

Circuit Court for Wicomico County
Case No. C-22-CV-18-000362

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 304

September Term, 2019

DAWN CAREY

v.

SALISBURY UNIVERSITY

Fader, C.J.,
Arthur,
Zarnoch, Robert A.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Fader, C.J.

Filed: May 28, 2020

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

This appeal involves a request for reclassification of an administrative staff position at Salisbury University (the “University”). Dawn Carey, the appellant, sought to be reclassified from Administrative Assistant II to the higher level of Program Management Specialist. The University, the appellee, denied the request for reclassification, and an Administrative Law Judge (“ALJ”) of the Office of Administrative Hearings (“OAH”) affirmed. Ms. Carey petitioned for judicial review in the Circuit Court for Wicomico County, which denied the petition, and Ms. Carey appealed. We conclude that the ALJ’s decision to uphold the University’s denial of reclassification for Ms. Carney was supported by substantial evidence. Therefore, we will affirm.

BACKGROUND

Statutory and Regulatory Background

Job classifications for government employees have their roots in the civil service reforms of the Progressive Era. In 1883, the Pendleton Civil Service Reform Act, 22 Stat. 403, revolutionized federal employment by repudiating the spoils system¹ and providing “for open, competitive examinations for testing the fitness of applicants for the public service.” *Id.* at 403. In 1920, Maryland became the ninth state to adopt a merit system of employment for State personnel. *See* Phillip S. Anthony et al., *Maryland State Personnel, Pensions, and Procurement*, 5 Legislative Handbook Series 7 (2014), *available at*

¹ Under the “spoils” or “patronage” system that prevailed in nineteenth-century America, “political bosses and elected officials [] reward[ed] individuals who supported them” with government jobs. *See* Phillip S. Anthony et al., *Maryland State Personnel, Pensions, and Procurement*, 5 Legislative Handbook Series 9 (2014), *available at* <https://msa.maryland.gov/megafile/msa/speccol/sc5300/sc5339/000113/020000/020598/unrestricted/20141692e-005.pdf> (accessed May 20, 2020).

<https://msa.maryland.gov/megafile/msa/speccol/sc5300/sc5339/000113/020000/020598/unrestricted/20141692e-005.pdf> (accessed May 20, 2020). The legislation that created Maryland’s merit system described the reform as intended

to provide candidates for appointment to positions in the classified service after determining by practical tests of the fitness of such candidates for the positions which they seek, without regard to the political or religious opinions or affiliations of such candidates, or of any other standard except the business efficiency of the classified service, and to provide adequate means for the prompt removal from positions in the classified service of all persons therein who may be indolent, incompetent, inefficient, or otherwise unfit to remain therein²

Id. at 11 (quoting Md. Laws 1920, ch. 41, § 27); *see also e.g., Am. Fed’n of State, County & Mun. Emps., Council 31, AFL-CIO v. Dep’t of Cent. Mgmt. Servs.*, 681 N.E.2d 998, 1006 (Ill. App. Ct. 1997) (explaining that “a fundamental purpose of a civil service system is to remove employment from the patronage system” by “offer[ing] . . . promotion for conscientious, faithful, honest, and efficient service”).

Among other reforms, “[t]he original merit system law included provisions relating to . . . the establishment of position classes.” Anthony et al., 5 Legislative Handbook Series at 11. Such classifications were “intend[ed] to avoid problems inherent in political spoils systems such as nepotism” by “provid[ing] standards of employment and advancement through testing.” *Sec’y, Md. Dep’t of Pers. v. Bender*, 44 Md. App. 714, 715 (1980), *aff’d*,

² Similarly, in *Lilly v. Jones*, 158 Md. 260 (1930), the Court of Appeals described Baltimore City’s merit system as having been “inaugurated, first, to secure the appointment of persons, after examination, suitable and qualified for the positions or offices to which they are applicants, and, second, . . . to place their removal beyond the control of the appointing power, who might, for political, religious, or other insufficient reasons, be disposed to remove them, and to appoint unsuitable and inefficient persons as their successors to the injury and detriment of the public.” *Id.* at 270-71.

