Circuit Court for Baltimore City
Case No: 24-C-17-003550

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 891

September Term, 2018

SHERON THORNTON

v.

DEPARTMENT OF PUBLIC SAFETY AND CORRECTIONAL SERVICES

Nazarian,
Wells,
Moylan, Charles E., Jr.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: August 9, 2019

*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.

Sheron Thornton, appellant, worked for the Department of Public Safety and Correctional Services, appellee, as a senior agent in its Division of Parole and Probation. On December 20, 2016, she was terminated after an internal investigation found that she had engaged in unauthorized contact with an inmate within the correctional system, that she had failed to disclose the unauthorized contact to her employer, and that she had made false statements during the investigation into her misconduct. Following her termination, Ms. Thornton noted a timely administrative appeal, and the matter was forwarded to the Office of Administrative Hearings. An administrative law judge ("ALJ") concluded that the Department had lawfully terminated Ms. Thornton. Ms. Thornton then filed a petition for judicial review with the Circuit Court for Baltimore City, which affirmed the decision of the ALJ.

On appeal, Ms. Thornton raises the following issues,[1] which we consolidate and rephrase for clarity: 1) whether the ALJ erred in finding that the Department complied with the 30-day time limitation imposed by § 11-106 of the State Personnel and Pensions Article, and 2) whether the ALJ erred in finding that the Department lawfully terminated Ms. Thornton. Because we are not persuaded that the ALJ erred, we shall affirm.

[1] In her brief, Ms. Thornton contends that she was entitled to union representation at an investigatory interview into her alleged misconduct. This issue was not raised before the ALJ and is not preserved for appeal pursuant to Maryland Rule 8-131(a). Additionally, Ms. Thornton contends that the ALJ erred in granting a motion to quash subpoena. The transcript from the motions hearing is not included in the record on appeal, nor is an order detailing the basis of the ALJ's decision. Therefore, we will not address that issue. *Black v. State*, 426 Md. 328, 337 (2012) ("Appellant or petitioner has the burden of producing a sufficient factual record for the appellate court to determine whether error was committed.")

DISCUSSION

Standard of Review

When reviewing the decision of an administrative agency, "we bypass the judgment of the circuit court and look directly at the administrative decision." *Kim v. Maryland State Bd. of Physicians*, 196 Md. App. 362, 370, (2010). Our inquiry is limited to determining "whether there is substantial evidence in the record to support the agency's findings and conclusions and whether the agency's decision is premised upon an erroneous conclusion of law." *McClellan v. Dep't of Pub. Safety & Corr. Servs.*, 166 Md. App. 1, 18 (2005).

Our review of whether substantial evidence exists to support an administrative decision is narrow. *Id.* "[T]he question is not whether we would have reached the same conclusions, but merely whether a 'reasoning mind' could have reached those conclusions on the record before the agency." *Id.* We must review the evidence in the light most favorable to the administrative agency. *Miller v. City of Annapolis Historic Pres. Comm'n*, 200 Md. App. 612, 632 (2011). As it pertains to discretionary matters, this Court "may not substitute its judgment for that of the administrative agency." *Kim*, 196 Md. App. at 370.

Deadline for Disciplinary Action

The procedure for disciplining a state employee is outlined in § 11-106 of the State Personnel and Pensions Article. Before imposing a disciplinary action, subsection (a) requires an "appointing authority" to investigate the alleged misconduct, meet with the employee, consider mitigating circumstances, determine the appropriate disciplinary action, and give the employee written notice of the disciplinary action to be taken and the employee's appeal rights. In pertinent part, subsection (b) provides that "an appointing

authority may impose any disciplinary action no later than 30 days after the appointing authority acquires knowledge of the misconduct for which the disciplinary action is imposed." Ms. Thornton contends that the Department took disciplinary action against her *after* this 30-day period had lapsed.

There was substantial evidence on the record to support the ALJ's finding that the Department complied with the 30-day time provision. Ms. Thornton does not dispute that Joseph Clocker, the Department's Director of Parole and Probation, was her appointing authority. Director Clocker testified that he first received knowledge of the alleged misconduct on November 22, 2016. Detective Jonathan Wright of the Department's Intelligence and Investigative Division ("IID") then began an investigation that included reviewing Ms. Thornton's personnel file for any authorization to interact with inmates, reviewing Ms. Thornton's acknowledgment of the Department's policy, verifying her phone number and address, reviewing the August 6, 2016 phone call in question, interviewing Ms. Thornton, and submitting an investigative report. On December 16, 2016, a "mitigation conference" was held in which Ms. Thornton and Director Clocker were present. Immediately following the conference, Ms. Thornton was given a written notice of termination pending signature by the Department's Secretary. The Secretary approved the termination on December 20, 2016. Based on this timeline, the ALJ concluded that the Department complied with the 30-day time provision required by statute.

