

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

IN THE MATTER OF

██████████,

APPELLANT,

AND

**MONTGOMERY COUNTY
GOVERNMENT,**

EMPLOYER

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CASE NO. 19-10

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ORDER OF DISMISSAL

██████████ (Appellant), an employee of the Department of Transportation, filed an appeal with the Merit System Protection Board (MSPB) on October 8, 2018. Although Appellant submitted a copy of a Statement of Charges (SOC) with his appeal, Montgomery County Personnel Regulations (MCPR), § 35-4(d)(1), requires a copy of a Notice of Disciplinary Action (NODA) in order for the MSPB to consider the appeal. Accordingly, on October 8 the MSPB acknowledged receipt of the appeal and requested that Appellant submit a copy of a NODA. The Board's letter advised Appellant that unless the County had issued a NODA taking disciplinary action against him, the MSPB would lack jurisdiction over the appeal.

After receiving no response from Appellant, on November 29, 2018, a second letter was sent advising him that under MCPR § 35-8(c), he was required to respond to an MSPB request for documentation within 15 working days. The letter further advised him that if the MSPB did not receive a copy of the required documentation, *i.e.*, a NODA, by December 24, 2018, an order dismissing the appeal may be issued.

Having received no response to the requests for documentation, the Board issued a Show Cause Order on December 26, 2018, requiring Appellant to provide a statement of such good cause as exists for why he has failed to provide a required NODA. Appellant did not respond to the Show Cause Order even though it advised Appellant that absent the filing of a NODA or a finding by the

Board of good cause for his failure to file a NODA, the Board would dismiss his appeal for lack of jurisdiction. MCPR § 35-7(b) & (c); MSPB Case No. 18-26 (2018); MSPB Case No. 17-06 (2017); MSPB Case No. 15-09 (2015). Moreover, pursuant to MCPR § 35-7(b), the Board may dismiss an appeal if the appellant fails to prosecute the appeal or comply with the Board's appeal procedures. It is well settled that the sanction of dismissal may be imposed if a party fails to prosecute or defend an appeal. MSPB Case No. 15-19 (2015).

After being given the opportunity, Appellant has not provided a copy of a NODA. Thus, because Appellant has not provided the copy of the NODA or responded to several letters from the Board and a Show Cause Order, the Board must dismiss this matter for failure to comply with established appeal procedures, due to Appellant's failure to prosecute his case, and because the Board lacks jurisdiction. MCPR § 35-7(b) & (c); MSPB Case No. 17-17 (2017); MSPB Case No. 17-06 (2017); MSPB Case No. 15-09 (2015). Accordingly, it is hereby **ORDERED** that the appeal in Case No. 19-10 is **DISMISSED**.

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*, an appeal may be filed with the Circuit Court for Montgomery County, Maryland County, Maryland in the manner prescribed under the Maryland Rules, Chapter 200, Rule 7-202.

For the Board
January 17, 2019

A solid black rectangular box used to redact the signature of Michael J. Kator.

Michael J. Kator
Chair