

**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. 18-23

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ORDER OF DISMISSAL

On February 26, 2018, [REDACTED] (Appellant) filed this appeal of the decision of the Department of Corrections and Rehabilitation (DOCR) not to select him for a promotion to the rank of Lieutenant. Appellant alleged, in part, that he had improperly been given incomplete study materials for the promotional examination. On March 28, 2018, the County provided a response to the appeal, asserting that Appellant had not asked for all the materials, the DOCR test process was conducted appropriately, and that Appellant was unable to show that the County acted in a manner that was arbitrary and capricious, illegal, based on political affiliation or other nonmerit factors, or in violation of examination and scoring procedures.

On July 2, 2018, the Board asked the County for additional information concerning the actions of DOCR with regard to test preparation materials.¹ The County responded to the request for further information on July 24, 2018. The Board again asked the County for further information by letter dated August 8, 2018, including additional affidavits from officers who distributed test

¹The letter asked for “clarification as to: (a) whether there was a Correctional Law book available on August 6th when Appellant obtained the study source materials; (b) whether Appellant was offered a Correctional Law book at any time; (c) what was included in the “study packet” Appellant and other applicants signed for, and whether every applicant received the same materials; (d) whether the Correctional Law book was included with the study source material packet in other years or for other exams; (e) how many of the individuals obtaining study source materials received the Correctional Law book and whether there is a written record; and, (f) whether or not those who received the Correctional Law book made specific requests for a copy.”

preparation study materials, and the status of the eligible list resulting from the Lieutenant's exam, the number of applicants on the list, the schedule for future exams, and current vacancies at that rank. The Board also asked Appellant for certain information.

The County responded to the second request for information on September 10, 2018. As part of that response the County advised that Appellant had been promoted to the rank of Lieutenant effective September 2, 2018. Appellant did not respond to the Board's request.

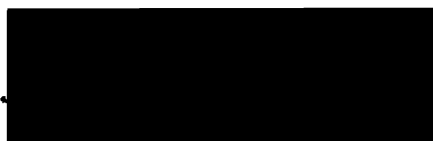
In light of the promotion, on September 18, 2018, the Board requested that the parties advise the Board by October 1, 2018, how they wished to proceed with the appeal. The County submitted a Motion to Dismiss on October 1, 2018, asserting that the MSPB should dismiss this appeal as moot since Appellant was promoted to the rank of Lieutenant, the position he had sought. Appellant's reply was also due on October 1, 2018, but he has filed no response or communication of any sort with the Board. Nor has Appellant provided a reply to the County's motion explaining why, having received the relief he had sought in his appeal, his case should not be dismissed as moot.

Appellant has not opposed the County's motion to dismiss for mootness or responded to the Board's August 8 and September 18 letters. Pursuant to Montgomery County Personnel Regulations (MCPR), § 35-7(d), the Board may dismiss an appeal if the appeal becomes moot, and under MCPR § 35-7(b) the Board may dismiss an appeal for failure to prosecute. MSPB Case No. 15-19 (2015); MSPB Case No. 09-07 (2009).

Accordingly, the Board grants the motion to dismiss and hereby **ORDERS**, that the appeal in MSPB Case No. 18-23 be **DISMISSED**, with prejudice, on the basis of mootness and for failure to prosecute the appeal.

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
October 29, 2018



Angela Franco
Chair