

Circuit Court for Baltimore County
Case No. 03-C-17-007412

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 2616

September Term, 2017

VICTORIA CROSBY

v.

DEPARTMENT OF PUBLIC SAFETY &
CORRECTIONAL SERVICES

Meredith,
Graeff,
Reed,

JJ.

Opinion by Reed, J.

Filed: March 5, 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. Md. Rule 1-104.

On October 4, 2016, Victoria Crosby (“Appellant”), who was employed as a Correctional Officer with the Baltimore Pretrial Complex of the Department of Public Safety and Correctional Services (“the Department”), was provided with a Notification of Charges under the Correctional Officers Bill of Rights. The charges, eight (8) in total, related to an allegation that Appellant was engaged in an inappropriate relationship with an inmate. On June 14, 2017, an administrative hearing board issued a written decision finding Appellant guilty of all eight (8) charges and recommending termination for each. On July 11, 2017, the termination was upheld by the Secretary for the Department. Appellant sought judicial review before the Circuit Court for Baltimore County, which affirmed the termination on January 24, 2018. This appeal followed.

In bringing this appeal, Appellant presents one question for our review, which we have rephrased for clarity:¹

- I. Was there substantial evidence in the record to support the findings of the hearing board?

For the following reasons, we affirm.

FACTUAL AND PROCEDURAL BACKGROUND

Appellant had served as a Correctional Officer with the Department since February 19, 2015. In July of 2016, an intelligence analyst from the Department’s Intelligence and

¹ Appellant presented the following question for appellate review:

- I. Whether there is substantial evidence in the record to support the factual findings of the hearing board, and whether it was otherwise affected by error of law?

Investigative Division reported that routine monitoring of the inmate phone system revealed that inmate Andre Jones (“Jones”) had placed several calls from the correctional facility to the phone number on file for Appellant. These calls were recorded and listened to by Department investigators, who concluded that the conversations were between Appellant and Jones, which occurred without prior authorization from the Department. Further investigation showed that Appellant had visited Jones in 2013, prior to her employment with the Department, and that Appellant had been listed on Jones’ list of authorized visitors. Appellant failed to advise the Department of her contact with Jones prior to gaining her employment.

As the investigation into the suspected improper contact progressed, the Department conducted two (2) interrogations of Appellant, during the first of which Appellant denied having phone conversations with Jones. Appellant explained that Jones was an acquaintance of her sister, Quintonya Harris (“Harris”), and that Harris had moved in with Appellant to help her care for her children after her husband was killed. Appellant explained that she was not initially aware that Harris was using her cell phone² to communicate with Jones. At the conclusion of Appellant’s first interrogation, the investigator, Captain Roberts, advised Appellant that she would follow up by interviewing Harris. There is no indication that Captain Roberts ever spoke with Harris.

During her second interrogation, Appellant was asked whether she had ever visited

² Appellant had owned her cell phone for more than six (6) years, and the phone number for her cell phone was the number on file on each of the emergency contact forms filed by Appellant with the Department.

with Jones. She explained that she had only met with Jones prior to becoming a correctional officer, when she had taken Harris to visit him. She acknowledged that her name appeared on the inmates visiting list, but made clear that she had personally never visited Jones, only going to the facility in order to transport Harris.

Based on the conclusions reached from her investigation, Captain Roberts recommended eight (8) charges be brought against Appellant. Roberts' recommendations were based, in part, on her conclusion that Appellant had never visited Jones "under the auspices of the Department," but that Appellant had personally visited Jones while an employee of the Department. Captain Roberts also relied on her own review of the audiotapes of the alleged conversations between Appellant and Jones. Appellant was subsequently charged, both with charges arising from the alleged improper contact and with having provided a false report during her two interrogations.

During Appellant's termination hearing, Harris provided a statement in which she affirmed that she was the one involved in a relationship with Jones and that she used Appellant's phone without Appellant's knowledge. Harris also testified that she had a child with Jones. Furthermore, Harris explained that Appellant had never been in a relationship with Jones, and that she believed Appellant and Jones did not get along at all. Harris provided letters from the correctional facility to her, Appellant's address, establishing their relationship. Additionally, Jones informed the Department during their investigation that he did know Harris.

