

**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. 21-09**

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**ORDER OF DISMISSAL**

Appellant, a Liquor Store Clerk I, filed the above captioned appeal with the Merit System Protection Board (Board or MSPB) on October 7, 2020, concerning a September 22, 2020, Notice of Termination issued by the Alcohol Beverage Services (ABS).

Due to procedural errors with the proposed termination, on November 2, 2020, ABS issued a memorandum to Appellant which had as the subject line “Rescind Notice of Termination.” The memorandum stated that “You are hereby notified that the Notice of Termination, dated September 22, 2020, is rescinded and will be removed from your file.” By memorandum dated December 3, 2020, Appellant was informed that she was being placed on paid administrative leave pending termination retroactive to September 14, 2020. The memorandum also advised Appellant that she was “expected to be available to the department between the business hours of 8:30 a.m. until 5:00 p.m. Monday through Friday and must promptly respond to any telephone calls and/or emails from the department.” To the Board’s knowledge, as of today Appellant has not received a new notice of termination.

On November 9, the County filed a Motion to Dismiss the appeal as moot. Attached as exhibits to the Motion to Dismiss were a November 6 Amended Notice of Proposed Termination from the Director of ABS and the November 2 “Rescind Notice of Termination” memorandum. The County’s Motion to Dismiss did not represent or provide certification that it had fully rescinded the September 22 Notice of Termination by making Appellant whole through reinstatement with full back pay and benefits. For that reason, on November 19, 2020, the Board

issued a Show Cause Order asking “the County to show good cause as to why the Board should not deny its Motion to Dismiss for failure to fully rescind the Notice of Termination and make Appellant whole by reinstating her with full back pay and benefits.” The County’s November 30 response to the Show Cause Order stated that ABS intended to make Appellant whole through reinstatement with full back pay and benefits, however, ABS still need to “engage with other departments regarding her payroll, retirement, and health benefits.” The County concluded by asking for dismissal “or, in the alternative, . . . additional time to finalize the processing of Appellant’s correction.” Because the County had failed to show with certainty and particularity that Appellant had or would be made completely whole, on December 7, 2020, the Board denied the Motion to Dismiss.

On January 6, 2021, the County filed a second Motion to Dismiss providing additional information as to why it believed that Appellant had now been fully reinstated and made whole. Appellant opposed the motion, arguing that while she had been paid for her unused annual leave and compensatory time when she was originally terminated, she nevertheless wished to have the leave credited back to her now that she has been reinstated. Appellant also argued that she should be paid an amount in addition to her administrative leave payments to compensate her for the time she is expected to be available for emails and phone calls per the December 3 memo.

The Board is persuaded that the September 22, 2020, Notice of Termination has been fully rescinded, and Appellant made whole. We express no opinion as to the merits of Appellant’s claims concerning her alleged entitlement to a restoration of leave hours instead of a cash payout or to stand by pay while on administrative leave. In our view, the leave and stand by pay matters would best be more appropriately addressed through the grievance procedure.

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. 19-04 (2019); MSPB Case No. 17-27 (2017); 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.

Accordingly, the Board hereby **GRANTS** the County’s Motion to Dismiss and **ORDERS** that the appeal in Case No. 21-09 be and hereby is **DISMISSED** as moot. Should the County seek to terminate Appellant in the future she may file a timely appeal with the Board within ten (10) working days after receiving a notice of termination.

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.

Order of Dismissal  
MSPB Case No. 21-09  
Page 3

For the Board  
February 2, 2021

  
Harriet E. Davidson  
Chair