UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 02441

September Term, 2015

ANTONIO CLARKE

v.

DEPARTMENT OF PUBLIC SAFETY AND CORRECTIONAL SERVICES

Krauser, C.J.,
Nazarian,
Shaw Geter,
JJ.

Opinion by Shaw Geter, J.

Filed: February 21, 2017

This appeal arises under the Correctional Officer's Bill of Rights ("COBR"). Appellant, Antonio Clarke, appeals a judgment of the Circuit Court for Baltimore County reversing the decision of an Administrative Law Judge ("ALJ") that rescinded a reprimand imposed upon Clarke by his employer, the Maryland Department of Public Safety and Correctional Services ("the Department").

On September 2, 2014, Clarke was served with a Notice of Disciplinary Charges, stemming from an incident that occurred on June 1, 2014. Clarke appealed the Notice and at the conclusion of a hearing before an ALJ, he moved for summary decision. The ALJ granted Clarke's motion finding that because the Notice was not served within 90 days of the occurrence of the incident, it violated Section 10-907 of COBR. The Department appealed and the circuit court reversed.

In this timely appeal, Clarke presents one question for our review, which we have rephrased:

> Did the ALJ err as a matter of law in concluding that COBR §10-907 requires that charges be served within 90 days from the date the appointing authority learned of the alleged misconduct.

We answer this question in the affirmative and uphold the circuit court's judgment reversing the ALJ's decision.

STATEMENT OF FACTS

Appellant, Lieutenant Antonio Clarke, is a Correctional Officer employed by the Maryland Department of Public Safety and Correctional Services. At all relevant times pertinent to this appeal, Clarke was assigned to the Metropolitan Transition Center

("MTC"), which is a facility within the Division of Corrections as the senior-lieutenant of the "D-Block" located in the B-Dormitory.

On June 1, 2014, during a security check of D-Block, Corporal Martin Apaam found an inmate lying motionless on the floor of the shower area. He was unresponsive and had sustained blunt force trauma to his head, ear, eye, and upper torso. Shortly after the inmate was discovered, Lt. Clarke arrived on the scene and secured the area, making sure no one entered the shower area or touched anything that could be considered evidence. When the Duty Lieutenant arrived, Clarke left the scene without verbally transferring authority of the scene over to the Duty Lieutenant.[1]

Before concluding his shift on the date of the incident, Clarke wrote a narrative of the event and submitted it to the Security Chief. Warden Soloman Hejirika ("Warden Herjirika") was notified of the incident via telephone.

The incident was investigated by MTC in the months that followed, and on August 8, 2014, Investigative Captain Zena Bates authorized a Notice of Interrogation to be served on Clarke. Bates was unable to question Clarke because he was on scheduled vacation until the first week in September. Thereafter, she completed her investigation, and found "Clarke negligent in his duties and in violation of the Standards of Conduct…."

[1] According to the designated Duty Lieutenant, Lt. Ramonja Williams, Duty Lieutenants are assigned desk work. On the day of the incident, Clarke was the designated "Leg" Lieutenant and was responsible for conducting security rounds.

On August 27, 2014, Warden Hejirika issued a Notice of Disciplinary Charges. He indicated on the Notice, "Employee on vacation out of country. Document signed without employee present." Clarke was served with the Notice of Disciplinary Charges on September 2, 2014, when he returned to work.

Upon receipt, Clarke appealed and a hearing was held on January 6, 2015, before an ALJ, at the Office of Administrative Hearings. At the conclusion of the hearing, Clarke moved for summary decision arguing that the charges were brought under Sections 10-901 through 10-913 of COBR, which require service within 90 days from the date of the incident. The ALJ agreed and granted his Motion, rescinding the reprimand. The judge concluded that the term "bringing" charges, under COBR §10-907, included personal service of the charges, and therefore, Clarke was required to receive written notice of his charges within 90 days. Because he did not receive notice until the ninety-third day—"three days late"—the ALJ concluded that rescission was mandated.

