Circuit Court for Prince George's County
Case No.: CAL19-16546

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 2266

September Term, 2022

AMY BROWN

v.

WASHINGTON SUBURBAN SANITARY COMMISSION

Reed,
Albright,
Eyler, James R.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Reed, J.

Filed: March 3, 2026

*This is an unreported opinion. This opinion may not be cited as precedent within the rule of stare decisis. It may be cited for its persuasive value only if the citation conforms to Rule 1-104(a)(2)(B).

Following her termination of employment with the Washington Suburban Sanitary Commission ("WSSC"), Amy Brown filed an appeal to an Administrative Law Judge ("ALJ") with the Office of Administrative Hearings ("OAH"). OAH affirmed WSSC's termination of Ms. Brown's employment, and Ms. Brown filed a petition for judicial review in the Circuit Court for Prince George's County. The circuit court affirmed OAH's decision, and Ms. Brown noted the instant appeal. On appeal, Ms. Brown asks whether the circuit court erred in affirming the termination of her employment.[1] For the reasons we shall discuss, we answer that question in the negative and affirm the judgment of the circuit court.

BACKGROUND

Ms. Brown was employed with WSSC when, in March and in May of 2018, she received two separate three-day suspensions. Although WSSC policy provides employees the right to appeal a suspension within five days of receipt of the suspension, Ms. Brown did not appeal either suspension.

Per WSSC policy, receiving two suspensions within a twelve-month period "typically will result in a recommendation for the employee's [r]elease." Accordingly, in July of 2018, WSSC issued Ms. Brown a Personnel Action Notification ("PAN") recommending her release from employment.

[1] The issue as presented in Ms. Brown's brief is: "Whether [she] was terminated in violation of the Due Process Clause of the Fourteenth Amendment of the United States Constitution because the policy underlying her termination was overly vague and ambiguous[?]"

Ms. Brown noted an appeal of the PAN to WSSC's human resources director. The human resources director appointed a hearing officer, who, in August of 2018, sustained the PAN's recommendation. The following month, WSSC's deputy general manager issued a final decision terminating Ms. Brown's employment.

Ms. Brown appealed her termination to the OAH. An ALJ held a hearing and thereafter issued an oral and written decision affirming WSSC's decision. The ALJ noted that Ms. Brown was "asking the OAH to examine the facts and circumstances that gave rise to the second suspension in an effort to have the second suspension deemed improper and void, thereby resulting in only one suspension which does not satisfy the two suspension requirement under Personnel Policy 2:12 Disciplinary Procedures (IV)(C)(3) for a recommendation of release from employment." However, the ALJ noted that Ms. Brown "did not appeal either of the two suspensions" and thereby waived her right to appeal the suspensions. Noting that both of Ms. Brown's suspensions within a twelve-month period were "final[,]" the ALJ concluded that "WSSC had a basis for recommending release of [Ms. Brown] from employment."

Ms. Brown filed a petition for judicial review in the Circuit Court for Prince George's County.[2] The circuit court heard oral argument on Ms. Brown's petition and

[2] As noted in our opinion following a prior appeal by Ms. Brown, *Brown v. Washington Suburban Sanitary Comm'n*, 250 Md. App. 531 (2021) ("*Brown I*"), that petition was initially erroneously dismissed by the circuit court. *Id*. at 534. On remand from *Brown I*, the circuit court heard the merits of Ms. Brown's case and affirmed the decision of the OAH, leading to the appeal presently before us.

thereafter issued an oral ruling affirming the ALJ's decision. Ms. Brown noted this timely appeal. Additional facts will be provided as necessary.

STANDARD OF REVIEW

When reviewing the decision of an administrative agency, "we review the agency's decision directly, not the decision of the circuit court." *Comptroller of Treasury v. Sci. Applications Int'l Corp.*, 405 Md. 185, 192 (2008). Further, "[b]ecause an agency's decision is presumed *prima facie* correct, we review the evidence in the light most favorable to the agency." *Id*. We discussed our role and "overarching goal" in reviewing administrative agency decisions in *Sugarloaf Citizens Association v. Frederick County Board of Appeals*, 227 Md. App. 536 (2016):

> The overarching goal of judicial review of agency decisions is to determine whether the agency's decision was made "in accordance with the law or whether it is arbitrary, illegal, and capricious." *Long Green Valley Ass'n v. Prigel Family Creamery*, 206 Md. App. 264, 274 (2012) (internal citation omitted). With regard to the agency's factual findings, we do not disturb the agency's decision if those findings are supported by substantial evidence. *See id*. (internal citations omitted). Substantial evidence is defined as "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." *Catonsville Nursing Home, Inc. v. Loveman*, 349 Md. 560, 569 (1998) (internal citations omitted) (internal quotation marks omitted). We are not bound, however, to affirm those agency decisions based upon errors of law and may reverse administrative decisions containing such errors. *Id*.

Id. at 546.

