

**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. 22-39

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FINAL DECISION

This is the Final Decision of the Montgomery County Merit System Protection Board (MSPB or Board) on the appeal of ██████████ (Appellant) from the determination of Montgomery County’s Board of Elections (BOE) that Appellant did not meet screening criteria. The Appeal was officially filed May 16, 2022.¹ The County filed its response to the appeal (County Response) on June 14, 2022. Appellant filed her reply (Appellant’s Reply) on July 18, 2022. The appeal was considered and decided by the Board.

FINDINGS OF FACT

Appellant, a current County employee, is a School Health Room Technician. On May 5, 2022, she applied for a Grade 16 Office Services Coordinator position with the Board of Elections (IRC54076). County Exhibit (CX) 1. Appellant received notice that she did “not meet screening criteria” for the position. Status Change Notice, May 13, 2022.

According to the County, Appellant did not meet the minimum qualifications for the job because she lacked the required “Four (4) years of progressively responsible office support experience.” CX 2, Affidavit of ██████████ (June 8, 2022). Appellant’s application indicates that she only has two years and three months of such experience as an Election Aide II. CX 1; CX 2. Because Appellant’s resume lists the Election Aide II position as part time/temporary she likely

¹The appeal was filed by electronic mail on Friday, May 13, 2022, a date when the Merit System Protection Board offices are not open. Accordingly, the appeal is considered to have been officially received the next Board business day. See MSPB Case No. 18-13 (2018).

has less than two years of experience. CX 1, p. 22. Moreover, because Appellant did not list any education beyond her High School degree (a minimum requirement for the position), there is no basis to allow any education to be substituted for work experience. CX 1, pp. 4, 10-11.

Appellant admits that she failed to include her full employment history in the Work Experience section of the electronic job application. Appellant's Reply, ("I'm not going to deny that I didn't put my other employment information in the work experience section"). *See also* Appellant Email, July 5, 2022. ("I didn't put my full work experience and honestly the process is very confusing especially when you have uploaded your Resume. I also noted that in the preferred criteria part I did put School Health Room Technician along with my work as an Election Judge Trainer or II.").

The electronic job application instructs applicants how they must enter Work Experience into the electronic job application:

Please enter the specific jobs from your resume and the duration of time you worked performing any of the indicated job responsibilities. Select the responsibilities or work areas in which you have experience and that are clearly indicated on your resume during the time period entered. The Start and End Date for your job experience must be completed. If you are currently working in the job and performing any of the indicated job responsibilities, please use today's date for the End Date. The system will not accept "Present" or any other text.

CX 1, p. 12.

From our review of Appellant's resume, it does not appear that her work experience other than as an Election Aide qualifies as "office support experience." The work experience on Appellant's resume includes School Health Room Technician, Realtor, Jiffy Lube Service Technician, Library Page (part time), and Bus Operator. CX 1, pp. 21-23.

The relief sought by Appellant is limited to receiving an explanation for her nonselection. The MSPB appeal form asks the question: "What action would you like the Board to take in this case (*i.e.*, what is the relief/remedy you are requesting)?" Appellant answered: "Specific reason why they denied my application stating that I didn't meet screening criteria."

While the County argues that it is not obligated to provide specific reasons why an applicant has been determined to not meet screening criteria it nevertheless provided the information to the Board and Appellant.

APPLICABLE CODE PROVISIONS AND REGULATIONS

Montgomery County Code, Chapter 33, Personnel and Human Resources, § 33-9, Equal Employment Opportunity and Affirmative Action, which provides, in pertinent 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 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 nonmerit 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, June 30, 2015, February 2, 2016, and February 23, 2016), Section 6, Recruitment and Application Rating Procedures, which provides, in relevant 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, 2001 (As amended February 15, 2005, October 21, 2008, November 3, 2009, July 27, 2010, February 8, 2011, June 30, 2015, and June 1, 2020), 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.

ISSUE

Was the County's decision on Appellant's application 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 AND CONCLUSIONS

In a nonselection appeal the appellant has the burden of proving that the County's decision on the application was arbitrary, capricious, illegal, or based on political affiliation or other non-merit factors. Montgomery County Code, § 33-9(c); MCPR § 6-14; MSPB Case No. 18-13 (2018). *See* MCPR § 34-9(d)(2). The County argues that Appellant cannot meet this substantial burden of proof under the Personnel Regulations and County Code to show that the County's decision was arbitrary and capricious, or illegal. The Board agrees and concludes that Appellant has failed to meet this burden.

Although Appellant stated that she did not provide the necessary information to allow OHR to properly assess her experience because the instructions were confusing, we find that the instructions were explicit and clear. Just as importantly, the application and Appellant's resume do not demonstrate that she met the minimum qualifications for work experience.

Under MCPR § 6-4(b), "the OHR Director may disqualify an applicant at any point in the hiring process if: (1) the applicant lacks required minimum qualifications such as education, experience, a license, or a certification; . . .". Appellant's attempts to now provide work experience details omitted from her application must be rejected. The Board has previously held that the County may rely on information provided with the application and that the Board will not reverse the County's decision based on subsequently provided information. MSPB Case No. 19-03 (2018); MSPB Case No. 16-15 (2016); MSPB Case Nos. 15-14 and 15-23 (2015).

We also note that while there may be no explicit regulation requiring OHR to give detailed explanations as to why applicants do not meet screening criteria when notifying an applicant, under the Maryland Public Information Act an applicant such as Appellant is a “person in interest” who may be entitled to documents containing that information. Md. Code Ann., General Provisions Article, § 4-311(b). However, Appellant does not suggest that she contacted OHR to ask for an explanation before filing her appeal. In any event, the appeals process resulted in Appellant being given an explanation and being allowed to respond.


Appellant has failed to meet her burden of showing that the nonselection decision, based on the lack of required work experience she listed on her 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 Code, § 33-9(c); MCPR, § 6-14.

ORDER

Based upon the foregoing analysis and finding that a hearing on this matter is unnecessary, the Board **DENIES** Appellant’s appeal from her nonselection for the position of Office Services Coordinator (IRC54076).

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*, within 30 days of this Order a petition for judicial review 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
September 27, 2022


Harriet E. Davidson
Chair