

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 1776

September Term, 2013

THEOLINDA LYONS-OWENS

v.

MARYLAND AVIATION ADMINISTRATION

Graeff,
Nazarian,
Sharer, J. Frederick
(Retired, Specially Assigned),

JJ.

Opinion by Sharer, J.

Filed: May 26, 2015

*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.

Theolinda Lyons-Owens, Lyons-Owens, was terminated from her position as Equal Employment Opportunity Manager of the Maryland Aviation Administration (“the Administration”). Lyons-Owens appealed her termination to the Office of Administrative Hearings (“OAH”), which, following a hearing, affirmed the Administration’s decision. Subsequently, Lyons-Owens sought judicial review in the Circuit Court for Baltimore County, which affirmed the ALJ’s decision. This appeal followed.

Lyons-Owens presents a single question for our review, which we have revised for clarity:

Did the ALJ err by failing to find that Lyons-Owens was deprived notice and an opportunity to be heard prior to her hearing; and did the ALJ err in finding that the Administration produced substantial, credible evidence to justify her termination?

For the reasons that follow, we shall affirm the judgment of the circuit court.

FACTS and PROCEEDINGS

The charges underlying Lyons-Owens termination stemmed, largely, from her conduct in three particular instances: (1) her behavior at an Office of Fair Practices staff meeting; (2) her communication with Cedric Johnson, Director of Security at BWI Airport; and (3) her communications with David Agbor, one of Johnson’s employees. For clarity, we summarize the situations separately, as established by the record.

A. The Staff Meeting

On March 9, 2011, Angela Martin, Lyons-Owens’s supervisor and Director of the Administration’s Office of Fair Practices, led a staff meeting attended by Lyons-Owens and

her co-workers. At the meeting, Martin explained a change in the office’s attendance policy. The new policy required employees to call their supervisor if they were going to be 15 minutes late, and to call again if they were going to be 30 minutes late. At the initial mention of the policy change, Lyons-Owens, in a raised voice, indicated that she had a question about the new policy; Martin responded that she would take questions after the agenda items were concluded. Undeterred, Lyons-Owens, loudly, stated that the new rules were inflexible and “antiquated” and insisted that Martin did not understand the shortcomings of the policy because she did not have a husband or children.

Later in the meeting, Martin stated that employees needed to be careful with their trash because there had been a problem with mice in the office. Lyons-Owens responded to that comment by asserting that the mice were probably coming from Martin’s office, as it needed to be cleaned.

B. Meeting with Cedric Johnson, Security Director at BWI Airport

On February 11, 2011, Lyons-Owens contacted Johnson’s administrative assistant and asked to speak with Johnson right away. Subsequently, Johnson went to Lyons-Owens’s office to meet with her. During that meeting, Lyons-Owens informed Johnson that there were complaints, filed by several Security employees, including Agbor, a Compliance Officer, that involved a Security employee, Amanda Baker. Baker was Agbor’s supervisor. Only one of the complaints involved conduct which occurred since Johnson had become Security Director in January 2010. The information passed from Lyons-Owens to Johnson

concerned Martin because, although a complaint had been made about one of Johnson's employees, the complaint process had not yet reached the investigation stage, the point at which witnesses and relevant parties would be interviewed or advised of the complaint.

Pursuant to agency standard procedure, those to be notified about an employee's complaint, prior to the investigative phase, are the EEO manager to whom the complaint was reported, the individual who is the subject of the complaint, the Administration's Executive Director, and the Deputy Executive Director. An investigation plan is formulated and implemented only after the Executive Director has reviewed a memorandum related to the complaint. At the time of Lyons-Owens's meeting with Johnson, Martin had been meeting with the Administration's Executive Director about the memorandum related to the most recent complaint involving a Security employee.

Subsequently, Johnson e-mailed Martin and Janine Ladzinski, Director of Human Resources of the Administration, about his meeting with Lyons-Owens. In the e-mail, Johnson noted that, because Lyons-Owens advised him of complaints made against employees in his office, he would have to modify an affidavit he had recently given in which he stated that he had not been aware of any fair practice or civil rights issues related to Baker, the subject of the complaint.

C. Communications with David Agbor

After receiving Johnson's e-mail, Ladzinski became concerned that Lyons-Owens may have disclosed confidential Administration Management information to Agbor.

