Circuit Court for Prince George's County
Case No. CAL2005281

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 1738

September Term, 2021

GENETHIA G. WILLINGHAM

v.

DEPARTMENT OF HUMAN SERVICES

Reed,
Friedman,
Zic,

JJ.

Opinion by Reed, J.

Filed: January 31, 2025

*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 Md. Rule 1-104(a)(2)(B).

This appeal arises from a decision of the Office of Administrative Hearings denying a State employee grievance filed by Appellant, Genethia Willingham. Appellant sought judicial review of the decision in the Circuit Court for Prince's George's County. The circuit court affirmed.

Appellant noted a timely appeal from the judgment of the circuit court. She presents three questions for our review, which we consolidate and rephrase into one: Does COMAR 17.04.11.19(E), which places limits on an employee's use of accrued leave after the employee gives notice of "resignation," apply to an employee who has given notice of retirement?[1]

For the reasons discussed below, we answer no and reverse the decision of the Circuit Court for Prince George's County.

FACTUAL AND PROCEDURAL BACKGROUND

The relevant facts in evidence before the administrative law judge are undisputed. Appellant was employed, for 22 years, by the Prince George's County Department of Social Services, which is part of the Maryland Department of Human Services (the

[1] Appellant, in her brief, posed these three questions for this Court's consideration:

1. Is there evidence to support the actions taken by the administrative agency?
2. Were the agency's actions arbitrary and capricious?
3. Does COMAR 17.04.11.19 apply to a person retiring?

"Department").[2] On May 10, 2019, Appellant met with Wanda Martin, the Benefits Coordinator for the Department, to discuss her retirement options and obtain retirement paperwork. Ms. Martin was aware that Appellant was about to take three months of pre-approved paid leave, from May 17, 2019, through August 15, 2019. During the meeting, Ms. Martin explained to Appellant that she "would only be allowed to use ten (10) days of paid leave between the time she gives her notice o[f] retirement and the effective date of the retirement."

Ms. Martin gave Appellant a copy of COMAR (Code of Maryland Regulations) 17.04.11.19, which governs the payment of accrued leave to an employee upon "separation" from State service.[3] Subsection (E) of that regulation provides: "Once an employee has given notice of resignation, the employee may not use more than 10 days of annual leave, personal leave, or compensatory leave, or any combination of those types of leave, between the time notice is given and the effective date of resignation." COMAR 17.04.11.19(E).

On June 18, 2019, while out on leave, Appellant returned to Ms. Martin's office and submitted a notarized application for retirement benefits. Appellant did not offer a copy of her completed application into evidence at the hearing, but she did introduce a blank form

[2] The Prince George's County Department of Social Services is a unit of the Maryland Department of Human Services (the "Department"), a principal department of the State government. Md. Code, Hum. Servs. §§ 2-201, 3-201(a).

[3] COMAR 17.04.11.19 was promulgated in its current form by the Maryland Department of Budget and Management with an effective date of March 23, 1998. COMAR 17.04.11.9999; *see also* 25:6 Md. Reg. 490 (1998).

entitled "Application for Service or Disability Retirement." Appellant testified that, on the part of the form that requires applicants to enter the date that their "retirement allowance be effective on", she entered September 1, 2019.

At this meeting, Ms. Martin reminded Appellant of the provisions of 17.04.11.19(E) and told Appellant that the 10-day period would begin to run that day. Ms. Martin gave Appellant another copy of 17.04.11.19, with subsection (E) highlighted.

Ten workdays later, on July 3, 2019, without further notice, Appellant was placed on unpaid leave. As a result of being placed on unpaid leave on July 3rd, Appellant did not continue to accrue annual leave, as leave is accrued only during periods when an employee is either actively working or on paid leave.

On July 16, 2019, Appellant mailed correspondence to the Department, in which she stated that her last day of work would be August 15, 2019. Appellant did not offer a copy of that correspondence into evidence at the hearing. Appellant did not return to work but remained on unpaid leave until August 15th. At some point after August 15, Appellant received payment for 203.74 hours of unused annual leave, and 98.58 hours of unused compensatory time. The Appellant claimed that she was still owed 33.066667 hours of pay along with 4.06 comp time hours.