The Department alleged during the hearing that it was Appellant, not Harris, who had a relationship with Jones, arguing that Harris failed to produce anything beyond her

own testimony that could serve as proof that she and Jones were the parents of a child. In supporting its assertion, the Department offered recordings of the phone calls alleged to have been between Appellant and Jones. In the recording, the parties are heard to be discussing the colors of Appellant's bedroom and kitchen, and Jones is heard commenting on his past relationship with Appellant and his hopes for their future together. While none of the voices in the audio tapes were confirmed by any of the participants in the conversations recorded, Captain Roberts testified that she believed Appellant to be the female voice on each of the tapes.

Following the hearing, but before the Secretary's final decision, Appellant sent the Department documentation meant to prove that Jones and Harris did have a child together. Specifically, on June 20, 2017, Robert LaRue of the Maryland Association of Correctional and Security Employees ("MACE") faxed to the Chief DPSCS Hearing Officer, Glendell Adamson, a series of documents specifically addressing the issues raised by the Department at the hearing. The fax was received by the Employee Relations Unit that same day, prior to the issuance of the Secretary's final order dated July 11, 2017. Among the documents sent by Mr. LaRue was the birth certificate of the alleged child conceived by Harris and Jones. The fax also contained documentation of the death of Appellant's husband and the notice to the Warden reflecting that Appellant's emergency contact, "Tonya" Harris, shared a phone number with Appellant.

On July 11, 2017, the Secretary for the Department issued a final order upholding the eight charges against Appellant and the recommendation for Appellant's termination. None of the documents faxed to the Department from Mr. LaRue are referenced in the

Secretary’s final order. Appellant sought judicial review of the Department’s decision before the Circuit Court for Baltimore County, which affirmed the termination on January 24, 2018.

This appeal followed.

STANDARD OF REVIEW

When reviewing a decision of an administrative agency, our role is “precisely the same as that of the circuit court.” *B & S Marketing Enterprises, LLC v. Consumer Protection Div.*, 153 Md. App. 130, 150 (2003) (quoting *Dep’t Of Health and Mental Hygiene v. Shrieves*, 100 Md. App. 283, 303–04 (1994)). We review only the decision of the administrative agency itself. *Maryland Dep’t. of Public Safety & Correctional Services v. PHP Healthcare Corp.*, 151 Md. App. 182, 194 (2003).

Our review is two-fold; we look to whether there is substantial evidence in the record to support the agency's findings and conclusions and whether the agency's decision is premised upon an erroneous conclusion of law. *Motor Vehicle Administration v. Lytle*, 374 Md. 37, 56 (2003); *Kram v. Maryland Military Dep’t.*, 146 Md. App. 407, 411–12 (2002). In *Bulluck v. Pelham Wood Apts.*, 283 Md. 505 (1978), the Court of Appeals discussed this standard, as well as other principles concerning judicial review of agency decisions:

“Substantial evidence,” as the test for reviewing factual findings of administrative agencies, has been defined as “such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.” The scope of review “is limited ‘to whether a reasoning mind reasonably could have reached the factual conclusion the agency reached’”

In applying the substantial evidence test, we have emphasized that a “court should [not] substitute its judgment for the *expertise* of those persons who constitute the administrative agency from which the appeal is taken.” We also must review the agency’s decision in the light most favorable to the agency, since “decisions of administrative agencies are *prima facie* correct,” and “carry with them the presumption of validity.” Furthermore, not only is it the province of the agency to resolve conflicting evidence, but where inconsistent inferences from the same evidence can be drawn, it is for the agency to draw the inferences. (Citations omitted) (Emphasis in original).

Bulluck, 283 Md. at 512–13.

We appraise an agency’s fact finding in the light most favorable to the agency, and this deference extends to subsequent inferences drawn from that fact finding, so long as supported by the record. *Schwartz v. Maryland Dep’t. Of Natural Resources*, 385 Md. 534, 554 (2005). We give great deference to the agency’s assessment of the credibility of the witnesses. *Gigeous v. Eastern Correctional Institution*, 363 Md. 481, 504 (2001); *Finucan v. Maryland State Bd. of Physician Quality Assurance*, 151 Md. App. 399, 421 (2003).