Thereafter, Ladzinski contacted Martin, suggesting an investigation of Lyons-Owens to determine whether Lyons-Owens had been “releasing confidential information to people who don’t need to know.”

Thereafter, Ladzinski, Martin, and George Pratt, the Administration’s Employee/Employer Relations Officer, looked into communication between Lyons-Owens and Agbor. A review of records of Agbor’s state-issued cell phone disclosed dozens of calls made to, and received from, Lyons-Owens’s personal cell phone, between October 2009 and February 2011. Many of the calls were made during non-working hours, *i.e.*, nights and weekends.

D. Further Investigation of Lyons-Owens

Subsequently, Martin, Ladzinski, and Pratt met with Agbor to ask about his communications with Lyons-Owens. Agbor stated that he did not specifically recall the phone conversations and noted that he may have called Lyons-Owens by accident. Later in the meeting, Agbor admitted the calls were related to EEO complaints he had about his having been disciplined. He stated that the calls were not of a personal nature and explained that he had Lyons-Owens’s personal cell phone number because she had given it to him.

Martin, Ladzinski, and Pratt also met with Lyons-Owens regarding her communications with Agbor. Lyons-Owens denied having given Agbor her personal cell phone number, explaining that he would have already had it. She also denied having Administration employees call her during non-working hours. When told that phone records

indicated numerous calls between her personal cell phone and Agbor's state-issued cell phone, she stated that she may have given Agbor her phone number, but that she did not remember the calls. Later in the meeting, Lyons-Owens claimed that Agbor had gotten her phone number from Claude Samuels, the Administration's former Director of Security. She asserted that she could not remember the reasons for the calls, but conceded that they may have been for the purpose of advising Agbor about EEO procedures. Lyons-Owens denied that the calls were of a personal nature.

Explaining her reason for meeting with Johnson, Lyons-Owens said that it was her standard procedure to notify directors of departments when one of their employees was involved in an EEO complaint. Lyons-Owens named Carlos Rece, the former Director of Maintenance for the Administration, as a director whom she had contacted in the past.

Lyons-Owens was also asked about the March 2011 staff meeting in the Fair Practices Office. She asserted that although she did not respect Martin, she did not show disrespect at the staff meeting. Later in the investigatory meeting, she agreed that she had been rude to Martin at the staff meeting and admitted to making inappropriate statements about Martin not having a husband or children.

At the end of the meeting, Lyons-Owens was advised that the matters discussed were part of a confidential, and ongoing, proceeding and that she was not to speak to anyone, except her "representative," about them. She was told, specifically, not to speak to Agbor about the matter.

Although, following the investigatory meetings with Agbor and Lyons-Owens, the Administration was not able to determine if confidential information had been wrongly communicated, because Agbor and Lyons-Owens were not forthcoming when questioned on the matter, it was, nevertheless, concluded that disciplinary action was warranted.

E. Mitigation Conference

Subsequently, a mitigation conference was held to determine appropriate discipline. Attending were: Pratt, Martin, Ladzinski, and Lyons-Owens. Lyons-Owens told Pratt, Ladzinski, and Martin that she had been advised, by an Administration employee, that they had spoken to Rece in the course of their investigation; when asked, Lyons-Owens declined to name the employee who gave her that information. Lyons-Owens also stated that she had spoken to Samuels and that he would attest to the fact that he was the one who gave her cell phone number to Agbor. The Administration was not able to verify her claim because Samuels was “difficult” and uncooperative.

The outcome of the mitigation conference was the recommendation to terminate Lyons-Owens’s employment.

F. The Charges Underlying the Termination

The charges against Lyons-Owens tracked COMAR 11.02.08.06(B):

- (1) The employee is incompetent or inefficient in the performance of job duties;
- (2) The employee’s action or inaction amounts to insubordination;

(3) The employee has performed the job duties in a careless or negligent manner;

(6) The employee has violated any statute, regulation, executive order, written policy, written directive, or written rule;

(7) The employee has failed to obey a lawful and reasonable direction given by a supervisor or superior;

(8) The employee has committed an act of misconduct or a serious breach of discipline;

(9) Unauthorized Absence;

(11) The employee has been wantonly offensive toward other employees, supervisors, or members of the public;

(12) The employee's action or inaction has caused or reasonably could be expected to result in loss or injury to the State or members of the public;

(16) The employee has willfully made a false official statement or report.

G. OAH Hearing

Lyons-Owens appealed her termination and was afforded a hearing before the OAH.