On August 18, 2019, Appellant filed a grievance against the Department, seeking "[r]estoration of earnings/leave." In her grievance, Appellant presented the timeline of events described above, and also asserted that she never received written notice from her employer stating when the pay stoppage would take place. Appellant argued that "[t]his

policy has an adverse effect on anyone retiring" which she believed was not the intent of the regulation.

A hearing was held before an administrative law judge ("ALJ") on December 5, 2019. At the administrative hearing, Appellant argued that notice of retirement was not a notice of resignation, and therefore, the Department should not have applied 17.04.11.19(E). In support of her argument Appellant pointed to a section of the Department's Employee Handbook, which sets forth different timeframes for submitting a letter of resignation and a letter of retirement and also incorporates the language of 17.04.11.19(E). In pertinent part, the Employee Handbook provides:

> **Resignation, Transfer, and Retirement from State Service**
> If you are planning to resign, submit a letter of resignation to your supervisor at least two (2) weeks prior to the effective date of your resignation to be considered resigned in good standing. A copy of the resignation letter should be forwarded to HRDT.
>
> If you are planning to transfer to another local department of social services or a different State agency . . . , submit a letter of transfer at least two (2) weeks prior to your effective date with the new agency. Information regarding your leave, etc. will be transferred to the new agency. A copy of the transfer letter should be forwarded to HRDT.
>
> If you planning to retire, submit a formal letter of retirement to your employer 30 days prior to the effective date. In most cases, you will have discussed your plan to retire with HRDT's Benefits Unit. Upon retirement, unused sick leave is credited towards your service [to] increase your retirement allowance.
>
> * * *
>
> An employee who has given notice of their resignation may use no more than 10 days of annual, personal, or compensatory leave between the time the notice is give and the effective date of the resignation.

Employee Handbook, *Md. Dep't Hum. Servs.*, 4–5 (updated Feb. 20, 2018) (emphasis added). Appellant argued that the 10-day limit on use of annual leave does not apply to retirement because the provision refers only to resignation, while the Employee Handbook distinguishes between resignation, transfer, and retirement for purposes of notification to the employer.

During cross-examination of Appellant, counsel for the Department suggested that a Department "checklist" for retirement, which Appellant had introduced into evidence, used the terms retirement and resignation "interchangeably." The checklist advised employees to file a "retirement application" two months prior to retirement, and to provide a "formal letter of resignation" one month prior to retirement (emphasis added). Appellant did not agree that the terms were used interchangeably in the checklist and instead claimed that it was "an error."

Appellant argued, alternatively, that even if 17.04.11.19(E) was applicable to retirement, the Department incorrectly used her application for retirement to calculate the ten-day period. Appellant maintained that the application for retirement benefits that she submitted on June 18, 2019, was not a "notice of resignation" because it provided only the effective date of her retirement (September 1, 2019), but not the date of her last day of work (August 15, 2019).[4] Appellant claimed that the notice of retirement was the

[4] According to Deon Carter, the Department's Human Resources Manager, the effective date of retirement is the last day of the month following the employee's last day of work.

correspondence she sent on July 18, 2019, in which she advised that her last day of work would be August 15, 2019.

Deon Carter, the Human Resources Manager for the Department, was the only other witness to testify. Mr. Carter stated that, for purposes of 17.04.11.19(E), a notice of retirement "is synonymous with resignation or separation from [S]tate service." He explained that the retirement application that the Department received on June 18, 2019, in which Appellant requested retirement benefits effective September 1, 2019, constituted notice of Appellant's intent to resign or retire from State service, and, therefore, the 10 days of allowable leave began to run on June 18th.

The Department argued that 17.04.11.19(E) had been correctly applied; that Appellant's submission of retirement paperwork on June 18, 2019, consisted of "notice of resignation" for purposes of the regulation, and that, because Appellant was on unpaid leave from July 3rd to August 15th, she was not entitled to accrue additional leave during that time.

