SJC-12933

JOHN DOE, SEX OFFENDER REGISTRY BOARD NO. 3177 vs. SEX OFFENDER REGISTRY BOARD.

Worcester. December 4, 2020. - February 2, 2021.

Present: Budd, C.J., Gaziano, Lowy, Cypher, & Kafker, JJ.

Sex Offender. Sex Offender Registration and Community Notification Act. Evidence, Sex offender. Practice, Civil, Sex offender, Standard of proof.

Civil action commenced in the Superior Court Department on October 15, 2018.

The case was heard by Janet Kenton-Walker, J., on motions for judgment on the pleadings.

The Supreme Judicial Court on its own initiative transferred the case from the Appeals Court.

Edward Gauthier for the plaintiff.
David L. Chenail for the defendant.

KAFKER, J. This case concerns the reclassification of John Doe, Sex Offender Registry Board No. 3177 (Doe), from a level two to a level three sex offender. The Sex Offender Registry Board (board) initiated an upward reclassification of Doe, based

in part on charged sex offenses of which Doe has been acquitted. After an evidentiary hearing, the board ordered Doe to register as a level three offender. Doe challenges the board's determination, arguing that it was arbitrary and capricious and unsupported by substantial evidence. Doe argues that we should require the board to prove new sex offenses by clear and convincing evidence; however, we have recently affirmed that subsidiary facts, including new sex offenses, need only be proved by a preponderance of the evidence. We decline to reconsider this holding. Further, based on review of the hearing examiner's carefully reasoned and detailed decision, we conclude that there was clear and convincing evidence supporting the level three upward reclassification, based on the new sex offenses, substantial other criminal activity, and multiple other risk factors.

Finally, Doe argues that the decision, handed down approximately three years after the sex offense charges, is improper because it was not based on "new information" and the hearing was not held within "a reasonable time." See G. L. c. 6, § 178L (3). Reviewing the totality of the circumstances, we determine that the board's decision was proper because the board initiated the reclassification process shortly after receiving information of the new sex offense charges, and the delays in reaching a final decision were not unreasonable. We

therefore affirm the board's decision to upwardly reclassify Doe.

1. Background. a. Factual and procedural background. i. Sex offenses and allegations. There are three main reported instances of Doe's sexual misconduct, involving three different victims. First, when Doe was seventeen years old, he sexually assaulted a seven year old girl (victim one), rubbing her chest and vagina with his hands, and rubbing his penis on her. On March 10, 1993, Doe was found guilty of indecent assault and battery on a child under the age of fourteen. He was sentenced to one year of probation, which he did not complete, and received a 120-day sentence in a house of correction. As a result of this misconduct, he was classified as a level two sex offender in 2003.

Second, in 1995, a fifteen year old girl (victim two) reported that Doe, then twenty, sexually harassed and assaulted her. Despite her protestations and attempts to stop him, he grabbed her buttocks in a Dunkin Donuts, placed his hands on her breasts while they were driving, spit food at her, attempted to hug and kiss her, and, while they were outside, touched her buttocks and breasts. All of these acts were committed in the presence of victim two's friend, who also made a statement to the police. Doe was charged with two counts of indecent assault

and battery on a person age fourteen or older for these actions, and acquitted.

Third, in 2015, a thirty-nine year old woman (victim three) reported to police that Doe had sexually harassed and assaulted her multiple times while she was driving him to work, including once when they stopped at a store.[1] Doe was charged with three counts of indecent assault and battery on a person age fourteen or older, and was acquitted.[2]

Victim three reported to police that for the two weeks preceding her report, she worked with Doe in order to earn a little money, driving Doe and his coworker back and forth to assist them in moving wood. She reported that against her will, Doe regularly touched her, rubbed her, and fondled her during these rides. He also made explicit sexual comments and sexual advances. Once, he exposed himself to her.

Victim three also reported that while they were in a store, Doe rubbed his semi-erect penis on her backside and grabbed her vagina. Victim three reported that two other people were in the car at the time of the store incident, Doe's friend and the

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[1] Here, we do not review the entirety of the facts related to the 2015 charges, but only those that are relevant to our review.

