



STATE OF NEW JERSEY

FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION

In the Matter of Hani Tawfik, Police
Officer (S9999R), Perth Amboy

List Removal Appeal

CSC Docket No. 2016-1773

ISSUED: **NOV 20 2016** (HS)

Hani Tawfik appeals the removal of his name from the eligible list for Police Officer (S9999R), Perth Amboy based on his failure to meet the residency requirement.

The appellant, a nonveteran, took and passed the open competitive examination for Police Officer (S9999R), which had a closing date of September 4, 2013. The resulting eligible list promulgated on May 2, 2014 and expires on May 1, 2017.¹ The appellant's name was certified to the appointing authority on February 20, 2015. In disposing of the certification, the appointing authority requested the removal of the appellant's name on the basis that he did not satisfy the residency requirement. Specifically, the appointing authority asserted that the appellant was not a resident of Perth Amboy on the closing date. In support of its contention, it submitted portions of the appellant's employment application, in which the appellant indicated that he resided at a Florida address from August 2007 through February 2014; tax year 2013 documents that indicate the Florida address; and additional correspondence and documentation provided by the appellant on June 18, 2015, which the appointing authority asserted were inconsistent with information previously provided.

On appeal to the Civil Service Commission (Commission), the appellant argues that he has maintained permanent residency in Perth Amboy since 2012, when he moved back to Perth Amboy from Florida after he and his wife separated.

¹ The expiration date of the subject eligible list was extended one year, to May 1, 2017.

He states that upon his move back to Perth Amboy, he resided initially on Colfax Street then moved to William Street. The appellant claims that due to his employment with RJ Corman Railroad, he was temporarily assigned to Kentucky, Tennessee and Florida, and stationed at different locations over the course of his employment. He further argues that his 2013 New Jersey tax return shows that his wife filed as a non-resident because she lived, and still lives, in Florida while employed for a New Jersey company. The appellant maintains that moving to another state for a "short time" does not change one's domicile, and that a "short time" means "anywhere from a month or two or up to a year or more."

In addition, the appellant emphasizes that under *N.J.A.C.* 4A:4-2.11(b), municipalities must submit their residency ordinances or resolutions on an annual basis.² In this regard, he points to a request he made under the Open Public Records Act (OPRA) in which he sought "any documentation Perth Amboy provided their residency requirements for year 2013 or 2015." The response to the OPRA request states that "the City of Perth Amboy did not submit any documents to the New Jersey Civil Service Commission regarding its residency requirements for the year 2013 or 2015." The appellant also notes his understanding that a residency requirement prior to hiring has not been past practice as, according to the appellant, there are "many" current officers who have "never" resided in Perth Amboy.

In support, the appellant submits his OPRA request with the associated response; confirmation of his 2013 New Jersey gross income tax payment, showing the William Street address as being associated with his credit card; a "Reprint" of his 2013 W-2 statement showing the William Street address; his 2014 W-2 statement showing the William Street address; voter registration information; motor vehicle address change history; an employment application submitted August 21, 2013 in which the appellant identified the William Street address as his address; and his lease for the Colfax Street address for a term running from May 1, 2012 through May 1, 2013.

In response, the appointing authority, represented by Arlene Quiñones Perez, Esq., maintains that under Civil Service law and rules, and Perth Amboy's ordinance, all applicants must be *bona fide* residents of Perth Amboy on the closing date of the job announcement to be eligible for appointment to the title of Police Officer.³ It argues that information provided by the appellant on his employment

² *N.J.A.C.* 4A:4-2.11(b) provides: "In local service, an appointing authority shall provide the Civil Service Commission with its residency ordinance or resolution, if any, on an annual basis or as requested by an appropriate representative of the Commission, and shall provide any subsequent modifications within 20 days after adoption."

³ Perth Amboy's residency ordinance, in pertinent part, provides: "In accordance with the provisions of *N.J.S.A.* 40A:9-1.4, applicants for positions and employment in the classified service of the City of Perth Amboy, including applicants for police officer and fire fighter titles, shall be limited to *bona fide* residents of the City of Perth Amboy, both on the closing date of the civil service examination, if

application, submitted on or about January 12, 2015, shows that he did not reside in Perth Amboy on the September 4, 2013 closing date. In this regard, the appellant indicated on his application that he had resided at the William Street, Perth Amboy address since February 2014 and indicated the Florida address as his address from August 2007 to February 2014. On his application, the appellant also indicated that he obtained his New Jersey driver's license in September 2014 and held a Florida driver's license from August 2007 to September 2014. Additionally, he indicated on his application that he had two motor vehicles, with Florida plates, registered in his name and he identified a Florida auto insurance company. The appellant also indicated his attendance at Saint Leo University in Saint Leo, Florida from August 2012 through the date of his employment application.

