Circuit Court for Baltimore City
Case No.: 24-C-16-006021

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 978

September Term, 2017

MARYLAND DEPARTMENT OF HEALTH

v.

WANDA GRIMES

Friedman,
Beachley,
Salmon, James P.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Salmon, J.
Concurring Opinion by Friedman, J.

Filed: January 29, 2019

Wanda Grimes ("Grimes") was employed as a medical care program specialist for the Department of Health's Office of Systems, Operations, and Pharmacy ("OSOP") until March 8, 2016. On that date the Maryland Department of Health ("the Department") served her with a notice of termination. In essence, the Department claimed that the timesheets Grimes submitted overstated the hours she worked. More specifically, the Department contended that during the period between August 1, 2015 and February 10, 2016, there was a 37.42 hour (4.71 days) discrepancy between the information on the timesheets Grimes submitted and the records of the State's parking lot that showed the times her automobile entered and exited the lot. According to the notice of termination, Grimes "often left work earlier than the time listed on her timesheets." For example, records from parking Lot F, where Grimes parked her vehicle, showed Grimes's vehicle left the lot at 11:48 a.m. on December 3, 2015, but her timesheet stated that she had left work at 3:30 p.m. The notice of termination listed six separate charges. The charges were worded as follows:

> Charge I – Annotated Code of Maryland, State Personnel and Pensions [Article] § 11-105(2) Theft of State property of a value greater than $300.00.
>
> Charge II – COMAR 17.04.05.04 B (3) Being guilty of conduct that has brought or, if publicized, would bring the State into disrepute.
>
> Charge III – COMAR 17.04.05.05 B (6) Stealing State property with a value of $300 or less. [The correct COMAR section is COMAR 17.04.05.04 B(6)].
>
> Charge IV – COMAR 17.04.05.04 B (8) Engaging in conduct involving dishonesty, fraud, deceit, misrepresentation, or illegality.
>
> Charge V – COMAR 17.04.05.04 B (10) Willfully making a false official statement or report.

> Charge VI – COMAR 17.04.05.04 B (15) Committing another act, not previously specified when there is a connection between the employee's activities and an identifiable detriment to the State.

Grimes appealed through the steps of the State personnel management system. Ultimately, a contested case hearing was scheduled before the Office of Administrative Hearings and an administrative law judge ("ALJ") was assigned. The ALJ conducted a two-day hearing that concluded on September 13, 2016. The ALJ ruled that the Department had not met its burden of proof in regard to Charge I (theft of state property of a value greater than $300), Charge III (stealing State property with a value of $300 or less), or Charge VI (committing another act not previously specified when there is a connection between the employee's actions and identifiable detriment to the State). The ALJ held, however, that the Department had met its burden of proof as to the remaining charges, i.e., Charge II (conduct that has brought, or, if publicized, would bring the State into disrepute), Charge IV (engaging in conduct involving dishonesty, fraud, deceit, misrepresentation or illegality), and Charge V (willfully making a false official statement or report). The ALJ also concluded that the sanction of termination, with prejudice, from State employment was reasonable, based on competent evidence and a fair investigation and was not an abuse of discretion.

Grimes filed a petition for judicial review in the Circuit Court for Baltimore City. The circuit court, after a hearing, reversed the ALJ's decision and ordered Grimes to be reinstated with back pay. The main reason for the court's decision was that, in the court's view, the Department had failed to show that the appointing authority, prior to Grimes's

termination, had satisfied the procedural requirements set forth in Md. Code (1993, 2015 Repl. Vol.), State Personnel and Pensions Article ("SPP") § 11-106(a). More specifically, the trial court concluded that the evidence presented at the hearing before the ALJ did not prove that the Department's appointing authority made the determination that the appropriate disciplinary action for Grimes's misdeeds was dismissal from State employment. The court ruled, in the alternative, that the ALJ's decision to uphold the termination was "unsupported by material and substantial evidence[.]"

