Circuit Court for Prince George's County
Case Nos. CAL-17-18471 and CAL-17-25521

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1419
September Term, 2017

No. 2674
September Term, 2018

(Consolidated)

BRIAN D. LYNCH

v.

MAYOR AND TOWN COUNCIL OF COLMAR MANOR, *ET AL*.

Kehoe,
Arthur,
Wells,
JJ.

.
Opinion by Kehoe, J.

Filed: February 21, 2020

*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. *See* Md. Rule 1-104.

In these consolidated appeals, we consider two judgments of the Circuit Court for Prince George's County. Both are related to the Colmar Manor Police Department's efforts to discharge one of its officers, Brian D. Lynch, after he allegedly made a false statement to an officer investigating whether Lynch had engaged in unauthorized secondary employment. Between the two appeals, Lynch raises the following issues, which we have reworded slightly and reordered:

1. Did the circuit court err when it declined to consider Lynch's show-cause petition alleging violations of rights guaranteed by the Law Enforcement Officers' Bill of Rights?

2. Did the hearing board commit an error of law when it summarily denied Lynch's pre-hearing motion asserting that the charges were untimely and impermissibly vague and that the department had, by requesting "admissions" from Lynch, improperly shifted the burden of proof and biased the hearing board?

3. Did the hearing board deprive Lynch of his rights under Md. Code, § 3-104(n)(1)(ii) of the Public Safety Article ("Pub. Safety"), when it refused to take any action against the department upon discovering that the department had not turned over certain documents?

4. Did the hearing board err when it denied Lynch's motion for an acquittal after the department rested its case-in-chief?

5. Was the hearing board's finding that Lynch was guilty of making a false statement based upon substantial evidence?

6. Did the hearing board act arbitrarily and capriciously by "refus[ing] to consider" the testimony of a defense witness because she did not memorialize her investigation in a particular manner?

7. Did the circuit court err by failing to rule upon and grant Lynch's motion to strike the town's answering memorandum after the town failed to file a response to Lynch's petition for judicial review, as required by Md. Rule 7-204(a)?

Although the circuit court erred when it refused to consider the merits of Lynch's show-cause petition, Lynch failed to establish he was prejudiced by this mistake. And because his other contentions are without merit, we will affirm the judgments of the circuit court.

Background

The statutory scheme

Resolving the issues presented in Lynch's consolidated appeals turns in large part on the interpretation of the rights and procedures outlined in the Law Enforcement Officers' Bill of Rights ("LEOBR"), codified at Md. Code, §§ 3-101–3-113 of the Public Safety Article ("Pub. Safety"). We begin with some background.

The LEOBR provides procedural protections to officers during internal investigations and subsequent administrative hearings that could result in their discipline, demotion, or dismissal. *Coleman v. Anne Arundel County Police Department*, 369 Md. 108, 122 (2002). These protections include strict limits on the investigation and interrogation of officers, Pub. Safety § 3-104; a statute of limitations on administrative charges, generally requiring departments to bring the charges "within 1 year after the act that gives rise to the charges comes to the attention of the appropriate law enforcement agency official," Pub. Safety § 3-106(a); and a right to an administrative hearing by a hearing board when charges are brought and disputed, Pub. Safety § 3-107. The right to a hearing comes with several additional guarantees designed to ensure due process. The officer is entitled to notice of

the right to a hearing, and that notice must also state "the time and place of the hearing and the issues involved." Pub. Safety § 3-107(b). The officer has a right to representation by counsel, Pub. Safety § 3-107(e)(3), and to compulsory process for the production of witnesses and relevant evidence, Pub. Safety § 3-107(d)(1)–(3).

When an officer believes he has been denied a right guaranteed to him by the LEOBR, the statute provides two remedial paths. First, the officer "may apply to the circuit court of the county where [he] is regularly employed for an order that directs the enforcement agency to show cause why the right [denied] should not be granted." Pub. Safety § 3-105(a). The aggrieved officer may apply for this show-cause petition at any time before he appears before a hearing board. Pub. Safety § 3-105(b). Second, if the administrative hearing leads to departmental disciplinary action, the officer may seek judicial review of that decision in the circuit court. Pub. Safety § 3-109(a). If he is aggrieved by the circuit court's decision, he may appeal to our Court. Pub. Safety § 3-109(b).

Lynch sought recourse to both of these mechanisms for judicial intervention after his department sought to dismiss him for the reasons we next explain.

The underlying incident

On July 25, 2015, Lynch, a police officer working for the town of Colmar Manor, was moonlighting as a security guard at an outdoor party at a home in Fort Washington. The party was rowdy, and officers from the Prince George's County Police Department were dispatched to respond to a noise complaint. At some point, Lynch got into an argument with the county officers, and they arrested him. Lynch was later released without any

criminal charges, but he was not completely out of the woods. The Colmar Manor police chief opened an investigation to determine whether Lynch had been properly authorized, in accord with departmental policy, to work at the party. Lynch was notified about this investigation by email on July 30, 2015.

The "unauthorized secondary employment" investigation was conducted by Detective Erik Reynolds of the Prince George's County Police Department. It was slow going. Reynolds did not interview Lynch about the cookout incident until almost a year later, on July 19, 2016. In this investigative interrogation, Reynolds asked Lynch about his run-in with the county officers and whether he had been authorized by his department to work the party in the first place. Lynch told the detective that a supervisor had given him the green light:

> [Reynolds]: . . . For the part-time that you [were] working at the residence, is that approved through your department?
>
> [Lynch]: Yes.
>
> [Reynolds]: And who gave you the approval to work it?
>
> [Lynch]: My sergeant.
>
> [Reynolds]: And what is your sergeant's name?
>
> [Lynch]: Sergeant Sims.

About ten months after this interview, on May 17, 2017, the Colmar Manor department served Lynch a notification of three charges against him. These alleged that Lynch had made a "false" or "untruthful" statement in violation of the town's personnel policy (which bars "[k]nowingly giving or making a false statement of a material nature in matters

relative to employment") and specific rules of the police department (which require employees "to respond truthfully to questions asked by supervisors in connection with matters relating to the official business of the department," and forbid them from making "untruthful statements, either verbal or written, pertaining to official duties"). A fourth charge was added on June 30, 2017, alleging that Lynch's untruthful statement constituted "conduct unbecoming an employee," in violation of another department rule. None of these charges specified what the alleged false statement was; they told Lynch only that the false statement had been made to Reynolds "during the course of an official internal investigation."

Accompanying the notifications of charges received by Lynch were "disciplinary action recommendations." In these recommendations, Colmar Manor's police chief explained that the charges were based upon information in Reynolds's investigative report and that he proposed to fire Lynch for the alleged violations of town policy and department rules. The recommendations also explained that Lynch could contest the charges and the proposed punishment in a hearing before an administrative board.

Lynch did dispute the charges, and a hearing board was convened under Pub. Safety § 3-107. The hearing was scheduled for August 7, 2017. On July 13, 2017, while Lynch and the department were preparing for the hearing, counsel for the town emailed Lynch a "request for admission of facts." In it, the town asked Lynch to "admit," among other things, (1) that he had been working secondary employment on July 25, 2015, (2) that Lynch had told Reynolds he had been given permission to work this job, and (3) that there

was no record in the department's files of any request from Lynch to work the job or permission given from Lynch's superiors to do so. The email from the town's lawyer told Lynch that the town "expect[ed] a timely response . . . in 15 days."

The pre-hearing petition to show cause

On August 1, 2017, a few weeks after the town sent its request for admissions, Lynch filed a petition for a show-cause order in the Circuit Court for Prince George's County. The petition made clear that it was filed "pursuant to Md. Code, Public Safety § 3-105." In his petition, Lynch argued that the department had violated his rights under the LEOBR in three ways. First, he said, the administrative charges, brought in May and June of 2017, but related to the July 25, 2015, cookout incident, were time-barred by the one-year statute of limitations found in Pub. Safety § 3-106(a). Second, he argued, the charges were impermissibly vague, giving Lynch no way of knowing what exactly the department alleged to be a false statement. Third, he argued, the town's request for admissions had improperly shifted the burden of proof to Lynch, infringing on his right to a fair hearing and biasing the board against him.