[2] The incidents giving rise to the charges occurred in two different counties, resulting in two different trials. Doe was acquitted of one count on October 14, 2015, and the other two counts on May 10, 2016.

friend's mother. Police contacted the mother by telephone, who stated victim three had told her that Doe had grabbed her in the crotch. Despite attempts by the police, neither person came to the police station to give a written statement. When police viewed the store video recording between the times that victim three indicated she was there, they did not see anyone matching the description she gave of herself and Doe.

At the first jury trial, victim three testified to similar incidents that she reported to the police, and expanded on the sexual comments Doe made. She testified on cross-examination that Doe told her he had a man-eating pig and a shotgun on his farm, and implied that she felt threatened by his statements. The police lieutenant who investigated her complaint testified that she was upset and crying when she spoke to him about the incidents, and that she did not report anything to him about the man-eating pig or shotgun.

At the second trial, in a different county, see note 2, supra, victim three again testified to similar details as those she reported to the police, expanding on Doe's comments and actions. She testified to the incident at the store and that Doe threatened her with his man-eating pig and gun. She further testified that Doe did not pay her for gasoline or the rental of a U-Haul truck.

The friend's mother, who had previously spoken to the police, testified that victim three told her about Doe's sexual advances but that victim three was vague as to the event in which Doe grabbed her crotch and gave three different locations for the event. The witness further testified that victim three stated she would "get even with" Doe if she did not get paid for the job.

The police officer testified that she was unable to find victim three or Doe in surveillance video recordings from the store. A clerk from the store testified that victim three and Doe were both customers at the store. The clerk was unable to recall if he was working on the day of the incident but stated that he works every morning and had no recollection of any confrontation taking place.

Doe's friend, who worked with Doe and rode in the back seat of the truck while the assaults took place, testified that he did not have any recollection of whether they had stopped at a convenience store. He testified that Doe never touched victim three inappropriately.

ii. Other criminal history. Doe has in excess of thirty adult convictions spanning from 1992 to 2016 for multiple

violent and nonviolent crimes.[3] He has received nine different incarceration sentences in excess of sixty days.[4] Three different women obtained abuse prevention orders against him, in 2006, 2015, and 2017. While incarcerated in 2011, Doe waived his parole hearing, stating, "If I wanted parole I would have just stayed on probation."

iii. Procedural history. In December 2015, based on the 2015 sex offense charges, the board notified Doe of his duty to

[3] Doe has been convicted of larceny, conspiracy, operating a motor vehicle after suspension as a habitual traffic offender, possession of a class B substance, distribution of a class B substance, conspiracy to violate the controlled substances act, failure to register as a sex offender, shoplifting, burning a building, breaking and entering with intent to commit a felony, intimidation, threatening, assault and battery, trespassing, assault with a dangerous weapon, and malicious destruction of property.

[4] On March 17, 2008, he was sentenced to two years of incarceration for failure to register as a sex offender. On August 11, 2008, he received a ninety-day sentence for larceny. On July 13, 2010, his probation for a larceny conviction was revoked and he was ordered to serve eighteen months. On April 9, 2012, he was incarcerated for ninety days for possession of a class B substance. In 2013, he received concurrent six-month terms of incarceration for distribution of a class B substance (four counts) and conspiracy to violate the controlled substances act (two counts). On June 12, 2013, the plaintiff was incarcerated for eighteen months for a violation of probation for a conviction of breaking and entering in the nighttime with intent to commit a felony. On September 4, 2014, he received a ninety-day sentence for possession of a class B substance. A month later he was sentenced to concurrent 112-day terms of incarceration for larceny (three counts) and conspiracy. On January 4, 2017, the plaintiff was convicted of receiving stolen property and possession of marijuana and was sentenced to concurrent six-month terms of incarceration.

