Circuit Court for Baltimore City
Case No. 24C17004759

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 893

September Term, 2018

ANTHONY REED

v.

WASHINGTON SUBURBAN SANITARY COMMISSION

Fader, C.J.,
Berger,
Moylan, Charles E., Jr.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Moylan, J.

Filed: October 1, 2019

On August 25, 2016, the appellant, Anthony Reed, was terminated from his employment with the Washington Suburban Sanitary Commission ("the Sanitary Commission"). On September 1, 2016, the appellant filed an appeal of his termination. The appeal was to the Director of Human Resources who, in turn, referred it to a Sanitary Commission employee designated as a hearing officer. On September 29, 2016, the designated hearing officer issued a written decision upholding the recommendation for the appellant's termination. On October 12, 2016, the Deputy General Manager, Monica Johnson, acting as the Release Deciding Official, upheld the hearing officer's decision recommending termination.

On October 24, 2016, the appellant took a further appeal to the Maryland Office of Administrative Hearings ("OAH"). After a four-day hearing before Administrative Law Judge ("ALJ") Steven Adler, the ALJ upheld the appellant's termination. On September 22, 2017, the appellant filed a Petition for Judicial Review in the Circuit Court for Baltimore City. After hearing oral argument, Judge Sylvester B. Cox on May 11, 2018, issued an Opinion and Order affirming the decision of the ALJ. This appeal has followed.

The Contentions

On this appeal, the appellant raises four contentions. They are:

1. WSSC's Termination Policy violates Md. Code Ann., Pub. Util., Section 18–123(a) and is Unconstitutional because it denied Mr. Reed a Meaningful Opportunity to be Heard before His Termination.

2. Mr. Reed's Termination was Invalid Because it was not approved by WSSC's Human Resources Office in Violation of WSSC Policies and the Accardi doctrine.

3. OAH's Decision was Arbitrary and Capricious because the Allegations of a Code of Ethics Violation by Petitioner Reed are False and the Decision Lacked Evidentiary Support.

4. The ALJ Erred in Not Deferring to the Decision of the Unemployment Agency.

What Is An Opportunity To Be Heard?

The appellant's first contention is exclusively constitutional. He relies on Maryland Code, Public Utilities Article, Sect. 18–123(a), which provides:

> (a) An employee may not be permanently removed except for cause and after an opportunity to be heard.

(Emphasis supplied). He claims that he was denied the right to a hearing and that that denial violated his right to due process pursuant to the 14th Amendment of the United States Constitution.

The appellant raised this precise issue before ALJ Adler. In his very thorough 22-page Decision, the ALJ summarized the appellant's argument in this regard.

> The Employee argued throughout the hearing that the Commission's current appeal procedure is, on its face, in contravention of the due process rights set forth in State statute and the United States Constitution. The Employee argued specifically that since prior WSSC policy required an in-person grievance hearing in all employee appeals of removal actions and that policy was changed from an in-person proceeding to a record review with the right to an in-person hearing at the discretion of the hearing officer, the Employee was denied an opportunity to be heard as required in section 18–123 of the Public Utilities Article, and thus deprived of due process.
>
> Although the Employee with absolute accuracy points out that the controlling WSSC policy was changed from one affording an in-person grievance hearing to a record review, which can be supplemented by an in-person hearing at the discretion of the hearing officer, this alone does not make the Commission's policies and procedures in violation of State statute and, more broadly, a deprivation of due process rights. Here, the statute

> grants WSSC employees the right to be heard before being released from employment—this right to be heard establishes the process which is due. I must now determine what an opportunity to be heard means and whether it was afforded to the Employee in this case.

(Emphasis supplied; footnote omitted).

Citing Supreme Court authority, ALJ Adler looked to Cleveland Board of Education v. Loudermill, 470 U.S. 532, 105 S. Ct. 1487, 84 L. Ed. 2d 494 (1985), for the proposition that the right to be heard comprehended a right to receive notice of the charges against one and the opportunity to respond. The ALJ continued:

> Sufficient due process—the right to be heard—does not necessarily mean an in-person hearing before a tribunal, in all contexts. Matthews v. Eldridge, 424 U.S. 319, 343 (1976) ("[i]n general, 'something less' than an evidentiary hearing is sufficient prior to adverse administrative action"). Furthermore, in the context of public employees, due process involves receiving notice, an explanation of the employer's evidence, and an opportunity to present the employee's account of events. Loudermill, 470 U.S. at 546 (citing Arnett v. Kennedy, 416 U.S. 134, 170–71 (1974)). To require more process than this would intrude on the government's interest in expeditiously removing an unsatisfactory employee. Id. Significantly and most relevant here, the opportunity to present the employee's reason for why a proposed personnel action should not be taken may be either in-person or in writing. Id.

