

**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. 18-09

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**DECISION GRANTING MOTIONS FOR RECONSIDERATION AND REVISING
FINAL DECISION AND ORDER**

On January 31, 2019, the Merit System Protection Board (MSPB or Board) issued a Final Decision and Order in the above-captioned matter. On February 5, 2019, Montgomery County filed a memorandum asking that the Board revise the decision because of an erroneous reference to a County regulation, COMCOR 33.86.01. The next day, the Board sent a letter to Appellant’s attorney advising her that the Board would treat the County memorandum as a motion for reconsideration and, citing Montgomery County Personnel Regulation (MCPR), § 35-17(b), that any response to the County’s motion “must be filed within 5 calendar days from receipt of the request.”¹ On February 8, 2019, by electronic mail, Appellant filed a response to the County’s memorandum in which he joined the County request to revise the January 31 decision and further requested that the Board reconsider its decision on the merits.

As the Board agrees that the reference to COMCOR 33.86.01 was in error, the Board grants the County’s motion for reconsideration, rescinds the January 31, 2019, decision, and hereby issues this revised Final Decision and Order. Although we also grant Appellant’s request for

¹ The Board has ten (10) days following the receipt of a request for reconsideration to issue a decision. If the Board fails to act within ten days from receipt of the request, the request is deemed denied. Montgomery County Code, § 2A-10(f); MCPR § 35-17(c).

reconsideration, as explained below we hold that the erroneous analysis of COMCOR 33.86.01 was immaterial and does not alter our conclusions.

BACKGROUND

Appellant is a former Montgomery County firefighter who, effective July 5, 2001, retired with a non-service connected disability under Montgomery County Code (MCC), § 33-43. On October 16, 2017, Appellant filed this appeal to the Merit System Protection Board (MSPB or Board) challenging the interpretation of the County Chief Administrative Officer's (CAO) decision concerning application of an earnings offset to his disability pension based on his ability to work.² The County filed a response to the appeal (County Response) and Appellant, through his attorneys, filed final comments (Appellant's Reply). The appeal was considered and decided by the Board.

FINDINGS OF FACT

The parties do not dispute the material facts underlying the appeal. Appellant began his employment with the County Department of Fire and Rescue Service (DFRS) on August 27, 1990. County Response at 1. Upon beginning County employment, Appellant became a participant in the Montgomery County Employees' Retirement System (ERS). *Id.* As a firefighter, Appellant participated in the ERS as a Group G member. County Response at 1; County Exhibit A; Appellant's Reply at 6.

Appellant was awarded a non-service connected disability retirement under MCC § 33-43, effective July 5, 2001. Appellant had ten years and ten months of credited service. County Response at 1. Appellant was a Firefighter/Rescuer III with the County DFRS at the time of his retirement. Appellant's Reply at 1. Had Appellant not retired on disability in 2001 and instead continued to be continuously employed as a firefighter, he would have reached his normal retirement date with over 20 years of credited service in late 2010. Appellant's Reply at 1.

On August 5, 2016, the County requested documentation of Appellant's 2015 non-pension income. Appellant provided the requested information and, on February 3, 2017, the County notified Appellant that it would be offsetting his disability payments in their entirety starting on March 1, 2017, citing MCC § 33-43(j). Appellant's Reply at 7. In an apparent response to Appellant's objections, on May 19, 2017, [REDACTED], the County Retirement Benefits Manager, sent Appellant a letter stating:

For public safety employees who retired on disability retirement prior to their NRD [Normal Retirement Date], the NRD date used in the annual disability income

² The appeal was submitted online on Friday, October 13, 2017, a day that the Merit System Protection Board's offices are closed. Accordingly, the appeal was officially received by the Board on October 16, 2017, the Board's next business day. MSPB Case Nos. 17-14 and 17-16 (2017); MSPB Case Nos. 15-16, 15-17, and 15-28 (2015). *See* Montgomery County Code, § 1-301(c)(3).

verification is the first of the month after age 55. As required by Montgomery County Code, we will continue to request an annual income verification from you until July 1, 2023 when you turn age 55.