Ifeyinwa Nwankwo, a co-worker, testified that Lyons-Owens often acted unprofessionally during staff meetings by loudly interrupting Martin. Linda Budzynski, also a co-worker, testified that during the March 2011 staff meeting, Lyons-Owens interrupted Martin several times and was loud and aggressive in voicing her displeasure with the policy being discussed.

Jan Bryant, Director of the Office of Diversity at the Maryland Department of Transportation ("DOT"), testified that she is responsible for enforcing the civil rights law and

EEO programs within the Department.¹ She explained that the policy regarding the EEO claim process provides for confidentiality “as much as possible.” Bryant met with Martin, Pratt, and Ladzinski regarding Lyons-Owens’s possible “violation of the confidentiality outlined in the THRS policy”² and concluded that she believed the records related to Agbor’s state-issued cell phone indicated a breach of the applicable confidentiality policy. Specifically, Bryant testified:

Because the nature of the job is that we need people to talk to us and we have to guarantee confidentiality as much as we can. If you are going to be talking to the complainant or anybody else, particularly outside of work hours, it gives the appearance of impropriety.

You are talking, you know, you would be talking in an unofficial capacity also and that to me is just, it is a breach of confidentiality. Confidentiality in this role is extremely important in order for us to effectively do our job, we need to be able to guarantee that information that is told to us in confidence stays in confidence to the extent possible.

Bryant stated that sharing information with Johnson about complaints involving employees in his office was a violation of confidentiality. She testified, however, that she recalled stating that she did not think there was a written policy or statute that directly addressed the Lyons-Owens - Agbor communications.

¹The Maryland Aviation Administration is a division of the Maryland Department of Transportation.

²The acronym “THRS” refers to the “Transportation Service Human Resources” policy.

Martin testified that, with respect to the investigation of EEO complaints, her office followed the policy set forth in THRS section 11D.³ She explained the process as follows:

[ADMINISTRATION'S COUNSEL]: And just generally, what does that policy require in the investigation of discrimination complaints?

[MARTIN]: The policy basically requires that there are certain forms. When an employee comes in, they discuss with the EEO manager or myself the situation. They explain why they think they are subject to discrimination.

There is a discussion of different information about what they think the reasons, et cetera. There is a form for the employee to fill out if they feel they have been discriminated against.

There is a rights form. So basically, the process is followed. If the complaint is accepted, the employee would get a letter. The responding official for [the Administration] or the manager, whoever is the person that has been accused of discrimination would get a notice letter and the agency head would get a memo about that.

Then the complaint would be investigated.

[ADMINISTRATION'S COUNSEL]: . . . are there any other individuals notified at that step in the process?

³Although the relevant provision of THRS section 11D was not discussed at the hearing, or admitted into evidence, we note that subsection 9.3 provides:

9.3 Through the [EEO complaint] investigation, the Equal Opportunity Officer shall ascertain all facts surrounding the complaint. All records (including personnel records), policies, witnesses, and any other information shall be made available to the Equal Opportunity Officer. The Equal Opportunity Officer shall advise the complainant that the Administration will ensure confidentiality as much as possible. The employees involved in the investigation, including the complainant and witnesses, shall be assured of no retaliation.

(emphasis in original).

[MARTIN]: No. Basically the process is that the complaint is filled out with the EEO manager. It is written up. The form is filled out, the complainant gets a letter. They get their notification in the letter saying it has been accepted, that you should not be retaliated against, et cetera, and the complaint letter is signed.

The manager or whoever is accused of the discrimination gets a notification letter in a letter format. The Executive Director gets a memo with a cc to the Deputy Executive Director and that's the notification.

[ADMINISTRATION'S COUNSEL]: Okay. And what's the next step in the process?

[MARTIN]: The next step is that the investigation occurs. There is an investigation plan developed. The EEO manager or as I said in some cases myself would investigate.

Witnesses would be contacted, meetings would be held, information would be requested, statements from those people would be placed in the file. Analysis would be done, other documents would be requested, et cetera. Just the investigation process and then an investigative report would be written up.

[ADMINISTRATION'S COUNSEL]: Okay. And at the conclusion of the investigative process, well, what happens to the investigative report?

[MARTIN]: The investigative report is shared with legal counsel for review. There is review and input from legal counsel and then the investigative report is finalized.

The information is shared with the Executive Director. If there is a probable cause finding in a lot of instances where there is a no probable cause finding, the complainant has been advised of that in a written letter.