Ms. Thornton contends, however, that the Department "had the means" to discover the unauthorized call on August 6, 2016, the day the call occurred. Ms. Thornton does not

cite any authority which provides that the 30-day time provision begins when the appointing authority acquires the means to discover misconduct. On the contrary, the Court of Appeals has held that the knowledge required to start the 30-day period is "knowledge sufficient to order an investigation." *Western Correctional Inst. v. Geiger*, 371 Md. 125, 144 (2002). Further, there is no indication in the record that the Department could have discovered the unauthorized call on August 6, 2016 as contended by Ms. Thornton. Nicholas Weikel, an IID analyst, testified that technical problems with the call system that matched inmate calls to employee phone numbers rendered the system "inactive" in "August, September, and October" of 2016. He further testified that manually cross-checking inmate calls with every departmental employee's phone number could not be accomplished "in an acceptable time length" because of the "volume of phone numbers."

Ms. Thornton also contends that the appointing authority's knowledge of the alleged misconduct began on November 15, 2016, the date on which Mr. Weikel received a spreadsheet from his supervisor that identified several phone calls between inmates and departmental employees. The list included the August 6, 2016 phone call in question.[2] Ms. Thornton argues that the knowledge acquired by Mr. Weikel on November 15, 2016 should have been imputed to Director Clocker, the appointing authority. In support, she cites *Ford v. Dep't of Public Safety and Correctional Services*, 149 Md. App. 488, 499 (2003), which states that "an appointing authority may acquire knowledge of misconduct of an employee directly, i.e., personally, or indirectly, through imputation of the knowledge of an agent."

[2] Mr. Weikel did not listen to the August 6, 2016 call until November 22, 2016.

However, the evidence before the ALJ did not establish an agency relationship between Mr. Weikel and Director Clocker. There was no testimony regarding the relationship between their respective units, nor was there any evidence that Mr. Weikel answered to or had any duty to report his knowledge to Director Clocker. In the absence of such evidence, agency between Mr. Weikel and the appointing authority, Director Clocker, was not established.

The ALJ, therefore, had substantial evidence to support his finding that the Department complied with 30-day time provision required by § 11-106(b) of the State Personnel and Pensions Article.

Substantial Evidence of Lawful Termination

The record reveals that there was substantial evidence to support the ALJ's finding that the Department lawfully terminated Ms. Thornton. The Department's Standards of Conduct and several executive directives were entered into evidence as exhibits. The Standards of Conduct and Executive Directive ADM.050.0043 both state that without written authorization from the employee's appointing authority, "an employee may not become socially, personally, or intimately involved in relationships with inmates, offenders, or clients of the Department. This includes communication through written correspondence, telecommunications and social interactions." Director Clocker testified that violation of this policy is considered a "third category infraction" and is grounds for termination pursuant to the Standards of Conduct, regardless of the employee's past disciplinary history.

The evidence is uncontroverted that Ms. Thornton was aware of this policy, having signed an acknowledgement of it on May 20, 2015. She also testified that employees are required to notify their supervisors if any unauthorized contact occurs with an inmate. Ms. Thornton confirmed that she received and accepted a call from an inmate on August 6, 2016. Director Clocker testified that the call was not authorized by anyone in Ms. Thornton's chain of command and that she did not notify her supervisor of the call after it occurred. Notably, Ms. Thornton testified that she knew that she was potentially violating the Department's policies when she accepted the call.

Mr. Weikel, Detective Wright, and Director Clocker each testified that they listened to a recording of the August 6, 2016 phone call. They testified that the conversation lasted several minutes and focused on personal matters and matters concerning her employment. They testified that during the call, Ms. Thornton told the inmate that she wasn't supposed to be talking to him. Nonetheless, she proceeded to discuss her upcoming birthday, inquired about the inmate's release from custody, and suggested that the inmate write to her, verifying her address during the conversation. The inmate joked about Ms. Thornton's sex life during the call.

Director Clocker testified that the unauthorized phone call was the basis of Ms. Thornton's termination, not any retaliatory animus based upon prior EEO claims filed by Ms. Thornton. Based on this evidence, it was reasonable for the ALJ to conclude that Ms. Thornton had violated the Standards of Conduct and Executive Directive ADM.050.0043 by engaging in an unauthorized phone call with an inmate. Pursuant to the Department's policy, this was grounds for termination.

Accordingly, the ALJ had substantial evidence to support his finding that the Department lawfully terminated Ms. Thornton.

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