

Circuit Court for Prince George's County
Case No. CAL20-03257

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 1349

September Term, 2021

DANTEE LONG

v.

PRINCE GEORGE'S COUNTY POLICE
DEPARTMENT

Nazarian,
Zic,
Ripken,

JJ.

Opinion by Ripken, J.

Filed: September 14, 2022

*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 Administrative Hearing Board (the “Board”) for the Prince George’s County Police Department (“PGPD”) found appellant, Dantee Long (“Long”), guilty of making false statements and intentionally misrepresenting facts to members of the Charles County Sheriff’s Office (“CCSO”) in violation of Prince George’s County Code (“PGCC”) § 18-160. As a result of the Board’s decision and subsequent disciplinary recommendations, PGPD terminated Long’s employment. Long filed a petition for judicial review in the Circuit Court for Prince George’s County, which affirmed the Board’s findings. Long then filed this appeal again asserting error in the Board’s findings of guilt.

ISSUES PRESENTED FOR REVIEW

On appeal to this Court, Long presents two issues for our review:¹

- I. Did the Board err in finding substantial evidence to conclude that Long had given false statements or misrepresented facts to members of CCSO?
- II. Did the Board err in finding there were no significant conflicts of evidence to resolve when determining whether Long gave false or misleading statements?

¹ Rephrased from:

1. Did the AHB err as a matter of law and/or lack substantial evidence to find Long guilty of Charges #2 and 3 where there was overwhelming evidence to suggest that Long stated that his vehicle had been parked in the garage for one month and no evidence to suggest that Long denied operating the vehicle during the time frame of the alleged hit-and-run incident?
2. Did the AHB fail to resolve all conflicts in the evidence in rendering [its] findings as to Charge #3?

For the reasons to follow, we hold that there was substantial evidence for the Board to conclude that Long gave false statements and misrepresented facts to members of CCSO in violation of PGCC § 18-160. We further hold that there were no significant conflicts of evidence for the Board to resolve in determining whether Long gave false or misleading statements. We shall affirm.

FACTUAL AND PROCEDURAL BACKGROUND

On September 5, 2017, at approximately 6:00 p.m., Long, who was employed as a Police Corporal with PGPD, was driving his 2017 silver BMW convertible in Waldorf, Maryland. Long's friend and fellow member of PGPD, Corporal Jerald Greenwood ("Greenwood") and Greenwood's son were riding in the back seat of Long's vehicle. Greenwood indicated that as Long approached a green light, a black Ford pickup truck in front of them, being driven by Robert Jones ("Jones"), slammed on its brakes. According to Greenwood, Long then executed an "evasive maneuver," swerving to the right of the pickup truck stopped in traffic, turned left, and continued home.

Jones began following Long's vehicle in an attempt to obtain Long's vehicle tag number. As Jones was following Long's vehicle, Jones noticed a CCSO marked cruiser traveling on the road. The cruiser was being operated by Sergeant Nasatka, who was off duty in civilian clothing. Jones flagged down Sergeant Nasatka and reported that he was the victim of a hit-and-run accident and described the culprit vehicle as a silver convertible. Sergeant Nasatka initiated a call for service and requested that an on-duty deputy respond to his location. Deputy Spencer was dispatched to the location, and Jones provided him with the license plate number for the silver convertible. Deputy Spencer discovered the

vehicle was registered to Long and obtained his address. Sergeant Nasatka, Deputy Spencer, and Lieutenant Hense drove to Long's home to investigate.

Greenwood indicated that upon arriving at Long's home, the silver convertible was parked in the garage. Greenwood and Long spent the next hour in Long's driveway, drinking alcoholic beverages and watching Long's children play. When Sergeant Nasatka arrived at Long's home, Sergeant Nasatka observed the garage door open with a silver convertible parked inside. Sergeant Nasatka spoke to Long and advised him that he was there to investigate a hit-and-run accident involving a silver convertible.

The officers gave varying accounts of the timeframe in which Long represented the car had been parked. Per Sergeant Nasatka, Long stated "the car hasn't moved in three or four months." Sergeant Nasatka further indicated that Long said "that the car hadn't moved in a period of time," and he believed Long said "it was a couple of months." Before the Board, Sergeant Nasatka confirmed that Long told him the car had not moved in three or four months.² Deputy Spencer testified that Long stated the car was a "show vehicle" and it had not left the garage "in months." According to Lieutenant Hense, Long stated the car had been in the garage for "a month." Greenwood heard Long state the car was a "show car" and that it had been "in the garage for a while."

