Circuit Court for Anne Arundel County
Case No. C-02-CV-21-001465

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 1448

September Term, 2022

IN THE MATTER OF DANIEL HALL

Reed,
Zic,
Getty, Joseph M.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Zic, J.

Filed: September 6, 2024

* 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).

Appellant, Daniel Hall, was formerly employed by Anne Arundel County (the "County"). It was disclosed to the County that Mr. Hall used medical cannabis for pain management following a neck injury. Mr. Hall admitted to cannabis use and was subjected to a reasonable suspicion drug test, which yielded a positive result for cannabis. Following a hearing by the County Personnel Board (the "Board"), Mr. Hall was terminated. Mr. Hall appealed this decision to the Circuit Court for Anne Arundel County, which affirmed the Board's decision to terminate Mr. Hall.

QUESTIONS PRESENTED

Mr. Hall presents two questions for our review, which we have recast and rephrased as follows:[1]

1. Whether the circuit court erred in affirming the Board's decision that the County's termination of Mr. Hall for using medical cannabis with a valid written certification was proper.

2. Whether the circuit court erred in affirming the Board's finding that Mr. Hall could have been under the influence of cannabis at work.

For the following reasons, we answer both questions in the negative and, therefore, affirm.

[1] Mr. Hall phrased the questions as follows:

1. Whether Maryland's medical-cannabis law protects a contracted, public employee with a valid written certification from being terminated for using medical cannabis.

2. Whether the Board erred in finding Hall was under the influence at work based solely on admitted off-duty use and a positive urine test.

BACKGROUND

In June 2018, Mr. Hall was hired by the County as an Environmental Control Inspector. An Environmental Control Inspector is designated as a "safety-sensitive" position, as it involves driving a County vehicle and visiting construction sites. Employees in "safety-sensitive" positions are subject to both random and reasonable-suspicion drug testing. Mr. Hall's employment was governed by the Anne Arundel County Charter, the Anne Arundel County Employee Relations Manual, and the County's contract with Mr. Hall's Union, Local 582. In pertinent part, § J-01 of the Employee Relations Manual states as follows:

> It is the policy of Anne Arundel County to provide for a workplace free of drugs and alcohol and to pursue all reasonable and lawful means to *eliminate the use of controlled dangerous substances* and the abuse of alcohol by County employees and volunteers. It is also the policy of the County to adhere explicitly to the federal regulations governing the use of alcohol and/or controlled dangerous substances by employees whose positions require that they hold a Commercial Drivers License (CDL). It is the intent of the County to adhere to the Federal Motor Safety Carrier Act (FMSCA) and regulations issued thereunder and in many instances to apply those standards to all County employees as set forth herein. To implement this policy, Anne Arundel County has developed a proactive program to address drug and alcohol abuse.

The Employee Relations Manual specifically states: "Employees and public safety and Safety-Sensitive volunteers will be responsible for[a]bstaining from [controlled dangerous substance] use and alcohol abuse." At the time, cannabis qualified as a controlled dangerous substance. Md. Code Ann., Crim. Law § 5-101 (2002, 2019 Repl.

Vol.).[2] As a "safety-sensitive" designated employee, Mr. Hall's appointment was subject to successfully passing a drug test, and Mr. Hall was informed of the County's drug policy upon hire. The County Charter states that a permanent employee may be terminated when the employee "(b) . . . has committed an act on or off duty which amounts to conduct unbecoming to the employee's classification or position," or "(d) . . . has violated any lawful and official regulation or order." County Charter, Art. VIII, § 808.

Mr. Hall subsequently broke his neck while off-duty and sought to utilize medical cannabis as a pain treatment option. In February 2020, Mr. Hall obtained written certification from a physician for medical cannabis. By Mr. Hall's own admission, he used medical cannabis in the evenings—including weeknights—to sleep without pain, but he denied ever using cannabis prior to or during work. While Mr. Hall claimed that he was never under the influence of cannabis while at work, he failed to present any evidence at his hearing before the Board regarding his doctor's recommendations for appropriate dosage or timing of usage to ensure Mr. Hall was not intoxicated at work, or any medical or scientific testimony regarding the same.