(Emphasis supplied; footnote omitted).

In Loudermill, the Supreme Court said just that, stating:

> The foregoing considerations indicate that the pretermination "hearing," though necessary, need not be elaborate. We have pointed out that "[t]he formality and procedural requisites for the hearing can vary, depending upon the importance of the interests involved and the nature of the subsequent proceedings." In general, "something less" than a full evidentiary hearing is sufficient prior to adverse administrative action. Mathews v. Eldridge, 424 U.S., at 343, 96 S. Ct. at 907.

470 U.S. at 545 (emphasis supplied; some citations omitted).

The Supreme Court was emphatic that the right to a hearing contemplates 1) notice and 2) the right to respond. That response, the Supreme Court made clear, may be orally or in writing.

> The essential requirements of due process, and all that respondents seek or the Court of Appeals required, are notice and an opportunity to respond. The opportunity to present reasons, either in person or in writing, why proposed action should not be taken is a fundamental due process requirement. The tenured public employee is entitled to oral or written notice of the charges against him, an explanation of the employer's evidence, and an opportunity to present his side of the story. To require more than this prior to termination would intrude to an unwarranted extent on the government's interest in quickly removing an unsatisfactory employee.

470 U.S. at 546 (emphasis supplied; citations omitted).

Applying that Supreme Court authority, the ALJ concluded that the Due Process Clause had not been unconstitutionally violated.

> The appeals policy in effect at the time the Employee was recommended for release provided for a written opportunity to respond, including the right to submit "any . . . information the employee believes is relevant . . . witness statements and affidavits, photographs, and other documentary evidence." Applying Matthews, Loudermill, Rowe, the cases cited and discussed therein, and their progeny to the facts of the case at bar, I conclude that the policy, on its face, complies with the statute and satisfies the requisite due process requirements.

(Emphasis supplied; footnote omitted). We fully agree.[1]

[1] After the ALJ cited and analyzed Cleveland Board of Education v. Loudermill; City of Annapolis v. Rowe; and Matthews v. Eldridge and then concluded, "Applying Matthews, Loudermill, Rowe, the cases cited and discussed therein, and their progeny to the facts of the case at bar." We are at a loss to understand how the appellant, in his brief, can baldly assert, "Without citing to any authority, the OAH administrative judge concluded that WSSC's policy . . . satisfied the due process requirements." (Emphasis supplied). Where does such an assertion come from? Are not the opinions of the Supreme Court of the United States and the Court of Appeals of Maryland "authority"?

Exception To The Accardi Doctrine: A Descent Into Trivia

In a strained contention, the appellant claims that the Sanitary Commission violated its own policy when the written termination notice given to the appellant failed to contain the signature of a human resources representative and that that violation, in turn, meant that the termination procedure ran afoul of the so-called Accardi doctrine. The Accardi doctrine traces back to the 1954 opinion of the Supreme Court in United States ex. rel Accardi v. Shaughnessy, 347 U.S. 260, 74 S. Ct. 499, 98 L. Ed. 681 (1954), and holds generally that an administrative agency is required to follow its own rules, regulations, and policies.

We will hold for a moment our application to this case of Maryland's version of the Accardi doctrine. Our initial consideration will be of the adequacy of the record before us to determine what, indeed, the policy was that was allegedly violated. We would remind counsel in this regard that it is not the obligation of an appellate court to undertake legal research on behalf of a party. It is not sufficient for counsel to point the appellate court to where it may go to discover the precise words of a policy in issue. It is the burden of counsel to produce before the court the precise words of a policy critical to the decision in the case and to the source of those words.

