

**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. 21-113**

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**ORDER OF DISMISSAL**

[REDACTED] (Appellant), a Resident Supervisor II with the Department of Correction and Rehabilitation, received a Notice of Termination on April 8, 2021. The Notice of Termination advised Appellant: “You have a right to file grievance, pursuant to MCPR section 34, within 30 days or you may file an appeal to the Merit System Protection Board, pursuant to MCPR section 35, within 10 (ten) days.”<sup>1</sup>

At 9:36 p.m. on Friday, May 14, 2021, a day and time when the Merit System Protection Board (Board) office is closed, Appellant filed an appeal on the Board’s website challenging the termination. The appeal was deemed received on Monday, May 17, 2021, the Board’s next business day. Under the applicable personnel regulations, Appellant had ten (10) working days to file an appeal. The Appeal was filed twenty-nine (29) working days after receipt of the Notice of Termination.

The County moved to dismiss the appeal as untimely on August 5, 2021. Appellant was entitled to respond to the County’s motion by August 16<sup>th</sup> under Montgomery County Personnel Regulations (MCPR), §35-11(a)(4). Having received no response from Appellant, on August 18, 2021, the Board issued a Show Cause Order requiring Appellant to provide a statement of such good cause as exists for why the appeal regarding his termination should not be dismissed as untimely.

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<sup>1</sup> MCPR refers to the Montgomery County Personnel Regulations.

Appellant provided a timely response to the Show Cause Order in which he asked that his appeal not be dismissed because he “acted in good faith when I filed unknowing of the Merit Board’s filing deadline.” Appellant provided the following explanation:

1. My initial response to my termination was filed as a grievance based on what I knew about filing a grievance within the time period of thirty (30) days allotted to do so. I met that deadline when I filed my grievance.
2. I requested assistance from the Union on filing a grievance, but that assistance never came. Since I had to meet the 30 days deadline to file, I went ahead and did the best that I could and filed what I thought was a grievance. (*Please see attached email sent to the Union requesting assistance to file a grievance.*)
3. After filing what I thought was a grievance, I was contacted by the Merit Board and given direction to file an appeal in a particular format per the Board’s requirements, which I did. I at no time intended not to meet the Merit Board’s filing deadline.

Appellant Memorandum in Response to Show Cause Order. (emphasis in original).

Under the Montgomery County Personnel Regulations Appellant had ten (10) working days to file a direct appeal to the Board challenging his termination. MCPR, § 35-3(a)(2) (“An employee has 10 working days to file an appeal with the MSPB in writing after the employee: . . . (2) receives a notice of termination”). It is undisputed that Appellant received the Notice of Termination on April 8, 2021. The appeal to the MSPB was thus due on April 20<sup>th</sup>, but was not filed electronically until 9:36 p.m. on Friday, May 14, 2021, a day and time when the Board’s office is closed.

The Board has held on many occasions that appeals or pleadings filed after Board office hours and on days the office is closed are considered to have been officially received the next Board business day. *See* MSPB Case No. 20-06 (2020); MSPB Case Nos. 17-14 and 17-16 (2017); MSPB Case Nos. 15-16, 15-17, and 15-28 (2015). Accordingly, we find that the appeal in this matter was officially received by the Board on May 17, 2021, 19 working days late.<sup>2</sup>

At no time was the Appellant “given direction to file an appeal” with the Board. Regarding Appellant’s argument that his appeal to the MSPB is the filing of a grievance, he is in error. The Notice of Termination clearly advised Appellant that he had a choice of filing a direct appeal to the MSPB within ten working days or a grievance within 30 days. This was also clearly explained to Appellant in a May 17, 2021, letter from the Board’s Executive Director.<sup>3</sup> There is nothing in the record suggesting that Appellant was ever told by a County employee that a direct appeal to

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<sup>2</sup> The Board’s website provides notice of the official office hours and specifically advises that appeals filed outside of those hours will be considered as filed the next official workday. The homepage of the Board’s website, found at <https://www.montgomerycountymd.gov/mspb/>, states: “The MSPB’s office hours are Monday - Thursday, 9:30 a.m. - 3:00 p.m. Appeals filed outside of those hours will be considered officially filed the next MSPB business day.”

<sup>3</sup> The letter stated: “To file a grievance appeal, a grievance must be filed at Step 1, appealed at Step 2 to the Chief Administrative Officer (CAO), and a copy of the CAO’s Step 2 decision must be submitted to the Board with the appeal. Montgomery County Personnel Regulations (MCPR), § 35-4(d)(2).”

the MSPB was the same as a grievance. In any event, he still filed late as his deadline for filing a grievance was May 10 and he appealed to the Board on May 17.

If instead Appellant means that his email with the union indicates that he did file a grievance, then he appears to have failed to exhaust administrative remedies by appealing to the CAO at Step 2, and there is no record that there was a CAO's written decision that could properly be appealed to the Board. MSPB Case No. 15-28 (2015). *See Public Service Commission v. Wilson*, 389 Md. 27, 89 (2005).<sup>4</sup>

In the past, the Board has not waived the 10-day period for filing an appeal without good cause, and we have not been provided with good cause why we should do so here. *See* MSPB Case No. 20-06 (2020) (11 working days after receipt); MSPB Case No. 19-27 (2020) (11 working days after receipt); MSPB Case No. 14-43 (2014) (23 working days after receipt).

Accordingly, it is hereby **ORDERED** that the appeal in Case No. 21-113 be, and hereby is, dismissed because it was not filed within the time limits specified in MCPR § 35-3(a).

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  
August 26, 2021

  
Harriet E. Davidson  
Chair

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<sup>4</sup> We note that any claim Appellant may wish to assert that the union failed to comply with its duty of fair representation is not within the MSPB's jurisdiction. MSPB Case No. 16-05 (2016) ("the County Labor Relations Administrator, not the Board, has jurisdiction over duty of fair representation disputes between County employees and their exclusive bargaining representatives. *See* Montgomery County Code, § 33-104(a)(2), (c); § 33-109(b), (c)").