There is a notice [sent] to the respondent and essentially the complaint is closed at that point if it's a no probable cause.

Asked about complaints involving Security employees, Martin stated that she thought it was unusual for Lyons-Owens to have contacted Johnson because she did so even before

Martin presented the appropriate memorandum to the Executive Director. She believed that Lyons-Owens had shared information with Johnson about Baker having credibility problems. Martin testified that Lyons-Owens had told her that she met with Johnson because it was standard practice of hers to let directors know when employees they supervised were involved in complaints; Martin, however, stated that she was not aware of such a standard practice.

Regarding Lyons-Owens's communication with Agbor, Martin noted:

Well, the concern was that confidential information may have been shared or was shared during the discussions because traditionally we do not discuss or contact complainants after hours and at all times of the night . . . to talk about complaints.

. . . that's not normal practice. That's not something that would have been a part of any policy or procedure and I definitely had never shared with [Lyons-Owens] that she should feel free to do that.

Martin recalled that Agbor and Lyons-Owens, in their respective interviews, gave conflicting reasons for the calls between them and that, as a result, Martin believed the calls were about complaints..

With respect to the March 2011 staff meeting, Martin noted:

And then there was some other discussion about mice and, you know, paper . . . I think one of the comments I made in addition to going over this was that we should keep trash and things tidy. . . . because our building had mice.

Another employee . . . commented that mice like paper and they'll nest in it . . . and then [Lyons-Owens] commented that they were probably coming from my office because my office was junky or needed to be cleaned up and

something to that effect and that they were probably in my office which I thought was inappropriate. But that was her comment.

She asserted further that Lyons-Owens was often excessively loud and argumentative when communicating with her. There were several years in the past when Martin wrote performance evaluations of Lyons-Owens and gave her low ratings with respect to characteristics such as tact, cooperation, punctuality, and communication.

Lyons-Owens testified, with respect to the March 2011 staff meeting, that she voiced her concerns about the new attendance policy because she thought that she was the only person in the office whom it would affect. She asserted that when she voiced her exception to the changes to the attendance policy, Martin cut her off and told her to save her questions until after every point of the meeting memorandum had been presented. Additionally, Lyons-Owens admitted that, later in the staff meeting, she “probably did” state that Martin’s office “[was] a mess.” However, Lyons-Owens insisted that she did not: (1) interrupt Martin; (2) raise her voice; (3) mention that Martin did not have a husband; or (4) state that Martin’s office was “trashy.”

Lyons-Owens claimed that she did not have a relationship with Agbor outside of the workplace and did not communicate with him about personal matters. She asserted that Agbor, at some point, came to see her with a problem he had with a meeting in which he had participated. After consulting Martin on how to handle the inquiry, she interviewed the relevant parties, and prepared a summary for Martin. Lyons-Owens asserted that she was

aware of the sort of information she was not supposed to share with complainants and claimed that she never disclosed to Agbor any confidential information.

When asked about Agbor's phone records that showed text messages between his state-issued cell phone and her personal cell phone, Lyons-Owens did not recall receiving text messages from Agbor and that he "never" contacted her in that manner. For each entry in Agbor's phone records showing a communication between Lyons-Owens and Agbor, Lyons-Owens was asked if she remembered the subject call; Lyons-Owens responded to each query by indicating that she did not remember making or receiving the call in question.

Regarding her meeting with Johnson, Lyons-Owens stated that, in February of 2011, she was assigned to work on an investigation "with regard to [Agbor]" and that, subsequently, she met with Johnson because:

Well, the investigation plan requires that you establish jurisdiction. You cannot file a grievance and . . . file an EEO complain[t] for the same exact issue.

The only person who could tell me if there was a grievance already in play is the appointing authority, [Johnson].

So I go to him and I find out if he is already working on the issue. If not, I'm coming to investigate two employees . . . and it is also to make sure I got cooperation in this Office of Airport Security when I start calling people.

. . . So that's why I went to [Johnson] to bring him on board, that an investigation was coming to his area, and that I needed to know to prepare my investigation plan if there was already a grievance because if there [was] a grievance, I [would] recommend in my investigation plan that we do an administrative close . . .