Further, "[i]n applying the substantial evidence test, the reviewing body does not substitute its judgment for the expertise of the agency." *Kohli v. LOOC, Inc.*, 103 Md. App. 694, 709 (1995). Instead, our review "is limited to whether a reasoning mind reasonably could have reached the factual conclusion the agency reached." *Id*. In other

words, "if reasoning minds could reasonably reach the conclusion reached by the agency from the facts in the record, then it is based upon substantial evidence, and the court has no power to reject that conclusion." *Liberty Nursing Ctr., Inc. v. Dep't of Health & Mental Hygiene*, 330 Md. 433, 443 (1993).

DISCUSSION

Ms. Brown asserts that the circuit court erred in affirming the decision of the ALJ because it "was unconstitutional as it gave effect to a denial of due process involving an overly vague and ambiguous policy." She contends that she interpreted the word "typically" in the policy "to not function as automatic or effectively" and accordingly, that "the policy as written did not place her on notice that she would be automatically recommended for termination if she received two suspensions within twelve months."

WSSC responds that there was substantial evidence in the record and that the ALJ properly affirmed WSSC's decision to terminate Ms. Brown's employment. Further, WSSC maintains that Ms. Brown failed to raise her contentions regarding due process or the constitutionality of the policy before the ALJ, and accordingly, that those claims are not preserved for our review. We agree.

I. The decision of the ALJ was made in accordance with the law and is supported by substantial evidence.

Ms. Brown does not dispute that the ALJ's decision was supported by substantial evidence, nor does she challenge any of the ALJ's factual findings. Indeed, she does not dispute that she was suspended from her employment twice within a twelve-month period or that she did not appeal either suspension. Nor does she challenge the fact that WSSC's

policy regarding several suspensions in a twelve-month period, as stated in its personnel policy, is that "[t]wo [s]uspensions within a 12-month period typically will result in a recommendation for the employee's [r]elease." Accordingly, reasoning minds could reasonably reach the conclusion that the termination of Ms. Brown's employment, following her two suspensions within a 12-month period, was proper and that the decision was based upon substantial evidence.

II. Ms. Brown failed to preserve her due process and constitutional claims for our review.

Md. Code Ann., Public Utilities § 18-123(b) provides that a WSSC employee "who is permanently removed [from employment] may appeal to the Office of Administrative Hearings in accordance with § 4-401 of the State Personnel and Pensions Article." Section 4-401 of the State Personnel and Pensions Article ("State Pers. & Pens.") provides OAH the authority to "conduct a hearing and issue a final decision in . . . an appeal under § 18-123 of the Public Utilities Article for the removal of an employee of the Washington Suburban Sanitary Commission." Md. Code Ann., State Pers. & Pens. § 4-401(4).

Employees dissatisfied with the administrative agency's decision may file a petition for judicial review in the circuit court. *See* Md. Code Ann., State Gov't § 10-222. However, the Supreme Court of Maryland has "repeatedly pointed out that judicial review of administrative decisions is limited to the issues or grounds dealt with by the administrative agency." *Ins. Comm'r of State of Maryland v. Equitable Life Assur. Soc. of U.S.*, 339 Md. 596, 634 (1995). In other words, all issues, "including Constitutional issues, that could have been but were not presented to the administrative agency may not ordinarily

be raised for the first time in an action for judicial review."[3] *See Finucan v. Maryland Bd. of Physician Quality Assur.*, 380 Md. 577, 589 (2004) (quotation marks and citation omitted).

Here, the record indicates that Ms. Brown failed to preserve her constitutional challenges for our review. The only issue Ms. Brown raised before the ALJ was related to the legality of the second suspension. As Ms. Brown's counsel put it at the hearing before the ALJ, "the sole issue involves the second suspension[.]" Indeed, as the ALJ observed, Ms. Brown sought to "have the second suspension deemed improper and void, thereby resulting in only one suspension which does not satisfy the two suspension requirement" to terminate her employment. However, the ALJ noted that because Ms. Brown failed to appeal the second suspension, the legality of the second suspension was not properly before OAH.

Ms. Brown does not dispute that she failed to raise her claims before the ALJ, and instead asserts "the ALJ made it clear that he did not have authority to entertain constitutional challenges to the WSSC policies" and thus, she "did not waive" her challenges on appeal. We see no indication that the ALJ refused to hear constitutional challenges relating to Ms. Brown's termination. Instead, the ALJ noted that it lacked authority to consider the merits of the underlying suspensions, consistent with both WSSC policy and with State Pers. & Pens. § 4-401(4):

[3] Ms. Brown asserts, and WSSC does not dispute, that Ms. Brown had a constitutionally protected property interest in her continued employment at WSSC. *See Cleveland Bd. of Educ. v. Loudermill*, 470 U.S. 532 (1985).

> [ALJ]: So the issue with respect to the suspensions, the OAH has no authority to delve into the suspension as to whether or not the suspension was handled properly or not. The only thing that the OAH can determine is whether or not the termination was in accordance with the policy, which in my understanding is that if you have two suspensions within a 12-month period of time, the employee may be separated from employment.

