

**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. 20-15

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ORDER OF DISMISSAL

Appellant filed the above captioned appeal with the Merit System Protection Board (Board or MSPB) on March 10, 2020, seeking to appeal from the decision of the Department of Liquor Control to terminate him from his position. The appeal form required Appellant to “Attach a copy of the Disciplinary Action or Notice of Termination.” On the appeal form Appellant stated that he received a notice of denial of employment on “Thursday, June 6, 2019.” Appellant did not attach a copy of a Notice of Termination or the June 6, 2019 notice.

On March 11, 2020, the Board acknowledged receiving the appeal and advised Appellant’s attorney that she must “provide a copy of the Notice of Termination and other relevant documents within 15 working days,” citing Montgomery County Personnel Regulations (MCPR), § 35-8(c). The MSPB stayed its processing of the appeal until receipt of the required documentation.

By email dated March 26, 2020, Appellant submitted a copy of a Notice of Proposed Termination that was dated April 30, 2019. On March 30, the Board sent another letter to Appellant’s attorney advising her that the Board could not proceed with processing the appeal until it had received a Notice of Termination. The letter further advised:

Please understand that a Notice of Proposed Termination is not the same as a Notice of Termination. *See* Montgomery County Personnel Regulations (MCPR), § 29-4. Until the County issues a Notice of Termination, the MSPB lacks jurisdiction over your client’s appeal. MCPR § 29-7(a); § 35-2(a); § 35-3(a)(2).

If the MSPB does not receive a copy of the required documentation, *i.e.*, a Notice of Termination, an order dismissing your client's case without prejudice may be issued. If the appeal is dismissed without prejudice your client would be able to refile once a Notice of Termination is issued.

On April 7, 2020, Appellant's attorney sent an email to the Board asking, "What is done in cases where the Agency never issues the Notice of Termination?" The Board's Executive Director responded to Appellant's attorney as follows, in part:

As explained in our letters, the Board does not appear to have jurisdiction until the County actually seeks to terminate your client, and the appeal may be premature. In the absence of a Notice of Termination the Board may dismiss the appeal without prejudice. Your client may also withdraw his appeal until such time as the County takes action against him. If your legal analysis leads you to believe that the Board may nevertheless assert jurisdiction, you may file an appropriate pleading and the Board will take it and any County response into consideration.

You may wish to contact the Office of the County Attorney or the Office of Human Resources to discuss the situation and the impact on your client.

Appellant's attorney responded by seeking further clarification:

My client was terminated as a county employee but was never provided with the actual Notice of Termination. I gather that you are saying that he needs to try to get that document from the county or have them issue one before he can open his case? I just want to clarify. He is not on payroll and all of his benefits including insurance coverage stopped some time ago - all evidence that he is no longer employed. My question was more literal regarding someone that never received the actual Notice of termination but is in fact terminated; the employer failed to issue the termination notice among other things. I interpret your response being that my client should try to get a Notice from the HR or Office of County Attorney.

The Board's Executive Director answered by telling Appellant's attorney the following:

I am not suggesting a specific course of action on your part. As I said in the email, an employee may appeal after receiving a notice of termination, but "if your legal analysis leads you to believe that the Board may nevertheless assert jurisdiction, you may file an appropriate pleading and the Board will take it and any County response into consideration."

Having heard nothing further from Appellant or his attorney, on April 29, 2020, the Board issued a Show Cause Order requiring Appellant to provide a Notice of Termination or a statement of such good cause as exists for why one could not be provided. The Notice of Termination or statement was to be filed on or before close of business May 12, 2020. Appellant was advised that absent the filing of the required documents and statement the Board would dismiss this appeal.


To date no statement has been filed, and neither Appellant nor his attorney have communicated in any way with the Board.

Accordingly, it is hereby **ORDERED** that the appeal in Case No. 20-15 be and hereby is

DISMISSED, without prejudice, for failure to comply with the Board's appeal procedures and for failure to prosecute. MCPR § 35-7(b).

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
June 5, 2020


Harriet E. Davidson
Chair