

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

IN THE MATTER OF

**[REDACTED]
[REDACTED],**

APPELLANT,

AND

**MONTGOMERY COUNTY
GOVERNMENT,**

APPELLEE

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CASE NO. 25-10

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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 [REDACTED] (Appellant) from the determination of the Montgomery County Office of Human Resources (OHR) Occupational Medical Services (OMS) division that Appellant was not medically acceptable to perform the duties of a Recreation Specialist. The Appeal was officially filed February 24, 2025. The County filed its response to the appeal (County Response) on March 27, 2025. The Appellant notified the Board on April 23, 2025, that he did not wish to submit any final comments.

The Board has determined that the record is complete based upon a review of the documents and exhibits provided by the parties and issues the following decision.¹

¹ Appellant did not label Appellant's attachments. For ease of reference, the Board has done so. Appellant provided the following documents:

1. A. Ex. 1 – Appeal Form #290, filed on February 24, 2025.
2. A. Ex. 2 – Denial of Employment Letter, dated February 5, 2025.

The County provided the following documents:

1. CR. – County Response, filed on March 27, 2025.
2. C. Ex. 1 – Job Bulletin 2024-00089 Rec Specialist Youth Development.

FINDINGS OF FACT

Appellant applied for a Grade 21 position as a Recreation Specialist with the Montgomery County Department of Recreation (REC). CR; C. Ex. 1. Per the job announcement, the job “may require work that involves physical demands, occasionally working outdoors in varying weather and extreme temperatures. . .” C. Ex. 1. Per the Classification Specification, the position is subject to the “Limited Core” medical exam protocol. C. Ex. 5. The Classification Specification also states that “[w]ork is primarily sedentary, but typical physical activity may vary considerably by position/team of assignment and it includes some walking, standing, bending, or carrying and delivering of supplies.” *Id.*

At the time of his interview, Appellant claims that he was six (6) days post-shoulder surgery and was in a sling, which was visible during Appellant’s interview. A. Ex. 1. On November 26, 2024, the Office of Human Resources issued a conditional offer of employment to Appellant, with a requirement that Appellant submit to and satisfy the medical requirements of the position. C. Ex. 2. On December 3, 2024, Appellant submitted to the required medical evaluation. A. Ex. 1. Appellant claimed that during the appointment the OMS doctor requested that Appellant obtain a doctor’s note regarding Appellant’s limitations due to the surgery at his next follow-up surgery appointment. *Id.* Appellant also claimed that the OMS doctor stated that Appellant had ninety (90) days to meet the medical clearance. *Id.* On January 23, 2025, after turning in the doctor’s note, Appellant received a telephone call wherein he learned that the conditional offer of employment was being rescinded. *Id.*

On January 9, 2025, the County’s Occupational Medical Services issued a memorandum to REC, indicating that Appellant was “Not Fit for Duty.” C. Ex. 3. On February 5, 2025, OHR issued a letter to Appellant, rescinding the conditional offer of employment based upon OMS’ determination that Appellant was “Not Fit for Duty.” A. Ex. 2; C. Ex. 4. Appellant received the letter from OHR on February 20, 2025. A. Ex. 1.

On March 24, 2025, OMS sent a memorandum to S█████ F█████, summarizing the Employee Medical Examiner’s (EME) decision designating Appellant as “Not Fit for Duty.” C. Ex. 6. The EME indicated that the decision was based upon Appellant’s disclosure and the Appellant’s medical records that stated Appellant was in a sling recovering from shoulder surgery and would not be cleared for full duty for approximately six (6) to seven (7) months post operation. *Id.* The EME opined that Appellant was unable to perform the essential functions of the job, as Appellant would be responsible for lifting items in excess of 20 lbs. and driving a 12-15 passenger vehicle with staff and program participants. *Id.*

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3. C. Ex. 2 – Conditional Offer, dated November 26, 2024.
 4. C. Ex. 3 – Not Fit for Duty Notification, dated January 9, 2025.
 5. C. Ex. 4 – Withdrawal of Conditional Offer, dated February 5, 2025.
 6. C. Ex. 5 – Class Specification No. 001015, Recreation Specialist.
 7. C. Ex. 6 – Memorandum from EME to OHR and Appellant, dated March 24, 2025.

Appellant's MSPB appeal form alleged that the Department's decision was wrong because rescission of the job offer was based on a temporary medical inability to complete the role. *See A. Appeal Form*. Appellant further indicated that the action he wanted the Board to take was to "allow for a second physical evaluation and an updated doctors note to be submitted allowing for [Appellant] to pass the medical clearance and accept the position." *Id.*

POSITIONS OF THE PARTIES

1. Appellant

- a. The decision to rescind the job offer was incorrect.
- b. OMS did not reach out to Appellant prior to issuing the rescission letter.
- c. Had OMS reached out, it would have been revealed that Appellant no longer had any physical restrictions that would prevent Appellant from performing the essential duties of the position.