Appellant's Exhibit A.³

Pursuant to MCC § 33-56(a), Appellant requested that the CAO provide a written interpretation of MCC § 33-43(j). Specifically, he asked whether it was proper for his disability pension to be offset for other income since the language of § 33-43(j) appeared to only permit offsets for members who retired with total incapacity. Appellant alleged that he retired with a partial, not total, incapacity. On September 29, 2017, the CAO issued a letter stating that the current MCC "does not apply" to Appellant because he retired in 2001. County Exhibit A.⁴ Furthermore, the CAO concluded that Appellant's years of disability retirement could not be treated as credited service towards his "normal retirement date," the point at which pension offsets normally cease. In reaching that conclusion, the CAO referenced with approval the May 19, 2017, letter of the County Retirement Benefits Manager. *Id.*; Appellant's Appeal at p. 2.⁵ Appellant then filed this appeal.

APPLICABLE LAW

Montgomery County Charter

§ 1-201. Effect of changes in the law.

(a) *Changes.* Unless the law expressly provides otherwise, when the County changes a law, the law does not affect:

³ Appellant's Exhibit A, the May 19, 2017, letter from the County Retirement Benefits Manager, [REDACTED], was Appellant's only exhibit.

⁴ The County submitted the following nine County Exhibits (CX):

CX A - Letter from CAO, September 29, 2017.

CX B - Changes to County Code 33-43, a two-part document consisting of: (I) an annotated version of § 33-43 created by the Office of the County Attorney and purporting to provide a history of amendments to that provision; and (II) the current published text of § 33-43.

CX C - Bill No. 45-10, Chapter 13, Laws of Montgomery County 2011.

CX D - Affidavit of [REDACTED], November 14, 2017.

CX E - ERS Benefit Formula Changes, an undated list of changes to the Employee Retirement System's various benefit formulae prepared by the County Office of Employee Retirement Plans.

CX F - the current published text of County Code § 33-38, with endnotes.

CX G - Bill No. 5-07, Chapter 3, Laws of Montgomery County 2007.

CX H - the current published text of County Code § 33-41, with endnotes.

CX I - the current published text of County Code § 33-47, with endnotes.

⁵ Although the CAO's letter referenced "the enclosed letter dated May 19, 2017" from Retirement Benefits Manager [REDACTED], the County did not include the [REDACTED] letter as part of County Exhibit A or otherwise include it with the County's submission to the Board. The [REDACTED] letter was made part of the record as Appellant's Exhibit A.

- (1) any rights vested in a person before the change became effective;
- (2) any contract rights that existed before the change became effective; and
- (3) any legal actions for a violation of the law that occurred before the change became effective.

(b) *Modifications.* For purposes of acts that occurred before a new law became effective, if the law modifies an existing provision in the Code, then the modified provision continues the existing provision unless:

- (1) The new law states that it does not continue the existing provision; or
- (2) The context indicates that the new law was not intended to continue the existing provision.

Council Bill 45-10, Chapter 13, Laws of Montgomery County 2011

Sec. 3. Effective Date. This Act, other than Section 4, takes effect on July 1, 2012. Section 4 takes effect 91 days after the Act becomes law. The amendments to County Code Chapter 33 made in Section 1 of this Act apply to any disability occurring on or after the date this Act takes effect.

Montgomery County Code

§ 33-38. Normal retirement date, mandatory retirement date, early retirement date, and trial retirement.

(a) *Normal retirement date.* The normal retirement date is the first day of the month elected by a member after the member meets the years of service and age requirements for the applicable membership group. For normal retirement:

* * *

(6) Group G: The member must have at least:

(A) 15 years of credited service and be at least age 55; or

(B) 20 years of credited service regardless of age.

* * *

(c) *Early retirement date.*

(1) A member, other than a group G member, who has not met the age and service requirements for a normal retirement may elect to receive pension payments

beginning on an early retirement date the first day of a month after the following requirements are met: . . .

(2) A group G member is not eligible for an early retirement.

§ 33-41. Credited service.

(a) *Member's credited service.*

(1) A member's credited service is the total service rendered under the employees' retirement system of Montgomery County, plus any credited service earned under the employees' retirement system of the State of Maryland and/or the Montgomery County police relief and retirement fund law plus any other credited service purchased or granted pursuant to this section. . . .

(b) *Procedures for determining credited service.*

(1) Full-Time Members. Service rendered during the full normal working time in a 12-month period, including paid authorized leave or other leave specifically provided here, will equal one year of credited service. The 12-month period referred to in the preceding sentence is the 12-month period that starts on the date (or the anniversary of the date) the employee first completed one hour of County service as a member.

