

Circuit Court for Baltimore City
Case No. 24-C-23-003913

UNREPORTED*
IN THE APPELLATE COURT
OF MARYLAND

No. 2481

September Term, 2024

IN THE MATTER OF THE PETITION OF
DAVID JOHNSON

Tang,
Kehoe, S.
Raker, Irma S.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Tang, J.

Filed: May 18, 2026

*This is an unreported opinion. This opinion may not be cited as precedent within the rule of stare decisis. It may be cited for its persuasive value only if the citation conforms to Rule 1-104(a)(2)(B).

This appeal arises from disciplinary proceedings initiated by the Baltimore City Police Department (the “Department”) against Detective David Johnson. The Department administratively charged Det. Johnson with providing false statements regarding his clock-in time on November 3, 2021. Following an administrative hearing, the Administrative Hearing Board (the “Board”) found Det. Johnson guilty and recommended his termination. The police commissioner adopted the Board’s recommendation and terminated his employment.

Det. Johnson petitioned for judicial review in the Circuit Court for Baltimore City. After a hearing, the court reversed the Board’s findings and ordered that Det. Johnson’s employment be reinstated with full back pay and benefits from the date of termination. On appeal, the Department raises the following issues, which we rephrase:¹

1. Did the Board err in admitting the investigative report prepared by a detective who was not present for cross-examination at the hearing?
2. Were the Board’s findings of guilt supported by substantial evidence?
3. Did the circuit court err in awarding Det. Johnson full back pay when it reversed the Board’s decision?

¹ In its brief, the Department presents the issues as follows:

1. Did the circuit court err in finding that the Board abused its discretion by admitting evidence gathered as part of the investigation through Captain Popp, even though he was active in the investigation and made the initial findings against Johnson?
2. Was the Board’s determination supported by substantial evidence where Sgt. Cox testified about Johnson’s timekeeping discrepancies and Johnson acknowledged errors in his reporting?
3. Did the circuit court err in reinstating Johnson’s employment with full back pay, when a procedural due process violation, if found, requires only a new hearing?

For the reasons that follow, we answer the first question in the negative and the second in the affirmative. Because of our disposition on the first two issues, we need not address the third. Accordingly, we reverse the circuit court’s decision and vacate its judgment. We remand the case to the circuit court to enter an order consistent with this opinion and to affirm the Board’s decision.

BACKGROUND

During the relevant period, officers with the Department were required to clock in at the start of their scheduled work hours using the timekeeping system Workday. Unless they had received prior permission to clock in from elsewhere, officers were prohibited from clocking in until they were physically present in the parking lot of their assigned building.

On November 3, 2021, Det. Johnson was scheduled to work from 8 a.m. to 4 p.m. At 8:06 a.m., he called his supervisor, Sergeant Jennifer Cox, to inform her that he had left his wallet at home. Sgt. Cox permitted him to retrieve it.

At 8:18 a.m., Det. Johnson arrived in the parking lot of his assigned building on Guilford Avenue. Sgt. Cox arrived shortly after him, and they spoke in the lot. Afterward, Sgt. Cox went inside and checked Workday, which indicated that Det. Johnson clocked in at 7:59 a.m.

Upon discovering this discrepancy, Sgt. Cox asked Det. Johnson where he was when he clocked in that morning. Det. Johnson initially said that he clocked in “on the lot,” but then stated he was at the gate of the parking lot. Knowing that surveillance cameras covered

both the lot and the gate, Sgt. Cox requested footage from the building engineer for the period between 7:00 a.m. and 8:30 a.m. After reviewing the video, she confirmed that Det. Johnson’s vehicle was neither in the lot nor at the gate at 7:59 a.m., the time he clocked in. The footage showed that Det. Johnson’s vehicle entered the lot only once that morning, at 8:18 a.m. Sgt. Cox paused the video at this point and took a photo of the still footage. She also took a photo of the still footage at 8:19 a.m., which showed her own vehicle arriving at the gate.

A few days later, Det. Johnson submitted a manual time entry verification report, certifying with his signature that he had actually started work at 8:18 a.m., not 7:59 a.m.

Investigation and Report

On November 9, 2021, Sgt. Cox submitted an internal complaint report for investigation by the Department’s Public Integrity Bureau (“PIB”).² In her written complaint, Sgt. Cox summarized the incident as described above.

At that time, Lieutenant Daniel Popp of the PIB—now a captain—assigned the case to Detective DeShawn Serrano as the primary investigator. Another detective served as the secondary investigator. Captain Popp’s duties at the time included supervising investigations, staying informed of all investigative steps, regularly meeting with PIB

² The PIB “is responsible for investigating allegations of wrongdoing by police officers and civilian employees.” *How to File a Police Complaint*, Balt. Police Dep’t (last visited Apr. 28, 2026), <https://www.baltimorepolice.org/how-to-file-police-complaint>, [<https://perma.cc/Z7VY-69DL>]. Its mission is “to provide members of the public and BPD employees with the opportunity to make confidential complaints.” *Id.* “PIB is committed to conducting independent internal investigations fairly and consistently and will hold all employees accountable for violations of its policies and applicable laws.” *Id.*

detectives, reviewing case files, listening to statements from both the complainant and the accused officer, and ultimately determining whether cases would be sustained, unfounded, or exonerated.

