

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

**IN THE MATTER OF**

**[REDACTED],**

**APPELLANT,**

**AND**

**MONTGOMERY COUNTY  
GOVERNMENT,**

**APPELLEE**

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**CASE NO. 25-12**

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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 Child Welfare Caseworker. The Appeal was officially filed March 3, 2025.<sup>1</sup> The County filed its response to the appeal (County Response) on April 2, 2025. On April 16, Appellant filed a letter dated April 15, 2025, from her Family Nurse Practitioner.

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.<sup>2</sup>

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<sup>1</sup>The appeal was submitted online to the MSPB on February 27, 2025, at 8:18 p.m., after Board business hours. The appeal was officially received by the MSPB the next Board business day. *See* MSPB Case No. 18-13 (2018).

<sup>2</sup> 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 #292, filed on February 27, 2025.
2. A. Ex. 2 – Denial of Employment Letter, dated February 5, 2025.
3. A. Ex. 3 – Physician's Note from K [REDACTED] C [REDACTED], CRNP, dated April 15, 2025.

The County provided the following documents:

## FINDINGS OF FACT

On August 20, 2024, the County issued a recruitment advertisement for the position of Child Welfare Caseworker, Grade 23, with the Department of Health and Human Services (HSS). C. Ex. 1. Per the advertisement, the successful candidate “will need to operate a motor vehicle to transport children, supplies, and equipment, to other locations and would require the need to lift and carry, and manage stairs with children, equipment, and supplies.” C. Ex. 1. The advertisement also stated that “[s]elected candidates for this position will be subject to a pre-employment medical exam, drug and alcohol screening and criminal history records check through the Maryland State Department of Public Safety and Correctional Services.” C. Ex. 1. The advertisement indicated that “[a]ny applicant who fails the medical exam . . . may be disqualified from employment for this position.” C. Ex. 1. The Medical Exam Protocol in the Classification Specification includes “Limited Core Exam with a Drug/Alcohol Screen.” C. Ex. 5.

Appellant applied for a Grade 23 position as a Child Welfare Caseworker with the Montgomery County Department of Health and Human Services (HHS). The class specification, job posting, and conditional offer indicated that candidates were required to successfully complete a medical examination protocol. *See* C. Ex. 1; C. Ex. 2; C. Ex. 5. The medical examination protocol specified for the position was a Limited Core Exam with a Drug/Alcohol Screen. *See* C. Ex. 5.

On November 21, 2024, Appellant was issued a conditional offer of employment for the position, subject to her satisfying the County’s medical standards for employment. *See* C. Ex. 2. Appellant presented for the physical examination on January 2, 2025. *See* C. Ex. 3.

On January 21, 2025, OMS issued a Memorandum, indicating that Appellant was “not fit for duty.” C. Ex. 3. On February 5, 2025, Appellant’s conditional offer was withdrawn based on the EME’s assessment that she did not meet the required medical standards for the position. *See* A. Ex. 2; C. Ex. 4.; C. Ex. 6.

On February 11, 2025, OMS doctor Dr. N [REDACTED] M [REDACTED], MD, sent a memorandum to Appellant, explaining that the decision to designate Appellant in a “not fit for duty” status was based upon a review of Appellant’s medical records, specifically information from Appellant’s treating physician that stated “without surgery, [Appellant] would have a restriction that would not allow [Appellant] to lift more than 10 pounds.” C. Ex. 6. The Memorandum also stated that OMS reached out to the department to see if there were any ways to accommodate Appellant’s

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1. CR. – County Response, filed on March 27, 2025.
  2. C. Ex. 1 – Job Bulletin 2024-00119 Child Welfare Caseworker.
  3. C. Ex. 2 – Conditional Offer, dated November 21, 2024.
  4. C. Ex. 3 – Not Fit for Duty Notification, dated January 21, 2025.
  5. C. Ex. 4 – Withdrawal of Conditional Offer, dated February 5, 2025.
  6. C. Ex. 5 – Class Specification No. 000638, Child Welfare Caseworker.
  7. C. Ex. 6 – Memorandum from EME to Appellant, dated February 11, 2025.

restrictions; however, due to the nature of the duties, the County determined that it was unable to reasonably accommodate Appellant's restrictions. C. Ex. 6.

Appellant's MSPB appeal form alleged that the Department's decision was made in error because Appellant disclosed her disability as requested on the medical history form prior to her pre-employment exam. A. Ex. 1. Appellant further indicated that the job posting did not list any physical requirements, nor were any discussed during the interview process. *Id.* "After my exam, I was informed that the position requires the ability to react in compromising situations and lift/push/pull more than 10 pounds, but I was not given the opportunity to discuss possible accommodations before my offer was rescinded." *Id.*

### **POSITIONS OF THE PARTIES**

#### **1. Appellant**

- a. The decision to rescind the job offer was in error.
- b. The job posting did not list any physical requirements, nor were any discussed during the interview process.
- c. The County failed to provide Appellant with the opportunity to discuss possible accommodations.

