

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

**IN THE MATTER OF**

**[REDACTED],**

**APPELLANT,**

**AND**

**MONTGOMERY COUNTY  
GOVERNMENT,**

**EMPLOYER**

\*  
\*  
\*  
\*  
\*  
\*  
\*  
\*  
\*  
\*  
\*  
\*

**CASE No. 18-19**

=====

**ORDER DISMISSING INTERLOCUTORY APPEAL**

Having reviewed and considered Appellant’s “Interlocutory Appeal” and the opposition thereto, the Merit System Protection Board (MSPB or Board) hereby dismisses that appeal for the reasons stated herein.

On February 1, 2018, the Board consolidated MSPB Case Nos. 16-09, 16-11, 16-12, 17-02, 17-04, 17-08, and 17-23 into this case, MSPB Case No. 18-19. In the February 1, 2018, order, and pursuant to Montgomery County Code, § 33-12(c) and Montgomery County Personnel Regulations, § 35-2(b), the Board also ordered that MSPB Case No. 18-19 be referred to the Montgomery County Office of Zoning and Administrative Hearings for a Hearing Examiner to conduct an evidentiary hearing and rule on motions. The Board instructed the Hearing Examiner to permit the parties to conduct appropriate discovery and to raise issues concerning the proper scope of that discovery, privileges, and the relevance of specific requests. The Hearing Examiner was authorized to limit discovery, as appropriate. The order further required the Hearing Examiner to provide the Board with a report and recommendation that included proposed findings of fact and conclusions of law, and a proposed decision. The Board’s order explicitly specified that the Hearing Examiner’s findings and recommendations would be subject to written exceptions by the parties and oral argument to the Board prior to the Board reaching a final decision.

In the absence of any express authority regarding an interlocutory appeal from a Hearing Examiner’s order, we draw an analogy to circumstances where interlocutory orders of administrative agencies may be reviewed immediately by a court. Such interlocutory appeals are

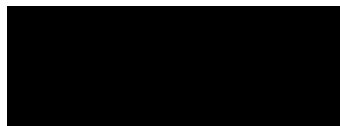
limited to those situations where: (1) an administrative order determines rights and liabilities and has immediate legal consequences; and (2) delay of judicial review would result in irreparable harm. *Holiday Spas v. Montgomery County Human Relations Commission*, 315 Md. 390 (1989). See SG, § 10-222(b) (State APA provision codifying the *Holiday Spas* holding).<sup>1</sup>

Appellant's Interlocutory Appeal meets neither of the *Holiday Spas* criteria. The Hearing Examiner's orders make no final determinations of rights or liabilities and have no immediate legal consequences. The Hearing Examiner has no authority to make any final decisions, and her proposed findings of fact, conclusions of law, and decision are subject to exception and final decision by the Board. Moreover, we do not see how the preliminary orders of the Hearing Examiner could therefore create irreparable harm. No remedies are imposed prior to a final decision, and none are completely foreclosed.

Appellant contends that denying the interlocutory appeal would result in piecemeal litigation because of the possibility that the Board will not agree with rulings of the Hearing Examiner, thus necessitating a remand for another hearing. However, the practical consequence of Appellant's suggested approach would be that every preliminary order of the Hearing Examiner could be appealed directly to the Board due to the risk that the Board may not ultimately agree. The Board referred this case to a Hearing Examiner of the Montgomery County Office of Zoning and Administrative Hearings because of that office's experience and expertise in conducting professional administrative hearings. If every preliminary order was immediately appealable the purpose and benefits of the delegation would be undermined.

For the above discussed reasons, it is hereby **ORDERED** that the Interlocutory Appeal is hereby **DISMISSED**. The Hearing Examiner shall continue carrying out the delegation contained in the Board's order of February 1, 2018.

For the Board  
May 16, 2018



Angela Franco  
Chair

---

<sup>1</sup> While the State APA does not apply to Montgomery County agencies, we may look to decisions interpreting the State APA for guidance. *Harvey v. Marshall*, 389 Md. 243, 296 (2005).