

**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. 20-05

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ORDER OF DISMISSAL

[REDACTED] (Appellant), a licensed pharmacist, filed this appeal alleging a denial of employment by WorkSource Montgomery. The appeal was submitted online to the Merit System Protection Board (MSPB) on Tuesday, September 10, 2019, at 7:48 p.m., after MSPB office hours. Accordingly, the appeal is considered to have been officially received by the Board on September 11, 2019, the next Board business day.

Appellant alleges that he was accepted by WorkSource Montgomery into a workforce development program under the Workforce Innovation and Opportunity Act (WIOA). Appellant states that he received training in resume writing and interview techniques in early March 2019. Appellant contends that on March 14, 2019, he met with a Career Advisor and the Director of the WorkSource Montgomery Adult and Dislocated Worker and Youth Program. Appellant claims that at the meeting the WorkSource personnel “endeavored to coerce/bully/subjugate me to accept, to be trained into a different trade or non-pharmacy job through the WIOA.” There is no indication that Appellant applied for or was denied a County merit system position.

On September 17, 2019, an acknowledgement letter was sent to Appellant and the County, establishing a schedule for the County and Appellant to submit information and complete documentation concerning the appeal. Because it appeared that to the extent Appellant was appealing a denial of employment, it was by an entity that was not part of County government, the letter also advised Appellant that:

[T]he MSPB only has jurisdiction over appeals from applicants for employment in County merit system positions. Indeed, it is not clear that WorkSource Montgomery has merit system employees or even that it is a County agency. In consideration of this, if you wish to withdraw your appeal please advise the Board as soon as possible.

The County submitted a Motion to Dismiss on October 23, 2019, asserting that the MSPB lacked jurisdiction. Appellant's reply was due on November 14, 2019, 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. 19-02 (2018); 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.

Pursuant to MCC § 15A-9(a), the "Council must designate, by resolution . . . a single nonprofit corporation which complies with all requirements of this Article as the County's Workforce Development Corporation." One of the requirements of that statutory provision is that the designated Workforce Development Corporation must "not [be] an instrumentality of the County." MCC § 15A-11(a)(2). In 2015, Montgomery County Council Resolution 18-295 (October 20, 2015) designated WorkSource Montgomery, Inc., as the County's Workforce Development Corporation.

It is undisputed that Appellant is appealing the alleged actions of WorkSource Montgomery, and that WorkSource Montgomery, Inc., is a private, non-profit corporation. The appeal alleges that WorkSource Montgomery refused to assist Appellant in obtaining employment as a pharmacist. There

is no claim that any County merit system position was in any way implicated or that any County agency was involved. We therefore conclude that WorkSource Montgomery is a corporate entity separate from Montgomery County Government and that Appellant was not applying for or denied a merit system position with the County government.

Based on the foregoing analysis, the Board concludes that it lacks jurisdiction over Appellant's appeal. Accordingly, it is hereby **ORDERED** that the appeal in Case No. 20-05 is dismissed for lack of jurisdiction.¹

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
December 3, 2019



Harriet E. Davidson
Vice Chair

¹ Board Member Michael J. Kator did not participate in the consideration, preparation, or adoption of this decision.