With respect to this contention, the critical time was the afternoon of August 25, 2016. On that day, the appellant was called to a meeting with David Malone, his immediate supervisor, and Jo Gray, the Human Resources Manager. The appellant was handed his notice of termination, formally referred to as RR PAN (Recommendation for Release – Personnel Action Notification). The RR PAN was signed by David Malone and by Thomas

J. Street, the Deputy General Manager. At the end of the meeting, Ms. Gray informed the appellant that he had the right to appeal the Recommendation for Release and handed him a memorandum explaining the appeal procedure. After the meeting was concluded, Ms. Gray, the then Group Leader for Employee Relations in the Human Resources Department, signed the RR PAN after observing that all processes and policies had been observed prior to placing the original RR PAN in the employer personnel file.

The appellant now claims that WSSC policy was violated because the policy dictated that Ms. Gray's signature should have been appended to the RR PAN before the termination meeting began and not after it had concluded. He also claims that WSSC policy was violated in that, albeit her signature was on the original copy placed in the personnel file, it was not on the copy given to him. The appellant tells us there is a policy requirement in these regards, but we say to him: "Who says so? Where exactly does it say that? What precisely does it say? Don't tell us about some policy restraint. Give it to us verbatim!"

We have examined the appellant's brief, line by line, and we find no express designation for such a precise policy with respect to a signature from a representative of Human Resources. The appellant does not even offer a precise quotation from such a precise policy directive. We have no idea as to whether a representative of Human Resources must sign the copy of the RR PAN given to the appellant as well as the original copy going into the file. We have no idea whether the Human Resources signature must be made before the termination meeting begins rather than as it concludes. We have no idea what exactly the Human Resources signature connotes—approval of the termination itself

on the merits or simply approval of how the termination process was conducted. We have no idea whether some WSSC policy even so much as mentions a signature by a representative of Human Resources. The appellant has failed to provide us with the information necessary to consider this contention, and that alone would fully justify its rejection out of hand.

Purely as an arguendo hypothetical, however, it behooves us to make mention of the Accardi doctrine. Albeit emanating from the Supreme Court, the Accardi doctrine is persuasive, not authoritative. Maryland, along with a number of other states, has opted to follow the Supreme Court's lead in its handling of appeals from federal administrative agencies. The states, however, have not been absolutely uniform in their administration of the doctrine. The Accardi doctrine itself, however, has become an "old reliable" precept of administrative law.

To be sure, the first recognition of the Accardi doctrine had been made by this Court in Hopkins v. Maryland Inmate Grievance Commission, 40 Md. App. 329, 391 A.2d 1213 (1978). Judge Mason observed that the rule that "an agency cannot violate its own rules and regulations" was a well-accepted precept of administrative law and that it had come to be recognized as the Accardi doctrine.

> This rule has been recognized in federal and state jurisdictions and has become known as the "Accardi doctrine" since it was announced in U. S. ex rel. Accardi v. Shaughnessy (1954). . . . . This doctrine has been broadly applied.

40 Md. App. at 335 (citations omitted).

In the ensuing 25 years, the Court of Special Appeals applied the doctrine on numerous occasions. See Board of Education of Anne Arundel County v. Barbano, 45 Md. App. 27, 41, 411 A.2d 124 (1980); Board of Education of Baltimore County v. Ballard, 67 Md. App. 235, 239 n.2, 507 A.2d 192 (1986); Durham v. Fields, 87 Md. App. 1, 18 n.2, 588 A.2d 352, cert. denied, 323 Md. 308, 593 A.2d 668 (1991); Board of School Commissioners of Baltimore v. James, 96 Md. App. 401, 424, 625 A.2d 361, cert. denied, 332 Md. 381–82, 631 A.2d 451 (1993); G & M Ross Enter., Inc. v. Board of License Commissioners of Howard County, 111 Md. App. 540, 543, 682 A.2d 1190 (1996); Anastasi v. Montgomery County, 123 Md. App. 472, 491, 719 A.2d 980 (1998); Smith v. State, 140 Md. App. 445, 462, 780 A.2d 1199 (2001); Pollock v. Patuxent Institution, 146 Md. App. 54, 67–76, 806 A.2d 388 (2002), aff'd, 374 Md. 463, 823 A.2d 626 (2003).