§ 33-43. Disability retirement. [current language since July 1, 2012]

(j) *Adjustment or cessation of disability pension payments.*

(1) If a member receiving service-connected disability pension payments reaches the first day of the month after the member's normal retirement date, the amount of pension then payable must not be less than the amount that would have been payable under Section 33-45(c) if the member had terminated service when the disability pension began and had not elected a return of member contributions with credited interest.

(2) (A) The Chief Administrative Officer may reduce the amount of the disability pension payments of a member retired with total incapacity who:

(i) has not reached the normal retirement date; and

(ii) is engaged in, or is able to engage in, an occupation that pays more than the difference between the disability pension payments and the current maximum earnings of the occupational classification from which the member was disabled.

(B) If a member other than a Group F member meets the criteria in subparagraph (A), the Chief Administrative Officer may reduce the member's disability pension payments until the disability pension payments plus the amount that the employee earned or is able to earn equals the maximum earnings of the occupational class from which the member was disabled.

(C) If a Group F member receives a non-service connected disability pension and meets the criteria in subparagraph (A), the Chief Administrative Officer may reduce the member's disability pension payments until the disability pension payments plus the amount the employee earned or is able to earn equals 120 percent of the maximum earnings of the occupational class from which the employee was disabled.

* * *

(3) If the earnings capacity of a disability retiree with a total incapacity changes, the Chief Administrative Officer may change the amount of the disability retirement pension. In this subsection, "disability pension" is the amount of pension payable without election of a pension payment option.

§ 33-43. Disability retirement. [language prior to July 1, 2012]

(j) *Adjustment or cessation of disability pension payments.*

(1) If a member receiving service-connected disability pension payments reaches the first day of the month following after the member's normal retirement date, the amount of pension then payable must not be less than the amount that would have been payable under the provisions of Section 33-45(c), if the member had terminated service on the date disability pension commenced and had not elected a return of member contributions with credited interest.

(2)(A) The Chief Administrative Officer may reduce the amount of the disability pension payments of a member who:

- (i) has not reached the normal retirement date; and
- (ii) is engaged in, or is able to engage in, an occupation that pays more than the difference between the disability pension payments and the current maximum earnings of the occupational classification from which the member was disabled.

(B) If a member other than a Group F member meets the criteria in subparagraph (A), the Chief Administrative Officer may reduce the member's disability pension

payments until the disability pension payments plus the amount that the employee earned or is able to earn equals the maximum earnings of the occupational class from which the member was disabled.

* * *

(3) If the earnings capacity of a disability changes, the Chief Administrative Officer may change the amount of the disability retirement pension. For the purpose of this subsection, “disability pension” is the amount of pension payable without election of a pension payment option.

(A) For a disability retiree other than a group F member, the Chief Administrative Officer must ensure that the amount of the revised pension does not exceed:

(i) the original disability retirement pension plus cost of-living increases; or

(ii) an amount that, when added to the amount the member earns or is able to earn, equals the maximum earnings of the occupational classification from which the member was disabled.

..

§ 33-45. Vested benefits and withdrawal of contributions.

(c) *Vested benefits.*

(2) On or after July 1, 1989, a member who has completed 5 years of credited service is fully vested in a normal retirement pension that has accrued to date of termination, with payments beginning on the first day of the month following the member’s normal retirement date.

United States Code, 26 U.S.C. § 401, Title 26, Internal Revenue Code, I.R.C. § 401(a).
Qualified pension, profit-sharing, and stock bonus plans,

(9) Required distributions. –

(A) In general. --A trust shall not constitute a qualified trust under this subsection unless the plan provides that the entire interest of each employee--

(i) will be distributed to such employee not later than the required beginning date, or

(ii) will be distributed, beginning not later than the required beginning date, in accordance with regulations, over the life of such employee or over the

lives of such employee and a designated beneficiary (or over a period not extending beyond the life expectancy of such employee or the life expectancy of such employee and a designated beneficiary). . . .

(C) Required beginning date. -- For purposes of this paragraph--

(i) In general. --The term “required beginning date” means April 1 of the calendar year following the later of--

- (I) the calendar year in which the employee attains age 70 ½, or
- (II) the calendar year in which the employee retires. . . .

ISSUE

Is the Chief Administrative Officer’s interpretation with regard to Appellant’s retirement benefit correct?

ANALYSIS AND CONCLUSIONS

The CAO’s Interpretation of the Retirement Statute is Entitled to Deference, if Reasonable.

