



STATE OF NEW JERSEY

FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION

In the Matter of Agustin Melendez,
Sheriff's Officer (S9999U), Middlesex
County

List Removal Appeal

CSC Docket No. 2018-3032

ISSUED: AUGUST 3, 2018 (HS)

Agustin Melendez appeals the removal of his name from the eligible list for Sheriff's Officer (S9999U), Middlesex County based on his failure to meet the residency requirement.

The appellant, a veteran, took and passed the open competitive examination for Sheriff's Officer (S9999U), which had a closing date of August 31, 2016. The resulting eligible list promulgated on March 29, 2017 and expires on March 30, 2019. The appellant's name was certified to the appointing authority on October 19, 2017. In disposing of the certification, the appointing authority requested the removal of the appellant's name on the basis that he did not meet the residency requirement. In support, the appointing authority submitted a copy of the appellant's response to the certification notice and an attached resume, both of which indicated a [REDACTED], Keyport address.¹ Agency records indicate that multiple lower-ranked eligibles on the October 19, 2017 certification were appointed, effective March 26, 2018.

On appeal to the Civil Service Commission (Commission), the appellant maintains that although Keyport is in Monmouth County, he actually resides in Old Bridge Township in Middlesex County. He states that the [REDACTED] Boulevard, Keyport address is for mailing purposes only, but the associated property at which he resides is in Old Bridge Township and he pays taxes to that municipality. In

¹ Agency records indicate the appellant used the same address on his application for the S9999U examination.

support, the appellant submits a copy of his current property tax assessment notice issued by the Old Bridge Township Tax Assessor, which indicates the [REDACTED] Boulevard address and identifies the county as “Middlesex County Tax Board.”

The appointing authority, despite being provided the opportunity, did not submit any arguments or documentation.

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.

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 his name from an eligible list was in error.

In this matter, the appointing authority requested the removal of the appellant's name due to his failure to meet the residency requirement based on the Raritan Boulevard address he provided in his response to the certification notice. On appeal, the appellant maintains that that address indicates Keyport for mailing purposes only and that he actually resides in Old Bridge Township in Middlesex County. He submits a copy of his current property tax assessment notice issued by the Old Bridge Township Tax Assessor, which indicates the [REDACTED] Boulevard address and identifies the county as "Middlesex County Tax Board." The Commission finds that this evidence persuasively demonstrates that the property location in question is in Middlesex County. As such, the removal of the appellant's name from the eligible list for Sheriff's Officer (S9999U), Middlesex County on grounds that he did not meet the residency requirement is unwarranted based on the record in this matter. Thus, the appellant has met his burden of proof, and it is appropriate that his name be restored to the subject eligible list. Moreover, because lower-ranked eligibles were appointed, effective March 26, 2018, and the appellant is a veteran, his appointment is mandated, provided that he first passes an updated background check. *See N.J.S.A. 11A:4-8 and N.J.S.A. 11A:5-6.* However, while the appointing authority must immediately appoint the appellant should he pass the updated background check, it is not required to displace any currently employed individual in appointing the appellant.

ORDER

Therefore, it is ordered that this appeal be granted and Agustin Melendez's name be restored to the eligible list for Sheriff's Officer (S9999U), Middlesex County so that he may continue with the selection process. Absent any disqualification issue ascertained through an updated background check, the appellant's appointment is otherwise mandated. Additionally, it is ordered that if the appellant is appointed, upon the successful completion of his working test period, his record will reflect a retroactive appointment date of March 26, 2018 for salary step placement and seniority-based purposes only.

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 AUGUST, 2018



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