Circuit Court for Baltimore City
Case No. 24-C-18-005199

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1904

September Term, 2019

MARYLAND DEPARTMENT OF HUMAN SERVICES

v.

OLUCHI AKUNNE

Fader, C.J.,
Nazarian,
Shaw Geter,

JJ.

Opinion by Nazarian, J.

Filed: October 19, 2021

Oluchi Akunne was a supervisor in the Baltimore City Department of Social Services ("DSS"), which is part of the Maryland Department of Human Services (the "Department").[1] She worked in DSS's Family Preservation Services unit ("Family Preservation"), and her duties included supervising caseworkers within that unit. One of those caseworkers was assigned to the case of a substance-exposed newborn whose father killed him in June 2017. After this tragic death, DSS investigated and, after finding Ms. Akunne performed her duties in connection with the case inefficiently and negligently, terminated her employment with prejudice. Ms. Akunne appealed the disciplinary action, and, after a contested case hearing, the Office of Administrative Hearings ("OAH") upheld Ms. Akunne's termination.[2]

Ms. Akunne filed a petition for judicial review in the Circuit Court for Baltimore City. The circuit court reversed the OAH's decision on procedural grounds without reaching the merits and ordered the Department to reinstate Ms. Akunne to her former position with full back pay and benefits. The Department timely appealed. We reverse the judgment of the circuit court and remand to that court with instructions to affirm the decision of the OAH.

[1] DSS is a unit of the Maryland Department of Human Services (the "Department"), a principal department of the State government. Md. Code (2007, 2019 Repl. Vol.), §§ 2-201, 3-201(a) of the Human Services Article ("HU").

[2] *See* Md. Code (1993 & 1994, 2015 Repl. Vol.) § 11-110 of the State Personnel and Pensions Article ("SP"); Md. Code (1984, 2014 Repl. Vol.), § 10-201, *et seq.*, of the State Government Article ("SG").

I. BACKGROUND

At the heart of this dispute lies the death of an infant. Many are responsible for that tragedy, not least the infant's parents, who the State represents were charged criminally and convicted in connection with his death. As for the Department, the OAH administrative law judge ("ALJ") observed in his memorandum opinion that there were "colossal errors" and "systematic failures at every level throughout [DSS]" that led to the infant's death. And the ALJ acknowledged that Ms. Akunne and her co-workers were "over-worked and overwhelmed." But as the ALJ also observed, this case does not present an opportunity to parse the many failings, but instead to determine whether the Department "acted appropriately and within the law by terminating [Ms. Akunne] with prejudice." With that in mind, we set forth the relevant factual background, which is based on OAH's fact findings unless we indicate otherwise.

Ms. Akunne testified that she came to the United States in 2002 when she was seventeen years old. She enrolled in community college and later received a full scholarship to Morgan State University. She received a master's degree in social work and had worked for DSS for about ten years at the time of the infant's death. She earned positive performance ratings, including those on two evaluations dated during the relevant time period (dated December 14, 2016 and June 19, 2017).

Ms. Akunne's official title within Family Preservation was "Team Administrator" or "TA," and she had held that position since June 2015. Her exact duties and responsibilities were the subject of some dispute before the OAH, but she does not contest

that they included supervising Family Preservation caseworkers.[3]

The infant, E.J., was born substance-exposed on December 27, 2016 to A.P. ("Mother") and P.J. ("Father"). E's case had initially been assigned to another unit within DSS, Child Protective Services ("CPS"), and CPS transferred the case to Family Preservation on or about February 10, 2017. Rhonda Parker, an employee in the Family Preservation unit, accepted the case file. The file contained references to CPS's prior involvement with the family. It referenced Mother and Father's three other children who had been removed from the home. It also referenced findings of indicated neglect by Mother and indicated child abuse by Father as to some or all of those children.[4] The file contained a CPS Safety Plan, signed by Mother, that provided that E was to have "[n]o unsupervised visits" with Father. The Safety Plan was to be reevaluated on January 14, 2017 (ostensibly by CPS, although the ALJ's decision does not say so) but never was.

[3] Ms. Akunne asserts that she was supervising more people than the applicable regulations allowed, and the ALJ agreed, stating that Ms. Akunne "was likely supervising more people than she should have been." But although the ALJ acknowledged that the applicable regulations provided that she should not supervise more than six people, "the evidence was vague and general as to how many [Ms. Akunne] actually had under her supervision, how many were full or part time and during what timeframe she supervised more than six people."

[4] According to the State and to documents in the file, the indicated findings of neglect against Mother and child abuse against Father stemmed from a March 2015 incident during which police responded to a domestic assault call at the home. Mother called police and reported having been hit and bitten by Father. She also reported that Father had hit one of the children earlier in the day; the police observed bruising and blood on the face and mouth of that child. The neglect finding as to Mother stemmed from her waiting until she had been assaulted by Father herself before calling police for assistance.

