

**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. 19-03**

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**FINAL DECISION AND ORDER**

On July 30, 2018, ██████████ (Appellant) filed an appeal with the Merit System Protection Board (MSPB or Board), challenging a July 28, 2018, denial of employment. The appeal was based on a notice he received advising him that he was not selected for a Traffic Management Technician I, Grade 15 position (IRC29184) because he “Did not meet screening criteria.”<sup>1</sup> The County submitted a response to the appeal on August 17, 2018 (County Response) with four exhibits.<sup>2</sup> Appellant filed a reply to the County Response on September 4, 2018 (Appellant Response).

**FINDINGS OF FACT**

In July 2018, Appellant submitted an application for a Traffic Management Technician I, Grade 15 position with DOT in response to job posting IRC 29184. CX 1, ¶5; CX 2. The County received 33 applications for the position. CX 1, ¶ 3. The vacancy announcement stated that the

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<sup>1</sup>Appellant submitted his online appeal on Saturday, July 28, 2018, a day and time when the Board’s office is not open. Accordingly, the appeal is considered to have been officially received by Board the next business day.

<sup>2</sup> The County Exhibits (CX) are as follows:  
CX 1 - Affidavit of EP, Human Resources Specialist III, Office of Human Resources, August 6, 2018;  
CX 2 - Vacancy Details, iRecruitment Position Vacancy IRC 29184, Traffic Management Technician 003982, created November 24, 2017;  
CX 3 - Resume submitted by Appellant;  
CX 4 - Exercise Stats for IRC 29184 - DOT - Transportation Management - Traffic Management Technician I, submitted by Appellant, 07/24/18 - 07/25/18

minimum qualifications for the Traffic Management Technician I position included one year of experience in traffic engineering or traffic management:

One (1) year of experience in traffic engineering or traffic management that has required the application of the principles of traffic engineering and mathematics to the solution of traffic management problems involving traffic control, capacity, vehicular speed, and related matters.

CX 2, p. 4. Appellant alleges that his experience met this minimum qualification based on:

more than SEVEN (7) years of experience in Traffic Management Centers. Six and a half with the Pennsylvania Turnpike Commission and one-half of a year of experience within the Maryland State Highway Administration's Traffic Management Centers, as a contractor for Procopio and Associates.

Appeal, p. 2.

Appellant states that his seven years of experience in traffic management includes more than six years as a radio operator at the Pennsylvania Turnpike Commission's Traffic Operations Center. Appellant's Response, p. 2. Appellant's resume provides a detailed listing of Appellant's job duties as a Radio Operator 1 with the Pennsylvania Turnpike Commission. CX 3, pp. 2-3. The job duties of a Radio Operator 1 listed by Appellant in his resume include:

- Manage, monitor, document, and provide resource assistance to all incidents occurring on the PA Turnpike.
- Receives emergency telephone and radio calls, dispatching, coordinating and recording public safety communications involving life-threatening situations and police activities across the 540-Mile PA Turnpike system.
- Responsible for operations of the Communications System and possession of a thorough knowledge of all PTC highway operations, encompassing Pennsylvania State Police, maintenance, fare collection and fire/ambulance services.
- Responsible for following standard operating procedures set forth in the rules and regulations of the Federal Communications Commission (FCC).
- Receive requests from customers and Turnpike employees for assistance, utilize the Commission's Graphical Information System (GIS) to determine proper response, and process, document, and update all communication's activities through the use of the Commission's Computer Aided Dispatch System.
- Notify key personnel of significant and unusual incidents that adversely affects the operation of the roadway in accordance with the Commission's Emergency Procedures.
- Assists customers with traveler information and customer care information via numerous telephone lines, and provide helpful information in utilizing

- the Commission's Customer Care-online EZ Pass payment system.
- Operates and processes emergency alarms received via the computerized Motorist-Aid Call Box System.
- Dispatch Police and ensure their safety when patrolling the Turnpike, and provide investigatory assistance when requested by the State Police Patrol or Communications Corporal.
- Collects, summarizes and broadcasts roadway and weather conditions and disseminates electronic and verbal weather forecasts received from various forecasting services.
- Monitors and reports unusual activities that develop backlogs of traffic to include disabled vehicles, accidents, and construction.
- Coordinates Fare-Collection hourly radio safety checks of Toll Collectors at single-staffed interchanges and responsible for necessary notifications.

██████████ (EP), a Human Resources Specialist III with the Office of Human Resources (OHR), reviewed the applications and concluded that ten of the 33 applicants met the minimum qualifications for the position. CX 1, ¶8. She concluded that Appellant's resume indicates that he only had three months of experience in the field of traffic engineering or management, as a Highway Operations Technician with Procopio & Associates. CX 3, p. 1; CX 1, ¶7. Thus, EP determined that Appellant was one of the 23 applicants who did not meet the minimum qualifications for the Traffic Management Technician I position. CX 1, ¶s 5 and 6.

Appellant also alleges that he is the victim of harassment by County officials and that since 2009 he has been blacklisted from employment in retaliation for filing claims of discrimination based on his religion. Appeal, p. 2.

