

April 8 and is based on the NODA dated February 27 and received by Appellant on March 8, 2019. As noted above, the appeal in MSPB Case No. 19-19 was filed March 4, after issuance of the February 27 NODA but before Appellant certified that he had received the NODA.

Because it appears that both appeals involve the same dismissal based on the same events, by order dated May 28, 2019, the Board consolidated the above captioned appeals.

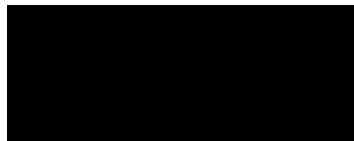
In MSPB Case No. 18-33, the appeal was filed June 27, 2018, without a NODA. As in this case, the Board sent a letter requesting submission of a NODA. The NODA was issued July 5, 2018, but the Board was not so advised. A show cause order was issued August 8, 2018, requiring the appellant to provide a statement of such good cause as exists for why she had failed to provide a required NODA. The appellant provided the NODA and a statement on September 6, 2018. The County did not reply to the appellant's statement, and on September 25, 2018, the Board resumed processing the case and issued the scheduling letter.¹

On the other hand, in MSPB Case No. 17-06 (2017), where the appeal was filed before a NODA was issued, the appellant did not file a NODA after repeated requests and a show cause order. The Board dismissed the appeal and in the order said "Should a NODA ultimately be issued, Appellant may then timely file an appeal."

In this case, the County seeks to dismiss the appeal because the second appeal, MSPB Case No. 19-26, was filed some 21 working days after Appellant received the NODA. MCPR § 35-3(a)(1) (appeal of a dismissal must be filed within 10 working days of a NODA). The County's motion argues "[t]hat Appellant filed an appeal of the *SOC* before March 22, 2019 is of no moment." (emphasis in original). We disagree. Although Appellant's appeal in MSPB Case No. 19-19 maybe have been considered premature and dismissed by the Board for that reason, the Board did receive the NODA *before* dismissing the appeal. Based on our previous administrative practice and precedent we will consider MSPB Case No. 19-19 to have been timely filed.

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

For the Board
June 17, 2019



Michael J. Kator
Chair

¹ Similarly, in MSPB Case No. 18-18 the appeal was filed a week before the NODA was issued, and the Board proceeded to process the appeal when the NODA was received.