290 Md. 345 (1981). As currently defined by § 1-101(c) of the State Personnel & Pensions Article (2015 Repl.; 2019 Supp.), a job class is “a category of one or more similar positions.” Those positions must be (i) “similar in their duties and responsibilities,” and (ii) “similar in the general qualifications required to perform those duties and responsibilities,” as well as subject to (iii) “the same standards and, if required, tests of fitness,” and (iv) “the same rates of pay.” *Id.* § 4-201(b). By mandating that the qualifications and compensation for analogous positions reflect “the similarity of duties performed and responsibilities assumed,” classification is designed to ensure “equality of treatment within a class” and thereby insulate jobs from political influence. *See* 67 C.J.S. *Officers* § 108.

For most State employees, classifications are defined and administered by the Department of Budget and Management. *See Kram v. Md. Military Dep’t*, 374 Md. 651, 658-62 (2003). A number of State entities have their own personnel systems, among the largest of which is that of the University System of Maryland. Chapter 246 of the Acts of 1988, which created the University System of Maryland, “authorized the Board of Regents . . . to establish personnel policies and procedures independent of” what is now the Department of Management and Budget. *See* Anthony et al., 5 Legislative Handbook Series at 20. “Except as otherwise provided by law, appointments of the University System of Maryland are not subject to or controlled by the provisions of the State Personnel and Pensions Article that govern the State Personnel Management System.” Md. Code Ann., Educ. § 12-111(a) (2019 Repl.). Thus, for Ms. Carey, the relevant classifying entity is the Board of Regents of the University System of Maryland.

Facts and Procedural History

The University is a four-year public university located in Salisbury, Maryland. A member of the University System of Maryland, the University has over 8,700 students and employs approximately 1,500 people. Salisbury Univ., *Campus History* (2018), <https://www.salisbury.edu/discover-su/campus-history/> (accessed May 21, 2020).

In July 2016, Dawn Carey was hired to work as an Administrative Assistant II in the University’s Department of Chemistry, part of the Richard A. Henson School of Science and Technology (the “Henson School”). “Early in [her] tenure at the University,” Ms. Carey “came to believe she was performing the duties of a” Program Management Specialist, which was the title of her immediate predecessor. Accordingly, in April 2017, she “requested a job study analysis” in which she sought to be reclassified as a Program Management Specialist.³

³ According to University System Bylaws, “[p]osition classification actions” may be based on (1) “significant and substantial changes that evolve in the position’s primary duties,” (2) “structured changes [that] occur in the position’s duties and responsibilities that were unforeseen at the time when the employee accepted the position and are crucial to the mission and/or organizational effectiveness of the USM institution,” or (3) “changes in the job evaluation program.” Although Ms. Carey acknowledged in her request for reclassification that her duties and responsibilities had not changed, she asserted that her job was misclassified at the time she accepted it, and the University agreed to review her position for possible reclassification based on that assertion. During the hearing, the University moved for judgment at the close of Ms. Carey’s case on the ground that she was not eligible for reclassification. The ALJ denied the motion, stating (while apparently misidentified in the transcript as counsel for the University) that “[t]here’s no requirement . . . that says that you have to first do the lower level duties for a period of time and then there’s a substantial change. And in theory, there could be a substantial change the very minute you walk in the door.” The University has not challenged that ruling on appeal.

Job classes within the University System of Maryland are defined by job class specifications. Each job class specification has three parts, the job summary, the list of primary duties, and minimum qualifications.⁴ The job class specification for Administrative Assistant II is:

JOB SUMMARY:

Under general supervision, provides complex administrative support to an individual, office, department or program. Work requires comprehensive knowledge of the organization or program where assigned, skill in working with issues related to policy, procedures, and confidential matters, and involves considerable participation in the work of the supervisor. Incumbents exercise discretion and judgment with considerable consequence of error.

