

**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. 23-10**

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**ORDER OF DISMISSAL**

Appellant electronically filed the above captioned appeal with the Merit System Protection Board (Board or MSPB) on March 22, 2023. The County filed a timely prehearing submission on May 8, 2023. Appellant’s prehearing submission due date was June 1, 2023. Having not received Appellant’s prehearing submission by June 6<sup>th</sup>, the Board’s Office Services Coordinator sent an email to Appellant notifying him that his prehearing submission was overdue. On June 7, Appellant replied:

Unfortunately, I have not had time to prepare my pre-hearing material. I understand the deadline has come [*sic*] and gone, at this point. Therefore, I have no choice but to withdraw my submission. I appreciate your time and assistance.

The Board’s Executive Director scheduled a conference call with Appellant and the Associate County Attorney (ACA) assigned to this appeal. Prior to the call the ACA notified the Board that Appellant had a pending disability retirement application. Following the conference call, the ACA advised that if the disability retirement was approved it would be effective as of the last day Appellant worked. The ACA further advised that the disability retirement process could take six months and perhaps longer if an Independent Medical Examination is needed. The Board decided to hold the appeal in abeyance pending resolution of the disability application.

On October 24, 2023, the ACA notified the Board that Appellant had been approved for a non-service connected disability retirement. That same day, the Board received confirmation from Appellant that he does not object to the MSPB closing his case “with the understanding that my DOCR personnel records will be updated accordingly with the updated information.”

The ACA confirmed that Appellant's disability retirement is retroactive to December 18, 2022, and that Appellant's personnel records have been updated to reflect that he retired. The effective date of Appellant's disability retirement is thus over 15 weeks prior to his April 5, 2023, appeal to the MSPB.

Pursuant to Montgomery County Personnel Regulation (MCPR), §35-7(d), the Board may dismiss an appeal if the appeal becomes moot. The Board has long taken the position that the withdrawal of an appeal renders that appeal moot. MSPB Case No. 21-02 (2020); MSPB Case No. 17-18 (2017). Moreover, because Appellant's disability retirement now officially predates the proposed termination by nearly four months, that termination is moot. Under longstanding Board precedent, an appeal must be dismissed as moot where the action appealed has been completely rescinded. *See, e.g.*, MSPB Case No. 17-03 (2016); MSPB Case No. 14-45 (2014); MSPB Case No. 14-11 (2014). The County has demonstrated to the Board that it has fully rescinded the action appealed.

Accordingly, it is hereby **ORDERED** that the appeal in Case No. 23-10 be and hereby is **DISMISSED** as moot. It is further **ORDERED** that within 30 days the County provide the Board with written certification that all electronic and hard copies of documents concerning or referencing the termination be removed from County and departmental personnel files, and that all County records reflect that Appellant was not terminated but instead retired on disability.

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

October 26, 2023

/Harriet E. Davidson/  
Harriet E. Davidson  
Chair