

**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. 23-08

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DECISION GRANTING MOTION TO DISMISS

Appellant is a volunteer with the Montgomery County Fire and Rescue Service (MCFRS) who filed an appeal with the Merit System Protection Board (Board or MSPB) challenging the revocation of her Emergency Medical Services (EMS) provider credentials in Montgomery County.

On January 30, 2023, the County filed a Motion to Dismiss and a Motion to Continue Deadline to File Pre-hearing Submissions Pending a Decision on the County’s Motion to Dismiss.¹ The County then filed a prehearing submission on February 6, 2023. Appellant filed a response opposing the County’s motion to dismiss on February 8, 2023, and a prehearing submission on February 27, 2023.²

Appellant, who is also a physician, has served as an Emergency Medical Technician (EMT) volunteer firefighter/rescuer with the Wheaton Volunteer Rescue Squad and the Glen Echo Fire Department. Appellant Exhibit (AX) 1.

State regulations promulgated by the Maryland Institute for Emergency Medical Services Systems (MIEMSS) require that each Emergency Medical Systems Operational Program (EMSOP) in the State have a Medical Director and a Medical Review Committee (MRC). Code of Maryland Regulations (COMAR) 30.03.02.02A(2), 30.03.03.03, and 30.03.04.03.

¹ County Exhibits attached to the Motion to Dismiss are labeled in this decision as MTD CX, while exhibits attached to the County Prehearing Submission are labeled simply as CX.

² Appellant Exhibits attached to the Opposition to the Motion to Dismiss are labeled in this decision as MTD AX, while exhibits attached to Appellant’s Prehearing Submission are labeled as AX.

Pursuant to those regulations the Montgomery County Medical Director and MRC are responsible for monitoring EMS providers in the County through a Quality Assurance Program. COMAR 30.03.04. The Medical Director has the full authority to suspend or limit the privileges of an EMS provider when the EMS provider “poses an imminent threat to the health or well-being of patients.” COMAR 30.03.03.06D. The EMSOP’s “policies and procedures, which shall include procedures for due process as the EMS operational program may require, shall govern suspensions and limitations of EMS provider privileges.” 30.03.03.06F.

A Quality Assurance Inquiry³ was conducted into allegations that on October 24, 2021, Appellant errantly administered medication that harmed a patient and resulted in the patient requiring resuscitation. MTD AX 3.⁴ A separate Quality Assurance Inquiry was opened against Appellant due to allegations that she engaged in actions beyond the scope of her EMS credentials when she was with the Wheaton Volunteer Rescue Squad. County Exhibit (CX) 2.

The County MRC held a “hearing” on February 23, 2022, at which Appellant testified and called a witness on her behalf. MTD AX 3.⁵ After the “hearing” concluded the full MRC recommended to the Medical Director that there should be a “full and permanent revocation” of Appellant’s “EMS credentials in Montgomery County at all levels of care.” AX 22; CX 3. On February 28, 2022, the Medical Director upheld the MRC recommendation to permanently revoke Appellant’s EMS credentials in Montgomery County. AX 5; CX 7.

The MRC and Medical Director found that without MCFRS approval, Appellant used MCFRS as a clinical site to meet the requirements of an outside and unapproved paramedic program at Creighton University. MTD AX 2; CX 3. Appellant used the allegedly unauthorized clinical experience to obtain certification as a National Registry Paramedic, which she then used to obtain a Maryland Paramedic License. CX 3 & 4. The MRC found that the quality of Appellant’s “initial paramedic education suffered because of her improper use of Montgomery County as a clinical site,” and that the “substandard initial education” resulted in the medical error that caused patient harm. AX 2; CX 3; CX 7. The Medical Director concluded that Appellant did not “seem to understand the nexus between her use of MCFRS for a clinical site, her substandard education, and the patient error that ultimately resulted in harm to the patient.” *Id.* The MRC stated that it had “no confidence” in Appellant’s “decision making, her integrity and her ability to function in a medical capacity.” *Id.*

On April 4, 2022, Appellant received a letter from MIEMSS that included a copy of an Incident Review Committee Complaint filed with MIEMSS by MCFRS. MTD AX 3. The letter from MIEMSS advised that the Provider Review Panel would be reviewing Appellant’s case. On April 18,

³ A Quality Assurance Inquiry is an investigation into a Quality Assurance Concern, which is defined as “any issue, incident, anomaly or event that could require a response by the QAO [Quality Assurance Officer]. Concerns may be but are not limited to: incidents discovered through random audit, praise and thank you correspondence, complaints, self-reporting, hospital follow-up, and system monitoring.” See MCFRS Policy and Procedure 21-04AM, *EMS Quality Management Plan* (August 31, 2021)

⁴ Appellant does not deny responsibility for the error. MTD AX 9.