PRIMARY DUTIES

1. Edits, formats, and revises a variety of documents and materials created by others. Proofreads for grammatical, typographical and basic content errors.
2. Converts rough copy and drafts to final version quality reports, presentations, and documents. Includes incorporating edits from multiple reviewers, adding graphics and effects to presentations, and applying campus style guidelines.
3. Drafts and signs routine correspondence and replies to inquiries which do not require technical program knowledge.
4. Develops, implements, and maintains paper and electronic filing systems which meet department needs and satisfy requirements for retention and information security. Enters, updates, and retrieves information as needed. Creates reports as needed.
5. Researches, analyzes, and summarizes information and source materials for reports independently and communicates findings orally and in writing.
6. Receives and reads incoming correspondence and information. Summarizes and prioritizes review of correspondence. Screens out items to

⁴ We omit the qualifications component of the job class specifications because it is not relevant to the issues raised on appeal. The University does not contend that Ms. Carey fails to satisfy the minimum qualifications for the positions.

be handled personally and forwards remainder with necessary background material.

7. Receives and screens telephone calls and visitors. Independently handles procedural and substantive matters and inquiries which do not require technical knowledge or refers callers to others as appropriate.

8. Makes all necessary arrangements for travel and independently performs required administrative follow-up and recordkeeping.

9. Assists in preparing and administering department budget by updating accounts, and running periodic reports.

10. Acts as intermediary for supervisor, interacting with officials, staff at all levels and the public. Provides information requiring comprehensive knowledge of institutional policies, procedures, and special departmental issues.

11. Anticipates supervisor's course of action when absent and facilitates problem resolution. Interprets administrative decisions and policies to other staff and transmits directions and instructions based on authority delegated by the supervisor.

12. May provide guidance and instruction to other office support staff.

Univ. Sys. of Md., *Job Class Specification: Administrative Assistant II* (Jan. 22, 2008), <https://www.usmd.edu/usm/adminfinance/hr/umspp/jobspec.php?tc=N09AA2> (accessed May 22, 2020).

The job class specification for Program Management Specialist is as follows:

JOB SUMMARY:

Under general supervision, performs a variety of routine professional and analytical assignments involving the practical application of management principles and techniques to routine operational activities.

PRIMARY DUTIES

1. Assists in the management of assigned program or supervision of an operational unit. Assists in the planning and implementation of new or revised programs, procedures, practices and organization.

2. Assists in or conducts studies and analyses of programs, organizations, procedures, or systems of limited scope or assists senior specialists in more complex projects.

3. Collects, compiles, and organizes data pertinent to various ongoing studies. Analyzes, summarizes, and communicates this information to appropriate officials.
4. Assists in the preparation of final reports, recommendations, and other information resources for the improvement of the organizational element or its programs.
5. Assists in planning and coordinating administrative activities of a program, such as assisting in the formulation and preparation of the organization[]’s budgets, grant proposals, and project proposals.
6. Consults with program head and administrative officials regarding policies, trends, and interpretation of data and program needs following specific instructions.
7. Conducts basic efficiency, time and cost studies and analyses of work processes and systems. Prepares simple statistical tables and charts, staffing patterns, work flow and organization charts.
8. Establishes effective communication channels and acts as liaison between the program and officials within and outside the institution.
9. May supervise[] clerical personnel.

Univ. Sys. of Md., *Job Class Specification: Program Management Specialist* (Feb. 03, 2005), <https://www.usmd.edu/usm/adminfinance/hr/umspp/jobspec.php?tc=N10PM1> (accessed May 22, 2020).

In response to Ms. Carey’s reclassification request, two employees from the University’s Office of Human Resources (the “Auditors”) conducted a “desk audit.”⁵ Following the audit, the Auditors “recommended against reclassification.” In March 2018,

⁵ “A desk audit is a procedure . . . whereby an employee’s work is reviewed to determine if he or she is performing responsibilities above those required for that individual’s current grade, making the employee eligible for a promotion and/or a higher pay grade.” *Ciafrei v. Bentsen*, 877 F. Supp. 788, 790 (D.R.I. 1995); *see also Jaburek v. Foxx*, 813 F.3d 626, 629 (7th Cir. 2016) (“A desk audit is when supervisory authorities assess an employee’s duties and pay.”); *Johnson v. Dist. of Columbia*, 947 F. Supp. 2d 123, 129 (D.D.C. 2013) (“[A] desk audit . . . is a process administered by [a] Human Resources department . . . to determine whether an employee’s duties and responsibilities are commensurate with his [or her] position, grade, and salary.”).

