Circuit Court for Anne Arundel County
Case No. C-02-CV-20-001164

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1065

September Term, 2020

CHRISTI STERLING

v.

MARYLAND DEPARTMENT OF TRANSPORTATION

Fader, C.J.,
Friedman,
Sharer, J. Frederick,
(Senior Judge, Specially Assigned)

JJ.

Opinion by Sharer, J.

Filed: October 14, 2021

*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 case arises out of a decision by the Motor Vehicle Administration ("MVA"), a unit of the Maryland Department of Transportation ("the Department"), appellee, to reject the employment of a probationary employee, Christi Sterling, appellant. For ease of reference, we shall refer to the MVA and the Department collectively as "the employer." After being notified of the employer's decision to reject her employment on probation, Sterling appealed to the Office of Administrative Hearings ("OAH"). After a hearing, the OAH found in favor of the employer. Sterling timely filed a petition for judicial review in the Circuit Court for Anne Arundel County. In a written opinion and order, the circuit court affirmed the decision of the OAH. This timely appeal followed.

QUESTIONS PRESENTED

Sterling presents the following two questions for our consideration:

> I. Was the Department's action to reject Ms. Sterling on probation invalid because the Department violated its own regulations?
>
> II. Was the Department's notice to the wrong address untimely?

For the reasons set forth below, we shall affirm.

FACTUAL AND PROCEDURAL BACKGROUND

A. Undisputed Facts

The basic facts of this appeal are not in dispute.[1] In December 2018, Sterling began working as a Personnel Officer III for the MVA. Her employment was subject to a

[1] Neither party included in the joint record extract the transcripts from the hearing before the OAH or the exhibits that were admitted in evidence. In her Brief, appellant made references to the proceedings before the OAH without providing any reference to the transcript. *See, e.g.*, Appellant's Brief at footnotes 1 and 7 and the first paragraph on page

(continued…)

probationary period of six months to one year. Her initial six-month period of probation was extended an additional six months and ended on December 4, 2019. Certain regulations and policies required the employer to notify Sterling of its decision to reject her employment by November 20, 2019, two weeks prior to the end of her probation period.

On November 20, 2019, Sterling was not at work due to a scheduled day off. On that day, the employer hand-delivered a notice of rejection to the address listed on Sterling's driver's license. Sterling no longer resided at that address and, in April 2019, had provided the employer notice of her new address. The employer also emailed a copy of the notice of rejection to Sterling's personal email address. Sterling testified that she did not check her personal email and did not learn of the notice of rejection until November 21, 2019, when she arrived at work. At that time, Sterling was told she had been rejected on probation for work performance and lateness. She was provided with a copy of her rights with regard to her rejection on probation but she was not provided a copy of the actual notice of rejection.

18. Appellant included one page from the hearing transcript in an appendix to her Brief and several pages from the hearing transcript in an appendix to her Reply Brief, but failed to include a "statement of the reasons" for doing so pursuant to Md. Rule 8-501(f). Appellee made several references to the transcript but failed to include copies of the pages referenced and a statement for the reasons for doing so pursuant to Md. Rule 8-501(e). In addition, appellee referenced exhibits from the hearing before the OAH that were not included in the joint record extract and failed to provide copies of them in an appendix along with a statement pursuant to Md. Rule 8-501(e). Counsel are expected to read and know the rules of appellate procedure. We are not required to ferret out from the record material which counsel should have included in the joint record extract.

B. Relevant Regulations and Policies

As this case involves a probationary employee, we pause here to review the relevant policies and regulations. The Secretary of Transportation is authorized to "establish a human resources management system for employees of the Department and its units" that is separate from the system that governs the employment of other State employees. Md. Code § 2-103.4(a) of the Transportation Article ("TR"). The Secretary is also authorized to adopt regulations governing the human resources management system including "procedures for leave, appointment, hiring, promotion, layoff, removal, termination, . . ., and reinstatement of employees[.]" TR § 2-103.4(d)(2).