register as a level three sex offender. Doe requested a hearing challenging the recommendation, and following the hearing he was ordered to register as a level three sex offender on September 26, 2016. Doe sought judicial review, after which the case was remanded to the board to consider the trial transcripts from his criminal trials. A new hearing was scheduled for January 2018, but was delayed until September 2018 due to a procedural error: the board did not have a record of the full majority of the board's vote to reclassify. After rectifying the error, on October 12, 2018, a board hearing examiner reviewed evidence presented as to Doe's sexual misconduct, criminal history, and history in the community. He examined the allegations underlying the charges related to misconduct against victim two and victim three, and found them sufficiently detailed as to render them reliable evidence for use in the proceeding. He then found by clear and convincing evidence that Doe "presents a high risk to reoffend sexually, and a degree of dangerousness to the public such that a substantial public safety interest is served by active dissemination of his sex offender registry information," and ordered Doe to register as a level three sex offender. Doe requested judicial review of the order, and a Superior Court judge upheld the board's decision on June 19, 2019. Doe appealed from the Superior Court's decision, and we took the case sua sponte.

b. Sex offender reclassification procedure. The board is authorized to seek reclassification of a sex offender. G. L. c. 6, § 178L (3). Reclassification may be initiated based on a number of factors, including receipt of "information indicating the sex offender has . . . [b]een investigated for or charged with committing a new sex offense" or has "[b]een incarcerated for more than [sixty] consecutive days at any time following final classification by the Board." 803 Code Mass. Regs. § 1.32(2) (2016). When the board seeks upward reclassification, the offender has an opportunity to respond and to challenge the board's recommendation at an evidentiary hearing. See G. L. c. 6, § 178L; 803 Code Mass. Regs. §§ 1.06-1.08, 1.32(4) (2016). At that hearing, the elements supporting reclassification must be established by clear and convincing evidence. Doe, Sex Offender Registry Bd. No. 380316 v. Sex Offender Registry Bd., 473 Mass. 297, 314 (2015) (Doe No. 380316). See 803 Code Mass. Regs. §§ 1.14(1), 1.32(4) (2016) (procedures same in reclassification as in classification). The offender may also seek judicial review of a board hearing decision. G. L. c. 6, § 178M.

The board's ultimate determination is comprised of three elements that must each be established by clear and convincing evidence: (1) the offender's risk of reoffense, (2) the offender's dangerousness as a function of the severity and

extent of harm the offender would present to the public in the event of reoffense, and (3) the public safety interest served by public access to the offender's information. Doe, Sex Offender Registry Bd. No. 496501 v. Sex Offender Registry Bd., 482 Mass. 643, 645-646 (2019) (Doe No. 496501). An offender is designated a level three offender "[w]here the board determines that the risk of reoffense is high and the degree of dangerousness posed to the public is such that a substantial public safety interest is served by active dissemination." G. L. c. 6, § 178K (2) (c). The board's enabling statutes and regulations list a number of specific factors that may be considered to determine risk of reoffense and degree of dangerousness. See G. L. c. 6, § 178K; 803 Code Mass. Regs. § 1.33 (2016).

At a hearing, an examiner "shall consider the relevant and credible evidence and reasonable inferences derived therefrom." Doe No. 496501, 482 Mass. at 645, quoting 803 Code Mass. Regs. § 1.20(2) (2016). "In determining whether the[] elements have been established by clear and convincing evidence, a hearing examiner may consider subsidiary facts that have been proved by a preponderance of the evidence." Doe No. 496501, supra at 656.

