

B-15



STATE OF NEW JERSEY

FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION

In the Matter of Christopher Mateiro,
Fire Fighter (M2554M),
City of Newark

CSC Docket No. 2014-2130

List Removal Appeal

ISSUED: OCT 03 2014 (DASV)

Christopher Mateiro, 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 144 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 83rd 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 a copy of the appellant's Motor Vehicle Services Address Change History, dated March 22, 2013, indicating that on November 21, 2011, the appellant changed his address from a Pacific Street, Newark, location (first Pacific Street address) to a Scarlet Oak Road, Califon, address. On December 20, 2011, he changed it back to the first Pacific Street address. Then on January 31, 2013, the

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.

appellant updated his address to a different location on Pacific Street (second Pacific Street address), which is listed as the appellant's current address. The appointing authority also presented the section of the appellant's application where he listed his places of residency as follows: the Scarlet Oak Road, Califon, address from September 1, 2009 to February 28, 2010; the first Pacific Street, Newark, address from March 1, 2010 to January 31, 2013; and the second Pacific Street, Newark, address from February 1, 2013 to the present. The appellant appealed to CPM, asserting that he has resided in Newark since March 1, 2010 and that his mother, Martha Mateiro-Fonseca, changed his address on his driver's license in 2011 to reflect the Scarlet Oak Road, Califon, address without his knowledge. CPM found that, pursuant to the appellant's address change history, the appellant established the Califon location 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 continuous residence. 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 certifies that from March 1, 2010 through January 31, 2013, his primary residence was at a second floor apartment on the first Pacific Street location, which was owned by his aunt, Angela Miguel. The apartment had its own entrance and the appellant had a refrigerator in his room, but he shared the kitchen and laundry facilities with his aunt's family. He also frequently had dinner with the family during the week. The appellant presents Miguel's Affidavit Certifying Residency and her certification, in which she certifies that the appellant lived at her Newark homes during the specified dates. Moreover, the appellant states that in May 2011, he was accepted to the California Western School of Law in San Diego, California. He attended law school there beginning in August 2011 and leased an apartment. There were no dormitories available. However, he returned to his Newark residences during holidays and breaks. Additionally, all of the documents regarding the appellant's acceptance and admission were sent to the first Pacific Street address. The appellant notes that on April 16, 2013, he wrote to the Fire Director and requested an extension of time to return material to his investigating officer as he was at law school. The appellant also informed the Fire Director that if he were "invited to the academy [he] would drop out immediately."

In support of his assertions, the appellant submits a copy of the lease for the first Pacific Street apartment, which was from March 1, 2010 through February 28, 2011. The rent was \$400 per month, which was paid by the appellant's mother and included utilities.² In addition, he presents a certification from his friend, Anthony Guzzi, who is a Newark resident and states that he has routinely driven the

² The appellant initially submitted an unsigned copy of the lease. He later presents a signed copy, which was dated February 24, 2010.

appellant from the Newark airport back to the first Pacific Street address during holiday breaks. Guzzi also has seen the appellant in local establishments, including a grocery store and a pizzeria on Pacific Street. On occasion, the appellant has dinner with Guzzi's family. In further support of his Newark residency, the appellant submits copies of his 2010 interest income statement; a jury service notice, postmarked June 17, 2010; several statements, dated in 2011 through 2013, from the Motor Vehicle Violations Surcharge System; and his 2011 income tax return which all lists his first Pacific Street address.

Regarding the address change on his driver's license, the appellant reiterates that, without his knowledge or permission, his mother went on-line in November 2011 when he was at law school and changed his address to Scarlet Oak Road, Califon, for car insurance purposes. The appellant was listed as a driver on his mother's car insurance policy. When his mother, Mateiro-Fonseca, advised him of what she did in December 2011, the appellant states that he immediately changed his address back to the first Pacific Street address since he was aware that he must maintain continuous residency in Newark. Mateiro-Fonseca had written a letter to the Fire Director, dated July 12, 2013, explaining what she had done and informing him that the appellant never moved back to Scarlet Oak Road as indicated in the address change history. The appellant includes Mateiro-Fonseca's certification, in which she attests to the foregoing information.