When CPS transferred the case to Family Preservation in February 2017, E's case was assigned to Ms. Akunne as supervisor. Ms. Akunne assigned E's case to caseworker Lamont Highsmith, who met, or attempted to meet, with Mother on a roughly weekly or biweekly basis up until about two weeks before Father killed E. As summarized by the ALJ, Ms. Akunne testified that she "had problems" with Mr. Highsmith "from the start," and that "he did not know the policy, he did not know how to do case notes, he was not coming to work, he did not make timely entries or have knowledge of his cases and she suspected he was not visiting clients and was cutting and pasting others' contact notes." And indeed, the ALJ found that many of Mr. Highsmith's contact notes for E's case were not entered into the statewide database known as "CHESSIE"[5] until May 2017. Mr. Highsmith made those entries in response to a "Corrective Action Plan" that Ms. Akunne delivered to him on May 9, 2017. Ms. Akunne was scheduled to meet with him on May 23 to go over his cases, including E's, but they communicated by email instead. Ms. Akunne acknowledged not reading the notes that Mr. Highsmith entered into CHESSIE after May 9 in response to the Corrective Action Plan.

The ALJ recounted in detail Mr. Highsmith's contact notes concerning E's case. The contact notes for the following dates included references to Mother living with Father: April 18, 2017; April 27, 2017; May 3, 2017; May 10, 2017; May 17, 2017; and May 24,

[5] CHESSIE stores Family Preservation and Child Protective Services case contact notes, family assessments, safety plans, family risk assessments, and family service plans. The ALJ observed that caseworkers are to enter contact notes into the system within five days of the contact.

2017.[6] The May 17 and May 24 notes indicated that Father had joined in the conversation with Mr. Highsmith. The contact notes also recounted Mr. Highsmith's visits to Mother in connection with an anonymous report that someone had called in to CPS in or about late March 2017. The caller asserted that Mother was using cocaine and was leaving E alone in the care of Father.[7] The ALJ found that Mr. Highsmith's April 7, 2017 contact note indicated that he went to Mother's home for his weekly visit and to discuss the CPS report. The ALJ further indicated that "[Mother] did not answer the door and a neighbor indicated that he had not seen [Mother] for a couple of days." The April 10 note indicated that Mr. Highsmith met with Mother and discussed the CPS report. Mother "denied she was using drugs and said the report was 'totally false,'" and Mr. Highsmith "indicated that [Mother] did not appear to be under the influence of any substance and was well-groomed." The April 27 note indicated that Mr. Highsmith did not meet with Mother, who was not home, and that the man who answered the door informed Mr. Highsmith that Mother and Father had moved in about two weeks previously. CPS also had generated contact notes in connection with the March 2017 report—notes that were likewise entered into CHESSIE later than they should have been, on or about May 11 and 12, 2017—that indicated that Father and Mother were living together.

[6] The ALJ observed that the contact notes referencing five of these dates contained language that was "strikingly similar . . . , suggesting it was 'cut and pasted'" from earlier entries: "Mother and father have reunited and are now raising their son together."

[7] The ALJ recounted how a CPS caseworker had attempted to visit with Mother about the anonymous report on March 31, 2017, but had failed to enter a contact note into CHESSIE until May 11, 2017.

E was killed on June 9, 2017. Upon learning that day of the fatality, Ms. Akunne's direct supervisor, Delores Mack, reviewed the paper case file. The ALJ observed that, based on her review, Ms. Mack believed that Ms. Akunne "should have contacted CPS Safety to review the file before [Family Preservation] took the case." Jennifer Berry, Family Preservation's Program Manager, also reviewed Mother's case file,[8] and the ALJ observed that she "noted numerous red flags that should have alerted [Ms. Akunne] to potential danger including the prior abuse and neglect findings, the Emergency Plan, the CPS MFRA determination of 'moderate' risk, and the genogram of who was in the home."[9]

[8] Ms. Akunne argues that "it was Ms. Berry's responsibility to determine if a referral was 'not appropriate for services,'" and cites in support the 2017 SOP and the 2010 SOP. (*See* footnote 16, below.) The ALJ made no findings about this assertion, but even if the decision for Family Preservation to accept a case lay with someone else, Ms. Akunne does not deny that she, as the supervisor, had responsibility to oversee the caseworker's management of the case after it had been accepted.

[9] "CPS MFRA" refers to a February 9, 2017 Maryland Family Risk Assessment ("MFRA") form completed by CPS. Under the section titled "History of Child Maltreatment," the form referenced "two reported cases of child maltreatment" and that the "Risk for History of Child Maltreatment" was "moderate." The form stated "On 8-31-15 indicated for physical abuse, [Mother] was not the maltreator and on 9-8-15 indicated of neglect, [Mother] was named the neglector." Under the section titled "Type and Extent of Current Maltreatment Investigation," the form referenced a "[m]inor incident of maltreatment" and that the incident was Mother's and E's both testing positive for marijuana at E's birth and that the "Risk for Type and Extent of Current Maltreatment Investigation" was "Low." Finally, the form indicated that the child was one month old and had no capacity to protect himself.

