

**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. 24-01

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ORDER OF DISMISSAL

Appellant, an employee with the Montgomery County Department of Police, electronically filed the above captioned appeal with the Merit System Protection Board (Board or MSPB) on July 3, 2023.¹ Appellant’s Appeal Form indicates that she was recently informed that she is not considered a supervisor because she is classified as an Administrative Specialist III.

Appellant was advised by letter from the Board’s Executive Director on July 3, 2023, that she must provide a copy of a Chief Administrative Officer’s Step 2 grievance decision for the Board to have jurisdiction over her appeal. Upon receiving the request for documentation Appellant called the MSPB office that same day. Appellant told the Board’s Office Services Coordinator (OSC) that she did not yet have any documentation. When asked whether she had filed a grievance, Appellant stated that the matter was currently with the Office of Internal Affairs (OIA) which could take thirty days. The OSC explained that the Board may choose to dismiss her appeal until documentation is received or that they may choose to continue the stay depending upon circumstances. Appellant said she would keep the Board informed of the OIA status.

On Sunday, September 3, 2023, Appellant emailed the OSC:

¹ The appeal was filed by electronic mail on Sunday, July 2, 2023, a day that the MSPB offices are not open. Accordingly, the appeal is considered to have been officially received the next Board business day. *See* MSPB Case No. 18-13 (2018).

Things are moving extremely slow regarding my issues and complaints. I was suggested to check back in with MSPB regarding filing my complaint. I am not sure where I left off with your office but I would like to proceed forward and add a few more issues to my complaint if possible. Can you please advise what steps I need to do to activate this complaint 24-01.

On September 5, the OSC responded, in part:

As stated in the “Request Documents” letter (attached) which was sent to you on July 3, 2023, you must provide a copy of the Chief Administrative Officer’s (CAO) decision in order for the Board to proceed with processing your grievance appeal per Montgomery County Personnel Regulations (MCPR), § 35-4(d)(2). To date, this office has not received the requested documentation.

MCPR [Section 34](#) covers grievances. Section 34-9(e) explains the steps of the grievance procedure.

That same day, Appellant called the MSPB office and asked for clarification regarding the grievance process saying that she was not familiar with it. The OSC went over the chart in MCPR §34-9(e) with her. Appellant seemed to understand that an appeal to the Merit System Protection Board is at Step 3 of the process and that she must go through Steps 1 and 2 before her appeal can proceed. She told the OSC that she has not yet filed a grievance but was about to do so.

On Friday, September 8, 2023, Appellant left a voicemail at the Board’s office stating that she has questions about the grievance she just filed. On Monday, September 11th the OSC returned the call. Appellant said she filed her grievance on Wednesday September 6th and said she would be filing an appeal with the Board if she does not agree with the CAO’s decision. The OSC again told Appellant that the Board could not process the appeal that she has already filed because she has not yet received the CAO’s decision. She asked for information concerning how to file an appeal to the CAO. The OSC again went over the chart in MCPR §34-9(e) and explained the logistics of sending a CAO decision to the Board. Appellant acknowledged that the grievance process will take some time based on the given filing deadlines.

Lack of Jurisdiction and Failure to exhaust administrative remedies

The County grievance procedure is designed to promote dispute resolution “at the lowest level” under “specific and reasonable time limits for each level or step.” MCPR § 34-3(a). The time within which to file a grievance is 30 calendar days after the date on which an employee knew or should have known of the occurrence or action on which the grievance is based, or the date on which the employee received a notice specifically required by the County regulations. MCPR § 34-9(a)(1). Step 1 of the grievance procedure provides that an employee shall initially file a grievance with the employee’s immediate supervisor. Step 2 requires that “within 10 calendar days after receiving the department’s response” an employee may file the grievance with the CAO. MCPR §34-9(e). A grievance appeal to the MSPB may be filed within 10 working days after the CAO’s Step 2 decision is received by the employee. MCPR §34-9(e); §35-3(a)(3). Appellant has not completed Step 1 of the grievance procedure but, rather, attempted to go directly to Step 3, an appeal to the MSPB.

Direct appeals are not within the Board’s jurisdiction. The Board has ruled numerous times that an employee must pursue and exhaust the various steps of the applicable administrative grievance procedure as a prerequisite to filing a grievance appeal with the Board. MSPB Case No. 23-04 (2022); MSPB Case No. 17-28 (2017); MSPB Case No. 11-08 (2011). *See* MCPR § 35-2(b) (“An employee . . . may file an appeal with the MSPB . . . after receiving an adverse final decision on a grievance from the CAO”). It is also a well-established principle of labor law that an employee must normally exhaust any contractual or administrative grievance procedures. MSPB Case No. 20-14 (2020); MSPB Case No. 15-28 (2015). *See Republic Steel Corp. v. Maddox*, 379 U.S. 650, 652-53 (1965).


Appellant’s failure to follow the grievance procedure until receiving a CAO decision constitutes a failure to exhaust her administrative remedies that must result in the dismissal of this appeal. MSPB Case No. 20-14 (2020); MSPB Case No. 15-28 (2015). *See Public Service Commission v. Wilson*, 389 Md. 27, 89 (2005).

We emphasize that dismissal of the instant appeal does not preclude Appellant from filing a new appeal with the Board after she has exhausted her administrative remedies.² She may again utilize the Board’s online appeal form as she did with this appeal.

Accordingly, it is hereby **ORDERED** that the appeal in Case No. 24-01 be and hereby is **DISMISSED WITHOUT PREJUDICE** for failure to comply with the Board’s appeal procedures, for lack of jurisdiction, and for failure to exhaust administrative remedies. MCPR § 35-7(b), (c) & (e).

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 16, 2023


Harriet E. Davidson
Chair

² We will not speculate whether any grievance Appellant files or has filed would be timely.