In addition, on February 1, 2013, the appellant indicates that his aunt, Miguel, purchased the second Pacific Street property which was previously owned by her deceased father, the appellant's grandfather. Miguel offered the basement apartment to the appellant, as the apartment provided him with more space and privacy. The rent was \$400 per month and included utilities. The appellant submits a copy of that lease which was dated January 28, 2013 and had a lease term from February 1, 2013 through January 31, 2014. Further, the appellant indicates that once he moved to the second Pacific Street address, he changed his address on his driver's license. The appellant also submits a copy of his Essex County Voter Acknowledgment Card, which lists this address and reflects a registration date of April 8, 2013.

Additionally, the appellant notes that he has lived with family members in Newark and such "[f]amilial relationships are among the closest that an individual can maintain." Further, the appellant claims that, regardless of whether he is appointed as a Fire Fighter, he plans to remain a Newark resident as he has strong family ties there and has been a resident for over four years. He submits the certification of Frank Fonseca, his uncle and a City of Newark Fire Captain, stating that he has personal knowledge that the appellant was living in Newark since March 2010. Fonseca has had dinner with the appellant and his sister's family at the first Pacific Street address and has "stopped by to catch up" with the appellant at the second Pacific Street location.

Lastly, the appellant indicates 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, which included the residency page of his application. Therefore, the appellant maintains that the appointing authority's request to remove his name from the subject eligible list must be denied.³ In summary, the appellant contends that he has spent all of his non-academic time in the Newark residences, has been seen in local establishments, receives mail and bills at his apartments, keeps his personal belongings in Newark, and is registered to vote in Newark. Accordingly, he indicates that his appointment should be "mandated with any back pay, retroactive benefits, including seniority, and attorney's fees to which he is entitled." He also requests to be added to any outstanding certification.

In response, the appointing authority, represented by Emily Truman, Assistant Corporation Counsel, asserts that it had a legal basis to remove the appellant from the subject eligible list since he has failed to provide "unequivocal proof" that he maintained continuous residency in Newark. It states that although the appellant provides documents in support of his appeal, many of these documents "are self-proclaiming without the benefit of reliable corroboration or they are irrelevant as to date, address or other details." Moreover, it emphasizes that the appellant's Motor Vehicle Services Address Change History lists a Californian address. Further, the appointing authority notes that the address change was not done in error as Mateiro-Fonseca certifies. Rather, it claims that it was "a deliberate attempt to mislead the insurance company" as to the appellant's residency. It states that Mateiro-Fonseca and the appellant have only come forward now regarding the alleged discrepancy, three years after it happened in 2011. The appointing authority contends that the appellant "did not bother to inform" it of what had occurred at the time. Further, the appointing authority highlights the fact that the appellant does not submit a rental agreement from March 2011 through January 2013 and the initial copy of the lease for the first Pacific Street apartment was not signed. Moreover, it argues that the appellant could not have established residency in Newark when he admittedly only spent two to three

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 Grevious* (MSB, decided May 19, 2004); *In the Matter of Michael Rubine, Police Officer (M5507T)*, North Bergen (MSB, decided September 10, 1998).

months in Newark while on break from law school in California. Additionally, the appointing authority indicates that the appellant had shown no plans to move to Newark prior to the examination closing date other than to establish residency to become a Newark Fire Fighter. Therefore, it maintains that the appellant has failed to demonstrate that he met the residency requirement and his appeal should be denied.

In reply, the appellant submits a supplemental certification, explaining once again that he did not know of the change of address to Califon. In that regard, he submits a letter from Artur Evaristo, a City of Newark Fire Captain, who states that he has known the appellant his entire life. Sometime in early December 2011, Evaristo indicates that he was having dinner with the appellant's parents and he mentioned that the City of Newark would probably be hiring Fire Fighters soon. The appellant's mother then told Evaristo that she changed the appellant's address on his driver's license without his knowledge since she was having car insurance issues. Evaristo responded that she should never have changed the license and that the appellant needed to change the address back immediately.