Ms. Akunne approved a March 8, 2017 MFRA form that had different entries and information than the February 9 CPS MFRA. The March 8 MFRA, in the "History of Child Maltreatment" section, referenced "[o]ne previous documented minor child maltreatment incident" and stated the "Risk for History of Child Maltreatment" was "Low." In the "Current Maltreatment Investigation" section, it referenced a "[m]inor incident of maltreatment" and that the current risk was "Low." The form also

Ms. Mack referred Ms. Akunne for disciplinary action, and Denise Warren-Artis, a human relations officer, conducted an investigation that included interviewing Ms. Akunne, Ms. Mack, and Ms. Berry. At her June 16, 2017 interview, Ms. Akunne signed an agreement waiving and indefinitely extending the Department's thirty-day period to impose disciplinary action. *See* SP § 11-106(b). At the same meeting, Ms. Akunne was provided the opportunity to offer mitigation, and she submitted a written statement. She indicated that at the time E's case was transferred from CPS to Family Preservation (February 10, 2017), the case file contained references to Father's status as unknown or estranged and to the risk to E's safety as being low

Upon completing her investigation, Ms. Warren-Artis recommended initially to Molly Tierney, DSS's then-director, that Ms. Akunne be suspended, but changed that recommendation later to termination. On July 26, 2017, Ms. Tierney recommended to the Department's Secretary, Lourdes Padilla, that Ms. Akunne's employment be terminated. On or about August 16, 2017, Ms. Akunne was placed on administrative leave.

Shortly after, Robin Harvey became DSS's acting Director. Ms. Harvey recommended to Secretary Padilla that Ms. Akunne be terminated with prejudice. Ms. Harvey testified at the OAH hearing that before she decided to recommend

incorrectly stated that the child's age was "1" and that the child had a "moderate" capacity to self-protect.

The differences between the two MFRA's are consistent with Ms. Akunne's assertions that Family Preservation was focused on providing substance abuse and parenting support to Mother and wasn't focused on the prior physical abuse.

termination, she reviewed the investigation report and relevant documents and spoke with several individuals about the case. As the ALJ recounted, Ms. Harvey concluded that Ms. Akunne had failed to supervise Mr. Highsmith properly, that she should have been aware of the danger to the child, that she lacked insight into her own failures to act, and that she failed to accept any responsibility for what happened:

> Ms. Harvey delegated the investigation to Denise Warren-Artis pursuant to the Delegation of Authority on file (Mgmt. Ex. 19 and 20), but reviewed the investigation report, recorded interview with the Employee, the SBC/SOP Protocol, the Safety Plan, and the Employee's statement; and spoke with Ms. Berry about the CPS file, the father's history, the March 2017 CPS referral regarding the father being back in the home, and the Chessie contact notes. She also discussed the case with Human Resources, Ms. Warren-Artis, Sean Bloodsworth,[10] and David Cintron of the OIG. Ms. Harvey determined that the employee failed to properly supervise the Caseworker and failed to take any action when she became aware the father was back in the home. She considered the mitigating circumstances offered by the Employee that others were and have been deficient in the past and the failings of the Caseworker, but none of her statement could justify not being aware of the danger posed by the father and not taking action once that danger presented itself. She determined that termination with prejudice was the appropriate action because she could not trust the Employee's judgment and had lost confidence in her role as a supervisor. She also found that the Employee did not accept any responsibility for what happened and lacked insight into her own role in the process.

On October 16, 2017, Ms. Padilla approved the notice of termination. On October 17, 2017, DSS mailed a letter to Ms. Akunne indicating that she was terminated effective October 19, 2017. On October 19, 2017, a DSS human relations employee called

[10] Mr. Bloodsworth's title was not identified.

Ms. Akunne and asked that she come to the office. Ms. Akunne came to the office that day, and the human relations employee handed her the Notice of Termination.

Ms. Akunne challenged her termination through the first- and second-step appeals procedures, and on December 4, 2017 appealed her termination to the Secretary of the Department of Budget and Management, who referred the case to OAH for a contested case hearing. *See* SG § 10-201, *et seq.* OAH held a hearing on May 1 and June 19, 2018, and on August 16, 2018, the OAH issued a written decision affirming Ms. Akunne's termination.

Ms. Akunne filed a petition for judicial review, and the circuit court conducted a hearing.[11] On May 22, 2019, the circuit court issued a memorandum opinion reversing the OAH's decision. The circuit court held that the Department had violated the procedural requirements of SP § 11-106(a)(5), which requires the appointing authority to give the employee a written notice of disciplinary action before taking the action. The court reasoned that handing the notice of termination to Ms. Akunne during regular business hours on October 19, 2017 did not comply with SP § 11-106(a)(5) because, it determined, the notice of termination became effective "at the first instant of October 19, 2017," which was before Ms. Akunne came to the office. And as a result of its ruling on that procedural question, the circuit court didn't address the merits of the termination decision.

The Department appealed. We supply additional facts as appropriate below.

[11] We did not find the transcript for the circuit court hearing in the record.