The circuit court held a hearing on Lynch's petition on the day that it was filed. Ultimately, Lynch's petition was denied—but not on its merits. The circuit court believed the issues raised in Lynch's petition were "issues to be fleshed out at the hearing board, not here." The court said that the issues raised generated a "factual dispute" whose resolution would require the court to conduct a "mini-trial" before the hearing board got a chance to address the issues. The hearing before the circuit court would be "a waste of judicial

resource and time [as well as] your time, the City's time, [and] Town [counsel's] time. In LEOBR cases, the judge explained, the circuit court "act[s] as an appellate court." In the court's view, if the hearing board did not side with Lynch on the issues he raised in his show-cause petition, he could "raise [them] for judicial review at that time." Lynch filed an appeal of the court's judgment to this Court, which was docketed as Appeal No. 1419 of the 2017 Term.

The administrative hearing

At the start of the proceedings before the hearing board on August 7, 2017, Lynch raised the issues that the circuit court had declined to consider: that the charges were untimely, that the charges were impermissibly vague, and that the town's request for admissions had improperly shifted the burden of proof on the issues to Lynch. After hearing arguments on the merits from both sides, the board sided with the town as to each contention.

First, the board pointed out that although the charges related to the cookout incident on July 25, 2015, the act that gave rise to the charges was the allegedly false statement made by Lynch on July 19, 2016. Because the charges against Lynch were filed within one year of that date—on May 17, 2017, and June 30, 2017 —they were not time-barred by the one-year statute of limitations in the LEOBR.

Second, the board did not believe the charges against Lynch were impermissibly vague. The board said it felt that the pre-hearing discovery materials received by Lynch,

together with the notice of charges, the witness list, the transcript of Lynch's interview with Reynolds and the complete investigatory file, were "sufficient to prepare a defense."

Third, the board was not convinced that the town's request for admissions had denied Lynch a fair hearing. The board viewed the request for admissions "as more of a proposal to reach a stipulation of facts," and it saw Lynch's failure to respond to that request "as simply a refusal to enter into any kind of stipulation of facts." Simply put, the board did not think the request had "any kind of meaning or consequence." Through the hearing, the parties would flesh out the facts, and the board would restrict itself to considering only the facts developed on that record "to determine if the charge[s were] sufficiently supported by a preponderance of the evidence."

After rejecting Lynch's preliminary arguments, the parties proceeded with the hearing. In its case-in-chief, the town elicited testimony from Detective Reynolds, who provided details about the internal-affairs investigation, and from Sergeant Mary Sims, Lynch's supervisor, whose testimony focused on the town's policy on requesting and approving secondary employment for officers and whether Lynch had requested and received approval to work the cookout. During direct and cross-examination, the parties had admitted into evidence four exhibits. Relevant information from the testimony of the witnesses and the exhibits introduced will be discussed in greater detail in our analysis.

When the town rested its case, Lynch made a motion for an acquittal, on the basis that the evidence then on the record was "insufficient to go any further." Lynch's counsel noted that "[t]he statement itself . . . that [Lynch] is alleged to have made to Detective

Reynolds . . . ha[d] not been placed into evidence." This statement, he said, was "critical." He also pointed out that the town's personnel policy and the specific departmental rules, with whose violation Lynch had been charged, had not been placed into evidence either.

The hearing board denied Lynch's motion for acquittal without explanation, and the hearing proceeded with Lynch's defense and a rebuttal by each side. Several more witnesses testified, including Lynch and Kimberly Yourick, a private detective working on his behalf. And more exhibits were placed into evidence.

After closing arguments, the hearing board found Lynch guilty of two of the four charges brought: knowingly making a false statement of a material nature in matters relative to employment, in violation of the town's personnel policy, and of conduct unbecoming an employee, in violation of department rules.[1] Its findings of fact, its conclusions of law and its disciplinary recommendations were memorialized in a thorough written decision. The department's police chief reviewed and accepted the findings, conclusions, and recommendations of the board. The chief terminated Lynch on August 30, 2017, in a letter that also notified Lynch of his right to appeal that decision. Lynch filed a petition for judicial review of the hearing board's decision. The circuit court affirmed the

[1] Lynch was found not guilty of giving a false statement to a supervisor, in violation of department rules, because Reynolds, a county detective, was not Lynch's supervisor. He was also found not guilty of making an untruthful statement pertaining to official duties, because the department rule under which this charge was brought was not in force at the time of Lynch's alleged false statement to Reynolds.

board's decision. Lynch appealed this judgment as well, which was docketed in this Court as Appeal No. 2674 of the 2018 Term.

As we explain below, resolving the first appeal, which challenges the circuit court's summary denial of Lynch's show-cause petition, requires this Court to assess the prejudice of any error committed by the circuit court. To do that, we needed a record of the proceedings before the hearing board. For that reason, the two appeals were consolidated, and we resolve the questions raised by each appeal in the analysis that follows.

Analysis

A. The pre-hearing petition to show cause

Lynch's first argument in this consolidated appeal is that the circuit court erred in declining to consider the merits of his pre-hearing petition to show cause. He contends that the court failed to distinguish between the two mechanisms for judicial intervention provided for in the LEOBR: pre-hearing show-cause petitions under Pub. Safety § 3-105 and post-hearing judicial review of disciplinary decisions under Pub. Safety § 3-109. Lynch argues that he was entitled to seek redress for the LEOBR violations alleged in the show-cause petition without first addressing his concerns to the hearing board—that he raised the issues in his petition in the proper forum and at the right time.

The town's responses to these arguments are off the mark. First, the town contends that the decision whether or not to issue a show-cause order lies within the discretion of the circuit court, and that the court did not abuse its discretion by declining to hear the merits

of the issues raised in Lynch's petition. As we will explain, this is clearly not the law. The town also suggests the same refusal is subject to a clearly-erroneous standard. This is also clearly not the law. Finally, the town suggests the court *did* consider the merits of Lynch's petition, but that the court, interpreting the "plain meaning" of Pub. Safety § 3-105, denied the petition "because in the judgment of [the court], the rights granted to [Lynch] by LEOBR were not refused, denied, or breached by the town." This is clearly a misreading of the record.

We agree with Lynch that the circuit court erred. But this error did not prejudice him and thus does not warrant reversal.

1. The standard of review

We review the circuit court's refusal to consider the merits of Lynch's petition *de novo*. This is because the court's decision was a legal determination that the issues raised in Lynch's petition were not properly before the court and that the issues first had to be raised before the hearing board. It resulted from the court's construction of the LEOBR statutory scheme, and our Court must therefore determine whether that construction was "legally correct." *Nesbit v. Government Employees Insurance Co.*, 382 Md. 65, 72 (2004) ("[W]hen the [circuit] court's order 'involves an interpretation and application of Maryland statutory and case law, [an appellate court] must determine whether the [circuit] court's conclusions are legally correct under a *de novo* standard of review.'" (quoting *Walter v. Gunter*, 367 Md. 386, 392 (2002))).

While it is certainly true that the circuit court would ultimately have some discretion in fashioning a remedy for a violation of Lynch's rights under the LEOBR, *see Manger v. Fraternal Order of Police, Montgomery County Lodge 35, Inc.*, 239 Md. App. 282, 294–95 (2018), this case does not involve such an exercise of discretion by the circuit court. The alleged error was an error of law.

2. The circuit court erred in refusing to consider the merits of Lynch's show-cause petition.

Under Pub. Safety § 3-105, a police officer has the right to ask a court to consider his concerns about the fairness of a pending disciplinary proceeding "before the hearing board takes any action and, depending on the violation at issue, even before the hearing board has an opportunity to act." *Manger*, 239 Md. App. at 292. This right, we have noted, is "unusual," *id.* (quoting *Mass Transit Administration v. Hayden*, 141 Md. App. 100, 111 (2001)), but the text of the statute makes clear that the § 3-105 show-cause petition is "a statutory exception to the doctrine of exhaustion of administrative remedies," *id.* at 293 (quoting *Hayden*, 141 Md. App. at 113). The show-cause petition "is not a mechanism to review what the trial board or police chief *has done* but to assure that the police agency *will do* what the law requires *in advance of* the required administrative hearing." *Id.* (emphasis added) (cleaned up).