Section 11-106(a) reads:

> (a) *Procedure.* – Before taking any disciplinary action related to employee misconduct, an appointing authority shall:
>
> (1) investigate the alleged misconduct;
>
> (2) meet with the employee;
>
> (3) consider any mitigating circumstances;
>
> (4) determine the appropriate disciplinary action, if any, to be imposed; and
>
> (5) give the employee a written notice of the disciplinary action to be taken and the employee's appeal rights.

(Emphasis added.)

In this appeal, the Department contends that, taking the evidence in the light most favorable to it, as we are required to do, there was substantial evidence to support the ALJ's decision that Grimes was guilty of charges II, IV and V. The Department further argues that, contrary to the circuit court's opinion, the ALJ was correct when she concluded that the Department had met its burden of showing that, prior to Grimes's termination, the Department had complied with SPP § 11-106(a)(4).

We disagree with the trial judge's conclusion that the Department had failed to produce substantial evidence to support the ALJ's decision that Grimes was guilty of charges II, IV and V. Our disagreement, however, is not outcome determinative, because we agree with the circuit court that the Department's "appointing authority," prior to terminating Grimes, did not fulfill the requirements of SPP §11-106(a)(4). Because the procedural requirements of §11-106(a)(4) were not met, we shall affirm the circuit court's judgment.

I.

UNDISPUTED FACTS

Prior to March 8, 2016, Grimes had worked for the State of Maryland for over 38 years. She had no disciplinary infractions during that period. At the time of her dismissal, Grimes worked for the Department in the Division of Recoveries and Financial Services Legal Liabilities section. Her regular work hours, at all times here relevant, were 7:00 a.m. to 3:30 p.m. But Grimes also routinely worked over ten hours per day and sometimes on Saturdays. If she worked beyond 40 hours per week, she was allowed to earn compensatory leave hours. She was not, however, eligible for overtime.

Grimes was required to submit bi-weekly timesheets to her supervisor, who was supposed to review the timesheets for accuracy before approval. Also, employees such as Grimes were required to sign a daily log indicating the time they started work and the time they finished their work day. The log sheets were available for use by the supervisor when reviewing employee timesheets.

At all times here relevant, Grimes had the privilege of parking her personal vehicle in parking Lot F, which was near the building where she worked. In order for Grimes's vehicle to enter or exit lot F, she was required to swipe her state identification ("ID") card against a device that operated the parking lot gates and recorded the time of her swipes. Grimes was prohibited from allowing any other employee to use her ID card for parking purposes.

On January 28, 2016, Dee Stephens, the Chief of Staff of the division in which Grimes worked, received an anonymous telephone call advising that Grimes had allowed another employee to use her parking pass. Ms. Stephens notified Craig Smalls of this allegation. Mr. Smalls was the Acting Executive Director of the OSOP. Ms. Stephens also sent an email asking William Jackson ("Jackson"), the Chief of the Central Services Division, to investigate the anonymous complaint. Jackson looked into the matter and on February 4, 2016, informed Ms. Stephens that his investigation had shown that Grimes had, in fact, allowed someone else to use her parking pass. Jackson met with Mr. Smalls and Grimes on February 5, 2016, where he then informed Grimes that her parking privileges were going to be revoked.

On February 5, 2016, after the meeting, Mr. Smalls sent an email to Jackson requesting that he conduct a further investigation before revoking Grimes's parking privileges. He did this because he believed that if Grimes's violation was only an isolated incident, then revoking her privileges permanently would be too harsh a sanction.

Therefore, he asked Jackson to review and compare Grimes's recorded parking lot in-out times with her timesheets for the months of December 2015 and January 2016.

On February 12, 2016, Grimes's superiors received an Access Attempts History report for the period between December 1, 2015 and February 10, 2016, which showed when Grimes entered and left parking Lot F; management also received another report regarding Grimes's timesheets for the same time period. Those documents showed that on some occasions, Grimes's vehicle left parking Lot F earlier than the time that her timesheet showed that she finished work. Also, on some occasions, her timesheet showed that she claimed to have started work earlier than the time of her arrival at parking Lot F. The Department then decided to conduct a broader investigation.