Over the course of that quarter of a century, the Court of Appeals had no occasion to recognize or to discuss the Accardi doctrine. In Maryland Transportation Authority v. King, 369 Md. 274, 799 A.2d 1246 (2002), the opinion for the Court by Judge Eldridge noted that although the Court of Appeals had not officially adopted the Accardi doctrine, it regularly adhered to numerous principles of administrative law reflected in Accardi.

> Although this Court has not previously discussed the Accardi doctrine as such, or even cited Accardi v. Shaughnessy, it is clear that, at least to some extent, a similar doctrine is reflected in Maryland administrative law.

369 Md. at 286 (citation omitted).

Judge Eldridge's opinion did mention one feature of the Court of Special Appeals's version of the Accardi doctrine that might be subject to future controversy—the lack of necessity to show actual prejudice.

> The Court of Special Appeals has recognized or applied the Accardi doctrine in numerous opinions. The Court of Special Appeals has taken the position that, in situations where the Accardi doctrine is applicable, it does not matter whether one was prejudiced by the failure of the agency to follow its procedures or regulations.

369 Md. at 285–86 (emphasis supplied; citations omitted).

In Transportation Authority v. King, however, the Court did not need to address the status of the Accardi doctrine in Maryland.

> In the present case, however, we need not further explore the Accardi doctrine and the extent of its applicability to Maryland administrative proceedings.

396 Md. at 287 (emphasis supplied).

It was the Court of Appeals opinion in Pollock v. Patuxent Institution Board of Review, 374 Md. 463, 467, 823 A.2d 626 (2003), that officially stamped Maryland's imprimatur on the Accardi doctrine.

> We adopt the "Accardi doctrine" and hold that it is applicable to administrative hearings in Maryland.

As a general statement of the Accardi doctrine, Judge Cathell's opinion, 374 Md. at 586, quoted with approval from the earlier decision of Maryland Transportation Authority v. King, 369 Md. at 282:

> "In Accardi v. Shaughnessy the Supreme Court of the United States held that an administrative decision is subject to invalidation because of the agency's 'failure to exercise its own discretion[,] contrary to existing valid

> regulations.' (Emphasis in original). Subsequently in a series of cases, the Supreme Court, relying on the Accardi case, has recognized a rule of federal administrative law that, with some exceptions, an administrative agency is required to follow its own procedures or regulations."

(Emphasis supplied).

After thoroughly surveying the national caselaw, however, Judge Cathell's opinion found that there were several approaches to the application of Accardi. The Court of Appeals opted not to follow the strict or mechanical approach.

> From the sampling of the Court of Special Appeals cases, and other cases discussed above, it appears that, under the reasoning of those cases, an agency's failure to comply with its own rules, especially where those rules affect fundamental rights guaranteed by the Constitution or a statute, might mandate invalidation of the agency action by the courts under a per se rule. We hold for Maryland that such an interpretation of Accardi under those circumstances is too strict and too general. Other jurisdictions have chosen to apply Accardi in a less inclusive manner to administrative regulations similar to the way we have interpreted our own APA provisions and our general rule in those cases in which the APA is not applicable.

374 Md. at 495 (emphasis supplied).

The Maryland approach to Accardi as articulated in Pollock requires not simply a technical violation of the agency's rule or regulation but also requires the appellant to demonstrate some actual prejudice from the violation.

> In other cases some jurisdictions have further chosen to require that, in any event, claimants must demonstrate prejudice resulting from the violation to have the agency action invalidated. We hold that this rationale reflects a more widely accepted interpretation of Accardi and is more in line with cases arising from the Supreme Court, and elsewhere, since Accardi. More important it is in line with Maryland public policy concerns as expressed by the Legislature in the APA for agencies that come under the APA's aegis.

374 Md. at 495–96 (emphasis supplied).

With respect to this required element of prejudice, the Court of Appeals modified the earlier and stricter policy of the Court of Special Appeals.

> We . . . only reverse the Court of Special Appeals' position that, where Accardi is applicable and the primary Accardi exception is not, any agency violation of a rule or regulation is a violation per se and the agency action must be invalidated. In such a factual scenario, we hold that a complainant must still show prejudice to potentially have the agency action invalidated. To the extent that the Board's belief that the Court of Special Appeals' past cases are inconsistent with the position we now take might be accurate, that court's prior positions are now modified by our express holding in this case.