On January 14, 2020, the ALJ issued a written opinion denying Appellant's grievance. The ALJ noted that neither COMAR nor the Department's employee handbook provide a definition for "resignation." The ALJ commented that the terms were used "imprecisely" in the employee handbook. The ALJ found, however, that 17.04.11.19 "does not have the same lack of clarity" as this section or any other regulation in that title of COMAR do not "provide any distinction between resignation and retirement."

Because the terms were not defined in the regulations or in the employee handbook, the ALJ consulted the Merriam-Webster Dictionary, in which "resign" was defined as "to

give up one's office or position[,]" and "retire" was defined as "to withdraw from one's position or occupation: conclude one's working or professional career." The ALJ concluded that "[b]ased on the common usage of the term retire, . . . retirement is a form of resignation." The ALJ added, "[w]hile not all resignations would constitute a retirement, the common usage of the terms implies that to retire is to give up an office or position, or to resign." The ALJ commented that her conclusion was bolstered by two retirement "checklists" introduced by Appellant, one of which "indicates that a letter of retirement must be submitted, while the other retirement checklist requires the retiree to submit a letter of resignation." The ALJ concluded:

> Considering that there is no regulatory definition of the two words, the common usage of the words overlap, and the retirement checklists provided by the [Appellant] seem to use the word interchangeably, I find that COMAR 17.04.11.19E applies to the [Appellant]. Consequently, I find she was only entitled to use ten days of annual, compensatory[,] or personal leave after providing notice of her retirement.

Next, the ALJ turned to the issue of when notice of resignation for purposes of 17.04.11.19(E) was given. The ALJ began by noting that the evidence did not include Appellant's completed application for retirement benefits, which she submitted on June 18, 2019, or the correspondence Appellant mailed on July 16, 2019. Consequently, the ALJ was not able to "determine what was contained in either, or whether the language would make a difference to [her] decision."

The ALJ noted that there was no statutory or regulatory definition of "notice", but that the Merriam Webster dictionary defined notice as "a warning or intimation of something," or "the announcement of a party's intention to quit an agreement or relation

at a specified time." The ALJ determined that submission of the application for retirement benefits on June 18, 2019, constituted notice of Appellant's intent to retire. The ALJ concluded that, therefore, the 10-day period began to run on June 18th, and that the Department had properly calculated the amount of leave that Appellant was entitled to take pursuant to 17.04.11.19(E).

The Appellant filed a Petition for Judicial Review of the ALJ's decision, which led to a hearing before the Circuit Court for Prince George's County on December 7, 2021. The circuit court affirmed the ALJ's ruling on December 13, 2021. The Appellant filed a timely notice of appeal to this Court on January 5, 2022.

PARTIES' CONTENTIONS

Appellant claims that the Department incorrectly applied COMAR 17.04.11.19(E). She asserts that the only form of separation from State service referred to in COMAR 17.04.11.19(E) is a "resignation", which, according to Appellant, is distinct from retirement. Appellant maintains that the Department misinterpreted 17.04.11.19(E) and wrongfully placed her on unpaid leave as of July 3, 2019. As a result, Appellant claims that she was denied 33 hours of leave that would have accrued between July 3, 2019, and August 15, 2019. We agree.

Appellant further contends that the Department improperly considered the retirement application she submitted on June 18, 2019, as a notice of resignation because (1) the Department "does not administer" the form, and (2) the form asks only for the effective date of retirement, but not the effective date of "separation from employment[.]"

The Department contends that the administrative law judge properly determined that retirement is a form of resignation. The Department then argues that the application for retirement benefits that Appellant submitted on June 18th constituted "notice of resignation" for purposes of 17.04.11.19(E). We disagree with the Department.