II. DISCUSSION

The Department identifies a single issue—whether the OAH's decision affirming Ms. Akunne's termination was supported by substantial evidence—and makes two arguments. *First*, it argues that the ALJ properly found that a notice of termination delivered on its effective date was timely under SP § 11-106(a)(5). *Second*, the Department contends that the ALJ affirmed Ms. Akunne's termination properly.[12] We agree that the notice of termination was timely and that substantial evidence supported OAH's decision to affirm Ms. Akunne's termination.

In an appeal of the decision of an administrative agency, we look through the circuit court's decision and review the agency's decision. *Richardson v. Md. Dept. of Health*, 247 Md. App. 563, 569 (*citing Cosby v. Dep't of Human Res.*, 425 Md. 629, 637 (2012)). "Our role is 'limited to determining if there is substantial evidence in the record as a whole to support the agency's findings and conclusions, and to determine if the administrative

[12] The Department phrases the Question Presented as follows: "Was the OAH decision affirming Ms. Akunne's termination lawful and supported by substantial evidence given Ms. Akunne's admitted failure to follow the Department's supervisory protocols?"

Ms. Akunne phrases the Questions Presented as follows:

> 1. Whether the circuit court properly found that the disciplinary action imposed was imposed in violation of State Personnel and Pensions 11-106, which provides that certain prerequisites to disciplinary action must take place before the imposition of disciplinary action?
>
> 2. Whether the decision to uphold the termination was supported by substantial evidence in light of the record as a whole?

decision is premised upon an erroneous conclusion of law.'" *Id.* (*quoting Milliman, Inc. v. Md. State Ret. and Pension Sys.*, 421 Md. 130, 151 (2011)).

The substantial evidence test examines "whether a reasoning mind reasonably could have reached the factual conclusion the agency reached." *Board of Physician Quality Assurance v. Banks*, 354 Md. 59, 68 (1999) (quotations and citation omitted). "The reviewing court also must review the agency's decision in the light most favorable to the agency, since decisions of administrative agencies are prima facie correct and carry with them the presumption of validity." *Baltimore Lutheran High Sch. Assoc., Inc. v. Employment Sec. Admin.*, 302 Md. 649, 662–63 (1985) (*citing Bulluck v. Pelham Wood Apts.*, 283 Md. 505, 512–13 (1978)). "A reviewing court should defer to the agency's fact-finding and drawing of inferences if they are supported by the record." *Banks*, 354 Md. at 68 (*citing CBS v. Comptroller*, 319 Md. 687, 698 (1990)); *Baltimore Lutheran High School*, 302 Md. at 663 ("Furthermore, not only is it the province of the agency to resolve conflicting evidence, but where inconsistent inferences from the same evidence can be drawn, it is for the agency to draw the inferences.") (citing *Bulluck*, 283 Md. at 512–13).

A. Delivery Of The Notice Of Termination On Its Effective Date Did Not Violate SP § 11-106(a).

During the hearing before OAH, Ms. Akunne argued that the Department did not give her notice of her termination "before" it occurred, in violation of SP § 11-106(a)(5). The ALJ disagreed and held that Ms. Akunne's receipt of the Notice of Termination on the effective date provided sufficient notice as required by SP § 11-106(a)(5). The circuit court reversed the OAH's decision, reasoning that the notice of termination became effective "at

the first instant of October 19, 2017" and therefore notice was not provided *before* disciplinary action was taken. The Department argues on appeal that the notice was timely. We agree.

A court's or agency's interpretation of a statute involves questions of law that we review *de novo*. *Johnson v. State*, 467 Md. 362, 371 (2020). "'The cardinal rule of statutory interpretation is to ascertain and effectuate the real and actual intent of the Legislature.'" *State v. Bey*, 452 Md. 255, 265 (2017) (*quoting State v. Johnson*, 415 Md. 413, 421–22 (2010)). We "'provide[] judicial deference to the policy decisions enacted into law by the General Assembly,'" and "'[w]e assume that the legislature's intent is expressed in the statutory language and thus our statutory interpretation focuses primarily on the language of the statute to determine the purpose and intent of the General Assembly.'" *Blackstone v. Sharma*, 461 Md. 87, 113 (2018) (*quoting Phillips v. State*, 451 Md. 180, 196 (2017)).

Section 11-106(a) of the State Personnel and Pensions Article requires the appointing authority[13] to take a number of steps before imposing disciplinary action on an

[13] "'Appointing authority' means an individual or a unit of government that has the power to make appointments and terminate employment." SP § 1-101(b). Ms. Akunne argued before the ALJ, and argues again here, that Ms. Harvey improperly deferred the final determination to terminate Ms. Akunne's employment to the Secretary of the Department, Ms. Padilla. As an initial matter, the ALJ expressly found that the testimony did not support that assertion, and the page of the transcript to which Ms. Akunne cites does not contain anything contradicting that conclusion. The testimony cited is Ms. Harvey's testimony that she approved the termination and that Ms. Padilla had the "ultimate approval" and signed the Notice of Termination and other relevant documents. Ms. Padilla's approval of the termination was consistent with the requirement set forth in SP § 11-104(6) for the appointing authority—here, Ms. Harvey—to obtain "prior approval of the head of the principal unit"—here, Ms. Padilla—before terminating an employee.

employee, including giving the employee written notice of the action "before" taking that action:

> (a) *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.