Regulations governing probation and the rejection of employees on initial probation periods are set forth in Title 11, Subtitle 2 of the Code of Maryland Regulations ("COMAR"). Newly hired employees of the Department are subject to a six-month probationary period. COMAR 11.02.02.05A. The probationary period may be extended for an additional six-month period. *Id.* "An employee who, in the judgment of the supervisor, is not satisfactorily performing the job duties may be rejected" from his or her position "with the concurrence of the appointing authority." COMAR 11.02.02.05F. "An employee rejected on probation shall be provided at least 2 weeks [sic] notice unless, in the judgment of the appointing authority, the employee's continued presence on the job would be contrary to the best interests of the Department." COMAR 11.02.02.05G. "The appointing authority shall provide the employee, in writing, with the reason or reasons for the rejection on probation, the effective date of the rejection on probation, and the appropriate appeal routes, including the time frame for appeal to the Office of

Administrative Hearings." COMAR 11.02.02.05H. A probationary employee may appeal her rejection to the OAH "within 5 work days of receipt of the written notice of rejection." COMAR 11.02.02.05J(1). A rejected employee serving an initial probation period "shall be afforded an opportunity for a hearing which is limited to the legal and constitutional basis for the rejection." COMAR 11.02.02.05J(2).

In addition to the regulations, the Department established the Transportation Service Human Resource Policy ("the Policy"). Section 6B of the Policy specifically addresses, among other things, the initial period of probation for new employees. Paragraph 4 of Section 6B, entitled "Purpose of Probation Period," provides:

> 4.1 The probation period is considered a continuation of the employment process and:
>
> 4.1.1 Is a trial working period that gives the supervisor an opportunity to observe and evaluate the capacity of the employee, which includes the employee's ability to perform the assigned duties satisfactorily.
>
> 4.1.2 Enables the employee to demonstrate qualifications and abilities by actual on the job performance; and to demonstrate capabilities and potential for higher assignments.
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> 4.1.3 Should be utilized by the supervisor to train and guide new employees in the successful performance of their job duties; to observe work performance and work habits; to provide counselling, as needed, on ways to overcome deficiencies; to discern and commend strong points; and to help to develop the employees to their fullest capacity in the job.
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> 4.4.4 Provides a means of removing or rejecting unsatisfactory employees, and of adjusting employee's probation period as appropriate.

Section 6B of the Policy includes the following provisions concerning the initial probation period:

> 5.4 Department managers and supervisors should monitor the newly hired Career Service employee's level of performance. A means of monitoring employee's performance is through discussions also known as progress conferences. These discussions should be documented. The purpose of these discussions is to provide direction, receive feedback and provide encouragement to the new employees.
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> 5.5 Prior to the completion of the probation period, all new employees shall receive a formal, written evaluation using the appropriate probationary performance evaluation form. This evaluation becomes part of the employee's official personnel file.

Several provisions of Section 6B address actions to be taken once a decision has been made to terminate the employment of a probationary employee, including the following:

> 8.2 Following approval of the recommended action of the employee's probationary status, the supervisor shall discuss the employee's probationary performance evaluation and status. The employee shall then be given an opportunity to comment on the evaluation form, sign the form and be given a copy of the completed performance evaluation form.
>
> 8.3 If the supervisor/department manager fails to provide a probationary performance evaluation to a newly hired employee prior to the conclusion of the new employee's probation period or a promoted employee prior to the conclusion of the employee's promotional probation period, then the employee automatically becomes a Career Service employee in the new classification with all rights and conditions of such.

Specifically with regard to notice of rejection on probation, Section 6B provides:

> 10.2 An employee rejected on probation shall be provided at least two (2) weeks [sic] notice, of the effective date of rejection. However, two weeks [sic] notice is not required if in the judgment of the Appointing Authority, the employee's continued presence on the job would be contrary to the best interests of the Administration/Department.
>
> 10.3 The Appointing Authority shall provide the employee in writing with the reason or the reasons for the rejection on probation, the effective date of the rejection on probation, and the appropriate appeal routes, including the time frame for appeal to the Office of Administrative Hearings.

