

B-12



STATE OF NEW JERSEY

FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION

In the Matter of Olufemi Ijandipe,
Fire Fighter (M2554M),
City of Newark

CSC Docket No. 2014-2162

List Removal Appeal

ISSUED: OCT 03 2014 (DASV)

Olufemi Ijandipe, represented by Craig S. Gumpel, Esq., appeals the attached decision of the Division of Classification and Personnel Management (CPM), which upheld the removal of his name from the Fire Fighter (M2554M), City of Newark, eligible list due to his failure to meet the residency requirement.

The open-competitive examination for Fire Fighter (M2554M), City of Newark, was announced with a closing date of March 31, 2010 and was open to residents of Newark. Applicants were required to maintain continuous residency up to the date of appointment. See *N.J.A.C. 4A:4-2.11(e)1*. The appellant, a nonveteran, passed the subject examination and ranked 81 on the resulting eligible list, which promulgated on December 13, 2011 and expires on December 12, 2014.¹ The second certification of the eligible list was issued on July 23, 2012 containing the names of 126 eligibles. The appellant was listed in the 20th position on the certification. In disposing of the certification, the appointing authority requested the appellant's removal for his failure to meet the residency requirement. It submitted the section of the appellant's employment application where it asked candidates to list "all prior place of residence." The appellant listed an Osborne Terrace, Newark, address from February 1995 to June 2006; a North Grove Street, East Orange, address from June 2006 to May 2007; a Thomas Street, Newark, address from May 2007 to November 2011; and a North Clinton Street, East

¹ The Fire Fighter (M2554M), City of Newark, eligible list was scheduled to expire on December 12, 2013. However, the list was extended for one year.

Orange, address from December 2011 to January 2013. Additionally, it presented the appellant's Motor Vehicle Services Address Change History, dated March 13, 2013, indicating that on October 27, 2008, the appellant changed his address from the Osborne Terrace, Newark, location to the Thomas Street, Newark, address. On October 10, 2012, the address was updated from the Thomas Street address to the North Clinton Street address in East Orange. The address history also reflected a change of address on January 25, 2013 to a Raymond Boulevard address in Newark, which is listed as the appellant's current address. The appellant appealed the removal of his name to CPM, arguing, among other things, that the East Orange address was his mailing address. However, CPM found that the appellant had established East Orange as both his mailing and residential address. Further, CPM indicated that the record did not contain official government documentation which demonstrated that the appellant maintained residency in Newark after his Thomas Street, Newark, property was foreclosed in January 2012. Therefore, CPM determined that the appointing authority presented a sufficient basis to remove the appellant's name from the subject eligible list.

On appeal to the Civil Service Commission (Commission), the appellant reiterates the arguments he submitted to CPM and certifies that he has been a Newark resident for the majority of his life. He attended elementary school and high school in Newark and remained a resident of Newark when he attended college in Massachusetts. He acknowledges that in 2006 after college graduation, he moved with his family to East Orange for one year. In May 2007, he purchased a home located in Newark on Thomas Street and lived there continuously until December 2011.² The property went into foreclosure and the appellant thereafter stayed with his uncle, Benjamin Bosede, at Columbia Avenue in Newark. The appellant states that he lived with his uncle from January 2012 through September 2012 until he was able to secure a new home. In October 2012, the appellant moved to an apartment on Raymond Boulevard in Newark, where he presently resides with a roommate named Valery Philippe. He indicates that he changed his driver's license to reflect the new address. It is noted that the appellant does not state the date of the change. However, as indicated above, his address was updated on January 25, 2013. The appellant submits a copy of his driver's license, which was issued on June 13, 2013 and reflects the Raymond Boulevard address.