Thus, the § 3-105 remedy is distinct from that provided by § 3-109, which enables an officer to seek judicial review of, among other things, the final decision of the hearing board. *See* Pub. Safety § 3-109(a) ("An appeal from a decision made under § 3-108 of this

subtitle shall be taken to the circuit court for the county in accordance with Maryland Rule 7-202."); Pub. Safety § 3-108(c)(2) ("The decision of the hearing board . . . may be appealed in accordance with § 3-109 of this subtitle."). Judicial review under § 3-109 is backward-looking, allowing the circuit court to consider what the board "has done," *Manger*, 239 Md. App. at 292, to redress problems "at the completion of the administrative process, after a final decision on the merits," *Bray v. Aberdeen Police Department*, 190 Md. App. 414, 427 (2010) (quoting *Moose v. Fraternal Order of Police*, 369 Md. 476, 492 (2002)).

In the present case, Lynch filed a petition to show cause under § 3-105, seeking to have the circuit court "oversee the administrative process *in advance*." *Manger*, 239 Md. App. at 294 (emphasis added). He was entitled to have the circuit court consider the merits of that petition before the scheduled administrative hearing, so that, if it found a violation of Lynch's LEOBR rights, the circuit court could issue an order to correct the problem either before or during the administrative hearing. *See Stone v. Cheverly Police Department*, 227 Md. App. 421, 438 (2016). The circuit court's belief to the contrary—that it acts only as an appellate court in LEOBR cases, and that Lynch was required by the statute to first raise the issues in his petition before the hearing board—was not legally correct.

3. Lynch has failed to demonstrate that he was prejudiced by the circuit court's rulings.

Establishing that the circuit court erred is not enough. We will not reverse a judgment if the circuit court's error was harmless. *Shealer v. Straka*, 459 Md. 68, 102 (2018). In the

civil context, this means that, to obtain relief, the complaining party must show that the identified error was prejudicial, or, in other words, that it "influenced the outcome of the case." *Sumpter v. Sumpter*, 436 Md. 74, 82 (2013) (quoting *Harris v. David S. Harris, P.A.*, 310 Md. 310, 319 (1987)); *see also Flores v. Bell*, 398 Md. 27, 33 (2007). The appellant, who bears the burden, must show more than the possibility of prejudice; he must instead show that prejudice was probable. *Barksdale v. Wilkowsky*, 419 Md. 649, 662 (2011) (explaining that the complainant must show prejudice was "likely," "substantial" or "probable").

Deciding whether Lynch was prejudiced by the circuit court's refusal to consider the merits of his show-cause petition requires us to evaluate the merits of those arguments. This way, we can determine whether Lynch would ultimately have been entitled to the relief he sought from the circuit court. Our analysis in part B.2 of this opinion, focused on the merits of the arguments when they were raised again before the hearing board, does just that. As we will explain, the arguments in Lynch's petition were meritless. Accordingly, Lynch cannot show that he was prejudiced by the circuit court's error.

B. Post-hearing judicial review

The remaining arguments in this consolidated appeal arise out of the post-hearing judicial-review proceedings in the circuit court. There, the circuit court, in a brief two-paragraph analysis, rejected all five of Lynch's challenges to the hearing board's actions and conclusions and affirmed the hearing board's decision. Lynch has brought all five of

those challenges to our Court. (He adds one more to the list, which we will discuss in part C of our analysis.)

Though our analysis differs somewhat from that of the circuit court, we similarly reject Lynch's appellate contentions.

1. The standard of review

When this Court reviews an administrative decision pursuant to Pub. Safety § 3-109, "we perform precisely the same role as the circuit court." *Bray v. Aberdeen Police Department*, 190 Md. 414, 420 (2010). "We are tasked with determining whether the administrative agency, as opposed to the circuit court, erred," *Baltimore Police Department v. Antonin*, 237 Md. App. 348, 359 (2018), which means we must "bypass the judgment of the circuit court and look directly at the administrative decision," *id.* (cleaned up).

No statute specifies the scope of review of LEOBR administrative proceedings initiated by a town or county department, but the Court of Appeals decided in *Younkers v. Prince Georges County*, 333 Md. 14 (1993), that reviewing courts should apply the standards "generally applicable to administrative appeals." *Id.* at 17. The Court further explained these applicable standards in *Coleman v. Anne Arundel County Police Department*, 369 Md. 108 (2002):

> [T]o the extent that the issue under review turns on the correctness of an agency's findings of fact, judicial review is narrow. It is limited to determining if there is substantial evidence in the administrative record as a whole to support the agency's findings and conclusions. While an administrative agency's interpretation and application of the statute which the agency administers should ordinarily be given considerable weight by

> reviewing courts, we owe no deference to agency conclusions based upon errors of law.

Id. at 121 (cleaned up); *see also Montgomery County v. Stevens*, 337 Md. 471, 482 (1995) (explaining that appellate courts reviewing LEOBR cases are limited "'to determining if there is substantial evidence' in the administrative 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'" (quoting *United Parcel v. People's Counsel*, 336 Md. 569, 577 (1994))). If an agency's decision is "premised solely upon an erroneous conclusion of law" or if the agency's conclusions cannot "reasonably . . . be based upon the facts proven," we need not uphold it. *Younkers*, 333 Md. at 19 (quoting *People's Counsel v. Maryland Marine*, 316 Md. 491, 496–97 (1989)).

Although an agency's exercise of discretion is "ordinarily unreviewable," courts may also intervene when the agency's exercise of discretion in an adjudicatory proceeding is arbitrary or capricious. *Maryland State Police v. Zeigler*, 330 Md. 540, 557–58 (1993).

2. The hearing board did not err in denying Lynch's pre-hearing motions.

As we noted above, Lynch raised before the hearing board the same contentions he raised before the circuit court with his show-cause petition: that the charges brought by the department were time-barred and impermissibly vague, and that the town's "request for admissions" improperly shifted the burden of proof in the proceedings and biased the hearing board against Lynch.

The hearing board did not err in rejecting these contentions.

a. The charges were not time-barred by Pub. Safety § 3-106(a).

Pub. Safety § 3-106(a) provides that a law-enforcement agency cannot bring administrative charges against an officer "unless the agency files the charges within 1 year after the act that gives rise to the charges comes to the attention of the appropriate . . . agency official." This limitation does not apply to charges related to criminal activity or excessive force. Pub. Safety § 3-106(b).

Lynch argues to this Court, as he argued to the circuit court in his show-cause petition and to the hearing board, that the charges against him were time-barred by § 3-106(a) because "the act that [gave] rise to the charges" brought against him in May and June of 2017 was the cookout clash with the county police in July of 2015. He notes that "[t]he entire purpose" of the department's investigation was to determine whether Lynch was working "unauthorized secondary employment," and that the department was "fully aware" that Lynch maintained he had been given permission to work at the cookout. He also points out that "the bases of the [false-statement] charges were precisely the same as the original allegations" made by the department: that the secondary employment was not authorized. According to Lynch, the department brought the false-statement charges in bad faith, as a "workaround" to avoid the limits imposed by § 3-106(a), because, after dragging its feet with the investigation, the department could no longer charge Lynch with a violation of the secondary-employment rules. But, Lynch says, "Reynolds' interrogation did not, and simply could not, reset the clock for the statute of limitations," which began to run "[t]he

moment the [d]epartment became aware of the alleged 'unauthorized secondary employment' and . . . Lynch's position" that the employment had been authorized.

Lynch's contentions on this score are fatally undercut by the Court's analysis and holding in *Robinson v. Baltimore Police Department*, 424 Md. 41 (2011). In that case, a Baltimore City police officer was charged with making false statements during an internal investigation into allegations that, while on duty, he had brandished his gun and police badge to force himself on a prostitute. *Id.* at 44. When interviewed, the officer told investigators that he did not recognize his accuser; denied having any sexual contact with her; said he had been driving his personal sedan on the day of the alleged assault and not the SUV identified by the woman; provided investigators with E-ZPass documentation to back up this claim; and said he was unfamiliar with the location of the alleged assault. *Id.* at 45. After the officer was charged with making false statements, he argued, just as does Lynch, that "the alleged false statements were 'part and parcel' of the [alleged] misconduct," and because any charges relating to the underlying incident of alleged assault were time-barred by § 3-106(a), so too were the related false-statement charges. *Id.* at 46, 50. The Court of Appeals flatly rejected this argument, holding that "'the act that gives rise to the charge[]' of making a false statement is the making of the false statement itself," not the underlying incident allegedly lied about. *Id.* at 52.

