vehicle was not operable. Reed replied that it was Claridy's responsibility to get to work, even if she had to ask a friend or family member to drive her. At no time during this call did Claridy ask Reed to arrange a ride for her.

Upon Captain Reed's suggestion, however, Claridy subsequently contacted a taxi company to arrange a ride to work. She was advised by the taxi service she contacted that it would not begin until 12:00 p.m. that day, that it "already had a waiting list," and that there "was no guarantee" that she would get a ride. Claridy did not ask to be placed on that waiting list, choosing instead to call, once again, Captain Reed. Reed then informed her, she testified, that there was nothing he could do, that it was not the Sheriff's Office's responsibility to give her a ride to work and that, although he was "aware" that the Sheriff's Office used to give employees rides to work, "we don't do that anymore."[4] When Claridy asked Captain Reed "what kind of leave [she] would be on," she was told that "they would . . . get back to [her]" on that issue. When she later received her next paycheck, she

[4] The parties stipulated, before the board, that, on October 29, 2012, "a member of the Sheriff's Office provided transportation to two deputy sheriffs."

realized she had not received any sort of leave for those two days but, instead, had been given "leave without pay" for October 29th and 30th.

Events of April 16, 2013

A little more than five months after Hurricane Sandy, on April 16, 2013, Claridy returned to work after having been on "approved sick leave" on April 12th of that year. She brought with her a note from her physician, which was left on Major Cogen's desk. The note was not, however, signed by her physician, as required by the Sheriff's Office's "general orders."[5] When Major Cogen arrived at work, he saw the note. Because it did not comply with the general orders, he took the note to Claridy's office and returned it to her, explaining that she would need to provide a signed note.

Major Cogen then left Claridy's office to retrieve his copy of the general orders with the intention of making a photocopy of the section on sick leave. But, on his way, he decided that he should also photocopy the unsigned doctor's note for "the record." He returned to Claridy's office to ask for the note. When he arrived, Claridy, holding the note in her hand, informed him that she was getting another note, which would be signed, and asked why the major needed the note back. Surprised at her response, Major Cogen then ordered Claridy to give him the note. "At that point," testified the major, Claridy "tore it up in front of [him] into several pieces" and then refused to give him the pieces. That prompted the major to warn Claridy that, if she did not give him the note, she was "going

[5] Section 2.8.4 of the Sheriff's Office "General Orders" establishes procedures for the use of sick leave. Specifically, subsection D(3) requires that an "employee shall assure that any certification of illness . . . shall be signed by an accredited . . . practitioner" or by any of several enumerated "licensed or certified medical providers."

to be charged with insubordination." He thereupon ordered her, once again, to give him the note; Claridy, once again, refused to do so.[6]

Then, as he left Claridy's office, Major Cogen encountered Major William Matthews and Deputy Gideon Shifaraw. He asked that they "come in and witness this," whereupon all three officers returned to Claridy's office. There, Major Cogen, once more, ordered Claridy to give him the note. Upon declaring, yet again, that she did not know why the major needed the note, she handed Major Cogen a coffee cup. Inside the coffee-filled cup were the torn pieces of the doctor's note.

Charges

As a result of the events of October 29 and 30, 2012, and the events of April 16, 2013, Claridy was charged with ten disciplinary infractions. For what had occurred on October 29, 2012, she was charged with the following: unsatisfactory performance because of her failure to conform to work standards established for her rank, grade, or position; unsatisfactory performance for her absence without leave; failure to report for duty as required; and failure to obey a lawful order. Then, for her conduct on October 30, 2012, she was charged with the same four infractions. And, finally, for her performance on April 6, 2013, she was charged with failure to ensure that a "certification of illness" was signed by "an accredited practitioner," as well as insubordination.

[6] Tanya McFadden, a "domestic violence clerk" who shared an office with Claridy, also testified before the board about this incident. Although she had been on the telephone and did not hear "exactly everything that was being said" between Claridy and Major Cogen, she recalled hearing Major Cogen "ask . . . for something" from Claridy, then "paper ripping," and then Major Cogen say, "are you refusing."

The Hearing Board's Findings

The hearing board found that Claridy had been ordered to report for duty on October 29th, "regardless of whether the courts were closed" that day; that Claridy did not report for work on October 29th or October 30th; that Claridy had not requested leave for those days from anyone in her "specific chain of command"; and that she did not have approval from her supervising officers to be absent from work on those two days.

Based on those factual findings, the board found Claridy guilty of the two counts each of unsatisfactory performance for being absent without leave; failure to report for duty; and failure to obey a lawful order.[7] In so finding, the board noted that there "was no credible evidence offered to suggest that Lt. Claridy was approved to be on leave" on either October 29th or 30th; that on October 29th both Captain Reed and Major Cogen had told Claridy "that she needed to report for work that day"; that on October 30th, Sergeant Gruzs had relayed an order to Claridy, from Major Cogen, that she "need[ed] to report to work" that day; and that the orders for Claridy to report to work were never "rescinded."