Moreover, the appellant explains that, in order to ensure that he received all of his mail when he was living with his uncle temporarily, he directed his mail to his family home on North Clinton Street in East Orange. He claims that it was not possible for him to live in the East Orange home because the lease agreement, dated December 1, 2011, which he submits, lists only five adults and one minor which represents his mother and five siblings. The appellant states that he was not

² The appellant indicates that, as of the examination closing date, he lived by himself at this location. However, his attorney refers to a co-worker living with the appellant.

included in this occupancy listing. It is noted that the lease agreement states that "In addition to Tenant, the following persons occupy the Real Property: 5 adult[s] and 1 minor children (sic). No other persons may occupy the dwelling without Landlord's prior written consent." The Tenant refers to the appellant's sister, Jenever Ijandipe. Therefore, the appellant asserts that he listed his East Orange mailing address rather than his physical address on his employment application so to make certain that he received all correspondence. The appellant indicates that he has lived in Newark continuously since March 2007, which exceeds any other location. He also contends that regardless of whether he is appointed as a Fire Fighter, he intends to remain a Newark resident.

Further, the appellant states that the appointing authority did not provide him with copies of all documentation sent to CPM as required by *N.J.A.C. 4A:4-4.7(b)1* and 2. Rather, CPM provided the documentation. Thus, the appellant maintains that the appointing authority's request to remove his name from the subject eligible list must be denied.³ In support of his appeal, the appellant submits the following documentation which reflects the Thomas Street, Newark, address: a City of Newark property tax activity report as of February 6, 2012; his 2010 and 2011 Tax Return Transcripts; bank statements from December 12, 2011 through December 11, 2012; and his 2011 W-2 statement. Additionally, he presents the certifications of Arnetta Ijandipe, his mother; Olujimi Ijandipe, his brother; Jenever Ijandipe, his sister; Benjamin Bosede, his uncle; and Valery Philippe, his roommate. The appellant's mother and siblings certify that the appellant has not lived in the Ijandipe household for several years. They further state that the appellant lived with Bosede after his home was foreclosed, but the appellant used the family's East Orange address for his mail "since it was more comfortable to receive mail by immediate family." Additionally, they maintain that the appellant was not accounted for in the lease. Bosede verifies that the appellant stayed with him from January 2012 through September 2012 "since [the appellant's] living arrangements at the time would have left him either on the streets or in a cramped dwelling place that would not have been suitable for he and his family." Philippe states that he is the appellant's roommate and is the lease holder of the Raymond Boulevard

³ *N.J.A.C. 4A:4-4.7(b)* provides that "1. Upon request of the eligible or upon the eligible's appeal, the appointing authority shall provide the eligible with copies of all materials sent to the appropriate Commission representative. 2. If the appointing authority fails to provide either the appropriate Commission representative or the eligible with copies of materials, the request for removal **may** be denied." [Emphasis added.] However, the appellant's argument fails since it is clear that *N.J.A.C. 4A:4-4.7(b)2* does not require this agency to automatically deny a request for removal if an appointing authority fails to provide the required material to the candidate or this agency. Rather, it states that the Commission *may* deny such a request. Thus, even though the appointing authority did not submit the requested documentation to the appellant previously, the appellant received the documentation from CPM and the matter is now before the Commission with complete documentation. See *In the Matter of Joseph Branin* (MSB, decided April 6, 2005); *In the Matter of Irving Frederick Greivous* (MSB, decided May 19, 2004); *In the Matter of Michael Rubine, Police Officer (M5507T)*, *North Bergen* (MSB, decided September 10, 1998).

apartment. Philippe is responsible for making payments. Therefore, the appellant asks that the Commission order his immediate reinstatement to the list and his name added to any outstanding certification. He also requests retroactive seniority for "Civil Service, salary, and benefit purposes."

In response, the appointing authority, represented by Kenneth G. Calhoun, Assistant Corporation Counsel, asserts that the appellant did not maintain continuous residency in Newark from the March 31, 2010 examination closing date. It emphasizes that the appellant "himself prepared and supplied, under oath, the Residency History document" (employment application), which makes no mention of the Columbia Avenue, Newark, address. Moreover, it contends that the dates when the appellant moved out of the Thomas Street address into his uncle's home is inconsistent. In this regard, it is noted that the employment application states that the appellant resided on Thomas Street from May 2007 to November 2011, but he indicates that he moved to his uncle's home in January 2012. Moreover, the appointing authority points out that the appellant never changed his driver's license to reflect the Columbia Avenue address. Rather, the address change history shows that the appellant changed his address in October 2012 to the East Orange location. Furthermore, the appointing authority states that the appellant did not change his address on his driver's license to the Raymond Boulevard location until January 2013, but yet, he claims to have moved there in October 2012. Thus, the appointing authority maintains that since the appellant provided an address outside of Newark and his Motor Vehicle Services Address Change History reflects the East Orange address, it was appropriate to remove his name from the subject eligible list.

