UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1774

September Term, 2015

KELLY M. LOWTHER

v.

ST. MARY'S COUNTY OFFICE OF THE SHERIFF TRIAL BOARD

Meredith,
Arthur,
Friedman,

JJ.

Opinion by Meredith, J.

Filed: July 25, 2017

Kelly M. Lowther, appellant, was formerly employed as a Corporal by the Office of the Sheriff for St. Mary's County, appellee. She served as a correctional officer at the St. Mary's County Detention Center in Leonardtown, Maryland. On June 1, 2014, while attending a social gathering at a conference of the Maryland Correctional Administrator's Association in Ocean City, Maryland, Ms. Lowther became intoxicated and made lewd comments to some of her supervisory officers. She also slapped her commanding officer in the face. As a result of her behavior, she was charged with violating the rules and procedures of the Sherriff's Office. Following a hearing by an administrative hearing board, Lowther's employment was terminated by St. Mary's County Sheriff. Lowther sought judicial review in the Circuit Court for St. Mary's County. The circuit court upheld the decision of the Sheriff. This appeal followed.

QUESTIONS PRESENTED

Lowther presents two questions for our review:

I. Did the Circuit Court err in finding that the [administrative hearing board]'s confirmation of the facts alleged during the administrative hearing conformed with Md. Code Ann., Correctional Services, § 11-1009(a)(1)?

II. Assuming, *arguendo*, that the [administrative hearing board] did not conform to the requirements set forth by Md. Code Ann., Correctional Services § 11-1009, did the Circuit Court err in finding that Sheriff Cameron complied with all relevant sections of [the Correctional Officers' Bill of Rights,] COBR?

For the reasons that follow, we shall affirm.

FACTUAL AND PROCEDURAL BACKGROUND

The facts concerning this appeal are largely undisputed. Lowther was previously employed by the Office of the Sheriff for St. Mary's County as a Corporal, serving as a correctional officer at the St. Mary's County Detention Center. Her commanding officer was Captain Michael Merican, who was, at that time, the Commander of the St. Mary's County Sheriff's Office Corrections Division, and was formerly the President of the Correctional Administrator's Association. In 2014, Captain Merican was the highest ranking officer in Lowther's chain of command except for Sheriff Tim Cameron. On June 1, 2014, during the annual Maryland Correctional Administrator's Association Conference in Ocean City, Maryland, Lowther attended a social gathering of conference attendees in the Clarion Hotel's bar. She became intoxicated, and engaged in conduct that Captain Merican witnessed and considered unacceptable. In her brief in this Court, Lowther concedes that she committed the following acts on the night of June 1, 2014:

> On that date, Appellant, as well as several other employees of the St. Mary's County Sheriff's Office, were present in Ocean City for a law enforcement conference. During the course of the social event at the bar, it is undisputed that Appellant made lewd comments to supervisory officers, including the following statements: "I hate my job . . . but I can suck cock all night long," "[I want] to blow the guys" at the end of the bar, and "[I] enjoy giving blowjobs." While making the first comment, Appellant was witnessed licking two of her fingers and running them down her chest. According to witness testimony presented during the [administrative hearing], Appellant appeared to be intoxicated when said comments were made.
>
> It is further undisputed that, during the social event, Appellant's hand made contact with Captain Michael Merican's face on two occasions. During the [administrative hearing], witness Lt. William Baker testified

> that he observed Appellant slap Merican: this testimony was corroborated by agency witnesses Merican and Kreps, and was further evidenced by video surveillance and still photographs capturing the incident.
>
> The sole witness called by the Appellant during the [administrative hearing] was Kasmira Long, who testified that she observed Appellant's hand make contact with Merican's face on two occasions, but described the same as a "tap." There is disagreement between the parties as to whether or not Long's testimony corroborates or contradicts the evidence presented by the agency.

(Page references to record omitted.)

Lowther was charged with three violations of the St. Mary's County Sheriff's Office rules, policies, and procedures. The first charge alleged that Lowther failed to abide by the law when she slapped, and thereby assaulted, Captain Merican.[1] The second charge alleged that Lowther violated the St. Mary's County Sheriff's Office rules by engaging in unbecoming and rude conduct when she discussed performing acts of fellatio with other officers and later slapped Captain Merican.[2] The third charge alleged that Lowther violated office policy requiring employees to treat other employees with respect when she discussed performing acts of fellatio and slapped Captain Merican.[3]

On September 10, 2014, an administrative hearing board was convened pursuant to the Correctional Officers' Bill of Rights ("COBR"), Maryland Code (1999, 2008 Repl.

