

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

IN THE MATTER OF

[REDACTED]

APPELLANTS,

AND

**MONTGOMERY COUNTY
GOVERNMENT,**

EMPLOYER

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CASE NO. 21-04

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ORDER OF DISMISSAL

On August 20, 2020, Appellant [REDACTED] filed the above captioned appeal with the Merit System Protection Board (Board or MSPB) on behalf of himself and fourteen (14) other Division of Highway supervisors in the Montgomery County Department of Transportation. On August 25, 2020, the Board’s Executive Director acknowledged receiving the appeal and advised Appellant [REDACTED] that for the Board to process his apparent grievance appeal “you must provide a copy of the Chief Administrative Officer’s decision regarding your grievance and other documentation of your grievance. Montgomery County Personnel Regulations (MCPR), § 35-4(d)(2) (“a copy of the CAO’s decision must be provided to the MSPB”).” Appellants’ appeal was docketed, but the Board stayed its processing of the appeal until receipt of the appropriate documentation.¹

The next morning, August 26, 2020, Appellant sent an email to the Board’s Executive Director stating that he needed “clarification on my next step, as it seems that I have missed a step.” Appellant then asked if his proper course of action was: “1. We must send a letter to the CAO for decision” and “2. If not pleased with their/his decision, submit that decision and our letter to you (MSPB.Mailbox@montgomerycountymd.gov).” Later that morning the Board’s Executive Director responded as follows, in part:

Without knowing what you have already done I am not in a position to give you more specific information about your options. I suggest that you read the [County](#)

¹ Appellants’ grievance concerns the lack of Covid-19 front facing pay for Division of Highway Services supervisors. Front facing work is that which involves physical interaction with the public and cannot be performed with appropriate social distancing. Employees eligible for front facing differential pay receive an additional \$10 per hour.

[personnel regulations](#) to make sure you are complying with the grievance procedure. The link provided is to the full grievance regulations, but you should carefully review §34-9, which deals with the grievance procedures and contains a helpful chart explaining the various steps to follow.

Appellant responded a few minutes later, stating: “Thanks. I haven’t done anything besides send you all the letter. I will review the personnel regs.”

The County grievance procedure is designed to promote dispute resolution “at the lowest level.” MCPR § 34-3(a). Step one of the grievance procedure provides that an employee shall initially file a grievance with the employee’s immediate supervisor, while step two provides that an employee may file the grievance with the CAO. MCPR §34-9(e). A grievance appeal to the MSPB must be filed within 10 working days after the CAO’s step two decision is received by the employee. MCPR §34-9(e); §35-3(a)(3).

Having received nothing further from Appellants since August 26, on October 26, 2020, the Board issued a Show Cause Order requiring Appellants to provide a statement of such good cause as exists for why the appeal should not be dismissed for lack of jurisdiction and failure to comply with the Board’s appeal procedures. The Show Cause Order stated that a “Chief Administrative Officer’s decision or statement of good cause shall be filed on or before close of business November 5, 2020. . .”. To date no statement of good cause or CAO’s decision has been filed, and Appellants have not communicated in any way with the Board since August.

Appellants were advised in the Show Cause Order that a failure to exhaust their administrative remedies may result in a dismissal of this appeal. MSPB Case No. 20-13 (2020); MSPB Case No. 15-28 (2015).

Accordingly, it is hereby **ORDERED** that the appeal in Case No. 21-04 be and hereby is **DISMISSED** for failure to comply with the Board’s appeal procedures and for failure to exhaust administrative remedies. MCPR § 35-7(b) & (e).²

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
November 19, 2020


Harriet E. Davidson
Chair

² Board Member Angela Franco did not participate in the consideration, preparation, or adoption of this decision.