Long identified himself as a police officer and gave Sergeant Nasatka his ID and badge. During Long's interactions with the officers, he became agitated and used profanity.

² The title on the transcript from Sergeant Nasatka's testimony before the Board where Nasatka made the statement appears to erroneously identify the interview as an interview with Long. However, the parties indicate that Sergeant Nasatka made this statement.

Greenwood further indicated that Long’s “emotions got high” and Greenwood told Long to “calm down.”³ Based on Long’s statements and actions during CCSO’s hit-and-run investigation, PGPD’s Internal Affairs Division conducted an internal investigation. After the Internal Affairs investigation concluded, Long was issued a Disciplinary Action Recommendation, charging him with three violations⁴ pertaining to the September 5 incident. Relevant to this appeal are charges two and three, violations of PGCC § 18-160, which provides: “No member of the Police Department, under any circumstances, shall make any false official statement or intentional misrepresentation of facts.”

Charge two states:

That on or about September 5, 2017, . . . the Respondent, Corporal Dantee Long . . ., did make a false statement to sworn members of the Charles County Sheriff’s Office, who were investigating a hit and run accident, when he denied driving his 2017 BMW during the incident timeframe.

Charge three states:

That on or about September 5, 2017, . . . the Respondent, Corporal Dantee Long . . ., did make a false statement to sworn members of the Charles County Sheriff’s Office, who were investigating a hit and run accident, when he stated that his 2017 BMW had been parked for over a month.

³ This conduct was the basis for Long’s first charge of unbecoming conduct, which is not an issue in this appeal.

⁴ Long’s first charge was for Unbecoming Conduct, in violation of PGCP General Order Manual, Volume I, Chapter 32, Section V, Subsection 3, which states: “As the most visible representative of government, employees must display unblemished professional conduct. To that end, employees are duty bound to avoid excessive, unwarranted, or unjustified behavior that would reflect poorly on themselves, the Department or the County government, regardless of duty status.”

In accordance with MD Code Ann., Public Safety § 3-107, Long exercised his right to contest the charges in an evidentiary hearing before the Board. The Board convened pursuant to the Law Enforcement Officers Bill of Rights (“LEOBR”) to consider the charges brought against Long. Based upon the testimony and evidence presented at the hearing, the Board concluded that sufficient evidence existed by a preponderance to support charges two and three.⁵ The Board subsequently conducted a character hearing, accepting testimony from both sworn members of PGPD and civilian witnesses regarding Long’s character. The Board considered Long’s personnel file, including his record of past performance and any prior disciplinary actions, in determining its recommendation that Long be terminated for charges two and three. The Chief of Police accepted the final disciplinary action against Long, and Long was subsequently terminated from employment with the PGPD.

Long appealed the Board’s decision to the Circuit Court for Prince George’s County. The circuit court affirmed the Board’s decision, and this timely appeal followed, wherein Long again asserts that, first, the Board lacked substantial evidence to conclude he gave false statements or misrepresented facts to members of CCSO, and second, the Board failed to resolve significant conflicts in the evidence.

⁵ A dissenting member of the Board would have found that a preponderance of evidence had not been established for charges two and three because the investigating officers differed in their testimony as to the length of time Long stated his vehicle had not moved.

DISCUSSION

The scope of judicial review of an administrative proceeding initiated by a county police department pursuant to the LEOBR “is [] generally applicable to administrative appeals.” *Coleman v. Anne Arundel Cnty. Police Dep’t*, 369 Md. 108, 121 (2002) (quoting *Montgomery Cnty. v. Stevens*, 337 Md. 471, 482 (1995)). We are tasked with determining whether the administrative agency, as opposed to the circuit court, erred. *Balt. Police Dep’t. v. Ellsworth*, 211 Md. App. 198, 207 (2013) (citing *Bayly Crossing, LLC v. Consumer Prot. Div.*, 417 Md. 128, 136 (2010)). Accordingly, “we bypass the judgment of the circuit court and look directly at the administrative decision.” *Salisbury Univ. v. Joseph M. Zimmer, Inc.*, 199 Md. App. 163, 166 (2011) (citing *White v. Workers’ Comp. Comm’n*, 161 Md. App. 483, 487 (2005)).

