

In the Matter of Robert W. Gill, Jr.
Department of Environmental Protection
CSC DKT. NO. 2007-3400
OAL DKT. NO. CSV 4217-07
(Civil Service Commission, decided February 11, 2009)

The appeal of Robert W. Gill, Jr., a former Section Forest Firewarden, Department of Environmental Protection, who appealed his return to his formerly held permanent title of Forest Fire Observer at the end of the working test period effective January 14, 2007, was heard by Administrative Law Judge John Schuster, III, who rendered his initial decision on December 15, 2008. No exceptions were filed.

Having considered the record and the Administrative Law Judge's initial decision, and having made an independent evaluation of the record, the Civil Service Commission, at its meeting on February 11, 2009, accepted and adopted the Findings of Fact and Conclusion as contained in the attached Administrative Law Judge's initial decision.

ORDER

The Civil Service Commission finds that the action of the appointing authority in returning the appellant to his formerly held permanent title was justified. The Commission therefore affirms that action and dismisses the appeal of Robert W. Gill, Jr.

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



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CSV 4217-07

AGENCY DKT. NO. 2007-3400-I

**IN THE MATTER OF ROBERT W. GILL, JR.
ENVIRONMENTAL PROTECTION.**

Robert W. Gill, Jr, appellant, pro se

Mark Collier, Deputy Attorney General, for the respondent (Anne Milgram, Attorney General of New Jersey, attorney)

Record Closed: April 22, 2008

Decided: December 15, 2008

BEFORE **JOHN SCHUSTER III**, ALJ:

STATEMENT OF THE CASE

In this matter Robert Gill (appellant) appeals the decision of the New Jersey Department of Environmental Protection, Division of Parks and Forestry, State Forestry Service (respondent) in failing to provide him with permanency status as a Section Forest Firewarden after completion of his working test period. The issue to be decided in this case is whether or not appellant qualified for the position of Section Forest Firewarden.

PROCEDURAL HISTORY

Appellant applied for and was given probationary status for the position of Section Forest Firewarden. He began his working test period on July 14, 2006. At the conclusion of an extended working test period on January 14, 2007, he was terminated from his probationary position and returned to his former position of Forest Fire Observer as a result of him not meeting the residency requirements for the position of Section Forest Firewarden. On February 15, 2007, appellant appealed his denial to the promotional title and the matter was transmitted to the Office of Administrative Law (OAL) on May 31, 2007 as a contested case, pursuant to N.J.S.A. 52:14B-1 to -15 and N.J.S.A. 52:14F-1 to -13. A settlement conference was heard on July 17, 2007 and when that event proved unsuccessful, the matter was assigned to the undersigned for hearing. The matter was scheduled for hearing on October 9, 2007; however, that hearing was adjourned at the request of the parties to continue settlement negotiations. The hearing was rescheduled for December 4, 2007 but that hearing was also adjourned at the request of the Deputy Attorney General because of witness unavailability. The hearing was then held on April 22, 2008 at the Office of Administrative Law at Quakerbridge Plaza in Mercerville, New Jersey. At the conclusion of the testimony and the admission of all documentary evidence, the record was closed. Due to a voluminous work load, extensions were granted for the preparation of the initial decision.

FINDINGS OF FACT

The respondent posted a Notice of Vacancy for the position of Section Forest Firewarden which posting ran from April 11, 2006 to April 25, 2006 (R-2). Appellant responded to that notice by applying for the position in geographic Section C11 where one of the vacancies existed. On July 14, 2006, he received a conditional appointment subject to satisfactory completion of his working test period (WTP). See R-5. Appellant was given a Satisfactory WTP evaluation on

September 14, 2006 with a later added notation he had not as yet met his residency requirements. See R-6. As to the residency requirements I **FIND**:

The New Jersey Department of Personnel Job Specification for Section Forest Firewarden (R-1) states "Appointees will be required to establish residence in an assigned area, within 30 days of appointment. (The appointee must live within the forest region assigned.)"

The published Notice of Vacancy (R-2) repeats the language in the job specification.

The Section Forest Firewarden Job Specification Operational Overview (R-3) states, "Must reside in assigned section within 30 days of permanent appointment. Residency is defined as living within the boundaries of the section or within 1 mile and three minutes travel time."

I also **FIND** on October 13, 2006, appellant was sent a letter by State Firewarden Morris G. Gabliks (R-7) reminding him of the residency requirement as a mandatory condition to being given permanent employment status and successful completion of his WTP. A second Progress Report was issued on November 14, 2006 which covered the period September 14, 2006 to November 14, 2006 (R-8). That report extended the WTP for 2 extra months with the explanation "since residency requirements have not been met." On that same date a letter was sent to appellant by Mr. Gabliks (R-9) which informed him "Please be advised that should you not attain residency at the end of the six month period, you will be returned to your former title." On December 14, 2006 a third Progress Report was issued (R-11). Appellant was given an unsatisfactory evaluation as a result of his residency requirement not having been met. A Final Progress Report was issued on January 14, 2007 (R-12) which requested termination because appellant had still not been able to satisfy the residency requirement associated with the position of Section Forest Firewarden.