[1] St. Mary's County Sheriff's Office Policy and Procedures Part A, Chapter 2, Section .06, Subsection .005, Conformance to Policies, Laws, and Regulations.

[2] St. Mary's County Sheriff's Office Policy and Procedures Part A, Chapter 2, Section .06, Subsection .001, Conduct Unbecoming / Rudeness.

[3] St. Mary's County Sheriff's Office Policy and Procedures Part A, Chapter 2, Section .06, Subsection .011, Conduct with Agency Personnel.

Vol., 2013 Supp.), Correctional Services Article ("Corr. Serv."), § 11-1001 *et seq.*, to hear testimony and receive evidence concerning the June 1 incident. Lowther concedes in her brief that "there is no argument in the matter *sub judice* to suggest that there was a lack of substantive evidence to find Appellant guilty of the administrative charges."

At the board's hearing, Lieutenant William Baker testified that Lowther had approached him during the gathering and stated: "I hate my job. But I can suck a cock all night long." Lowther then licked two of her fingers and ran them down her chest. Another participant at the event, William Griffin, testified that he had overheard Lowther telling Captain Merican that "she enjoyed giving blowjobs." Captain Merican testified that he had overheard Lowther say that she "wanted to blow the guys that were at the end of the bar." After Captain Merican asked Lowther what she was talking about, Lowther's hand made contact twice with Captain Merican's face. Lieutenant Baker testified that Lowther slapped Captain Merican in the face. Lieutenant Baker's testimony was corroborated by Captain Merican and an additional witness, as well as by video surveillance and still photographs of the incident. Captain Merican testified that, following the first slap, he told Lowther not to touch him again, at which point Lowther pushed Captain Merican's face with her hand. Captain Merican told the administrative hearing board that this incident was both personally embarrassing, and embarrassing for St. Mary's County, as it occurred in front of other officers from across Maryland, staff, and other guests.

Lowther had told investigators that she had been so intoxicated she had no recollection of what happened at the Clarion bar; she did not testify before the administrative hearing board. She called, as her only witness before the administrative hearing board, Kasmira Long, who worked as an inmate service coordinator for St. Mary's County. Lowther had been escorted out of the Clarion bar by Long immediately after the incident with Captain Merican. Long testified that she had seen Lowther "tap [Captain Merican's] face and then two seconds later, tap it again." Nevertheless, in a prior interview during the initial investigation of the incident, Long had stated that Lowther had slapped Captain Merican in the face. (She had told the investigator: "I believe she slapped him with her right hand." "To the left side of his face.") The characterization of the contact with Captain Merican's face -- whether a "slap" or a "tap" -- is the only factual dispute identified by Lowther regarding the evidence presented to the administrative hearing board. As noted above, Lowther concedes in her brief that her "hand made contact with Captain Michael Merican's face on two occasions."

The administrative hearing board, in a unanimous decision, found Lowther guilty of all three charges. The board issued its written summary on October 3, 2014. In its summary, the administrative hearing board provided the following recommendations for punishment for the infractions: "Charge # 1 Guilty, Demotion of one rank. Charge # 2 Guilty, 10 Day suspension without pay. Charge # 3 Guilty, 10 Day suspension without pay, consecutive to Count 2."

On October 29, 2014, Sheriff Cameron held a hearing pursuant to the Corr. Serv. § 11-1009(d)(5) because he was considering increasing the punishment for Lowther beyond what was recommended by the administrative hearing board. After stating that he had complied with the requirements of the COBR that must be met before a managing official may increase the penalty recommended by an administrative hearing board, *see* Corr. Serv. § 11-1009(d)(5)(i)–(iv), Sheriff Cameron invited Lowther to provide any comments she wished him to consider before ruling, stating:

> Corporal Lowther, I'd now like to give you the opportunity to state on the record anything you'd like me to consider as it pertains to whether or not – excuse me, to consider as it pertains to whether I should accept the trial board's recommendation or whether I should exercise my discretion to increase it.

Lowther's attorney responded, and argued that the administrative hearing board's "recommendation [for punishment] is appropriate."