On January 5, 2022, Det. Serrano interviewed Det. Johnson. During the interview, Det. Johnson explained that, at the time of the incident, he was going through a divorce, had stayed at a hotel the previous night, and felt “all over the place.” When shown his Workday clock-in entry at 7:59 a.m., Det. Johnson said he was unsure of his exact location at that time but believed he “was on the lot.” He recounted arriving at work and realizing he had forgotten his wallet. He explained that when he realized this, he “believe[d]” he was “at work.”

Det. Johnson stated that he called Sgt. Cox to request permission to retrieve his wallet, which she granted. He then “le[ft] out of the parking lot” to get his wallet but, after realizing he actually had it, he “c[a]me back in.” At other points in the interview, Det. Johnson stated he did not know “what time [he] clocked in” or “where [he] clocked in,” but guessed it was “[p]robably outside the gate” of the parking lot. He also said he could not specify whether he clocked in “by the light” on Guilford Avenue.

Det. Serrano asked Det. Johnson about his conversations with Sgt. Cox regarding the incident and his explanations. Det. Johnson recalled that Sgt. Cox told him the behavior would not be tolerated and that there was a “policy and procedure.” He emphasized that he did not intend to “harm” the Department by clocking in improperly and reiterated that, due to his personal circumstances at the time, he did not know “if [he] was coming or going.”

On June 23, 2022, Det. Serrano interviewed Sgt. Cox. Her account was consistent with her written complaint and the earlier recitation of events.

Det. Serrano attempted to obtain the video footage from the building engineer for the relevant period. However, the footage was retained for only fifteen days and had been automatically deleted by the time the case was assigned to him on November 23, 2021. He noted this in a memo dated January 14, 2022.

On July 5, 2022, Det. Serrano prepared a six-page investigative report summarizing the complaint, the interviews with Det. Johnson and Sgt. Cox (both transcribed), and relevant documents, including the Workday time entry, photos of surveillance video taken by Sgt. Cox, and Det. Johnson’s manual time entry verification form. He recommended findings for Capt. Popp to consider. Capt. Popp reviewed, approved, and signed the report.

The report included a section titled “Investigative Finding.” After reviewing the case file, transcripts, and other evidence, Capt. Popp “sustained” the allegations of “false statement/untruthfulness.” The findings, in relevant part, were as follows:

During this investigation[,] Detective Johnson stated he was currently going through a divorce and the situation has taken a toll on him. He stated that his intentions that day [November 3, 2021] were not to deceive the department or make any monetary gain. Detective Johnson’s time was adjusted to the appropriate time which was documented on the Manual Time Entry Verification Form[.]

* * *

Detective David Johnson advised his supervisor Sergeant Jennifer Cox that he was on the lot then he changed and advised he was at the gate pulling on [sic] the parking lot when he punched into the Workday system at 0759 on November 3, 2021. Sergeant Cox reviewed the surveillance footage on November 3, 2021 from 0700 hours to 0830 hours. Sergeant Cox advised while viewing the footage from the camera on the outside of the gate on

Guilford Ave[.] and the camera showing the front of the parking lot, there was not sight of Detective David Johnson’s blue Chevrolet Tahoe until 0818 hours, which contradicts his statement.

False Statement Charge

On September 22, 2022, the Department charged Det. Johnson with making a false statement under Policy 301, Rule 1, Section 15. That section provides that “[m]embers will not make, orally or in writing, any false statement, or misrepresentation of any material fact, or make any material omission of fact, including but not limited to statements or omissions made with the intent to mislead any person or tribunal.”

The charging document alleged that Det. Johnson violated the policy in two separate ways:

1. On or about November 3, 2021, Police Detective David Johnson made a false statement concerning his “punch in” time for the beginning of his shift in Workday.
2. On or about November 3, 2021, Police Detective David Johnson made a false statement to Police Sergeant Jennifer Cox concerning his location when he entered his “punch in” time for the beginning of his shift into Workday.

The charging document identified several Department witnesses, including Sgt. Cox, Det. Serrano, and Capt. Popp. The Department recommended terminating Det. Johnson’s employment.

Det. Johnson requested a hearing pursuant to the Law Enforcement Officers’ Bill of Rights (“LEOBR”).³

³ The LEOBR was previously codified as Maryland Code (2003, 2018 Repl. Vol.), §§ 3-101 through 3-113 of the Public Safety Article (“PS”). *See In re Cintron*, 265 Md.

Board Hearing

The Board held a hearing on the false statement charge. The hearing was initially scheduled for May 25, 2023. As detailed later, the Department issued an administrative subpoena to Det. Serrano to appear at the hearing. The subpoena was left at his residence just days before the hearing. Det. Serrano, who had retired from the police department by that time, did not appear at the hearing.⁴ At Det. Johnson’s request, the hearing was postponed to August 17, 2023 to secure Det. Serrano’s attendance.

