



STATE OF NEW JERSEY

In the Matter of Francis Soleo,
Police Officer (S9999R), Borough
of Keansburg

FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION

CSC Docket No. 2017-1131

List Removal

ISSUED: OCT 06 2017 (JET)

Francis Soleo, represented by Catherine M. Elston, Esq., appeals the removal of his name from the Police Officer (S9999R),¹ Borough of Keansburg eligible list for failure to maintain residency.

The appellant took the open competitive examination for Police Officer (S9999R), achieved a passing score, and was ranked on the subsequent eligible list. The appellant's name was certified on May 31, 2015 (OL160688).² Applicants were required to maintain continuous residency in Keansburg up to the date of appointment. See *N.J.A.C. 4A:4-2.11(e)*¹. In disposing of the certification, the appointing authority requested the removal of the appellant's name based on his failure to maintain residency in Keansburg from the closing date of the examination (*i.e.*, September 4, 2013) to the date of appointment. Specifically, the appointing authority asserted that its background investigation, which reviewed the addresses listed in his motor vehicle history, revealed that the appellant did not maintain continuously residency in Keansburg. Rather, the documentation shows that the appellant lived in Hazlet³ after the closing date.

On appeal to the Civil Service Commission (Commission), the appellant asserts that he maintained residency in Keansburg after the closing date of the announcement. The appellant explains that he has been a lifelong resident of

¹ It is noted that the S9999R list expired on March 22, 2017.

² Official personnel records also reflect that the appellant's name was also certified on the April 1, 2015 (OL150433) and was recorded as "retained, interested others appointed."

³ It is noted that the appellant's driver's abstract shows that he lived in Hazlet in 2015.

Keansburg and he continues to live there. Further, he contends that as a result of his mother's illness and a financial hardship he experienced in 2014, he temporarily lived with his father in Hazlet for approximately three months. The appellant acknowledges that he notified the appointing authority of the address change and he did not receive a response until his name was removed from the list. The appellant adds that, although he changed the address listed on his driver's license to a Hazlet address, he did not change the Keansburg address listed on his other documentation including bills, car insurance, and registration. The appellant states that the appointing authority inappropriately relied on the information contained in his driver's abstract to remove his name from the list. In addition, the appellant asserts that the appointing authority failed to provide him with a copy of the residency ordinance it relied on in support of removing his name from the list. The appellant adds that, after submitting an OPRA request, he only received a copy of a residency ordinance from 1977 and another undated residency ordinance from the appointing authority's website. Moreover, the appellant asserts that a conflict of interest exists in this matter, as his father testified at a disciplinary hearing involving former Chief of Police Raymond O'Hare⁴ and former Deputy Chief of Police James Pigott. See *In the Matter of Raymond O'Hare, Borough of Keansburg* (MSB, decided April 20, 2005).

In support of his appeal, the appellant provides a certification indicating that he has moved back to Keansburg and is currently residing there. He submits copies of documentation, including his driver's license, insurance cards, and bank statements, indicating a Keansburg address. He also submits various letters of recommendation.

In response, the appointing authority, represented by Joseph A. Clark, Esq., maintains that the appellant moved to Hazlet in 2014 which is evidenced by his change of address on his driver's license and as reflected in his driver's abstract. Further, the appointing authority states that the appellant's explanation regarding why he moved from Keansburg to Hazlet is of no moment given the residency requirements for the subject position. In addition, the appointing authority argues that the alleged conflict of interest is without merit as the disciplinary matter occurred 15 years ago and was unrelated to the instant matter.⁵ Moreover, the appointing authority asserts that the appellant's name was properly removed from the list as he did not maintain continuous residency in the jurisdiction after the closing date.

⁴ It is noted that Mr. O'Hare is now serving as the Business Administrator for Keansburg.

⁵ In support, the appointing authority provides certifications from Raymond O'Hare and James Pigott stating, among other things, that they did not have any influence on the removal of the appellant's name from the list. The appointing authority also provides a certification from Ginger Rogan, Human Resources Director for Keansburg, stating that she requested to remove the appellant's name from the list since the documentation reflected that he lived in Hazlet after the closing date.