Section 6B of the Policy provides that an employee rejected on probation may appeal that decision:

> 11.1 An employee may appeal a rejection on probation in writing to the Office of Administrative Hearings, with a copy to the Appointing Authority or the Appointing Authority's designee, within five (5) work days of receipt of the written notice of rejection. Work days do not include Saturdays, Sundays, and observed holidays.
>
> 11.2 An Employee rejected during the initial probation period shall be afforded an opportunity for a hearing, which shall be limited to the legal and constitutional basis for rejection. The employee bears the burden of proof during a hearing.

With these regulations and policy provisions in mind, we shall review the proceedings before the OAH and the circuit court.

C. The Office of Administrative Hearings

After being notified of the employer's decision to reject her employment on probation, Sterling appealed to the OAH. Sterling argued that the employer failed to follow the probation procedures set forth in section 6B of the Policy and, as a result, her rejection on probation was illegal. In support of her argument, Sterling relied on what is known as the *Accardi* doctrine, a rule of federal administrative law that generally provides that a federal administrative agency must follow its own rules and regulations. *United States ex rel. Accardi v. Shaughnessy*, 347 U.S. 260, 267-68 (1954). As we shall discuss in more detail, *infra*, in Maryland, the Court of Appeals expressly adopted its own variation of the *Accardi* doctrine in *Pollock v. Patuxent Inst. Bd. of Review*, 374 Md. 463, 503-04 (2003).

Sterling argued that the employer failed to follow the procedures set forth in section 6B of the Policy by failing to complete a formal, written evaluation using the appropriate

probationary performance evaluation form and failing to give her a copy of the evaluation form and an opportunity to sign it. Sterling also asserted that the employer did not provide her with at least two weeks' notice and, as a result, pursuant to section 6B, paragraph 8.3 of the Policy, she automatically became a career service employee.

At a hearing on March 5, 2020, the administrative law judge ("ALJ") admitted numerous exhibits and heard the testimony of three witnesses. Sterling testified that she was hired as a Personnel Officer III. After her first six months, she signed an extension of her probation for an additional six-month period. Sterling denied ever being counseled for her work performance or lateness, but stated that she communicated verbally and by email on a daily basis with Liz Markov[2], the Director of Human Resources and Organizational Development for the Department and MVA. Sterling sent texts to Markov when she was going to be late but acknowledged that she had received emails about her need to arrive at work on time.

On November 21, 2019, after reporting to work, Sterling met with Markov who told her that she had been rejected on probation. Sterling told Markov that she had not received notice of the rejection and later learned that it had been sent to her former address even though she had submitted a change of address form for her employer on April 15, 2019. That former address was still used on her driver's license because she had not changed it with the MVA. Sterling acknowledged her personal email address, but denied receiving

[2] In the record before us, Liz Markov is also referred to as Stella Markov.

an email notifying her of her rejection on probation. At her meeting with Markov on November 21st, she received information about her appeal rights.

Shawna Little, a Management Advocate II and labor employee relations representative for the Department, testified as an expert in the process of rejection on probation at the MVA at the time Sterling was rejected. She testified that the reasons for Sterling's rejection on probation were work performance and lateness. According to Little, supporting documentation was required for this type of rejection, but she did not receive any documentation for Sterling. Nor did she receive copies of any counseling forms for Sterling.

At the close of Sterling's case, the employer moved to dismiss the case on the ground that Sterling had failed to meet her burden of proving that the employer's actions were unconstitutional or illegal. The administrative law judge deferred ruling on that motion until the written decision was issued.

Markov was the sole witness to testify on behalf of the employer. She testified that when she arrived at the Department in May 2019, Sterling already had performance issues. Markov was not sure how well Sterling had been trained because there had been performance issues with her supervisor, so Markov gave Sterling extra time to work on those deficiencies. Those problems were documented in emails, but Markov did not put any type of formal discipline in Sterling's file.