2. County

- a. Appellant is unable to meet the burden of proof that the County's decision to rescind the conditional offer of employment was arbitrary, capricious, or illegal.

APPLICABLE CODE PROVISIONS AND REGULATIONS

MONTGOMERY COUNTY CODE

Sec. 33-9. Equal employment opportunity and affirmative action.

* * *

- (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 nonmerit factors, may be filed directly with the merit system protection board. Appeals filed with the merit system protection board shall be considered pursuant to procedures adopted by the board. The board may order such relief as is provided by law or regulation.

MONTGOMERY COUNTY PERSONNEL REGULATIONS, 2001

SECTION 6. RECRUITMENT AND APPLICATION RATING PROCEDURES

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.

SECTION 8. MEDICAL EXAMINATIONS AND REASONABLE ACCOMMODATION

8-1. Definitions.

- (a) Applicant: In this section, applicant means an individual who has received a conditional job offer for a County merit system position.
- (b) Conditional offer: An offer of County employment that the OHR Director may withdraw if the applicant fails to meet the medical requirements for the position.

* * *

- (c) Reasonable accommodation: A term that means a modification or adjustment:
 - (1) to a job application process that enables a qualified applicant with a disability to be considered for the position the qualified applicant desires;

* * *

8-3. Medical requirements for employment.

- (a) An applicant who is selected for a County position must meet the medical requirements for the position before the applicant is appointed to the position.

* * *

8-4. Medical standards and guidelines for medical examinations and preemployment inquiries.

- (a) Policy on medical standards and guidelines.
 - (1) The CAO must establish, consistent with the ADA:
 - (A) medical standards for positions and occupations; and

* * *

8-5. Reasonable accommodation.

- (a) If the Employee Medical Examiner (EME) finds that an applicant or employee is a qualified individual with a disability that impairs the individual's ability to perform

the essential functions of the job, the OHR Director must determine if the employee or applicant can be reasonably accommodated.

* * *

8-6. Required medical examinations of applicants; actions based on results of required medical examinations.

(a) Medical and physical requirements for job applicants.

- (1) The OHR Director may condition a job offer on the satisfactory result of a post-offer medical examination or inquiry required of all entering employees in the same job or occupational class.
- (2) An applicant who receives a conditional offer of employment in a County position must:
 - (A) submit a completed medical history form to OMS; and
 - (B) undergo the medical examinations or tests as required by the medical exam protocol that the EME has determined is appropriate for the County position.

* * *

- (7) The County may use the results of a pre-placement medical evaluation to:
 - (A) determine the individual's current ability to perform essential functions of the offered position without significant threat to the health and safety of the individual or others;
 - (B) medically certify the individual's need for a work restriction or reasonable accommodation;
 - (C) establish baseline health information on an employee that may be used to monitor changes over time; and
 - (D) detect health problems in the individual that need follow-up.
- (8) The EME must base the determination of whether an individual is medically fit for a position on the medical history and findings that directly reflect on the individual's ability to perform the essential job duties under the expected conditions. The EME must consider only medical findings that

- (A) affect the individual's current ability to perform the essential job duties under the expected conditions; or
- (B) indicate that the individual poses a direct threat to the health and safety of the individual or others.

* * *

(b) Medical exam protocols.

(1) How medical exam protocols are established.

- (A) The EME must establish a medical exam protocol for each County occupational class. The EME may include a medical history review, a physical evaluation, medical or physical tests, and consultations in a medical exam protocol.
- (B) The EME may require additional medical evaluations not included in the assigned medical exam protocol or may apply a different medical exam protocol, as appropriate:
 - (i) if one or more of the duties of a particular position or the conditions under which the duties are performed present risks or hazards not present in the duties assigned to other positions in the occupational class; or
 - (ii) if necessary to determine the applicant's ability to perform the essential functions of the job with or without accommodation.

* * *

(2) Types of medical exam protocols.

* * *

- (B) Limited Core Exam. This protocol includes a medical history review, vision and hearing tests if the employee's position requires driving, and a drug test, if required for the position. Depending on the risks associated with the applicant's job, other tests and a hepatitis B vaccination may be required. This protocol is for applicants for positions in occupational classes that are subject to preemployment drug screening and which:

- (i) are sedentary, but driving is a recurring and significant duty;
or
 - (ii) involve significant exposure to communicable diseases.
- (C) Core Exam. This protocol includes the same requirements as the limited core exam, but also includes a physical examination by a physician, urinalysis, EKG, additional blood tests, and additional tests for communicable diseases. A rabies vaccination may be required depending on the risks associated with the job. This protocol is for applicants for positions in occupational classes that involve:
 - (i) moderate or heavy physical demands;
 - (ii) significant exposure to potentially aggressive or combative people;
 - (iii) emergency communications; or
 - (iv) frequent shift rotation.