Notwithstanding “unfortunate language” that has been utilized in some of this Court’s opinions, “a court’s task on review is not to ‘substitute its judgment for the expertise of those persons who constitute the administrative agency’” *W.M. Schlosser Co. v. Uninsured Employers’ Fund*, 414 Md. 195, 205 (2010) (quoting *United Parcel v. People’s Counsel*, 336 Md. 569, 576–577 (1994) (internal citations omitted)). “Even with regard to some legal issues, a degree of deference should often be accorded the position of the administrative agency.” *W.M. Schlosser Co.*, 414 Md. at 205. However, while we give “considerable weight” to an administrative agency’s “interpretation and application of the statute,” *Id.* (citing *Lussier v. Md. Racing Commission*, 343 Md. 681, 696 (1996)), a reviewing court must “determine if the administrative decision is premised upon an

erroneous conclusion of law.” *United Parcel*, 336 Md. at 577.

DISCUSSION

A. Parties’ Contentions

Appellant contends that the substantial evidence in the record does not support the findings made by the hearing board. Appellant cites the Administrative Procedures Act, State Government § 10-222, to argue that the Secretary of the Department failed to adequately consider the evidence presented by Appellant before the final order was issued by the Secretary. Appellant asserts that the birth certificate provided via fax, as well as her own testimony, show that it was Harris who was involved in a relationship with Jones. Appellant further alleges that the board’s admission that it did not consider the statement by Jones that he knew Harris leads to a conclusion that Harris’ statement was credible. Finally, Appellant emphasizes that Captain Roberts failed to interview Harris prior to making her recommendation to the Department. As such, Appellant believes the totality of the evidence does not support her termination.

The Department asserts that there is substantial evidence in the record to support the factual findings of the hearing board. The Department emphasizes the cell-phone monitoring investigation, specifically the recorded conversations, to argue that the female voice was clearly that of Appellant. The Department contends that the hearing board was correct in rejecting Appellant’s explanation regarding her visits to Jones, as well as Harris’ testimony regarding her alleged relationship with Jones. The Department cites to case law in arguing that demeanor-based credibility determinations are left to the delegated trier of fact and are afforded the highest level of deference by the agency and the reviewing court

on review. As such, the Department contends that this Court should respect the decision by the hearing board to not weigh Harris’ testimony heavily. The Department concludes by stating that the recorded conversations, coupled with Harris’ lack of credibility, provide substantial evidence to support the hearing board’s findings and conclusion. We agree.

B. Analysis

Appellant’s challenge comes to this Court by way of the Administrative Procedure Act. In a judicial review proceeding under the Act, the circuit court may:

- (1) remand the case for further proceedings;
 - (2) affirm the final decision; or
 - (3) reverse or modify the decision if any substantial right of the petitioner may have been prejudiced because a finding, conclusion, or decision:
 - (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, State Gov’t § 10-222(h) (emphasis added).

Under this statute, the trial court’s role is a “narrow” one, which “goes very little beyond its inherent power of review to prevent illegal, unreasonable, arbitrary or capricious administrative action.” *Md. State Ret. & Pension Sys. v. Martin*, 75 Md. App. 240, 244 (1988) (citations and quotation marks omitted). We appraise an agency’s fact finding in the light most favorable to the agency, and this deference extends to subsequent inferences

drawn from that fact finding, so long as supported by the record. *Schwartz v. Maryland Dep't. Of Natural Resources*, 385 Md. 534, 554 (2005).

We give great deference to the agency's assessment of the credibility of the witnesses. *Gigeous v. Eastern Correctional Institution*, 363 Md. 481, 504 (2001); *Finucan v. Maryland State Bd. of Physician Quality Assurance*, 151 Md. App. 399, 421 (2003). In fact, determinations regarding the credibility of an individual based on their demeanor are made by the trier of fact and are owed the highest level of deference by the agency overseeing the hearing and the reviewing court on judicial review. *See Anderson v. Dep't of Pub. Safety*, 330 Md. 187, 216 (1993). This Court has repeatedly stated that substantial deference is granted to an administrative agency's credibility determinations to the extent that they are critical to the case and "are a product of observing the behavior of the witnesses and not of drawing inferences from and weighing non-testimonial evidence." *State Commission on Human Relations v. Kaydon Ring and Seal, Inc.*, 149 Md. App. 666, 693 (2003); *see also Berkshire Life Ins. v. Maryland Ins. Admin.*, 142 Md. App. 628, 648 (2002).