As for the events of April 16, 2013, the board found that Claridy, upon her return to work from sick leave, provided Major Cogen with a "doctor's note" that was unsigned by her physician; that the note "did not conform to agency policy"; and that Major Cogen "returned" to Claridy's office "a short time later and requested . . . that she return the

[7] Claridy was not found guilty of the two charges of unsatisfactory performance for the "failure to conform to work standards established for the members rank, grade, and/or position," because the "expectations Lt. Claridy failed to comply with," that is, reporting for work when scheduled on October 29th and 30th, "were general and not specific" to her rank, grade, or position.

'doctor's note' to him," but that Claridy refused to hand over the note. The board further found that, when Major Cogen "ordered" Claridy to give him the note, she refused and "tore the note"; that Major Cogen "continued to demand" that she "turn over" the note; and that Claridy "continued to refuse." Major Cogen then left Claridy's office, returned to that office with Major Matthews and Deputy Shifaraw, and "again demanded" the note, found the board. Only then, declared the board, did Claridy give the major "a cup containing coffee and the note which she had torn to pieces and put in the coffee cup."

Consequently, the board concluded that Claridy had violated the section of the general orders regarding the "certification of illness" to be submitted upon an employee's return to work and found Claridy guilty of insubordination based on "her refusal to obey Major Cogen's demands to return the doctor's note."

The Penalty Imposed

Before making its recommendation of administrative sanctions, the board was presented with both Claridy's "personnel file" and the Sheriff's Office's "disciplinary matrix." The board also heard additional testimony from both Major Cogen and Claridy regarding her personnel file and her past work performance . After taking, in the words of the board, "all of the information into account," the board recommended that, for each of the six guilty findings based on the events of October 2012, Claridy be demoted. For her failure to provide a signed certification of illness, the board recommended only one-day suspension, but, for her insubordination, the board recommended dismissal.

The Sheriff reviewed the board's findings and "concurred with the recommendations of punishment." He consequently terminated Claridy's employment with the Baltimore City Sheriff's Office.

Discussion

I.

Claridy contends that there was not substantial evidence presented to the hearing board to support its guilty findings. With respect to the charges stemming from her failure to report to work, she claims that the record before the board showed that she made "all attempts to call in" and there was no evidence "that she violated the policies in question." And, as for her failure to provide a signed doctor's note, she maintains that once the note was initially returned to her it became "rejected medical documentation" that she was permitted to destroy. And, since she did turn over the torn-up note to Major Cogen upon his request, she asserts that "there was no failure to subordinate herself to her superior."

The "scope of judicial review in a LEOBR case is that generally applicable to administrative appeals." *Coleman v. Anne Arundel Cnty. Police Dep't.*, 369 Md. 108, 121 (2002) (internal quotation marks and citations omitted). Therefore, "to the extent that the issue under review turns on the correctness of an agency's findings of fact," our review is "narrow" and "limited to determining if there is substantial evidence in the administrative record as a whole to support the agency's findings and conclusions." *Id.* (internal quotation marks and citations omitted). If "reasoning minds could reasonably reach" the agency's conclusion "from the facts in the record before the agency, by direct proof, or by permissible inference," then the agency's conclusion "is based upon substantial evidence,

and the court has no power to reject that conclusion." *Tippery*, 112 Md. App. at 339 (internal quotation marks and citations omitted).

The board's guilty findings as to the charges of unsatisfactory performance for absence without leave, failure to report for duty as required, and failure to obey a lawful order on October 29th and 30th were unquestionably supported by substantial evidence. It was undisputed that Claridy had been ordered—both by e-mail and in person—by her direct supervisor, Major Cogen, to report to work on October 29th, regardless of whether the courts were closed. And she was ordered by Major Cogen, an order which was transmitted by Sergeant Gruz, to report for work on October 30th. Moreover, on both of those days, Captain Reed further advised Claridy that it was her responsibility to find transportation to work. Notwithstanding those orders, Claridy did not report to work on either October 29th or October 30th. Nor was any evidence presented to the hearing board that Claridy took any steps to ensure her attendance at work. And, despite Claridy's belief that her supervisors would "get back to [her]" regarding what kind of leave she should request, she never requested, or was ever granted, leave for either day. Finally, her claims, on appeal, that she was "simply not able to report to work" and that she "advised her employer" of that do not affect the board's conclusion that she failed to report for duty as her supervising officer had ordered, and she neither requested nor was granted leave for those absences.