The Department issued another administrative subpoena for Det. Serrano, which was left at his residence in mid-July and delivered via certified mail about a week later. At the rescheduled hearing in August, Det. Serrano again failed to appear. Det. Johnson then moved to postpone the hearing a second time and requested that the Board apply to the circuit court for a subpoena to compel Det. Serrano’s attendance.⁵ The Board denied the requests and proceeded with the hearing with the witnesses present.

The Department called Capt. Popp to testify about the investigation and the information he relied upon in sustaining the false statement charge against Det. Johnson.

App. 481, 490 n.5 (2025). Effective July 1, 2022, “[t]he Maryland General Assembly repealed and replaced the LEOBR with the ‘Maryland Police Accountability Act’ [(“MPAA”)].” *Id.* All subsequent citations to the Public Safety Article refer to the statute as it existed prior to repeal.

⁴ The secondary investigator had also retired by this time. He also did not respond to an administrative subpoena.

⁵ *See* PS § 3-107(d)(4) (in case of witness’s disobedience or refusal to obey administrative subpoena, the Board may apply to the circuit court for an order to compel the witness’s attendance and testimony). We shall discuss this later.

Capt. Popp authenticated the investigative report, and the Board admitted it over Det. Johnson’s objection. Capt. Popp authenticated other evidence that he had reviewed, including Sgt. Cox’s complaint, still shots of the surveillance video taken by Sgt. Cox, and the transcripts of Det. Johnson’s and Sgt. Cox’s interviews.

Sgt. Cox testified about the incident as recounted above. In addition, she testified about a similar occurrence on October 13, 2021, a couple of weeks before the incident at issue. On that day, she reviewed Workday entries and noticed that Det. Johnson had clocked in at a time when he was not present at work. After discussing this with Det. Johnson, he stated that it would not happen again.⁶

The Board admitted various documents, including the investigative report, transcripts of Sgt. Cox’s and Det. Johnson’s recorded statements, Det. Johnson’s Workday time entry from November 3, 2021, his manual time entry verification form, and the photo Sgt. Cox took of the surveillance footage showing Det. Johnson’s car was at the gate at 8:18 a.m. on November 3, 2021.

Det. Johnson testified in his defense, stating that “[f]rom the best of [his] recollection, [he] believe[d] [he] was on the lot” when he clocked in at 7:59 a.m. and when he contacted Sgt. Cox at 8:06 a.m. about his missing wallet. He clarified that he “could have clocked in” “[a]t the light” on Guilford Avenue “coming to the gate,” as he had done on other occasions. However, on cross-examination, he conceded that he did not recall

⁶ Det. Johnson completed a manual time entry verification report for the October 13 incident on the same day he did for the November 3 incident. The October 13 incident was not the subject of the false statement charge in this case.

being at the light when he clocked in, explaining that his mind was “all over the place” due to his personal situation. Regarding his conversation with Sgt. Cox, Det. Johnson testified that he “may have told her” that he clocked in at “the lot or the light” but reiterated that “at the time [he] was all over the place.”

Board’s Decision

In a written opinion, the Board found Det. Johnson guilty of making a false statement. The opinion summarized the procedural history, listed the admitted evidence, and recounted Capt. Popp’s testimony regarding the investigation and his decision to sustain the false statement allegations. The Board also summarized Sgt. Cox’s testimony, which it found “very credible.”

The Board did not find Det. Johnson’s testimony credible, especially given his submission of a manual time entry form correcting his “punch in” time to 8:18 a.m. The Board viewed this correction as an “apparent admission of deception” regarding the Workday clock-in. The Board concluded that Det. Johnson was clearly not at the building when he clocked in at 7:59 a.m. Furthermore, Det. Johnson’s later explanations that he might have been in the parking lot, at the gate, or at the traffic light were “continued deception” that undermined his credibility. After reviewing the evidence, the Board found Det. Johnson guilty of (A) making a false statement about his “punch in” time for the start of his shift in Workday on November 3, 2021; and (B) making a false statement to Sgt. Cox about his location when he entered his “punch in” time into Workday.

The Board recommended terminating Det. Johnson’s employment. The Acting Police Commissioner accepted the Board’s recommendation and terminated his employment on August 24, 2023.

Judicial Review

On September 8, 2023, Det. Johnson filed a petition for judicial review in the circuit court. He argued, in relevant part, that the Board erred by admitting evidence from Det. Serrano’s investigation—such as the investigative report—without giving him an opportunity to cross-examine Det. Serrano about these materials. Det. Johnson claimed that this prevented him from conducting a “meaningful” cross-examination to challenge the credibility of the investigation and to impeach Det. Serrano. He further asserted that this denial of cross-examination violated his procedural due process rights and allowed evidence to be admitted in an oppressive and arbitrary manner, resulting in a fundamentally unfair hearing. As relief, he requested that the court reinstate his employment with full back pay and benefits accruing from the date of his termination.