In addition, the appointing authority contends that the record is "devoid of any facts" that the appellant spent a majority of his time at the Newark address from December 2011, when foreclosure proceedings began, to January 2013, when the appellant changed his address on his driver's license to Raymond Boulevard. Rather, it asserts that the East Orange location has a greater degree of permanence and attachment since the appellant's immediate family lives there. Moreover, it states that the appellant currently does not own any property in Newark and has not shown any proof that he pays rent or utilities for a Newark address. The appointing authority argues that the "certifications from family and close friends are self-serving, at best." Regarding the East Orange lease, the appointing authority notes that the lease provides that seven individuals may reside comfortably in the property: five adults and one child with the Tenant. Furthermore, the appointing authority emphasizes that the appellant acknowledged that in order to maintain continuous residency, he accepted his uncle's offer to live with him in Newark, and his uncle certified that this was a temporary situation. The appointing authority argues that this "ultimately led" the appellant to change his address to the East Orange location after he left his uncle's home in October 2012. Moreover, the appointing authority alleges that the

appellant made no effort to find alternative housing. It notes that Philippe, the appellant's current roommate, does not certify when the appellant actually moved in with him. Regarding the documents that the appellant presents, the appointing authority states that they are "self-proclaiming" or irrelevant as to the dates and provide no substantive proof that the appellant maintained continuous residency in Newark since March 31, 2010. Accordingly, the appointing authority requests that the appellant's appeal be denied.

CONCLUSION

N.J.A.C. 4A:4-2.11(c) provides in pertinent part that where residence requirements have been established in local service, residence means a single legal residence. The following standards shall be used in determining local legal residence:

1. Whether the locations in question are owned or rented;
2. Whether time actually spent in the claimed residence exceeds that of other locations;
3. Whether the relationship among those persons living in the claimed residence is closer than those with whom the individual lives elsewhere. If an individual claims a parent's residence because of separation from his or her spouse or domestic partner (see section 4 of P.L. 2003, c. 246), a court order or other evidence of separation may be requested;
4. Whether, if the residence requirement of the anticipated or actual appointment was eliminated, the individual would be likely to remain in the claimed residence;
5. Whether the residence recorded on a driver's license, motor vehicle registration, or voter registration card and other documents is the same as the claimed legal residence. Post office box numbers shall not be acceptable; and
6. Whether the school district attended by child(ren) living with the individual is the same as the claimed residence.

See e.g., In the Matter of Roslyn L. Lightfoot (MSB, decided January 12, 1993) (Use of a residence for purposes of employment need and convenience does not make it a primary legal residence when there is a second residence for which there is a greater degree of permanence and attachment). *See also, In the Matter of James W. Beadling* (MSB, decided October 4, 2006). Moreover, *N.J.A.C. 4A:4-2.11(e)1* states

that unless otherwise specified, residency requirements shall be met by the announced closing date for the examination. When an appointing authority requires residency as of the date of appointment, residency must be continuously maintained from the closing date up to and including the date of appointment. Additionally, *N.J.A.C. 4A:4-4.7(a)7* provides that discontinuance of an eligible's residence in the jurisdiction to which an examination was limited or for a title for which continuous residence is required is a cause for disqualification from an eligible list. *N.J.A.C. 4A:4-6.3(b)*, in conjunction with *N.J.A.C. 4A:4-4.7(d)*, provides that the appellant has the burden of proof to show by a preponderance of the evidence that an appointing authority's decision to remove his or her name from an eligible list was in error.