As for the board's finding of guilt as to the charge that Claridy failed to provide a signed certification of illness upon her return to work on April 16, 2013, it was undisputed that the note Claridy provided was unsigned and thus was in violation of the Sheriff's

Office's "general orders." And, as for the charge of insubordination, Major Cogen's testimony established that he asked Claridy for the note at least four times. She refused to give him the note as ordered, tore the note into pieces as the major stood in her office, and, then, gave him the pieces of the note in a coffee-filled cup.

In accordance with the substantial evidence test, our "inquiry is whether on the record the agency could reasonably make the finding" that it did. *Tippery*, 112 Md. App. at 339 (quoting *Snowden v. City of Balt.*, 224 Md. 443, 447 (1961)). Claridy has not demonstrated, on appeal, that the board's findings lacked substantial evidentiary support. To the contrary, the board's findings of guilt with respect to her failure to report for work were supported by nearly uncontroverted evidence. And her repeated refusals to give the unsigned doctor's note to Major Cogen and her destruction of the note were more than sufficient to establish the act, or acts, of insubordination charged.

II.

Claridy next contends that the penalty recommended by the board, and imposed by the Sheriff, was inconsistent with the Sheriff's Office's "disciplinary matrix," and thus amounted to an abuse of discretion. Specifically, she maintains that the board "went directly to the most severe sanction" of dismissal, without giving any indication of the basis for its decision.

Administrative sanctions, as "discretionary functions" of an agency, "must be reviewed under a standard more deferential than . . . the substantial evidence review afforded an agency's factual findings." *Md. Aviation Admin. v. Noland*, 386 Md. 556, 575 (2005) (quoting *Spencer v. Md. State Bd. of Pharmacy*, 380 Md. 515, 529 (2004)). Indeed,

as long as a sanction "does not exceed the agency's authority, is not unlawful, and is supported by competent, material and substantial evidence," we will not reverse or modify the sanction "based on disproportionality or abuse of discretion unless, under the facts of a particular case, the disproportionality or abuse of discretion was so extreme and egregious that the reviewing court can properly deem the decision to be 'arbitrary or capricious.'" *Rivieri v. Balt. Police Dep't.*, 204 Md. App. 663, 668 (2012) (quoting *Md. Transp. Auth. v. King*, 369 Md. 274, 291 (2002)).

Interestingly enough, Claridy has not assigned any error to the Sheriff's actions in terminating her employment. She instead focuses on the board's recommendation of dismissal—which was not binding on the Sheriff—and contends that the board, in making that recommendation, "disregarded" the "disciplinary matrix." She asserts that the offense of "insubordination" is a "Category E" violation, for which the discipline options, for a "first occurrence," range from "over fifteen days loss of leave" to "involuntary transfer," with "dismissal being the final and most severe sanction." She maintains that "no progressive disciplinary steps [were] taken" in her case and that the board improperly "went directly to the most severe sanction."

First of all, under the LEOBR, it falls to the Sheriff to "review the findings, conclusions, and recommendations of the hearing board" and "issue a final order" within "30 days after receipt of the recommendations of the hearing board." P.S. § 3-108(d)(1). The "recommendation of a penalty by the hearing board is not binding on" the Sheriff. P.S. § 3-108(d)(3). In fact, the Sheriff has statutory authority to "increase the recommended penalty of the hearing board," provided that certain statutorily mandated

steps are taken.[8] P.S. § 3-108(d)(5). In this case, the Sheriff concurred with the hearing board's report and recommendations, "which included dismissal." He therefore terminated Claridy's employment with the Sheriff's Office.

And the "disciplinary matrix" to which Claridy refers "establish[es] a standardized recommendation process for discipline." It is only a "guideline." The Sheriff, as noted, has "final authority regarding any punishment and is not restricted by the disciplinary matrix."

Moreover, the "matrix" in question sets forth six "categories" of violations, with "Category A" violations being the least serious and "Category F" violations being the most serious. Despite Claridy's contention that insubordination is a "Category E" violation, the "disciplinary matrix" makes clear that "violations relating to insubordination" can be ***either*** a "Category E" violation ***or*** a "Category F" violation. And, while there are six possible "discipline options" for a "Category E" violation—one of which is, in fact, dismissal— the ***only*** listed discipline option for a "Category F" violation is "dismissal." Thus, regardless of whether the hearing board found that Claridy's insubordination was a category E or F violation, dismissal was an available remedy under either finding. *See also* P.S. § 3-108(b)(1) ("After a disciplinary hearing and a finding of guilt, the hearing board

[8] Specifically, the Sheriff must first "personally" review the entire record of the proceedings before the hearing board; meet with the law enforcement officer and allow him or her to be heard "on the record"; provide, "in writing to the law enforcement officer, at least 10 days before the meeting, any oral or written communication not included in the record of the hearing board on which the decision to consider increasing the penalty is wholly or partly based"; and state, on the record, the "substantial evidence relied on to support the increase of the recommended penalty." P.S. § 3-108(d)(5)(i–iv).

may recommend the penalty it considers appropriate under the circumstances, including . . . dismissal . . . ."). Consequently, dismissal was certainly a sanction that the board was permitted to recommend for the offense of insubordination.