Lynch attempts to limit the holding of *Robinson*, saying that the Court held the officer's false statements in that case "served to reset the clock [under] § 3-106(a) . . . only because the officer fabricated an *entire* alibi defense." He points to a footnote in the case in which

the Court noted that Robinson's statements and provision of supporting documents went "well beyond a mere 'general denial' of [the] allegations." *Id.* at 45 n.3. We need not decide whether the *Robinson* Court intended to provide some exception to the rule it established—that the statute of limitations for false-statement charges begins to run when the false statement is made—for statements that amount to nothing more than a "general denial." Even if such a general-denial exception existed, Lynch's statements to Reynolds would fall beyond its bounds. Certainly, Lynch's alleged falsehoods were less elaborate than the story concocted by the officer in *Robinson*. But when asked by the investigating detective whether the department had approved his working the cookout job, Lynch said yes. And when asked who had given him the approval, he responded that Sergeant Sims had. This was not a general denial of wrongdoing, putting the burden on the department to prove its case. It was a story that proved, after further investigation, to be a fabrication. It was a false statement, chargeable within one year of its making.

Lynch is wrong to argue that *Robinson*'s holding allows the department to "indefinitely extend the § 3-106(a) statute of limitations." As the court in *Robinson* made clear, Pub. Safety § 3-106(a)'s finite time frame is meant to ensure that alleged infractions are not held over officers' heads indefinitely, *Robinson*, 424 Md. at 51, causing "significant uncertainty as to when, or even if, any disciplinary action is to be taken," *Baltimore Police Department v. Etting*, 326 Md. 132, 138 (1992) (quoting 1988 Md. Laws, ch. 330, *Floor Report of the Senate Judicial Proceedings Committee*). That purpose was served here. On July 25, 2016, one year after the cookout, the department could not hold disciplinary charges for

unauthorized secondary employment over Lynch's head. He could no longer be punished for what happened that day. It is true that proving the false-statement charges required an investigation not substantively different from an investigation into the underlying offense. But the § 3-106(a) statute of limitations was not enacted to "establish[] a framework for an investigative process," *Robinson*, 424 Md. at 51, to foreclose investigation into something that might have happened more than a year ago. And it certainly was not enacted to permit officers to lie about misconduct with impunity so long as at least one year has passed since the alleged misconduct's commission.

b. The charges were not impermissibly vague.

Lynch's next argument, again made both in his show-cause petition and later in his pre-hearing motion before the hearing board, is that the charges brought against him were impermissibly vague. We do not agree.

Pub. Safety § 3-104(n)(1)(i) requires that an officer subject to disciplinary charges be notified "of each charge and specification against" him at least ten days before the hearing. Similarly, Pub. Safety § 3-107(b)(2) entitles officers to notice of "the issues involved" in the administrative hearing. This Court has explained the nature of the notice officers are entitled to receive when "administrative charges" are brought against them:

> The charging document should detail the act or acts of misconduct the officer is accused of having committed, and the laws, rules, or regulations he is alleged to have violated *so that he has the necessary information to adequately defend himself* and so that the Board can assess the sufficiency of the charge and of the evidence presented and, if necessary, decide an appropriate sanction.

Prince George's County Police Department v. Zarragoitia, 139 Md. App. 168, 184 (2001) (emphasis added).

In *Reed v. Mayor and City Council of Baltimore*, 323 Md. 175 (1991), the Court of Appeals explained the significance of the requirement, under the statutory predecessor to § 3-107(b)(2), that officers receive notice of "the issues involved" in the charges brought:

> The requirement . . . that the notice of the disciplinary hearing advise the officer of the "issues involved" is a recognition by the General Assembly of the Fourteenth Amendment guarantee of procedural due process when a protected property interest in continued public employment is threatened by disciplinary proceedings. The obvious purpose of the notice requirement . . . is to apprise the officer of the charges warranting disciplinary action in sufficient detail *to enable the officer to marshal evidence and arguments in defense of the assertions*.

Id. at 183–84 (emphasis added) (cleaned up).

The officer's dismissal in *Reed* arose out of the early-morning arrest of Wesley Baker, who was an acquaintance of Officer Irma Reed and who was wanted for a parole violation. *Id* at 177. When police knocked on Reed's door, she told them that Baker was sleeping in a bedroom upstairs. *Id.* The officers went upstairs and arrested Baker without incident, although, the department later seemed to think, the lack of incident was only by good fortune: on a bureau at the foot of the bed where Baker had been sleeping, police found partially burned marijuana joints and a .25-caliber automatic handgun. *Id.* at 178.

The Baltimore City Police Department dismissed Reed after a hearing on two administrative charges. The first charge was clear, alleging marijuana usage in violation of a department rule. But the second was less straightforward: "that on or about July 11, 1989, in an incident reported under Central Complaint Number 8G25445, Police Officer Irma

Reed reflected discredit upon the Baltimore Police Department and/or herself as a member thereof." *Id.* at 182. This second charge, the Court held, was impermissibly vague. *Id.* at 184. It in no way conveyed that the discrediting conduct for which Reed was being terminated was not her alleged usage of marijuana, but rather her failure to warn the arresting officers that Baker had been armed. *Id.* at 184. Because this was not made clear to Reed before her disciplinary hearing, she was unable to "marshal evidence and arguments" in her defense. *Id.*

We recognize that the written notification of charges given to Lynch in this case was as vague as the written charges given to the officer dismissed in *Reed*. It was more or less a recitation of the elements of his alleged offenses, conveying only that Lynch had "knowingly give[n] a false statement to [Detective] Reynolds during the course of an internal investigation"; "knowingly give[n] an untruthful statement to [Detective] Reynolds during the course of an internal investigation"; "knowingly ma[d]e an untruthful statement to [Detective] Reynolds during the course of an official internal investigation"; and "knowingly give[n] an untruthful statement to [Detective] Reynolds, during the course of an internal investigation, which constitute[d] conduct unbecoming an employee." The statement of facts accompanying the charges was equally unilluminating: "It is alleged that on or about July 19, 2016, [Lynch] knowingly made/provided a false/untruthful statement to [Detective] Reynolds during the course of an official internal investigation."

However, in concluding that the dismissed officer in *Reed* had not been adequately apprised of "the issues involved" in her disciplinary hearing, the Court of Appeals looked

beyond the face of the written charges. It also considered the incident report incorporated by reference in the charging documents. *Id.* at 182–83. That incident report also did not "mention . . . any failure by Reed to warn the arresting officers that Baker was armed." *Id.* at 183.

It is in this critical way that the present case differs from *Reed*. A "disciplinary action recommendation" accompanied the notifications of charges given to Lynch on May 17, 2017, and June 30, 2017. These recommendations restated the charges against Lynch, provided that department proposed to terminate him, and incorporated by reference the investigative report prepared by Detective Reynolds. This report, according to the recommendation, was the basis for the false-statement charges. Unlike the incident report in *Reed*, which did not shed any light on misconduct charged, the investigative report incorporated into the charging documents, and turned over to Lynch by May 22, 2017, made it plain what statement was alleged to be false. In the last paragraph of his report's summary, Detective Reynolds wrote, "Lynch provided an untruthful statement to [me] on July 19, 2016 during a recorded interview *regarding the approval of the secondary employment* . . . . According to . . . Witness Sims, secondary employment approval . . . was not submitted."

The argument from Lynch's counsel that he was not given sufficient notice of the charges is belied by the record. The factual background provided in Lynch's initial show-cause petition states that in the Reynolds's twenty-minute interview with Lynch,

> there were only 2 questions about 'authorization' to work the event. Det. Reynolds asked Lynch if he was authorized to work the event, to which Ofc. Lynch replied in the affirmative. Det. Reynolds then asked who authorized this secondary employment and Lynch responded that he had received authorization from Sergeant Sims. *These were truthful answers and was the subject of the investigation in the first place: whether Ofc. Lynch was working "unauthorized secondary employment."*

The same petition acknowledges that determining whether Lynch's cookout job was unauthorized secondary employment was "the ultimate issue and entire point of the investigation."