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 legal residence. Post office box numbers shall not be acceptable; and
6. Whether the school district attended by children 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 his primary residence is located in Keansburg and, except for a three month period when he lived with his father in Hazlet, he has continuously lived in Keansburg after the September 2013 closing date. He argues that he lived in Hazlet as a result of his mother's illness and a financial hardship, and he returned to Keansburg at some point after the three month period. The appointing authority disputes that the appellant's residency in Keansburg was continuous, as the appellant's driver's abstract shows that he lived in Hazlet and he also acknowledges in this matter that he lived in Hazlet. Residence means a single legal residence. See *N.J.A.C. 4A:4-2.11(c)*. Considering the factors set forth in *N.J.A.C. 4A:4-2.11(c)*, the documentation submitted by the appellant on appeal is insufficient to show that he has maintained continuous residency in Keansburg since September 2013. His driving abstract clearly shows that he lived in Hazlet after the closing date. Although the Commission sympathizes with the appellant's reasons for moving out of Keansburg for the three month period, he clearly admits in this matter that he lived in Hazlet after the closing date. Thus, it is evident the appellant has not continuously resided in Keansburg. Moreover, the information submitted from the appellant, including his driver's license, insurance card, and bank records do not refute that he did not live in Hazlet after the closing date. Such information, in and of itself, does not sufficiently demonstrate that he maintained continuous residency in Keansburg.

Regarding the appellant's argument pertaining to the residency ordinance, such information does not establish his claims. The burden of proof is on the appellant in this matter and he has not provided any substantive evidence to show that Keansburg does not maintain a residency ordinance. Thus, the Commission has no basis to conclude that Keansburg does not possess such an ordinance. Accordingly, the appellant was required to maintain residency in Keansburg pursuant to *N.J.A.C. 4A:4-2.11(e)1*. Additionally, in order to be placed on the eligible list for the subject position, the appellant was required to apply for and take the Law Enforcement Examination (LEE) (S9999R). The S9999R announcement indicates that, 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. As such, the appellant cannot now argue that he was not notified about a residency requirement.

With respect to the appellant's argument that a conflict of interest exists in this matter, his reliance on *O'Hare, supra*, is misplaced. Although the appellant argues that his father's testimony in that matter is the reason why he was removed from the list in this matter, he has provided no evidence of such an allegation. In

comparison, the appointing authority provided certifications indicating that there was no conflict of interest as Pigott and O'Hare did not have any influence on removing the appellant's name from the subject list. As noted above, the appellant's removal from the list was proper based on his failure to maintain residency in the subject jurisdiction. Moreover, the appellant has not provided any substantive evidence to show that the appointing authority's background investigation was somehow deficient, improperly conducted, and that it adversely affected the appointing authority's decision to remove his name from the eligible list

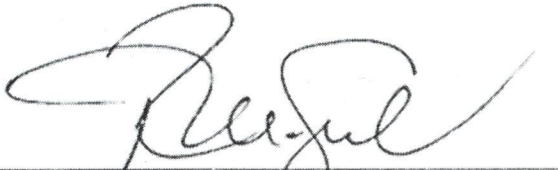
Accordingly, under these circumstances, the appointing authority has presented a sufficient basis to remove the appellant's name from the Police Officer (S9999R), Borough of Keansburg, eligible list.

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 4th DAY OF OCTOBER, 2017



Robert M. Czedo, Chairperson
Civil Service Commission

Inquiries
and
Correspondence

Christopher Myers
Director
Division of Appeals
& Regulatory Affairs
Civil Service Commission
Written Record Appeals Unit
P. O. Box 312
Trenton, New Jersey 08625-0312

c: Francis Soleo
Catherine M. Elston, Esq.
Joseph A. Clark, Esq.
Raymond O'Hare
Kelly Glenn