I **FIND** appellant does not reside in the geographic area identified by the State Forest Fire Service as C11. I also **FIND** appellant was advised verbally and in writing on multiple occasions that residency in the section was mandatory for one to hold the position Section Forest Firewarden.

I also **FIND** respondent has not consistently enforced this residency requirement in the past. Some employees in the same situation as appellant were given extensive periods of time to secure a residence in their assigned section and in other cases the residency requirement was overlooked entirely. I also **FIND** appellant listed his house for sale with a real estate broker and used his best efforts to secure a buyer so he could relocate in Section C11. When those efforts were unsuccessful, appellant was returned to his former position at the conclusion of his extended WTP. Finally, I **FIND** that but for appellant's residency issue he would have been promoted to the position of Section Forest Firewarden.

LEGAL ARGUMENTS

Respondent's position is that it has a valid policy requiring residency in the section where a forest firewarden is assigned. The basis for this requirement is the belief that a resident will be part of the community where he/she resides, know more local residents and be familiar with the roads and particulars of their specific section as a result of just residing in that locale. In addition living in an assigned section will give the firewarden quicker response time in case of an emergency.

Appellant argues he should not be subject to a strict application of the residency policy for the following reasons. First, he should be treated like others before him in that, at the very least, he should be given as much time as he needs to relocate as long as he is continuing to make a good faith effort to do so.

Second, the C11 section extends quite far to the west and his current residence is closer to the more forested area of the section than much of the section that is not forested. Finally, the agency has officially relaxed its policy by extending the residency requirement to slightly beyond section boundaries. See A-2 Policy I.C. Appellant states because he has extensive qualifications and credentials (A-4) he should also be given some leniency in the strict application of the residency requirements.

CONCLUSION

I **CONCLUDE** the respondent has the authority to enforce its rules and policies as long as it is not done in a discriminatory manner. I further **CONCLUDE** respondent has a residency policy and appellant has not satisfied that policy although he has made every reasonable effort to do so.

ORDER

For the reasons set forth herein, I **ORDER** respondent's determination to return appellant to his former position at the end of his Working Test Period be **AFFIRMED**.

I hereby **FILE** my initial decision with the **CIVIL SERVICE COMMISSION** for consideration.

This recommended decision may be adopted, modified or rejected by the **CIVIL SERVICE COMMISSION**, which by law is authorized to make a final decision in this matter. If the Civil Service Commission does not adopt, modify or reject this decision within forty-five days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

Within thirteen days from the date on which this recommended decision was mailed to the parties, any party may file written exceptions with the **DIRECTOR, MERIT SYSTEM PRACTICES AND LABOR RELATIONS, UNIT H, CIVIL SERVICE COMMISSION, 44 South Clinton Avenue, PO Box 312, Trenton, New Jersey 08625-0312**, marked "Attention: Exceptions." A copy of any exceptions must be sent to the judge and to the other parties.

December 15, 2008

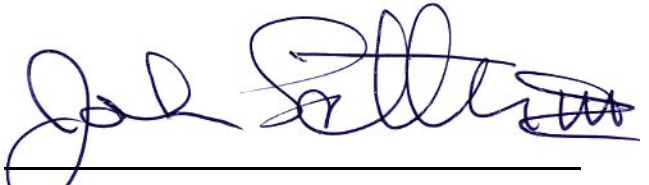
DATE

Date Received at Agency:

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LAW

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JOHN SCHUSTER III, ALJ

Mailed to Parties:

OFFICE OF ADMINISTRATIVE

WITNESSES

For Appellant:

Henry Hasselhan

James Dusha

Robert Gill

For Respondent:

Lori Worth

Maris Gabliks

EXHIBITS

For Appellant:

A-1 Notification of Certification

A-2 Forest Fire Service Circular

A-3 Progress Report of Probationer, November 14, 2006

A-4 Incident Qualification Card

A-5 Progress Report of Probationer, January 14, 2007

For Respondent:

R-1 Job Specification Section Forest Firewarden

R-2 Notice of Vacancy

R-3 Job Specification Operational Overview

R-4 Interview questions

R-5 Letter from Diane Ogonofski to Robert Gill, dated July 11, 2006

- R-6 Progress Report of Probationer, September 14, 2006
- R-7 Letter from Maris Gabliks to Robert Gill, dated October 13, 2006
- R-8 Progress Report of Probationer, November 14, 2006
- R-9 Letter from Maris Gabliks to Robert Gill, dated November 14, 2006
- R-10 Not admitted
- R-11 Progress Report of Probationer, December 14, 2006
- R-12 Progress Report of Probationer, January 14, 2007