Indeed, the other arguments made first to the circuit court in the show-cause proceeding and, later, to the hearing board showed that Lynch knew exactly which statements were at issue. He argued both to the circuit court and the hearing board that *charges for lying about having permission to work the side job* were time-barred because charges for working the side job without permission were time-barred. And his third argument, discussed below, was that the town's request for admissions improperly shifted the burden of proof because it asked him to admit, among other things, that "while under oath and on the record . . . , Officer Lynch was asked by Detective Reynolds if he had permission . . . to work the Fort Washington Event" and that "in response to [this] question, Office[r] Lynch replied 'YES' confirming that he had permission."

Before the hearing, Lynch also hired a private investigator, who interviewed the town's police chief about how the department's secondary-employment policy works in practice. The investigator was brought in as a witness for Lynch at the hearing, and her testimony

was used to show that Lynch had not been lying when he told Detective Reynolds that he had been given authorization to work the outside event.

Lynch asks us to ignore all of this context and to find the hearing board erred in rejecting his vagueness argument because, hypothetically, if he had not looked beyond the first page of the notification of charges, he might not have had fair notice of the issues involved in the disciplinary hearing. He says the hearing board should have dismissed the charges because he was forced to "assume" and "presume[]" that the charges related to his statement affirming he was authorized to work the outside event. We decline Lynch's invitation to put on blinders. It is clear from the record that Lynch's counsel and, presumably, Lynch himself were thoroughly familiar with the entirety of the statements of charges and their attachments before both the show-cause and the administrative hearings. The very arguments marshaled by Lynch and the evidence he presented at the hearing show he was in no way in the dark. He "was clearly acquainted with the misconduct that formed the basis for the charges against him." *Bray*, 190 Md. App. at 432. Therefore, we hold that the charging documents, together with the report they incorporated by reference, were not impermissibly vague. They adequately apprised Lynch of "the issues involved."

c. The town's request for admissions, although without statutory authority, did not shift the burden of proof or bias the hearing board against Lynch.

Pub. Safety § 3-107 entitles officers subject to discipline to "a hearing on the issues by a hearing board" and provides rules for, among other things, the composition of the board and the conduct of the hearing. The statute does not provide the burden of proof that must be met in LEOBR disciplinary hearings, but our case law has made clear that the

disciplining department must prove its charges by a preponderance of the evidence. *See Coleman*, 136 Md. at 451–52 (citing *Meyers v. Montgomery County Police Department*, 96 Md. App. 668, 705 (1993)).

Lynch argues this burden was inappropriately shifted to him when the town emailed him a pre-hearing "request for admissions," asking him to "admit" certain facts and expecting a "timely response" from Lynch within fifteen days. He argues the same request improperly biased the hearing board against him.

Lynch is correct that there was no statutory authority for the town's request, and the town admitted as much before the hearing board. The town's motivation for sending this request is obscure, and we are not sure how or why the town expected Lynch to "admit" that there was no record in the department's files of any request from Lynch to moonlight on July 25, 2015, or of permission given from Lynch's superiors to do so. (After all, the town, and not Lynch, maintained the department's records.) Equally incomprehensible to us, however, is Lynch's contention that this request somehow shifted the burden of proof in such a way as to warrant dismissal of the department's charges. Nothing in the emailed request could have relieved the department of its burden of establishing, by a preponderance of the evidence, that Lynch had made a false statement to Detective Reynolds. This is because the burden of proof—of production and of persuasion—is cast upon the parties *by the tribunal*. Parties have no power, by request or otherwise, to pass the burden back and forth among themselves.

Lynch's argument that the burden had been inappropriately shifted would have merit only if it appeared that the hearing board had somehow been moved by the town's request for admissions to place the burden on Lynch's shoulders. But the hearing board made it very clear that it viewed the request a proposal to reach a stipulation of facts, and Lynch's failure to respond "as simply a refusal to enter into any kind of stipulation of facts." The chairman of the board said he would give the request "no evidentiary weight" and that the request was kept from the rest of the board to minimize its impact. The chairman explained that the case would be decided "based upon the evidence presented before [the board] today in an effort to determine if the charge was sufficiently supported by a preponderance of the evidence."

The board's decision to completely ignore the request makes equally untenable Lynch's assertion that the request improperly biased the board such that, *as a matter of law*, the charges against him had to be dismissed. Lynch points to no evidence of bias.

3. The hearing board did not deprive Lynch of his rights under Pub. Safety § 3-104(n)(1)(ii).

While cross-examining Detective Reynolds at the hearing, Lynch's counsel asked the detective why his report didn't include the words "sustained or non-sustained or unfounded or exonerated or administratively closed." Reynolds said he had used those words to inform the department how it should proceed with the charges, but "[o]nly [i]n the closure memo." It was at this point that Lynch's counsel apparently realized he had never been given a copy of Reynolds's closure memo, and he objected. He cited Pub. Safety § 3-104(n)(1)(ii),

which entitles officers under investigation by their department to "a copy of the investigatory file and any exculpatory information" at least 10 days before the hearing and subject to certain preconditions already fulfilled by Lynch.

Before ruling on Lynch's objection, the chairman of the hearing board clarified, through questions asked of Reynolds, that the closure memo contained the detective's "findings of the investigation" and his "recommendation as to charges." And so, pointing to Pub. Safety § 3-104(n)(2)—which says that a department may exclude from the "exculpatory information" provided to an officer "(i) the identity of confidential sources; (ii) nonexculpatory information; and (iii) recommendations as to charges, disposition, or punishment"—the board overruled Lynch's objection. The chairman said that the information apparently contained in the closure memo would fall under "recommendation as to charges, dispositions and punishments," and thus it was not subject to disclosure under § 3-104(n)(1)(ii).

An almost identical issue arose again during the testimony of Sergeant Sims. During her cross-examination, Lynch's counsel asked about Sims's March 14, 2017, interview with Detective Reynolds. When asked whether she had provided Reynolds with any notes when she was interviewed, Sims said she had given the detective copies of Lynch's "approved part time slips" but did not remember giving him anything else. When asked whether she had "generate[d] any other notes about this incident," Sims said, "I don't remember." The exchange that followed is worth excerpting (emphasis added):

[Lynch's counsel]:	Did you . . . keep . . . a file of this incident?
[Sims]:	Yes, I did.

* * *

[Lynch's counsel]:	. . . Did you consult that [file] recently?
[Sims]:	I got my notes out of it.
[Lynch's counsel]:	Your—sorry, your notes?
[Sims]:	*The notes from the night of the incident that I took for Chief Gibson.*
[Lynch's counsel]:	Okay.
[Sims]:	While he was interviewing Officer Lynch.
[Lynch's counsel]:	. . . I asked if you generated any notes. I thought you said—
[Sims]:	I thought you meant *for Detective Reynolds*.
[Lynch's counsel]:	Okay. Fair enough, fair enough, fair enough. Have [your] notes been *turned over to [the town's attorney]? . . .*
[Sims]:	Yes, sir, they have.

At this point, Lynch's counsel objected again, on the same grounds: the notes were not included in the "very comprehensive investigative report" given to Lynch, and this omission, he said, violated Pub. Safety § 3-104(n)(1)(ii). The chairman of the board asked whether Sims's notes had been turned over to Detective Reynolds or if it was "just part of Ms. Sims's file." Lynch's counsel answered, "She discussed having . . . a file about this incident. That's the issue." In response to Lynch's objection, counsel for the town argued that "the notes made by Sergeant Sims are not part of the investigatory file," and that

"[t]hey're her notes made for her purposes only." Ultimately, the board overruled Lynch's objection. The board's reasoning seemed to be twofold, suggesting that the board was not sure that the notes fell within the scope of the disclosure rule and that, in any event, Sims's notes had not been relied upon in any way by the town (emphasis added):

> [Chairman]: [A]fter discussing with Board counsel and reviewing the [LEOBR] and your objection, we would ask if it would be amenable to you if we gave you a certain amount of time to review these notes, would that assist you today? So I'm offering that as sort of a mitigation.
>
> If you don't accept that, as far as I can tell so far, [counsel for the town] *didn't ask the witness anything directly about what her notes. . . contained*. [You] ask[ed] simply, did she have additional notes. *He's saying this is not part of the investigatory file. As far as we saw, it did not contain*, because nothing was asked about any kind of inculpatory information. So *I don't know if it would necessarily be deemed discoverable.* But since you bring it up, I'm going to offer that out.
>
> I don't know if [counsel for the town] has any kind of objection to it. I'll give you whatever time you need, if you think you need to review it, maybe up to 25 minutes, half an hour. If you want to bring Ms. Sims back in and maybe ask her questions about it.

