

**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. 19-08**

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**ORDER OF DISMISSAL**

[REDACTED] (Appellant) filed this appeal concerning denial of employment as a temporary, seasonal, part-time Library Page position, with the Montgomery County Public Libraries (MCPL). The appeal was submitted online to the Merit System Protection Board (MSPB or Board) on October 3, 2018. On October 4, 2018, an acknowledgement letter was sent to Appellant and the County, establishing a schedule for the parties to submit information and complete documentation concerning the appeal.

The County submitted a response on November 5, 2018, asserting that the appeal should be dismissed for lack of jurisdiction because it was filed a day late. The County response also argued that the denial of employment was appropriate. Appellant did not submit a reply or other pleading.

After reviewing the County response, the Board sent the parties a request for clarification on November 29, 2018. The Board asked the County to provide an explanation of the merit system status of the temporary, seasonal, part-time Library Page position, and address the Board's jurisdiction if the position is not in the merit system. Appellant was provided with an opportunity to respond to the County.

On December 14, 2018, the County submitted a response to the clarification request. The County response argued that the appeal should be dismissed for lack of jurisdiction and provided

a Class Specification which indicates that the Library Page position is not in the merit system. Although Appellant was again provided with an opportunity to respond, she failed to do so.

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. 19-02 (2018); MSPB Case No. 16-02 (2015); 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. A temporary position is a non-career position classified and filled under merit system principles. MCPR § 1-75. Thus, there can be no dispute that Appellant is appealing her nonselection for a temporary, seasonal, Library Page position that is not in the merit system.

Based on the foregoing analysis, the Board concludes that it lacks jurisdiction over Appellant's appeal of her nonselection for a non-merit system Library Page position with the MCPL. Accordingly, it is hereby **ORDERED** that the appeal in Case No. 19-08 is dismissed for lack of jurisdiction.<sup>1</sup>

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

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<sup>1</sup> Appellant has available to her other avenues to address potential allegations of disability discrimination, such as the United States Equal Employment Opportunity Commission, the Maryland Commission on Civil Rights, and the Montgomery County Office of Human Rights.

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County, Maryland County, Maryland in the manner prescribed under the Maryland Rules, Chapter 200, Rule 7-202.

For the Board  
January 24, 2019



Michael J. Kator  
Chair