⁵ The MRC is comprised of the MCFRS Quality Assurance Officer, the Medical Director as a non-voting member, the Emergency Medical and Integrated Healthcare Services (EMIHS) Section Assistant Chief, Battalion Chief, the Quality Improvement Officer, the Advanced Life Support (ALS) Educator from the MCFRS Public Safety Training Academy and other fire rescue professionals appointed by constituencies, such as the International Association of Fire Fighters and the Montgomery County Volunteer Fire Rescue Association.

2022, Appellant's counsel emailed a letter to the Fire Chief notifying him that he was representing Appellant with regard to the revocation of her EMS credentials and suggesting the hope that "common ground" may be found so that the "situation can be satisfactorily resolved without much fanfare." MTD AX 4. The letter noted that Appellant had "received no notification of right of appeal within MCFRS," but indicated that since the MIEMSS review was underway Appellant was requesting that any further MCFRS action be stayed until the MIEMSS process was concluded. *Id.*

On June 15, 2022, MIEMMS closed the case without taking any action against Appellant. MTD AX 5. Appellant's counsel then sent a letter to the Fire Chief on June 30, 2022, advising him of the MIEMMS finding and suggesting that the Medical Director's revocation of Appellant's EMS credentials "was without legal authority and was undertaken following a deeply flawed investigation tainted by bias." MTD AX 6. Counsel's letter stated that there had not been notice of final action by the Fire Chief as the department head from which an appeal could be taken. Appellant's counsel requested a meeting with the Fire Chief to discuss the decision issued by the Medical Director to resolve the matter short of further administrative and legal avenues. *Id.*

When Appellant and her counsel did not receive a response from the Fire Chief her counsel sent an email on August 17, 2022. MTD AX 7. Counsel stated that he was aware that current Chief and prior Chief of the Wheaton Volunteer Rescue Squad had requested to meet with the Fire Chief and Appellant. The email expressed hope that the meeting could "avert the need for litigation" and stated that Counsel had no objections to such a meeting. Counsel concluded by saying that if the meeting did not take place the Fire Chief should reply to the June 30 letter. *Id.* The Fire Chief replied to the email, saying that he was evaluating the request from the Wheaton Volunteer Rescue Squad Chief and would respond in a few days. MTD AX 8.

A meeting between the Wheaton Volunteer Rescue Squad chiefs, the Fire Chief and Appellant apparently took place on September 9, 2022. On September 29, 2022, Appellant e-mailed a letter to the Fire Chief asking him to reinstate her EMS credentials. CX 8; MTD AX 9. After not receiving a response Appellant again emailed the Fire Chief on November 15, 2022, requesting reinstatement. MTD AX 10.

On December 15, 2022, the Fire Chief responded to Appellant, saying that he had reviewed the Medical Director's decision and "based on his conclusions, I cannot overturn his decision." CX 8; MTD AX 11. The Fire Chief's response did not provide any further explanation.

The County's prehearing submission states that Appellant was terminated pursuant to Montgomery County Personnel Regulation (MCPR) §§ 29-2(5) and (9) because, after the action of the Medical Director, she does not have the required certifications for her EMS position and has an impairment not susceptible to resolution that causes her to be unable to perform the essential functions of her job. County Submission, p. 2.⁶ However, there is nothing in the record indicating that the Fire Chief took any action to terminate Appellant under Montgomery County Code, § 21-3(b) or MCPR §35-2(f).

Appellant's Appeal Form states her appeal as follows:

⁶ Appellant's Prehearing Submission, p.11, n. 1, states that she "has been able to volunteer with MCFRS in an administrative capacity."

The actions of Dr. S [REDACTED] and MCFRS are inconsistent with their treatment of similarly situated persons involved in the underlying incident and similar incidents, and the conclusions reached in the investigation are not based on any substantial facts or evidence. MIEMSS, the National Registry of EMTs (NREMT), and Creighton University (paramedic training program) did not find that my training was improper, nor that I committed a fraud with respect to my training program. I remain a Nationally Registered Paramedic in good standing and fully eligible to be licensed in the state of Maryland per MIEMSS.

Appeal Form, p. 3. Appellant stated the relief she is requesting as follows:

Dr. R [REDACTED] S [REDACTED] permanently revoked my EMS credentials and authority to provide BLS [Basic Life Support] services in Montgomery County, Maryland, which further prevents me from volunteering in a minimum staffing capacity as a firefighter in Montgomery County. Fire Chief [REDACTED] has refused to change Dr. S [REDACTED]'s decision. *I would ask that the Board fully reinstate my BLS EMS credentials and authority, return my prior IECS [Integrated Emergency Command Structure] rank, and further require Dr. S [REDACTED] and MCFRS to remove all references from my personnel file regarding this investigation.*

Appeal Form, p. 3 (emphasis added).