The Department then filed a petition for judicial review of the ALJ's decision in the Circuit Court for Baltimore County. Following a hearing, the court issued a Memorandum Opinion and Order dated November 19, 2015, wherein, it reversed the ALJ and remanded the case for a determination on the merits of Clarke's appeal. The court reasoned that,

> By its plain language, the 90-day limitation imposed by COBR §10-907 applies only to the *bringing of charges recommending the imposition of discipline*, not to the imposition of a disciplinary action. That section does not address when notice must be provided to the correctional officer. Rather, the notice requirement is addressed in COBR §10-908(b), and by

> it's plain language, that subsection does not impose the 90-day limitation, or any time limitation, on providing the correctional officer with notice of the charges.

The circuit court judge concluded that "[b]ecause the ALJ relied on inapplicable case law interpreting an inapplicable statute, the ALJ's decision was premised upon an erroneous conclusion of law." Clarke subsequently filed this instant appeal.

We shall recite additional facts as necessary to our discussion of the issues.

STANDARD OF REVIEW

The present case comes to this Court on review of an administrative agency decision. We take the same posture as the circuit court and review an agency's decision directly. *Anderson v. Gen. Cas. Ins. Co.*, 402 Md. 236 (2007). Because Section 11–110(d)(1) of the State Personnel and Pensions Article ("SPP") gives the OAH final decision-making authority over employee disciplinary cases, our inquiry is not whether the circuit court erred, but whether the ALJ erred. *See John A. v. Bd. of Educ. for Howard Cty.*, 400 Md. 363, 381 (2007).

Generally, our review is narrow. *Anderson*, 402 Md. at 236. With respect to findings of fact, "we must determine whether the agency decision is supported by substantial evidence in the record." *Id.* As to conclusions of law, "we will give considerable weight to the agency's experience in interpreting a statute that it administers." *John A.*, 400 Md. at 382 (internal citation omitted). Nonetheless, "it is within our prerogative to determine whether an agency's conclusions of law are correct, and to remedy the situation if found to be wrong." *Id.*

DISCUSSION

I. The Correctional Officer's Bill of Rights

An understanding of the history of the law in question, will help guide our discussion of the parties' arguments, ALJ decision, and our ultimate conclusion.

Prior to October 1, 2010, the disciplinary procedure for state correctional officers was governed under SPP, along with other state employees. *Kearney v. France*, 222 Md. App. 542, 544 (2015). Specifically, Section 11-106 of the SPP outlines extensive pre-disciplinary procedural steps and states:

> (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.
>
> **Deadline for disciplinary actions**
>
> (b) Except as provided in subsection (c) of this section, an appointing authority may impose any disciplinary action no later than 30 days after the appointing authority acquires knowledge of the misconduct for which the disciplinary action is imposed

MD. CODE, State Pers. & Pens. § 11-106 (1996). Maryland courts, in applying this statute, have found that subsection (b) requires that the enumerated steps in subsection (a) be taken within 30 days of the date on which the appointing authority learns of the alleged misconduct. *See Western Correctional Institution v. Geiger*, 371 Md. 125 (2002); *see also Dep't of Juvenile Servs. v. Miley*, 178 App. 99 (2008).

On October 1, 2010, the General Assembly enacted the Correctional Officer's Bill of Rights ("COBR"), which established procedures and timelines for disciplining correctional officers, separate and apart from other state employees. Specifically, Section 10-903 of COBR provides that its provisions "supersede any inconsistent provisions of any other State law, including §11-106 of the State Personnel and Pension Article, that conflict with this subtitle to the extent of the conflict." MD. CODE, Corr. Servs. § 10-903(a) (2010).

At issue in the instant case is Section 10-907(a) of COBR, which states:

> (a) The appointing authority may not bring charges recommending the imposition of discipline more than 90 days after the Intelligence and Investigative Division or the appointing authority acquires knowledge of the action that gives rise to the discipline.

MD. CODE, Corr. Servs. § 10-907(a) (2010). Section 10-908, of the same Article, sets forth the notice requirements and provides in pertinent part:

> (a) If the appointing authority brings charges recommending discipline against a correctional officer, the charges shall contain:
>
> (1) a statement of facts and offenses alleged; and
>
> (2) notice of the correctional officer's appeal rights.
>
> (b) The appointing authority shall provide the charges and notice required under subsection (a)(2) of this section to the correctional officer and to the correctional officer's legal counsel or the agent of the employee organization selected by the correctional officer under § 10-907 of this subtitle.