The Department opposed the petition, explaining that the Board’s decision primarily relied on the credibility of Sgt. Cox and Det. Johnson. The investigative report prepared by Det. Serrano merely summarized the evidence collected by Sgt. Cox, as well as the recorded statements of both Sgt. Cox and Det. Johnson. Regarding cross-examination, the Department noted that Det. Johnson had the opportunity to challenge the evidence described in the summary by cross-examining Sgt. Cox.

Ultimately, the court agreed with Det. Johnson that he was denied due process and that the Board therefore erred. Accordingly, it reversed the Board’s findings that Det. Johnson made a false statement and ordered that his employment be reinstated with full back pay and benefits accruing from the date of his termination.

Within ten days of the court’s order, the Department filed a motion to alter or amend the court’s decision, which was denied. The Department timely noted this appeal.

STANDARD OF REVIEW

The LEOBR, which was enacted in 1974 and codified during the relevant time at PS §§ 3-101 through -113, guaranteed police officers certain procedural safeguards during any investigation and subsequent hearing that could result in disciplinary action. *Fraternal Ord. of Police, Montgomery Cnty. Lodge No. 35 v. Mehrling*, 343 Md. 155, 181 (1996). “It [wa]s the officer’s exclusive remedy in matters of departmental discipline.” *Coleman v. Anne Arundel Cnty. Police Dep’t*, 369 Md. 108, 122 (2002).

“The scope of judicial review of a LEOBR case is the same as for an administrative appeal.” *Balt. Police Dep’t v. Ellsworth*, 211 Md. App. 198, 207 (2013). Upon the appeal of an administrative decision, reviewed by a circuit court, this Court must “bypass the judgment of the circuit court and look directly at the administrative decision.” *Id.* (quoting *Salisbury Univ. v. Joseph M. Zimmer, Inc.*, 199 Md. App. 163, 166 (2011)). However, Maryland law permits this Court to reverse or modify the agency’s decision only if a “substantial right of the petitioner may have been prejudiced because [of] a finding, conclusion, or decision” that:

- (i) is unconstitutional;
- (ii) exceeds the statutory authority or jurisdiction of the final decision maker;
- (iii) results from an unlawful procedure;
- (iv) is affected by any other error of law;
- (v) is unsupported by competent, material, and substantial evidence in light of the entire record as submitted;
- (vi) in a case involving termination of employment or employee discipline, fails to reasonably state the basis for the termination or the nature and extent of the penalty or sanction imposed by the agency; or
- (vii) is arbitrary or capricious.

Md. Code Ann., State Government § 10-222(h)(3).

DISCUSSION

I.

Investigative Report

Preliminarily, the Department maintains that the Board did not err in declining to postpone the hearing to seek a subpoena from the circuit court to compel Det. Serrano's attendance. Regarding the investigative report, the Department argues that the Board did not err or violate Det. Johnson's due process rights by admitting Det. Serrano's investigative report through Capt. Popp, even though Det. Serrano was not present for cross-examination at the hearing. This is because, according to the Department, Capt. Popp, who was present at the hearing, supervised Det. Serrano's investigation, reviewed the report and case file, evaluated the evidence, and made findings to sustain the allegations of false statements against Det. Johnson. In any event, the Department argues that the admission of the report was harmless.

Det. Johnson asserts that the Board erred in admitting the investigative report without allowing him the opportunity to cross-examine Det. Serrano. He contends that the Board denied him procedural due process, including the right to cross-examine witnesses and the evidence presented against him. He asserts that Capt. Popp’s testimony was insufficient to cure Det. Serrano’s absence because the testimony was incompetent. Moreover, he maintains that it was not harmless error to admit the report in violation of his due process rights. Regarding the subpoena for Det. Serrano, Det. Johnson argues that the Board abused its discretion in denying his request to apply for a judicial subpoena, again citing these due process concerns.

A. The Board did not abuse its discretion in denying Det. Johnson’s request to obtain a judicial subpoena to compel Det. Serrano’s attendance.

PS § 3-107(d)(1) provided that, in connection with a disciplinary hearing, the chief of police or hearing board may issue a subpoena to compel a witness’s attendance as relevant or necessary (“administrative subpoena”). If the witness disobeys the administrative subpoena, the chief of police or hearing board “*may apply . . . to the circuit court of a county . . . for an order to compel the attendance and testimony of the witness*” (“judicial subpoena”). PS § 3-107(d)(4) (emphasis added).

The parties do not dispute that the Board had the discretion to apply for a judicial subpoena to compel Det. Serrano’s attendance. Instead, the parties disagree about whether the Board abused its discretion in denying Det. Johnson’s request to apply for such a subpoena.

1. Additional Background

On May 15, 2023, Det. Johnson requested an administrative subpoena for Det. Serrano to compel his appearance at the initial hearing scheduled ten days later on May 25, 2023. However, Det. Serrano did not appear at the hearing.

At this hearing, Det. Johnson’s counsel requested a postponement to ensure Det. Serrano’s presence, arguing that as the primary investigator who prepared the report, he needed to be cross-examined about the findings in the report. Additionally, counsel requested that the Board apply for a judicial subpoena to compel Det. Serrano’s attendance at the rescheduled hearing.