STANDARD OF REVIEW

"In an appeal from a judgment entered in a judicial-review proceeding, 'we bypass the judgment of the circuit court and look directly at the [challenged] administrative decision.'" *Merryman v. Univ. of Balt.*, 246 Md. App. 544, 553 (2020), *aff'd on different grounds*, 473 Md. 1 (2021) (quoting *Salisbury Univ. v. Joseph M. Zimmer, Inc*., 199 Md. App. 163, 166 (2011)). "In other words, we perform precisely the same role as the circuit court [and] decid[e] for ourselves whether the administrative agency erred." *Id.* at 554 (internal citation and quotation marks omitted). "The reviewing court's role is narrow, as 'it 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 decision is premised upon an erroneous conclusion of law.'" *Employees' Ret. Sys. of City of Balt. v. Dorsey*, 430 Md. 100, 110 (2013) (quoting *Md. Aviation Admin. v. Noland*, 386 Md. 556, 571 (2005)).

"In applying the test for substantial evidence, the reviewing court 'decides whether a reasoning mind reasonably could have reached the factual conclusion the agency reached.'" *Id*. (quoting *Noland*, 386 Md. at 571). "The reviewing court defers to the agency's factual findings, if supported by the record." *Id*. An agency's decision is *prima facie* correct and presumed to be valid. *Id.* Consequently, the reviewing court "must

review the agency's decision in the light most favorable to it[.]" *Id.* (quoting *Noland*, 386 Md. at 571).

The central issue in this case is whether the ALJ correctly interpreted COMAR 17.04.11.19(E). "An agency decision based on regulatory and statutory interpretation is a conclusion of law." *Kor-Ko Ltd. v. Md. Dep't of the Env't*, 451 Md. 401, 412 (2017) (citation omitted). This Court review questions of law *de novo*. *Chesapeake Bay Found., Inc. v. Creg Westport I, LLC*, 481 Md. 325, 336 (2022) (citation omitted).

"When an agency interprets its own regulations or the statute the agency was created to administer, we are especially mindful of that agency's expertise in its field." *Kor-Ko*, 451 Md. at 412 (citation omitted). When, as in this case, "the construction of an administrative regulation rather than a statute is in issue, deference is even more clearly in order." *Id.* (quoting *Md. Transp. Auth. v. King*, 369 Md. 274, 288 (2002)). As the Supreme Court[5] explained:

> [A]gency rules are designed to serve the specific needs of the agency, are promulgated by the agency, and are utilized on a day-to-day basis by the agency. A question concerning the interpretation of an agency's rule is as central to its operation as an interpretation of the agency's governing statute. Because an agency is best able to discern its intent in promulgating a regulation, the agency's expertise is more pertinent to the interpretation of an agency's rule than to the interpretation of its governing statute.

Id. at 412–13 (quoting *King*, 369 Md. at 289). Although we give weight to an agency's expertise in interpreting *its own* regulations, "it is always within our prerogative to

[5] In the November 8, 2022, general election, the voters of Maryland ratified a constitutional amendment changing the name of the Court of Appeals of Maryland to the Supreme Court of Maryland. The name change took effect on December 14, 2022.

determine whether an agency's conclusions of law are correct, and to remedy them if wrong." *Schwartz v. Md. Dep't of Nat. Res.*, 385 Md. 534, 554 (2005) (citations omitted) (emphasis added).

In *Comptroller of Maryland v. FC-GEN Operations Investments LLC*, the Supreme Court of Maryland analyzed the issue of deference related to tax law. 482 Md. 343, 377–79 (2022). The Court recognized that over the years "courts stopped deferring to the Comptroller [of Maryland] and began deferring, instead, to the legal determinations of the Maryland Tax Court" when interpreting tax statutes. *Id.* at 377 (quoting *Comptroller of Maryland v. FC-GEN Operations Investments, LLC*, No. 0946, Sept. term 2020, 2022 WL 325940, at *8 (Md. Ct. Spec. App. Feb. 3, 2022), *aff'd* 482 Md. 343 (2022) (Friedman, J., concurring)). The Court recognized that the Comptroller is the agency that administers tax laws and not the Tax Court, which is "a quasi-judicial agency that considers appeals from decisions of taxing authorities." *Id.* at 378. The Court held that when reviewing a Tax Court decision "the court may give appropriate deference to the Comptroller's interpretation of a tax statute—not the Tax Court's interpretation—to the extent the interpretation is premised upon a statute that the Comptroller administers and the regulations promulgated for that purpose." *Id.*