The County Council has vested the CAO with the authority to issue interpretations of the retirement statute. As such, the CAO is entitled to deference with regard to his interpretation, so long as it is reasonable. MSPB Case No. 14-33 (2015). *See Martin v. OSHA*, 499 U.S. 144, 156 (1991). Where, however, the CAO’s interpretation is predicated on an error of law, no deference is appropriate. *See Dep’t of Health & Mental Hygiene v. Riverview Nursing Ctr.*, 104 Md. App. 593, 602 (1995); MSPB Case No. 11-03 (2010); MSPB Case No. 11-04 (2010).

The Language of the Statute Together with its Legislative History Support the CAO’s Interpretation of Chapter 13, Laws of Montgomery County 2011

At the time of Appellant’s retirement in 2001, the Montgomery County Code provided that disability retirement payments could be offset if a retiree was engaged in or able to engage in an occupation that pays more than the difference between the disability pension and the maximum earning of the occupational class from which the member retired. MCC § 33-43(j)(2).

Appellant points out that in 2011 the County Council enacted Bill No. 45-10 (Chapter 13, Laws of Montgomery County 2011), which amended § 33-43(j) to create a two-tiered service-connected disability retirement system consisting of partial and total incapacity disability benefits. Chapter 13 amended § 33-43(j)(2)(A) to apply the earnings offset provision only to members who retired with total incapacity.

Appellant argues that since he retired with partial incapacity, under the amended law his pension is not subject to offset. However, § 3 of Chapter 13 expressly states that “The amendments to County Code Chapter 33 made in Section 1 of this Act apply to any disability occurring on or after the date this Act takes effect.” County Exhibit C at p. 16. Thus, under the plain language of the statute the amendments to the statute upon which Appellant relies are to be applied prospectively, *i.e.*, to disabilities occurring on or after the Act’s effective date. As Appellant’s disability occurred a decade before the enactment of Chapter 13, the changes do not apply to him. *See* MSPB Case No. 10-17 (2010) (Statutory amendment to County Code Chapter 33 enacted three years after appellant’s retirement is not applicable).

Although it is often said that a review of legislative history is normally necessary only when the language of a statute is ambiguous, the legislative purpose is also critical to proper interpretation of a statute and must be discerned. Because the legislative purpose controls, we review the legislative history to ascertain whether the plain meaning of the words of the statute are indeed consistent with the bill’s purpose and objective, and “comports with common sense and avoids illogical or absurd results.” *Kaczorowski v. Mayor & City Council*, 309 Md. 505, 516-17 (1987). *See* MSPB Case No. 14-33 (2015).

Our review of the bill’s legislative history confirms the intent of the County Council as reflected in the explicit language of the bill. As introduced, § 3 of Council Bill 45-10 provided that the amendments to County Code Chapter 33 made by bill would prospectively “apply to any application for disability retirement filed on or after the date this Act takes effect.” County Exhibit C at p. 16. To avoid the possibility of any unconstitutional impairment of contract issues when creating the new, two-tiered disability retirement system, the Council amended the language to provide that the amendments would “apply to any disability occurring on or after the date this Act takes effect.” *Id.* *See* Action Packet, Council Bill 45-10, June 28, 2011, Memorandum from Robert H. Drummer, Senior Legislative Attorney, to County Council, pp. 4-5, Available at:

https://www.montgomerycountymd.gov/council/resources/files/lms/bill/2010/Action/pdf/279_754_Action_02162017.pdf.

Based on legal advice from the Office of the County Attorney, and to avoid the possibility of retroactive impairment of vested rights in violation of the United States Constitution’s Contract Clause, the County Council amended the bill so that changes in the pension law would only apply prospectively to members for whom disabilities occurred after the bill’s effective date.⁶ The bill was jointly considered by the Council’s Public Safety and Government Operations and Fiscal Policy Committees, and the committee recommended that the Council “amend the Bill to take effect on July 1, 2012 and apply to cases where the disability occurs on or after the date the Act takes effect.” *See* Action Packet, Council Bill 45-10, pp. 5 and 27.

⁶ Section 3 of the Act provided that, except for § 4 of the Act, the Act took effect July 1, 2012. Section 4, which was effective October 10, 2011, only concerned collective bargaining, which is not an issue relevant to this matter. The amendment to § 33-43(j)(2), creating the distinction between partial and total disability, was in § 1 of the Act.

