

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

IN THE MATTER OF

████████████████████,

APPELLANT,

AND

**MONTGOMERY COUNTY
GOVERNMENT,**

EMPLOYER

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CASE No. 22-05

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ORDER DENYING APPELLANT’S STAY REQUEST

On September 9, 2021, Appellant, a supervisor with the Montgomery County Office of Animal Services (OAS), received a Notice of Disciplinary Action (NODA) demoting her from her position as an Inspection and Enforcement Supervisor, Grade 23, to a Customer Services Representative II (Dispatcher), Grade 16. The demotion is apparently scheduled to begin on Sunday, September 26, 2021. On September 16, 2021, Appellant filed an appeal with the Merit System Protection Board (Board or MSPB), and on September 21, 2021, she requested a stay of the demotion pending the outcome of a hearing on the merits before this Board.

Appellant raises numerous reasons for requesting the stay. Those reasons include: She has had positive evaluations and is well qualified for her current position; she was not trained to handle the transition of the OAS from being part of the Department of Police to being an independent agency; that she has been denied due process; that the discipline was not imposed promptly; that the factual underpinnings for the discipline are vague, unsupported and inaccurate; that a similarly situated male employee was treated differently; that the action is unfair, unprofessional and vindictive in that she will be serving directly with and sometimes subordinate to those who complained about her; that she fears retaliation and discrimination; that she will suffer emotional distress; and that the demotion will cause substantial financial hardship and significant inconvenience in meeting her family obligations.

The County filed a response opposing the stay request on September 23, 2021.

Pursuant to Montgomery County Personnel Regulations (MCPR), §35-6(b), the Board is empowered to grant a stay upon such conditions as it may believe proper and just. However, in prior decisions the Board has said that it will not grant a stay request absent a showing of irreparable harm or extraordinary circumstances. We find that the issues raised by Appellant's arguments may be resolved during the Board's regular processing of the Appeal and do not state extraordinary circumstances or demonstrate harm that cannot be remedied should the Board find for Appellant on the merits.

Appellant will receive due process through the Board's hearing procedures, where the merits of relevant arguments concerning her performance and qualifications, the appropriate level of discipline, or the treatment of similarly situated employees may be addressed. So too with any issues concerning the fairness of the process, timeliness of the discipline, or the adequacy of the charges. Regarding the potential that Appellant may suffer emotional distress or other health effects, and inconvenience in the scheduling of her family obligations, Appellant may request appropriate accommodations from OAS and the Occupational Medical Services unit of the Office of Human Resources. The Board is sympathetic but cannot say that the suggestion that those possible outcomes may occur shows irreparable harm or extraordinary circumstances.

With regard to Appellants fear of retaliation and discrimination, the Board trusts that OAS management, OHR, and the Office of the County Attorney will take appropriate and necessary steps to investigate and promptly ensure that such unacceptable behavior by other employees will not take place, or will be quickly and satisfactorily resolved.


As to financial hardship, this Board has consistently held that financial loss does not constitute irreparable harm where monetary relief will make an employee whole, including in a demotion case. MSPB Case No. 05-07 (2005) (demotion). *See* MSPB Case No. 13-07 (2013) (suspension); MSPB Case No. 09-10 (2009) (dismissal); MSPB Case No. 08-12 (2008) (suspension). *See also* *Sampson v. Murray*, 415 U.S. 61, 84, 89-92 (1974) (loss of earnings and reputation is not irreparable harm in government personnel cases); *In re Frazier*, 1 MSPR 280, 282 (1979) ("It is well settled that in order to enjoin an agency's taking of a personnel action, the affected employee must show irreparable harm; and where monetary relief will make an employee whole, no irreparable harm exists.").

ORDER

For the reasons discussed above, the Board finds that any harm to Appellant caused by her demotion may adequately be addressed should Appellant ultimately prevail on the merits.

Accordingly, the Board **DENIES** Appellant's request for a stay.

For the Board
September 24, 2021


Harriet E. Davidson
Chair