Based on *FC-GEN*, we must give deference to the interpretation of a regulation from the administrative agency that has promulgated the regulations, rather than the adjudicative administrative body like the Office of Administrative Hearings that issued its written opinion in this case. As a result, we are not bound by the interpretations written in the written opinion issued on January 14, 2020. We would then turn to the administrative

agency's interpretation instead, however this case involves the analysis of a regulation that was not promulgated by the agency arguing the case before us. The agency appealing here is the Department of Human Services, interpreting a regulation from Title 17, which is promulgated by the Department of Budget and Management. The purpose of the subtitle on Personnel Services and Benefits was for the Department of Budget and Management to implement the provisions of the State Personnel and Pensions Article. COMAR 17.04.01.02. In the record before us, we do not have an interpretation of COMAR 17.04.11.19(E) from the Department of Budget and Management. As a result, since we are dealing with an administrative agency who was not responsible for the creation of these regulations, and whose expertise is not in the same area as the Department of Budget and Management, we have no obligation to give deference to the Department's interpretation and choose not to do so here.

DISCUSSION

The regulation at issue in this case, COMAR 17.04.11.19(E), is titled "Computation of Leave and Record Retention on Separation from Service." The regulation was promulgated by Maryland Department of Budget and Management with an effective date of March 23, 1998. Subsection (A) and (B) of the regulation govern the method by which an employee is paid for accrued annual leave and compensatory time upon "separation" from State service. "Separation" is an undefined term in the Department of Budget and Management's regulations.

Subsection (E) of the regulation provides: "Once an employee has given notice of resignation, the employee may not use more than 10 days of annual leave, personal leave,

or compensatory leave, or any combination of those types of leave, between the time notice is given and the effective date of resignation." The question before this Court is whether notice of retirement is a notice of resignation for the purposes of 17.04.11.19(E).

"We review [an agency's] conclusions of law for error by applying our well-settled principles of statutory interpretation." *Bd. of Liquor License Comm'rs for Balt. City v. Kougl*, 451 Md. 507, 515 (2017) (citation omitted). First, we look to the plain language of the regulation, which is "the best evidence of its own meaning." *Id*. (quoting *Total Audio-Visual Sys. v. Dep't of Labor, Licensing & Regul.*, 360 Md. 387, 395 (2000)). "We will give effect to the [regulation] as it is written so long as the words of the [regulation], construed according to their common and everyday meaning, are clear and unambiguous and express a plain meaning." *Concerned Citizens of Cloverly v. Montgomery Cnty. Planning Bd*., 254 Md. App. 575, 606 (2022) (citations and internal quotation marks omitted). If the language of the regulation is "clear and unambiguous, our inquiry ordinarily ends there." *Kougl,* 451 Md. at 516 (quoting *Christopher v. Montgomery Cnty. Dep't of Health and Hum. Servs*., 381 Md. 188, 209 (2004)).

"When interpreting [a] regulation, 'it is proper to consult a dictionary or dictionaries for a term's ordinary and popular meaning.'" *Id.* at 515–16 (quoting *Chow v. State*, 393 Md. 431, 445 (2006)). "To choose the appropriate definition, we look to the agency's interpretation of its own regulation." *Id.* at 517 (citing *King*, 369 Md. at 288–89). "We give deference to an agency's interpretation 'unless it is plainly erroneous or inconsistent with the regulation.'" *Id*. (quoting *King*, 369 Md. at 288–89).

Applying these principles, we conclude that the plain language of the regulation is not ambiguous, but inappropriately applied by the Administrative Law Judge. Subsection (E) refers only to a notice of resignation, for which there appears to be no applicable regulatory or statutory definition.[6] Therefore, we consider the common and everyday meaning of "resignation." In considering this meaning we do not find resignation to be the proper term in determining the rights of the Appellant under the circumstances.