The Department opposed the postponement, asserting that the investigative report was merely a summary of evidence to be presented during the case. It argued that Sgt. Cox was the source of the relevant evidence, would testify, and could be cross-examined. Furthermore, the Department explained that Capt. Popp had reviewed the evidence and findings in the report, agreed with them, and was available for cross-examination. In essence, the Department maintained that Det. Serrano’s testimony was not necessary.

The Chair of the Board acknowledged that the report had been “reviewed” by PIB superiors but believed Det. Serrano possessed “more intimate knowledge about the case” because he conducted the interviews. The Chair commented that the accused officer had the right to cross-examine the testimony presented, which was “very important.” With this in mind, the Chair sought to understand the Department’s efforts to serve the administrative subpoena on Det. Serrano and bring him to the hearing.

Testimony taken at this hearing established that Det. Serrano’s administrative subpoena was left under the doormat at his home on May 22, 2023, just three days before the hearing. Based on this, Det. Johnson’s counsel contended that Det. Serrano was not properly served; leaving the subpoena under his doormat was insufficient; and the motion to postpone should be granted, with the Board applying for a judicial subpoena to compel his appearance at the next hearing. He reiterated that having another officer “simply read the findings of Detective Serrano is a violation of due process.” The Department restated its earlier arguments and continued to oppose the postponement.

The Chair of the Board granted the postponement request, acknowledging the Department’s efforts to produce Det. Serrano, but stating that, as a matter of due process, it would be “fairer” for Det. Johnson to have the opportunity to question Det. Serrano. The Chair further explained that “in all fairness,” there needed to be at least a postponement to allow a “more concerted effort” to secure Det. Serrano’s presence at the hearing so Det. Johnson could ask him questions. The Chair also explained that Sgt. Cox was neither the primary nor the secondary investigator on the case. While recognizing the report’s “review process” by PIB superiors, the Chair expressed the importance of an accused having the opportunity to question those “responsible” and with “more intimate knowledge” of the case.

The Chair of the Board clarified that the “true intent” of the postponement was to allow “a little bit more time” to secure Det. Serrano’s attendance at the hearing, given that the previous issuance and service of the subpoena occurred on a compressed timeline and

close to the hearing date. The Chair deferred a decision on whether to apply for a judicial subpoena, explaining that the Board was providing an opportunity for the administrative subpoena to be effective, and he alluded to the uncertainty of whether the circuit court would grant the request for a judicial subpoena. The Chair also expressed doubt about whether he was obligated to apply for a judicial subpoena, but he stated that if it could be explained to him that he has such a “duty and responsibility,” he would “do that.”

The hearing was rescheduled for August 17, 2023. As noted, the Department made efforts to serve another administrative subpoena on Det. Serrano, this time by taping the subpoena to his door and by sending it via certified mail with a returned receipt. It also called him, though he did not respond. However, Det. Serrano again did not appear at the rescheduled hearing. At this hearing, Det. Johnson requested another postponement and renewed his request to apply for a judicial subpoena.

The Department opposed the requests, reiterating that Det. Serrano was not a necessary witness to the case. This time, the Department clarified its earlier explanation regarding the roles of the investigator, Det. Serrano, and the lieutenant, Capt. Popp, in the investigation. It explained that the primary investigator conducts the investigation and makes a “recommendation” regarding the disposition but does not make the “initial finding.” The lieutenant then reviews the investigator’s work and is responsible for making the initial finding in the case. If the PIB command agrees with the lieutenant’s finding, the command adopts that finding as the final determination. Accordingly, the Department argued that Capt. Popp as the lieutenant who made the finding contained in Det. Serrano’s

investigative report was the appropriate witness for cross-examination, and that Det. Serrano’s testimony was not necessary.

The Chair of the Board denied both the request to postpone the hearing and the request to apply for a judicial subpoena. Regarding the postponement request, the Chair reiterated that the prior postponement request was granted “with the intent on giving time” for Det. Johnson to secure Det. Serrano’s attendance, and he expressed frustration over the lack of diligence in doing so immediately following the May hearing. The Chair also noted that the Department had made “all effort to get Detective Serrano to respond today.” Regarding the judicial subpoena, the Chair noted that PS § 3-107(d)(4) did not mandate the Board to apply for a judicial subpoena; instead, the use of the word “may” (rather than “shall”) gave the Board discretion in deciding whether to do so.

2. Analysis

When an agency acts in a discretionary capacity, its decisions are afforded “a higher level of deference.” *Spencer v. Md. State Bd. of Pharmacy*, 380 Md. 515, 529 (2004). Accordingly, we apply the “arbitrary and capricious” standard to an agency’s discretionary functions. *Id.* at 529–30, 531–33 (holding that under a statute providing that agency “may delegate to the Office [of Administrative Hearings] the authority” to hear the case, the pharmacy board’s decision not to delegate case to OAH was “committed to the agency’s discretion,” and board “did not abuse that discretion under the arbitrary or capricious standard”); *cf. Md. State Police v. Zeigler*, 330 Md. 540, 557–58 (1993) (stating that an agency’s decision to reopen a hearing for additional evidence after it had begun deliberating

was committed to its discretion and therefore subject only to arbitrary and capricious standard of review).