SP § 11-106(a) (emphases added). Section 11-106(b) goes on to require that the appointing authority impose disciplinary action "no later than 30 days after" acquiring knowledge of the misconduct in question. That section is not at issue here because Ms. Akunne waived the thirty-day time period in the agreement she signed during her June 16 interview with Ms. Warren-Artis.

Ms. Akunne relies on *Western Correctional Inst. v. Geiger*, 371 Md. 125 (2002) and *Department of Juvenile Servs. v. Miley*, 178 Md. App. 99 (2008), to argue that the OAH erred, and the circuit court's holding was correct, that the notice of termination was not delivered to her in advance of the adverse disciplinary action. In *Geiger*, the Court of Appeals interpreted SP § 11-106, but did not squarely address the question of whether a notice of disciplinary action delivered on its effective date complies with subsection (b).[14]

[14] *Geiger* involved three questions: (1) whether SP § 11-106(b)'s thirty-day period commences at the time the appointing authority is first informed of the allegation of misconduct or at the time the appointing authority is informed of the results of the

Instead, the Court held, *first*, that subsection (b)'s thirty-day period begins at the time the appointing authority is first informed of the allegation of misconduct, not at the time any investigation is completed. 371 Md. at 144. *Second*, the Court rejected a burden-shifting interpretation of subsection (b) that would extend the thirty-day period if the employer showed it conducted the investigation with reasonable diligence. The Court held that all of the steps of SP § 11-106(a)—including the imposition of the disciplinary action—must be completed within § 11-106(b)'s thirty-day period:

> We hold that, viewed in context, § 11-106 gives the appointing authority 30 days to conduct an investigation, meet with the employee the investigation identifies as culpable, consider any mitigating circumstances, determining the appropriate action and give notice to the employee of the disciplinary action taken.

Id. at 144–45. *Third*, the Court held that rescission of the disciplinary action was the appropriate sanction. The Court gave weight to the primary purpose of the statute, *i.e.*, to protect the right of state employees to be treated fairly, and reasoned that it was appropriate to rescind disciplinary action taken outside the thirty-day time limit because otherwise the time limit would be meaningless. *Id.* at 150–51.

investigation; (2) whether, as this Court had held, SP § 11-106(b) envisions a burden-shifting analysis pursuant to which, upon the employee's successfully making a *prima facie* showing that the appointing authority was on notice of the alleged misconduct on a day more than thirty days before the disciplinary action, the employer would be given the opportunity to show by a preponderance of the evidence that the investigation required by § 11-106(a)(1) was conducted with reasonable diligence and the disciplinary action was imposed no more than thirty days after completion of that investigation; and (3) what is the appropriate sanction for violation of SP § 11-106(b), given that it doesn't set forth any sanction. 371 Md. at 129–30.

In *Miley*, we considered whether a notice of termination mailed on the thirtieth day and received on the thirty-first day satisfied the employer's obligation under SP §§ 11-106(a)(5) and 11-106(b) to provide the employee written notice of the disciplinary action within thirty days. 178 Md. App. at 100. We held that it didn't. Relying on *Geiger*, we reasoned that "the agency knew, or should have known, when it mailed the notice to Miley on the 30th day, that there was no possibility of the employee receiving the notice before the expiration of the 30th day." *Id.* at 106. Quoting *Geiger*, we observed that "[i]ndeed, 'the statute prohibits imposition of discipline beyond that [30-day] period,' because [SP] § 11-106(b) imposes an 'unambiguously mandatory time requirement.'" *Id.* at 110 (*quoting Geiger*, 371 Md. at 151). We went on to observe that if the agency had delivered the notice at issue to Mr. Miley on the 30th day, it would have met the time limit. *Id.* at 112.

The Department cites a more recent case in its reply brief, *Richardson*, that we decided after the opening briefs were filed in this appeal. 247 Md. App. 563. In *Richardson*, the employer investigated an employee's alleged misconduct and ultimately decided to terminate his employment with prejudice. *Id.* at 568–69. About five days before the thirty days expired, the employer texted and called the employee to request his presence at a meeting that same day. *Id.* at 569, 575. After failing to respond, the employer arranged to have the notice of termination personally delivered to the employee at his home address. *Id.* at 569. The notice specified that termination was effective on the date it was delivered (September 2), but, as in this case, it "did not specify the exact hour when it was to become effective." *Id.* at 575. On appeal, the employee argued that under *Miley*, the notice was

effective at the beginning of the day on September 2, and argued that the ALJ erred in finding compliance with SP § 11-106(b) insofar as Mr. Richardson had "remained an employee on September 2, 2016 through and up to the moment the Notice of Termination was delivered to his home that evening." *Id.* at 576. We affirmed the ALJ's decision. Relying on *Geiger*, we held that the decision to affirm was consistent with the purpose of the statutory scheme to protect the right of State employees to be treated with fairness. *Id.* (*citing Geiger*, 317 Md. at 150). In holding that delivery of the notice of termination on the same day it became effective was consistent with the fair process intended by SP § 11-106, we held that "treating the delivery of the Notice of Termination as timely was not unfair to Mr. Richardson because of his avoidance of all efforts to reach him." *Id.*

