

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

IN THE MATTER OF

[REDACTED],

APPELLANT,

AND

**MONTGOMERY COUNTY
GOVERNMENT,**

EMPLOYER

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CASE NO. 25-15

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ORDER OF DISMISSAL

On February 13, 2025, [REDACTED] (Appellant), a Bus Operator with the Montgomery County Department of Transportation, received a Notice of Disciplinary Action – Dismissal (NODA) dated February 3, 2025. The NODA advised Appellant:

The Union may file a Grievance on your behalf under Article 10 of the Collective Bargaining Agreement between MCGEO, Local 1994, and Montgomery County, within 30 calendar days of the date on which you receive this notice. Alternatively, as the County did not participate in the Alternative Dispute Resolution Conference, you may file an appeal with the Merit System Protection Board, pursuant to the Montgomery County Personnel Regulations, Sec. 35, within 10 days of the date you receive this notice.

On Monday, May 5, 2025, the MSPB received Appellant’s appeal challenging the dismissal. Under the applicable personnel regulations, Appellant had ten (10) working days to file an appeal. The Appeal was filed fifty-five (55) working days after receipt of the NODA.

The County filed a motion to dismiss on May 21, 2025. In support of its motion, the County argued that the appeal was untimely.¹ Appellant was entitled to respond to the County’s

¹ The County also argued that the Board lacks jurisdiction over some of Appellant’s allegations associated with Appellant’s union, the Montgomery County Government Employee Organization (MCGEO).

motion within ten (10) calendar days under Montgomery County Personnel Regulations (MCPR), §35-11(a)(4).

Appellant provided a timely response in which Appellant requested that Appellant's appeal not be dismissed for untimely filing because Appellant was not familiar with the grievance process or the associated filing deadlines. Per his response, Appellant acknowledged that Appellant should have read the NODA more carefully and that Appellant should have "acted more swiftly and sought further clarification," but suggested that Appellant "acted based on the information [Appellant] had, [Appellant's] trust in the process, and the consistent lack of communication and support from those [Appellant] reached out to."

Under the Montgomery County Personnel Regulations Appellant had ten (10) working days to file a direct appeal to the Board challenging his dismissal. MCPR, § 35-3(a)(1) ("An employee has 10 working days to file an appeal with the MSPB in writing after the employee: . . . (1) receives a notice of disciplinary action over an involuntary demotion, suspension, or dismissal"). "Working days" is defined as "[a]ll days except Saturdays, Sundays and official or special County holidays." MCPR § 35-1(i). Additionally, per the Personnel Regulations, the last day of a time period is not counted if it falls on a day when the relevant County office is closed. *See* MCPR § 2-5(b). It is undisputed that Appellant received the NODA on February 13, 2025. Because President's Day (a County holiday per MCPR § 24-2(b)(3)) fell within the filing period and because the Board is closed on Friday, the appeal to the MSPB was thus due on March 3, 2025. *See* MCPR § 2-5(c). However, the appeal was not received by the MSPB until May 5, 2025.

Appellant's explanation that he was unaware of the filing deadline is contradicted by the NODA that Appellant signed, which included specific instructions that Appellant must appeal the decision within ten (10) days.² Accordingly, we find that the appeal in this matter was officially received by the Board on May 5, 2025, forty-five (45) working days late.

In the past, the Board has not waived the 10-day period for filing an appeal without good cause, and we have not been provided with good cause why we should do so here. *See* MSPB Case No. 20-06 (2020) (eleven (11) working days after receipt); MSPB Case No. 19-27 (2020) (eleven (11) working days after receipt); MSPB Case No. 14-43 (2014) (twenty-three (23) working days after receipt).

Accordingly, it is hereby **ORDERED** that the appeal in Case No. 25-15 be, and hereby is, dismissed because it was not filed within the time limits specified in MCPR § 35-3(a).³

If any party disagrees with the decision of the Merit System Protection Board, pursuant to

² The NODA did not specifically say "working days." In the future, the Board recommends that the County be more precise in its appeal right language to avoid disputes over whether employees have sufficient notice of their appeal rights. *See* MSPB Case No. 25-03 (2025) (motion to dismiss denied due to improper appeal rights notice).

³ Because the Board is dismissing the matter as untimely, it is not necessary for the Board to address the County's jurisdictional arguments.

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
June 26, 2025


Sonya E. Chiles
Chair