In January 2021, Mr. Hall applied for a position with the County Fire Department. During the interview process, Mr. Hall admitted that he had used medical cannabis roughly 35 times since receiving his medical cannabis certification—all while employed

[2] Section 5-101 uses the term "marijuana," while the Board in Mr. Hall's case and various other statutes use the term "cannabis." These terms refer to the same substance; for consistency, we will use the term "cannabis" throughout this opinion.

in his safety-sensitive role as an Environmental Control Inspector. Following this disclosure, Mr. Hall was ordered to submit to a reasonable-suspicion drug test on Monday, March 8, 2021. Mr. Hall admitted he had used cannabis the weekend prior, and his drug test returned positive for cannabis. Mr. Hall's admission during his interview with the Fire Department was the sole reason for the administration of the drug test—Mr. Hall never presented any other indications of cannabis use.

Mr. Hall was subsequently terminated on April 15, 2021. Mr. Hall appealed his termination, and a hearing was held before the Board on September 23, 2021. At the hearing, Mr. Hall argued that because he was a qualifying patient under Md. Code Ann., Health—General ("HG") § 13-3301 (2013, 2022 Repl. Vol.)[3], under HG § 13-3313 he could not be subject to any "administrative penalty" or "denied any right or privilege" for his use of medical cannabis. The County argued that HG § 13-3313 did not prohibit employers from taking action against employees who test positive for cannabis, and even so, HG § 13-3314 permits the imposition of civil or criminal penalties if using medical cannabis "would constitute negligence or professional malpractice."

On October 1, 2021, the Board upheld Mr. Hall's termination. Mr. Hall appealed to the Circuit Court for Anne Arundel County, which affirmed the decision of the Board. In its oral ruling, the circuit court found that the County had a valid drug testing policy,

[3] Mr. Hall and the County both agree that HG §§ 13-3301 – 13-3316 were in effect at the time Mr. Hall was terminated and control in his case. On May 3, 2023, Governor Wes Moore signed into law the Cannabis Reform Act, 2023 Maryland Laws Ch. 255 (S.B. 516), which repealed HG §§ 13-3301 – 13-3316.

and that pursuant to HG § 13-3314, the protections of HG § 13-3313 did not apply in Mr. Hall's case. The circuit court "[did] not believe that the Board made an error of law, and . . . affirm[ed] the Personnel Board's decision." This appeal followed.

STANDARD OF REVIEW

When this Court "reviews the final decision of an administrative agency, we look through the circuit court's decision and evaluate the decision of the agency." *Maryland Dep't of the Env't v. Assateague Coastal Tr.*, 484 Md. 399, 446 (2023). Our review of the agency's decision 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." *Matter of Homick*, 256 Md. App. 297, 307-08 (2022) (quoting *Brandywine Senior Living at Potomac LLC v. Paul*, 237 Md. App. 195, 210 (2018)).

Substantial evidence is "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." *Homick*, 256 Md. App. at 308 (quoting *Piney Orchard Cmty. Ass'n v. Maryland Dep't of the Env't*, 231 Md. App. 80, 90-91 (2016)). "Under the substantial evidence standard, 'the court defers to the facts found and inferences drawn by the agency when the record supports those findings and inferences.'" *Cosgrove v. Comptroller of Maryland*, __ Md. App. __, __, No. 1030, Sept. Term 2023, slip op. at 8 (filed Aug. 29, 2024) (quoting *In re Featherfall Restoration LLC*, 261 Md. App. 105, 128 (2024), *cert. granted*, No. 67, Sept. Term, 2024, 2024 WL 3330317 (Md. June 17, 2024)). An agency's finding of fact, however, is "unsupported by substantial evidence if it is unreasonable in light of the entire record." *Prince George's County*

Dep't of Soc. Servs v. Taharaka, 254 Md. App. 155, 169 (2022). The agency's decision will only be upheld if it is "sustainable on the agency's findings and for the reasons stated." *Id.*