Wendy Ringling, the University’s Director of Human Resources Operations, informed Ms. Carey that “no change in classification [was] recommended” because “the current classification sufficiently represent[ed] and encompass[e]d the majority of the duties of the position.” She explained:

The requirements and demands of the position clearly indicate that the title of Administrative Assistant II is the most appropriate, specifically because the duties of the position are clerical and administrative in nature. There is no departmental or other final decision making authority accorded this position and further, the position does not establish guidelines or parameters for any decisions required for the Department.

This position does not qualify for the Program Management Specialist (PMS) title, as it does not require the practical application of management principles and techniques. This position provides assistance to management for the department at an administrative level and not in the management of the department. This position is not responsible for decision making outside of the scope established in the Administrative Assistant II Job Specification (duty #11).

(emphasis in original).

Ms. Carey timely filed a grievance, which, by both parties’ consent, “moved directly to . . . an appeal to the Office of Administrative Hearings.” Before the hearing, the University moved “to exclude any testimony or evidence including, concerning, regarding or otherwise relating to” a 2007 OAH decision involving Ms. Carey’s immediate predecessor, Terri Elliott. In the 2007 OAH decision, an ALJ had “ordered Ms. Elliott’s position reclassified from an [Administrative Assistant II] to a [Program Management Specialist].” The University argued that the 2007 OAH decision was irrelevant because it “date[d] back a decade before Ms. Carey’s grievance, and involve[d] an out-dated [Administrative Assistant II] Job Class Specification, different employees, and a different

set of circumstances.” The University also noted that the 2007 OAH decision had been “heavily influenced by” the University’s failure to present evidence. Specifically, the University had “failed to present any evidence from the desk audit performed of Ms. Elliott’s [Administrative Assistant II] position, or put on any testimony from the individual who conducted the desk audit.” Therefore, the University contended, the 2007 OAH decision would “not make the existence of any fact that is of consequence to the determination of the issues in these cases more or less probable.”

Ms. Carey opposed the University’s motion in limine. She argued that the 2007 OAH decision, “which granted a reclassification to [Ms. Carey]’s immediate predecessor in the same position,” was “sufficiently relevant as to be admissible in these proceedings.” Ms. Carey contended that although the Administrative Assistant II job class specification had been updated since 2007, “[s]ubstantively, there [were] no differences.” She also asserted that the University never petitioned for judicial review of the 2007 OAH decision, and argued that “[t]he fact that in hindsight, the University would have liked the prior case to have been presented differently does not adversely affect [its] probative value.” Ms. Carey contended that the prior decision was relevant because it involved “the same position, the same academic department, and the same duties” as in her case, and that the University’s attempts to distinguish it were addressed properly “to the document’s weight, rather than its admissibility.”

The ALJ denied the motion at the outset of the hearing. She concluded that the prior decision was irrelevant: “The evidence of the 2007 decision is not admissible because there’s no binding precedent from the 2007 grievance in an administrative decision. . . . I

don't have any obligation to follow the 2007 decision and I don't have any authority to follow the 2007 decision.”

The ALJ then heard testimony from David Frank Rieck, Chair of the Department of Chemistry; Karen Penuel and Sandra Ramses, two Program Management Specialists in other departments within the Henson School; Kenneth A. Vedder, the University's Associate Vice President of Human Resources; Ms. Ringling; and the Auditors. Some of these witnesses testified that Ms. Carey was performing the work of a Program Management Specialist, while others testified that she was properly classified as an Administrative Assistant II.

Ms. Carey, Dr. Rieck, Ms. Penuel, and Ms. Ramses testified that Ms. Carey's work fell within the Program Management Specialist classification. Ms. Carey and Dr. Rieck went through the job duties section of the job class specification and indicated that she performed each of the listed duties. Ms. Penuel, a Program Management Specialist, likewise agreed with statements that she “d[id] a very similar job to Ms. Carey” and that her “job task[s] and responsibilities [were] very similar.”

Ms. Ringling—whom the court qualified without objection as an expert “in the areas of job classification and reclassification”—testified regarding the University's process for interpreting job class specifications. She explained:

[T]he job specification is greater than just the duties, the duties are only one of three different parts of a job specification. There is the purpose statement, there are the duties and then there are knowledge[,] skills[,] and abilities that are necessary to perform the duties at the level the job specification intends them to be performed. So all three ha[ve] to [be] take[n] into consideration[,] not just the wording of a simpl[e] duty because some things can . . . have the same wording but be done at . . . different levels of complexity.”