Merriam-Webster defines "resign" as "to give up one's office or position." *Resignation*, *Merriam-Webster's Collegiate Dictionary* 1060 (11th Ed. 2014). Black's Law Dictionary defines "resignation" as "[a] formal notification of relinquishing an office or position; an official announcement that one has decided to leave one's job or organization often in the form of a written statement." *Resignation*, *Black's Law Dictionary* 1566 (11th ed. 2019). The Oxford English Dictionary defines "resignation" as "[t]he action or fact of resigning from one's employment, from an office, as a member of

[6] In the Department of Budget and Management title, the words "retire" and "resign" are never specifically defined. The title defines "Normal retirement age" related to State employee health benefits. COMAR 17.04.13.01(B)(6). "Resign" is also used as a contrast to applying for a leave of absence. *See* COMAR 17.04.11.24(H) (describing how if an employee does not notify the appointing authority that they will return to duty before the leave of absence expires, they will be considered resigned). The regulations also state that "[a]n employee can separate from employment by resigning." COMAR 17.04.04.03(A).

In the State Personnel and Pensions code Division I regarding State Personnel, which the Department of Budget and Management implements, neither "retirement" nor "resign" are defined. There is a provision that specifically allows for termination of employment by resigning, but it makes no distinction between a process for retirement or resignation. Md. Code, State Pers. & Pens. § 11-401. In Division II regarding Pensions, there is a definition for retirement, which is "the grant of a retirement allowance under this Division II after separation from employment with a participating employer." Md. Code, State Pers. & Pens. § 20-101(kk). However, Division II is not what the Department was trying to utilize for a definition of "retirement" or "resignation" in this case.

an organization, etc." *Resignation*, *Oxford English Dictionary Online*, www.oed.com/view/Entry/163604 (last accessed January 29, 2025).

Similarly to "resign," but in a more specific scenario, Merriam-Webster defines "retire" as "to withdraw from one's position or occupation[;] *conclude* one's working or professional *career*." *Retire*, *Merriam-Webster Dictionary*, https://www.merriam-webster.com/dictionary/retire (last accessed January 29, 2025) (emphasis added). Black's Law Dictionary defines "retire" as "[t]o stop working at a job, usu. upon reaching the normal age for leaving employment." *Retire*, *Black's Law Dictionary* (12th ed. 2024). The Oxford English Dictionary defines "retire" as "[t]o leave office, employment, or service permanently, now esp. on reaching pensionable age; to stop working." *Retire*, *Oxford English Dictionary Online*, https://www.oed.com/dictionary/retire_v?tab=meaning_and_use#173683430 (last accessed January 7, 2025). The record reflects that the Appellant worked at the Department of Social Services for twenty-two years. She had accrued the amount of leave she was attempting to be paid for through years of service with the State.

The meaning of "resignation" is distinct from "retirement." Retirement, by the definitions cited above, appears to be a particular type of resignation related to concluding one's professional career at a particular age. The ALJ noted, "[w]hile not all resignations would constitute a retirement," "a retirement is a form of resignation." We disagree that retirement is a form of resignation and hold that the ALJ did err in concluding that the use of the broader term "resignation" in COMAR 17.04.11.19(E) applied to an employee who has given a more specific notice of retirement.

The evidence relied upon by the ALJ beyond the dictionary definitions did not support the conclusion that "retirement" and "resignation" were synonymous. First, the ALJ analyzed two checklists provided by the Appellant. One checklist first advised employees to file a "retirement application" two months prior to retirement, and then to provide a "formal letter of resignation" one month prior to retirement. The ALJ said that "the checklists use the terms interchangeably" and this fact supported the regulation's applicability to the Appellant. However, the record was not clear as to what department produced both of these checklists. While one checklist clearly states it is from the Maryland State Retirement Agency and that document lists a "letter of retirement," the other checklist that mentions a "letter of resignation" does not have a source provided and during the hearing, it was not made clear from which department this checklist originated and the weight the checklist should be accorded. We do not agree that these retirement checklists used the words "retirement" and "resignation" interchangeably or further support the broader definition of "resignation."