374 Md. at 481 (emphasis supplied).

It is now clear that in Maryland there will be found no violation of Accardi in the absence of a showing by the complainant of some actual prejudice. Several of the earlier opinions by the Court of Special Appeals were cited with approval by the Court of Appeals for having taken the more lenient approach and insisting that an agency decision would not be invalidated absent a showing of actual prejudice. In Board of School Commissioners of Baltimore City v. James, 96 Md. App. 401, 625 A.2d 361, cert denied, 332 Md. 382, 631 A.2d 452 (1993), the complaint was made, as in this case, about a failure to comply strictly with the agency's published policy. In rejecting that complaint, this Court observed:

> Similarly, a failure to comply with a published statement of "policy," or "internal documents" to guide employees, or agency "guidelines," has been held not to invalidate agency action, absent a showing of prejudice.

96 Md. App. at 421–22 (emphasis supplied; citations omitted).

In Anastasi v. Montgomery County, 123 Md. App. 472, 719 A.2d 980 (1998), this Court again stressed the need for a showing of prejudice.

> As the James Court made clear, even if an agency rule does not have the force and effect of law (that is, even if it is simply interpretive, a statement of policy, or any other, lesser, rule of agency organization, procedure, or practice), a violation of that rule will still invalidate an agency's action if the complainant can show that he was substantially prejudiced by the violation.

123 Md. App. at 419 n.8 (emphasis supplied).

On this contention, there had been no scintilla of a showing of prejudice. Assuming, arguendo, that the policy requirements that the appellant claims, but failed to prove, exist actually do exist, what prejudice does the appellant claim to have suffered? He does not even make a claim in this regard. The obvious purpose of a signature by a representative of Human Resources on the notice of termination would be to indicate that Human Resources approved of and/or authorized the termination on its merits. The active participation in the oral notice to the appellant of his termination by Jo Gray, the Human Resources Manager, would have manifested even more concretely and directly exactly such approval and authorization, again presuming such a showing was necessary. The fact that Jo Gray's signature on the official RR PAN, the one that would be kept in the personnel files, was placed on the document an hour or so later rather than an hour or so earlier is quintessentially inconsequential. We cannot imagine what difference it possibly could have made to the appellant or to the predicament in which he finds himself. Accardi does not require anyone to perform a purely ritualistic ceremony. The appellant's resort to Accardi is unavailing.

The Heart Of The Matter

If the first two contentions obsessed over procedural trivia, the appellant's third contention touches the substantive raw nerve of the case. Everything turned on the result of the hearing before the Administrative Law Judge. This case was a factual dispute, pure and simple. At the end of a lengthy hearing, in the course of which he heard detailed testimony from five witnesses and in which he received and examined 49 exhibits, Administrative Law Judge Steven Adler issued a thorough 22-page opinion. He made 25 express findings of fact. In his Decision and Order of August 31, 2017, ALJ Adler concluded:

> I further conclude, as a matter of law, that the Employee's actions in informing Mr. Curry of his release prior to its imposition constitutes gross misconduct, properly resulting in the Employee's permanent release from the Commission.

This case turns on the adequacy of that factfinding. If the factfinding was flawed, the appellant will prevail. If the factfinding was legitimate, the appellant loses. The procedural and legal embellishments are so much sound and fury. Appropriately, the appellant frames his contention in terms of a factfinding dispute.

> OAH's Decision was Arbitrary and Capricious because the Allegations of a Code of Ethics Violation by Petitioner Reed are False and the Decision Lacked Evidentiary Support.

(Emphasis supplied).

The entrancing phrase "arbitrary and capricious," used by the appellant in framing his contention, sounds very much like a legal term of art. If it is so, however, the appellant never tells us. He never mentions it again and never bases any argument upon it. The ALJ conducted a four-day hearing. The very thoughtful and detailed 22-page decision of ALJ

Adler did not strike us as either arbitrary or capricious. The colorful phrase is meaningless in our consideration of this contention.[2]

The ALJ's findings of fact 7, 8, and 9 constitute the act of misconduct the appellant was found to have committed.