At oral argument, Ms. Akunne conceded that if *Richardson* applies, the circuit court's decision must be reversed. She argued, though, that *Richardson* doesn't apply because its holding is limited to situations—unlike this one—in which the employee attempts to evade the employer's efforts to provide notice of the disciplinary action. And it's true that, in contrast to Mr. Richardson, Ms. Akunne did not avoid efforts to reach her—she complied with the request from the human resources employee to come to the office on October 19 where she was handed the notice of termination.

Even so, *Richardson* is not so limited. As an initial matter, the main concern of *Geiger* and *Miley* doesn't exist here. In each of those cases, the dispute centered around whether the employer agency had, within the SP § 11-106(b)'s thirty-day time period, completed all five of SP § 11-106(a)'s steps—including providing notice of the disciplinary

action to the employee. In contrast, in this case—as in *Richardson*—the employer's compliance with the thirty-day period is not at issue (Ms. Akunne waived it by written agreement). Instead, at issue here is whether the Department providing written notice of her termination on its effective date was consistent with the Department's obligation under SP § 11-106(a) to provide written notice of the disciplinary action "before" it was taken. And it was. Here, as in *Richardson*, Ms. Akunne's receipt of the notice of termination on its effective date complied with the requirement to provide such notice before the action was taken. 247 Md. App. at 576. We agree with the ALJ that SP § 11-106(a) does not create an obligation to deliver notice of termination at least one day before its effective date.

Ms. Akunne argues that the Department could have indicated in the notice that it was effective by close of business on that day or on some later date. But Ms. Akunne doesn't identify any way in which she was prejudiced by receiving the notice on the day it became effective. That interpretation is consistent with the purpose of the statutory scheme to protect the right of each employee to be treated fairly. *Id.* (*citing Geiger*, 371 Md. at 150). The manner of delivery in this case was not unfair.

Ms. Akunne also relies on SP § 11-306 to argue that the "effective date" of a notice of termination is defined as 12:01 a.m. on that date. Her reliance on that section is misplaced. Section 11-306 provides that, as of the effective date of termination, an individual is considered a "former employee" and shall have appeal rights:

> As of the effective date of an employment termination, the individual whose employment is terminated:
>
> (1) is a former employee; and

(2) shall have the appeal rights provided by this title.

But this section does not define "effective date" as applied to the entirety of Title 11. Indeed, it does not define "effective date" at all. Instead, read in context, its purpose is to define the appeal rights of a terminated employee.

B. Substantial Evidence Supported The ALJ's Affirmance Of Ms. Akunne's Termination.

Next we turn to whether substantial evidence supported the ALJ's affirmance of Ms. Akunne's termination. We hold that it did.[15]

Ms. Akunne was terminated for:

> (1) being inefficient in the performance of her duties in violation of COMAR 17.04.05.03B(1);
>
> (2) being negligent in the performance of her duties in violation of COMAR 17.04.05.04B(1); and
>
> (3) being guilty of conduct if publicized would bring the State into disrepute in violation of COMAR 17.04.03.04B(3).

The Department's October 19, 2017 Notice of Termination stated that Ms. Akunne's "lack of adequate oversight was critical" to E's case. The Notice stated that "Ms. Akunne neglected the father's abusive history in her directives/case management" and that "had the

[15] The question of whether substantial evidence supported the ALJ's decision is properly before us even though the circuit court did not address that question. As noted above, in an appeal of an administrative decision, we look through the circuit court's decision and review the decision of the agency. Although Ms. Akunne, as the prevailing party, was not entitled to appeal the circuit court's judgment, she may argue on appeal as a ground for affirmance of the circuit court's judgment matters resolved against her before the administrative agency. *See Paolino v. McCormick & Co.*, 314 Md. 575, 579 (1989) (*citing Offutt v. Montgomery County Bd. of Educ.*, 285 Md. 557, 564 n.4 (1979)). This principle "is merely an aspect of the principle that an appellate court may affirm a trial court's decision on any ground adequately shown by the record." *Offutt*, 285 Md. at 564 n.4.

father's abusive history been considered, the child's death could have been avoided." Although the Notice stated, on the one hand, that Ms. Akunne "failed to read the history of [Mother's] CPS referral" and, on the other, that "[t]he investigation substantiated that Ms. [] Akunne read the case file," it focused on the fact that Ms. Akunne had notice that Father posed a risk to the child and that she had been advised the Father was seen in the home. The Department stated that "Ms. Akunne should have directed the caseworker to remove the child from the home." The Department concluded the Notice by stating that as a supervisor, Ms. Akunne was required to work independently, and that her negligence and inefficiency in E's case had eroded the Department's trust in her to "earnestly and honestly perform the essential functions of her job."