Lyons-Owens also stated that she advised Johnson that Agbor had previously filed a complaint against Baker, asked “preliminary questions” regarding Agbor’s active complaint, and discussed prior complaints against Baker by other employees. She admitted that when she was initially asked, by Martin, about her meeting with Johnson, she did not reveal that she spoke with Johnson about complaints other than Agbor’s. Lyons-Owens acknowledged that THRS section 11D is the policy controlling EEO investigations within the DOT and stated that she only notified directors about complaints in their offices when “a complaint required that procedure.”

With respect to how Agbor obtained her personal cell phone number, Lyons-Owens testified:

Well . . . [Agbor] and I weren’t that close. So I never really thought about it. But I knew that I hadn’t given him my phone number.

Then it came to me one day that I remember Claude Samuels called me and asked me if he could give [Agbor] my telephone number . . . to discuss something with him and I told him he could. That’s how [Agbor] got my cell number.

On cross-examination, Lyons-Owens gave the following responses to questions about whether she had given Agbor her personal cell phone:

[ADMINISTRATION’S COUNSEL]: Now, initially when . . . [Martin] asked you if [Agbor] had your telephone number and your answer was [“no”] for that correct?

[LYONS-OWENS]: Incorrect.

[ADMINISTRATION’S COUNSEL]: When they asked you had you given your telephone number to [Agbor], you answered [“(no, [”]) correct?

[LYONS-OWENS]: I didn’t, I wasn’t clear at the time.

[ADMINISTRATION’S COUNSEL]: That wasn’t my question. My question is when they asked you if you had given your telephone number to [Agbor], your answer was [“(no, [”]) correct?

[LYONS-OWENS]: No. I’m going to say no. I did not say that.

[ADMINISTRATION’S COUNSEL]: When [Martin] asked you the question, [“(did you give your personal home or cell telephone number to [Agbor], [”]) you answered [“(no, [”]) is that correct?

[LYONS-OWENS]: I do not recall exactly what happened in that meeting.

During her phone calls with Agbor, Lyons-Owens stated, they discussed Agbor’s inquiry, the weather, their children, and “personal life things.”

Following Lyons-Owens’s testimony, Martin was recalled as a rebuttal witness. Martin testified that the first time Lyons-Owens claimed that notifying directors of complaints in their offices was her standard procedure was during the first meeting after the investigation of Lyons-Owens began. Martin asserted that contacting the director of an office to determine jurisdiction for a complaint was unnecessary because information related to the jurisdiction for a complaint would have been provided by the complainant.

The ALJ ruled as follows:

I conclude as a matter of law that [Lyons-Owens] violated the following sections of COMAR 11.02.08.06B: (1) the employee is incompetent or inefficient in the performance of job duties, and is unable to perform at acceptable levels after proper guidance, training and recommendations for

improvement have been provided to the employee; (2) the employee's action or inaction amounts to insubordination; (3) the employee has performed job duties in a careless, negligent or willful manner, including causing damage to, or waste of, State property, State resources or property of a member of the public; (6) the employee has violated any statute, regulation, executive order, written policy, written directive, or written rule; (7) the employee has failed to obey a lawful and reasonable direction given by a supervisor or superior; (8) the employee has committed an act of misconduct or a serious breach of discipline; (9) unauthorized absence; (11) the employee has been wantonly offensive toward other employees, supervisors, or members of the public; and (15) the employee has willfully made a false official statement or report.

Accordingly, the ALJ affirmed the decision to terminate Lyons-Owens's employment.

On judicial review, the circuit court affirmed the ALJ's findings and conclusions.

Additional facts will be provided below as our analysis requires.

DISCUSSION

Lyons-Owens contends that she was not provided notice, in the charges, of the confidentiality policy she was alleged to have violated. Further, she insists that there was not substantial evidence to justify each of the charges of her termination. Accordingly, she requests that "the decision of the [ALJ] below be reversed, and that she be reinstated to her former position with full back pay and benefits."

Standard of Review

Our review of an administrative agency's adjudicatory decision is narrow and is restricted to the determination of whether there was substantial evidence in the record to support the agency's findings and conclusions, and whether the agency's decision was legally correct. *Maryland Aviation Admin. v. Noland*, 386 Md. 556, 571 (2005) (citing *Board of*

Physician Quality Assurance v. Banks, 354 Md. 59, 67-68 (1999)). In our review, we defer to the agency’s findings of fact and the inferences drawn therefrom if supported by the record. *Id.* (Citing *Board of Physician Quality Assurance*, 354 Md. at 68). We review the ultimate decision in the light most favorable to the agency as “the agency’s decision is prima facie correct and presumed valid[.]” *Id.* (quoting *Board of Physician Quality Assurance*, 354 Md. at 68). Our deference extends even to certain of the agency’s legal decisions, because the role of the agency is to interpret and apply the statutes it is charged with administering. *Id.* at 572 (citing *Board of Physician Quality Assurance*, 354 Md. at 69).

