Circuit Court for Prince George's County
Case No. CAL18-20463

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 3313

September Term, 2018

STARSHA SEWELL

v.

TRANSIT MANAGEMENT OF CENTRAL MARYLAND, INC., *et al*.

Beachley,
Shaw Geter,
Moylan, Charles E., Jr.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: May 7, 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.

Starsha Sewell, appellant, appeals from an order, issued by the Circuit Court for Prince George's County, affirming a final order of the Maryland Department of Labor, Licensing and Regulation Board of Appeals (the Board) finding that she had been discharged for gross misconduct and was therefore disqualified from receiving unemployment benefits. She raises four issues on appeal, which reduce to one: whether the Board's decision should be reversed.[1] For the reasons that follow, we shall affirm.

Ms. Sewell was employed as a bus driver by Transit Management of Central Maryland, Inc, appellee, (Transit Management). On February 13, 2017, the Prince George's County Office of Child Support Enforcement (OCSE) sent a garnishment order to Transit Management requiring it to withhold a certain amount of Ms. Sewell's pay check to satisfy her child support obligations. The same day, Ms. Sewell sent an email to Transit Management's Chief Financial Officer, its Employer Operations Administrator, and Circuit Court Judge John Davey. The subject heading of the email was "Unlawful Wage Garnishment Attempt- Civil Rights Complaint of Discrimination Will Be Filed if Enforced." In addition to threatening to file a discrimination complaint if Transit Management complied with the order, Ms. Sewell accused Judge Davey of "human trafficking" and OCSE of racketeering and conspiracy. In response to this email, Transit Management placed Ms. Sewell on unpaid administrative leave pending an investigation.

[1] Ms. Sewell's first three "questions presented" address whether the circuit court erred in affirming the Board's final decision. However, as set forth herein, in reviewing an administrative decision we evaluate the decision of the agency, not the decision of the circuit court. In her fourth question presented, Ms. Sewell claims that an employee of the OCSE should be held criminally liable for engaging in extrinsic fraud upon the circuit court. That issue is not properly before us and we will not address it on appeal.

As part of that investigation, Ms. Sewell was asked to meet with Elaina Evans, Transit Management's Human Resources Manager. During that meeting, Ms. Sewell screamed at Ms. Evans and her behavior "escalated" to the point that Ms. Evans became "fearful" and had to threaten to "call the authorities" to get Ms. Sewell to leave. Thereafter, Transit Management terminated Ms. Sewell's employment.

Ms. Sewell filed a claim for unemployment benefits and a claims examiner concluded that she was not eligible to receive benefits because she had been terminated for "gross misconduct," as defined in section 8-1002 of the Labor and Employment Article. Ms. Sewell appealed that decision and a hearing was scheduled before a hearing examiner. Transit Management did not attend that hearing and Ms. Sewell was awarded unemployment benefits. Transit Management appealed that decision to the Board of Appeals, claiming that it did not receive the "notice of hearing" because it had been sent to the wrong address. The Board determined that the "notice of hearing" had not been mailed to Transit Management's address of record and remanded the case for a new hearing. Following the hearing, the hearing examiner entered a decision finding that Ms. Sewell had not engaged in gross misconduct. In doing so, it credited her testimony that she did not intend to threaten anyone but believed she "had a valid claim of discrimination against her employer."

Transit Management appealed, and the Board reversed the hearing examiner's decision. In doing so, the Board concluded that Transit Management had been denied due process because Ms. Sewell had refused to be cross-examined at the hearing. As a remedy, the Board excluded her testimony and only considered the testimony and evidence

submitted by Transit Management. After considering that evidence, the Board found that "the preponderance of the credible evidence presented during the hearing" established that Ms. Sewell had violated Transit Management's employment policies prohibiting "threatening, intimidating, and otherwise disruptive behavior" and therefore, that she had been discharged for gross misconduct. Ms. Sewell filed a petition for judicial review and the circuit court affirmed the Board's decision. This appeal followed.

In reviewing an administrative agency's decision, "we look 'through the circuit court's . . . decision[ ], although applying the same standards of review, and evaluate the decision of the agency.'" *People's Counsel for Baltimore County v. Loyola College in Maryland,* 406 Md. 54, 66 (2008) (citation omitted). We "will not disturb an administrative decision on appeal if substantial evidence supports factual findings and no error of law exists." *Long Green Valley Ass'n v. Prigel Family Creamery*, 206 Md. App. 264, 273-74 (2012) (citation omitted).

Here, Ms. Sewell has not shown any error in the Board's decision. Maryland Rule 8-504(a) requires a party's brief to contain a "clear concise statement of the facts material to a determination of the questions presented," a "concise statement of the applicable standard of review for each issue," and "[a]rgument in support of the party's position on each issue." Ms. Sewell's brief contains none of these things. First, her "statement of the facts" does not contain any relevant background information or discuss the evidence that was presented at the hearing before the claims examiner. Moreover, although she makes numerous conclusory allegations of misconduct against various persons who have been involved in her case, she does not raise any specific claims of error regarding the Board's

decision for us to review.[2] For example, she does not discuss the Board's factual findings or indicate why any of those were not supported by the evidence. Nor does she offer any argument as to why her actions, as found by the Board, would not constitute gross misconduct as a matter of law. Consequently, we will not consider these issues on appeal. *See Diallo v. State*, 413 Md. 678, 692-93 (2010) (noting that arguments that are "not presented with particularity will not be considered on appeal" (citation omitted)).

Finally, Ms. Sewell does not address any other aspect of the Board's order, including its decision to exclude her testimony, other than to briefly assert thatTransit Management "admitted that they were not deprived of due process."[3] But this claim is also not argued with particularity. And in any event, it lacks merit. Ms. Sewell's contention appears to be based on a statement made by Transit Management's attorney during the hearing on her petition for review in the circuit court. Specifically, counsel informed the court that:

> [O]ne of the questions that I believe that's before the Court is whether or not the Board erred in its – obviously when the Board erred in making its decision, as part of their decision process they held that constitutional due process was not afforded the employer, because during the hearing Ms. Sewell refused to subject herself to cross-examination.

[2] In fact, most of her brief is spent attacking the validity of the child support order, an issue that is not properly before us.

[3] We note that in her reply brief, Ms. Sewell contends that the Board erred in remanding the case for a new hearing after determining that Transit Management did not have notice of the first hearing before the hearing examiner. We do not consider that claim as it was not raised in her opening brief. *Robinson v. State*, 404 Md. 208, 215 n.3 (2008) ("An appellate court will not ordinarily consider an issue raised for the first time in a reply brief.").

However, when viewed in context, we are not persuaded that this was an admission by Transit Management that it was not denied due process. Rather, its attorney was simply presenting the issue to the circuit court for its consideration.

Although Ms. Sewell is clearly unhappy with the Board's decision, it is not our responsibility to "attempt to fashion coherent legal theories to support [her] [] claims" of misconduct. *See Konover Property Trust, Inc. v. WHE Assocs., Inc.*, 142 Md. App. 476, 494 (2002). Rather, it is her burden on appeal to demonstrate that the Board committed prejudicial error. Because she has not met that burden, we shall affirm.

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