

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

IN THE MATTER OF

████████████████████,

APPELLANT,

AND

**MONTGOMERY COUNTY
GOVERNMENT,**

APPELLEE

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CASE NO. 22-34

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ORDER OF DISMISSAL

Appellant ██████████ electronically filed the above captioned appeal of his dismissal with the Merit System Protection Board (Board or MSPB) on April 7, 2022.¹ Appellant and the representative designated on his appeal form, ██████████, Executive Director of the Montgomery County Volunteer Fire Rescue Association (MCVFRA), were advised by a letter from the Board emailed April 7, 2022, that Appellant’s prehearing submission was due on May 31, 2022. Mr. ██████████ responded by email, clarifying that “the complaint is against MCFRS [Montgomery County Fire and Rescue Service] not Cabin John Park VFD.”

On May 9, 2022, the County filed its prehearing submission and separately filed a motion to strike Appellant’s representative, asserting that Mr. ██████████ does not have the legal authority to represent Appellant in his capacity as the MCVFRA’s Executive Director. Neither Appellant nor Mr. ██████████ responded to the County’s Motion to Strike or filed Appellant’s prehearing submission by the due date. *See* Montgomery County Personnel Regulations (MCPR) §35-11(a)(4) (response opposing a motion is due within 10 calendar days). On June 1 the Board’s Executive Director sent an email to Mr. ██████████ and Appellant requesting the status of the required prehearing submission and an immediate response to the motion to strike. The email also advised that absent the proper filing of a prehearing submission and a response to the motion to strike, the Board might rule on the motion and may dismiss the appeal. MCPR § 35-7(b). The email further

¹ The appeal was filed by electronic mail on Wednesday, April 6, 2022, after MSPB office hours. Accordingly, the appeal is considered to have been officially received the next Board business day. *See* MSPB Case No. 18-13 (2018).

requested that if Mr. [REDACTED] was no longer Appellant's representative, the Board should be provided with the contact information for the new representative.

When Appellant did not file the requested prehearing submission and response to the motion, or otherwise contact the Board, on June 21, 2022, a second letter was sent by email and first-class mail to Appellant, and a separate letter was emailed addressed to Mr. [REDACTED]. The letter to Appellant requested a written explanation for the lack of response and the filing of a prehearing submission by June 29, 2022. The letter also asked whether Mr. [REDACTED] was still Appellant's representative and whether Appellant intended to continue with his appeal. Appellant was advised that failure to file an explanation and a prehearing submission by June 29th might result in the dismissal of his appeal.

In the letter to Mr. [REDACTED], the Board requested a written explanation for the lack of response to the motion to strike and the filing of a prehearing submission by June 29, 2022. The letter asked Mr. [REDACTED] to advise if he was still Appellant's representative and whether Appellant intended to continue with his appeal. The letter also stated that failure to file an explanation and a prehearing submission by June 29th may result in the dismissal of the appeal.

When the Board received no response from Appellant or Mr. [REDACTED] it issued a July 18, 2022, Show Cause Order requiring Appellant to provide an explanation and a prehearing submission by July 25th. The Order advised "that absent the proper filing of a prehearing submission, and a finding by the Board of good cause for his failure, the Board will dismiss his appeal for failure to prosecute the appeal or comply with established appeal procedures."

Appellant responded to the Show Cause Order on July 25th but did not provide an explanation for his failure to provide the required prehearing submission. Instead, Appellant requested "an additional 90 days to prepare my case, seek counsel, and work with the MCVFRA clarifying the County's new position on MCVFRA representation." His representative, Mr. [REDACTED], has submitted nothing and has not contacted the Board with any explanation of whether he remains Appellant's representative. Nevertheless, Appellant's statement expressed his desire to have the MCVFRA and its Executive Director, Mr. [REDACTED], continue to provide him with representation. Neither Appellant nor Mr. [REDACTED] have provided a response to the County's motion to strike Mr. [REDACTED] as representative. Appellant also complained that the County has confused matters by moving to strike Mr. [REDACTED] and the MCVFRA as his representative, and asked that the Board require the County respond to his appeal on the merits. This request ignored the fact that at the same time the County filed a motion to strike it also filed its full prehearing submission opposing the appeal on the merits.

The County makes a persuasive argument that Appellant has not shown "such good cause as exists for why he has failed to file the required prehearing submission" or provided a satisfactory explanation for his failure to do so. Under MCPR § 35-7(b) the Board "may dismiss an appeal if the appellant fails to prosecute the appeal or comply with established appeal procedures."

Appellant has not provided a prehearing submission, and the Board finds that he has no satisfactory explanation for that failure. Accordingly, the Board must dismiss this matter for failure to comply with established appeal procedures and due to Appellant's failure to prosecute his case.

MCPR, § 35-7(b). *See* MSPB Case Nos. 19-19 & 19-26 (2019); MSPB Case Nos. 19-24 & 19-25 (2019).

Accordingly, it is hereby **ORDERED** that the appeal in Case No. 22-34 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
August 10, 2022


Harriet E. Davidson
Chair