2. Discussion. a. Standard of review. A reviewing court may set aside or modify the board's classification decision where it determines that the decision is in excess of the board's statutory authority or jurisdiction, is based on an

error of law, is not supported by substantial evidence, or is an arbitrary and capricious abuse of discretion. Doe No. 496501, 482 Mass. at 649. G. L. c. 30A, § 14 (7) (describing factors for court's review of agency's decision). The reviewing court "shall give due weight to the experience, technical competence, and specialized knowledge of the agency, as well as to the discretionary authority conferred upon it." G. L. c. 30A, § 14 (7).

b. Standard of proof for new sex offense. Doe challenges our prior holding that where a sex offense is unproven at a criminal trial, a hearing examiner may consider the facts underlying the charges "where such facts are proven by a preponderance of evidence," the standard used for subsidiary facts. Soe, Sex Offender Registry Bd. No. 252997 v. Sex Offender Registry Bd., 466 Mass. 381, 396 (2013) (Soe). As we expressly stated in Soe, "[a]n acquittal at a criminal trial simply means that a jury did not find the defendant guilty of the charged sex offense beyond a reasonable doubt; it does not demonstrate that the evidence at the classification hearing did not warrant a finding by a preponderance of the evidence that the sex offender committed the charged offense." Id. Doe suggests we should heighten the standard of proof to clear and convincing evidence to prove the facts of new offenses.

To support his proposition, Doe argues that a new sex offense is "not a subsidiary fact [that is] combined with other facts to reach a legal conclusion," but that it is a "legal fact" that triggers reclassification.[5] This argument is incorrect. The occurrence of a new sex offense is not an element that must be proved for reclassification by clear and convincing evidence; it is a factor to be considered in determining the risk of reoffense and dangerousness. See G. L. c. 6, § 178K; 803 Code Mass. Regs. § 1.33. Therefore, it is a subsidiary fact. Doe also confuses the board's many bases to seek reclassification -- set out in 803 Code Mass. Regs. § 1.32 -- with the elements the board bears the burden of proving at an evidentiary hearing on reclassification by clear and convincing evidence. Compare G. L. c. 6, § 178L (authorizing board to promulgate regulations defining what new information is relevant to risk of reoffense as basis to seek reclassification when information is received), with G. L. c. 6, 178K (defining elements of classification to be proved). The regulations

[5] Doe originally contended that the board erroneously applied the preponderance of the evidence standard to the elements underlying his reclassification. The hearing examiner correctly applied the clear and convincing evidence standard to the elements. Doe corrected his mistake in a letter to the court shortly before oral argument and does not contest that we have previously clearly stated that underlying subsidiary facts may be proved by the preponderance of the evidence. See Doe No. 496501, 482 Mass. at 656.

explicitly provide that receipt of information indicating that the offender has been "investigated for or charged with committing a new sex offense" is just one of many bases for seeking reclassification. 803 Code Mass. Regs. § 1.32(2)(a). Other bases include conviction of a new sex offense, listed separately to differentiate it from mere investigation, as well as other grounds unrelated to a new sex offense. See 803 Code Mass. Regs. § 1.32(2)(b). See also 803 Code Mass. Regs. § 1.32(2) (list of bases is nonexhaustive).

Further, Doe's challenge is unpersuasive in light of the facts and legal analysis in the current case. First, the hearing examiner in this case erred in Doe's favor by applying the heightened burden of clear and convincing evidence not only to the necessary elements of reclassification, but also to proof of the new sex offenses. Second, the board sought to reclassify Doe because he was investigated and charged for a new sex offense under 803 Code Mass. Regs. § 1.32(2)(a), not because he was convicted of a new sex offense under § 1.32(2)(b). Therefore, his argument that he never committed or was convicted of the sex offense does not apply to the board's decision to initially seek reclassification.[6] Third, Doe's upward

[6] Nowhere does Doe challenge the validity of the regulation using investigation or charges concerning a new sex offense as a

reclassification was based only in part on the new sex offenses. His substantial other criminal activity, occurring after his original classification and resulting in his incarceration for over sixty days, independently justified the board's decision to seek upward reclassification and was appropriately considered in the hearing examiner's analysis of risk factors. Numerous other risk factors were also properly considered.

