Circuit Court for Baltimore City
Case No. 24-C-22-001348

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND**

No. 1227

September Term, 2022

IN THE MATTER OF THE PETITION
OF ROSHAWN TAYLOR

Wells, C.J.,
Arthur,
Eyler, James R.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Arthur, J.

Filed: June 14, 2023

*This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

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

A security attendant at a State hospital engaged in what she admitted was unprofessional conduct. She was demoted. She challenged the demotion in an administrative proceeding before an administrative law judge ("ALJ"), who concluded that management acted lawfully. On the employee's petition for judicial review, the Circuit Court for Baltimore City upheld the ALJ's decision.

The employee appealed. We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

Appellant Roshawn Taylor was employed as a Security Attendant III (i.e., a sergeant) with the Security Department at the Clifton T. Perkins Hospital, a State psychiatric hospital.

On July 16, 2021, Ms. Taylor was assigned to the lobby post at the main door. The post is normally staffed by two security attendants, but on that day Ms. Taylor was working alone.

At about 1:00 p.m., a visitor arrived in the vestibule of the lobby. The visitor wanted to drop off some items for a patient. The visitor waited in the vestibule for someone to take the items. While the visitor waited, she exchanged words with Ms. Taylor, who was behind the desk and security scanner in the lobby.

Ms. Taylor paged another officer for assistance in taking the items from the visitor. In response, Ms. Taylor's superior, Captain Jones, told her that the other officer had left for the day. He directed Ms. Taylor to handle the intake of the visitor's items on her own.

At some point, Sergeant David and Corporal Armwood came to the lobby. Sergeant David went to the vestibule to assist the visitor with her items.

When Ms. Taylor was hanging up the telephone, she accidentally turned on the intercom in the vestibule. She heard the visitor talking on her phone and telling someone to come to the hospital so that they could wait for Ms. Taylor when she got off work and "whoop her ass."

Ms. Taylor immediately left her station and went into the vestibule to confront the visitor. She asked the visitor if she was threatening her. The visitor answered, yes.

Sergeant David stepped between Ms. Taylor and the visitor. He directed Ms. Taylor to leave the vestibule. Corporal Armwood grabbed Ms. Taylor's arm and shoulder to pull her away from the visitor and out of the vestibule. Ms. Taylor told Corporal Armwood, her subordinate, to let her go.

Corporal Armwood moved Ms. Taylor into the lobby and away from the visitor. Sergeant David took care of the visitor's items.

Ms. Taylor made a complaint about the visitor. In evaluating the complaint, Major Lee reviewed video footage of the lobby from the time of the encounter between Ms. Taylor and the visitor. He determined that Ms. Taylor had been the aggressor. He took no action against the visitor.

Jazmine Rich, the Human Resources Director, investigated the incident. In the course of the investigation, Ms. Taylor admitted that her response to the visitor was unprofessional. Ms. Rich determined that Ms. Taylor's actions were inappropriate and unprofessional and that her behavior was "unacceptable."

Marion Fogan, Ms. Taylor's appointing authority, reviewed the Human Resources investigation and determined that discipline should be imposed. Ms. Fogan considered terminating Ms. Taylor's employment, but decided that a demotion to Security Attendant II was appropriate. She reasoned that Ms. Taylor had been in a lead position and that her response to the visitor did not evidence an ability "to carry out and model appropriate behavior." She observed that Ms. Taylor escalated the situation and advanced toward the visitor in an aggressive manner, requiring a lower-level peer to step in and restrain her.

Ms. Taylor's response was largely one of mitigation. She pointed out that she had been employed by the State since 1989 and was eligible to retire, and that she had never been disciplined. She had not been scheduled to work on the day in question, but was asked to come in, and agreed to do so. She said that the security desk was understaffed, and she complained that her superior, Captain Jones, had told her to handle the visitor herself. She claimed that the visitor was known to have threatened others. She denied that she moved aggressively toward the visitor and claimed that she "just wanted to talk to her." She said that about a month later the visitor apologized to her and gave her a hug.

Ms. Taylor was demoted from Security Attendant III to Security Attendant II. In the accompanying notice of disciplinary action, the appointing authority relied on several subparts of COMAR 17.04.05.04, which concerns disciplinary actions relating to employee misconduct. Under that provision, an employee may be disciplined for:

> (1) Being negligent in the performance of duties;

* * *

(3) Being guilty of conduct that has brought or, if publicized, would bring the State into disrepute;

(4) Being unjustifiably offense in the employee's conduct toward fellow employees, wards of the State, or the public;

* * *

(12) Violating a lawful order or failing to obey a lawful order given by a superior, or engaging in conduct, violating a lawful order, or failing to obey a lawful order which amounts to insubordination; [or]

* * *

(15) Committing another act, not previously specified, when there is a connection between the employee's activities and an identifiable detriment to the State.