Ms. Ringling testified that Ms. Carey was not qualified for Program Management Specialist classification because it was “intended to be programmatic[,] in that the duties it performs are directly related to the enhancement and the future of the program based on strategic goals and objectives of the program[,] not necessarily tasks based work that [is] needed to ensure that the department o[r] program just continues on a daily basis.” Ms. Ringling explained that most of Ms. Carey’s duties were “task oriented,” in the sense that “they are tasks that need to be accomplished in any office in order for the office to function.” She also testified that Ms. Carey’s work did not “involv[e] the practical application of management principles and techniques,” as required by the job summary section of the job class specification, because her duties were “not programmatic” and “d[id]n’t rise to the level of analysis.” The Auditors both testified that Ms. Carey was classified appropriately as an Administrative Assistant II because her “tasks were solely based on policies and procedures” and were “[m]ore routine, less complex.”

At various times throughout the hearing, Ms. Carey attempted to elicit testimony from witnesses concerning the duties of her predecessor, Ms. Elliott. The ALJ sustained the University’s objections, ruling that the “issue [was] whether Ms. Carey [was] currently improperly classified,” and that she was “only concerned with what duties [Ms. Carey] [was] performing[,] . . . [n]ot what a prior employee performed.”

After the hearing, the ALJ issued a written decision upholding the University’s denial of Ms. Carey’s reclassification. The ALJ found—as the University conceded—that Ms. Carey was “an exemplary employee who require[d] little day-to-day supervision”; that her supervisor “relie[d] on her to a great extent”; and that “[s]he show[ed] initiative and

she ha[d] important institutional knowledge.” Nevertheless, relying on Ms. Ringling’s expert testimony, the ALJ concluded that Ms. Carey “by and large . . . d[id] not perform” “the nine primary duties of the [Program Management Specialist].” The ALJ reasoned that Ms. Carey’s “job functions . . . cross[ed] over between different job classifications”—including Administrative Assistant I; Administrative Assistant II; and Budget Analyst I—but that she “d[id] not apply management principles and techniques to routine operational activities”; did not “create[] the budget”; and was not “responsible for making management-level decisions.” Although Ms. Carey “compile[d] and organize[d] data for tracking and recording budgetary matters,” the ALJ concluded that “[h]er responsibility [was] characterized more as a clerical function” and was “more in keeping with complex support services in an [Administrative Assistant] II job description than a [Program Management Specialist] job description.” The ALJ accepted Ms. Ringling’s testimony that Ms. Carey did “not analyz[e]” information because she “gather[ed] data and put[] it in spreadsheets and reports” rather than “gather[ing], eliminat[ing], and assess[ing] data.” Because Ms. Carey was “not in a position where specialized knowledge . . . was required, nor [was] she ultimately responsible for performing the analytical functions that are required of a [Program Management Specialist],” the ALJ held that the University had not “misinterpreted or misapplied any rule . . . when it denied [Ms. Carey’s] request to reclassify her position.”

Ms. Carey timely petitioned for judicial review by the Circuit Court for Wicomico County. After a hearing, the circuit court issued an order “find[ing] that there is substantial evidence to support the decision of the Administrative Law Judge” and that “there was no

error on her part in excluding evidence of the 2007 OAH [Decision].” Accordingly, the court denied the petition for judicial review. Ms. Carey timely appealed.

DISCUSSION

“In reviewing the decision of an administrative agency, this Court ‘look[s] through’ the decision of the circuit court and directly evaluates the decision of the agency.” *Motor Vehicle Admin. v. Medvedeff*, 466 Md. 455, 464 (2019) (quoting *Brutus 630, LLC v. Town of Bel Air*, 448 Md. 355, 367 (2016)). Under § 10-222(h) of the State Government Article (2018 Repl.),⁶ *see Charles County Dep’t of Soc. Servs. v. Vann*, 382 Md. 286, 295 (2004), our “role . . . is limited to determining if there is substantial evidence in the record as a whole to support the agency’s findings and conclusions, and to determine if the

