

**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. 24-10

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ORDER OF DISMISSAL

Appellant filed the above captioned appeal with the Merit System Protection Board (Board or MSPB) on March 5, 2024, seeking to appeal from the decision of Montgomery County Public Schools (MCPS) to terminate him from his position¹.

On March 5, 2024, an acknowledgement letter was sent to Appellant and the County from the MSPB’s Office Services Coordinator (OSC). Because Appellant was appealing a termination by an entity of the County government, the letter also advised Appellant that:

[T]he MSPB only has jurisdiction over disciplinary or termination appeals from employees in County merit system positions. Accordingly, I urge you to explore your appeal rights, if any, to the Montgomery County Public Schools (MCPS).

If you believe that the Board may assert jurisdiction over the termination of an MCPS employee, you may file an appropriate pleading and the Board will take it and any County response under consideration.

Appellant responded to the OSC’s email on March 10, 2024, and provided documentation including MCPS’s appeal instructions.

¹ The appeal was submitted online to the Merit System Protection Board (MSPB) on March 4, 2024, at 9:21 p.m., a time when the MSPB office is not open. The appeal was officially received by the MSPB the next Board business day.

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 his termination from MCPS, a County Agency which is not within the executive and 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. 24-10 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*, an appeal 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
April 23, 2024


Barbara S. Fredericks
Chair