

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

**IN THE MATTER OF**

**[REDACTED]**

**APPELLANT,**

**AND**

**MONTGOMERY COUNTY  
GOVERNMENT,**

**EMPLOYER**

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**CASE NO. 18-06**

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**ORDER DENYING MOTION TO DISMISS**

On October 9, 2017, Appellant filed this appeal with the Merit System Protection Board (MSPB or Board) challenging the decision of the Department of Correction and Rehabilitation to dismiss him from his position as a Correctional Supervisor - Sergeant. On January 2, 2018, Appellant filed a prehearing submission and exhibits pursuant to the Board's procedural rules. Included in Appellant's prehearing submission was a Motion to Dismiss the charges against him as untimely. Appellant Prehearing Submission, pp. 3-4.

The Board has carefully considered the motion to dismiss and the arguments of the parties and finds no basis for dismissing the charges against Appellant based on timeliness. Under Montgomery County Personnel Regulations (MCPR), § 33-2(b)(1), "[a] department director should start the disciplinary process promptly and issue a statement of charges within 30 calendar days of the date on which the supervisor became aware of the employee's conduct, performance, or attendance problem." It is well settled that use of the term "should" or "may," rather than "shall" or "must," suggests that the 30-day requirement is not absolute. Moreover, MCPR § 33-2(b)(2), provides that "[a] department director may wait for more than 30 calendar days to issue a statement of charges if an investigation of the employee's conduct or other circumstances justify a delay." Thus, the County Personnel Regulations are readily distinguishable from the mandatory State

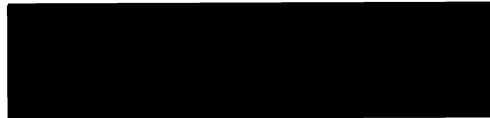
statute construed by the Court of Appeals in *Western Correctional Institution v. Geiger*, 371 Md. 125 (2002).

Appellant also references MSPB Case No. 11-02 (2011), where the Board found that the County had not taken prompt discipline when the department director waited over one year after he became aware of the alleged misconduct to issue a statement of charges. Here, according to Appellant, the statement of charges was issued 43 days after the addendum to the investigative report. We decline to hold that an alleged delay of less than two weeks violates the prompt discipline requirements of MCPR, § 33-2(b).

Accordingly, it is hereby **ORDERED** that Appellant's motion to dismiss is **DENIED**.

For the Board

February 27, 2018



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Angela Franco  
Chair