Gary Spurrier, an agent of Central Services, obtained Grimes's parking Lot F access records for the period between August 1, 2015 through February 10, 2016 and obtained, as well, copies of Grimes's timesheets for that period. He noted discrepancies between the two sets of documents. The discrepancies he noted were that Grimes either entered Lot F after her reported start time, as reflected on the timesheets, or she exited Lot F earlier than the time shown on her timesheet.

Next, Cathie Thompson, Chief of Payroll and Administration for the Department performed a payroll audit for the same period that Mr. Spurrier investigated. In performing the payroll audit, Ms. Thompson assumed that if Grimes's car had left parking Lot F on any given date, she was not working after the time she left the lot. Likewise, she assumed that Grimes did not start work prior to the time that the records showed that her car arrived

at Lot F. Using the aforementioned assumptions, she testified that between August 1, 2015 and February 10, 2016, Grimes overstated the time she worked by 37 hours and 42 minutes or 4.71 days. This meant that if the timesheets had been accurate, Grimes would have been entitled to 37.42 hours of compensatory time. Ms. Thompson conceded, however, that Grimes never used or attempted to use all or any part of the aforementioned 37.42 hours of compensatory time.

On February 23, 2016, Grimes attended a mitigation conference, which lasted about 20 minutes. Ms. Stephens and Mr. Smalls also participated in the conference. Although she was not provided with copies of the documents relied upon by the Department, Grimes was asked to give a written explanation of the discrepancies between the parking lot access reports and her timesheets. In her initial written response, Grimes stated that it was her custom to fill out her timesheets in advance for a two-week period and relied on her supervisor to catch any discrepancies between the timesheets and her log-in sheets.

Two days later, on February 25, 2016, Grimes sent Mr. Smalls another written statement in which she said that at times she allowed other people to use her vehicle while she still worked. On such occasions she would meet the individual who was going to use her vehicle in the lobby, walk to the vehicle, exit the parking lot by swiping her ID card, drive to the front of the building, turn the vehicle over to the borrower, and return to work.

II.

Additional Evidence

Ms. Thompson gave several examples of the discrepancies between the sign-in sheet, timesheet and the parking lot records, *viz.*:

- On November 4, 2015, Grimes's car left the lot at 5:22 p.m., but her time sheet for that date showed that she worked until 7:00 p.m.

- For November 23, 2015, Grimes's "sign in sheet says she left at 7, but the garage says 6:03."

- For December 21, 2015, Grimes's "time sheet says she left at 7, but the sign in sheet says she left at 5:10 and the garage [record] shows she left at 5:19."

- For January 15, 2016, Grimes's "time sheet says she signed out at 1:03 p.m.," but "the lot entry [record] says 12:02 p.m."

- For January 28, 2016, Grimes's time sheet shows she signed out of work at 7:00 p.m., "but it says 3:09 p.m. for the lot" exit.

- For January 29, 2016, Grimes's time sheet stated that she left at 7 p.m., but the garage records showed that her car "left out at 3:52 p.m."

During cross-examination by Grimes's attorney, the following exchange occurred:

> [GRIMES'S COUNSEL]: Okay. And so on a given day, if Ms. Grimes, again, for example, on August 28th, . . . Ms. Grimes'[s] time sheet had her leaving at 3:30, but her car didn't leave until 4:44, a difference of an hour and 14 minutes.
>
> [THOMPSON]: Mm-hmm.
>
> [GRIMES'S COUNSEL]: That amount was not credit[ed] in your calculation of this overall time, is that correct?
>
> [THOMPSON]: I would not have credited them for that, and we never make the assumption that the employee is not, where we are located, okay, the employee may have left work, stopped and chatted with a friend, they

> may have gone to CQ, they may have gone to Rite-Aid, the[y] may have stopped and had dinner.
>
> There's any number of things that they could have done before they actually got in their car and left. So I couldn't make the assumption that the employee worked.
>
> [GRIMES'S COUNSEL]: But you made the assumption that if her car is not there, the employee is not working, isn't that correct?
>
> [THOMPSON]: That's correct because there was an entry and an exit from the lot, and I'm sure that during mitigation there would have been an opportunity to explain why the car would have left in and out.