Regarding the lease for the first Pacific Street address, the appellant submits a signed copy and explains that he became a holdover tenant after the one-year term expired. With the consent of his landlord, his aunt, the appellant leased the apartment on a month-to-month basis. Moreover, the appellant responds that he had no reason to disclose the Califon address change until he was removed from the subject eligible list since he believed that he corrected his address on his driver's license and it had no effect on his residence status as he remained a Newark resident. Additionally, the appellant maintains that he never intended to reside in California and did not obtain a driver's license in that state. He notes that he applied to Seton Hall Law School, which is located in Newark, but he was rejected. Had he been accepted, he would never have left Newark to attend law school in California. The appellant submits a letter from Seton Hall Law School, dated December 12, 2011, regarding a transfer opportunity. He emphasizes that this letter is addressed to the first Pacific Street address and not to the Califon location, where he was alleged to have resided at the time.

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.

Pursuant to the standards set forth in *N.J.A.C. 4A:4-2.11(c)*, the appellant has presented convincing evidence that he has resided continuously in Newark since the March 31, 2010 examination closing date. He presents leases for the first and second Pacific Street, Newark, addresses from March 1, 2010 through February 28, 2011 and February 1, 2013 through January 31, 2014, respectively. The

appellant credibly explains that once his lease expired on February 28, 2011, he was a holdover tenant, leasing the apartment month-to-month. Although the appointing authority notes that the appellant initially submitted an unsigned copy of the first Pacific Street lease, the validity of this lease has not been rebutted. Rather, it has been confirmed by Miguel through her affidavit and certification.⁴ Moreover, the certification of the appellant regarding his residency has also been corroborated by the certifications of Miguel, Guzzi, Mateiro-Fonseca, and Fonseca and the letter from Evaristo. The appellant also submits numerous documents with his Newark addresses, which were contemporaneously mailed and dated after he established residency in March 2010. The appellant has shown that he has resided and socialized in Newark since the examination closing date. Additionally, the Commission acknowledges that, for educational reasons, students may live away from their local legal residence. In this case, the appellant's primary residence remained in Newark notwithstanding that he lived in California to attend law school. There is nothing in the record which demonstrates that the appellant established residency in California. Further, the appellant did not attend law school until August 2011 and prior to that time he lived in Newark for over one year. Thus, the time spent in California during this intermittent period does not invalidate the appellant's residency status in Newark.

With respect to the appellant's driver's license, there is no dispute that an address change occurred in November 2011 to Califon. However, the appellant explains that once he discovered what his mother had done, he immediately changed his address back to the first Pacific Street, Newark, address, as he remained a resident of Newark at the time. The certification from the appellant's mother and the letter from Evaristo verify that the change of address occurred unbeknownst to the appellant. Further, the statements regarding this discrepancy are consistent as to the timing of the events. The appellant changed his address back to Newark in December 2011 upon his discovery, which is only one month after it occurred. Moreover, the appointing authority suggests that the appellant never intended to relocate to Newark, but for the fact that he was seeking an appointment as a Fire Fighter. However, the appellant indicates that he plans to remain a Newark resident, regardless of whether he is appointed as a Fire Fighter. The record shows that the appellant has family ties in Newark and has been a resident for over four years. The Commission finds no credible evidence in the record to dispute the appellant's current residency.

Accordingly, the appellant has met his burden of proof in this matter and the appointing authority has failed to present a sufficient basis to remove the appellant's name from the eligible list for Fire Fighter (M2554M), City of Newark, eligible list. It is noted that since the appellant is not a veteran, his appointment is

⁴ Since the rent included the utilities, the fact that the appellant does not provide such documents is not detrimental to his appeal.

not mandated. Additionally, the appellant is subject to an updated background check and must successfully pass medical and psychological examinations prior to any appointment. Therefore, the appellant has not presented a sufficient basis for a retroactive appointment or back pay, nor reinstatement on any pending certification. *See e.g., In the Matter of John Tracy* (CSC, decided March 13, 2014) (The Commission denied an appellant's request for reconsideration of the remedies provided to him upon his restoration to a Fire Fighter eligible list, finding that the appellant was not a veteran and thus not entitled to a retroactive appointment). The Commission stresses that individuals whose names merely appear on a list do not have a vested right to appointment. *See In re Crowley*, 193 N.J. Super. 197 (App. Div. 1984), *Schroder v. Kiss*, 74 N.J. Super. 229 (App. Div. 1962). The only interest that results from placement on an eligible list is that the candidate will be considered for an applicable position so long as the eligible list remains in force. *See Nunan v. Department of Personnel*, 244 N.J. Super. 494 (App. Div. 1990).

