

**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. 18-18

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ORDER ACCEPTING SETTLEMENT AGREEMENT

Appellant filed the above captioned appeal with the Merit System Protection Board (MSPB or Board). The appeal pertains to Appellant’s 10-day disciplinary suspension. On December 12, 2018, the first day of a hearing on the merits was held. Prior to scheduling the second and final day of hearings the parties indicated that they were in settlement negotiations. On December 27, 2018, the County notified the Board that the parties had reached an agreement. On January 10, 2019, the parties filed a fully executed settlement agreement with the Board purporting to resolve the appeal.

As this case involves a disciplinary action, the Board finds that it has jurisdiction to accept the settlement agreement into the record. MCPR § 35-15; MSPB Case No. 17-12 (2017); MSPB Case No. 16-10 (2016); MSPB Case No. 15-24 (2015). *Cf.*, *Pleshaw v. OPM*, 98 M.S.P.R. 478, 480 (2005). Because the agreement is a Last Chance Settlement Agreement and Appellant is not represented by counsel, the Board is required to review it carefully to determine not only whether it is lawful on its face and freely entered into by the parties, but also whether it is fair, and that there is no evidence of agency bad faith or duress. *Weber v. U.S. Postal Serv.*, 47 M.S.P.R. 360 (1991); *Ferby v. U.S. Postal Serv.*, 26 M.S.P.R. 451, 456 (1985). In order to fulfill the Board’s responsibilities a conference with the parties was held on January 24, 2019. The Board met with the parties in order to obtain clarification as to the meaning of certain terms of the agreement, to

ascertain whether both parties have the same understanding of the terms, and to verify that Appellant's agreement was knowing and voluntary.

The Board reviewed the agreement with the parties and verified that Appellant understood all of the operative terms. He acknowledged understanding that his 10-day suspension would be reduced to a 5-day suspension, which has already been served by forfeiture of annual leave. Appellant understood that he was agreeing to attend certain County training, and that while he would not schedule the training, he will have a responsibility to attend. Appellant further acknowledged that he would not engage in behavior that constituted "yelling, harassing, or speaking in an aggressive, combative, or disrespectful tone with co-workers," and that such behavior would be a violation of the agreement and constitute cause for dismissal. The parties agreed that if the County issues a Notice of Disciplinary Action based on Appellant's violation of the agreement, he nevertheless retains the right to appeal the factual basis for the charges. Appellant explicitly acknowledged that, if the County proves that a violation occurred, he will be subject to dismissal.

The Board finds that the agreement is comprehensive, knowingly and freely made, fair, and that there is no evidence of bad faith or duress. Therefore, the Board agrees to accept the settlement agreement into the record. Pursuant to Montgomery County Personnel Regulations (MCPR), § 35-15(b), the MSPB retains jurisdiction to interpret and enforce the terms of the settlement agreement.

The Board suggests that in future agreements of this nature the County seek to include more explicit language concerning appeal rights, less ambiguous language regarding prohibited behavior, and an anti-retaliation provision. The Board notes with approval that the last chance agreement has a limited duration; however, last chance agreements generally are for a period of one year. Thus, the three-year duration in this case strikes the Board as being the upper limit of an appropriate duration.

Accordingly, the Board hereby **ORDERS**:

1. That the settlement agreement filed by the parties in this matter be entered into the Board's records;
2. That the appeal in Case No. 18-18 be and hereby is **DISMISSED** as settled;
3. That the County will ensure that the required training on Interpersonal Communications, Managing Emotions in the Workplace, Emotional Intelligence, and Building a Respectful Workplace will address sensitivity to cultural differences and, where appropriate, utilize recorded role-playing exercises that allow participants to watch themselves, learn from, and evaluate their own behaviors.

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4. That within 45 calendar days of this Order the County provide the Board with written certification, copied to Appellant, that it has fully implemented the terms of the settlement agreement;
5. That the Board will retain jurisdiction over any disputes that arise concerning the interpretation or enforcement of the settlement agreement.

For the Board
January 28, 2019



Michael J. Kator
Chair