

**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. 18-07

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ORDER DENYING MOTION TO DISMISS AND/OR TO BIFURCATE

On October 10, 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 Officer. On January 3, 2018, Appellant filed a Motion to Dismiss Charges and/or to Bifurcate Issue of Timeliness, asserting that the charges against him were untimely.

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 requirements in State Personnel and Pensions Article (SPP), § 11-106, the State statute construed by the Court of Appeals in *Western Correctional Institution v. Geiger*, 371 Md. 125 (2002). Appellant argues that the State statute’s protections apply to him, completely ignoring SPP § 11-102, which limits the application of the subtitle that includes § 11-106 “to all employees in the

State Personnel Management System within the Executive Branch” of State government. Appellant is a County employee, not an employee of the State Division of Correction or anywhere else in the Executive Branch of State government.

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

Accordingly, it is hereby **ORDERED** that Appellant’s motion to dismiss or to bifurcate is **DENIED**.

For the Board

February 27, 2018



Angela Franco
Chair