Although Ms. Thompson testified, in detail, as to how she calculated the 37.4 hours differential, she did not bring to court the spreadsheet she had used to make those calculations.

Mr. Smalls testified that his responsibilities included being in charge of "three administrations" in the Department, which were Systems Operations, the Pharmacy, and the kidney disease program for the State of Maryland's Medicaid program. He has approximately three-hundred employees under his command and his position includes responsibilities for taking disciplinary action against employees. He testified that prior to Grimes's termination he checked with Grimes's supervisor who advised that Grimes's timesheets were never pre-filled with times, such as "7 to 7."

Mr. Smalls testified that he was the "appointing authority" for the Department. This was important because SPP § 11-106(a)(4) requires that before taking any disciplinary action against an employee, the appointing authority must, *inter alia*, determine the appropriate disciplinary action, if any, to be imposed. Mr. Smalls was examined

extensively on both direct and cross-examination as to whether he was the person who made the determination to terminate Ms. Grimes. The relevant testimony in this regard was as follows:

> [DEPARTMENT'S COUNSEL]: So ultimately how did you arrive at the decision to terminate Ms. Grimes'[s] employment?
>
> [SMALLS]: Well, first of all, let me just say that the agency, the program administration does not come up with the charges. It is usually HR [Human Resources] who comes up with the charges.
>
> Sometimes we are given more like a preview of this is what potentially could happen, but it's ultimately HR that comes up with the charges and it's the secretary of the department who does the termination and that sort of thing.
>
> We as managers, appointing authorities, we are never the ones who basically said we're going to terminate anyone.
>
> [DEPARTMENT'S COUNSEL]: So did you sign the Notice of Termination after the secretary signed it?
>
> [SMALLS]: No, I signed it before. Exactly. Mm-hmm.
>
> [DEPARTMENT'S COUNSEL]: But did you see the Notice of Termination –
>
> [SMALLS]: Yes, and I agreed with it.
>
> During cross-examination, the following colloquy occurred:
>
> [GRIMES'S COUNSEL]: What is your responsibility as the appointing authority as the person who signed this Notice of Termination?
>
> [SMALLS]: The appointing authority is given the responsibility to approve personnel transactions, including hirings as well as terminations.
>
> [GRIMES'S COUNSEL]: Okay. And what is involved in that responsibility? What do you have to do in order to do that?

[SMALLS]: Basically what my involvement is . . . investigate the matter to the degree where I'm satisfied with what has taken place or what is alleged to have taken place.

At that point in time after meeting with HR, that's when we, there is usually discussion and we agree on what the outcome or what the possible outcome may be.

[GRIMES'S COUNSEL]: And who made the determination that termination was the appropriate sanction in this case?

[SMALLS]: It was the Secretary who made the determination that Ms. Grimes would be terminated.

[GRIMES'S COUNSEL]: So you did not make the determination that termination was appropriate?

[SMALLS]: Oh, the determination was, the determination over the, about the termination came from HR.

* * *

[GRIMES'S COUNSEL]: Who decides what the appropriate sanction is?

[SMALLS]: The SHR.

[GRIMES'S COUNSEL]: Not the appointing authority?

[SMALLS]: The appointing authority, again, no.

* * *

[GRIMES'S COUNSEL]: Is it your understanding that the Secretary makes the ultimate decision about the termination?

[SMALLS]: Yes, he is.

(Emphasis added.)

On direct-examination, Ms. Grimes testified as follows:

[GRIMES'S COUNSEL]: [W]hat was your practice with regard to completing your time sheets?

[GRIMES]: My practice normally is, or was until they told me that I couldn't do that anymore, I would normally fill out my time sheet every two weeks straight down.