The Department was notified that Appellant's phone number had been linked to calls made by Jones from the correctional facility at which Appellant worked. As such, the Department was tasked with determining whether Appellant had engaged in improper conduct with Jones. In arguing that she had not engaged in any improper conduct, Appellant asserted that it was her sister, Harris, who had been communicating with Jones via Appellant's phone. Harris, during her testimony, supported Appellant's assertions and stated that she had a past romantic relationship with Jones. Therefore, it was critical to the

Department's case to determine if either Appellant or Harris were credible in their testimony. As the Department's determination regarding Harris' credibility was critical to the case, the Department's determinations are afforded substantial deference.

Here, the Department determined that Harris was not credible. The Department found that the recorded conversations between Jones and the female voice calling from Appellant's phone number indicated that Harris was lying. While Harris testified that she did not have a job, there were numerous times the female voice referred to working, including her night shifts and her overtime hours. Furthermore, while Harris testified that she had visited Jones with Appellant prior to Appellant's employment with the Department, the visitor's list at the facility does not list Harris as ever visiting Jones. Instead, the visitor's log indicates that only Appellant visited Jones on March 28, 2014. As such, the Department had substantial evidence to find that Harris was not credible.

Appellant asserts that the Department failed to adequately consider the materials faxed to the Department prior to their ruling, specifically a birth certificate indicating that Harris and Jones had a child together and a death certificate for Appellant's late husband. Had the Department adequately considered such evidence, Appellant contends that the Department would have found Harris more credible.

However, the faxed materials were not provided to the Secretary until after the hearing board had conducted their investigation and held the hearing in this matter. According to the Administrative Procedure Act, there are specific rules governing supplemental evidence following the completion of a hearing but prior to a conclusion being reached by the final decision maker. Typically, a party who is aggrieved by the final

decision of a hearing board is entitled to judicial review of the decision. However, for supplemental evidence to be considered after the conclusion of a hearing, the following must be met:

Additional evidence

(f)(1) Judicial review of disputed issues of fact shall be confined to the record for judicial review supplemented by additional evidence taken pursuant to this section.

(2) The court may order the presiding officer to take additional evidence on terms that the court considers proper if:

- (i) before the hearing date in court, a party applies for leave to offer additional evidence; and
- (ii) the court is satisfied that:
 - 1. the evidence is material; and
 - 2. there were good reasons for the failure to offer the evidence in the proceeding before the presiding officer.

Md. Code, State Gov't. § 10-222.

Appellant asserts that the supplemental evidence was provided to the Department following her hearing because she recognized there were credibility concerns regarding Harris' testimony and because the Department argued that it was Appellee who was in a relationship with Jones. However, Appellant did not apply for leave to offer the Secretary additional evidence. Furthermore, Appellant failed to provide good reasoning for failure to offer the evidence before the hearing board, as both the birth and death certificates were surely in existence at the time of the hearing. As such, the Secretary was under no obligation to accept, nor consider, the faxed materials. As the Secretary's decision was confined to the evidence on the record, the only evidence to be considered by the Secretary

was the recorded conversations collected by the Department, the testimony presented at the hearing, and the credibility of those who testified.

Here, the Department did not find Harris credible for a litany of reasons. Hence, the Department placed more weight on the recorded conversations in finding that Appellant engaged in improper conduct with an inmate at the facility in which she worked. Such evidence provided adequate grounds for her termination. As we have previously discussed, the Department is afforded great deference in regards to its demeanor-based credibility determinations. As such, the Department's finding and subsequent decision to terminate Appellant was proper.

Accordingly, the judgment of the Circuit Court for Baltimore County is affirmed.

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