⁶ Section 10-222(h) empowers a reviewing court to:

- (1) remand the case for further proceedings;
- (2) affirm the final decision; or
- (3) reverse or modify the decision if any substantial right of the petitioner may have been prejudiced because a finding, conclusion, or decision:
 - (i) is unconstitutional;
 - (ii) exceeds the statutory authority or jurisdiction of the final decision maker;
 - (iii) results from an unlawful procedure;
 - (iv) is affected by any other error of law;
 - (v) is unsupported by competent, material, and substantial evidence in light of the entire record as submitted;
 - (vi) in a case involving termination of employment or employee discipline, fails to reasonably state the basis for the termination or the nature and extent of the penalty or sanction imposed by the agency; or
 - (vii) is arbitrary or capricious.

administrative decision is premised upon an erroneous conclusion of law.” *Donlon v. Montgomery County Pub. Schs.*, 460 Md. 62, 74 (2018) (quoting *Motor Vehicle Admin. v. Shea*, 415 Md. 1, 14 (2010)). We “must review the agency’s decision in the light most favorable to it; . . . the agency’s decision is prima facie correct and presumed valid, and . . . it is the agency’s province to resolve conflicting evidence and to draw inferences from that evidence.” *Id.* Nevertheless, “it is always within our prerogative to determine whether an agency’s conclusions of law are correct,” *Bd. of Liquor License Comm’rs v. Kougl*, 451 Md. 507, 513-14 (2017) (quoting *Adventist Health Care v. Md. Health Care Comm’n*, 392 Md. 103, 120-21 (2006)), and “[i]f an agency’s conclusion is based on an error of law, it will not be upheld,” *Kougl*, 451 Md. at 514.

I. THE ALJ DID NOT ERR OR ABUSE HER DISCRETION IN EXCLUDING THE 2007 OAH DECISION.

Ms. Carey contends principally that the ALJ erred in failing to consider the 2007 OAH decision and to treat it as *res judicata*. “An ALJ is permitted to exclude evidence that is incompetent, irrelevant, immaterial, or unduly repetitious.” *Solomon v. State Bd. of Physician Quality Assurance*, 155 Md. App. 687, 705 (2003). “[E]videntiary rulings, particularly those hinging on relevance, are entrusted to the sound discretion of the ALJ,” *Para v. 1691 Ltd. P’ship*, 211 Md. App. 335, 386 n.17 (2013), and “[w]e do not disturb such rulings absent an abuse of the ALJ’s discretion,” *Solomon*, 155 Md. App. at 705. Provided that the “agency’s exercise of discretion does not violate regulations, statutes, common law principles, due process and other constitutional requirements, it is ordinarily unreviewable by the courts.” *Md. State Police v. Zeigler*, 330 Md. 540, 557 (1993).

Ms. Carey argues that the ALJ erred as a matter of law in excluding the 2007 OAH decision because the “earlier decision was, in effect, *res judicata*.” The University responds that “Ms. Carey’s *res judicata* argument is waived because she did not raise the *res judicata* doctrine in her opposition to the University’s motion *in limine* and the ALJ did not rule on the application of the doctrine in excluding the evidence.” We agree. Ms. Carey did not argue *res judicata* before the ALJ and, therefore, is precluded from raising it now. See *Brodie v. Motor Vehicle Admin.*, 367 Md. 1, 3-4 (2001) (“[I]n an action for judicial review of an adjudicatory decision by an administrative agency, a reviewing court ordinarily ‘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.’” (quoting *Dep’t of Health & Mental Hygiene v. Campbell*, 364 Md. 108, 123 (2001))).

In any event, even were Ms. Carey’s argument not waived, we would conclude that it lacks merit. “Under the doctrine of *res judicata*, a judgment on the merits in a prior suit bars a second suit involving the same parties or their privies based on the same cause of action.” *Batson v. Shiflett*, 325 Md. 684, 703 (1992) (quoting *Parklane Hosiery Co. v. Shore*, 439 U.S. 322, 326 n.5 (1979)). The Court of Appeals has held that “principles of *res judicata* . . . apply to administrative decisions . . . in which . . . [the] agency is acting in a judicial capacity and resolves disputed issues . . . properly before it which the parties have had an adequate opportunity to litigate.” *Stavely v. State Farm Mut. Auto. Ins.*, 376 Md. 108, 116-17 (2003) (quoting *Sugarloaf Citizens Ass’n v. Northeast Md. Waste Disposal*, 323 Md. 641, 658-59 n.13 (1991)).

