

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

**IN THE MATTER OF**

**██████████,**

**APPELLANT,**

**AND**

**SANDY SPRING VOLUNTEER  
FIRE DEPARTMENT,**

**APPELLEE**

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**CASE NO. 24-17**

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**ORDER OF DISMISSAL**

On May 7, 2024, ██████████ (Appellant), filed an appeal with the Merit System Protection Board (MSPB or Board), challenging a 30-day suspension he received as discipline. On that same day, the Board issued a scheduling letter ordering Sandy Spring Volunteer Fire Department (SSVFD) to file its prehearing submission by June 6, 2024. SSVFD did not file a prehearing submission. ██████████ filed a prehearing submission on June 27, 2024.

On the Appellant’s Appeal Form, he listed his Title/Position as “Board Member/Quartermaster/Administrative Member.” According to the SSVFD website, the Appellant is listed under Active Administrative not Active Firefighters or Active EMS. Also, the Statement of Charges from the SSVFD provided in the Appellant’s prehearing submission refers to Appellant as “administrative member/Board of Director ██████████.” AX 3, p.4.

The Montgomery County Code provides that “the Merit System Protection Board must hear and decide each appeal filed by a volunteer firefighter or rescuer aggrieved by an adverse final action of the Chief or a local fire and rescue department involving the removal, demotion, or suspension of, or other disciplinary action applied specifically to, that individual as if the individual were a County merit system employee.” Montgomery County Code § 21-7(a). Under the Montgomery County Personnel Regulations (MCPR), “a volunteer firefighter or rescuer” has appeal rights under MCPR Section 35-2(f) which states:

A volunteer firefighter or rescuer may file an appeal with the MSPB over an adverse final action of the Fire Chief or local fire and rescue department involving any disciplinary action applied specifically to that individual, including a restriction or prohibition from participating in fire rescue activities, as if the individual were a County merit system employee. A volunteer firefighter or rescuer is entitled to a de novo hearing before the MSPB from a demotion, suspension, termination, dismissal or involuntary resignation. The MSPB must hear and decide each such appeal except for an appeal of a personnel matter subject to an employee grievance procedure under a collective bargaining agreement.

MCPR Section 35-7(c) states that the MSPB must dismiss an appeal if it determines it lacks jurisdiction. On July 16, 2024, the Board issued a Show Cause Order which ordered the Appellant to provide a statement of such good cause as exists for why the Board should not dismiss this matter. The statement was to include documentation showing Appellant's status as a "volunteer firefighter or rescuer." The Appellant filed a response (Appellant Response) on August 6, 2024, which stated, in part, "As I am a retired disabled firefighter/EMT, I am physically and legally unable to perform Fire and or EMS duties..." Appellant Response, p. 1. Appellant also stated, "If I were not retired/disabled, I would still be an active Firefighter/Rescuer." Appellant Response, p.1. Appellant closed his response with, "I have attached my Transcripts to show my previous status as a firefighter/rescuer." Appellant Response, p. 5.

SSVFD filed a response (SSVFD Response) on Friday, August 23, 2024, which was officially received by the Board on August 26, 2024. In their response, SSVFD pointed out that Article 19, Section 2 of the Agreement between Montgomery County Volunteer Fire Rescue Association, and Montgomery County Government / Montgomery County, Maryland distinguishes between a volunteer firefighter and/or rescuer and Appellant's position as a quartermaster. SSVFD Response, p. 2 and SSVFD Ex 1. SSVFD referred to Section 3(a) of the Montgomery County Fire and Rescue Service Personal Protective Equipment and On-Duty Apparel Policy for LFRD [Local Fire and Rescue Departments] Volunteer Personnel which specifically defines Administrative Personnel. SSVFD Ex 2. Additionally, SSVFD cited the Uniform and Grooming title of Sandy Spring Volunteer Department Policies and Procedures, which distinguishes between firefighters/rescuers and administrative/operational officers. SSVFD Response, p. 3 and SSVFD Ex 3.

This Board's jurisdiction is not plenary but is, rather, limited to that which is granted to it by statute. MSPB Case No. 14-42 (2015). *See Blakehurst Lifecare Community v. Baltimore County*, 146 Md. App. 509, 519 (2002) ("An administrative agency is a creature of statute, which has no inherent powers and its authority thus does not reach beyond the warrant provided it by statute."). *See also King v. Jerome*, 42 F.3d 1371, 1374 (Fed. Cir. 1994) (U.S. Merit Systems Protection Board's jurisdiction is only over those actions which are specifically provided for by some law, rule, or regulation). As a limited tribunal whose jurisdiction is derived from statute, the Board is obligated to ensure that it has jurisdiction. MSPB Case No. 19-08 (2019); MSPB Case No. 18-17 (2018); MSPB Case No. 09-08 (2009). *See* Montgomery County Personnel Regulations (MCPR), § 35-7(c) ("The MSPB must dismiss an appeal if it determines it lacks jurisdiction.").

The Montgomery County Code provides the MSPB with jurisdiction over the discipline of volunteer firefighters and rescuers. Under the County Code, § 21-1(c), a "volunteer" is defined as

“an individual who, without salary, performs fire, rescue, emergency medical, or related services as provided in this Chapter with the Montgomery County Fire and Rescue Service.” This definition does not encompass membership on a local fire and rescue department’s (LFRD) governing board.


Montgomery County Code § 21-7(a) gives the MSPB jurisdiction over any volunteer firefighter aggrieved by an adverse final action of a LFRD, and § 21-7(a) says that the MSPB has jurisdiction when a volunteer firefighter is “aggrieved by an adverse final action . . . involving the removal, demotion, or suspension of, or other disciplinary action applied specifically to, that individual *as if the individual were a County merit system employee.*” (emphasis added). The provision expressly applies to individuals serving as volunteer firefighters acting in roles that are akin to employees, not to persons serving as members of the organization’s corporate governing body.

In fact, Appellant provided no evidence to contradict SSVFD’s declaration that Appellant’s current position as quartermaster is the only relationship he had with SSVFD when he received the discipline. As such, the Board has no jurisdiction over this dispute.

The Board finds that it lacks jurisdiction to hear Appellant’s appeal of his suspension from SSVFD. Accordingly, Appellant’s appeal is **DISMISSED**, and we need not reach the merits of dismissing Appellant’s appeal pursuant to MCPR Section 35-7(f).

If any party disagrees with the decision of the Merit System Protection Board, pursuant to Montgomery County Code, §21-7(f), *Appeals of Board decisions*, 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  
November 4, 2024

  
Barbara S. Fredericks  
Chair