BEFORE THE MERIT SYSTEM PROTECTION BOARD FOR MONTGOMERY COUNTY, MARYLAND

IN THE MATTER OF	*	
*	*	
	*	
	*	
APPELLANT,	*	
	*	
AND	* CASE NO. 17-27	
	*	
MONTGOMERY COUNTY	*	
GOVERNMENT,	*	
	*	
EMPLOYER	*	
	*	
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FINAL DECISION AND ORDER

On March 24, 2017, (Appellant) was sent a Notice of Intent to Terminate (NOIT) and, on April 27, 2017, a Notice of Termination. On May 8, 2017, Appellant filed an appeal with the Merit System Protection Board (MSPB or Board), seeking to challenge her termination from employment with the County's Office of Human Resources. On June 15, 2017, by electronic mail, the County acknowledged that that the original NOIT was procedurally deficient and notified Appellant and the Board that the NOIT and the Notice of Termination were being withdrawn. On June 19, 2017, the Board issued an order requiring Appellant to show good cause as to why the Board should not dismiss her appeal as moot.

The County provided certification that the termination was rescinded and that Appellant was placed on administrative leave, effective Monday, May 8, 2017. Affidavit of July 5, 2017, ¶¶ 9-10. The County further certified that Appellant has been made whole for any loss of salary and benefits. *Id.* For these reasons, the County argues that this appeal, MSPB Case No. 17-27, should be dismissed. County's Response to Show Cause Order, July 18, 2017. Appellant's response to the Show Cause Order does not provide any persuasive explanation of why the County's actions rescinding the Notice of Termination and reinstating Appellant with full back pay and benefits do not moot this case.

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Appellant has called to the Board's attention a prior MSPB case, MSPB Case No. 10-19 (2010), in which Appellant (under a different name) was terminated due to excessive medical absences after exhausting all paid leave. Appellant Response to Show Cause Order, July 10, 2017. In that case, after the MSPB found that the County agency involved had failed to give Appellant proper notice of her rights it ordered her reinstated with back pay. Appellant argues that in this appeal the Board should grant her motion to dismiss the notice of termination and rescind the termination. She further argues that the County should not be allowed a "do over." However, unlike MSPB Case No. 10-19, in this case the County recognized its failure to provide proper notice and reinstated Appellant with back pay without waiting to be ordered to do so by the Board. This appeal is moot because the action being appealed has been completely rescinded.¹

Pursuant to Montgomery County Personnel Regulations (MCPR), § 35-7(d), the Board may dismiss an appeal if the appeal becomes moot. Under longstanding Board precedent, an appeal must be dismissed as moot where an agency completely rescinds the action appealed. *See, e.g.,* MSPB Case No. 17-03 (2016); MSPB Case No. 14-45 (2014); MSPB Case No. 14-11 (2014); MSPB Case No. 12-06 (2006); MSPB Case No. 10-12 (2010). The County has demonstrated to the Board that it has fully rescinded the action appealed and made Appellant whole.

ORDER

Based on the above, the Board hereby dismisses Appellant's appeal based on mootness.

For the Board July 26, 2017

Charlotte Crutchfield Chair

Appellant claims that she has not been made whole because at the time of the flawed notice of intent to terminate she still had 30 days left on a 90-day period in which she had disability priority rights to vacant County jobs. Appellant Response to Show Cause Order, p. 2. While it is correct that the notice was provided with 30 days remaining, Appellant ignores the fact that the notice clearly indicated, in bold lettering, that she had a month left to secure another position before the termination would take effect. Memorandum from to Appellant, March 24, 2017, ¶ 2. Moreover, the County submitted an affidavit certifying that Appellant had a 90-day period of priority rights. Affidavit of July 18, 2017, ¶ 7.