* * *

- (d) Application of ADA and reasonable accommodation.
 - (1) The EME must determine if the applicant is a qualified individual with a disability under the ADA when the Employee Medical Examiner finds that an applicant has a medical condition that impairs the individual's ability to perform the essential functions of the job or would be a direct threat to the health or safety of the applicant or others.
 - (2) If the EME finds that an applicant is a qualified individual with a disability under the ADA, the department director must provide a reasonable accommodation, unless the OHR Director determines that accommodation would impose an undue hardship on the County.
 - (3) The OHR Director may withdraw the conditional job offer and not consider the applicant for employment in that job, if:
 - (A) the EME finds that the applicant with a medical impairment is not a qualified individual with a disability under the ADA; or

- (B) the applicant is a qualified individual with a disability under the ADA but the OHR Director has determined that reasonable accommodation would impose an undue hardship on the County.

* * *

8-8. Medical reports on applicant or employee fitness. After a required medical examination, the EME must:

- (a) prepare a written report of the medical findings and a determination of the individual's fitness for the position;
- (b) maintain this report as part of the individual's official medical record; and
- (c) advise the applicant or employee in writing if the EME finds the individual to be medically unqualified, the reason for the disqualification, and the manner in which the individual may appeal the decision.

* * *

8-11. Appeals by applicants and grievance rights of employees.

- (a) A non-employee applicant or employee applicant who is disqualified from consideration for a position or rated as medically unfit for appointment to a position may file an appeal directly with the MSPB under Section 35 of these Regulations.

SECTION 34. GRIEVANCES

34-9. Grievance procedure.

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- (d) Burden of Proof.

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- (2) The grievant has the burden of proof in a grievance on any other issue.

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SECTION 35. MERIT SYSTEM PROTECTION BOARD APPEALS, HEARINGS AND INVESTIGATIONS

35-2. Right of appeal to MSPB.

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- (c) An applicant or employee may file an appeal directly with the MSPB over a denial of employment.

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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 was arbitrary, capricious, illegal, or based on political affiliation or other non-merit factors. *See* Montgomery County Code, §33-9(c); MSPB Case No. 18-13 (2018); Montgomery County Personnel Regulations (MCPR) § 34-9(d)(2). The County argues that Appellant has failed to prove that the County's decision was arbitrary, capricious, or illegal. The Board agrees and concludes that Appellant's appeal is denied.

The County is authorized to establish medical standards for each County position. *See* MCPR § 8-4(a)(1)(A). An applicant must meet the required medical standards to be considered for the position. *See* MCPR § 8-3(a). The County may withdraw an offer of employment if the applicant fails to meet the medical standards for the position. *See* MCPR § 8-1(b).

In the instant case, Appellant applied and interviewed for the position, was provided a conditional offer of employment pending a medical evaluation, submitted to a required medical evaluation, but was unable to satisfy the medical requirements of the job. At the time of his medical evaluation, Appellant was only a few weeks post shoulder surgery. The EME determined, based upon the medical records and other information provided by Appellant, that Appellant could not currently perform the essential functions of the position. Because Appellant could not satisfy the medical requirements of the position, OHR rescinded the conditional offer of employment.

There is no dispute that appellant failed to meet the fitness requirements specified for the Recreation Specialist position. *See* CE Ex. 6. The Board has previously determined on multiple occasions that the County should receive significant deference in its decision-making surrounding medical fitness. *See, e.g.* MSPB Case No. 23-02 (2023); MSPB Case No. 15-30 (2015); MSPB Case No. 13-01 (2012); MSPB Case No. 03-01 (2003). Appellant has provided no evidence that the County's decision to withdraw his conditional offer, based on his failure to meet those fitness requirements, 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. *See* Montgomery County Code, § 33-9(c); MCPR, § 6-14. Additionally, Appellant chose not to provide a reply to the County's response to the appeal. As such, Appellant has not met Appellant's

burden of proof. See MSPB Case No. 23-02 (2023). As such, we conclude that Appellant has not met his burden of proof, and his appeal is denied.


We note that, going forward, Appellant is free to apply for any open County position and undergo a new medical evaluation if required.²

ORDER

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 Recreation Specialist (Job Number 2024-00089). It is further **ORDERED** that, should Appellant apply for a future position, the County will reconsider Appellant's medical acceptability based on his then existing medical condition.

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
June 24, 2025


Sonya E. Chiles
Chair

² Should Appellant experience nonselection after applying for a new position, such nonselection would be treated separate and apart from the instant case. Appellant would maintain appeal rights to the MSPB pursuant to Montgomery County Code § 33-9 and MCPR § 6-14.