

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

IN THE MATTER OF

[REDACTED],

APPELLANT,

AND

**MONTGOMERY COUNTY
GOVERNMENT,**

EMPLOYER

*
*
*
*
*
*
*
*
*
*
*

CASE NO. 19-29

=====

ORDER OF DISMISSAL

Appellant, an employee of the County Department of Transportation (DOT), Division of Highway Services (DHS), filed the above captioned appeal with the Merit System Protection Board (Board or MSPB) on June 5, 2019, concerning an alleged denial of a promotion to a Work Force Leader II position. Because the appeal did not include a copy of a formal notification of non-promotion, by letter dated June 6, 2019, the Board stayed the processing of the appeal and requested submission of a copy of a notification of nonselection as required by Montgomery County Personnel Regulations (MCPR), § 35-4(d)(3). On June 12, 2019, Appellant submitted additional documents concerning his application. However, while Appellant alleged that in meetings with his supervisor and an individual in the DHS Human Resources division he was verbally told that he had been removed from the Well Qualified list and placed on the Qualified list, Appellant did not submit a written notification of nonpromotion.

On July 9, 2019, the Board issued a Show Cause Order requiring Appellant to provide a statement of such good cause for why the appeal regarding his application for a promotion should not be dismissed as premature. Appellant was advised that, absent the filing of the required statement and a finding by the Board that there was good cause for the filing of his appeal prior to a denial of the promotion, the Board would dismiss this appeal. The statement was due on or before close of business July 18, 2019. To date, Appellant has not filed a statement of good cause.

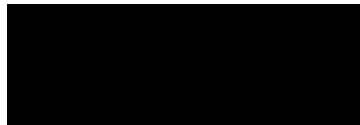
In previous cases this Board has held that where an appellant has been deemed “Qualified” for a position and placed on an eligible list, but no selection has been made, the Board lacks jurisdiction over the appeal because no denial of employment or a promotion has occurred. MSPB Case No. 17-01 (2016); MSPB Case No. 14-41 (2014); MSPB Case No. 14-16 (2014); MSPB Case No. 14-14 (2014). A denial of employment or promotion that would permit an appeal occurs when the County determines that an applicant does not meet the minimum qualifications for a position or has been specifically provided with official notice that the applicant will not receive further consideration for a position. MSPB Case No. 14-41 (2014); MSPB Case No. 14-12 (2014).

After being given the opportunity, Appellant has not provided an explanation for why the appeal regarding his application for a promotion should not be dismissed as premature. Thus, because Appellant cannot be deemed to have been denied a promotion, the Board must dismiss this matter because it lacks jurisdiction over the appeal. MCPR § 35-7(c).¹

Accordingly, it is hereby **ORDERED** that the appeal in Case No. 19-29 be and hereby is **DISMISSED**.

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
July 31, 2019



Michael J. Kator
Chair

¹ Appellant may file a new appeal with the Board should he not be selected for the Work Force Leader II position. See MSPB Case No. 14-16 (2014).