Sterling's rejection on probation was filed at Markov's direction. Markov provided Little with emails regarding Sterling's performance and lateness and directed Little to prepare the form for rejection. According to Markov, Sterling had abused the flex schedule

and ultimately, on October 9th, a decision was made to deny her the opportunity to use flex time. Markov told Sterling that she had to let her know if she would be late. Sometimes Sterling did let Markov know, but when she did not, Markov would have to reach out to her. Sterling continued to have late arrivals after her ability to use flex time had been denied.

Markov had ongoing verbal and email conversations with Sterling about her performance. Markov explained what Sterling needed to improve in order to continue her employment. On October 9th, Markov sent an email to Sterling regarding her lack of preparedness for meetings, which had been an ongoing problem.

On November 19, 2019, Markov confirmed with Little that Sterling's probation period ended on November 20, 2019. Markov planned to hand the notice of rejection to Sterling on November 20, 2019. Sterling was supposed to work a half day, but called out on the morning of November 20th, so Markov had to serve the notice of rejection by another means. Markov had the notice of rejection delivered to Sterling's home address that was listed on her driving record. In addition, Sterling had notified Markov that she was interviewing with other Department agencies, so Markov "knew that she would have an up-to-date application on file" in the applicant tracking system. Markov obtained Sterling's email address from her most recent application in the system and sent a copy of the notice of rejection to that email address. Markov received a delivery receipt for the email, but could not determine if the email had been opened.

In a written decision, the ALJ granted the employer's motion for summary decision. Relying on *Smack v. Dep't of Health and Mental Hygiene*, 134 Md. App. 412 (2000), the

ALJ held that, "[i]n the context of a rejection on initial probation, the term 'illegal' means that the rejection is contrary to public policy." The ALJ determined that there was no genuine dispute of material fact concerning the employer's decision to reject Sterling on probation and, notwithstanding the employer's admitted failure to follow strictly its own regulations, the decision was neither illegal nor unconstitutional. The ALJ wrote:

> Without question, the Employer failed to follow its own policy, as detailed in 6B, in regard to rejecting an Employee at initial probation. It is not clear from the record whether the Employer ever counseled the Employee or gave her notice that her work performance or attendance was an issue. Regardless, the Employer never provided the Employee with a written evaluation on the appropriate form and therefore never gave her a chance to respond to the evaluation in writing. Violating the *Accardi* doctrine is not illegal as the term is analyzed in reference to the statute. In the context of a rejection on initial probation, the term "illegal" means that the rejection is contrary to public policy. I have set forth examples above.
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> I certainly sympathize with the Employee's position that she was not provided the proper counseling and notice of the Employer's evaluation of her work performance. However, I am required to enforce the law and regulations as written. The Employee has not identified a legal or constitutional basis to challenge her rejection on probation. As such, her appeal must fail as a matter of law.

B. Judicial Review

Sterling filed a petition for judicial review in the Circuit Court for Anne Arundel County. She argued that the ALJ's decision was legally incorrect because the employer's failure to follow its own rules and regulations was illegal and in violation of the *Accardi* doctrine and Maryland case law applying that doctrine to Maryland administrative agencies. The employer again countered that Sterling could only challenge her rejection on probation on legal and constitutional bases, that those were limited to actions that violated public policy or were the result of unlawful discrimination, that Sterling was not

unlawfully discriminated against, and that public policy was not violated. In addition, the employer argued that Sterling failed to show that she was prejudiced as a result of the violation.