The appointing authority also relied on the hospital's code of conduct, which requires employees not to display unprofessional demeanor or conduct.

Ms. Taylor exercised her right to appeal the demotion to the Secretary of Budget and Management. *See* Maryland Code (1993, 2015 Repl. Vol.), § 11-110(a)(1) of the State Personnel and Pensions Article ("SPP"). In accordance with SPP § 11-110(b)(1)(ii), the Secretary referred the appeal to the Office of Administrative Hearings. An ALJ from the Office of Administrative Hearings conducted a hearing, as required by SPP § 11-110(c)(2).

On the basis of the facts detailed above, the ALJ found that, in confronting the visitor rather than calling for assistance, Ms. Taylor exercised poor judgment, engaged in unprofessional conduct, and negligently performed her duties in a way that would bring

the State into disrepute if her actions were publicized. The ALJ concluded that Ms. Taylor had violated COMAR 17.04.05.04B(1), (3), and (4).

The ALJ also found that Ms. Taylor had violated Sergeant Jones's order to handle the visitor and her items. On that basis, the ALJ concluded that Ms. Taylor had violated COMAR 17.04.05.04B(12).

The ALJ went on to find that Ms. Taylor had modeled poor behavior and had acted to the detriment of the chain of command because her subordinates, Sergeant David and Corporal Armwood, were required to intervene to deescalate the confrontation between her and the visitor. On that basis, the ALJ concluded that Ms. Taylor had violated COMAR 17.04.05.04B(15).

Finally, the ALJ concluded that Ms. Taylor's conduct violated the hospital's Code of Conduct because it was disruptive, disrespectful, or inappropriate to others.

Although management had imposed what the ALJ called a "severe" penalty, he recognized that under COMAR 17.04.05.02C he could not alter the penalty "unless the discipline imposed was clearly an abuse of discretion and clearly unreasonable under the circumstances." The ALJ found that a demotion was not clearly unreasonable or an abuse of discretion. He reasoned that management had "acted within its authority in imposing the discipline for clear violations of COMAR and the Code of Conduct." Consequently, he affirmed the discipline that management had imposed.

Under SPP § 11-110(d)(3), the ALJ's decision is the "final administrative decision."

Ms. Taylor petitioned for judicial review in the Circuit Court for Baltimore City. The circuit court affirmed the ALJ's determination.

Ms. Taylor noted a timely appeal.

QUESTION PRESENTED

Ms. Taylor formulates the question presented in this way: "Was it reasonable to punish an employee with a thirty two year unblemished service record with a demotion for a single minor infraction?"

Ms. Taylor's employer formulates the question a bit differently: "Was the discretionary decision to demote Ms. Taylor arbitrary and capricious in light of the contested facts that she tried to initiate a physical confrontation with a member of the public and required restraint by her colleagues?"

As we conceive the narrow scope of appellate review in an administrative proceeding concerning the discipline of a State employee, we formulate the question as follows: Did the ALJ err or abuse his discretion in concluding that the discipline imposed was not clearly an abuse of discretion and was not clearly unreasonable under the circumstances?

STANDARD OF REVIEW

On an appeal from a circuit court's ruling on a petition for judicial review of an administrative decision, the appellate court reviews the decision of the administrative decision, not the decision of the circuit court. *See*, *e.g.*, *Department of Health & Mental Hygiene v. Campbell*, 364 Md. 108, 123 (2001); *accord People's Counsel for Baltimore County v. Surina*, 400 Md. 662, 681 (2007).

"A court's role in reviewing an administrative agency adjudicatory decision is narrow[.]" *Board of Physician Quality Assurance v. Banks*, 354 Md. 59, 67 (1999); *accord Maryland Aviation Admin. v. Noland*, 386 Md. 556, 571 (2005). The court is limited to determining whether there is substantial evidence in the record as a whole to support the agency's findings and conclusions and whether the administrative decision is premised upon an erroneous conclusion of law. *Board of Physician Quality Assurance v. Banks*, 354 Md. at 67-68; *accord Maryland Aviation Admin. v. Noland*, 386 Md. at 571.