Regarding counsel fees, N.J.A.C. 4A:2-2.12(a) provides that the Commission shall award partial or full reasonable counsel fees incurred in proceedings before it and incurred in major disciplinary proceedings at the departmental level where an employee has prevailed on all or substantially all of the primary issues before the Commission. *See also*, N.J.S.A. 11A:2-22. However, this is not a disciplinary appeal. The only regulation under which the appellant may be entitled to back pay, benefits, and counsel fees is N.J.A.C. 4A:2-1.5(b). That regulation provides in pertinent part that:

[b]ack pay, benefits and counsel fees may be awarded in disciplinary appeals and where a layoff action has been in bad faith. *See N.J.A.C. 4A:2-2.10*. In all other appeals, such relief may be granted where the appointing authority has unreasonably failed or delayed to carry out an order of the [Commission] or where the Commission finds sufficient cause based on the particular case. A finding of sufficient cause may be made where the employee demonstrates that the appointing authority took adverse action against the employee in bad faith or with invidious motivation.

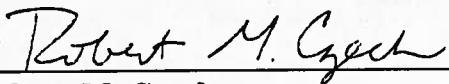
The instant matter is not a disciplinary or layoff appeal, nor is this a situation where the appointing authority has failed or delayed to carry out a Commission order. Further, the appellant has not shown that the appointing authority abused its discretion, acted in bad faith, or had an invidious reason to request the appellant's removal from the subject eligible list. Therefore, under these circumstances, there is no basis to grant the appellant's request for back pay, benefits, and counsel fees.

ORDER

Therefore, it is ordered that this appeal be granted and the appellant's name be restored to the Fire Fighter (M2554M), City of Newark, eligible list, for prospective employment opportunities only. However, should the appellant not receive an opportunity to be considered for a position prior to the expiration of the eligible list, the list shall be revived and the appellant's name certified at the time of the next certification for Fire Fighter, City of Newark.

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

Inquiries
and
Correspondence

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

Attachment

c: Christopher Mateiro
Craig S. Gumpel, Esq.
Emily Truman, Assistant Corporation Counsel
Michael Greene
Kenneth Connolly



Chris Christie
Governor
Kim Guadagno
Lt. Governor

STATE OF NEW JERSEY
CIVIL SERVICE COMMISSION
DIVISION OF CLASSIFICATION AND PERSONNEL MANAGEMENT
P. O. Box 313
Trenton, New Jersey 08625-0313

Robert M. Czech
Chair/Chief Executive Officer

February 21, 2014

Craig S. Gumpel, Esq.
Fox and Fox, LLP
70 South Orange Avenue
Suite 203
Livingston, NJ 07039

RE: Removal of Name from Eligible List – Christopher Mateiro

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

Dear Mr. Gumpel:

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 (March 31, 2010) up to and including the date of consideration for appointment.

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. Mateiro's Motor Vehicle Services Address Change History, which indicates that Mr. Mateiro had established 1234 Scarlet Oak Road, Califon, NJ 07830-3010 as both his mailing and residential address between the closing date of the announcement and the issuance of the certification. 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;

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. Mateiro does not include any official government documentation which establishes that your client had maintained continuous residency in Newark between March 31, 2010 and the issuance of the certification.

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. Mateiro's name has been sustained and the appeal is denied.

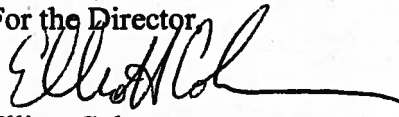
In accordance with Merit System Rules, you may appeal this decision to the Division of Appeals and Regulatory Affairs (DARA) within 20 days of receipt of this letter. You must submit all proofs, arguments and issues which you plan to use to substantiate the issues raised in your appeal. Please submit 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 (C44:10-55 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
PO Box 312
Trenton, NJ 08625-0312

Sincerely,
For the Director,


Elliott Cohen,
Local Placement Services

c: Julien X. Neals

Julien X. Neals
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