In a written opinion and order, the circuit court affirmed the decision of the OAH. Relying on *Bd. of Educ. of Anne Arundel Cty. v. Barbano*, 45 Md. App. 27 (1980), the court concluded that the primary purpose of the regulations at issue was not to bestow benefits on probationary employees such as Sterling, but "to ensure the public interacts with competent and dedicated employees." Moreover, "the purpose of the rules in question is to provide a system for evaluating probationary employees and not to safeguard the rights of the probationary [Department] employees." The court also determined that the failure of the employer to evaluate Sterling's performance before rejecting her on probation "was not a failure to confer an important procedural benefit" on Sterling; rather it "was a failure in the 'ordinary transaction of business.'" The court held that Sterling was not prejudiced by the employer's failure to evaluate her performance because even if feedback had been provided, it "was overwhelmingly negative and ostensibly would have led to the same substantive outcome: a rejection of [Sterling] on initial probation."

With regard to Sterling's argument that the employer's notice of rejection was unreasonable because it was hand-delivered to her former address and sent to her personal email address, the court held that there was substantial evidence that Sterling received adequate notice and that she was not prejudiced by receipt of actual notice of her rejection on probation when she arrived at work on November 21, 2019. The court wrote that to "conclude that [the employer] missed the mark by 8 hours and thus the employee had

irrevocably crossed the Rubicon from probationary employee to career service employee would be the triumph of literalism indeed."

STANDARD OF REVIEW

In a judicial review proceeding, the issue before us is not whether the circuit court erred, but whether the administrative agency erred. *Bayly Crossing, LLC v. Consumer Prot. Div.*, 417 Md. 128, 136 (2010). For this reason, we will "look through" the circuit court's decision in order to evaluate the decision of the agency. *In re J.C.N.*, 460 Md. 371, 386 (2018); *Kor-Ko Ltd. v. Md. Dep't of the Env't*, 451 Md. 401, 409 (2017); *Garrity v. Md. State Bd. of Plumbing*, 447 Md. 359, 368 (2016); *People's Counsel for Balt. Cty. v. Loyola Coll. in Md.*, 406 Md. 54, 66 (2008).

Our review of an administrative agency's determination is limited narrowly to determining if there is (1) "'substantial evidence in the record as a whole to support the agency's findings and conclusions[,]'" and (2) "'to determine if the administrative decision is premised upon an erroneous conclusion of law.'" *Cosby v. Dep't of Human Res.*, 425 Md. 629, 638 (2012)(quoting *Bd. of Physician Quality Assurance v. Banks*, 354 Md. 59, 67 (1999)). To determine whether there is substantial evidence to support the agency's findings and conclusions, we look to see "whether the ALJ's determination was 'supported by evidence which a reasonable person could accept as adequately supporting [the] conclusion.'" *In re J.C.N.*, 460 Md. at 386 (quoting *Kenwood Gardens Condos, Inc. v. Whalen Props., LLC*, 449 Md. 313, 325 (2016)). We view the evidence in the light most favorable to the agency. *Colburn v. Dep't of Pub. Safety & Corr. Servs.*, 403 Md. 115, 128 (2008).

We review the ALJ's grant of a summary decision *de novo*. *Eng'g Mgmt. Servs., Inc. v. Md. State Highway Admin.*, 375 Md. 211, 230 (2003). We must reverse if we determine, on *de novo* review, that there was a genuine dispute of material fact and that the ALJ's finding was not legally correct. *Id.* at 229-30. We may not uphold the ALJ's decision "unless it is sustainable on the agency's findings and for the reasons stated by the agency." *Kor-Ko Ltd.*, 451 Md. at 424 (emphasis omitted) (quoting *Walker v. Dep't of Hous. & Cmty. Dev.*, 422 Md. 80, 107 (2011)).

DISCUSSION

I.