Furthermore, when a court considers "a lawful and authorized administrative disciplinary decision or sanction, ordinarily within the discretion of the administrative agency," the scope of judicial review is even more limited. *See Maryland Aviation Admin. v. Noland*, 386 Md. at 575. "As long as an administrative sanction or decision does not exceed the agency's authority, is not unlawful, and is supported by competent, material and substantial evidence, there can be no judicial reversal or modification of the decision based on disproportionality or abuse of discretion unless, under the facts of a particular case, the disproportionality or abuse of discretion was so extreme and egregious that the reviewing court can properly deem the decision to be 'arbitrary or capricious.'" *Maryland Transp. Auth. v. King*, 369 Md. 274, 291 (2002); *accord Maryland Aviation Admin. v. Noland*, 386 Md. at 575.

"[T]he burden in a judicial review action is upon the party challenging the sanction to persuade the reviewing court that the agency abused [its] discretion and that the decision was 'so extreme and egregious' that it constituted 'arbitrary or capricious'

agency action." *Maryland Aviation Admin. v. Noland*, 386 Md. at 581 (quoting *Maryland Transp. Auth. v. King*, 369 Md. at 291).

DISCUSSION

Ms. Taylor acknowledges that the issue on appeal "is **not** whether the Department abused its discretion by" taking "disciplinary action" against her. (Emphasis in original.) She agrees that she "made a mistake and behaved unprofessionally." She also agrees that the employer "was within its rights to issue some sort of disciplinary action." She correctly recognizes that the sole issue on appeal is whether the choice of disciplinary action was reasonable and appropriate or extreme or egregious given the totality of the circumstances.

Citing the notice of disciplinary action (and not the testimony before the ALJ), Ms. Taylor complains that the appointing authority failed to consider mitigating factors, such as her three decades of service and the absence of any prior disciplinary record. She continues to blame the incident on the hospital, asserting that it did not follow its own staffing rules. She disputes the ALJ's conclusions about her multiple violations of the COMAR regulations and the code of conduct, asserting that the record reflects only a "minor lapse of judgment of no consequence." She denies that she threatened anyone, even though the ALJ found that she "suddenly rushed from her post to the vestibule door" to confront the visitor and that she had to be physically restrained by two subordinates. She points out that she did not use profanity and did not actually injure anyone or anything. She does not dispute that the appointing authority had the power to demote her and even to fire her for the violations that the ALJ found to have occurred,

but she asserts that she should only have been reprimanded or suspended instead. She complains of "an abuse of discretion through the failure to exercise discretion."

To the extent that Ms. Taylor is simply rearguing the facts of the case before the ALJ, her contentions are devoid of merit. The ALJ's factual findings are supported by an abundance of evidence, including Ms. Taylor's own statements, the testimony of the Human Resources officer and the appointing authority, and a video-recording of the encounter between Ms. Taylor and the visitor. She abandoned her post and rushed at a visitor to the hospital. She had to be restrained by her subordinates. By her own admission, her conduct was unprofessional. Moreover, in findings that are binding on her and us, the ALJ concluded that her conduct would bring the State into disrepute if it were publicized, that she had disobeyed an order, that she had undermined the chain of command and been a poor model for her subordinates, and that she had violated the institution's code of conduct by engaging in disruptive, disrespectful, or inappropriate behavior.

To the extent that Ms. Taylor challenges the exercise of discretion in the imposition of discipline, her arguments are almost equally unmeritorious. The appointing authority testified that she considered firing Ms. Taylor, but chose the lesser sanction of demotion instead. The ALJ heard Ms. Taylor's testimony and acknowledged that she had "performed her duties well and without incident" in her three prior decades of service to the State. On this record, it is reasonable to infer that both the appointing authority and the ALJ exercised their discretion in evaluating the appropriate measure of discipline.

Under the authorities cited above, if the measure of discipline was allowed by law and was not so extreme and egregious as to be arbitrary or capricious, then we are constrained to uphold it. We are not "the authorized decision-makers." *Maryland Aviation Admin. v. Noland*, 386 Md. at 582. Nor are we a higher-level human resources department with the wisdom and power to second-guess the lawful, discretionary personnel decisions made by executive branch agencies.

While we might (or might not) have imposed a lesser sanction if the decision were ours to make, we cannot say that it was "extreme and egregious" to demote her by one step for her admitted misconduct rather than merely to suspend or reprimand her. Ms. Taylor has not met her burden. *Maryland Transp. Auth. v. King*, 369 Md. at 291. Therefore, the ALJ correctly upheld the disciplinary action. *Id.*

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