#### **2. County**

- a. Appellant has not alleged and is otherwise unable to prove 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 pre-employment 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 or safety of the individual or others.

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(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.

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(2) Types of medical exam protocols.

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(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 pre-employment 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.

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- (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.

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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.

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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 appointed to the position. *See* MCPR § 8-3(a). The County may withdraw an offer of employment if the applicant fails to meet the medical requirements for the position. *See* MCPR § 8-1(b).

In the instant case, Appellant applied for a position as a Child Welfare Caseworker and the job specifications stated that her employment was conditioned on her successful clearance of the medical examination protocol for the position.

The County's decision to rescind the conditional offer of employment was not arbitrary, capricious, or illegal. The uncontested facts in this case are that the County included information in the job advertisement that the position required the successful candidate to be able to carry children and equipment up and down flights of stairs and drive a vehicle. Thus, the County determined that applicants for the position must successfully pass a medical evaluation to receive a final offer of employment. Appellant submitted to the required medical evaluation, and based upon a review of Appellant's medical history, the EME determined that Appellant's current condition, without surgical intervention, would prevent Appellant from lifting more than ten (10) lbs. The EME consulted with the department and determined that there were no reasonable

accommodations that would permit Appellant to perform the required duties of the position. Appellant did not contest the facts as stated above.<sup>3</sup>

Appellant's argument that the position advertisement did not list any physical requirements is without merit. The posting clearly included language that indicates that successful candidates for the position "will need to operate a motor vehicle to transport children, supplies, and equipment, to other locations and would require the need to lift and carry, and manage stairs with children, equipment, and supplies." C. Ex. 1.

Appellant's contention that the County improperly failed to discuss possible accommodations with Appellant is not supported by the Personnel Regulations. Nowhere in the County Code or the Personnel Regulations does it require the County to discuss accommodations with an applicant for County employment. The only requirement is that the OHR Director must evaluate reasonable accommodations should the EME find that a job applicant is a qualified individual with a disability that impairs the individual's ability to perform the essential functions of the job. *See* MCPR § 8-5(a) & (d). The OHR Director concurred with the EME's decision regarding the lack of reasonable accommodations, as evidenced by OHR's issuance of the rescission letter. C. Ex. 4.

In reply to the County's response to the appeal, Appellant provided a medical provider's note from K██████ C██████, CRNP, which indicated that Appellant does not have any restrictions that would prevent Appellant from performing the duties of the position. Appellant's submission is problematic for two reasons.

First, the Board gives significant deference to the County's evaluation of whether an applicant is medically capable of performing the essential functions of a position unless the Appellant can show the County's decision was arbitrary or capricious. *See* MSPB Case No. 23-02. Appellant's submission fails to show that the County's decision was arbitrary or capricious, as there is no explanation as to why Appellant's condition changed since the last doctor note that indicated Appellant was unable to lift more than 10 lbs. without surgical intervention.

Second, and more importantly, the note was not part of the record when the County made its decision to rescind the conditional offer of employment. Nor could it have been, as it was issued on April 15, 2025, more than two months after Appellant's conditional offer was rescinded. The Board has previously determined that absent extraordinary circumstances, the Board will not consider evidence that was not revealed during the application process unless the Board conducts a hearing in a non-selection case. *See* MSPB Case. No. 15-23 (Footnote 9). Accordingly, Appellant's submission has no probative value under the circumstances.

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<sup>3</sup> We note that it's the OHR Director's responsibility to determine whether an applicant can be reasonably accommodated. *See* MCPR § 8-5(a). In this case, the EME asked the Department whether Appellant's current condition could be accommodated. It does not appear that the OHR Director was consulted when the decision was made. However, we believe that the OHR Director adopted the EME's determination regarding reasonable accommodation when the conditional offer of employment was rescinded. To avoid issues in the future, the Board suggests that the County review its current policies and procedures with the EME and OMS to ensure compliance, as well as revisit the MCPR to evaluate whether the applicable provisions require amendment.

There is no dispute that Appellant failed to meet the fitness requirements specified for the Child Welfare Caseworker position. *See* C. Ex. 6. Appellant has provided no evidence that the County's decision to withdraw her conditional offer, based on her 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* MCC § 33-9(c); MCPR § 6-14. As such, we conclude that Appellant has not met the burden of proof and the 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.<sup>4</sup>

### 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 Child Welfare Caseworker (Job Number 2024-00119). It is further **ORDERED** that, should Appellant apply for a future position, the County will reconsider Appellant's medical acceptability based on her 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

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<sup>4</sup> 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.