Sterling contends that her rejection on probation was invalid because the employer violated its own regulations, specifically Section 6B, paragraphs 5.5, 8.2, and 8.3. She argues, as she did below, that she should be reinstated as an employee because the employer's failure to follow its own regulations constituted a violation of the *Accardi* doctrine as applied in Maryland cases. As we have already noted, the *Accardi* doctrine, which has its genesis in *Accardi*, 347 U.S. at 267, "requires, with some exceptions, an administrative agency to generally follow its own procedures or regulations." *Pollock*, 374 Md. at 467 n.1. In *Pollock*, Maryland adopted its own variation of the *Accardi* doctrine. The Court of Appeals examined how the doctrine was applied in Maryland and other jurisdictions, and set forth the following framework:

> [A]n agency of the government generally must observe rules, regulations or procedures which it has established and under certain circumstances when it fails to do so, its actions will be vacated and the matter remanded. This adoption is consistent with Maryland's body of

> administrative law, which generally holds that an agency should not violate its own rules and regulations.
>
> In so holding we nonetheless note that not every violation of internal procedural policy adopted by an agency will invoke the *Accardi* doctrine. Whether the *Accardi* doctrine applies in a given case is a question of law that . . . requires the courts to scrutinize the agency rule or regulation at issue to determine if it implicates *Accardi* because it affects individual rights and obligations or whether it confers important procedural benefits or, conversely, whether *Accardi* is not implicated because the rule or regulation falls within the ambit of the exception which does not require strict agency compliance with internal procedural rules adopted for the orderly transaction of agency business, *i.e.*, not triggering the *Accardi* doctrine.
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> Additionally, we adopt the exception to the *Accardi* doctrine which provides that the doctrine does not apply to an agency's departure from purely procedural rules that do not invade fundamental constitutional rights or are not mandated by statute, but are adopted primarily for the orderly transaction of agency business.
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> * * *
>
> Where the *Accardi* doctrine is applicable, we are in accord with the line of cases arising from the Supreme Court and other jurisdictions which have held that prejudice to the complainant is necessary before the courts vacate agency action. In the instances where an agency violates a rule or regulation subject to the *Accardi* doctrine, *i.e.*, even a rule or regulation that affects individual rights or obligations or affords important procedural benefits upon individuals, the complainant nevertheless must still show that prejudice to him or her (or it) resulted from the violation in order for the agency decision to be struck down.

Id. at 503-04 (quotations omitted).

Accordingly, three conditions must be satisfied before the decision of a Maryland agency will be vacated under the *Accardi* doctrine: (1) the agency must have violated its own regulations or procedures; (2) those regulations or procedures must affect individual rights and obligations or confer important procedural benefits, and not have been adopted merely for the orderly transaction of agency business; and, (3) the party alleging a violation

must show that the violation resulted in prejudice to him or her. *See Balt. Police Dep't v. Antonin*, 237 Md. App. 348, 369-70 (2018).

In *Smack, supra*, we addressed the moving party's burden of proving that his or her termination on probation was illegal or unconstitutional. 134 Md. App. at 426. That case involved a probationary employee who alleged, among other things, that her termination on probation was illegal or unconstitutional based on racial discrimination. *Id.* at 417. We held that "the thrust of the term 'illegal' is the creation of an exception for terminations that contravene public policy." *Id.* at 427. We noted a decision of the Fourth Circuit Court of Appeals, applying Maryland law, which held that "the public policy exception in Maryland extends only to those situations where an employee is retaliated against for a 'refusal to engage in illegal activity, or the intention to fulfill a statutorily prescribed duty." *Id.* at 427 (quoting *Adler v. Am. Standard Corp.*, 830 F.2d 1303, 1307 (4th Circ. 1987), *rev'g* 538 F.Supp. 572 (D.Md.1982) (applying Maryland Law). We explained the type of public policies that have received protection as follows:

> In Maryland, public policies that have received protection include the refusal to violate clients' and customers' constitutional rights to privacy, freedom from and opposition to sexual harassment that amounted to assault and battery, freedom from gender-based discrimination, and the protection of children from abuse or neglect[.] The Court of Appeals has also held that a public body cannot fire an at-will employee for the exercise of his First Amendment rights. In *Ewing v. Koppers Co.*, 312 Md. 45, 537 A.2d 1173 (1988), the Court of Appeals made clear that discharge based solely on the exercise of worker's compensation rights violates public policy. The *Ewing* court held that the abusive discharge cause of action is available not just to at-will employees, but also to employees working under an employment contract.