The ALJ’s Findings

Where the ALJ found that a number of instances of Lyons-Owens’s conduct supported multiple charges of termination, we shall assess the charges in the sequence which best avoids redundancy.

A. COMAR 11.02.08.06B(1), (3)&(6)

The record reveals that Lyons-Owens met with Johnson about a complaint involving one of his employees, Agbor, before an investigation plan was formulated. Further, there was evidence of extensive phone communication between Lyons-Owens and Agbor, including many calls which occurred outside of work hours, between October 2009 and February 2011. Agbor was involved in an EEO inquiry and an EEO complaint in 2009 and 2011, respectively. Both Agbor and Lyons-Owens conceded that EEO procedures, among other things, were discussed during the calls.

The ALJ noted that because of Lyons-Owens’s position as EEO Manager, her duties gave her the power to affect the reputations and careers of those touched by EEO investigations. As such, the ALJ found that it was “egregious” and “a serious breach of confidentiality” for Lyons-Owens to speak with Johnson about Agbor’s complaint before an investigation plan was formulated. Further, as to Lyons-Owens’s communication with Agbor, the ALJ found that “an EEO officer should not be discussing an ongoing investigation with either party to that investigation outside the ordinary course of the investigation.”

Based on that finding, the ALJ concluded that the phone conversations showed a close relationship between Lyons-Owens and Agbor, that “it [was] hard to imagine how [Lyons-Owens] could not be partial to [Agbor’s] view of [his] case[,]” and that, accordingly, it was inappropriate for Lyons-Owens to have been investigating inquiries or complaints involving Agbor. Therefore, the ALJ found that the evidence supported the charges of incompetent or inefficient performance of job duties, performance of job duties in a careless or negligent manner, and violation of a written policy. COMAR 11.02.08.06.B(1), (3)&(6).

In light of the record, we are satisfied that the ALJ’s findings regarding those charges were supported by substantial evidence.

With specific regard to the charge of violating a written policy, we are not persuaded by Lyons-Owens’s contention that she was denied notice of the policy she was alleged to have violated. Pursuant to COMAR 11.02.08.06D, an employee who is the subject of

charges supporting an order of termination shall be provided “in writing . . . a statement of the charges and specifications for termination[.]” Also with respect to such notice, Md. Code Ann. (2009 Repl. Vol.), § 10-207(a)-(b)(3) of the State Government Article (“SG”), provides in pertinent part:

§ 10-207. Notice of agency action.

(a) *In general.* – An agency shall give reasonable notice of the agency’s action.

(b) *Contents of notice.* – The notice shall:

(1) state concisely and simply:

(i) the facts that are asserted; or

(ii) if the facts cannot be stated in detail when the notice is given, the issues that are involved;

(2) state the pertinent statutory and regulatory sections under which the agency is taking its action;

(3) state the sanction proposed or the potential penalty, if any, as a result of the agency’s action;

“In administrative proceedings, reasonable notice of the nature of the allegations must be given to the party so that it can prepare a suitable defense.” *Regan v. Board of Chiropractic Examiners*, 120 Md. App. 494, 519 (citation omitted). To qualify as reasonable, and, thus, sufficient, notice, “the adequacy of the notice must be determined in the light of the particular circumstances.” *Bernstein v. Board of Ed. of Prince George’s County*, 245 Md. 464, 474 (1967).

The facts alleged in the charges noted that, prior to Lyons-Owens’s mitigation conference, she was advised, in writing, that she was being investigated for “potential violations of confidentiality” and other acts of misconduct. The notice also stated that one of the charges was “violat[ion] [of] any statute, regulation, executive order, written policy, written directive, or written rule[.]” At the OAH hearing, Martin clarified that the policy of confidentiality that Lyons-Owens was alleged to have violated was found in THRS section 11D. Thereafter, Lyons-Owens conceded that THRS section 11D was the policy that controlled EEO investigations within the DOT, which includes the Administration.