Furthermore, the recommended sanction of dismissal was supported by substantial evidence. As we have previously stated, Claridy was found guilty of insubordination based on her failure to promptly obey a lawful order of her superior. Indeed, Claridy refused at least four orders from Major Cogen to give him the note at issue and tore the note into pieces in his presence, before finally complying by giving what remained of the note to the major in a cup filled with coffee. Each of her refusals was an insubordinate act.

These were not, to be sure, the impetuous acts of an inexperienced officer. Claridy held the rank of lieutenant and was a twenty-three-year veteran of the Sheriff's Office. Her two decades of experience made her refusal to obey direct orders, and the contemptuous manner in which she ultimately responded to the major's order, more culpable, not less. Her rank and experience, in combination with the substantial evidence supporting the board's finding of guilt on the charge of insubordination, persuades us that the board's recommendation of dismissal for that offense was neither arbitrary nor capricious.

Finally, although Claridy contends that the board erred by not stating the basis for its recommendation and by making no reference to the "disciplinary matrix" in its decision, the board was not required to do so. When the "discretionary sanction imposed upon an employee by an adjudicatory administrative agency is lawful and authorized, the agency need not justify its exercise of discretion by findings of fact or reasons articulating why the agency decided upon the particular discipline." *Noland*, 386 Md. at 581. Here, the board

had already set forth its findings of fact and conclusions of law in support of its findings that Claridy was guilty of eight of the ten charges against her. And, as the sanction it recommended for the offense of insubordination was authorized by the "disciplinary matrix" and supported by the evidence it had just set forth, the board was not required to further explain why it recommended the sanctions it did.

III.

Claridy's final contention is that the hearing board improperly relied on "adverse material" that was part of her personnel file in making its recommendation as to the sanctions to be imposed. Specifically, she maintains that the hearing board was improperly permitted to review her "Internal Affairs file," which "contained information regarding allegations that were never presented" to her.

Under the LEOBR, if a hearing board "makes a finding of guilt," it "shall" consider the officer's "past job performance and other relevant information" before making disciplinary recommendations. P.S. § 3-108(a)(5). In accordance with that requirement, the board, in this case, heard "additional testimony" from both Major Cogen and Claridy, and "review[ed] Lt. Claridy's past job performance." To assist in that review, the Sheriff's Office provided the board with Claridy's "personnel files," which Claridy and her counsel were given an hour to review when Claridy's counsel asserted, at the hearing before the board, that the file had not been previously shown to them.

Notwithstanding Claridy's characterization of her internal affairs file as "impermissible documentation," the inclusion of those records in her personnel file was not a violation of the LEOBR. Nothing in that statute prevents a law enforcement agency

from including, in an officer's personnel file, records of an "internal investigation." Although under the LEOBR, a law enforcement agency "may not insert adverse material[9] into a file of the law enforcement officer" unless the officer has had the opportunity to "review, sign, receive a copy of, and comment in writing on the adverse material," an exception is set forth in the statute for the "file of the internal investigation," which may be inserted into an officer's personnel file without his or her review. P.S. § 3-104(o)(1). Thus, although Claridy may not have previously seen one of the internal affairs charges[10] that was included in her personnel file, the LEOBR did not preclude the inclusion of that charge in her file and did not require that the Sheriff's Office give Claridy the opportunity to review and comment on that charge before including it in her personnel file.

Moreover, although Claridy contends that the board "indicated reliance" on her internal affairs file, she has not cited any portion of the board's findings which demonstrate reliance on (or, indeed, any reference to) the internal affairs documents in her personnel file. Indeed, the board's decision states that it took "all of the information" presented to it—as it was required to do under the LEOBR—"into account before making its recommendations of punishment." And neither the board's decision, nor the Sheriff's order

[9] The LEOBR does not define "adverse material." We have opined, however, that "documentation . . . could be considered 'adverse material' [if] it might negatively reflect on [the officer's] job performance." *Montgomery Cnty v. Krieger*, 110 Md. App. 717, 738 n.7 (1996).

[10] Claridy has not identified, on appeal, what "impermissible documentation" the board reviewed, stating only that her internal affairs file contained "allegations that were never presented" to her. We surmise, from the transcript of the proceedings before the board, that her complaint relates to an internal affairs document from 2005. Claridy testified that she was unaware "that such a case existed."

terminating Claridy's employment, indicate reliance on the internal affairs documents as to which Claridy now complains—documents which were not, in any event, impermissibly included in her personnel file.

JUDGMENT OF THE CIRCUIT COURT FOR BALTIMORE CITY AFFIRMED. COSTS TO BE PAID BY APPELLANT.