Doe's argument that we should overturn our precedent is based on our decision in Doe No. 380316, 473 Mass. 297. That case, which raised the standard of proof for elements of classification to clear and convincing evidence, id. at 298, does not support his argument.[7] It was decided with the knowledge that subsidiary facts are proved by preponderance of the evidence, and did not reference or overturn the subsidiary fact standard. Compare Soe, 466 Mass. at 396 (stating in 2013 that charges may be proved by preponderance of evidence), with Doe No. 380316, supra (raising standard of proof for elements in 2015). We have considered and upheld the subsidiary fact standard since our decision in Doe No. 380316, stating in 2019:

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basis for seeking reclassification. See 803 Code Mass. Regs. § 1.32(2)(a) (2016).

[7] Doe No. 380316 was relevant to Doe's erroneous contention that the hearing examiner applied the preponderance of the evidence standard to the elements of reclassification. Doe's brief contains exactly one sentence connecting the case to the argument at hand.

> "In determining whether these elements have been established by clear and convincing evidence, a hearing examiner may consider subsidiary facts that have been proved by a preponderance of the evidence. This, too, is consistent with the evidentiary rule in criminal cases that, although every element needs to be proved beyond a reasonable doubt, preliminary questions of fact and subsidiary facts need only be proved by a preponderance of the evidence." (Quotation and citation omitted.)

Doe No. 496501, 482 Mass. at 656. While recognizing the burdensome nature of sex offender registration, we reiterate that, in the interest of accurately determining the risk of reoffense and dangerousness to the public, the board may consider subsidiary facts that are proved by a preponderance of the evidence, including subsidiary facts resulting in acquittals, where those facts are nonetheless proved by a preponderance of the evidence. Cf. Doe No. 380316, 473 Mass. at 301-302 (making exception to stare decisis because of substantial changes to law and other developments in time since previous decision).

c. Doe's challenge to the hearing examiner's decision. In addition to challenging the legal standard, Doe also objects to the hearing examiner's specific application. Doe contends that there is insufficient evidence to support his classification and the board otherwise acted arbitrarily and capriciously. See G. L. c. 30A, § 14 (7). We reject both arguments, concluding there was substantial evidence to support the decision and no legal error.

Substantial evidence is "such evidence as a reasonable mind might accept as adequate to support a conclusion." G. L. c. 30A, § 1 (6). As we "give due weight to the experience, technical competence, and specialized knowledge of the [board], as well as to the discretionary authority conferred upon it," G. L. c. 30A, § 14 (7), Doe "bears a heavy burden of establishing that the [board]'s decision was incorrect" (quotation and citation omitted). Boston Police Dep't v. Civil Serv. Comm'n, 483 Mass. 461, 469 (2019).

Doe bases his argument on inconsistencies in victim three's accounts of the alleged assault, inconsistencies between her statements and those of others, the absence of surveillance video evidence, and victim three's motive to lie.[8] In addition to those inconsistencies already reported in our discussion of the hearing examiner's facts,[9] Doe emphasizes that victim three testified she could not pinpoint specific dates when Doe touched her; that she at different times testified to different timelines of how long she gave Doe rides and when the touching

[8] Doe does not clarify what motive this is. We assume it is the indication that she was never reimbursed for the rides she gave Doe, as the hearing examiner referenced this in his decision.

[9] The inconsistencies were, notably, the absence of victim three and Doe in a surveillance video recording, the store clerk's testimony that he did not see an incident, and Doe's friend's testimony that he never saw any inappropriate behavior while riding with Doe and victim three.

started; that she maintained she had told the police about the shotgun and the man-eating pig, but the police officer testified she never mentioned them; that she testified she was "not looking to get paid" but told the police officer that she expected to be paid; and that she reported the sexual assault after Doe failed to pay her.