The ALJ affirmed the Termination, concluding that whether Ms. Akunne read the file or failed to read the file, she failed to comprehend danger that she should have comprehended. The ALJ found that the Department properly determined that she was inefficient and negligent in the performance of her duties under COMAR 17.04.05.03B(1) and 17.04.05.04B(1) and that the neglect and inefficiency, if publicized, would bring the State into disrepute under COMAR 17.04.03.04B(3). Ms. Akunne testified before the OAH, and the ALJ made the following findings based on her testimony:

> - Ms. Akunne did not recall seeing the Safety Plan at the time of the referral, but that even if she had seen it, she would not have focused on it because it was not the reason the case was referred to Family Preservation;
> - On April 18, 2017, Mr. Highsmith presented Mother's case to Ms. Akunne and others during a meeting that included Ms. Mack, and Mr. Highsmith indicated that Mother's three other children had been removed from

Mother's care;

- Ms. Akunne admitted to reading the February 9 CPS MFRA indicating a history of abuse and neglect in the family, although she stated it "was not relevant" because it was not the reason the case was referred to Family Preservation;
- Ms. Akunne acknowledged that she did not read Mr. Highsmith's tardy contact notes relating to Mother's case after May 9—including those that indicated Father and Mother were reunited—after he entered them into CHESSIE in response to the Corrective Action Plan;
- Ms. Akunne denied seeing the CPS contact notes in CHESSIE concerning Mother's leaving the infant alone with Father;
- Ms. Akunne acknowledged that she had weekly meetings and more in-depth monthly reviews with her caseworkers to review their cases, but also acknowledged that the SOP required bi-weekly reviews;[16] and
- Ms. Akunne acknowledged that she did not meet in person with Mr. Highsmith regarding Mother's case after May 9, 2017.

The ALJ found it "troubling" that Ms. Akunne did not make more effort to follow up on Mother's case considering the concerns she had about Mr. Highsmith's performance.

[16] The ALJ observed that there was a lot of testimony about whether the May 2010 Family Preservation Protocol (also referred to as the "2010 SOP") or the January 4, 2017 Family Preservation Protocol (also referred to as the "2017 SOP") governed Mother's case. The ALJ observed that evidence supported that the 2017 SOP governed the case, but that Ms. Akunne violated both SOPs by failing to hold weekly and/or bi-weekly meetings about Mother's case after May 9. Ms. Akunne argues that the 2017 SOP was not in full effect, but she doesn't explain how that is relevant to her termination, and she doesn't dispute that she was required under both SOPs to meet with her caseworkers on a regular basis.

And he found it particularly concerning that Ms. Akunne failed to meet with Mr. Highsmith about Mother's case after May 9:

> Had a meaningful review of the file occurred within the two weeks following May 8, 2017, it is possible that the concerns about the father would have come to light and there would have been the opportunity to remove the child. The entrance of the father into the home during this critical timeframe made the meeting that much more pertinent. The failure of [Ms. Akunne] to have this supervisory meeting with [Mr. Highsmith], in violation of both the 2010 and 2017 SOP, directly impacted the supervision of this case and violated the very safeguard provided by the weekly or bi-weekly meeting. Therefore I find that [Ms. Akunne] violated the SOP of the [Department] in failing to hold a supervisory meeting subsequent to May 9, 2017, directly impacting the safety of Child E.J.

Finally, the ALJ found that Ms. Akunne contradicted herself about whether she had read the case file and the extent to which she was aware that Father posed a danger:

> It is difficult to determine what mitigation [Ms. Akunne] offers as she contradicted herself throughout the investigation and at the hearing. On the one hand she states the file did not contain certain documents when it came over from CPS, but then says maybe it did, but she just did not see them, then offers that even if she did see them, they were not relevant. She blames [Mr. Highsmith] for not telling her the father was back in the home, but then indicates she had no reason to be concerned about that. While it appears that [Ms. Akunne] was hard working and respected prior to this tragedy, her handling of this case was so clearly flawed, none of the mitigating factors can compensate.

Ms. Akunne argues that substantial evidence does not support the various factual bases for her termination, which she asserts break down into the following five "charges":

- Ms. Akunne failed to read the case file, or parts of it;
- Ms. Akunne could have prevented E's death had she read the case file and thereby learned of Father's history

of physical abuse with another child, and subsequently instructed Mr. Highsmith to remove the child;

- Ms. Akunne read the case file, but failed to take Father's previous maltreatment of another child into consideration in directing Mr. Highsmith to provide only substance abuse services to Mother;
- Ms. Akunne should have directed Mr. Highsmith to remove the child from the home upon learning that Father was back in the home given her awareness of the family's history with physical abuse and the (expired) Safety Plan stating that Father was to have no unsupervised visits with E; and
- Ms. Akunne approved the CPS MFRA, which indicated "Low Risk."

