

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

IN THE MATTER OF

████████████████████,

**APPELLANT,**

**AND**

**CASE NO. 20-17**

**MONTGOMERY COUNTY  
GOVERNMENT,**

**EMPLOYER**

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**DECISION ON COUNTY’S REQUEST FOR RECONSIDERATION**

On June 23, 2021, the Montgomery County Merit System Protection Board (MSPB or Board) issued a final decision in ████████████████████████████████ (Appellant) appeal of her dismissal from County employment. The Board rescinded Appellant’s dismissal, reinstated her without back pay, and reduced the discipline to a 45-day suspension.

The County filed a motion requesting reconsideration on July 6, 2021. The County requested that the Board reinstate Appellant’s dismissal, arguing that although the Board had found that the County had met its burden of proof it did not “discuss the full extent of the possible consequences the Department faced because of the Appellant’s actions.” The County argues that its potential exposure to liability is significant due to Appellant’s actions.

In the alternative the County asks the Board to increase Appellant’s suspension from 45 days to 6 months. The County argues that the more severe penalty is “more appropriate” and that the 45-day suspension “sets a bad precedent.”

Finally, in the event the Board does not reinstate the dismissal, the County asks that the Board amend the language in the Order concerning required training for Appellant. The County “requests the Board amend Part 5 of the Order to include a 90-day deadline for Appellant to become proficient in NextGen and define proficiency as being able to manage NextGen independently and enter all notes into NextGen, within 48 hours of interacting with the patient,

with no errors.” The County then states that this amendment would be consistent with the County Department of Health and Human Services “policies on NextGen.”

Appellant filed a response to the County's request on July 13, 2021, arguing that reconsideration was not appropriate because the County did not allege that there were new facts which were not reasonably available at the time of the hearing or that the Board's decision contained any obvious error. Appellant suggests that if the Board reconsiders the penalty imposed on her that it would be more appropriate to reinstate her with full backpay, perhaps with a reduction for the 45-day suspension.

On July 13, 2021, the County filed a Reply to Appellant's Opposition to Motion for Reconsideration, objecting to the portion of Appellant's response that requests that she be granted backpay. The County argues that Appellant's suggestion is an untimely request for reconsideration of the Board's decision, having been filed more than ten days after the Board's final decision of June 23, 2021.

The County urges the Board to reinstate Appellant's dismissal because the Board did not “discuss the full extent of the possible consequences the Department faced,” arguing that its potential exposure to liability is significant due to Appellant's actions. Because of the alleged exposure to liability the County faces, the County argues that a more severe penalty is “more appropriate” and that the 45-day suspension “sets a bad precedent.” However, the County's reconsideration request concedes, and the record reflects, that DHHS has no clear idea of what records and exactly how many of them, are missing. Unrelated to Appellant's behavior, the failures of DHHS management may play a significant role in any potential liability.

Indeed, our decision expressly found that the County was not blameless: “Notwithstanding Appellant's recordkeeping shortcomings, we find that DHHS and HCH are responsible for inadequate, if not haphazard, recordkeeping procedures. . .”. Final Decision, MSPB Case No. 20-17 (2021), p. 13. The responsibility for any liability is at least shared by DHHS management. Rather than focus solely on Appellant's missteps, we strongly urge DHHS to take immediate steps to implement improved patient and client recordkeeping practices and procedures.

Importantly, the County does not allege any error of law. Nor does it identify any Board findings that are unsupported by the record. The County is not asserting that there is any new and material evidence or legal argument that was not available when the record closed. The County is simply disagreeing with the Board's judgment concerning the severity of the penalty.

The Board sees no basis for reconsidering its decision on the level of penalty. The Final Decision fully explains the Board's reasoning for concluding that while a significant sanction is justified, dismissal is not.

Finally, the County requests that the Board amend “the Order to include a 90-day deadline for Appellant to become proficient in NextGen and define proficiency as being able to manage NextGen independently and enter all notes into NextGen, within 48 hours of interacting with the patient, with no errors.” The County states that this amendment would be consistent with the County Department of Health and Human Services “policies on NextGen.” However, the County


does not call the Board's attention to anything in the record supporting that assertion. The County's suggestion that the Board's order define proficiency to include the entry of notes into NextGen within 48 hours of interacting with a patient also seems inconsistent with the record evidence that Appellant was given a designated day each week to enter notes into NextGen.

In the absence of record evidence supporting the County's assertions concerning the NextGen policies the County is essentially requesting that the Board supplement the record with unsworn factual statements made in its motion for reconsideration. When deciding on a request for reconsideration the Board will only consider new and material evidence that, despite due diligence, was not available when the record closed. MSPB Case No. 12-11 (2012). The County does not contend that the information concerning DHHS policies on standards for entering notes into NextGen constitutes new and material evidence that was unavailable despite due diligence when the record closed. If the County wished for the Board to consider the DHHS NextGen policies in making its decision, those policies should have been introduced by the County before the record was closed.

Since we decline to reconsider the penalty in this matter, we need not decide whether the alternative argument made by Appellant in her opposition to the County's motion is timely. We view Appellant's argument as only applying "[i]f there were any reconsideration of the Board's penalty assessment."

For the foregoing reasons, the Board **DENIES** the motion for reconsideration and declines to reconsider its Final Decision in this matter.

For the Board  
July 14, 2021

  
Harriet Davidson  
Chair