If a pay period cut off on Tuesday, on Wednesday I would fill it out 6:30 to 7:00, 6:30 to whatever time that I planned to work for that duration period.

* * *

[GRIMES'S COUNSEL]: And then did you make any changes to it before submitting the time sheet at the end of the two weeks?

[GRIMES]: I would take, if I come in, say I signed in say 6:30, I mean, on my 2 week time sheet and I came in at 7:05 or whatever it is.

When it was time to turn in my time sheet, I would go get the sign in board, look at the sign in board and copy what's on the sign in board or try to, into the spot what I already pre[-]filled.

* * *

[ALJ]: Why would you do that? Wouldn't it just be easier to –

[GRIMES]: Well, there was a practice in our building that, it became a practice, that when time sheets come to turn in, they always claim that they can never find people['s] time sheets.

It's the cut off, we got to find the time sheets. So then they suggested that we would fill in our time sheets. This is before we was [sic] computerized, fill in your time sheet. At least we know where it is, it's in a centralized place, and then we'll get it and submit it, and then you can always do a time change form.

That way, everybody gets paid and we turned in a time sheet because they claimed that, I guess personnel or whoever got it, would complain that they didn't submit a time sheet for various employees.

So they suggested that we keep it in a centralized place, pre [-] fill it out, sign it, so that when it's time to turn in or say they call for your time sheets in advance, they know where it is.

* * *

[GRIMES'S COUNSEL]: Okay. So you would compare the handwritten log in sheet against the computer time sheet?

[GRIMES]: Right. Computer screen where I already pre-completed it.

[GRIMES'S COUNSEL]: Okay. And then you would make whatever changes –

[GRIMES]: I'm trying to catch all of them.

[GRIMES'S COUNSEL]: Okay.

[GRIMES]: But I don't, because my supervisor would call me in and say, Wanda, you missed this, this, this, this. I'd say thank God for you, and he would sometimes catch them himself and change them.

Or personnel would send something up that said we need to make adjustment, and then we would go back and he would sign off.

Grimes further testified that her daughter and son "would from time to time borrow [her] car." Grimes explained that she was not required to "sign out [on] the sign in sheet when [she] would go down to bring" the car to a borrower. Instead, Grimes would "just say to [her] supervisor, I got to run downstairs, . . . and he'd be like, okay."

Grimes called her daughter, Virginia Watkins, as a witness. Ms. Watkins was also an employee of the State of Maryland, but at a different agency. She testified that during the period from August 2015 to February 2016, she would sometimes "utiliz[e her] mom's vehicle" to get to work or run errands. Watkins testified: "Typically I would call her to

make arrangements and make sure it's feasible for her to meet me in the lobby or she'll meet me in the front and we'll walk to her vehicle and then I'll proceed from there." Watkins identified eight specific dates on which she borrowed her mother's car while Grimes remained at work. Some of those dates were the same as ones where the Department had concluded that Grimes had left work earlier than the time recorded on the timesheets.

II.

THE DECISION OF THE ALJ

In the hearing before the ALJ, Grimes's attorney argued that the Department had not followed the proper procedure prior to terminating his client. Therefore, counsel maintained that Grimes's termination was illegal. He stressed the fact that during his testimony, Mr. Smalls explicitly admitted that he, as the appointing authority, did not make the determination that Grimes should be terminated. In this regard, the ALJ said:

> The Employee argued that during his testimony Smalls confirmed that it was the Secretary who determined that the Employee should be terminated. I did not interpret Smalls's testimony to support the Employee's argument, nor does the other evidence support her assertion. Smalls testified that he ordered the investigation regarding the Employee's misuse of her parking permit as well as the discrepancies between the parking lot access records and her timesheets. Stephens, Smalls and the Employee's testimony established that Smalls conducted a mitigation conference with the Employee on February 25 [sic], 2016. Smalls explained that Human Resources wrote up the appropriate charges based on the facts presented, but that ultimately he was the individual who approved the termination as reflected by his signature on the Notice along with the signature of the Secretary.