In this case, the hearing examiner properly considered both the trial transcripts and the police reports. See Doe, Sex Offender Registry Bd. No. 10800 v. Sex Offender Registry Bd., 459 Mass. 603, 638 (2011) (hearing examiner not bound by rules of evidence and may admit and give probative effect to evidence if it is kind of evidence on which reasonable persons generally rely in conduct of serious affairs). The hearing examiner's decision is clear that his finding that Doe did assault victim three on multiple occasions was based on her multiple detailed and consistent reports about the assaults. The hearing examiner also considered the partial corroboration of victim three's statements, and the similarity between the reported assaults on victim two and the reported assaults on victim three. Importantly, the hearing examiner recognized that the statements were not fully corroborated and considered victim three's motive to lie before concluding that there was not substantial evidence that victim three was being deceptive in her statements to the police and in court. He weighed the entirety of the evidence

before him, taking full note of the contents of the trial transcripts on which Doe relies and any inconsistencies therein with the police reports, and concluded that there was sufficient evidence to find Doe sexually assaulted victim three.[10]

After this conclusion, the hearing examiner considered, in detail, four high risk factors, eleven risk elevating factors, and three risk mitigating factors that he found applicable from the regulations' list of risk factors.[11] As part of his analysis, the hearing examiner appropriately considered Doe's

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[10] The hearing examiner found "sufficient evidence under the clear and convincing standard to indicate that [Doe] did sexually assault [victim three] on multiple occasions." As we have stated, this subsidiary fact need only be found by a preponderance of the evidence. Doe No. 496501, 482 Mass. at 656.

[11] The hearing examiner considered the high risk factors of Doe's repetitive and compulsive behavior, an adult offender and a child victim, Doe's age at his first sexual offense, and declining early release in order to avoid community supervision. The hearing examiner also considered the risk elevating factors of the relationship between Doe and the victims, alcohol and substance abuse, commission of a sex offense in a public place, an extravulnerable victim, the diversity of the types of Doe's victims, the number of victims, Doe's contact with the criminal justice system, his history of violence unrelated to sexual assaults, his noncompliance with community supervision, his hostility toward women, and his less than satisfactory participation in sex offender treatment. Finally, the hearing examiner considered the risk mitigating factors of Doe's offense-free time in the community, his advanced age, and his participation in sex offender treatment, but the hearing officer gave the last factor no weight due to lack of documentation concerning Doe's participation and progress. See 803 Code Mass. Regs. § 1.33 (2016) (listing and classifying risk factors).

long criminal history, including substance abuse;[12] his nonsexual violence; his noncompliance with community supervision; and his multiple restraining orders from women. See 803 Code Mass. Regs. § 1.33(9)-(13), (15). Finding that Doe's behavior -- including, but not limited to, behavior underlying the 2015 sexual offense charges -- implicated multiple risk factors, the hearing examiner concluded that there was clear and convincing evidence that Doe presents a high risk to reoffend sexually, and a degree of dangerousness to the public such that a substantial public safety interest is served by active dissemination of his sex offender registry information. See G. L. c. 6, § 178K (2) (c) (elements for level three sex offender classification). Reviewing the hearing examiner's detailed decision and the reports and transcripts on which it relies, and giving due weight to the board's expertise and specialized knowledge, we conclude that the decision is supported by substantial evidence. See G. L. c. 30A, § 14. Doe bases his argument on slight

[12] Title 803 Code Mass. Regs. § 1.33(9) (2016) provides that, because "[d]rugs and alcohol are behavioral disinhibitors [that] may increase an offender's risk of reoffense," alcohol and substance abuse may be considered "when the sex offender has a history of substance abuse, demonstrates active substance abuse, or when the offender's substance use was a contributing factor in the sexual misconduct." Victim three testified that Doe's offensive touching was worse when he was drunk. Doe also has a lengthy history of substance-related crime. The hearing examiner therefore found Doe's substance abuse to increase his risk of reoffense and degree of dangerousness.

inconsistencies in the records that the hearing examiner carefully examined and weighed in his conclusion. Cf. Doe, Sex Offender Registry Bd. No. 151564 v. Sex Offender Registry Bd., 456 Mass. 612, 622-623 (2010) (case remanded to board where board did not consider evidence presented of effect of age on recidivism).

d. Requirement that reclassification be based on new information. Doe also argues that his upward reclassification was in violation of G. L. c. 6, § 178L (3), because it was not based on new evidence and the board failed to provide Doe a hearing within a reasonable time as required by statute. General Laws c. 6, § 178L (3), states:

> "The board may, on its own initiative . . . , seek to reclassify any registered and finally classified sex offender in the event that new information, which is relevant to a determination of a risk of re-offense or degree of dangerousness, is received. The board shall promulgate regulations defining such new information and establishing the procedures relative to a reclassification hearing held for this purpose; provided that (i) the hearing is conducted according to the standard rules of adjudicatory procedure or other rules which the board may promulgate, (ii) the hearing is conducted in a reasonable time, and (iii) the sex offender is provided prompt notice of the hearing . . . ." (Emphasis added.)

We must read statutory language "with its plain meaning and in light of the aim of the Legislature" (citation omitted). Commonwealth v. Wassilie, 482 Mass. 562, 573 (2019). The statute's plain language is "the principal source of insight into legislative intent." Water Dep't of Fairhaven v.

Department of Envtl. Protection, 455 Mass. 740, 744 (2010), quoting Providence & Worcester R.R. v. Energy Facilities Siting Bd., 453 Mass. 135, 142 (2009). Within a statute, "all parts shall be construed as consistent with each other so as to form a harmonious enactment effectual to accomplish its manifest purpose." Bank of New York Mellon v. King, 485 Mass. 37, 50 (2020), quoting Anderson v. National Union Fire Ins. Co. of Pittsburgh PA, 476 Mass. 377, 381–382 (2017).

Here, we must interpret the requirements of new information and a timely hearing, and their interrelationship. We have previously stated that "[w]e do not consider the 'reasonable time' standard to be a rigid one; rather, it requires a 'fair consideration of the total circumstances of the case.' However, it does not provide the board with unfettered discretion to delay offender-initiated reclassification and termination hearings . . . ." Doe, Sex Offender Registry Bd. No. 76819 v. Sex Offender Registry Bd., 480 Mass. 212, 223 (2018), quoting School Comm. of Boston v. Board of Educ., 363 Mass. 20, 28 (1973). The same is true for board-initiated upward classifications. We therefore consider whether the board's timing for initiating, conducting, and completing an upward classification was reasonable in light of the new information that the board was presented. We conclude that the timing here was reasonable.

Doe alleges that the approximately three-year delay between the time of the 2015 sexual assault charges and the 2018 reclassification hearing at issue violates the time requirements in G. L. c. 6, § 178L (3). However, in this case, the board first sought to reclassify Doe in December 2015, two months after he was first acquitted of the new sex offenses. There were reasonable explanations for the three-year delay in reaching a final decision on reclassification. Doe's challenge to the initial reclassification decision resulted in a remand for the board to consider the trial transcripts. Upon remand, the board discovered a procedural error, that there was no record of a vote by a majority of the full board to seek reclassification of Doe. This procedural error did further delay final resolution, but the board timely rectified the error, documenting a vote of the full board less than one month after the error was discovered. A new hearing considering the trial transcripts was then held. There was no evidence of any improper motive or other bad faith on the part of the board.[13] In sum, the board acted expeditiously when it received information of allegations of new sex offenses against Doe, and the delays to finally resolve the reclassification were

[13] There is also no evidence that the error was prejudicial. The hearing examiner based his de novo decision on records, transcripts, and police reports, all documents that were unaffected by the time needed to correct the procedural error.

reasonable and not evidence of any bad faith on the part of the board.

3. Conclusion. For the foregoing reasons, we conclude that the hearing examiner's decision was supported by substantial evidence and not arbitrary or capricious. We further conclude that because the board promptly moved to reclassify Doe upon receipt of allegations of new sex offenses, and there was no evidence of any improper delay on the part of the board in its proceeding to reclassify Doe, the board's decision comports with the requirements of G. L. c. 6, § 178L (3), that the decision to seek to reclassify Doe be based on "new information" and made at a hearing conducted within a "reasonable time." Therefore, the judgment affirming the board's decision to classify Doe as a level three sex offender is affirmed.

So ordered.