Additionally, we review an agency's conclusions of law *de novo*. *Matter of Cricket Wireless, LLC*, 259 Md. App. 44, 67 (2023). Statutory interpretation by an agency is one such conclusion of law. *Assateague Coastal Tr.*, 484 Md. at 450-51. Courts will "occasionally apply agency deference when reviewing errors of law" regarding "whether the agency correctly interpreted an applicable statute or regulation." *Comptroller v. FC-GEN Operations Invs. LLC.*, 482 Md. 343, 360 (2022). We apply a "'sliding-scale approach,' in which the weight given to the agency's interpretation depends on a number of factors." *Cosgrove*, __ Md. App. at __, slip op. at 9 (quoting *Assateague Coastal Tr.*, 484 Md. at 451). "We give more weight when the interpretation resulted from a process of reasoned elaboration by the agency, when the agency has applied that interpretation consistently over time, or when the interpretation is the product of contested adversarial proceedings or formal rule making." *Id.*

DISCUSSION

I. THE CIRCUIT COURT DID NOT ERR IN AFFIRMING THE BOARD'S DECISION THAT THE COUNTY MAY TERMINATE EMPLOYEES FOR USING MEDICAL CANNABIS WITH A VALID WRITTEN CERTIFICATION WHEN THE EMPLOYEE IS EMPLOYED IN A SAFETY-SENSITIVE ROLE.

A. Applicable Law

Mr. Hall was terminated following a drug test that was positive for cannabis. Mr. Hall's termination was governed by § 808 of the County Charter, which calls for

termination when an employee "(b) . . . has committed an act on or off duty which amounts to conduct unbecoming to the employee's classification or position," or "(d) . . . has violated any lawful and official regulation or order." The Board found Mr. Hall in violation of § J-01 of the Employee Relations Manual, which stated the policy of the County to "eliminate the use of controlled dangerous substances" and required employees to "[a]bstain[] from [controlled dangerous substance] use and alcohol abuse." This violation was grounds for Mr. Hall's termination.

Mr. Hall does not argue that the County Charter or the Employee Relations Manual do not apply to him. Mr. Hall instead argues on appeal, as he did below, that Maryland law prohibits employers from terminating employees based on medical cannabis usage. To support his argument, Mr. Hall cites to HG § 13-3313. Section 13-3313 stated in pertinent part:

> (a) Any of the following persons acting in accordance with the provisions of this subtitle may not be subject to arrest, prosecution, revocation of mandatory supervision, parole, or probation, or any civil or *administrative penalty*, including a civil penalty or disciplinary action by a professional licensing board, or be *denied any right or privilege*, for the medical use of or possession of medical cannabis:
>
> (1) A qualifying patient:
>
> (i) In possession of an amount of medical cannabis determined by the Commission to constitute a 30-day supply; or
>
> (ii) In possession of an amount of medical cannabis that is greater than a 30-day supply if the qualifying patient's certifying provider stated in the written certification that a 30-day supply would be

> inadequate to meet the medical needs of the qualifying patient.

HG § 13-3313(a)(1)(i)-(ii) (emphasis added). Mr. Hall argues that he is a qualifying patient under HG § 13-3301(p)(1)[4], and, therefore, is protected from any administrative penalty or the denial of a right or privilege in violation of HG § 13-3313.

The County adopts the Board's determination that HG § 13-3313 must be read in tandem with HG § 13-3314, which states:

> (a) This subtitle may not be construed to authorize any individual to engage in, and does not prevent the imposition of any civil, criminal, or other penalties for, the following:
>
> (1) Undertaking any task under the influence of cannabis, when doing so would constitute negligence or professional malpractice;
>
> (2) Operating, navigating, or being in actual physical control of any motor vehicle, aircraft, or boat while under the influence of cannabis.

HG § 13-3314(a)(1)-(2).

We agree that Mr. Hall is a qualifying patient under HG § 13-3313. Mr. Hall engages in extensive statutory analysis to argue that his termination was an administrative penalty, or in the alternative, because he was a permanent employee of the County, his termination amounted to a denial of the right to or privilege of continued public employment. We need not address this issue, however, if we agree with the County that

[4] HG § 13-3301(p)(1) defines a qualifying patient as an individual who "[h]as been provided with a written certification by a certifying provider in accordance with a bona fide provider-patient relationship."