#### **APPLICABLE LAW**

**Montgomery County Code, Chapter 33, Personnel and Human Resources, Section 33-9, Equal employment opportunity and affirmative action**, which states in applicable part,

- (c) **Appeals by applicants.** 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. Appeals alleging discrimination prohibited by chapter 27, "Human Relations and Civil Liberties," of this Code, may be filed in the manner prescribed therein. Appeals alleging that the decisions of the Chief Administrative Officer were arbitrary and capricious, illegal, based on political affiliation, failure to follow announced examination and scoring procedures, or non-merit factors, may be filed directly with the Merit System Protection Board. . . .

**Montgomery County Personnel Regulations (MCPR), 2001 (As amended January 18, 2005, July 31, 2007, October 21, 2008, July 20, 2010, July 12, 2011, July 24, 2012, December 11, 2012, June 25, 2013, and June 30, 2015, February 2, 2016, and February 23, 2016), Section 6, Recruitment and Application Rating Procedures**, which provides, in pertinent part:

**§ 6-14. Appeals by applicants.**

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 alleging that the decision of the CAO on the individual's application was arbitrary and capricious, illegal, based on political affiliation or other non-merit factors, or that the announced examination and scoring procedures were not followed.

**Montgomery County Personnel Regulations (MCPR), 2001 (As amended February 15, 2005, October 21, 2008, November 3, 2009, July 27, 2010, February 8, 2011, and June 30, 2015), Section 35, Merit System Protection Board Appeals, Hearings, and Investigations**, which states in applicable part:

**§ 35-2. Right of appeal to MSPB.**

- (c) An applicant or employee may file an appeal directly with the MSPB over a denial of employment.
- (d) An employee or applicant may file an appeal alleging discrimination prohibited by Chapter 27 of the County Code with the Human Relations Commission but must not file an appeal with the MSPB.

**ISSUE**

Was the County's decision to deny Appellant employment arbitrary and capricious, illegal, or based on political affiliation or other non-merit factors, or announced examination and scoring procedures that were not followed?

**ANALYSIS**

Appellant has the burden of proving that the County's action with regard to his application was arbitrary, capricious, illegal, or based on political affiliation or other non-merit factors. Montgomery County Code, §33-9(c); MSPB Case No. 18-13 (2018); MSPB Case No. 15-01 (2015).

The County presented evidence demonstrating that the minimum qualifications for the Traffic Management Technician I position included at least one year of experience in traffic engineering or traffic management that involved applying the principles of traffic engineering and mathematics to the solution of traffic management problems involving traffic control, capacity, vehicular speed, and related matters. Appellant contends that his experience with the Pennsylvania Turnpike Commission and the Maryland State Highway Administration meets this requirement. However, he had much less than a year with a State Highway Administration contractor, and the job duties he described for his job as radio operator in the Pennsylvania customer assistance center do not encompass traffic engineering or management functions. Appellant has failed to

demonstrate how his call center customer assistance experience is comparable to traffic engineering or traffic management functions that require “the application of the principles of traffic engineering and mathematics to the solution of traffic management problems involving traffic control, capacity, vehicular speed, and related matters.” CX 2, p.4; CX 3, pp. 2-3. Accordingly, we conclude that Appellant has failed to show that the County’s determination that he lacked the requisite experience for the position was arbitrary or capricious.<sup>3</sup>

Finally, as to Appellant’s claim that since 2009 he has been blacklisted and harassed by the County based on his religion, the Board has previously found on multiple occasions that it lacks jurisdiction over Appellant’s discrimination claims. *See, e.g.*, MSPB Case No. 18-28 (2018); MSPB Case No. 16-01 (2015); MSPB Case No. 16-02 (2015); MSPB Case No. 15-31 (2015); MSPB Case No. 15-15 (2015); MSPB Case No. 15-04 (2015); MSPB Case No. 14-40 (2014). *See* Montgomery County Code, § 33-9(c); MCPR § 35-2(d).

Based on the record evidence, it appears that rejection of the application based on lack of qualifications was legitimate and that there is no indication that action was based on any impermissible non-merit factor. The Board therefore concludes that Appellant has failed to meet his burden of showing that the County’s decision was arbitrary and capricious, illegal, based on political affiliation, failure to follow announced examination and scoring procedures, or nonmerit factors.

Based upon the foregoing analysis, and finding that a hearing on this matter is unnecessary, the Board **DENIES** Appellant’s appeal from his nonselection for the position of Traffic Management Technician I.

Pursuant to Montgomery County Code, § 33-15, *Judicial review and enforcement*, and MCPR, § 35-18, *Appeals to court of MSPB decisions*, if any party disagrees with the decision of the Merit System Protection Board they may within 30 days file an appeal with the Circuit Court for Montgomery County, Maryland, in the manner prescribed under Chapter 200, Title 7 of the Maryland Rules.

For the Board  
October 8, 2018



Angela Franco  
Chair

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<sup>3</sup> Appellant attempted to provide additional detail concerning his experience as part of his response in this appeal, but some of that information was not part of his application. The Board has held in previous cases that the County may rely on the information provided with the application itself, and that the Board will not reverse the County’s decision based on subsequently provided information. MSPB Case No. 16-15 (2016); MSPB Case Nos. 15-14 and 15-23 (2015). In any event, we see nothing in the subsequently provided information that would justify altering our finding.