In the instant matter, the appellant asserts that he lived continuously in Newark since May 2007. Although he listed an East Orange address on his employment application from December 2011 to January 2013, he claims that he resided with his uncle in Newark from January 2012, after his Newark property was foreclosed, thorough September 2012. The appointing authority disputes the appellant's assertions and points to inconsistencies in the appellant's statements and documents.

N.J.A.C. 4A:4-2.11(e)1 requires the appellant to maintain continuous residency from March 31, 2010 up to and including the date of appointment. The appellant submits his certification and certifications of relatives and his roommate to support his appeal. However, in evaluating the statements and the documentation in the record, the Commission finds that these certifications are not credible. Initially, the employment application clearly asks candidates to list *all places of residency* and does not inquire about mailing addresses. The appellant failed to list his uncle's residence on Columbia Avenue in Newark. The appellant's explanation in this regard is thus suspect. The appellant also provides inconsistent dates. He lists his residency on his employment application as Thomas Street, Newark, from May 2007 to November 2011 and at North Clinton Street, East Orange, from December 2011 to January 2013. However, the appellant certifies that he lived at Thomas Street until December 2011 and moved to his uncle's home in January 2012. He left his uncle's home in October 2012, but yet still lists the East Orange address through January 2013. Moreover, the appellant does not sufficiently explain why he never listed the Columbia Avenue, Newark, address on his driver's license, nor do the address changes on his driver's license support his certification. In that regard, if the appellant in fact moved to Raymond Boulevard in October 2012, then his address on his driver's license should have been updated to that location. However, on October 10, 2012, he changed his address from the Thomas Street, Newark, location to the North Clinton Street address in East Orange. It was not until January 25, 2013 when the appellant updated his address to Raymond Boulevard. Thus, the appellant's arguments are not persuasive. See *e.g., In the Matter of Patrick O'Hara* (CSC, decided January 13, 2010) (Commission

found appellant who claimed he leased a Newark address on April 12, 2006, but did not change his motor vehicle record until November 7, 2007 was not a resident since *N.J.S.A. 39:3-36* requires a motorist to report an address change within one week of move).

As to the factors set forth in *N.J.A.C. 4A:4-2.11(c)*, the appellant has not shown that he owned or rented property after his Newark home was foreclosed. Although the appellant states that he lived with his uncle and currently lives with Phillipe, no rental agreement or supporting documentation shows an actual rental. The Commission is also not convinced that his family's lease precluded the appellant from living at the East Orange location. As the appointing authority points out, seven occupants could reside there. Moreover, the appellant has not demonstrated that, despite claiming two different addresses, he spent more time in Newark. The appellant states that he received his mail at his family's East Orange home and his relatives there are his immediate family. Further, although the appellant intends to live in Newark regardless of whether he is appointed as a Fire Fighter, the record shows that the appellant's Newark residency was not continuous from the examination closing date. Lastly, the documents that the appellant presents only reflect the Thomas Street address. They do not substantiate that the appellant continued to live in Newark after the property's foreclosure. As indicated in *Lightfoot, supra*, use of a residence for purposes of employment need does not make it a primary legal residence. *See also, In the Matter of Chad Batiuk*, Docket No. A-5593-05T5 (App. Div. September 28, 2007) (Appellant's convoluted residency saga was less than plausible and his use of a claimed township address was found to be utilized to deceive the appointing authority).

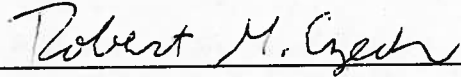
Therefore, under these circumstances, the appointing authority has presented a sufficient basis to remove the appellant's name from the Fire Fighter (M2554M), City of Newark, eligible list due to his failure to meet the residency requirement. Accordingly, the appellant has failed to meet his burden of proof in this matter.

ORDER

Therefore, it is ordered that this appeal be denied.

This is the final administrative determination in this matter. Any further review should be pursued in a judicial forum.