Res judicata does not apply here because, as the University points out, Ms. Carey and Ms. Elliott “are not the same party and are not in privity.” A party’s “privies,” for purposes of res judicata, include “all persons who have a direct interest in the subject matter of the suit, and have a right to control the proceedings, make defense, examine the witnesses, and appeal if an appeal lies.” *Cochran v. Griffith Energy Servs.*, 426 Md. 134, 141 (2012) (quoting *Ugast v. LaFontaine*, 189 Md. 227, 232-33 (1947)). Notwithstanding Ms. Carey’s characterization of herself “as a successor in interest” to Ms. Elliott, Ms. Carey was not “so far represented by [Ms. Elliott] that [her] interests receive[d] actual and efficient protection” in the 2007 proceedings. *See id.* (emphasis omitted). The mere fact that Ms. Carey is employed in a position occupied formerly by Ms. Elliott does not mean that Ms. Carey and Ms. Elliott are “in privity . . . for purposes of res judicata.” *See Cochran*, 426 Md. at 140; *see also O’Nesti v. DeBartolo Realty Corp.*, 862 N.E.2d 803,807 (Ohio 2007) (“The relationship between co-employees subject to the same employment-related contract, without more, does not establish privity.”).

Moreover, res judicata generally has been recognized only as “an affirmative defense,” *Anne Arundel County Bd. of Educ. v. Norville*, 390 Md. 93, 106 (2005) (quoting *Lizzi v. Wash. Metro. Area Transit Auth.*, 384 Md. 199, 206 (2004)), not as an offensive tool “to bar a defendant from raising any new defenses,” *see O’Nesti*, 862 N.E.2d at 807. Other jurisdictions have cautioned that “the use of offensive claim preclusion is generally disfavored.” *O’Nesti*, 862 N.E.2d at 807-08 (collecting cases); *see also, e.g., St. Paul Mercury Ins. v. Williamson*, 224 F.3d 425, 439 (5th Cir. 2000) (noting that “[r]es judicata . . . is typically a defensive doctrine”).

Turning to the ALJ’s evidentiary determination more generally, we hold that the ALJ did not abuse her discretion in excluding the 2007 OAH decision as irrelevant. As already discussed, that decade-old decision by a different ALJ regarding the job classification of a different employee was not controlling, nor was the ALJ required to afford it weight. As the ALJ recognized, “[a]n opinion of an OAH ALJ has no precedential value.” See Arnold Rochvarg, *Maryland Administrative Law* § 3.73 (2007). Nor was the prior opinion relevant to any alleged inconsistency in the University’s treatment of its employees, because the University took the position—a decade apart—that neither employee met the standard for classification as a Program Management Specialist.⁷ See *Neutron Prods. v. Dep’t of the Env’t*, 166 Md. App. 549, 604-05 (2006) (“Because the ALJ was not persuaded as to the factual similarity of the cases offered for comparison, . . . the ALJ, in his discretion, appropriately rejected Neutron’s request to present evidence of prior settlement agreements,” and “[t]he agency’s decision to exclude such evidence, based on relevance, was neither erroneous nor an abuse of discretion”).

⁷ Before the ALJ, in addition to seeking to introduce the 2007 OAH decision regarding Ms. Elliott, Ms. Carey attempted to introduce evidence that her job duties were similar to those of Ms. Ramses and Ms. Penuel, both of whom are classified as Program Management Specialists. Ms. Carey has not challenged on appeal the ALJ’s evidentiary rulings with respect to that evidence. Nor has she argued (below or on appeal) that in classifying her differently from Ms. Ramses and Ms. Penuel, the University acted arbitrarily or capriciously. Cf. *Harvey v. Marshall*, 389 Md. 243, 303 (2005) (“[A]lthough an administrative agency certainly has some leeway to abandon prior decisions and ‘adapt [its] rules and policies to the demands of changing circumstances,’ an agency’s decisions must also ‘not be so fluid as to become arbitrary or capricious.’” (quoting *Montgomery County v. Anastasi*, 77 Md. App. 126, 137 (1988))).