> 7. If an Employee is not released prior to the end of the probationary period, the Employee automatically becomes a merit system employee and may thereinafter only be permanently removed from employment for cause and after an opportunity to be heard.
>
> 8. The Commission determined it would release Mr. Curry at the end of his probationary period on June 21, 2016.
>
> 9. After the Commission's decision to release Mr. Curry was made, but before the personnel action was implemented, the [appellant] contacted Mr. Curry and informed him of the pending release and advised Mr. Curry not to work at the Commission on that day.

(Emphasis supplied).

The single thrust of the appellant's detailed six-page argument on this contention is an attack on the credibility findings of the ALJ. With respect to the alleged improper communication between the appellant and Mr. Curry, the appellant now argues:

> [The appellant] denied that he told Mr. Curry not to come to work and Mr. Curry denied that [the appellant] told him not to come to work, and there is no reason why [the appellant] would risk his job to provide information to an employee he barely knew.

(Emphasis supplied).

[2] But see Harvey v. Marshall, 389 Md. 243, 295, 884 A.2d 1171 (2005); Board v. Gould, 273 Md. 486, 500–01, 331 A.2d 55 (1975).

The appellant now argues that it was somehow reversible error for the ALJ not to have believed those denials.

The appellant then attacks the findings of the ALJ that the witnesses called by its Sanitary Commission to establish the improper communication were credible. A key witness was Eva Holguin. The appellant's attacks on her credibility are trivial. "She testified on direct that she had one conversation with Mr. Curry. On cross examination, she claimed that she had three to four conversations with Mr. Curry." At one point, she referred to the improper message as a "call," but that was "contradicted" by someone else who referred to the communication as a "texting." "Finally, her statement that Mr. Reed called Mr. Curry contradicts the statement of Mr. Baig that Mr. Reed said he texted Mr. Curry." From such an insubstantial predicate, the appellant condemns Ms. Holguin's "incredible testimony" and then passes final judgment.

> A review of Ms. Holguin's testimony in the record confirms that she was not credible and her testimony could not be a reasonable basis for finding that Mr. Reed engaged in the misconduct.

(Emphasis supplied).

In a like vein, the appellant charges that "the administrative judge credited an unreliable email from Mr. Baig and an undated letter from Mr. Gonzalez." From a minor and inconsequential difference in their evidence, the appellant concludes:

> Because the Gonzalez letter is undated and the Baig and Gonzalez correspondence was not under oath, and neither Mr. Baig nor Mr. Gonzalez testified at the hearing, the administrative judge should not have even considered this "evidence."

(Emphasis supplied).

The appellant argues that some of the WSSC's evidence is unworthy of consideration because it is hearsay. That is not the law governing OAH hearings in Maryland. "If hearsay is found to be credible and probative, it may be the sole basis for a decision of an administrative body." Kade v. Charles H. Hickey School, 80 Md. App. 721, 724, 566 A.2d 148 (1989). See also Travers v. Baltimore Police Department, 115 Md. App. 395, 411, 693 A.2d 378 (1997).

Contrary to the charge being made by the appellant, ALJ Adler in this case could not have been more studious and more probative in his assessment of credibility. His evaluation of both the appellant and of Ms. Holguin's began:

> To resolve this issue, I must determine what factual findings the credible evidence of record supports. The Employee maintained a demeanor throughout the four days of hearing, and during the testimony at issue, in a manner that would lead me to believe he is generally credible. The tone of his voice did not change, he maintained eye contact when answering questions relating to this issue, and spoke in a direct, straightforward, and very matter-of-fact way. On the other hand, Ms. Holguin, too, appeared to be credible. While it seemed Ms. Holguin appeared slightly reluctant and somewhat uncomfortable to be testifying against a former colleague, I do not find this impugns her credibility but, rather, suggests she had no animus toward the Employee or Mr. Curry nor was an apologist for the Commission. I observed Ms. Holguin's demeanor closely throughout her testimony and it yielded no signs of falsity; she provided answers on direct and cross-examination freely, full, responsibly, and with clarity. The decision to credit the testimony of one over the other is a difficult one to make based solely on demeanor. Demeanor, however, is not the only tool given to a finder of fact to determine credibility.

(Emphasis supplied).