Although the ALJ prohibited argument on the validity of the suspensions, there is no support in the record for the assertion that the ALJ prohibited argument regarding the issue properly before it—Ms. Brown's termination. Indeed, more than once, the ALJ sought argument pertaining to whether Ms. Brown's termination was proper:

> [ALJ]: And I'm perfectly willing to accept evidence with respect to whether or not she should be terminated or not, or released, or whatever the language is that was used, but what I'm not going to hear is evidence as to whether or not she was properly suspended for the second suspension.
>
> So in other words, if you have a concern that she was not properly terminated or that the WSSC did not follow its procedures in the termination, I'm perfectly willing to hear those arguments, because that's why we're here and that's the jurisdiction of the OAH, okay? If your argument is based on the fact that you claim the second suspension was illegal or improper, I'm not going to hear that.
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> [ALJ:] So at this point, if the parties would like to be heard further with respect to the termination, we can, I will certainly entertain that.

Nonetheless, the transcript reflects no mention of the constitutional challenges that Ms. Brown now asserts on appeal.

Assuming, for the sake of argument, that Ms. Brown had properly raised her contentions before the ALJ, we still find no merit to her assertions. Ms. Brown asserts that her due process rights were violated because "she was not notified that a receipt of the

second suspension would effectively usurp her opportunity to have a pre-termination challenge." We are unpersuaded that the second suspension usurped her opportunity to present a pre-termination challenge. Indeed, before her termination, Ms. Brown received notice of the PAN recommending her termination. She filed an internal appeal challenging that recommendation, which was considered and ultimately affirmed by a hearing officer. Her termination became final only after the hearing officer's decision was confirmed by a deputy general manager. Accordingly, we are unpersuaded that Ms. Brown was not given the process she was due regarding her termination or the opportunity to have a pre-termination challenge.

The only case that Ms. Brown cites in support of her due process claims is *Pourtal v. Coos County, Oregon*, No. 6:21-CV-00574-MK, 2022 WL 801455, at *1 (D. Or. Mar. 1, 2022), report and recommendation adopted, No. 6:21 CV 00574-MK, 2022 WL 797843 (D. Or. Mar. 16, 2022). That case involved due process challenges following an employment investigation against Pourtal, which began as an investigation into her allegedly inappropriate relationship with a coworker but expanded into a broader investigation into her management style. *Id*. at 2. After her former employer, Coos County, filed a motion to dismiss, Pourtal opposed the motion and asserted that her due process rights were violated because she had not been "given notice that the scope of the investigation had expanded to include general inquiry into her management style" and that accordingly, she was not "given an opportunity to plead her case or make argument . . . regarding the allegations about her management style." *Id*. at 4. The court agreed, finding that the facts "would trigger liability for a due process violation[,]" and denied the

defendant's motion to dismiss. *Id*. Here, there are no allegations that an investigation concerning Ms. Brown expanded without her knowledge, and Ms. Brown was given an opportunity, both in her internal appeal to WSSC and before the ALJ, to make arguments regarding her termination.

Nor do we agree that the word "typically" renders the policy vague or unconstitutional. In support of her position, Ms. Brown relies upon *Baker v. City of SeaTac*, 994 F. Supp. 2d 1148 (W.D. Wash. 2014), a case where a former public employee asserted that her due process rights were violated when she was terminated from employment and denied a post-termination hearing. *Id*. at 1153, 1167. The parties disagreed about the interpretation of the employee handbook: Baker asserted that the handbook indicated that she could only be fired for cause and the City of SeaTac maintained that it demonstrated Baker was an at-will employee. The court concluded that the handbook had two plausible interpretations and thus, that it was ambiguous. The court resolved the ambiguity against the City of SeaTac (the drafter) and found that the policy established that cause was required to terminate Baker's employment. *Id*. at 1156-57.

Here, there is no claim that the policy about receiving two suspensions within a twelve-month period had more than one plausible interpretation. Instead, the policy clearly establishes that two suspensions within a twelve-month period "typically will result in a recommendation for the employee's [r]elease." The fact that the policy includes the word "typically" does not make it vague or ambiguous. Regardless of whether a recommendation for termination is made, the policy unambiguously establishes that receiving two suspensions within a one-year period remains grounds for a recommendation for

termination. Accordingly, even had Ms. Brown properly preserved her contentions for review, we disagree that the ALJ's decision to affirm Ms. Brown's termination following her second suspension within a twelve-month period was "arbitrary, illegal, and capricious" under these facts. *Long Green Valley Ass'n v. Prigel Family Creamery*, 206 Md. App. 264, 274 (2012) (quotation marks and citation omitted).

JUDGMENT OF THE CIRCUIT COURT FOR PRINCE GEORGE'S COUNTY AFFIRMED. COSTS TO BE PAID BY APPELLANT.