“In reviewing an administrative agency decision, we are limited to determining if there is substantial evidence in the record as a whole to support the agency’s finding and conclusions, and to determine if the administrative decision is premised upon an erroneous conclusion of law.” *Mehrling v. Nationwide Ins. Co.*, 371 Md. 40, 57 (2002) (internal quotation omitted) (citing *Bd. of Physician Quality Assurance v. Banks*, 354 Md. 59, 67–68 (1999)). When applying the substantial evidence test, a reviewing court decides “whether a reasoning mind reasonably could have reached the factual conclusion the agency reached.” *Motor Vehicle Admin. v. Carpenter*, 424 Md. 401, 412 (2012).

We defer to the agency’s fact-finding and inferences if they are supported by the record. *Id.* at 413. “If there was evidence of the fact in the record before the agency, no matter how conflicting, or how questionable the credibility of the source of the evidence,

the court has no power to substitute its assessment of credibility for that made by the agency, and by doing so, reject the fact.” *Travers v. Balt. Police Dep’t*, 115 Md. App. 395, 421 (1997) (quoting *Comm’r, Balt. City Police Dep’t v. Cason*, 34 Md. App. 487, 508 (1977)).

I. THERE IS SUBSTANTIAL EVIDENCE IN THE RECORD TO SUPPORT THE BOARD’S CONCLUSION THAT LONG GAVE FALSE STATEMENTS AND MISREPRESENTED FACTS TO MEMBERS OF CCSO.

Long first contends the Board lacked substantial evidence to find him guilty of charges two and three in violation of PGPD § 18-160, which states: “No member of the Police Department, under any circumstances, shall make any false official statement or intentional misrepresentation of facts.” Long asserts that, as to count two, there was no evidence to suggest that he expressly denied operating the vehicle during the timeframe of the reported hit-and-run incident. As to count three charging him with falsely stating that his vehicle was in the garage for “months,” Long argues that there was in fact overwhelming evidence to suggest he stated that his vehicle had been parked in the garage for one month. In response, PGPD maintains the Board received sufficient evidence to conclude Long gave false statements and misrepresented facts for counts two and three. We agree with PGPD.

A. There Was Substantial Evidence to Find Long Guilty of Count Two.

The Board received substantial evidence to conclude Long made false statements when he denied driving his 2017 BMW during the incident timeframe. Greenwood and Sergeant Nasatka testified before the Board, and the transcripts of their previously recorded witness statements to the Internal Affairs Division were received into evidence. In his

recorded witness statement, as well as in direct testimony before the Board, Greenwood testified that Long was driving his own vehicle, a silver convertible, on the date in question. Moreover, Sergeant Nasatka testified that when he informed Long that he was investigating a hit-and-run accident involving a silver convertible, Long responded that the vehicle had not moved in months and that he had been driving his truck all day. The Board also considered Deputy Spencer's witness statement in which he testified that Long stated he had not driven his vehicle and that it had been in the garage for months.

Long argues that in order to prove he was guilty of charge two, the Board was required to find that he expressly denied driving his 2017 BMW during the incident timeframe. To this end, Long contends none of the CCSO employees ever explicitly asked him if he had driven the vehicle during that timeframe. Long relies on Sergeant Nasatka's testimony before the Board, in which Sergeant Nasatka indicated Long never denied driving the vehicle during the incident timeframe. Long argues that an omission of fact is not within the conduct prescribed by PGPC § 18-160. Long concedes that the Board may have been justified in determining that he omitted certain information during the CCSO investigation⁶ but argues that the Board did not find—and could not have found—that he made an affirmative misrepresentation.

⁶ We note that the Board's finding that Long intentionally omitted driving his vehicle during the incident timeframe was responsive to a Board member's dissent in which that Board member indicated the witnesses' statements and testimony differed as to the length of time Long stated he had not driven the vehicle and that Long's statements may have been unreliable because he was intoxicated.

We disagree. The Board found that “the statements made by [] Long constituted false statements.” Even if we were to accept Long’s argument that omissions are not intentional misrepresentations under PGPC § 18-160, the outcome of this appeal would not change. There is ample evidence in the record for the Board to conclude that Long’s statements go beyond omissions of fact and constitute false statements and intentional misrepresentations of fact. Long’s statements to Sergeant Nasatka amounted to a representation that Long had not driven the convertible at any time in the last month, including during the day in question. These statements, coupled with Greenwood’s testimony that Long was driving the convertible earlier in the day, were sufficient for the Board to conclude that Long gave false statements and misrepresented facts. Therefore, we hold the Board did not err in finding Long guilty of count two.