The ALJ was also supported by the in-court testimony of Mr. Carter, who testified that for the Department, retirement was "synonymous with resignation or separation from [S]tate service." He also testified that the formal letter of resignation given prior to retirement, as described above, "is received as a resignation." Given our discussion above about the Department in this case not being the Department of Budget and Management, we are not required to give deference to the Department's interpretation of "retirement" and "resignation" and based on our analysis above of the difference between "retirement" and "resignation" we choose not to defer to Mr. Carter's interpretation.

Lastly, the ALJ discussed the employee handbook provided during the hearing, stating that "[t]he Handbook is ambiguous due to the clear distinction between resignation and retirement in certain paragraphs, but not in other paragraphs of the same section in the Handbook." We agree that the Handbook clearly distinguishes between resignation and retirement, as when the Handbook wants to refer to multiple forms of leaving State Service, it begins a paragraph with "[u]pon resignation, transfer, or retirement[.]" Employee Handbook, *supra,* at 5. By contrast, the paragraph concerning the ten days of leave that mirrors the language of COMAR 17.04.11.19(E): "An employee who has given *notice of their resignation* may use no more than 10 days of annual, personal or compensatory leave between the time the notice is given and the effective date of the resignation." *Id.* (emphasis added). We do not agree that this Handbook is ambiguous, but rather by its plain language makes it clear that retirement and resignation are two different processes and if the Handbook wanted the ten-day leave limitation to apply to retirement notices, then it could have stated that.

There was not substantial evidence presented to the ALJ that resignation and retirement were synonymous. As a result, under COMAR 17.04.11.19(E) a "notice of resignation" will not include a "notice of retirement."

The remaining issue then is whether the Appellant provided a notice of her resignation to the Department, rather than a notice of retirement. Because of our holding above we do not hold that there was substantial evidence to support the ALJ's finding that Appellant's application for retirement benefits received on June 18, 2019, constituted "notice of resignation." This finding is a mixed question of law and fact, to which "we

apply the substantial evidence test, that is, the same standard of review [we] would apply to an agency factual finding." *Thomas v. State Ret. & Pension Sys. of Md.*, 184 Md. App. 240, 248 (2009), *aff'd*, 420 Md. 45 (2011) (quoting *Comptroller of Treasury v. Sci. Applications Int'l Corp.*, 405 Md. 185, 193 (2008)).

The Appellant here submitted a blank Application for Service or Disability Retirement form, which expressly states that the applicant "hereby appl[ies] to *retire* from the Maryland State Retirement and Pension System." (emphasis added). Given our holding that "retire" is not synonymous with "resign" we do not agree that this application for *retirement* can constitute an application for *resignation*. Although Appellant's completed and signed retirement application was not in evidence, Appellant testified that she indicated on the form that her retirement would be effective as of September 1, 2019. This form was received by the Department on June 18, and they used that date to calculate what they perceived to be the permissible leave. From this evidence, it not was reasonable for the ALJ to conclude that submission of the retirement application served as notice of the Appellant's intent to resign by September 1, 2019 that would trigger the ten-day limitation on benefits under COMAR 17.04.11.19(E). Instead, this document only served as notice of the Appellant's intent to retire and when the Appellant retired she was entitled to the leave that she accrued through her years of service to the State.

CONCLUSION

The ALJ's conclusion that "notice of resignation" under COMAR 17.04.11.19(E) includes a notice of retirement was legal error. The ALJ's determination that Appellant's Application for Service Retirement constituted "notice of resignation" for purposes of the

regulation was not supported by substantial evidence in the record. Therefore, we reverse the judgment of the Circuit Court for Prince George's County. We remand the case back to the ALJ to conduct findings of fact as to what money the Appellant is owed based on her unused leave at the time of her retirement from service.[7]

JUDGMENT OF THE CIRCUIT COURT FOR PRINCE GEORGE'S COUNTY REVERSED FOR REMAND TO THE ADMINISTRATIVE LAW JUDGE. COSTS TO BE PAID BY APPELLEE.

[7] The Appellant calculated based on her paystubs that she was still owed 33.066667 hours of pay along with 4.06 comp time hours that she earned on top of that based on those hours. The Appellee did not propose an alternative number of hours of pay owed and the ALJ came to no findings of fact on whether these hours were accurate.