

Circuit Court for Baltimore City
Case No. 24-C-21-004319

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND**

No. 1993

September Term, 2021

IN THE MATTER OF THE PETITION OF
DONALD GAFF

Graeff,
Kehoe,
Zic,

JJ.

Opinion by Zic, J.

Filed: February 14, 2023

* 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.

** At the November 8, 2022 general election, the voters of Maryland ratified a constitutional amendment changing the name of the Court of Special Appeals of Maryland to the Appellate Court of Maryland. The name change took effect on December 14, 2022.

Donald Gaff, appellant and former Baltimore Police Department (“BPD”) police officer, was convicted of misconduct in office. Following a hearing by the BPD Administrative Hearing Board (the “Board”), appellee, Mr. Gaff was terminated from the BPD. Mr. Gaff petitioned for judicial review in the Circuit Court for Baltimore City. The circuit court found that BPD’s termination of Mr. Gaff was not arbitrary and capricious. Mr. Gaff presents the following issue for our review:

Was [Mr. Gaff’s] termination from the Baltimore Police Department arbitrary and capricious and did the Baltimore Police Department fail to reasonably state the basis for his termination?

For the reasons that follow, we answer this question in the negative and affirm the judgment of the circuit court.

BACKGROUND

In September 2016, while working as a police officer with BPD, Mr. Gaff “assaulted Mr. Jamal Wilson by pushing him in the chest and slapping him in the face while conducting a traffic stop.” As a result of the incident, Mr. Gaff was charged with and convicted of misconduct in office. *State v. Gaff*, No.116335009 (Md. Cir. Ct. Baltimore City Sept. 16, 2019). Mr. Gaff was sentenced to one year of incarceration, with all but one day suspended, and one year of probation.

Following an investigation, BPD’s Disciplinary Review Committee (the “Committee”) administratively charged Mr. Gaff with violating Policy 302, Rules and Regulations, Policy, Section 2, Follow the Law (“Policy 302”). That policy states that “BPD employees are responsible for adhering to federal, state, and local laws, BPD policies, BPD trainings, and any applicable collective bargaining agreement and relevant

labor laws.” The Committee found that Mr. Gaff violated Policy 302 when he: (1) assaulted Mr. Wilson, (2) was charged with misconduct in office due to the interaction with Mr. Wilson, and (3) was convicted of misconduct in office due to the interaction with Mr. Wilson. The Committee recommended Mr. Gaff be terminated.

Pursuant to the Law Enforcement Officer’s Bill of Rights (“LEOBR”)¹, Mr. Gaff requested a hearing with the Board.² At the hearing, the Board heard testimony from Mr. Gaff and several witnesses, as well as argument from Mr. Gaff’s counsel and BPD. In a written Decision and Order, the Board found that Mr. Gaff was convicted of misconduct in office and concluded that Mr. Gaff violated Policy 302. The Board recommended Mr. Gaff be terminated.

On September 21, 2021, Michael S. Harrison, BPD Police Commissioner, accepted the Board’s recommendation of termination. Mr. Gaff sought to challenge his termination and petitioned for judicial review in the Circuit Court for Baltimore City. The circuit court concluded the decision to terminate Mr. Gaff was not arbitrary and capricious and affirmed Commissioner Harrison’s decision. This timely appeal followed.

¹ Although the LEOBR has since been repealed, it was still in effect at the time of the proceedings for Mr. Gaff’s case. The repeal took effect on July 1, 2022. Chapter 59, Laws of Maryland 2021.

² Section 3-107(a)(1) of the Public Safety Article states that “if the investigation or interrogation of a law enforcement officer results in a recommendation of demotion, dismissal, transfer, loss of pay, reassignment, or similar action that is considered punitive, the law enforcement officer is entitled to a hearing on the issues by a hearing board before the law enforcement agency takes that action.”

STANDARD OF REVIEW

When reviewing an administrative agency’s decision, this Court reviews the agency’s decision, not the circuit court’s decision. [O]ur primary goal is to determine whether the agency’s decision is in accordance with the law or whether it is arbitrary, illegal, and capricious.

Accordingly, we apply a limited standard of review and will not disturb an administrative decision on appeal if substantial evidence supports factual findings and no error of law exists. Under this more deferential standard, this Court may overrule an agency’s factual finding only when the finding is unsupported by competent, material, and substantial evidence in light of the entire record as submitted. [J]udicial review of agency factual findings is limited to ascertaining whether a reasoning mind could have reached the same factual conclusions reached by the agency on the record before it. If, however, the case involves an interpretation and application of Maryland statutory and case law, [we] must determine whether the lower court’s conclusions are legally correct under a *de novo* standard of review.

Balt. City Police Dep’t v. Robinson, 247 Md. App 652, 670-671 (2020) (citations and quotation marks omitted).

