

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

IN THE MATTER OF

[REDACTED]

APPELLANT,

AND

**MONTGOMERY COUNTY
GOVERNMENT,**

EMPLOYER

*
*
*
*
*
*
*
*
*
*
*
*

CASE NO. 21-10

=====

ORDER OF DISMISSAL

Appellant, a Safety and Training Instructor with the Montgomery County Department of Transportation (MCDOT), filed the above captioned appeal with the Merit System Protection Board (Board or MSPB) on October 15, 2020. Appellant’s appeal seeks COVID-19 front facing differential pay.¹

On October 15, the Board’s Executive Director acknowledged receiving the appeal and advised Appellant that for the Board to process his grievance appeal he must file a grievance, appeal the Step 1 decision to the Chief Administrative Officer (CAO), and submit a copy of the CAO’s Step 2 decision to the Board. Montgomery County Personnel Regulations (MCPR), § 35-4(d)(2) (“a copy of the CAO’s decision must be provided to the MSPB”). Appellant’s appeal was docketed, but the Board stayed its processing of the appeal until receipt of the documentation necessary to show that he had exhausted his administrative remedies.

When the Board received no response it issued a November 19, 2020, Show Cause Order requiring Appellant to provide a CAO’s decision or other explanation by November 30. The Order advised that “absent the filing of the required documents . . . the Board will dismiss this appeal.” Appellant did not respond to the Show Cause Order even though it advised Appellant that a failure to exhaust administrative remedies may result in a dismissal of this appeal. MCPR § 35-7(e). *See* MSPB Case No. 20-13 (2020); MSPB Case No. 15-28 (2015).

¹ Front facing work is that which involves physical interaction with the public and cannot be performed with appropriate social distancing. Employees eligible for front facing differential pay receive an additional \$10 per hour.

On January 13, 2021, Appellant was copied on a memorandum to the Office of Labor Relations (OLR) and the Office of Human Resources (OHR) asking for a status report on COVID-19 grievances appealed to the CAO. Appellant was also copied on a February 2, 2021, Order requesting that the CAO issue written decisions in a number of COVID-19 front pay appeals, including the above captioned appeal. When OLR provided the Board with CAO decisions on March 4, 2021, they specifically stated that “After a careful search of our records, [OLR] has no record of having received a grievance from [Appellant].”

On March 11, 2021, the Board’s Executive Director sent Appellant another letter advising him that the “Board is prepared to dismiss your appeal if it does not hear from you by March 17, 2021, with an explanation of why your appeal should not be dismissed for failure to prosecute, failure to comply with Board procedures, or failure to exhaust administrative remedies.” The Board has not received any response from Appellant to date.


Despite repeated requests for required documents and information the Board has received nothing from Appellant since October 15, 2020.

Thus, because Appellant has not provided the copy of a CAO’s decision or an explanation for that failure, or responded to 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, failure to exhaust administrative remedies, and because the Board lacks jurisdiction. MCPR § 35-7(b), (c) & (e); MSPB Case No. 19-10 (2019); MSPB Case No. 17-17 (2017); MSPB Case No. 17-06 (2017).

Accordingly, it is hereby **ORDERED** that the appeal in Case No. 21-10 be and hereby 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*, within 30 days of this Order a petition for judicial review may be filed with the Circuit Court for Montgomery County, Maryland in the manner prescribed under the Maryland Rules, Chapter 200, Rule 7-202.

For the Board
March 22, 2021


Harriet E. Davidson
Chair