Sheriff Cameron then stated that he disagreed with the recommended penalty, and he considered the appropriate punishment to be termination. Sheriff Cameron stated, *inter alia*, that "Lowther's behavior was improper and her physical assault on Captain Merican was illegal and contrary to the Sheriff's Office policy." Sheriff Cameron further stated that Lowther's "conduct that constituted an assault towards another employee, an employee who represents a rule of order as a commander of the detention center, is unacceptable, shocking, and particularly egregious." A personnel order terminating Lowther's employment was issued by Sheriff Cameron on October 30, 2014.

On November 14, 2014, pursuant to Corr. Serv. § 11-1010(a), Lowther petitioned for judicial review in the Circuit Court for St. Mary's County. Lowther argued that the "[administrative hearing board] failed to provide a single factual finding upon which its decision was based thereby preventing any appropriate judicial review." *See* Corr. Serv. § 11-1009(a)(1). Lowther contended that, because "there are no findings made and no reasons given" by the administrative hearing board for its decision, the decision could not stand. Lowther further argued that, because the administrative hearing board had made no factual findings, Sheriff Cameron improperly engaged in his own fact finding when he chose to increase Lowther's punishment to termination.

The circuit court affirmed the ruling of the Sheriff. This appeal followed.

STANDARD OF REVIEW

Neither party to this appeal has cited, nor are we aware of, any reported decision outlining the appropriate standard of review for an appeal of a decision arising from a hearing pursuant to the COBR. But the Law Enforcement Officers' Bill of Rights ("LEOBR"), Maryland Code (2003, 2015 Repl. Vol.), Public Safety Article ("PS"), § 3-101 *et seq.*, contains procedural language that is nearly identical to the language of the COBR, and we conclude that cases that have interpreted the LEOBR are instructive.

The COBR was enacted in 2008 with the primary purpose of "providing for certain rights of a correctional officer in [Allegany County, Carroll County, Cecil County, Garrett County, Harford County, and St. Mary's County] relating to employment, investigation, and discipline under certain circumstances. . . ."

Chapter 689, Acts of 2008. In *Kearney v. France*, 222 Md. App. 542, 544 (2015), we noted the close relationship between the COBR and the LEOBR:

> The COBR's roots are in the Law Enforcement [Officers'] Bill of Rights ("[LEOBR]"), which applies to certain police officers of state and local agencies, but which did not extend to any local or state correctional officers. *See* House Committee on Appropriations Floor Report, S.B. 887 (2010).
>
> In 2008, the General Assembly passed the Cecil County Correctional Officer's Bill of Rights applicable to correctional officers in that county's detention center. *See* Maryland Laws Ch. 689 (H.B. 1245) (2008). As stated in the Floor Report for House Bill 1245, its provisions "are similar to the provisions of the Law Enforcement Officer's Bill of Rights." . . . Although provisions of the [LEOBR] and COBR may differ in certain aspects, we are persuaded that disciplinary cases decided under the [LEOBR] have instructive value. . . ."

The Court of Appeals has described the standard of judicial review applicable to proceedings under the LEOBR as follows:

> We have concluded that the scope of judicial review in a LEOBR case "'is that generally applicable to administrative appeals.'" [*Montgomery County v. Stevens*, 337 Md. 471, 482, 654 A.2d 877, 882 (1995)] (quoting [*Younkers v. Prince George's County*, 333 Md. 14, 17, 633 A.2d 861, 862 (1993)]). Thus, to 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. . . .'" *Id*. (quoting *United Parcel v. People's Counsel*, 336 Md. 569, 577, 650 A.2d 226, 230 (1994)). *See also Younkers*, 333 Md. at 18–19, 633 A.2d at 863; [*Meyers v. Montgomery County Police Dep't*, 96 Md. App. 668, 708–09, 626 A.2d 1010, 1030 (1993)]. While "an administrative agency's interpretation and application of the statute which the agency administers should ordinarily be given considerable weight by reviewing courts," *Board of Physician Quality Assurance v. Banks*, 354 Md. 59, 69, 729 A.2d 376, 381 (1999), "we owe no deference to agency conclusions based upon errors of law." *State Ethics v. Antonetti*, 365 Md. 428, 447, 780 A.2d 1154, 1166 (2001). *See Belvoir Farms Homeowners Ass'n, Inc. v.*

> *North*, 355 Md. 259, 267, 734 A.2d 227, 232 (1999); *Catonsville Nursing Home, Inc. v. Loveman*, 349 Md. 560, 569, 709 A.2d 749, 753 (1998).