“Arbitrary or capricious decision-making . . . occurs when decisions are made impulsively, at random, or according to individual preference rather than motivated by a relevant or applicable set of norms.” *Harvey v. Marshall*, 389 Md. 243, 299 (2005) (citation modified). Although each case “must be evaluated on an individual basis,” the arbitrary and capricious standard “is best understood as a reasonableness standard,” under which an agency’s decision is subject to reversal only where it acts “unreasonably or without a rational basis.” *Id.* at 297 (citation omitted).

Det. Johnson contends that the Board’s decision not to postpone the hearing a second time and not to apply for a judicial subpoena for Det. Serrano was arbitrary and capricious. Specifically, he characterizes the Chair of the Board’s comments at the first hearing as an acknowledgment of the necessity of Det. Serrano’s testimony and seeking a judicial subpoena to compel his appearance. Det. Johnson argues that the Board should have followed through on its earlier “promise” to request a judicial subpoena for Det. Serrano and that its failure to do so was arbitrary and capricious.

Det. Johnson reads too much into the Chair’s remarks at the first hearing. When read in context, the Chair’s comments make clear that the postponement was granted to allow an additional opportunity to serve Det. Serrano with an administrative subpoena, because the initial issuance and service may not have given him adequate time to comply. The Board

did not promise Det. Johnson any particular result if Det. Serrano did not appear at the August hearing.

The Board did not act arbitrarily or capriciously in denying Det. Johnson’s request to postpone the hearing again and apply for a judicial subpoena. The Board had already granted a postponement to give him an opportunity to secure Det. Serrano’s attendance. Significantly, the Department clarified at this hearing that Det. Serrano made recommendations in the investigative report, not the initial findings, which the Board may have misunderstood at the first hearing. It was Capt. Popp who made the initial findings to support the charge, and he was available for cross-examination. Furthermore, given that the charge involved false statements in which the credibility of Sgt. Cox and Det. Johnson was central, and considering that the investigative report summarized evidence to be introduced at the hearing, it was reasonable for the Board to conclude that Det Serrano’s testimony would not add to the case and, therefore, that his absence would not infringe upon Johnson’s due process right.⁷ For the reasons stated, the Board did not abuse its

⁷ Other courts reviewing administrative decisions have held that an agency does not violate an individual’s due process rights in refusing to subpoena a particular witness—and thereby does not abuse its discretion—where the testimony would not add to the record. *See, e.g., Bender v. Dep’t of Motor Vehicles*, 593 N.W.2d 27, 32 (Neb. Ct. App. 1999) (“In order for a party to argue that the denial of a request for a witness’[s] attendance violates due process, the party must show that the witness’[s] testimony would add something to the information in the record.”); *Berger v. Sec’y of Health & Hum. Servs.*, 835 F.2d 635, 640–41 (6th Cir. 1987) (holding that an administrative law judge did not abuse discretion in denying an individual’s request to subpoena a Social Security Administration employee who determined the individual was not entitled to retirement benefits where she “possessed all the documents that the SSA employee relied on to determine that she was not entitled to benefits,” i.e., her husband’s and her own tax returns and business records, and thus

discretion in denying Det. Johnson’s request to postpone the hearing and request for a judicial subpoena.

B. The Board did not err or violate Det. Johnson’s due process rights in admitting the investigative report.

Det. Johnson argues that the Board erred in admitting Det. Serrano’s investigative report without Det. Serrano’s testimony. He does not seriously dispute that the report was probative. Instead, he contends that the report lacked reliability because he was unable to question Det. Serrano, and that Capt. Popp’s inability to explain Det. Serrano’s investigative methods or decisions highlighted the necessity of Det. Serrano’s testimony.⁸

subpoena was “not reasonably necessary for the full presentation of her case”); *Davis v. Off. of Pers. Mgmt.*, 918 F.2d 944, 946 (Fed. Cir. 1990) (holding that an administrative judge’s refusal to grant a petitioner’s request for witnesses was not denial of due process where petitioner “failed to come forward with evidence that the documents submitted were insufficient, or that the witnesses’ testimony would add anything to the information in the record”); *Tiffany v. Dep’t of Navy*, 795 F.2d 67, 70 (Fed. Cir. 1986) (“The presiding official is authorized to rule on witness lists, i.e., to exclude witnesses whose testimony is considered to be irrelevant, immaterial *or repetitious*.” (emphasis added)); *Lowder v. Dep’t of Homeland Sec.*, 504 F.3d 1378, 1383 (Fed. Cir. 2007) (holding that an administrative judge did not abuse his discretion in excluding testimony of three witnesses as “cumulative or insufficiently probative”).