Clearly the issue in this case is limited to the question of whether there was an improper or illegal action by the Medical Director or the MCR in revoking the Appellant's EMT credentials and authority to provide BLS in Montgomery County. That can only be examined by this Board if in fact we have the jurisdictional authority to rule on the matter. We do not.

APPLICABLE CODE PROVISIONS AND REGULATIONS

Montgomery County Code, Chapter 21, Fire and Rescue Services, which provides, in pertinent part:

§ 21-3. Fire Chief; Division Chiefs.

(b) The Fire Chief is the uniformed department head of the Montgomery County Fire and Rescue Service, and has all powers of a department director. The Chief has full authority over all fire, rescue, and emergency medical services in the County, including any fire, rescue, and emergency medical services provided by local fire and rescue departments. The Chief must implement County law, regulations, and policies to effectively administer the Fire and Rescue Service.

(g) In addition to any other authority under this Chapter, the Fire Chief may take disciplinary action against any employee or volunteer in the Service, including those in a local fire and rescue department, for violating any County law, regulation, policy, or procedure, or any lawful order of the Chief or the Chief's designee. Disciplinary action under this subsection may include suspension or discharge of an employee and restriction or prohibition of a volunteer from participation in fire and rescue activities. The Chief must not take any action involving an employee or volunteer of a local department, except when the Chief finds that immediate action is required to protect the safety of the public or any employee or volunteer,

unless the Chief finds that the local department has not satisfactorily resolved the problem in a timely and effective manner. Any finding by the Chief under the preceding sentence is not subject to appeal. Each employee or volunteer must give the Chief any information, not otherwise legally privileged, that the Chief reasonably needs to administer this Chapter.

§ 21-7. Appeals of certain disciplinary actions.

(a) *Jurisdiction.* Except as provided in subsection (g), the Merit System Protection Board must hear and decide each appeal filed by a volunteer firefighter or rescuer aggrieved by an adverse final action of the Chief or a local fire and rescue department involving the removal, demotion, or suspension of, or other disciplinary action applied specifically to, that individual as if the individual were a County merit system employee.

Montgomery County Personnel Regulations (MCPR), 2001, Section 29, Termination, (as amended October 21, 2008), provides, in relevant part:

§ 29-1. Definition.

Termination: A nondisciplinary act by a department director to end an employee's County employment for a valid reason. Examples of valid reasons for termination include those stated in 33.07.01.29, 29-2.

§ 29-2. Reasons for termination.

(a) A department director may terminate the employment of an employee: . . .

(5) who does not have a current license or certification required as a minimum qualification for the employee's occupational class; . . .

(9) who has an impairment not susceptible to resolution that causes the employee to be unable to perform the essential functions of the employee's job; . . .

Montgomery County Personnel Regulations (MCPR), 2001, Section 33, Disciplinary Actions, (As amended December 11, 2007, October 21, 2008, November 3, 2009, and June 30, 2015), provides:

§ 33-10. Right of a Volunteer Firefighter or Rescuer to appeal a disciplinary action to the MSPB. A volunteer firefighter or rescuer aggrieved by an adverse final action of the Fire Chief or a local fire and rescue department involving any disciplinary action applied specifically to that individual, including a restriction or prohibition from participating in fire and rescue activities, may file a direct appeal with the MSPB under 33.07.01.35 of these Regulations, as if the individual were a County merit system employee.

Montgomery County Personnel Regulations (MCPR), 2001, Section 35, Merit System Protection Board Hearings, Appeals, and Investigations, (As amended February 15, 2005, October 21, 2008, November 3, 2009, July 27, 2010, February 8, 2011, June 30, 2015, and June 1, 2020), provides, in part:

§ 35-2(f). A volunteer firefighter or rescuer may file an appeal with the MSPB over an adverse final action of the Fire Chief or local fire and rescue department involving any disciplinary action applied specifically to that individual, including a restriction or prohibition from

participating in fire rescue activities, as if the individual were a County merit system employee. A volunteer firefighter or rescuer is entitled to a de novo hearing before the MSPB from a demotion, suspension, termination, dismissal or involuntary resignation. The MSPB must hear and decide each such appeal except for an appeal of a personnel matter subject to an employee grievance procedure under a collective bargaining agreement.