Coleman v. Anne Arundel Cty. Police Dep't, 369 Md. 108, 121–22 (2002). *Accord Ocean City Police Dep't v. Marshall*, 158 Md. App. 115, 120–21 (2004); *Baltimore Police Dep't v. Ellsworth*, 211 Md. App. 198, 207 (2013), *aff'd*, 438 Md. 69 (2014).

We see no reason to apply a different standard of judicial review in cases that arise under the COBR. Accordingly, we will apply the same standards that are generally applicable to judicial review of decisions of administrative agencies. *Coleman*, *supra*, 369 Md. at 121.

Lowther concedes: "There is no argument as to the existence of substantive evidence to support the [administrative hearing board]'s findings." But she contends that the administrative hearing board "failed to abide by the requirements set forth in [Corr. Serv. § 11-1009(a)(1)] with respect to the information contained in its report." More specifically, she asserts "that the agency's order finding Appellant guilty of the charges was not sustainable upon the agency's findings and for the reasons stated by the agency because no such findings or reasons were provided in the board's report." Because Lowther has alleged that the administrative hearing board erred in failing to abide by the procedural requirements of Corr. Serv. § 11-1009(a)(1), our review of the claimed error of law is conducted *de novo*. *Cf. Coleman*, *supra*, 369 Md. at 122 ("Petitioner's sole issue before us, namely, whether an incorrect standard of proof was applied in the assessment of whether the Department proved the charges, presents a purely legal question. Accordingly, this Court reviews the matter *de novo*.").

DISCUSSION

Section 11-1008(a)(1) of the COBR provides that, if an "investigation or interrogation of a correctional officer results in a recommendation of demotion, dismissal, transfer, loss of pay, reassignment, or similar action that is considered punitive, the correctional officer is entitled to a hearing on the issues by a hearing board before the managing official takes that action." Sections 11-1008(e) through (j) describe procedures to be followed by the hearing board in conducting the hearing.

Section 11-1009 of the COBR addresses the procedures to be followed by the hearing board in rendering its decision, as well as the procedure to be followed by the "managing official" after the board issues its recommendation. Sections 11-1009(a)(1)–(2) state that any decision, order, or action by a hearing board shall be in writing and accompanied by findings of fact, consisting of a concise statement concerning each issue in the case.[4]

[4] Corr. Serv. § 11-1009(a)(1)–(5) provides:

> § 11-1009. Decisions, orders, or actions to be in writing
>
> (a)(1) A decision, order, or action taken as a result of a hearing under § 11-1008 of this subtitle shall be in writing and accompanied by findings of fact.
>
> (2) The findings of fact shall consist of a concise statement on each issue in the case.
>
> (3) A finding of not guilty terminates the action.

continued…

Lowther contends that the administrative hearing board failed to comply with Corr. Serv. § 11-1009(a)(1) by failing to adequately provide factual findings upon which its guilty verdicts were based. Lowther further contends that, because the administrative hearing board did not provide any written findings of fact supporting its guilty verdicts, Sheriff Cameron could not have conducted a proper review of Lowther's case in compliance with the Corr. Serv. § 11-1009(d)(1), and therefore, improperly increased the penalty that was recommended by the administrative hearing board.

A. Preservation of Lowther's Appellate Arguments

Although neither party has submitted arguments in their briefs concerning the preservation for appellate review of the issues raised on appeal by Lowther, we will

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continued…

> (4) If the hearing board makes a finding of guilt, the hearing board shall:
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> (i) reconvene the hearing;
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> (ii) receive evidence; and
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> (iii) consider the correctional officer's past job performance and other relevant information as factors before making recommendations to the managing official.
>
> (5) A copy of the decision or order, findings of fact, conclusions, and written recommendations for action shall be delivered or mailed promptly to:
>
> (i) the correctional officer or the correctional officer's counsel or representative of record; and
>
> (ii) the managing official.

nevertheless address preservation, which may be raised for the first time on appeal. *See Haslup v. State*, 30 Md. App. 230, 239 (1976) (permitting an appellate court to determine *sua sponte* whether an issue is preserved for review).