⁸ One example Det. Johnson cites is during Capt. Popp’s cross-examination, where counsel questioned him about specific investigative steps Det. Serrano did or did not take. Counsel focused on efforts to obtain surveillance footage of the lot during the relevant period, which was no longer available when Det. Serrano began the investigation. Sgt. Cox had previously emailed the building engineer requesting the footage, but Det. Serrano did not collect this email. Counsel asked Capt. Popp why Det. Serrano had not recovered the email. Capt. Popp responded by rhetorically questioning why Det. Serrano would want to recover the email, explaining that Det. Serrano had spoken to the building engineer, but the footage was unavailable, and that the investigator could exercise discretion over which evidence to pursue during the investigation. Ultimately, Capt. Popp stated he did not know why Det. Serrano did not attempt to recover the email.

In sum, Det. Johnson contends that admitting the report without an opportunity to cross-examine Det. Serrano denied him basic procedural due process.

1. Relevant Legal Overview

“[T]he requirements of procedural due process as guaranteed by the Fourteenth Amendment to the Constitution and Article 24 of the Maryland Declaration of Rights apply to an administrative agency exercising judicial or quasi-judicial functions.” *Travers v. Balt. Police Dep’t*, 115 Md. App. 395, 407 (1997). “In addition, a police officer confronted with disciplinary proceedings is entitled to the protections afforded by the contested case provisions of the Maryland Administrative Procedure Act . . . as well as those of the Law Enforcement Officers’ Bill of Rights.” *Id.* (citation modified). Finally, the LEOBR provides for judicial review of a final order by the police chief. *Id.*

At the time of the alleged misconduct, the LEOBR provided the following standard of admissibility for disciplinary hearings, which in relevant part states:

- (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.
- (2) The hearing board shall give effect to the rules of privilege recognized by law and shall exclude incompetent, irrelevant, immaterial, and unduly repetitious evidence.

PS § 3-107(f)(1)–(2).

“[W]hile administrative agencies are not constrained by technical rules of evidence, they must observe basic rules of fairness as to the parties appearing before them so as to comport with the requirements of procedural due process afforded by the Fourteenth Amendment.” *Travers*, 115 Md. App. at 411. “[T]o be admissible in an adjudicative

proceeding, hearsay evidence must demonstrate sufficient reliability and probative value to satisfy the requirements of procedural due process.” *Id.* Regarding reliability, we have said that hearsay statements “possess a greater caliber of reliability” when they are “sworn under oath, or made close in time to the incident, or corroborated.” *Id.* at 413 (internal citations omitted). “[N]ot only is hearsay evidence admissible in administrative hearings in contested cases but . . . such evidence, if credible and of sufficient probative force, may indeed be the sole basis for the decision of the administrative body.” *Eger v. Stone*, 253 Md. 533, 542 (1969).

Additionally, the Supreme Court of Maryland has “countenance[d] the relaxation of evidentiary rules so long as they are not applied in an arbitrary or oppressive manner that deprives a party of his or her right to a fair hearing.” *Travers*, 115 Md. App. at 412. “[A] basic tenet of fairness in administrative adjudications is the requirement of an opportunity for reasonable cross-examination.” *Id.* at 417.

2. Analysis

The Board did not err in admitting the investigative report. The report contained hearsay evidence derived from Sgt. Cox’s complaint and recorded interviews; the hearsay statements in the report were corroborated by independent evidence, such as Sgt. Cox’s and Det. Johnson’s testimony about the incident, the Workday entry, still shots of the surveillance video, and the manual time entry verification form. *See, e.g., id.* at 414. (holding that hearsay statement from complaining witness was sufficiently reliable and therefore admissible in part because it was corroborated by other evidence).

Instead, Det. Johnson’s challenge to the report’s admissibility centers on the reliability of the investigation itself. He contends that the entire report is unreliable because it is uncertain whether Det. Serrano’s investigation was “accurate and complete.” He explains that he was “denied any opportunity to test the thoroughness of the investigation, leaving its reliability wanting.”

Det. Johnson primarily relies on *Tron v. Prince George’s County*, 69 Md. App. 256 (1986), to argue that the court erred in admitting the investigative report without an opportunity to cross-examine Det. Serrano about it. There, the County sought to establish that a claimant’s disability was not work-related. *Id.* at 258. It did not produce any witnesses at the hearing. *Id.* at 260. Instead, it introduced written reports of three physicians who had examined the claimant, as well as the testimony of another doctor who “placed great reliance” on those reports in concluding that the disability was not work-related. *Id.* at 260, 267. We concluded that the claimant’s right to a fair hearing had been denied because “the opportunity to cross-examine witnesses is a requirement of administrative adjudicatory hearings[,]” “no live witnesses were produced[,]” and the disputed evidence was “essential” to the conclusion reached by the Medical Advisory Board. *Id.* at 263, 268.

