

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

IN THE MATTER OF

[REDACTED],

APPELLANT,

AND

**MONTGOMERY COUNTY
GOVERNMENT,**

APPELLEE

*
*
*
*
*
*
*
*
*
*
*
*

CASE NO. 25-11

=====

ORDER OF DISMISSAL

Appellant filed the above captioned appeal with the Merit System Protection Board (Board or MSPB) on February 26, 2025, seeking to appeal the decision of the federal Department of Health and Human Services to terminate Appellant from Appellant’s position.

On February 27, 2025, an acknowledgement letter was sent to Appellant and the County from the MSPB’s Executive Director. The letter also advised Appellant that:

It appears you are appealing a termination from a federal government position within the federal Department of Health and Human Services. Please be advised that the Montgomery County Government MSPB only has jurisdiction over termination appeals filed by Montgomery County Government merit system employees. Thus, there is a question whether the Montgomery County MSPB has jurisdiction over your appeal. Accordingly, I urge you to explore your appeal rights and any applicable filing deadlines and procedures to the federal Merit Systems Protection Board as stated in the Notification of Termination During Probationary Period letter which you attached to your appeal form.

In consideration of this, if you wish to withdraw your appeal with the Montgomery County Government MSPB, please advise the Board as soon as possible. If you believe that the Board may assert jurisdiction over the termination of a federal government employee, you may file an appropriate pleading, and the Board will take it and any County response under consideration.

To date, Appellant has not responded or filed an appropriate pleading.

This Board's jurisdiction is not plenary but is limited to that which is granted to it by statute. *See* MSPB Case No. 10-09; MSPB Case No. 10-12; MSPB Case No. 10-16; *see also 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."); *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); *Monser v. Dep't of the Army*, 67 M.S.P.R. 477, 479 (1995). As a limited tribunal whose jurisdiction is derived from statute, the Board is obligated to ensure that it has jurisdiction. *See* MSPB Case No. 18-17 (2018); MSPB Case No. 09-08 (2009); *see also Schwartz v. USPS*, 68 M.S.P.R. 142, 144-45 (1995). If the Board lacks jurisdiction to hear an appeal, the appeal must be dismissed. *See* Montgomery County Personnel Regulations ("MCPR") § 35-7(c) ("The MSPB must dismiss an appeal if it determines it lacks jurisdiction.").

The Board has jurisdiction to hear appeals from merit system employees. *See* MCPR § 35-2 (employees with merit system status have a right of appeal to the MSPB). Merit system employees are defined by § 33-6 of the Montgomery County Code as "[a]ll persons who are employed by the county in full-time or part-time year-round permanent career positions in any department/office/agency of the executive and legislative branches of the county government or in any other position specifically so designated by law." *See also* MCPR §§ 1-38, 1-39 and 1-40.

It is undisputed that Appellant is appealing Appellant's termination from a federal government position within the federal Department of Health and Human Services which is not within the executive and legislative branches of the County government. As such, Appellant was not terminated from a merit system position with the County government.

Based on the foregoing analysis, the Board concludes that it lacks jurisdiction over the instant appeal. Accordingly, it is hereby **ORDERED** that the appeal in Case No. 25-11 is dismissed for lack of jurisdiction.

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*, an appeal 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
April 24, 2025


Sonya E. Chiles
Chair