

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

IN THE MATTER OF

[REDACTED],

APPELLANT,

AND

**MONTGOMERY COUNTY
GOVERNMENT,**

APPELLEE

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CASE NO. 24-04

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ORDER OF DISMISSAL

Appellant electronically filed the above captioned appeal with the Merit System Protection Board (MSPB or Board) on December 18, 2023, seeking to appeal from the decision of the Housing Opportunities Commission (HOC)¹ to terminate her from her position.² The appeal form required Appellant to “Attach a copy of the Disciplinary Action or Notice of Termination.” Appellant did not do so.

That same day, the Board’s Executive Director sent Appellant’s counsel a letter acknowledging receipt of the appeal. The acknowledgement letter stated that Appellant did not clearly show that she was a Montgomery County merit system employee and advised that the MSPB only has jurisdiction over disciplinary or termination appeals from employees in County merit system positions. Accordingly, the Board’s Executive Director urged Appellant’s counsel to explore his client’s appeal rights, if any, to the HOC.

The Executive Director’s letter further advised:

¹ The HOC is a state-authorized government organization that administers federal, state, county, and private affordable housing programs. Information regarding HOC’s mission and history is available on its website at [Housing Opportunities Commission - Home \(hocmc.org\)](https://www.hocmc.org).

² The appeal was filed by electronic mail on Friday, December 15, 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).

If your legal analysis leads you to believe that your client is a County merit system employee there is a requirement that you file a copy of a Notice of Termination. See Montgomery County Personnel Regulations, § 29-4 and § 35-4(d). If you believe that the Board may assert jurisdiction over the termination of an HOC employee or a County merit system employee who has not submitted a Notice of Termination you may file an appropriate pleading and the Board will take it and any County response under consideration. You may wish to contact the Office of the County Attorney or the Office of Human Resources to discuss the situation and the impact on your client.

Appellant's appeal was given a case number, but the MSPB stayed its processing of the appeal until receipt of the appropriate documentation. Appellant's counsel was warned in the Board's acknowledgment letter dated December 18, 2023, that failure to provide the Board with a copy of the Notice of Termination may result in dismissal of his client's appeal without prejudice. To date, the Board has not received a copy of the Notice of Termination.

Having heard nothing further from Appellant or her attorney, on April 11, 2024, the Board issued a Show Cause Order requiring Appellant to provide either a Notice of Termination or a statement explaining why one could not be provided. The Notice of Termination or statement was to be filed on or before close of business on April 25, 2024. Appellant was advised that absent the filing of the required documents and statement, the Board would dismiss her appeal.

To date no statement has been filed, and neither Appellant nor her attorney have communicated in any way with the Board.

This Board's jurisdiction is not plenary but is limited to that which is granted to it by statute. See MSPB Case No. 10-09; MSPB Case No. 10-12; MSPB Case No. 10-16; see also *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."); *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); *Monser v. Dep't of the Army*, 67 M.S.P.R. 477, 479 (1995). As a limited tribunal whose jurisdiction is derived from statute, the Board is obligated to ensure that it has jurisdiction. See MSPB Case No. 18-17 (2018); MSPB Case No. 09-08 (2009); see also *Schwartz v. USPS*, 68 M.S.P.R. 142, 144-45 (1995). If the Board lacks jurisdiction to hear an appeal, the appeal must be dismissed. See Montgomery County Personnel Regulations ("MCPR") § 35-7(c) ("The MSPB must dismiss an appeal if it determines it lacks jurisdiction.").

The Board has jurisdiction to hear appeals from merit system employees. See MCPR § 35-2 (employees with merit system status have a right of appeal to the MSPB). Merit system employees are defined by § 33-6 of the Montgomery County Code as "[a]ll persons who are employed by the county in full-time or part-time year-round permanent career positions in any department/office/agency of the executive and legislative branches of the county government or in any other position specifically so designated by law." See also MCPR §§ 1-38, 1-39 and 1-40.

It is undisputed that Appellant is appealing her termination from HOC, which is not within the executive or legislative branches of the County government. As such, Appellant was not terminated from a merit system position with the County government.

Based on the foregoing analysis, the Board concludes that it lacks jurisdiction over the instant appeal. Accordingly, it is hereby **ORDERED** that the appeal in Case No. 24-04 is dismissed for lack of jurisdiction.

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 an appeal may be filed with the Circuit Court for Montgomery County, Maryland, in the manner prescribed under Chapter 200, Title 7 of the Maryland Rules.

For the Board
May 28, 2024


Barbara S. Fredericks
Chair