The ALJ went on to consider the substance of the arguments, and those "other factors lead me to find the position of the commission and the testimony and reporting of

its witnesses more persuasive." With respect to Ms. Holguin and Messers, Baig and Gonzalez, the ALJ concluded:

> The above discussion notwithstanding and perhaps most significantly, neither Ms. Holguin nor Messrs. Baig or Gonzalez, all of whom provided written statements to Mr. Malone, had a motive to fabricate a story about the Employee. At no time was it established that any of these individuals gained or benefitted from the Employee's release from employment. Nor was it shown that any relationship existed that would incentivize Ms. Holguin or Messrs, Baig or Gonzalez to color their testimony in a manner unfavorable to the Employee. I also considered that none of these individuals were subordinates of the Employee or worked directly with the Employee on a regular basis; they had nothing to gain by falsely reporting to Mr. Malone or any other person.

(Emphasis supplied).

In later giving his conclusion, the ALJ alluded to his ability to observe the demeanor of the witnesses.

> Over the four full days of hearings that this proceeding spanned, I had an extensive opportunity to observe the parties and witnesses, to assess their respective credibility based on demeanor and other observational factors[.][12]

[12] I assessed "[a]ll aspects of the witness's demeanor—including the expression of his countenance, how he sits or stands, whether he is inordinately nervous, his coloration during critical examination, the modulation or pace of his speech and other non-verbal communication." Elliott, 170 Md. App. at 388 (internal citations, emphasis, and quotation marks omitted).

(Emphasis supplied).

Would the appellant have us substitute our assessment of the witnesses' credibility for that made by ALJ Adler? The law says we may not do so. In Neutron Products, Inc. v.

Department of the Environment, 166 Md. App. 549, 583, 890 A.2d 858 (2006), this Court stated emphatically:

> When the ALJ makes factual findings based on an assessment of credibility, "'the agency should give appropriate deference to the opportunity of the [ALJ] to observe the demeanor of the witnesses,' and the agency should reject credibility assessments only if it gives 'strong reasons.'" Id. (citations omitted). Put another way, the agency "should give substantial deference to the ALJ's credibility determinations to the extent they are critical to the outcome of the case and they are demeanor-based, that is, they are the product of observing the behavior of the witnesses and not of drawing inferences from and weighing non-testimonial evidence."

(Emphasis supplied). The deference to the ALJ owed by the "agency" is also owed by all reviewing tribunals, including the circuit court and the appellate court. We happily defer to the credibility assessments made by ALJ Adler. It is not for us to second-guess. If the unspoken but implicit contention was that the evidence was not legally sufficient to support the ALJ's finding, we hold that there was substantial evidence to support the finding of gross misconduct. The ALJ also made the significance of that finding clear.

> Having found the Employee committed the acts discussed above and that this disclosure to Mr. Curry constituted gross misconduct, I must now determine if a finding of gross misconduct is sufficient to uphold the Commission's decision to release the Employee. The Commission's policy clearly states that gross misconduct is the type of conduct that may justify immediate release without prior warning and without the need to move through the progressive disciplinary procedures set forth in the Commission's policies.

(Emphasis supplied; footnote omitted).

An Irrelevant Collateral Action

The appellant coincidentally applied for unemployment benefits with the Maryland Unemployment Office. That office determined that there was insufficient evidence that he

had engaged in gross misconduct. Because the evidence before the unemployment agency was essentially the same as the evidence before the ALJ, the appellant claims that the WSSC should defer to the factfinding of the unemployment agency rather than to the findings of the ALJ.

This contention was brought before the ALJ and summarily rejected by him.

> The Employee finally argued that the ruling of the unemployment claims examiner finding insufficient evidence of gross misconduct should directly bear on the outcome of this case. However, prior rulings in other administrative proceedings are not binding precedent within the meaning of stare decisis and have no preclusive effect on the decision I make here. See Nelson v. F.D.I.C., 83 F.3d 1375, 1377 (Fed. Cir. 1996).

(Emphasis supplied).

We affirm the ALJ's handling of the issue. If anything, the appellant seems to be reaching out for some "law of the case"-like doctrine without any basis for doing so. Under the "law of the case" doctrine, of course, a prior decision or ruling by an appellate court may have a preclusive effect on later proceedings in the same case. That commanding status, however, does not inhere in the rulings of a fellow administrative agency. By the same token, we know of no rule or principle recommending even the extension of deference in such a relationship.

JUDGMENT AFFIRMED. COSTS TO BE PAID BY APPELLANT.