DISCUSSION

Mr. Gaff argues that his termination from BPD was arbitrary and capricious. Mr. Gaff argues that the agency failed to state the findings of fact upon which it based its decision. The agency’s failure to do so, according to Mr. Gaff, is cause for reversal because an agency, under the Administrative Procedure Act (“APA”), must reasonably state the basis for its decision in order for appellate courts to adequately review its decision.

BPD argues that the LEOBR, not the APA, applies to BPD. According to BPD, the LEOBR requires a statement regarding the Board’s findings of fact and its

recommended penalty but does not require the Board to outline why it decided to recommend a specific penalty. BPD also argues that the Board provided “a full basis for recommending termination.”

I. THE LOEBR, NOT THE APA, APPLIES TO MR. GAFF’S DISCIPLINARY PROCEEDINGS.

The APA excludes the BPD from its purview. Although “[a] state police officer confronted with disciplinary proceedings is entitled to protections afforded by the contested cases provisions of the APA . . . as well as those provided under the LEOBR[,] . . . [c]ounty police agencies . . . are not included within the purview of the State APA.”

Coleman v. Anne Arundel Cnty. Police Dep’t, 369 Md. 108, 137-38 (2002). Section 10-203(a) of the State Government Article states that the APA does not apply to:

(4) an officer or unit not part of a principal department of State government that:

(i) is created by or pursuant to the Maryland Constitution or general or local law;

(ii) operates in only 1 county; and

(iii) is subject to the control of a local government or is funded wholly or partly from local funds.

At the relevant time, BPD was a state agency, but operated only in Baltimore City and was funded by Baltimore City. *Esteppe v. Balt. City Police Dep’t*, 476 Md. 3, 8 n.4 (2021).³ Therefore, the APA does not apply to BPD.

³ BPD was converted into an agency of Baltimore City on January 1, 2023 pursuant to Chapter 133, Laws of Maryland 2021.

Instead, the LEOBR applies to BPD police officers. The LEOBR defines a “[l]aw enforcement officer” as an individual who is “authorized by law to make arrests” and is a member of, among other agencies, “the Police Department of Baltimore City.” Md. Code Ann., Pub. Safety § 3-101(e)(1) (2003, 2018 Repl. Vol.). The LEOBR is “‘the exclusive remedy for law enforcement officers faced with disciplinary charges,’ and preempts alternative grievance procedures.” *Montgomery Cnty. v. Fraternal Order of Police, Montgomery Cnty. Lodge 35, Inc.*, 427 Md. 561, 577 (2012) (quoting *Moats v. City of Hagerstown*, 324 Md. 519, 527 (1991)). Because Mr. Gaff was a law enforcement officer with BPD, the LEOBR applies to his disciplinary proceedings.

II. MR. GAFF’S TERMINATION WAS SUPPORTED BY SUBSTANTIAL EVIDENCE.

The LEOBR requires that a “decision, order, or action taken as a result of a hearing . . . shall be in writing and accompanied by findings of fact.” Pub. Safety § 3-108(a)(1) (2003, 2018 Repl. Vol.). Additionally, “[t]he findings of fact shall consist of a concise statement on each issue in the case.” Pub. Safety § 3-108(a)(2) (2003, 2018 Repl. Vol.). Further, “[t]he recommendation of a penalty shall be in writing.” Pub. Safety § 3-108(b)(2) (2003, 2018 Repl. Vol.).

In its written Decision and Order, the Board found the following facts: “[O]n or about November 12, 2019, Officer Donald Gaff was convicted of Misconduct in Office arising out of his interaction with Mr. Jamal Wilson. The criminal conviction was a violation of Policy 302, Rules and Regulations, Policy, Section 2, Follow the Law.” Based on those facts, the Board found Mr. Gaff guilty of violating Policy 302. Further,

the written Decision and Order stated that “[f]ollowing the Board’s findings of fact and conclusions of law, and consideration of the evidence presented as to punishment, the Hearing Board recommends the following punishment to Police Commissioner Harrison: Termination.”

The Board’s written Decision and Order meets the requirements of the LEOBR because the decision is in writing and includes findings of fact, a concise statement of the issues, and a recommended penalty. Although the statement is brief, the law does not require more. *See Md. Aviation Admin. v. Noland*, 386 Md. 556, 581 (2005) (“[W]hen the discretionary sanction imposed upon an employee by an adjudicatory administrative agency is lawful and authorized, the agency need not justify its exercise of discretion by findings of fact or reasons articulating why the agency decided upon the particular discipline.”). Because Policy 302 simply requires police officers to follow the law, a finding of a criminal conviction is sufficient to conclude that the policy was violated. Further, BPD policies specifically allow a punishment of termination for “[v]iolations concerning criminal conduct.”⁴ Accordingly, we affirm the judgment of the circuit court.

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

⁴ The BPD Disciplinary Matrix categorizes violations concerning criminal conduct as Category E and Category F violations. Although the record is unclear whether Mr. Gaff’s criminal conduct was considered a Category E or Category F violation, both categories contemplate termination as a possible disciplinary option.