

**BEFORE THE  
MERIT SYSTEM PROTECTION BOARD  
FOR  
MONTGOMERY COUNTY, MARYLAND**

**IN THE MATTER OF**

**[REDACTED]**

**APPELLANT,**

**AND**

**MONTGOMERY COUNTY  
GOVERNMENT,**

**EMPLOYER**

**CASE NO. 17-27**

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**DECISION ON APPELLANT'S REQUEST FOR RECONSIDERATION**

On May 8, 2017, Appellant filed an appeal with the Merit System Protection Board (MSPB or Board), seeking to challenge her termination from employment with the County's Office of Human Resources. On June 15, 2017, the County acknowledged that the termination action was procedurally deficient and notified Appellant and the Board that the Notice of Termination was being withdrawn. Given that the termination being appealed was rescinded, on June 19, 2017, the Board issued an order requiring Appellant to show good cause as to why the Board should not dismiss her appeal as moot.

Appellant's July 10, 2017, response to the Show Cause Order did not provide any persuasive explanation of why the County's actions rescinding the Notice of Termination and reinstating Appellant with full back pay and benefits did not moot her appeal. Although not contesting that she had been reinstated with full back pay and benefits, Appellant claimed that she had not truly been made whole. That is because at the time of the flawed notice of intent to terminate Appellant still had 30 days left on a 90-day period in which she had disability priority rights to vacant County jobs. Appellant Response to Show Cause Order, p. 2. However, the Board's July 26, 2017, Final Decision and Order found that while the notice of intent to terminate was provided to Appellant with 30 days of the 90-day period remaining, the notice unambiguously indicated, in bold lettering, that Appellant still had a month left to secure another position before

the termination would take effect. Memorandum from ██████████ to Appellant, March 24, 2017, ¶ 2.<sup>1</sup>

The County provided certification on July 5, 2017, and in its July 18, 2017, response to the Show Cause Order, that the termination was rescinded, that Appellant was retroactively placed on administrative leave, and that Appellant had been made whole for any loss of salary and benefits. Accordingly, the Board found that the appeal was moot because the action being appealed had been completely rescinded.

On August 7, 2017, Appellant filed a request for reconsideration alleging that she was not provided with the County's July 18, 2017, response to the Show Cause Order because it was mailed to an incorrect address.<sup>2</sup> This Board has previously held that the failure of a party to properly serve a copy of a pleading on the opposing party is insufficient, in and of itself, to justify reconsideration of a final decision. For example, in MSPB Case No. 13-12 (2013), the County sought reconsideration for a variety of reasons, including its complaint that it never received a copy of the appellant's reply. The County argued that Board staff should have noticed the absence of a certificate of service and informed the appellant to provide a copy to the County. Nevertheless, reconsideration was denied.

Appellant has had ample opportunity to present her reasons as to why the Board should not dismiss her appeal as moot. Appellant argues that although the Show Cause Order did not provide for additional responses and replies after the submissions of each party, MSPB Case No. 16-04 (2015), provides authority for the Board to permit the parties to file additional, supplemental pleadings. That case is inapposite to this matter since the filings in Case No. 16-04 occurred *prior* to the final decision. In this case, the issuance of the final decision means that any additional arguments Appellant wishes to make must meet the standard for reconsideration of a final decision. Appellant has failed to do so. Although Appellant received a copy of the County response from the Board on July 31, 2017, and was provided with the full text of Montgomery County Personnel Regulation (MCPR) §35-17, her request for reconsideration does not state any substantive objections to or arguments concerning the County's response, or allege any mistake or irregularity, other than the mailing of the County's response to what she now claims is the wrong address. Under the facts of this matter, the alleged misdirection of the County's response did not deprive Appellant of due process or the ability to fully state her case as to why the appeal should not be dismissed as moot.

The County has demonstrated by a preponderance of the evidence that it has fully rescinded the action appealed and made Appellant whole, while Appellant has provided no material evidence to the contrary. Appellant has not provided any valid reason to warrant the Board issuing a new

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<sup>1</sup> Appellant argues that she should have an opportunity to respond to the July 18, 2017, Affidavit ██████████. The Board's final decision cited the ██████████ affidavit as having certified that Appellant had a 90-day period of priority rights. Affidavit of ██████████, July 18, 2017, ¶ 7. However, the Board did not rely solely on the ██████████ affidavit as it merely confirmed what was also stated in the March 24, 2017, ██████████ memorandum.

<sup>2</sup> The County's August 10, 2017, response to Appellant's request for reconsideration asserts that its July 18 response was mailed to the address Appellant provided to the County on April 27, 2017. Under the circumstances of this case, the Board need not resolve the question of what was the "correct" address for Appellant.

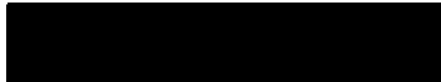
decision different from the Board's initial decision. *See* MSPB Case No. 12-11 (2012). The Board will not alter its decision that the appeal must be dismissed as moot. *See, e.g.*, MSPB Case No. 17-03 (2016); MSPB Case No. 14-45 (2014); MSPB Case No. 14-11 (2014); MSPB Case No. 12-06 (2006); MSPB Case No. 10-12 (2010).

**ORDER**

Based on the above, the Board hereby denies Appellant's request for reconsideration of the Board's decision to dismiss her appeal based on mootness.

If any party disagrees with the decision of the Merit System Protection Board, pursuant to Montgomery County Code, §33-15, *Judicial review and enforcement*, and MCPR, §35-18, *Appeals to court of MSPB decisions*, within 30 days of this decision an appeal may be filed with the Circuit Court for Montgomery County, Maryland, in the manner prescribed under Chapter 200, Title 7 of the Maryland Rules.

For the Board  
August 15, 2017



Charlotte Crutchfield  
Chair