The appointing authority further argues that tax documents submitted by the appellant with his employment application confirm that he was not a Perth Amboy resident in 2013. In this regard, it notes that a Florida firm prepared the appellant's tax year 2013 federal return and provided the prepared return with a cover letter dated April 2014 addressed to the appellant and his wife at the Florida address. It notes that the appellant's tax year 2013 W-2 statement and tax year 2013 federal return both listed the Florida address as his address. The appointing authority also notes that the appellant filed a nonresident return with New Jersey for tax year 2013 and that this return listed the Florida address as his address.

In addition, the appointing authority maintains that the appellant's supplemental correspondence and documentation, submitted to the appointing authority in June 2015, contradicted information provided earlier in the application process. In this regard, the appellant stated in the June 2015 correspondence that he had been a Perth Amboy resident since 2012; that as part of his position with RJ Corman Railroad, he was temporarily assigned to Kentucky, Tennessee and Florida; and that he resided at Colfax Street, Perth Amboy, followed by William Street, Perth Amboy. However, the appellant, on his employment application, had indicated that his residence in Perth Amboy began in February 2014 rather than 2012; had not indicated the Colfax Street address or any address in Kentucky or Tennessee; and had indicated that his employment with RJ Corman Railroad began in October 2013 rather than 2012. Further, the appellant provided as part of his June 18, 2015 submission a "reprinted" tax year 2013 W-2 statement listing the William Street address, whereas the 2013 W-2 statement he provided with his employment application listed the Florida address.

In support, the appointing authority submits its residency ordinance;⁴ the subject examination announcement;⁵ portions of the appellant's employment

one is given, and on the date of hire, except as otherwise provided herein or upon the determination of the New Jersey Department of Personnel that an insufficient number of qualified residents exist for available positions."

⁴ The residency ordinance was amended in 1975, 1992, 1995 and 2009.

application; the appellant's tax documents submitted with his employment application; and the appellant's supplemental June 18, 2015 submission.

In reply, the appellant takes issue with the timeliness of the appointing authority's response, arguing that the appointing authority is in violation of "due process."⁶ As to the merits, the appellant states that his attendance at Saint Leo University actually entailed online courses, which he continues to take. The appellant acknowledges omitting the Colfax Street address on his employment application but states that he had informed the Detective Sergeant of Internal Affairs of the omission and the Detective Sergeant advised him that the information would be added to the appellant's file. As to why he did not provide any Kentucky or Tennessee address on his employment application, the appellant asserts that he never held residence in either state since he stayed in hotels for work purposes. The appellant also asserts that a Florida firm prepared his tax return because his wife resides there. He also claims that his 2013 W-2 had both a Florida address and a New Jersey address because one copy was mailed to his wife in Florida and another to him in New Jersey. The appellant reiterates that he paid taxes to New Jersey for tax year 2013.

Further, the appellant contends that since the response to his OPRA request indicated that Perth Amboy did not submit documents to this agency regarding its residency requirements for 2013 or 2015, the residency requirement that provided the basis for his removal from the subject eligible list is invalid.

Finally, the appellant represents that a Captain on his interview panel excused himself as many Internal Affairs complaints had been filed against this Captain by the appellant's immediate family members. The appellant "strongly believe[s]" that the Captain used his rank to request the appellant's removal from the eligible list as a "personal vendetta."

⁵ The examination announcement, in pertinent part, provided: "Where hiring preferences apply, applicants must meet the residency requirements of the appointing jurisdiction as of September 4, 2013 and may be required to maintain continuous residency in that jurisdiction up to and including the date of appointment (emphasis in original)."

⁶ The Division of Appeals and Regulatory Affairs (DARA) acknowledged receipt of the appellant's appeal in a letter dated November 23, 2015. DARA's letter instructed the appointing authority to provide the documentation supporting the appellant's removal from the subject eligible list within 20 calendar days of receipt of DARA's letter. DARA's letter further provided that the appellant, upon receipt of the supporting documentation, would have 20 calendar days to submit any arguments, and the appointing authority could then reply within 20 calendar days of receipt of the appellant's response. The appointing authority provided the supporting documentation in correspondence postmarked December 17, 2015. The appellant did not submit any response to the supporting documentation. The appointing authority submitted its response in correspondence postmarked January 27, 2016.

