



STATE OF NEW JERSEY

In the Matter of Neil O’Sullivan, Fire
Fighter (M1544T), Jersey City

**FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION**

CSC Docket No. 2019-61

List Removal Appeal

ISSUED: DECEMBER 21, 2018 (SLK)

Neil O’Sullivan, represented by Robert J. Pompliano, Esq., appeals his removal from the eligible list for Fire Fighter (M1544T), Jersey City on the basis that he lacks the required background.

The appellant took the open competitive examination for Fire Fighter (M1544T), achieved a passing score, and was ranked on the subsequent eligible list. In seeking his removal, the appointing authority indicated that the appellant lacks the required background. Specifically, the subject examination announcement indicates that applicants must be citizens of the United States by the August 31, 2015 closing date. However, the appellant did not become a citizen until December 21, 2015.

On appeal, the appellant states that he was under the belief, at the time of his application, that his citizenship had already been confirmed and/or it should have been confirmed prior to the closing date. He asserts that he did not play in role in the delay in his naturalization. The appellant believes that such a technical defect can be, and most often is, waived by the appointing authority. He further believes that the Civil Service Commission (Commission) has the authority to deem his citizenship as being effective by the closing date for the purposes of this examination.

In response, the appointing authority, represented by James B. Johnston, Assistant Corporation Counsel, highlights that the announcement mandates that

applicants be citizens by the closing date. Therefore, it states that the appellant's obtaining citizenship three months after the closing date is of no consolation. The appointing authority highlights that there is no statutory authority or case law that requires it to waive the citizenship requirement. Also, it indicates that the citizenship requirement is not just a Commission requirement, but it also is a Jersey City requirement. Therefore, the appointing authority indicates that this is not a requirement that it would waive.

CONCLUSION

N.J.A.C. 4A:4-2.3(b)2 requires applicants to possess all the requirements specified in an announcement for an open competitive examination by the closing date. *N.J.A.C.* 4A:4-4.7(a)1, in conjunction with *N.J.A.C.* 4A:4-6.1(a)1, allows the Commission to remove an eligible's name from an eligible list when he or she lacks the job requirements. *N.J.A.C.* 4A:4-6.3(b) provides that the appellant has the burden of proof in examination appeals.

In this matter, the appointing authority had a valid reason for removing the appellant's name from the list. Specifically, the appellant was not a citizen by the August 31, 2018 closing date as required in the subject announcement. While the appellant argues that it was not his fault that his citizenship did not become effective until three months after the closing date, this argument is unpersuasive. In this regard, there is no basis to relax the provisions of *N.J.A.C.* 4A:4-2.3(b)2. Specifically, the appointing authority has indicated its unwillingness to "waive" the citizenship requirement and since the list is competitive with currently more than 1000 eligible candidates, the Commission has no basis to relax the citizenship requirement.

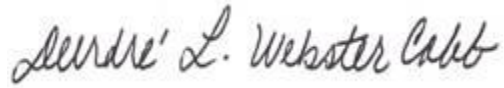
Accordingly, the appellant has not met his burden of proof in this matter and the appointing authority has shown sufficient cause for removing his name from the Fire Fighter (M1544T), Jersey City eligible list.

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 19th DAY OF DECEMBER, 2018



Deirdré L. Webster Cobb
Chairperson
Civil Service Commission

Inquiries
and
Correspondence

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

c: Neil O'Sullivan
Robert J. Pompliano, Esq.
Robert Kakoleski
James B. Johnston, Assistant Corporation Counsel
Kelly Glenn