With respect to judicial review of administrative agencies, the same requirement of preservation applies as in an appeal from the circuit court. *See Schwartz v. DNR*, 385 Md. 534, 553–55 (2005) ("[A] reviewing court ordinarily 'may not pass upon issues presented to it for the first time on judicial review . . . .'"); *Brodie v. MVA*, 367 Md. 1, 4 (2001) ("Since Brodie's entire challenge to the administrative decision was based on an issue not raised before the agency, the Circuit Court should have affirmed the administrative decision without reaching the issue."); *Dept. of Health v. Campbell*, 364 Md. 108, 123 (2001) ("[T]he reviewing court, restricted to the record made before the administrative agency, . . . may not pass upon issues presented to it for the first time on judicial review and that are not encompassed in the final decision of the administrative agency."); *Bray v. Aberdeen Police Dep't*, 190 Md. App. 414, 434 (2010) (during a LEOBR hearing, the police officer "did not . . . ever make any objection on the record that [the police department] had failed to provide exculpatory information. . . . Therefore, we conclude that this issue was not properly preserved for our review."); *Halici v. Gaithersburg*, 180 Md. App. 238, 248–49 (2008) ("Ordinarily, a court reviewing the decision of an administrative agency 'may not pass upon issues presented to it for the first time on judicial review. . . .'" "The exceptions to the requirement for issue preservation are rare.").

Although Lowther's argument on appeal attacks the Sheriff's decision because of the adequacy of the administrative hearing board's written decision, no such argument was made at the agency level until after the Sheriff had already announced his final decision in this matter, even though there were several points when Lowther could have timely raised the objection.

The first point came during the board's hearing on September 10, 2014. The board convened and heard opening statements from counsel for the Sheriff's Office and defense counsel for Corporal Lowther, and then heard testimony from six witnesses. At that point, the board provided counsel the opportunity to make closing arguments with respect to guilt or innocence. When counsel concluded their arguments, the hearing board chair stated: "That's going to conclude the receiving of testimony and the summations [a]t this time. . . . We'll go into the verdict stage." The hearing board left the room to deliberate, and returned one hour and 44 minutes later to announce the verdict: "We have deliberated and come to a conclusion and the conclusion is all unanimous on the findings. As to charge one, charge one is guilty. As to charge two, charge two is guilty. As to charge three, charge three is guilty." Addressing counsel for the Sheriff's Office, the hearing board chair then asked: "Mr. [Counsel], the Sheriff's Office recommendation?" The Sheriff's Office requested that the administrative hearing board recommend termination.

Counsel for Corporal Lowther raised no objection at that point to the adequacy of the board's explanation of its findings of fact. Instead, Lowther called mitigation

witnesses to testify about the officer's exemplary service record and community activities. Counsel also introduced a "packet of awards and commendations" Lowther had received. Counsel then offered argument in support of a sanction of "a significant number of suspension days without pay." Counsel commented: "You know, I get the Board's decision. I understand where you're coming from." But he urged the board to consider the environment in which the incident had occurred, stating in part:

> And you are able to recommend anything from, you know, written reprimands up to loss of leave to suspension days to potentially demotions and to terminations.
>
> But I don't think that is an appropriate recommendation in this case. I just don't think the facts that are posed and sort of the throw up of the hands is oh, my gosh, we got somebody that got slapped, it was an assault. I think that's an over dramatization of the events.
>
> . . . I would ask you to temper your recommendation with the circumstances that you heard throughout the course of these proceedings and trust in light of that that you'll make a fair recommendation.

The board took another break to deliberate, and returned 25 minutes later to deliver its conclusion. The administrative hearing board's recommendation to the Sheriff would be: as to charge one, demotion of one rank; as to charge two, a suspension of ten days without pay; as to charge three, a suspension of ten additional days without pay. The hearing examiner noted that the board's recommendation would be forwarded to the Sheriff for him to make the final disposition. Nothing was said by Lowther's counsel about the adequacy of the board's findings of fact.