B. There Was Substantial Evidence to Find Long Guilty of Count Three.

Long next argues there was a lack of substantial evidence to support the Board’s finding that he stated his vehicle had been in the garage for over one month. Long contends the witnesses’ testimony was conflicting with respect to the amount of time Long stated his vehicle had been parked. In support of its findings, the Board considered transcripts from the CCSO investigating officers, Greenwood and Jones, as well as live testimony from Greenwood and Sergeant Nasatka.

Sergeant Nasatka testified that Long indicated “the car hasn’t moved in a period of time.” Sergeant Nasatka further testified that Long indicated the car had not moved in a “couple of months” and that it had been “three or four months.” The Board also took Deputy Spencer’s testimony into account, wherein he testified that Long stated his vehicle

had not left the garage “in months.” The Board further considered Lieutenant Hense’s testimony that Long reported the car had been in the garage for “a month,” as well as Greenwood’s testimony that Long stated the car had been “in the garage for a while.” The record demonstrates that there was substantial evidence for the Board to conclude that Long made false statements and intentionally misrepresented facts when he reported to various members of CCSO that his car had been parked for varying periods of time over a month prior to the hit-and-run incident.

In light of all of the evidence presented to the Board, a reasonable person could have concluded that Long made false statements and intentionally misrepresented facts when he denied driving his vehicle on the date in question and insisted his vehicle had been in the garage for a considerable period of time. We conclude there was substantial evidence in the record to support the Board’s determination that Long was guilty of counts two and three.

II. THE BOARD RESOLVED ALL SUBSTANTIAL CONFLICTS OF EVIDENCE.

Finally, Long contends that the Board failed to resolve all substantial conflicts of evidence with respect to count three. Long argues the Board failed to resolve the witnesses’ conflicting testimony regarding the timeframe he reported that his vehicle was in the garage. Long asserts the Board’s findings cannot be sustained because, other than Deputy Spencer, no one else “conclusively stated” that Long reported his vehicle was in the garage for over a month.

It is necessary for an administrative agency to “resolve all significant conflicts in the evidence” before rendering its findings of fact and conclusions of law. *Md. Comm’n on*

Hum. Rels. v. Malakoff, 273 Md. 214, 229 (1974). Moreover, “not 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.” *Balt. Lutheran High Sch. Ass’n v. Emp. Sec. Admin.*, 302 Md. 649, 663 (1985). In resolving conflicting evidence, an administrative agency is responsible for determining the credibility of the witnesses before the agency. *Motor Vehicle Admin. v. Karwacki*, 340 Md. 271, 284 (1995).

Here, the Board had the opportunity to evaluate the testimony and judge the credibility of the witnesses in relation to the recorded interviews received into evidence. In doing so, the Board expressly indicated that the majority found the witnesses’ statements and testimony credible. Long is not entitled to relief because we “have no power to substitute our assessment of credibility for that of the agency,”⁷ if, as we have already concluded, “there was evidence to support the findings of fact in the record before the agency.” *Fire & Police Emps.’ Ret. Sys. of Balt. v. Middleton*, 192 Md. App. 354, 359 (2010) (citing *Terranova v. Bd. of Trs.*, 81 Md. App. 1, 13 (1989)).

Moreover, Long’s argument is flawed because it does not point to a significant, unresolved conflict in the evidence upon which the Board relied to find he was guilty of count three. In its findings of fact, the Board specified that it evaluated the various statements offered by the witnesses and determined Long’s statements constituted false statements. Although there were discrepancies in the witnesses’ testimony as to the precise length of time Long stated his vehicle had been in the garage, the variation was

⁷ To be clear, we are not suggesting we would have reached a different conclusion than the Board.

insignificant. Additionally, the variation could be due to Long's own inconsistent statements to witnesses and not the witnesses' inconsistent recollections. Regardless of whether Long told investigating officers his vehicle had been in the garage for one month or several months, a reasonable mind could conclude, as the Board did, that Long made false statements and intentionally misrepresented the length of time his vehicle was in the garage.

**JUDGMENTS OF THE CIRCUIT COURT
FOR PRINCE GEORGE'S COUNTY
AFFIRMED. COSTS TO BE PAID BY
APPELLANT.**