Corr. Servs. § 10-908.

When the administrative hearing in this case was conducted, there was no case law interpreting or reconciling the differences between Section 11-106 of the SPP and

Sections 10-907 and 10-908 of COBR. Given the absence of case law, the ALJ concluded that "the two statutes are otherwise indistinguishable" outside of the fact that COBR "extended the time for an appointing authority to bring disciplinary charges against a correctional officer from thirty days to ninety days." As such, the ALJ relied on case law interpreting SPP in her decision. Because SPP §11-106 has been interpreted to require that written notice be provided before any disciplinary action can be deemed to have occurred, the ALJ found that service of disciplinary charges under COBR must take place within the 90-day time limit. Ultimately, the judge concluded that "the appointing authority disciplined the Employee on September 2, 2014, three days late, in violation of Section 10-907 of the Correctional Services Article."

II. Parties' Arguments and Court's Analysis

Appellant argues that the ALJ properly concluded that the disciplinary action imposed was untimely. He asserts that Section 10-907 of COBR requires that correctional officers be served with notice of disciplinary charges within 90 days. Therefore, Clarke avers that the Warden failed to comply with COBR when he provided notice on the ninety-third day.

The Department contends that the ALJ erroneously construed Section 10-907 of COBR "reading into it the requirement that service of…disciplinary charges take place within the 90-day time limit." It asserts that the ALJ "relied upon case law interpreting an inapplicable statute expressly superseded by §10-907(a)." According to the Department, COBR "imposes no time limit on when [disciplinary] charges are to be served on a

correctional officer." As such, service on the ninety-third day was in compliance with the statute.

COBR §10-907 states that the "appointing authority may not bring charges recommending the imposition of discipline more than 90 days after…the appointing authority acquires knowledge of the action that gives rise to the discipline." At the crux of this appeal is the meaning of the phrase "bring charges."

When interpreting a statute, our guiding principle of statutory interpretation is to ascertain and effectuate the legislature's intent. *Sprenger v. Pub. Serv. Comm'n*, 400 Md. 1, 29 (2007). If the language of the statute, construed in light of its plain meaning, is unambiguous, our analysis ends there. *Anderson v. Gen. Cas. Ins. Co.*, 402 Md. 236, 245 (2007). However, if the statutory text reveals an ambiguity, we may consult other resources to ascertain the legislative intent. *City of Baltimore Dev. Corp. v. Carmel Realty Assocs.*, 395 Md. 299, 319 (2006).

By its plain language, the 90-day limitation imposed by COBR §10-907 applies only to the "bring[ing of] charges recommending the imposition of discipline." The requirement for service appears in Section 10-908(b) and states, "the appointing authority shall provide the charges and notice…to the correctional officer and to the correctional officer's legal counsel or the agent of the employee organization selected by the correctional officer…." No limit is imposed by the language of the statute regarding when the charges are to be served on the correctional officer. The statute merely provides

details regarding the form of the charges and a list of individuals who must receive notice.

It is well established that courts should neither add words to, nor delete words from, a clear and unambiguous statute to give it a meaning not reflected by the language the legislature chose to use. *Taylor v. NationsBank, N.A.*, 365 Md. 166, 181 (2001). Here, the General Assembly did not include a time period within which the charges must be served. We therefore, hold, that the plain language of Sections 10-907 or 10-908 of the Correctional Service Article do not mandate that service be accomplished within a particular time frame. Because the plain language of the statute is clear and unambiguous, we need not look further in our analysis.

In the present case, the appointing authority, Warden Herijika, "acquired knowledge of the action that gave rise to the discipline" on June 1, 2014. The Warden signed the Notice of Disciplinary Charges on August 27, 2014, 87 days after he was notified of the incident. The Notice included a statement of facts and gave Clarke notice of his appeal rights in compliance with COBR §10-908(a). As such, the Department brought charges against Clarke within the 90-day time limitation imposed by COBR §10-907.

Thus, the ALJ committed error in concluding that service of disciplinary charges must take place within the 90-day time limitation. The circuit court's judgment shall be affirmed.

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