Appellant argues that because the amendments were beneficial to retirees the Council could have retroactively applied the amendments without impairing vested rights. Appellant's Reply at pp. 3-4. While it may be true that the Council could have constitutionally made "beneficial" changes in the statute retroactively applicable to those who were already retired without impairing vested rights, the Council instead expressly chose to make the changes prospective. The language of § 3 was carefully considered, reflected a conscious decision made by the County Council, and cannot under any reasonable analysis be viewed as "illogical or absurd." Moreover, contrary to Appellant's suggestion, Appellant's Reply at p. 5, § 3 of Chapter 13 is not mere legislative history. It is part of the statute itself and must be given effect.

Whether a statute applies retroactively or prospectively is ordinarily one of legislative intent. *Langson v. Riffe*, 359 Md. 396, 406 (2000). There is also a presumption in Maryland law that statutes operate prospectively. *Pautsch v. Maryland Real Estate Commission*, 423 Md. 229, 263 (2011). See MSPB Case No. 10-17 (2010). That presumption of prospective application, and thus continuation of provisions in effect at the time of amendment, is codified in the Montgomery County Charter, § 1-201 ("(b) For purposes of acts that occurred before a new law became effective, if the law modifies an existing provision in the Code, then the modified provision continues the existing provision unless: (1) The new law states that it does not continue the existing provision; or (2) The context indicates that the new law was not intended to continue the existing provision"). Under the express language of § 3 of Chapter 13, the provisions Appellant claims were repealed remain in effect for Appellant, since his disability occurred prior to July 1, 2012. The language of the bill and its legislative history unmistakably indicate that the Council's intent was to make the changes to Chapter 33 applicable only to those for whom a disability occurred on or after July 1, 2012.

Appellant suggests that reading § 3 as applying the amendments prospectively creates an "internal conflict," since § 33-43(i)(2) applies to certain members who retired between June 26, 2002, and June 30, 2007, and thus cannot also apply to those with a disability occurring on or after July 1, 2012. This argument ignores the fact that Chapter 13 did not amend the language Appellant references in § 33-43(i)(2) concerning benefit calculations for members who retired between June 26, 2002 and June 30, 2007. Since Chapter 13 did not change the language Appellant references, there is no conflict or reason § 33-43(i)(2) may not continue to be given effect.

Even had there been an amendment creating an inconsistency between various provisions of the statute, longstanding rules of statutory interpretation require that an attempt be made to harmonize the conflicting provisions. *Board of Physician Quality Assurance v. Mullan*, 381 Md. 157, 168 (2004); *Board of County Commissioners, v. Bell Atlantic - Maryland, Inc.*, 346 Md. 160, 178 (1997); *Scott v. State*, 297 Md. 235, 245 (1983) ("[A] statute should be construed so that all of its parts are given effect and harmonized if possible"); *Associated Acceptance v. Bailey*, 226 Md. 550, 556 (1961) (apparent contradiction between two parts of a statute should be interpreted to harmonize those parts together).

Accordingly, the Board finds that Chapter 13's amendments to § 33-43(j)(2) do not apply to disability retirees, such as Appellant, who retired prior to July 1, 2012.

Appellant's Normal Retirement Date is at Age 55

Appellant argues that the earnings offset should no longer apply to him because he has reached his "normal retirement date." Under Montgomery County Code, § 33-38(a), a member's normal retirement date is the first day of the month he or she decides to retire after meeting the years of service and age requirements for his or her membership group. As a member of Group G, Appellant's normal retirement date under the statute is when he had at least 15 years of credited service and reached age 55, or when he had 20 years of credited service, regardless of age. § 33-38(a)(6).

However, Appellant retired on disability with just short of eleven years of credited service. Appellant argues that the years he would have worked had he not retired on disability should be imputed to his credited service so that he would meet the requirements of 15 years and age 55, or 20 years of credited service. Appellant's Reply at p. 6. The County maintains that Appellant does not yet qualify for normal retirement because he had less than 15 years of service at the time he received a disability retirement and "imputed" service is nowhere authorized under the statute. County Response at p. 3; County Exhibit A. In his May 19, 2017, letter to Appellant, the County Retirement Benefits Manager stated that based on advice from the County Attorney "we cannot impute service to compute your Normal Retirement Date." Appellant Exhibit A.