We conclude that Lyons-Owens, in the circumstances of this case, was adequately advised of the policy she was alleged to have violated.

B. COMAR 11.02.08.06B(2), (9)&(11)

The record also established that Lyons-Owens was frequently rude and disrespectful toward Martin, her supervisor. Her attitude was clearly shown during the March 2011 staff meeting at which Lyons-Owens loudly, and continually, interrupted Martin even after she stated that she would take questions after the meeting agenda had been concluded. Lyons-Owens’s interruptions were not only disruptive but also, in some instances, took the form of derogatory remarks directed at Martin. Moreover, the record shows that Lyons-Owens was often, in e-mails, private conversations, and in staff meetings, rude and unprofessional when interacting with Martin.

On one specific occasion, January 21, 2011, Martin saw Lyons-Owens leaving the office early and asked for an explanation. Lyons-Owens responded that she did not feel well and left a leave slip, and continued on her way without providing any further answer to Martin’s question. It was also shown that, in September 2010, Lyons-Owens failed to attend two days of mandatory training.⁴

The record supports the finding of those facts by the ALJ, which the ALJ found to be conduct amounting to insubordination, in violation of COMAR 11.02.08.06B(2), unauthorized absence, in violation of COMAR 11.02.08.06B(9), and the act of being wantonly offensive toward her supervisor, in violation of COMAR 11.02.08.06B(11).

We are satisfied that the ALJ’s findings were supported by substantial evidence.

C. COMAR 11.02.08.06B(7)&(8)

In addition to the above-noted instances of Lyons-Owens’s failure to obey Martin’s instructions, the record reveals that following the investigation meeting with Martin, Pratt, and Ladzinski, Lyons-Owens was told not to discuss matters related to the investigation with others. Subsequently, Lyons-Owens spoke with Samuels about how Agbor obtained her cell

⁴In her brief, Lyons-Owens argued that it was improper for the ALJ to cite Lyons-Owens’s absence from training as support for the finding that she was insubordinate because her absence from training had not been mentioned in the charges for termination. We are unpersuaded by Lyons-Owens’s argument on this point. The record shows that the charges for termination contained an entry related to “09/29/10” noting that Lyons-Owens had been issued “a Letter of Counseling dated September 28, 2010,” a document which addressed, among other conduct, Lyons-Owens’s “frequent absences from work[.]” The letter of counseling, admitted as a part of this record, provided a detailed summary related to Lyons-Owens’s failure to attend required training in September 2010.

phone number, a circumstance related to the investigation, given that the reason for, and nature of, the communications between Lyons-Owens and Agbor was under review.

Accordingly, the ALJ found that Lyons-Owens's actions amounted to a failure to obey the direction of her supervisor, a violation of COMAR 11.02.08.06B(7), and misconduct, a violation of COMAR 11.02.08.06B(8). On this record, we conclude that the ALJ's findings were supported by substantial evidence.

D. COMAR 11.02.08.06B(15)

Finally, we address the remaining charge – willfully making a false official statement. The record shows that during the investigatory meeting Lyons-Owens told Martin, Ladzinski, and Pratt that she had met with Johnson prior to the formulation of an investigative plan because she normally spoke with directors when an employee in their department was the subject of a complaint. She mentioned Carlos Rece as a director she had spoken to in the past. Rece, however, testified that he had never spoken to Lyons-Owens, in a professional capacity, regarding a complaint, or otherwise. Moreover, during the same investigative meeting, Lyons-Owens denied having Administration employees contact her during non-working hours. This statement was contradicted by the extensive record of communications between Lyons-Owens and Agbor.

The ALJ found that those statements by Lyons-Owens “made more difficult the full investigation into her alleged breaches of confidentiality, wasted time and misled,” and

concluded that the evidence showed that Lyons-Owens had given false official statements in violation of COMAR 11.02.08.06B(15).

Again, we conclude that this finding was supported by substantial evidence.

In sum, we hold that the ALJ did not err by finding that Lyons-Owens was properly notified of the written policy she was alleged to have violated, and that there was substantial evidence supporting each of the charges upon which her termination was based.⁵

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

⁵ Although we concluded that each charge for termination was supported by substantial evidence, we note that a single supported charge could serve as proper grounds for Lyons-Owens’s termination from employment. COMAR 11.02.08.06B (“Cause for Termination. **One or more than one** of the following causes is sufficient reason for termination, though termination may be for a cause or causes other than those enumerated[.]”).