HG § 13-3313 must be read in conjunction with § 13-3314, which states that the protections of § 13-3313 do not apply when an individual is under the influence of cannabis and his or her actions could constitute negligence or professional malpractice, or the individual is operating a motor vehicle. Thus, Mr. Hall would appropriately be subject to a penalty—such as termination—if he was under the influence of cannabis at work and this (1) would constitute negligence or professional malpractice, or (2) occurred while he was operating a motor vehicle. We must, therefore, determine whether the Board erroneously concluded that Mr. Hall could have been under the influence of cannabis at the time he reported to work.

II. THE CIRCUIT COURT DID NOT ERR BY AFFIRMING THE BOARD'S DECISION THAT MR. HALL COULD HAVE BEEN UNDER THE INFLUENCE AT WORK, AND TERMINATION WAS, THEREFORE, APPROPRIATE.

Mr. Hall argues that the Board's determination that Mr. Hall could have been under the influence at work was not supported by evidence in the record, and that the Board could "reasonably infer that [Mr.] Hall consumed cannabis[,] [b]ut the more specific conclusion that he was under the influence at work is 'unreasonable and cannot stand,'" citing *Bond v. Dep't of Pub. Safety and Corr. Serv.*, 161 Md. App. 112, 125-26 (2005). Conversely, the County argues that due to the proximate nature of Mr. Hall's cannabis use to the start of his workday, and Mr. Hall's failure to submit any evidence regarding the timeframe of his cannabis intoxication, it was reasonable for the Board to determine that Mr. Hall could have been under the influence of cannabis while at work.

To support his argument that the Board erroneously concluded that sufficient evidence existed to show that Mr. Hall was under the influence of cannabis at work, Mr.

Hall cites to *Bond*. In *Bond*, an employee of the Department of Public Safety and Correctional Services ("DPSCS") was terminated after submitting a drug test that was positive for cannabis. 161 Md. App. at 117-18. The employee was only subject to reasonable suspicion drug testing, not random drug testing, as she was employed in a "non-sensitive" position. *Id*. The employee applied for another job that required her to take a drug test, which yielded a positive result for cannabis. *Id.* at 118. News of the employee's positive test made its way back to DPSCS, and the employee was required to take a reasonable suspicion drug test, at which point she admitted to using cannabis approximately two to three weeks prior. *Id.* The employee was terminated for violating § 11-105 of the State Personnel and Pensions Article ("SPP"), specifically SPP § 11-105(3), which states that the "illegal sale, use, or possession of drugs on the job," is "cause[] for automatic termination." *Id.* at 118-19; Md. Code Ann., SPP § 11-105(3) (1993, 1997 Repl. Vol.).

On appeal, this Court held that the circuit court erred in upholding the employee's termination, as the administrative law judge's decision was not supported by substantial evidence. *Id.* at 117. Of note, this Court held that the mere fact that the employee failed a drug test by testing positive for cannabis did not mean that she used or possessed cannabis at work. *Id.* at 125. The Court emphasized the difference between the alleged on-the-job use—which was prohibited by SPP § 11-105—and the employee's admitted off-the-job use. *Id.* (holding that although the employee's positive test for cannabis and admitted cannabis use supported the inference that the employee had used cannabis, "the more specific conclusion that [the employee] smoked, possessed, or was under the

influence of marijuana at work does not reasonably flow from the fact that she tested positive for using marijuana."). This Court held that it was erroneous for the administrative law judge to specifically conclude that the employee used cannabis at work based on her admission of cannabis use outside of work two to three weeks prior and a positive test result for cannabis while at work. *Id.* at 127.

We find *Bond* distinguishable from Mr. Hall's case for two reasons: (1) in *Bond*, the employee was employed in a non-sensitive position, whereas Mr. Hall was a safety-sensitive employee; and (2) the employee in *Bond* admitted to using cannabis "two or three weeks before the drug tests" whereas Mr. Hall admitted to using cannabis the night prior to his positive drug test. *Bond*, 116 Md. at 118.