In regard to the issue of whether there was substantial evidence to show that the Department had met its burden of showing that Grimes was guilty of charges II, IV and V,

the ALJ found that the Department had met that burden. In arriving at her decision, the ALJ discussed Ms. Grimes's explanation for the discrepancies but found that, overall, her excuses were not persuasive. More specifically, the ALJ found:

> I find that Management has met its burden in regard to the other charges. Management's audit reflected that on many occasions there were discrepancies between the Employee's parking lot recorded usage times and her reported work hours. Based on those discrepancies, Management concluded that the Employee left work for the day much earlier than she reported on her timesheet, and thus concluded that time entries for those days were fraudulent and deceitful. Management went on to conclude that on those dates that there were discrepancies that the times entered on the Employee's timesheets were fraudulent and deceitful.
>
> The Employee did not satisfactorily persuade me that Management's conclusions were incorrect. The Employee attempted to offer an explanation for the discrepancies between her timesheets and the parking lot records. On February 23, 2016, the Employee presented a written statement to Management explaining that it was not uncommon for her to allow others to use her vehicle while she is at work. The Employee's daughter testified that it was not uncommon for her to borrow the Employee's car. She was able to provide eight specific dates, corroborated by her timesheets, when she was off from work and may have borrowed her mother's car. The Security Guard assigned to the Employee's office building confirmed that . . . the Employee regularly worked in the evenings between 6:00 p.m. and 7:00 p.m. or later.
>
> The Employee and her daughter's testimony provided a possible explanation for some of the discrepancies between the parking lot records and the timesheets, but they do not account for the large number of discrepancies that totaled over 37 hours and 42 minutes. Additionally, the Employee offered no plausible explanation for any of the discrepancies between the start time noted on the Employee's timesheet and the entrance time noted by the parking lot. By way of example, Management noted that on September 11, 2015 the Employee noted on her timesheet that she started at 7:00 a.m. but the parking lot record indicated a 7:18 a.m. entry time. On September 29, 2015, the Employee noted a 6:30 a.m. start time but the parking lot record reflects that she did not enter until 7:05 a.m. The Employee attempted to lay blame for some of the discrepancies on the explanation that she filled out her biweekly timesheet in advance of the covered work weeks and would make corrections or rely on her supervisor

to make corrections on her behalf. This explanation is not credible given that the timesheets reflect various start times and end times. The Employee testified that her regular hours are 7:00 a.m. to 3:30 p.m. If the Employee filled out her timesheets in advance, one would expect to see some consistency in the start and end times. The Employee's timesheets had various start times and end times throughout two week periods. Start times in some two week periods ranged from 7:00 a.m., 7:05 a.m., 7:20 a.m., 6:30 a.m. and 7:15 a.m. Similarly, the end time entries on the timesheets were inconsistent and ranged from 3:30 p.m.., 4:30 p.m., 5:55 p.m., 6:15 p.m., 7:05 p.m. and 7:15 p.m. It is simply not credible that the Employee would know her sporadic start and end times two weeks in advance. Additionally, most of the Employee's stop times on her timesheet were after her supervisor's normal work hours and he therefore would not be able to verify the time she left the office.

The Employee's explanations did not persuade me that she did not intentionally enter false start and stop times on her timesheets. The end result of the Employee putting down the false start and stop times on her timesheets was to earn compensatory time that could then be converted into leave. She misrepresented her entry and exit times on her timesheets for a total of over 37 hours in a six-month period. There is no doubt Management has proven this basis for termination, COMAR 17.04.05.04B(8).

Additionally, the Employee clearly made a false official statement or report in misrepresenting her time on her timesheets. Management clearly has proven that this ground, COMAR 17.04.05.04B(10), is a basis for termination.

Finally, the Employee's actions would, if known, clearly bring the State into disrepute. Such actions by this State employee clearly would result in the public having less confidence in the honesty and integrity of State government. The violation of COMAR 17.04.05.04B(3) alleged by Management has been clearly proven.

III.