Lynch's counsel rejected the board's offer, saying the "only remedy" for the violation he claimed was dismissal of the charges. If dismissal was "not in the cards," he said, "certainly [his] review of the documents probably wouldn't help anything to change that."

Lynch now argues to this Court that the board erred in overruling his objections and declining to dismiss the charges against him.

It is far from clear on the record before us whether the closure memo and Sims's notes could be considered part of "the investigatory file and any exculpatory information" subject

to disclosure under Pub. Safety § 3-104(n)(1)(ii). Neither document is part of the record. From what we can piece together from the hearing transcript, it is possible that Reynolds's closure memo would be part of the discoverable "investigatory file." It is also possible, however, that the board was right to think the memo is excepted from disclosure under Pub. Safety § 3-104(n)(2)(iii).[2] All we know from the record is that the memo contains Reynolds's "findings of the investigation" and his "recommendation as to charges." And as the hearing board noted, § 3-104(n)(2)(iii) excepts from disclosure "recommendations as to charges, disposition, or punishment." It is less likely that Sims's notes were part of the discoverable "investigatory file." All we know from the record is that these notes were part of Sims's own files—"notes made for her purposes only"—and that a copy of the notes

[2] Lynch argued before the hearing board that the closure memo was part of the "investigatory file" and therefore could not fall within the disclosure exception under § 3-104(n)(2)(iii) for "recommendations as to charges, disposition, or punishment." That is because the statute tells departments what they can exclude "*from the exculpatory information*" provided to the officer; it does not say departments may exclude *anything* from the investigatory file. He seems to have dropped this argument on appeal. His brief suggests that the closure memo was subject to disclosure not because it was entirely outside the disclosure exception under § 3-104(n)(2) but because "the closure memo was not only a recommendation as to charges, disposition, or punishment and therefore was not excludable on that basis. It also contained Detective Reynolds' investigative findings and summary."

Accordingly, we need not address whether the disclosure exceptions enumerated in § 3-104(n)(2) would apply to "recommendations as to charges, disposition, or punishment" found within an "investigatory file." (That the statute excepts "nonexculpatory information" from disclosure suggests that the exceptions may apply to both the investigatory files and the exculpatory information given to officers.) We address Lynch's argument that the closure memo contained more than excepted "recommendations as to charges, disposition, or punishment" in our prejudice analysis.

was given to the town's attorney. Sims said she did not recall giving the notes to Reynolds during his investigation, and she never said the notes were given to the chief either.

Even if we could conclude that the detective's closure memo or Sims's notes from her personal file were discoverable under § 3-104(n)(1) and not excepted from disclosure under § 3-104(n)(2), Lynch has not established any prejudice by the board's inaction. *Jacocks v. Montgomery County*, 58 Md. App. 95, 107 (1984) ("To establish that there has been a reversible error, the burden is on the appellant in all cases to show prejudice as well as error." (cleaned up)); *see also Baltimore Detention Center v. Foy*, 461 Md. 627, 647 (2018) (explaining, in the context of the Correctional Officers' Bill of Rights, that "[n]ot every violation. . . will result in relief for the aggrieved party" and that "[r]elief is only afforded after 'prejudice . . . [is] shown'"). Again, the documents at issue are not a part of our record, and so we cannot be sure of what they contain. Lynch suggests in his brief that the closure memo contained "Detective Reynolds' investigative findings and summary." So far as we can tell, the investigative report actually received by Lynch, marked at the hearing as Prosecution Exhibit 2, contained the same summary and findings. Lynch has not pointed us to any discrepancy between what he received and the closure memo apparently withheld that might have altered the course of the case.

Similarly, with no idea what was contained in Sims's notes, we are unable to conclude that Lynch was prejudiced by their nondisclosure. We note that Lynch's counsel appeared uninterested in the notes after their existence was made known at the hearing. Offered a chance to review them, so that he might have discovered something that would have helped

his case or helped to justify a delay or dismissal of the hearing, he declined. Counsel's indifference as to what information Sims's notes contained leads us to believe they were not of import, and therefore their nondisclosure could not have been prejudicial.

4. The hearing board did not err by denying Lynch's motion for an acquittal.

After the town declared before the hearing board that it "rest[ed]" its case, Lynch made a motion for an acquittal, arguing that the evidence then on the record was "insufficient to go any further." The hearing board denied Lynch's motion.

Lynch argues that this denial of his motion to acquit was in error because the town had not made a *prima facie* case sufficient to survive a motion for acquittal. We disagree. In explaining why, we assume for the sake of argument that a motion to acquit could properly be made at this point in the hearing, that the hearing board was required to entertain it, and that the board's ruling on the motion would have to be decided according to the same standard used to rule upon motions to acquit before a judicial tribunal. Assuming all of this, our review on appeal is limited to "merely ascertain[ing] whether there [was] any relevant evidence, properly before the [hearing board], legally sufficient to sustain a [finding of guilty]." *State v. Payton*, 461 Md. 540, 557 (2018) (quoting *Morgan v. State*, 134 Md. App. 113, 126 (2000)). The evidence is legally sufficient when, "if believed and given maximum weight," it would either show directly, or support a rational inference of, all the facts that must be proved in a given case. *Pro-Football, Inc. v. Tupa*, 197 Md. App. 463, 479 (2011) (citing *Starke v. Starke*, 134 Md. App. 663, 679 (2000)).

The evidence on the record at the time Lynch made his motion to acquit easily overcomes this legal-sufficiency hurdle. At that point, the board had heard testimony from two witnesses—Detective Reynolds and Sergeant Sims—and had also received in evidence Reynolds's investigative report, the approved secondary-employment forms from Lynch's personnel file, and a transcript of Reynolds's interview of Sims. During Reynolds's testimony, the detective told the board that when he interviewed Lynch, Lynch told him he had been working authorized secondary employment on July 25, 2015. Reynolds also testified that he followed up on this claim with Sergeant Sims, who said no such employment had been authorized. Sims reiterated this in her own testimony. The secondary-employment approval forms given to the board contained no form for the July 25 gig. And in the transcript of Sim's interview with Reynolds, Reynolds told Sims that "Officer Lynch stated during his interview that you gave him approval—the approval to work [the Fort Washington] location." In that same transcript, Sims says she did not give Lynch any such approval. From all of this, the board could find (1) that Lynch told Reynolds he had been given authorization to work this side job and (2) that the statement was false. No other facts were required to be proved.

Lynch contends the town's case was not legally sufficient at the time his motion was made because the town failed to introduce "the most important and basic piece of evidence" in a false-statement case: the false statement itself. His position is that the hearing board could not lawfully have found Lynch guilty of making a false statement if the transcript of the interview containing the alleged false statement was not in evidence. Lynch's brief cites

no authority for the proposition that a transcript is of talismanic importance in these cases or that testimony from a witness who heard the allegedly false statement is insufficient proof that the statement was made. It is not our job to find it for him. *HNS Dev., LLC v. People's Counsel for Baltimore County*, 425 Md. 436, 459 (2012) ("The brief provides only sweeping accusations and conclusory statements [and] we are disinclined to search for and supply [the appellant] with authority to support its bald and undeveloped allegation . . . .").