A review of the applicable statute does not reveal a basis for imputing the credited service necessary to reach a normal retirement date in the manner Appellant suggests. County Code § 33-41, which addresses credited service, nowhere provides for imputing service, for purposes of determining a normal retirement date, to time in a disability retirement status. That conclusion is buttressed by specific statutory provisions providing for imputed service in other circumstances. For example, credited service for purposes of calculating a normal retirement date may be imputed for time spent in military service. County Code § 33-41(c) & (e). Applying the maxim of legislative interpretation *expressio unius est exclusio alterius*, the Board concludes that the specific provision of imputed service for time spent in military service strongly suggests that the absence of an express requirement for time in a disability retirement status means that there is no such authority. *See* MSPB Case No. 17-07 (2017).

Appellant also argued that under COMCOR 33.86.01 his time as a disability retiree should count towards a calculation of credited service. In our January 31, 2019, initial decision, after reviewing the Code, we also analyzed the regulation. Subsequently, the County moved for reconsideration of the decision, pointing out that COMCOR 33.86.01 was not applicable to Appellant since that regulation only applies to those participating in a now repealed disability benefits program in Article VI of Chapter 33 of the Code, while Appellant receives his disability retirement benefits under Article III of Chapter 33. In response, Appellant acknowledged that although he had cited and relied on COMCOR 33.86.01, he now agrees with the County that it is

not applicable. Appellant also argues that the Board should reconsider its opinion on the merits because the Board “based a critical portion of its analysis” on COMCOR 33.86.01. Appellant’s Response to County Memorandum, February 8, 2019. Appellant misconstrues our decision, as the analysis of COMCOR 33.86.01 simply supported the conclusions we reached in construing the applicable Code provisions and was included in order to address points raised in Appellant’s Final Comments. As we stated in the January 31 decision, COMCOR 33.86.01 “does not alter our view that ‘credited service’ for purposes of determining a normal retirement date does not include imputed time while on disability retirement.”

Finally, Appellant argues that since there is no statute or regulation that provides for a “normal retirement date” using age 55 alone, no disability retiree with less than the required minimum credited service could ever reach a normal retirement date. Appellant’s Reply at p. 6. Although the County’s Response does not assert that Appellant has a normal retirement date, the May 19, 2017, [REDACTED] letter states that “For public safety employees who retired on disability retirement prior to their NRD [Normal Retirement Date], the NRD date used in the annual disability income verification is the first of the month after age 55.” Appellant Exhibit A.

The Board is unable to identify any other mechanism in County statute or regulation to compute the normal retirement date for a Group G member with less than 15 years of credited service. We do not agree with Appellant’s suggestion that the absence of a statutory normal retirement date for a vested individual failing to meet the age and credited service requirements means that such an individual would never qualify for retirement benefits. If, under the Code, age 55 alone could not be treated as the normal retirement date in the absence of sufficient credited service, the County would not be permitted to totally deny retirement benefits to members who have vested rights. The alternative would necessarily be the date the Internal Revenue Code mandates the pay out of retirement benefits to individuals not still employed, *i.e.*, when they reach age 70½. 26 USC § 401(a)(9).

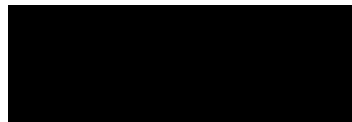
In our view, Appellant need not wait that long. We regard the May 19 letter from the County Retirement Benefits Manager to be an acknowledgement by the County that age 55 will be treated as the normal retirement date for Appellant, notwithstanding his insufficient credited service. The letter was expressly adopted by and incorporated into the CAO’s decision, and there is nothing in the County’s Response or elsewhere in the record suggesting a contrary interpretation of County law and practice. Accordingly, for purposes of this case, the Board concludes that the May 19 letter, as adopted by the CAO, is an admission by the County that Appellant’s normal retirement date is the first of the month after he reaches age 55. *See Crane v. Dunn*, 382 Md. 83, 96 (2004); *Montgomery County v. Herlihy*, 83 Md. App. 502, 510 (1990). On that date, any earnings offset of Appellant’s retirement benefits must cease. § 33-43(j).

ORDER

Based on the foregoing, the Board **DENIES** Appellant's appeal from the CAO's interpretation of the statute providing for an earnings offset to his disability pension based on his ability to work. Furthermore, the County is hereby **ORDERED** to treat the first of the month after Appellant reaches age 55 as his normal retirement date, cease application of any earnings offset when Appellant reaches age 55, and, for the purpose of calculating the appropriate level of retirement benefits at age 55, provide Appellant with credited service under any Code, regulation, or policy provisions applicable to a disability retiree who has reached the normal retirement date.

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 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
February 13, 2019



Michael J. Kator
Chair