ANALYSIS AND CONCLUSIONS

Appellant is appealing the revocation of her Emergency Medical Services provider credentials in Montgomery County and asking the Board to reinstate her BLS EMS credentials and her previous IECS rank. The County Motion to Dismiss contends that the MSPB lacks jurisdiction over the subject matter of this appeal, or the authority to reinstate Appellant's EMS credentials. The County further contends that even if the MSPB has jurisdiction, the appeal is untimely.

The parties have filed numerous documents into the record in support of and in opposition to the Motion to Dismiss and as part of their Prehearing Submissions. We have reviewed and considered the pleadings and the exhibits. Because we conclude that the Board has no jurisdiction over the Medical Director's decision to revoke Appellant's EMS certification, we need not address other issues raised by the Motion to Dismiss or in the Prehearing Submissions.

The Board Lacks Jurisdiction Over EMS Credentialing

This Board's jurisdiction is not plenary but is, rather, limited to that which is granted to it by statute. MSPB Case No. 14-42 (2015). *See Blakehurst Lifecare Community v. Baltimore County*, 146 Md. App. 509, 519 (2002) ("An administrative agency is a creature of statute, which has no inherent powers and its authority thus does not reach beyond the warrant provided it by statute."). *See also King v. Jerome*, 42 F.3d 1371, 1374 (Fed. Cir. 1994) (U.S. Merit Systems Protection Board's jurisdiction is only over those actions which are specifically provided for by some law, rule, or regulation). As a limited tribunal whose jurisdiction is derived from statute, the Board is obligated to ensure that it has jurisdiction. MSPB Case No. 19-08 (2019); MSPB Case No. 18-17 (2018); MSPB Case No. 09-08 (2009). *See* Montgomery County Personnel Regulations (MCPR), § 35-7(c) ("The MSPB must dismiss an appeal if it determines it lacks jurisdiction.").

Appellant's EMS credentials were revoked by the Medical Director on February 28, 2022, pursuant to his authority under State regulations and County policies. AX 5; CX 7. He did so apparently at the recommendation of a properly constituted MRC in which the Appellant was represented and was allowed to address the MRC. The State regulation, COMAR 30.03.03.06D, provides that "through the granted authority of an EMS operational program, an EMS operational program medical director may suspend or limit the privileges of an EMS provider within that EMS operational program if, in the opinion of the EMS operational program medical director, the EMS provider poses an imminent threat to the health or well-being of patients." Both the MRC and the Medical Director found a nexus between Appellant's substandard initial education and the subsequent medical error that resulted in serious patient harm.

The Medical Director specifically stated that the decision resulted in "Permanent revocation of your EMS credentials in the County" and "Permanent revocation of your affiliation with the MCFRS EMS Operational Program." AX 5; CX 7.

The regulation further provides that “The EMS operational program’s policies and procedures, which shall include procedures for due process as the EMS operational program may require, shall govern suspensions and limitations of EMS provider privileges.” COMAR 30.03.03.06F.

Those policies are contained in MCFRS Policy and Procedure 21-04AM, *EMS Quality Management Plan* (August 31, 2021). That policy states, at § 7(c)(10)D, that “The Medical Director shall have final authority to approve any recommendation of the MRC.” *See* Motion to Dismiss, MTD CX 1. The Medical Director is thus the final decisionmaker in such matters.

In a prior appeal the Board recognized that the medical Quality Assurance process is distinct from the disciplinary process. In MSPB Case No. 04-15 (2005), the Board in that case addressed multiple charges against an EMT who was a firefighter/rescuer, including an incident where the appellant was accused of violating medical protocols. The Quality Assurance Inquiry by the Medical Review Committee was put on hold pending the outcome of the disciplinary process. The Fire Chief testified that even though the quality assurance process was distinct from the disciplinary process there was a concern that if the Medical Review Committee took some action, it would be viewed as a disciplinary action. The Board dismissed the disciplinary charges concerning that incident for failure to issue the Statement of Charges in a timely manner. The Board then acknowledged that a Quality Assurance Inquiry by the Medical Review Committee and Medical Director was not a disciplinary action when it said:

While the Board finds that this incident should not have been included in the Statement of Charges because of the failure to timely process it, the Board has not addressed the merits of the charge. *The Board urges the County to proceed with any medical remediation it deems necessary based upon its findings regarding this incident.*

MSPB Case No. 04-15 (2005), p.16, n. 2 (emphasis added).