We also doubt the search for authority would be fruitful. Evidentiary and procedural rules are more relaxed in LEOBR hearings. *See* Pub. Safety § 3-107(f)(1) ("Evidence with probative value that is commonly accepted by reasonable and prudent individuals in the conduct of their affairs is admissible and shall be given probative effect."); *Travers v. Baltimore Police Department*, 115 Md. App. 395, 408 (1997) ("[I]t is well settled that the procedure followed in administrative agencies is not as formal and strict as that of the courts. . . . [and] the rules of evidence are generally relaxed in administrative proceedings . . . ."). It was also Lynch's *statement*, and not the *contents of the transcript*, that was at issue in this case. *Cf.* Md. Rule 5-1002 ("To prove *the content of a writing*, . . . the original writing . . . is required, except as otherwise provided in these rules or by statute." (emphasis added)); *Meyers v. United States*, 171 F.2d 800, 812 (D.C. Cir. 1949) ("Statements alleged to be perjurious *may be proved by any person who heard them*, as well as by a reporter who recorded them in shorthand." (emphasis added)). Surely the transcript of Lynch's interview would have been *better* proof of exactly what Lynch said

and the fact that he did say it, but the evidence in the record still tended to prove he made the statement. Parties generally are not required to produce the best or most probative evidence of a proposition to defeat a motion for acquittal; instead, they are required to produce legally sufficient evidence.

Lynch also argues that the hearing board, in denying his motion to acquit, "effectively shifted the burden to [Lynch] to *disprove* the *allegations* in the charging document and to prove that he *did* have approval to work the assignment." (Emphasis in appellant's brief.) This contention is unpersuasive. The denial of a motion to acquit in no way shifts the burden of proof borne by the parties. The denial only establishes that the party who bears the burden has climbed the first of two mountains: the burden of production. Another mountain remains—the burden of persuasion—requiring the burden-bearing party to persuade the finder of fact, by the appropriate standard, of the truth of the facts establishing each element of his claim. The burden of production is, as Judge Charles E. Moylan put it, "a question of supply." *Chisum v. State*, 227 Md. App. 118, 130 (2016). The burden of persuasion, still carried even when the first burden has been discharged, is "a question of . . . execution." *Id.*

When it denied Lynch's motion for acquittal, the board was deciding only that the town had presented sufficient evidence from which it *could* find that Lynch had made a false statement. When it denied the motion, the board did nothing more than to decide that there was a legal basis for it to find Lynch guilty if it found the town's evidence to be persuasive and its witnesses to be credible. At no point was Lynch required to prove his innocence.

5. The hearing board's finding that Lynch was guilty of making a false statement was based upon substantial evidence.

Lynch's next contention is that the hearing board's finding that Lynch was guilty of making a false statement was not based upon substantial evidence. For many of the same reasons given in the preceding section of our analysis, we reject this contention.

Pub. Safety § 3-108(a) provides that "[a] decision, order, or action taken as a result of a hearing under § 3-107 of this subtitle shall be in writing and accompanied by findings of fact." This written decision will be sustained by courts on review if "substantial evidence in the record supports the agency's conclusions." *Bond v. Department of Public Safety and Correctional Services*, 161 Md. App. 112, 123 (2005) (cleaned up). We require of the agency's decision "reasonableness, not rightness." *Id.* (quoting *Board of Physician Quality Assurance v. Mullan*, 381 Md. 157, 173 (2004) (emphasis added in *Bond*). In other words, if "a reasoning mind could have reached the same factual conclusions reached by the agency on the record before it," *Taylor v. Harford County Department of Social Services*, 384 Md. 213, 222 (2004), we will affirm.

In its written decision, the board concluded that Lynch was guilty of "[k]nowingly giving or making false statements of a material nature in matters relative to employment." The conclusion was based on the following factual findings (emphasis added):

> Testimony and evidence presented to the Board identified PFC Lynch worked secondary employment . . . on July 25, 2015. . . . *Testimony from Sgt. Sims and Chief Gibson directly contradict PFC Lynch's assertion he received approval to work the party;* they both denied giving permission to work the event or even having knowledge of the event. Sgt. Sims testified *she never knew the event was occurring at that location, never gave PFC*

> *Lynch approval to work the secondary employment in any form at that location, never forwarded any request for working secondary employment at the location to Chief Gibson, and had no authority to authorize secondary employment.* . . . Furthermore, a review of PFC Lynch's personnel file shortly after the event came to light did not produce an approved Secondary Employment request form for the house party . . . on July 25, 2015. . . . *There is no evidence corroborating PFC Lynch's testimony he turned in a Secondary Employment request form and obtained verbal approval from Sgt. Sims.* Furthermore, the request form PFC Lynch claims he submitted had no approval signatures and was never presented to investigators or his supervisors to mitigate the allegations against him. In fact, according to the Colmar Manor Police Department policy on secondary employment, *only the Chief of Police has the authority to give authorization to work secondary employment.* PFC Lynch testified he was familiar with Colmar Manor's General Order regarding proper approval procedures prior to the interview with Detective Reynolds and *acknowledged he did not receive authorization from the Chief of Police, Brian Gibson, to work the house party* . . . on July 25, 2015, in writing or verbally. He claimed he only received verbal permission to work the house party from Sgt. Sims. Furthermore, PFC Lynch admitted he was in violation of the department's secondary employment policy because of that very fact. Consequently, *if PFC Lynch never obtained permission to work secondary employment from the Chief of Police verbally or in writing, he did not have approval to work the house party on July 25, 2015, regardless of his assertion it was verbally approved by Sgt. Sims;* he knowingly made a false statement.

These same findings were used to justify the board's conclusion that Lynch had engaged in "conduct unbecoming an employee."

From the evidence on the record, "a reasoning mind" could easily have drawn the same factual conclusions drawn by the board: (1) that Lynch said he had been authorized to work the house party by Sergeant Sims, (2) that no such authorization was given, and (3) that even if it had been, Lynch knew verbal authorization from Sims was not enough to comply with departmental policy. Most of the evidence supporting these conclusions was on the record by the time Lynch moved for an acquittal. The later-introduced transcript of the

Reynolds–Lynch interview, as well as the testimony from Lynch and the police chief summarized in the board's rationale, provided additional support. The board's real fact-finding task was deciding which witnesses to believe in the few instances in which facts were even in dispute. That the hearing board concluded that the testimony of the witnesses called by the town were more credible that the witnesses called by Lynch is not a basis for us to conclude that the board's ultimate conclusions were not based on substantial evidence.

Lynch argues, however, that the hearing board's conclusions could not be based upon substantial evidence because Lynch's statement that he had been authorized to work the side job was just an opinion. An opinion, he says, cannot be false. The short answer to this contention is that even if Lynch *believed* getting oral permission from Sims was enough to comply with departmental policy, he still told the detective that Sims gave him oral permission, while Sims, on the other hand, testified that she never gave *any kind of permission* to Lynch. The board was entitled to credit Sims's testimony and therefore could reasonably have concluded that Lynch made a false statement.

6. The hearing board did not refuse to consider the testimony of a defense witness because she did not memorialize her investigation in a particular manner.

Lynch's next contention is that the hearing board acted arbitrarily and capriciously by "refus[ing] to consider" the testimony of a defense witness "solely on the grounds that she did not memorialize her investigation in a particular manner." We reject this argument

because its premise—that the hearing board "refused to consider" testimony—does not accurately characterize what the hearing board did.

The testimony at issue came from Kimberly Yourick, the private investigator hired by the defense. Yourick, a retired Montgomery County detective, testified that, as part of her investigation, she interviewed the town's police chief twice about "approvals and pre-approvals for secondary employment [in] Colmar Manor." The town initially objected to Yourick's testimony, claiming statements from her conversation with the chief would be improper hearsay evidence. But the town's hearsay objection was overruled because, as the chairman of the hearing board explained, "[h]earsay is admissible at an administrative hearing board." Yourick's relevant testimony was that, according to the chief, officers seeking approval for secondary employment "would not necessarily have to put in a pre-approval." Instead, they could work the outside job without any authorization beforehand "as long as they received approval shortly afterwards," usually via a subsequent text message or phone call, or "through the written process of approval." This statement clearly contradicted the department's written policies for getting approval for secondary employment.

After the town's brief cross-examination, the chairman of the hearing board asked Yourick whether either of her two interviews with the chief had been "recorded in any way." Yourick said she had not recorded either interview. The board's questioning also revealed that the investigator's claim on direct examination had perhaps been overbroad. Yourick clarified that police could go ahead and work jobs without preauthorization if they

"fit within the realm of . . . certain standards," and only if the officer "d[id]n't have very much notice about a part time position" and thus could not timely submit a written request for approval.