Det. Johnson’s reliance on *Tron* is unavailing. As we explained in *Tron*, an individual’s “reasonable right of cross-examination” will vary depending on “the circumstances of each particular case, the nature of the proceedings, and the character of the rights which may be affected by it.” *Id.* at 267. “[R]easonable cross-examination . . . is required for a full and true disclosure of the facts.” *Id.* In *Tron*, the physicians’ written

reports constituted the County’s entire case and were therefore “essential” to the Medical Advisory Board’s conclusion. *Id.* at 268. In this case, neither the investigative report nor the quality of Det. Serrano’s investigation was material to the determination of whether Det. Johnson made false statements about his clock-in time. Furthermore, Det. Johnson’s accusers—Sgt. Cox, the complaining witness, and Capt. Popp, who made the finding that led to the false statement charge—were both present and available for cross-examination. Therefore, the Board did not violate Det. Johnson’s due process rights or err in admitting the investigative report without cross-examination of Det. Serrano.

Even if the Board erred, we would not disturb its decision because the error was harmless. “[I]t is the policy of [Maryland appellate courts] not to reverse for harmless error and the burden is on the appellant in all cases to show prejudice as well as error.” *See Wash. Suburban Sanitary Comm’n v. Lafarge N. Am., Inc.*, 443 Md. 265, 289 (2015). “In considering whether an error was harmless, we also consider whether the evidence presented in error was cumulative evidence,” i.e., evidence that “tends to prove the same point as other evidence presented.” *Cintron*, 265 Md. App. at 503 (quoting *Dove v. State*, 415 Md. 727, 743–44 (2010)).

In this case, the question of whether Det. Johnson made the alleged false statements hinged on a credibility determination—specifically, whether the factfinder believed him or Sgt. Cox. The Board explicitly found that Det. Johnson’s testimony was not credible, and credited Sgt. Cox’s testimony instead. It did not rely on Det. Serrano’s report to make any credibility determinations; it merely noted that Capt. Popp reviewed the report and made a

finding regarding the false statement allegations. Additionally, the Board did not appear to give weight to the report (or Capt. Popp’s testimony) when assessing the credibility of Sgt. Cox and Det. Johnson.

In addition, the Board relied on Det. Johnson’s manual time entry report after the incident, which showed a punch-in time of 8:18 a.m., which it characterized as “an apparent admission of deception.” It also noted his inconsistent answers about his physical location when he clocked in, which “indicated to the Board there was continued deception.” Therefore, we are convinced that any error in admitting the investigative report (or Capt. Popp’s testimony) was harmless, as the Board did not rely on it in determining whether Johnson made the alleged false statements. *See, e.g., Am. Radio-Tel. Serv., Inc. v. Pub. Serv. Comm’n*, 33 Md. App. 423, 435–36 (1976) (holding that the erroneous admission of affidavits without opportunity for cross-examination of affiants was harmless where the “information in the affidavits was established by other competent evidence, if believed,” and the “two affidavits taken together amount[ed] to an infinitesimal portion of the total information available to the [decisionmaker] in reaching his conclusion”); *Rogers v. Radio Shack*, 271 Md. 126, 129 (1974) (concluding that it was error for agency to rely on investigator’s report where it was never introduced into evidence and appellant had no opportunity to cross-examine investigator or rebut contents of report, but determining that the error was harmless where neither Board nor circuit court placed any weight upon the report).

II.

Substantial Evidence

“When reviewing a decision by an administrative agency, this Court ‘looks through’ the decision of the circuit court . . . to determine whether the agency itself erred.” *In re Homick*, 256 Md. App. 297, 307 (2022) (citation omitted). Our inquiry is “limited to evaluating whether there is substantial evidence in the record as a whole to support the agency’s findings and conclusions and to determining whether the administrative decision is premised upon an erroneous conclusion of law.” *Brandywine Senior Living at Potomac LLC v. Paul*, 237 Md. App. 195, 210 (2018). “In this context, substantial evidence . . . has been defined as such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.” *Piney Orchard Cmty. Ass’n v. Md. Dep’t of the Env’t*, 231 Md. App. 80, 91–92 (2016). “Furthermore, not only is 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.” *Brandywine*, 237 Md. App. at 211.

We conclude there was “such relevant evidence as a reasonable mind might accept as adequate to support a conclusion” that Det. Johnson made false statements. *Piney Orchard*, 231 Md. App. at 91–92. As stated, the Board found that Sgt. Cox’s testimony at the hearing was credible and found Det. Johnson’s testimony lacked credibility. Moreover, in the Board’s view, Det. Johnson essentially admitted to making false statements when he acknowledged in his verification form that he started work at 8:18 a.m. rather than 7:59 a.m. Finally, when asked by Sgt. Cox where he was when he clocked in, Det. Johnson gave

conflicting answers. In other words, there is substantial evidence—even independent of the investigative report and Capt. Popp’s testimony—that a reasonable mind could accept as adequate to establish that Det. Johnson had made false statements.

**JUDGMENT OF THE CIRCUIT COURT
FOR BALTIMORE CITY REVERSED;
ORDER OF CIRCUIT COURT VACATED;
CASE REMANDED WITH
INSTRUCTIONS TO AFFIRM THE
DECISION OF THE ADMINISTRATIVE
HEARING BOARD AND ENTER AN
ORDER CONSISTENT WITH THIS
OPINION. APPELLEE TO PAY COSTS.**