STANDARD OF REVIEW

The parties agree that our task on review is not to substitute our judgment for the expertise of those persons who constitute the administrative agency. *Stover v. Prince*

George's County, 132 Md. App. 373, 381 (2000) (citations and quotation marks omitted). The reviewing court's obligation is to determine "'whether there was substantial evidence before the administrative agency on the record as a whole to support its conclusions.'" *Id.* (quoting *Maryland Commission on Human Relations v. Mayor and City Council of Baltimore*, 86 Md. App. 167, 173, *cert. denied*, 323 Md. 309 (1991)). So long as the ALJ's decision is supported by substantial evidence, a reviewing court cannot interfere with the agency's factual conclusions. *Id.* (citations and quotation marks omitted).

IV.

FIRST ISSUE PRESENTED

In support of her contention that the evidence was insufficient to prove Charge II, or IV or V, Grimes makes six assertions, which we will address *seriatim*.

ASSERTION ONE

Grimes first complains that although she was accused of being absent from work when her vehicle was not parked in the lot, she was not credited for working when the parking lot records showed her car exited Lot F much later than the time shown on her timesheet. That, according to Grimes, left "open the possibility that [she] left [work] much later than the times reflected on her timesheets."

It is true that it is possible that Grimes continued to work after the time shown on the timesheet she filled out. But, the ALJ had evidence before her that, if credited, would justify the rejection of such a possibility. As previously noted, Ms. Thompson testified that the fact that an employee's car had not been removed from the parking lot, did not

indicate that the employee was still working because, after signing out, an employee could go shopping or visit with coworkers. A similar explanation, of course, could not account for the fact that on numerous occasions her car left Lot F much earlier than the times shown on her timesheet. The ALJ evidently accepted Ms. Thompson's explanation, which was the ALJ's prerogative.

ASSERTION TWO

Grimes next contends that the evidence was insufficient because the Department produced no evidence showing that "the ingress and egress gate on the parking lot [where] she parked was a proper method of time keeping, or that the Employee was ever notified that the parking lot gate would be used as a measure of her attendance." There was, at a minimum, circumstantial evidence that the parking lot records were a proper method of time keeping. One can properly infer from the fact that (1) only State employees were allowed to use parking Lot F; (2) Grimes used parking lot F after traveling from her home to work in her own car; (3) therefore it was probable that if Ms. Grimes's car left parking Lot F, then Ms. Grimes left work at about the same time.

While it is true that Grimes was not notified, prior to the mitigation conference, that the State would use parking records to measure the hours she worked, she presented no argument, and we can think of no valid ones, showing why such notification was required.

ASSERTION THREE

According to Grimes, the evidence was insufficient because no document was relied upon by the ALJ "to verify the charges and calculations found in the notice of termination" that would support the "overall discrepancy of 37:42 hours (4.71 days)[.]"

The testimony of the Department's witnesses, if believed, showed the discrepancy at issue. Also, the ALJ had before her the parking records, timesheets and log-in-sheets that showed the discrepancies. Under such circumstances, it was not necessary to produce any spreadsheet or additional document(s), to corroborate the aforementioned evidence.

ASSERTION FOUR

Grimes next maintains that there was "no testimony or evidence that at any time the Employee's work was not complete and timely, nor [was] there any testimony or evidence that there were any occasions when the Employee was not present and available at work when needed or when checked." This is true but has no relevance to the issue of whether the ALJ's decision was supported by substantial evidence.

ASSERTION FIVE

Grimes's next assertion is worded as follows:

> Even while acknowledging that the Employee had demonstrated that she routinely works until 7:00 p.m. or later, and that her daughter's corroborated testimony accounted for a large number of the hours in question, the ALJ still determined, without support, that the Employee had "misrepresented her entry and exit times on her timesheet for a total of over 37 hours in a six-month period."

(Citation to record extract omitted.)