Perhaps most significantly, the 2007 OAH decision reflects that the ALJ’s determination was based in significant part on the University’s failure to present evidence to contest Ms. Elliott’s case. The University presented “no information from the auditor” and offered “no evidence [] whatsoever of what reasons, if any, the auditor gave in support of the denial of [Ms. Elliott]’s reclassification.” In Ms. Carey’s case, by contrast, the University presented detailed documentation from the audit, testimony from both Auditors and from Mr. Vedder, and expert testimony from Ms. Ringling that explained the classification decision. It is thus unclear what value the 2007 OAH decision could have provided by comparison. The ALJ was required to make her decision based on the evidence presented regarding Ms. Carey’s duties and performance, not on the deficiencies in the University’s evidentiary presentation in Ms. Elliott’s case or the conclusions a different ALJ drew from the one-sided presentation of evidence in that case. We therefore hold that the ALJ did not abuse her discretion in excluding the 2007 OAH decision.

III. THE ALJ’S DECISION WAS SUPPORTED BY SUBSTANTIAL EVIDENCE.

Ms. Carey also asserts that the ALJ’s decision to uphold the University’s denial of her request for reclassification was not supported by substantial evidence. When reviewing an agency’s decision under the substantial evidence test, we consider “whether a reasoning mind reasonably could have reached the factual conclusion the agency reached.” *Md. Aviation Admin. v. Noland*, 386 Md. 556, 571 (2005) (quoting *Bulluck v. Pelham Wood Apts.*, 283 Md. 505, 512 (1978)). We “review the agency’s decision in the light most favorable to it,” *Noland*, 386 Md. at 571 (quoting *CBS v. Comptroller*, 319 Md. 687, 698 (1990)), and “defer to the agency’s fact-finding and drawing of inferences if they are

supported by the record,” *Noland*, 386 Md. at 571. Here, “after reviewing the evidence in a light most favorable to the administrative agency,” *Colburn v. Dep’t of Pub. Safety & Corr. Servs.*, 403 Md. 115, 128 (2008), we conclude that the ALJ’s decision was supported by substantial evidence.

Ms. Ringling, the only expert to testify, spoke at length regarding Ms. Carey’s responsibilities and explained that most of her duties were “task oriented,” in the sense that “they are tasks that need to be accomplished in any office in order for the office to function.” She testified that Ms. Carey’s work did not “involv[e] the practical application of management principles and techniques,” as is required for the Program Management Specialist classification, because her duties were “not programmatic” and “d[id]n’t rise to the level of analysis.” The ALJ credited Ms. Ringling’s testimony, finding that she “was a knowledgeable and persuasive witness.” Ms. Ringling’s opinion also was supported by the testimony of the Auditors, both of whom agreed that Ms. Carey was classified appropriately as an Administrative Assistant II because her “tasks were solely based on policies and procedures” and were “[m]ore routine” and “less complex” than those expected of a Program Management Specialist.

To be sure, Ms. Carey and her witnesses testified that her work did fall within the classification for a Program Management Specialist. But “it is the agency’s province,” not ours, “to resolve conflicting evidence and to draw inferences from that evidence.” *Emps.’ Ret. Sys. v. Dorsey*, 430 Md. 100, 110 (2013) (quoting *Noland*, 386 Md. at 571). The existence of evidence that might have supported a contrary conclusion does not mean that

“a reasoning mind reasonably could [not] have reached the factual conclusion the agency reached.” *Cf. Noland*, 386 Md. at 571 (quoting *Bulluck*, 283 Md. at 512).

CONCLUSION

The ALJ did not err or abuse her discretion in excluding evidence of the 2007 OAH decision, and her ruling that upheld the University’s denial of Ms. Carey’s request for reclassification was supported by substantial evidence. The circuit court correctly denied Ms. Carey’s petition for judicial review.

**JUDGMENT OF THE CIRCUIT COURT
FOR WICOMICO COUNTY AFFIRMED.
COSTS TO BE PAID BY APPELLANT.**