Id. at 428 (internal citations omitted).

In the case at hand, Sterling failed to establish that her rejection on probation was unconstitutional or that she was rejected for an illegal reason. The procedural violations she references do not implicate constitutional concerns. As made clear in *Smack*, Sterling's assertion that any violation of the *Accardi* doctrine is necessarily illegal is incorrect. Although procedural violations might qualify as illegal under appropriate circumstances, that is not the case here. Neither the failure to use a particular evaluation form nor the manner by which the employer notified Sterling of her rejection violated public policy and neither rendered the decision to reject her on probation illegal or unconstitutional as those terms are described in *Smack.*

With regard to the notice given, as the employer points out, the "14-day notice requirement does not reflect any bedrock principle of Maryland law or policy" or "establish an inviolable policy of giving no fewer than fourteen days' notice." The policies actually provided that the employer could give less than two weeks' notice if, "in the judgment of the appointing authority, the employee's continued presence on the job would be contrary to the best interests of the Department." COMAR 11.02.02.05G. Although the employer did not rely on that provision, and attempted to provide notice within the 14-day period, it is clear that the policy of providing two weeks' notice is not inviolable.

The same is true with respect to the fact that notice was provided via hand-delivery to the address listed on Sterling's driver's license and via email to her personal email address. Although the employer should have used the address Sterling provided in April 2019, the failure to do so does not violate an inviolable principle of public policy. In fact, as the employer points out, Maryland law requires each licensed driver to provide his or

her current address. *See* TR § 16-116(a). Further, Sterling acknowledged that the email address used by the employer did, in fact, belong to her. Neither of these circumstances arises to the level of illegality identified in *Smack* as sufficient to overturn the decision on the ground of illegality.

For these reasons, we conclude that the ALJ's conclusion that Sterling failed to meet her burden of proof was supported by substantial evidence and was not plainly erroneous.

II.

Even if this case was not subject to the standards of "illegal" and "unconstitutional" action as set forth in *Smack*, Sterling would fare no better. Under Maryland's interpretation of the *Accardi* doctrine, Sterling was required to establish that the policies on which her claims are based "affect individual rights and obligations or confer important procedural benefits," that the policies were not adopted "merely for the orderly transaction of agency business[,]" and that "the violation resulted in prejudice" to her. *Antonin*, 237 Md. App. at 369-70 (citing *Pollock*, 374 Md. at 503-04).

Sterling failed to establish that the alleged violations resulted in prejudice to her. She acknowledged that her initial period of probation was extended another six months. There was no evidence to suggest that Sterling was unable to respond to that decision. Similarly, there was no evidence to suggest that she was unable to respond to the more informal means the employer used to evaluate her performance. The record makes clear that Sterling was able to pursue an appeal from her employer's decision and she did not assert that witnesses had become unavailable, that their memories had faded, or that her ability to proceed was prejudiced in any way.

With respect to prejudice, Sterling points to the fact that she was required to bear the burden of proof on appeal as if she was a probationary employee instead of a Career Service employee under Section 6B, paragraph 8.3. Sterling did not raise this issue below, but even if she had, her reading of Section 6B, paragraph 8.3 ignores *Smack* and the purpose of the provision. Section 6B, paragraph 8.3 was clearly intended as a mechanism to allow employees whose performance on probation met applicable standards to move seamlessly into employment as Career Service employees. To conclude that Sterling should have been treated as a Career Service employee simply because she never formally received the appropriate evaluation form or had a chance to respond to it, would, as the employer suggests, "be the triumph of literalism indeed." The technical violations Sterling alleges do not justify the conclusion that the employer was required to retain her as a Career Service employee, when her performance as a probationary employee was unsatisfactory.

JUDGMENT OF THE CIRCUIT COURT FOR ANNE ARUNDEL COUNTY AFFIRMED; COSTS TO BE PAID BY APPELLANT.