Reading the ALJ's decision in context, it is clear that the ALJ did not believe the "borrowed car" explanation. As previously mentioned, the ALJ simply acknowledged that Grimes's testimony and that of her daughter "provided a possible explanation" for some of the discrepancies. But the ALJ went on to say that despite Grimes's various explanations, she (the ALJ) was not persuaded that Grimes "did not intentionally enter false start and stop times on her timesheets . . . that could then be converted into leave . . . for a total of over 37 hours[.]"

ASSERTION SIX

Lastly, Grimes contends that even though all of the charges that the ALJ sustained required that the Department prove an intent to mislead or falsify, there was "simply no evidence supporting that any of the Employee's actions were done with the intent to mislead or misrepresent." It is true that there was no direct evidence that Grimes overstated the hours she worked with the intent to "mislead or misrepresent." But in this case, as in almost all cases, intent cannot be proven by direct evidence; instead, it must be proven by circumstantial evidence. The ALJ was persuaded, based on the numerous incorrect start and stop times shown on her time sheets that Grimes acted with the intent to mislead or falsify. That finding was based on a permissible inference inasmuch as the inaccurate entries were so numerous coupled with the fact that Grimes provided no explanation that the ALJ credited. In other words, there was substantial evidence from which the ALJ could infer, legitimately, that the inaccurate information on the timesheet was entered with the intent to mislead or falsify.

SECOND ISSUE PRESENTED

Grimes contends, and the trial judge agreed with the contention, that the Department failed to prove that Mr. Smalls, the appointing authority, complied with SPP § 11-106(a)(4) prior to terminating Grimes, because Mr. Smalls was not the one who made the determination that Grimes should be terminated. The Department contends that there was "substantial evidence in the record" that Mr. Smalls complied with that requirement.

As mentioned, in regard to this issue, the ALJ stated that she "did not interpret Smalls's testimony" as supporting Grimes's argument that Smalls's testimony "confirmed that it was the Secretary who determined that the Employee should be terminated." The ALJ gave three reasons why she interpreted Smalls's testimony differently than did Grimes. First, Smalls ordered the investigations into the misuse of the parking permit and the discrepancies between parking lot records and her time sheets. Second, Smalls conducted the mitigation conference with Ms. Grimes. The first two reasons plainly did not support the ALJ's conclusion.

We turn then to the ALJ's third reason: after the Human Resources department wrote up the charges, Smalls was the one who "ultimately" approved the termination as shown by his signature (as well as that of the Secretary) on the Notice of Termination. Section 11-106(a)(4) requires that an appointing authority "determine" the appropriate sanction. The word "determine" means "to settle or decide (a dispute, question, etc.) by an authoritative or conclusive decision." Webster's Encyclopedia Unabridged Dictionary of the English Language, page 393 (1989).

Smalls testified, without contradiction, that: 1) he was the appointing authority; and 2) that he was not, the individual that made the determination that Grimes should be terminated. That testimony needed no interpretation. If Smalls made the determination that Grimes should be terminated, it is impossible to believe that he would not know it. Approving a determination made by someone else, is not the same as making that determination in the first place. And, as Grimes's counsel pointed out, if the General Assembly had intended that it would be sufficient if the appointing authority approved the determination (to terminate an employee) that someone else made, the legislators would have said so.

For the above reasons, we hold that the evidence was not sufficient to show that, prior to Grimes's termination, the Department complied with §11-106(a)(4) of the State Personnel and Pensions Article.

JUDGMENT AFFIRMED. COSTS TO BE PAID BY APPELLANT.

Circuit Court for Baltimore City
Case No. 24-C-16-006021

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 978

September Term, 2017

MARYLAND DEPARTMENT OF HEALTH

v

WANDA GRIMES

Friedman,
Beachley,
Salmon, James P.
(Senior Judge, Specially Assigned),

JJ.

Concurring Opinion by Friedman, J.

Filed: January 29, 2019

I concur in the result and join the majority's resolution of the Second Issue Presented, namely that the wrong official decided to terminate Ms. Grimes's employment. Because that is sufficient to determine the outcome of the case, I would not reach the First Issue Presented (or any of its subparts) both because it is unnecessary and so as not to put this Court's imprimatur on the Department's process.