She argues that the Department failed to prove each of these five "charges" by a preponderance of the evidence. But although she organizes her argument around these five charges, her overall contention is that we should reweigh the evidence presented to the OAH. That is not our role. We defer to the agency's fact-finding if supported by the record, *Banks*, 354 Md. at 68, and it is the agency, not the reviewing court, that draws any inferences from conflicting evidence. *Baltimore Lutheran High School*, 302 Md. at 662–63.

The question before us is whether substantial evidence supports the ALJ's affirmance of the Department's termination of Ms. Akunne. It does. Ms. Akunne does not dispute that these critical factual conclusions are supported by the evidentiary record: that she contradicted herself in her testimony about the level of her familiarity of Mother's case; that she acknowledged that, sometime during the pendency of the case and before E's death, she was at least aware of the removal of Mother's three other children and of

previous instances of abuse and neglect by Father; that she failed to read Mr. Highsmith's tardy contact notes, as entered after May 9 in CHESSIE, indicating that Father and Mother were living together; and that she failed to meet in person with Mr. Highsmith about E's case after May 9 as required under the 2010 and 2017 SOPs. The evidence in the record supporting those findings is sufficient to meet the substantial evidence standard.

As to the five "charges" that Ms. Akunne raises, her particular arguments boil down to three. She argues *first* that Ms. Parker and Ms. Berry had the obligation to read the case file when CPS referred it to Family Preservation. In support, she cites to the report of the Office of the Inspector General ("OIG") regarding DSS's overall handling of E's case. The OIG concluded that Family Preservation failed to conduct a sufficient review of the file before accepting it. But even if it were Ms. Parker's or Ms. Berry's obligation to review the file before accepting it on Family Preservation's behalf, Ms. Akunne does not cite any support for the proposition that it wasn't her responsibility to read the case file as well and to oversee the case once it was assigned to her.

Second, Ms. Akunne argues the evidence does not support the allegation that she should have directed Mr. Highsmith to remove E from the home when Mr. Highsmith put her on notice that the Father had returned to the home. She denies she was aware that Father had returned to the home, and she references her efforts to seek assistance in disciplining Mr. Highsmith, which she asserts her superiors did not support initially. She also asserts that her workload was heavy and she was supervising more caseworkers than regulations allow, and she implies that the reason she never read the tardy CHESSIE entries after

May 9 was that it was not yet time for the monthly review of Mother's case. But again, none of those assertions contradict the ALJ's conclusion that Ms. Akunne, as a supervisor, bore the responsibility to oversee Mr. Highsmith's work and judgment in the case, or his observation that it was "troubling" that she was not more engaged in E's case in light of the challenges Mr. Highsmith presented.

And *third*, Ms. Akunne argues that the Department failed to meet its burden to demonstrate how the "low" risk rating on the Family Preservation March 8, 2017 MFRA that Ms. Akunne approved was inappropriate. As noted above in footnote 9, the March 8, 2017 Family Preservation MFRA differed from the February 9, 2017 CPS MFRA—the Family Preservation version incorrectly indicated the child's age was "1" and that he had a "moderate" capacity to self-protect, when he was in fact only several months old and had no capacity to self-protect. It also appeared to evaluate risk solely related to the child's drug exposure and did not take into account the history of physical abuse of other children in the household. Ms. Akunne argues that the CPS form indicates the father was "estranged," and argues that the differences between the two forms were simply a matter of the difference of focus and function between CPS and Family Preservation. But the MFRAs alone did not form the basis for Ms. Akunne's termination. Even if Family Preservation's MFRA was filled out appropriately —and we express no opinion on that— the MFRA was not the sole basis for the Department's termination of Ms. Akunne.

In sum, nothing Ms. Akunne raises undermines, on a substantial evidence standard, the ALJ's conclusion that she was negligent and inefficient in her supervisory duties. The

question isn't whether Ms. Akunne had actual notice or knowledge of Father having returned to the home—the question is whether, as a supervisor, she should have been on notice of that. The question isn't whether she was overworked, but whether she failed in her duties as to Mother and E's case. The ALJ acknowledged that mistakes were made at many levels within the Department with respect to E's death and that "[Ms. Akunne] and her co-workers were clearly over-worked and overwhelmed." Even so, the ALJ affirmed the Department's conclusion that, notwithstanding Ms. Akunne's long tenure with DSS and her positive performance reviews, she had been negligent and inefficient in the performance of her duties in Mother's case. The ALJ found that at the very least, Ms. Akunne could have been made aware of Father's return to the home had she read Mr. Highsmith's contact notes, entered tardily into CHESSIE at Ms. Akunne's direction in connection with disciplinary action, but she failed even to do that.

JUDGMENT OF THE CIRCUIT COURT FOR BALTIMORE CITY REVERSED. CASE REMANDED WITH INSTRUCTIONS TO AFFIRM THE DECISION OF THE OAH. APPELLEE TO PAY COSTS.