

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

**IN THE MATTER OF**

**████████████████████,**

**APPELLANT,**

**AND**

**MONTGOMERY COUNTY  
GOVERNMENT,**

**EMPLOYER**

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**CASE NO. 19-02**

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**ORDER OF DISMISSAL**

████████████████████ (Appellant) filed this appeal concerning denial of employment as a Supervisor, Strategic Industry Partnerships, with the Montgomery County Public Schools (MCPS). The appeal was submitted online to the Merit System Protection Board (MSPB or Board) on Friday, July 27, 2018, a date when the MSPB office is not open. Accordingly, the appeal was considered to have been officially received the next Board business day. On July 30, 2018, an acknowledgement letter was sent to Appellant’s attorney and the County, establishing a schedule for the County and Appellant to submit information and complete documentation concerning the appeal. The letter also advised Appellant’s attorney:

that the MSPB only has jurisdiction over appeals from applicants for employment in County merit system positions. Accordingly, I urge you to explore your client’s appeal rights, if any, to the MCPS.

The County submitted a Motion to Dismiss on August 27, 2018, asserting that the MSPB lacked jurisdiction. Appellant’s reply was due on September 24, 2018, but no reply or other pleading has been filed with the MSPB to date.

This Board’s jurisdiction is not plenary but is, rather, limited to that which is granted to it by statute. MSPB Case No. 10-09; MSPB Case No. 10-12; MSPB Case No. 10-16. *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); *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. 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.”). *See also Schwartz v. USPS*, 68 M.S.P.R. 142, 144-45 (1995).

The Montgomery County Code (MCC) grants the MSPB jurisdiction over appeals from applicants for employment in a merit system position with the County. MCC § 33-9(c) (“Any applicant for employment or promotion to a merit system position may appeal decisions of the Chief Administrative Officer with respect to their application for appointment or promotion.”); MCPR § 6-14 (“Under Section 33-9 of the County Code, a non-employee or employee applicant for a merit system position may file an appeal directly with the MSPB”). Thus, the MSPB only has jurisdiction over appeals from applicants for employment in County merit system positions. MSPB Case No. 09-08 (2009).

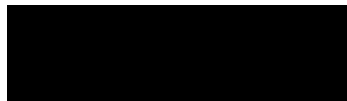
Merit system employees are defined by the Montgomery County Code, § 33-6, as “All persons who are employed by the county in full-time or part-time year-round permanent career positions in any department/office/agency of the executive and legislative branches of the county government or in any other position specifically so designated by law.” *See* MCPR § 1-39. It is undisputed that Appellant is appealing his nonselection for a supervisory position with the MCPS. The appeal states that the position Appellant sought was that of Supervisor, Strategic Industry Partnerships with the Montgomery County Public Schools. The exhibits attached to the appeal include a July 5, 2018, email from [REDACTED], Coordinator, Montgomery County Public Schools, Office of Human Resources and Development, advising Appellant that he had not been selected for the position.

The position Appellant was denied was not a merit system position with the executive or legislative branches of the County government; rather, it was a position with a separate entity, the MCPS. *Board of Education of Montgomery County v. Montgomery County*, 237 Md. 191, 197(1964) (“The board of education is not a part of the executive branch of the county government nor an agency under its control.”). The MCPS has personnel authority over its employees that is independent of the executive and legislative branches of County government. Md. Code Ann., Educ. § 4-103(a) (county board of education shall appoint personnel); § 6-201(a)(1) (“the county board shall employ individuals in the positions that the county board considers necessary for the operation of the public schools in the county.”). *See Donlon v. Montgomery County Public Schools*, 460 Md. 62, 90 (2018); *Chesapeake Charter, Inc. v. Anne Arundel County Board of Education*, 358 Md. 129, 138-39 (2000) (“teachers, principals, and other professional, administrative, clerical, security, transportation, and maintenance staff” are hired by and employees of the county school board “in accordance with a personnel system established by the county board.”).

Based on the foregoing analysis, the Board concludes that it lacks jurisdiction over Appellant's appeal of his nonselection for a position with the MCPS. Accordingly, it is hereby **ORDERED** that the appeal in Case No. 19-02 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 County, Maryland in the manner prescribed under the Maryland Rules, Chapter 200, Rule 7-202.

For the Board  
October 11, 2018



Angela Franco  
Chair