Lynch argues in his brief that the board, in its written decision, stated that it "would not consider [Yourick's] testimony nor give weight to her testimony simply because she did not record the conversation." He points out correctly that there is no legal requirement that investigators record their conversations for them to be admissible in these hearings. And had the board "refused to consider" the testimony for this reason, that act of discretion might have been held arbitrary and capricious. However, the summary of Yourick's testimony in the board's written decision shows that it did *consider* her testimony. The board just wasn't *convinced* by it. Faced with clear and otherwise consistent evidence about the department's actual policies for securing authorization for secondary employment, the board decided not to base its ultimate findings on a supposed exception to the policy that "differed from the evidence presented and lacked validation."

Simply put, Lynch's argument fails because it misunderstands the board's treatment of Yourick's testimony. A board's decision not to put much, or any, probative weight on certain testimony is not the same as a "refus[al] to consider" it.

C. Lynch's motion to strike the town's answering memorandum

Lynch's final appellate contention targets the circuit court's failure, in the judicial-review proceeding, to rule upon and grant his motion to strike the town's answering memorandum for an alleged violation of Md. Rule 7-204.

The LEOBR provides a right to seek judicial review of hearing-board decisions by filing a petition in the circuit court "in accordance with Maryland Rule 7-202." Pub. Safety § 3-109(a). To maintain his status as a party in the action for judicial review, any person "entitled by law to be a party and who wishes to participate as a party shall file a response to the petition." Md. Rule 7-204(a). This response must be filed within thirty days of notice of the petition, "*unless the court shortens or extends the time*" for filing. Md. Rule 7-204(c) (emphasis added); *see also A.C. v. Maryland Commission on Civil Rights*, 232 Md. App. 558, 577 (2017). The response need only state "the intent to participate in the action for judicial review," and "[n]o other allegations are necessary." Md. Rule 7-204(a).

Lynch filed his petition for judicial review in the Circuit Court for Prince George's County on September 11, 2017. The town never filed a response to this petition, but on November 9, 2017, the town filed supplementary materials and documents to be placed in the record.

On December 15, 2017, Lynch filed a motion to extend time for filing a memorandum "setting forth a concise statement of the questions presented for review, a statement of facts material to those questions, and argument on each question," pursuant to Md. Rule 7-207. The town opposed this motion in a response filed on December 19, 2018. In that response, the town sought to have the judicial-review action dismissed because, the town argued, under Md. Rule 7-207, Lynch had already missed the deadline for filing his memorandum. Counsel for the town—ironically, we note, since counsel for the town had already missed his own deadline for filing a response under Md. Rule 7-204—said that "the Maryland

Rules are not trivial. They are 'precise rubrics' for the practice of law." The circuit court ultimately granted Lynch's motion and extended the deadline for filing his memorandum until February 5, 2018.

Lynch filed his memorandum by the newly set deadline, and the town filed its answering memorandum on February 20, 2018. On March 12, 2018, Lynch filed a reply memorandum and a motion to strike the town's answering memorandum, raising for the first time the town's failure to timely file a response to Lynch's initial petition for review, as required by Md. Rule 7-204. Counsel for the town, who earlier insisted the Maryland Rules be treated like "precise rubrics," changed his tune and asked the court to forgive his failure to comply with the rules because the town's participation in the action "did not prejudice or surprise [Lynch] in any way."

The circuit court heard oral argument on the merits of this case on May 10, 2018. And on September 5, 2018, the circuit court issued an order rejecting Lynch's arguments on appeal and affirming the decision of the hearing board. The circuit court never explicitly ruled on the motion to strike the town's answering memorandum. The town participated in the oral argument, and the town's failure to file a response to the petition for judicial review was not raised at oral argument before the circuit court.

1. The standard of review

We view the challenged action of the circuit court as a *sub silentio* denial of Lynch's motion to strike the town's answering memorandum for an alleged violation of Md. Rule 7-204. Such denials are reviewed for an abuse of discretion. *See, e.g.*, *Department of Public*

Safety and Correctional Services v. Neal, 160 Md. App. 496, 510 (2004). Generally, a court abuses its discretion when it makes a ruling that is:

> well removed from any center mark imagined by the reviewing court and beyond the fringe of what that court deems minimally acceptable. That kind of distance can arise in a number of ways, among which are that the ruling either does not logically follow from the findings upon which it supposedly rests or has no reasonable relationship to its announced objective.

North v. North, 102 Md. App. 1, 14 (1994).

2. The circuit court did not abuse its discretion in failing to rule upon and grant Lynch's motion to strike the town's answering memorandum.

We note first, as the Court did in *Neal*, 160 Md. App. 496, that

> [i]t is unclear what relief [Lynch] seeks in pursuing this contention. [He] does not argue, and there would be no basis to argue, that an abandonment by [the town] of [its] party status in the judicial review action would have worked a change in the standard of review applied by the circuit court, or we would have had any impact on the circuit court's ruling. Moreover, on appeal in this Court, we do not review the circuit court's ruling, but review directly the final agency decision, and [Lynch] does not argue, and also would have no basis to argue, that our standard of review would be affected by an abandonment of party status by [the town] in the circuit court. Also, [Lynch] does not argue that [the town] has lost [its] right to participate as a party in this Court.

Id. at 507. But here we are.

Even if there were a point to it, Lynch's final contention is without merit. Md. Rule 7-204 "expressly grants the court discretion to extend the time for filing a response to the petition; and the language of [the rule] does not preclude the court from exercising that discretion to extend the filing deadline retroactively, after it has passed." *Id.* at 509. The rule also gives the circuit court discretion to treat other forms of participation in the action

as the equivalent of a response, so long as that action "ma[kes] plain that [the party] intended to participate." *Id* at 510; *see also Oltman v. Maryland State Board of Physicians*, 182 Md. App. 65, 79–80 (2008) (explaining that filing of a motion to dismiss "adequately demonstrated that the [agency involved] 'intends to participate in the action'"). If the intention to participate is made known, then the purpose behind the response requirement of Md. Rule 7-204 has been fulfilled.

This is what happened in the present case. It is clear from the record that the town was an active participant in the judicial-review proceedings before the circuit court. It appears that the circuit court viewed the town's various filings, responses, motions, and memoranda as the equivalent of a late-filed response demonstrating the town's intent to remain a party to the action, and for that reason allowed the town to participate in the judicial-review proceeding. In so doing, the circuit court did not come remotely close to abusing its discretion.

Conclusion

As to Appeal No. 1419 of the 2017 Term, we hold that the circuit court erred when it denied Lynch's petition to show cause without addressing its substance. However, Lynch has failed to show that he was prejudiced because the substantive arguments raised by him in his pre-hearing petition were ultimately unpersuasive. As to Appeal No. 2674 of the 2018 Term, we conclude that the circuit court was correct when it affirmed the hearing

board's decision, and it did not abuse its discretion in allowing the town to participate in the judicial-review proceeding.

As a general rule, the prevailing party in an appeal is entitled to have its costs paid by the losing party. Md. Rule 8-607(a). However, this Court may allocate costs differently. *See, e.g.*, *Andre v. Montgomery County*, 37 Md. App. 48, 65 (1977). We will do so here.

As we explained, Lynch was clearly entitled to have the circuit court rule on the merits of his show-cause petition. The town did not present an even remotely plausible argument to the contrary at either the circuit-court level or on appeal. Had the court addressed the show-cause petition on its merits, the hearing board would have been relieved of a burden that was the court's duty to shoulder. Under the circumstances, we conclude that it is appropriate for the town to bear the costs in the appeal from the court's ruling in the show-cause action.

NO. 1419, SEPTEMBER TERM, 2017:

THE JUDGMENT OF THE CIRCUIT COURT FOR PRINCE GEORGE'S COUNTY IS AFFIRMED. APPELLEE TO PAY COSTS.

NO. 2674, SEPTEMBER TERM, 2018:

THE JUDGMENT OF THE CIRCUIT COURT FOR PRINCE GEORGE'S COUNTY IS AFFIRMED. APPELLANT TO PAY COSTS.