

**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. 22-35

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ORDER OF DISMISSAL

Appellant filed an appeal of a disciplinary action on April 27, 2022. When Appellant failed to provide a Notice of Disciplinary Action (NODA) after multiple written requests, on June 16, 2022, the Board issued a Show Cause Order requiring Appellant to provide a statement of such good cause as existed for why he had failed to file the required documentation to proceed with his appeal. On June 23, 2022, Appellant responded by email and attached a copy of the NODA.

On June 28, the Board’s Executive Director spoke with Appellant by telephone, explaining Appellant’s options regarding an appeal of the disciplinary action received. The Executive Director followed up with an email to Appellant that same afternoon, explaining that a scheduling letter would be sent providing the due date for the prehearing submission. On June 29, 2022, an acknowledgment letter was sent to the parties providing the due dates of the prehearing submissions. On July 19, the County requested a two-week extension of the due dates, to which Appellant replied on the same day that he did not object. An email was sent at 11:14 am on July 19th to the parties granting the County’s request and advising Appellant that his prehearing submission must be submitted on or before Tuesday, September 6, 2022.

When Appellant did not file his prehearing submission by September 6, the Board’s Office Services Coordinator notified Appellant by email on September 7th that the prehearing submission was not received and requested that Appellant notify the Board in writing if he no longer intended to pursue his appeal. When Appellant did not respond, an email was sent on September 12th again asking when the prehearing submission would be filed and requesting that the Board be notified in writing if Appellant no longer intended to pursue his appeal. After no response from Appellant, on September 15th a letter was emailed and sent by first class mail to Appellant requesting a written

explanation for the lack of response and the filing of the prehearing submission by September 26, 2022. The letter also stated that failure to file an explanation and a prehearing submission by September 26th might result in the dismissal of his appeal.

On September 22, Appellant replied to the Board's September 12th email by asking, "Could I have an extension on filing this?" Within an hour the Board's Executive Director responded to Appellant as follows:

The Board has attempted to contact you on multiple occasions since you missed the September 6 deadline and until now has not received any response. Attached is the September 15 letter that was emailed and sent by first class mail advising that you should provide a written explanation for your lack of response **and** that must you file your prehearing submission by September 26, 2022. If you do not provide a satisfactory explanation and file the prehearing submission by September 26 your appeal may be dismissed. (emphasis in original).

On September 26th Appellant responded by email, stating:

I like to proceed with the prehearing. I am not sure the process is. please guide me through it.

I might have missed the notice earlier, I've been taken vacation since 9/11/2022 where I had almost no email access. that's not an excuse. Please accept my apologies for not responding earlier.

Despite repeated written notifications advising Appellant of his obligation to file a prehearing submission Appellant has failed to do so. For the above reasons, on September 27th the Board issued another Show Cause Order. Appellant was ordered to provide a statement of such good cause as exists for why he has failed to timely file the required prehearing submission. The statement was to be filed with the Board on or before close of business October 5, 2022, with a copy served on the County. On October 4th Appellant sent an email to the MSPB mailbox but did not copy the County. The email stated:

I might have missed the notice earlier, I've been taken vacation since 9/11/2022 where I had almost no email access. That's not an excuse. Please accept my apologies for not responding earlier.

I hereby submitting my request for prehearing statement.

That same day, the Board's Executive Director replied to Appellant's email and copied the County:

The Show Cause Order (attached) requires that by tomorrow, October 5, you must file your prehearing statement, and a statement of such good cause as exists for why you have failed to file the required prehearing submission on time. If you fail to do so your appeal may be dismissed.

You have repeatedly been advised that you must submit a prehearing statement. You were sent a letter on June 29 providing you with a link to the Board's Hearing

Procedures (attached). On page 3 of the procedures, it is explained that you must submit:

- Copies of all written reports, documents, photographs, charts, letters, or any other material to be introduced or used at the hearing, and that all exhibits must be labeled and tabbed shall be placed in a 3-ring binder.
- The names and addresses of all prospective witnesses, and a summary of their anticipated testimony.
- The names and addresses of witnesses and documents and records requiring service of a subpoena.
- The estimated time required for your presentation of the case.

Please remember to also provide a copy of anything you send to the Board to Associate County Attorney [REDACTED].

Appellant has still not provided a prehearing submission and the Board finds that he has no satisfactory explanation for that failure. Appellant has not shown such good cause as exists for why he has failed to file the required prehearing submission or provided a satisfactory explanation for his failure to do so. Under MCPR § 35-7(b) the Board “may dismiss an appeal if the appellant fails to prosecute the appeal or comply with established appeal procedures.”

While we recognize that Appellant is pursuing his appeal without the benefit of counsel, it is a longstanding principle of Maryland law that procedural rules apply equally to *pro se* litigants in quasi-judicial administrative proceedings. *Department of Labor, Licensing & Regulation v. Woodie*, 128 Md. App. 398, 411 (1999) (“It is a well-established principle of Maryland law that *pro se* parties must adhere to procedural rules in the same manner as those represented by counsel.”). *See Tretick v. Layman*, 95 Md. App. 62, 68 (1993) (“The principle of applying the rules equally to *pro se* litigants is so accepted that it is almost self-evident.”).

Accordingly, the Board must dismiss this matter for failure to comply with established appeal procedures and due to Appellant’s failure to prosecute his case. MCPR, § 35-7(b). *See* MSPB Case No. 22-34 (2022); MSPB Case Nos. 19-19 & 19-26 (2019); MSPB Case Nos. 19-24 & 19-25 (2019).

Accordingly, it is hereby **ORDERED** that the appeal in Case No. 22-35 be and hereby is **DISMISSED**.

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.

For the Board
October 12, 2022

[REDACTED]
Harriet E. Davidson, Chair