Safety-sensitive positions may be subjected to more stringent controlled dangerous substance testing policies. The County has a great interest in ensuring that all safety-sensitive employees, such as those charged with operating County vehicles, are acting in a safe manner by maintaining a drug-free workplace. A prohibition on the use of controlled dangerous substances is one such way of achieving that goal, particularly given the limitations of drug tests to test for cannabis intoxication. *Bond* highlights these limitations. Even two to three weeks after her admitted use, the employee in *Bond* was still testing positive for cannabis. *Id.* at 118. Mr. Hall's cannabis use was more proximate than the employee in *Bond*, as Mr. Hall admitted to using cannabis the night prior to his positive drug test.

We agree that the Board's conclusion that Mr. Hall could have been under the influence of cannabis at work was not "unreasonable in light of the entire record."

Taharaka, 254 Md. App. at 169. Mr. Hall's own testimony provided that he occasionally used cannabis the night before reporting to work. Mr. Hall presented no evidence that his doctor recommended certain dosages, and presented no scientific evidence regarding the intoxicating effects of cannabis and how long someone may be under the influence after smoking or ingesting edible cannabis products. Absent such evidence, it was not unreasonable for the Board to determine that Mr. Hall, the morning after his admitted cannabis use, may have still been under the influence of cannabis when he reported to work.

Unfortunately, current urine tests, such as the one utilized by Anne Arundel County, cannot distinguish between cannabis used one day or one week ago.[5] Additionally, there is no current test to show whether an individual is presently intoxicated by cannabis.[6] We acknowledge that Mr. Hall never appeared to be under the

[5] *See, e.g.*, Kerry Cork, *Cannabis Use by Employees: Drug-Free Policies and the Changing Legal Landscape*, 49 Fordham Urb. L.J. 593, 607-08 (2022) ("Because of the way a user's body metabolizes THC, [marijuana drug] tests often have limited usefulness in determining a person's THC intoxication. THC can be detected in blood for up to 36 hours or urine for days or even months after THC intoxication has ended. A blood test, for example, can detect THC up to 36 hours after use; a saliva test, up to 48 hours after use; a urine test, up to 30 days after use; and a hair test, up to 90 days after use. Moreover, the effects of THC are both cumulative and relative: determining impairment depends on a user's tolerance, individual metabolism, test sensitivity, amount of THC consumed, hydration, mode of consumption.") (footnotes omitted).

[6] *See id.*; *see also* National Institute for Justice, *Field Sobriety Tests and THC Levels Unreliable Indicators of Marijuana Intoxication* (April 5, 2021), https://nij.ojp.gov/topics/articles/field-sobriety-tests-and-thc-levels-unreliable-indicators-marijuana-intoxication [https://perma.cc/F467-92YD] (summarizing a study finding that "THC levels in biofluid were not reliable indicators of marijuana intoxication," and observing that "standardized field sobriety tests commonly used to detect driving under the influence of drugs or alcohol were not effective in detecting marijuana intoxication.").

influence of cannabis at work; however, considering the limitations of testing for cannabis intoxication, once Mr. Hall produced a urine test that was positive for cannabis, it was not unreasonable for the County to determine that Mr. Hall could have been intoxicated during working hours. Therefore, it was not clearly erroneous for the circuit court to affirm the Board's determination that Mr. Hall could have been under the influence of cannabis at work.

CONCLUSION

We hold that the circuit court did not err in upholding the Board's decision to terminate Mr. Hall. Although HG § 13-3313 prohibits the County from imposing a civil or administrative penalty on or denying rights or privileges to qualifying patients using cannabis, HG § 13-3314 states that qualifying patients are not protected when, under the influence of cannabis, their conduct constitutes negligence or professional malpractice, or involves the operation of a motor vehicle. Mr. Hall, therefore, could be subjected to the penalty of termination, even though he was a qualifying patient, if he was under the influence of cannabis while at work. Because it was not unreasonable for the Board to conclude that Mr. Hall was under the influence of cannabis while at work, the circuit court did not err in affirming the Board's decision to terminate Mr. Hall. We affirm.

JUDGMENT OF THE CIRCUIT COURT FOR ANNE ARUNDEL COUNTY AFFIRMED; COSTS TO BE PAID BY APPELLANT.