The administrative hearing board's written report and recommendation was provided to Sheriff Cameron on October 3, 2014. The options available to the Sheriff at

that point -- as the "managing official" in COBR terminology -- are described in Corr. Serv. § 11-1009(d), which states:

> (d)(1) Within 30 days after receipt of the recommendations of the hearing board, the managing official shall:
>
> (i) review the findings, conclusions, and recommendations of the hearing board; and
>
> (ii) issue a final order.
>
> (2) The final order and decision of the managing official is binding and then may be appealed in accordance with § 11-1010 of this subtitle.
>
> (3) The recommendation of a penalty by the hearing board is not binding on the managing official.
>
> (4) The managing official shall consider the correctional officer's past job performance as a factor before imposing a penalty.
>
> (5) **The managing official may increase the recommended penalty of the hearing board only if the managing official personally:**
>
> **(i) reviews the entire record of the proceedings of the hearing board;**
>
> (ii) meets with the correctional officer and **allows the correctional officer to be heard on the record;**
>
> (iii) discloses and provides in writing to the correctional officer, at least 10 days before the meeting, any oral or written communication not included in the record of the hearing board on which the decision to consider increasing the penalty is wholly or partly based; **and**
>
> **(iv) states on the record the substantial evidence relied on to support the increase of the recommended penalty.**

(Emphasis added.)

Because Sheriff Cameron was inclined to increase the penalty to termination, he scheduled a meeting with counsel and Ms. Lowther for October 29, 2014. Between the time the administrative hearing board issued its written report on or about October 3, 2014, and the commencement of hearing with Sheriff Cameron on October 29, 2014, Lowther had raised no objection to the adequacy of the board's findings of fact.

At the outset of the hearing convened by Sheriff Cameron on October 29, 2014, the Sheriff advised the parties in attendance: "As the managing official within the meaning of [Corr. Serv.] Section 11-1009, I am contemplating increasing the penalty recommended by the Board resulting from a hearing held September 10, 2014." He further stated:

> I wish to advise that pursuant to Section 11-1009, . . . I have reviewed, considered and relied upon the following: I received a written summary report of the disciplinary hearing board late Friday, October 3rd, 2014, from Captain Douglas Moore, Hearing Board Chair. . . .
>
> I also reviewed all documents, photographs, the two surveillance video disks, the entire audio recording of the trial board proceedings and defense exhibits.
>
> I read the personnel file of Kelly M. Lowther. The file contains records of Corporal Lowther's awards, commendation, letters of appreciation and evaluations or appraisals of her past job performance.
>
> **Corporal Lowther, I'd now like to give you the opportunity to state on the record anything you'd like me to consider as it pertains to whether . . . I should accept the trial board's recommendation or whether I should exercise my discretion to increase it.**

(Emphasis added.)

Despite being offered the opportunity to "state on the record anything you'd like me to consider" regarding the board's recommendation, Lowther raised no objection to the adequacy of the administrative hearing board's written report, its findings of fact, or anything else regarding the procedures the board had followed. The argument that Lowther makes on appeal regarding the lack of written findings of fact in the board's report could have been raised with the Sheriff -- and could have been addressed and cured if raised -- before the Sheriff made his ruling pursuant to Corr. Serv. § 11-1009(5).

In the absence of any timely objection to the adequacy of the board's findings, it is disingenuous for Lowther to argue that the Sheriff's decision was "not compliant with the relevant sections of COBR." Lowther urges us to focus on Corr. Serv. § 11-1009(d)(1) -- which requires the managing official to "review the findings, conclusions, and recommendations of the hearing board" -- and hold that, because the board set forth no findings other than "guilty," the Sheriff was barred, as a matter of law, from taking action pursuant to § 11-1009(d)(5). But that argument was not made at the agency level -- *i.e.*, to the Sheriff -- when the Sheriff offered the opportunity to be heard. As a consequence, the issue was not properly preserved for appellate review.

And counsel for Lowther was not merely silent when offered the opportunity to comment on the board's written report, but instead, urged Sheriff Cameron to *accept* the administrative hearing board's final summary and recommendation that she not be terminated, stating:

> Mr. Sheriff, just on behalf of Corporal Lowther, the -- during the mitigation phase of the hearing, substantial arguments were made on behalf

> of Corporal Lowther as to why the discipline should not be larger than what it turned out to be by the Hearing Board.
>
> The Board clearly accepted those arguments after considering all of the evidence. They clearly believed that in light of all of the circumstances, including the nature of the proceeding, the off duty nature of the event, the fact that it involved not only Corporal Lowther [but also] the director from the corrections and other people that were present during the event, that it was a social event.
>
> That under those circumstances outside of the work place, that the recommendation was an appropriate recommendation.
>
> * * *
>
> And I think that the Board, you know, exercised its good judgment collectively in making the recommendation that they made.
>
> . . . [O]ur position coming into this meeting is that the Board recommendation is appropriate. . . .