The County asserts that as a result of the revocation of her EMS credentials Appellant was terminated pursuant to MCPR § 29-2(5) and (9) for failure to have a current license or certification required as a minimum qualification for her position. County Prehearing Submission, p. 2. Other than the statement on page 2 of the County Prehearing Submission, there is nothing in the record indicating that the Fire Chief or a local fire and rescue department took any action to terminate Appellant under Montgomery County Code, § 21-3(b), (g), or MCPR § 35-2(f). It was the Medical Director’s decision to revoke Appellant’s EMS credentials which rendered Appellant unable to legally engage in EMS activity in Montgomery County.

While Appellant contends that there must be an administrative appeal beyond the Medical Director, the controlling regulations and polices provide otherwise. Appellant argues that the Fire Chief as the agency head has authority over the Medical Director. It is true that “The Fire Chief is the implementation and enforcement authority for all policies and regulations of the Montgomery County Fire and Rescue Service.” COMCOR 21.02.15.06. However, that broad authority is subject to specific limits in regulations and policies. One of those limitations is contained in MCFRS Policy and Procedure 21-04AM, *EMS Quality Management Plan* (August 31, 2021), § 7(c)(10)D, which gives

the Medical Director “final authority to approve any recommendation” of the Medical Review Committee.

Contrary to Appellants contentions, the decision of the Medical Director may not be appealed to the Fire Chief. COMAR 30.03.03.06D provides that “through the granted authority of an EMS operational program, an EMS operational program medical director may suspend or limit the privileges of an EMS provider within that EMS operational program if, in the opinion of the EMS operational program medical director, the EMS provider poses an imminent threat to the health or well-being of patients.” The regulations further provide that “The EMS operational program’s policies and procedures, which shall include procedures for due process as the EMS operational program may require, shall govern suspensions and limitations of EMS provider privileges.” COMAR 30.03.03.06F. As noted above, MCFRS Policy and Procedure 21-04AM, § 7(c)(10)D, gives the Medical Director “final authority.” Because the Medical Director was the final decisionmaker the Fire Chief had no authority to review or reverse the Medical Director’s determination concerning Appellant’s EMS credentials. The Medical Director’s determination to revoke Appellant’s EMS credentials constituted the County’s final action.⁷

Appellant’s EMS credentials were revoked by the Medical Director on February 28, 2022, pursuant to his authority under State regulations and County policies. AX 5; CX 7. The State regulation, COMAR 30.03.03.06D, provides that “through the granted authority of an EMS operational program, an EMS operational program medical director may suspend or limit the privileges of an EMS provider within that EMS operational program if, in the opinion of the EMS operational program medical director, the EMS provider poses an imminent threat to the health or well-being of patients.”

The regulation further provides that “The EMS operational program’s policies and procedures, which shall include procedures for due process as the EMS operational program may require, shall govern suspensions and limitations of EMS provider privileges.” COMAR 30.03.03.06F. Those policies are contained in MCFRS Policy and Procedure 21-04AM, *EMS Quality Management Plan* (August 31, 2021). That policy states, at § 7(c)(10)D, that “The Medical Director shall have final authority to approve any recommendation of the MRC.” The Medical Director is thus the final decisionmaker in such matters and this Board has no role in reviewing that decision.

The Board does not have jurisdiction over the EMS credentialing process and may not order the Medical Director to reinstate Appellant’s credentials.⁸

⁷ We find no policy or regulation providing that the Chief had authority to reverse the Medical Director’s action. Nor does the Chief’s December 15, 2022, response that “based on [the Medical Director’s] conclusions, I cannot overturn his decision” suggest that he thought he had the authority. CX 8; MTD AX 11.

⁸ We note that Appellant may have a right to judicial review of the Medical Director’s decision. Even if an administrative action is not subject to quasi-judicial administrative review (including by the MSPB), under Maryland law it may nevertheless be subject to an inherent right judicial review. *See Heaps v. Cobb*, 185 Md. 372 (1945). *See also* MD Rules, Title 7, Chapter 400 (Administrative Mandamus for quasi-judicial actions); Md Rule 15-701 (traditional mandamus).

ORDER

For the reasons discussed above the County's Motion to Dismiss is **GRANTED** and the appeal is **DENIED** because the Board lacks jurisdiction to review credentialing decisions by the Medical Director.⁹ All pending motions concerning discovery are **DISMISSED AS MOOT**.

If any party disagrees with the decision of the Merit System Protection Board, pursuant to Montgomery County Code, § 21-7(f), *Appeals of Board decisions*, 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
September 25, 2023


Harriet E. Davidson
Chair

⁹ Because we find that the Board does not have jurisdiction to hear an appeal of the Medical Director's decision concerning EMS credentials, we need not determine whether such an appeal would be untimely under MCC § 21-7(b) and MCPR § 35-3(c).