DECISION RENDERED BY THE
CIVIL SERVICE COMMISSION ON
THE 1st DAY OF OCTOBER, 2014



Robert M. Czech
Chairperson
Civil Service Commission

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and
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Henry Maurer
Director
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Attachment

c: Olufemi Ijandipe
Craig S. Gumpel, Esq.
Kenneth G. Calhoun, Assistant Corporation Counsel
Michael Greene
Kenneth Connolly



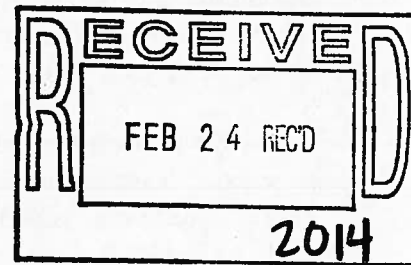
Chris Christie
Governor
Kim Guadagno
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STATE OF NEW JERSEY
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Robert M. Czech
Chair/Chief Executive Officer

February 21, 2014

Jeffrey J. Berezny, Esq.
Fox and Fox, LLP
70 South Orange Avenue
Suite 203
Livingston, NJ 07039



RE: Removal of Name from Eligible List – Olefemi Ijandipe

Title: Fire Fighter
Jurisdiction: Newark
Symbol: M2554M
Certification No: OL130280
Certification Date: 07/23/12

Dear Mr. Berezny:

This is in response to your correspondence contesting the removal of your client's name from the above-referenced eligible list.

The Appointing Authority requested removal of your client's name in accordance with N.J.A.C. 4A:4-2.11(e)1, which permits the removal of an eligible candidate's name from the eligible list for failure to continuously maintain residency from the closing date of the examination announcement up to and including the date of appointment (March 31, 2010).

In support of its decision, the Appointing Authority provided a copy of the Candidate Investigation Report. Included in the investigation report was a copy of Mr. Ijandipe's Motor Vehicle Services Address Change History, which indicates that between October 10, 2012 and January 24, 2013 Mr. Ijandipe had established [REDACTED] N. Clinton St, East Orange, NJ 0717-3606 as both his mailing and residential address. Among the standards used to determine residency are the following paragraphs in 4A:4-2.11 (Residence standards):

5. Whether the residence recorded on a driver's license, motor vehicle registration, or voter registration card and other documents is the same as the claimed legal residence. Post office box numbers shall not be acceptable; and

Based on this information, the Appointing Authority states that your client did not maintain continuous residency in the City of Newark.

Documentation submitted by, or on behalf of, Mr. Ijandipe does not include any official government documentation which establishes that your client had maintained a residence in Newark after the foreclosure of his ■ Thomas Street property in or about January 2012.

After a thorough review of our records and all the relevant material submitted, we find that there is not a sufficient basis to restore your client's name to the eligible list. Therefore, the Appointing Authority's decision to remove Mr. Ijandipe's name has been sustained and the appeal is denied.

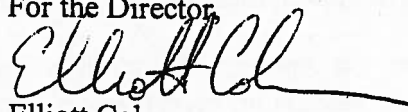
In accordance with Merit System Rules, you may appeal this decision to the Division of Appeals and Regulatory Affairs (DARA) within 20 days of receipt of this letter. You must submit all proofs, arguments and issues which you plan to use to substantiate the issues raised in your appeal. Please submit a copy of this determination with your appeal to DARA. You must put all parties of interest on notice of your appeal and provide them with copies of all documents submitted for consideration.

Please be advised that pursuant to P.L. 2010 C.26, effective July 1, 2010, there shall be a \$20 fee for appeals. Please include the required \$20 fee with your appeal. Payment must be made by check or money order only, payable to the NJ CSC. Persons receiving public assistance pursuant to P.L. 1947, C. 156 (C.44:8-107 et seq.), P.L. 1973, c.256 (C.44:7-85 et seq.), or P.L. 1997, c.38 (C.44:10-55 et seq.) and individuals with established veterans preference as defined by N.J.S.A. 11A:5-1 et seq. are exempt from these fees.

Address all appeals to:

Henry Maurer, Director
Division of Appeals and Regulatory Affairs
Written Appeals Record Unit
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Sincerely,
For the Director,


Elliott Cohen,
Local Placement Services

c: Julien X. Neals

Julien X. Neals
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