Sheriff Cameron then announced his decision to terminate Lowther's employment, and outlined the various facts that contributed to his decision to increase the administrative hearing board's recommended discipline of Lowther. Only after Sheriff Cameron announced his final decision, increasing Lowther's punishment, did Lowther express any concern regarding the administrative hearing board's findings, stating:

> I would simply note that the -- as the Sheriff, you would rely on the factual findings of the Hearing Board as to whether they found those facts to be accurate or truthful or when weighing the facts or evidence they made a conclusion one way or the other on any individual facts.
>
> I will note that the Board has made no such factual findings.
>
> And I would just raise an objection [that] your [sic] substitutes your fact finding for that of the Board in reaching your conclusion.

Whether this after-the-fact objection would have been addressed if raised in a more timely fashion became a moot point after Sheriff Cameron had announced his decision. By waiting until after the final decision maker had made a final decision, Lowther took a gamble, and lost a point for appeal. Because Lowther failed to raise any objections to the administrative hearing board's findings until after the agency, through Sheriff Cameron, issued its final ruling, she waived the arguments she has asserted before us concerning the adequacy of the administrative hearing board's factual findings.

B. The Administrative Hearing Board's Factual Findings

Even if we were to reach the merits of Lowther's argument about the inadequacy of the hearing board's factual findings, we would conclude that the procedural glitch was, at most, a harmless error.

The Court of Appeals has held: "'It has long been the policy in this State that this Court will not reverse a lower court judgment if the error is harmless.'" *Barksdale v. Wilkowsky*, 419 Md. 649, 657 (2011) (quoting *Flores v. Bell*, 398 Md. 27, 33 (2007)); *see also Harris v. David S. Harris, P.A.*, 310 Md. 310, 319 (1987) (holding that "the appellate courts of this State will not reverse a lower court judgment for harmless error: the complaining party must show prejudice as well as error."). Moreover, the appellant bears the burden of demonstrating that an error was not harmless. *See Crane v. Dunn*, 382 Md. 83, 91 (2004) (citing *Rippon v. Mercantile-Safe Deposit & Trust Co.*, 213 Md. 215, 222 (1957)); *Harris*, *supra*, 310 Md. at 319 ("In civil cases, it is well established that the burden of demonstrating both error and prejudice is on the complaining party."). The

Court of Appeals has "defined injury, or prejudice to the litigant, as error that influenced the outcome of the case." *Harris*, *supra*, 310 Md. at 319.

In the first place, we are not convinced that, in a case such as this in which the facts were not truly disputed, it was a material error for the administrative board to, essentially, incorporate by reference the facts alleged in the charges by rendering a conclusory finding of "guilty." The board's written report included the statements of charges, each of which provided substantial factual detail. And there was very little genuine dispute as to any of the alleged facts. Indeed, the only factual dispute identified by Lowther is whether she slapped Captain Merican or merely tapped his face. Either degree of unwanted contact would meet the technical definition of an assault. *See Snowden v. State*, 321 Md. 612, 617 (1991) (describing assault as "the unlawful application of force to the person of another"). Under the circumstances of this case, in which the characterization of that admitted contact was the only disputed point, the board's findings of "guilty" adequately apprised Lowther of the manner in which the board had resolved that dispute of fact.

As a more general proposition, we agree with Lowther that the language in the COBR seems to contemplate that the administrative hearing board will not simply issue one-word findings of fact. Corr. Serv. § 11-1009(a)(2) provides: "The findings of fact shall consist of a concise statement on each issue in the case." But, given the unusually limited nature of the dispute in the evidence here, we need not define the minimum level of acceptable conciseness in this case. Although it would be a better practice – and in

some cases a matter of critical importance – for the hearing board to set forth in its report a brief statement summarizing its finding on each fact required to support its conclusion of guilt or non-guilt with respect to each charge, Lowther has not shown that she was prejudiced by the manner in which the administrative hearing board submitted its report in this case.

Exercising his discretion pursuant to Corr. Serv. § 11-109(d)(5), Sheriff Cameron personally reviewed the entire audio recording of the board's hearing, as well as all exhibits, and all information offered by Lowther in mitigation. We are not persuaded that the outcome of this proceeding would have been any different if the board had included an express finding of a "slap," rather than simply set forth findings of "guilty [as charged]." Accordingly, even if we were to conclude that the board's report failed to contain sufficient findings of fact to comply with § 11-1009(a)(2), we would find that error to be harmless under the particular circumstances of this case.

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