

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

IN THE MATTER OF

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APPELLANT,

AND

**MONTGOMERY COUNTY
GOVERNMENT,**

EMPLOYER

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CASE NO. 21-09

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ORDER DENYING MOTION TO DISMISS

Appellant, a Liquor Store Clerk I, filed the above captioned appeal with the Merit System Protection Board (Board or MSPB) on October 7, 2020, concerning a September 22, 2020, Notice of Termination issued by the Alcohol Beverage Services (ABS).

On November 2, 2020, ABS issued a memorandum to Appellant which had as the subject line “Rescind Notice of Termination.” The memorandum stated that “You are hereby notified that the Notice of Termination, dated September 22, 2020, is rescinded and will be removed from your file.” On November 9, the County filed a Motion to Dismiss the appeal as moot. Attached as exhibits to the Motion to Dismiss were a November 6 Amended Notice of Proposed Termination from the Director of ABS and the November 2 “Rescind Notice of Termination” memorandum.¹

Under Montgomery County Personnel Regulations (MCPR), § 35-7(d), the Board may dismiss an appeal if the appeal becomes moot. Under longstanding Board precedent, an appeal must be dismissed as moot where an agency completely rescinds the action appealed. MSPB Case No. 17-27 (2017). *See* MSPB Case No. 10-12 (2010).

However, the County’s Motion to Dismiss did not represent or provide certification that it had fully rescinded the September 22 Notice of Termination by making Appellant whole through

¹ The Notice of Proposed Termination provided that: “Prior to final action being taken in this matter, you may respond to this notice, orally, in person, or in writing, to ██████████, Director, Alcohol Beverage Services ██████████@montgomerycountymd.gov by the close of business on the tenth (10th) working day following the date you receive this notice.” However, when Appellant emailed the Director of ABS on November 12 she received an automatic reply indicating that he would be out of the office until November 30.

reinstatement with full back pay and benefits. For that reason, on November 19, 2020, the Board issued a Show Cause Order asking “the County to show good cause as to why the Board should not deny its Motion to Dismiss for failure to fully rescind the Notice of Termination and make Appellant whole by reinstating her with full back pay and benefits.”

The County’s response to the Show Cause Order states:

Counsel has been authorized by ABS to represent that that Appellant has been receiving salary, and it intends to make her whole through reinstatement with full back pay and benefits. However, ABS must further engage with other departments regarding her payroll, retirement, and health benefits to ensure Appellant receives the correct adjustments.


The County concluded by asking for dismissal “or, in the alternative, . . . additional time to finalize the processing of Appellant’s correction.”


Appellant’s reply expressed concern that the County may not fully rescind the termination and make her whole. Her reply requests “that my accumulated leave be returned to me without Penalty as this termination should not have taken place, as I was notably working and was needed even on the day of my termination 9/11/2020.”²

Because the County has failed to show with certainty and particularity that Appellant has or will be made completely whole, the Board has an insufficient basis to conclude that the appeal is moot.

Accordingly, the Motion to Dismiss is **DENIED**. The County may file a motion to dismiss or motion for summary decision based on mootness by January 6, 2021, if it can provide satisfactory certification that the termination was completely rescinded, and that Appellant was made whole.

For the Board
December 7, 2020


Harriet E. Davidson
Chair

² Appellant also asks that she have the opportunity to speak with the Director of ABS: “I am awaiting the return of The Director,  to return, and to respond to my email requesting a time for us to verbally discuss this Proposed termination letter as it stated to do so. Once I speak with him, and come to an agreement or not, I will then decide to terminate, my appeal or not.” It is the Board’s expectation that the Director of ABS will give Appellant a full and fair opportunity to respond to the pending notice of termination prior to a Notice of Termination being issued.