CONCLUSION

Initially, the appellant contends that the appointing authority provided an untimely response that violated “due process.” However, the record reflects that the appointing authority appears to have provided the documentation supporting the appellant’s removal within 20 days of its receipt of the November 23, 2015 letter from the Division of Appeals and Regulatory Affairs, as these materials were postmarked December 17, 2015. The appellant had the opportunity, at that point, to submit arguments within 20 days of receipt of the supporting documentation but did not. The appointing authority then provided its response in correspondence postmarked January 27, 2016. The Commission does not find the timing of the appointing authority’s response unreasonable given that the appellant had been afforded 20 days to submit arguments in response to the December 17, 2015 materials. Regardless, it should be noted that there is no jurisdictional statutory timeline within which a party is required to respond to an appeal. The Commission can expand the 20-day time period or limit it depending on the case. *See e.g., In the Matter of Michael Compton* (MSB, decided May 18, 2005). In addition, in order for the Commission to make a reasoned decision in a matter, it must review a complete record. *See e.g., In the Matter of James Burke* (MSB, decided June 22, 2005). Moreover, the appellant had the opportunity to reply to the appointing authority’s response. As such, there is no basis to disregard the appointing authority’s response.

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.

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. *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 the appellant from an eligible list was in error.

The appellant posits that Perth Amboy's residency requirement is invalid because his OPRA request revealed that Perth Amboy did not submit any documents to this agency regarding its residency requirements for the year 2013 or 2015. This contention is unpersuasive. In this regard, neither *N.J.S.A.* 40A:9-1.4, the statute authorizing a municipality to limit the eligibility of applicants for positions and employments in the classified service of such municipality to residents of that municipality, nor *N.J.A.C.* 4A:4-2.11(b), the rule cited by the appellant, provide for the invalidation of a municipality's residency ordinance when that municipality does not submit documents to this agency regarding its residency requirements. Moreover, a review of Perth Amboy's residency ordinance indicates that it was amended in 1975, 1992, 1995 and 2009, and there is no indication that Perth Amboy repealed its residency ordinance. As such, the record reflects that Perth Amboy's residency ordinance has been in effect since well before 2013. The appellant's related claim that a residency requirement prior to hiring has not been past practice because there are many current officers who have never resided in Perth Amboy is also unpersuasive since the claim is unsubstantiated and there is no evidence in the record as to the circumstances of the alleged officers' hiring.

Upon review of the record in this matter, the Commission finds that the appellant has not shown that he was a Perth Amboy resident as of the September 4, 2013 examination closing date. The appellant claims that he has been a Perth Amboy resident since 2012, when he separated from his wife. He notes that a Florida firm prepared his 2013 federal tax return because his wife lives in Florida and that his 2013 New Jersey tax return shows that his wife filed as a nonresident. The appellant asserts that there are two copies of his 2013 W-2 statement with different addresses because one copy was mailed to his wife in Florida and another to him in New Jersey. He also highlights that he paid taxes to New Jersey for 2013.

Nevertheless, the record reflects that the appellant's 2013 federal tax return lists a Florida address as his home address and that the appellant filed a nonresident New Jersey tax return for 2013 that also listed the Florida address as his address. Thus, the appellant's tax records suggest that he was not a Perth Amboy resident as of the examination closing date. Furthermore, information supplied by the appellant on his employment application indicates that the appellant was not a Perth Amboy resident as of the closing date. In this regard, the appellant listed the Florida address as his residence from August 2007 to February 2014; indicated that he held a Florida driver's license from August 2007 to September 2014; and indicated that he had two motor vehicles with Florida plates registered in his name. In short, there are discrepancies between the information and arguments presented on appeal and the information that was provided on the employment application.

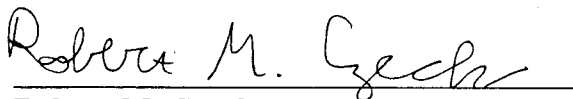
With regard to the appellant's claim that a Captain on his interview panel requested the appellant's removal from the subject eligible list as a "vendetta," the claim is speculative as other than his mere allegation, the appellant fails to provide any documentation or evidence in support. Regardless, as already discussed, there is sufficient support in the record to indicate that the appellant did not satisfy the residency requirement. Under these circumstances, the appointing authority has presented a sufficient basis to remove the appellant's name from the Police Officer (S9999R), Perth Amboy eligible list due to his failure to meet the residency requirement. Accordingly, the appellant has not met 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 23RD DAY OF NOVEMBER, 2016



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