B-4

STATE OF NEW JERSEY

FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION

In the Matter of Albert J. Maresca III,
Fire Fighter (M2554M),
City of Newark

CSC Docket No. 2014-1090

List Removal Appeal

ISSUED: AUG 15 2014 (DASV)

Albert J. Maresca III 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 disabled veteran, passed the subject examination and ranked number one on the resulting eligible list, which promulgated on December 13, 2011 and expires on December 12, 2014.[1] The first certification of the eligible list was issued on May 1, 2012 containing the names of 100 eligibles. The appellant was listed in the first position on the certification. In disposing of the certification, the appointing authority requested the removal of the appellant's name due to his failure to meet the residency requirement. It is noted that 30 appointments, effective July 23, 2012, and one appointment, effective August 17, 2012, were made from the certification. The appellant appealed to CPM, submitting documentation which listed an Oliver Street, Newark, address, such as a hospital bill dated December 12,

[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.

2012; a benefit change confirmation from Lowe's Companies Inc., dated October 20, 2011; credit union statements from October 1, 2011 to March 31, 2012; and a County of Essex Voter Acknowledgment Card with a registration date of January 13, 2012. However, upon review, CPM found 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 contends that the appointing authority removed him for "breaking residency" before he was required by the Servicemembers Civil Relief Act (SCRA), 50 *U.S.C.S. Appx.* §§501 *et seq.*, to establish residency. In that regard, he explains that this federal law permits him to establish residency within six months of his separation from service. The appellant also submits that section 705 of this law "allows [him] the right to acquire residency while away in the military." At the time of the examination closing date on March 31, 2010, the appellant states that he was serving with the United States Marine Corps (USMC) and had been deployed to Afghanistan from December 2009 to July 2010. However, it is noted that the appellant later explains that from February 2007 until February 2010, he lived at Camp LeJuene in North Carolina with the members of the USMC. He was not discharged until February 19, 2011. The appellant submits a copy of his Certificate of Release or Discharge from Active Duty. The certificate also provides the appellant's date of entry as February 20, 2007 and his "Home of Record at Time of Entry" as Atlantic Highlands, New Jersey.[2] The appellant thus argues that he had until August 19, 2011 to establish residency in Newark. He states that he lived with his brothers Brett and Dylan Maresca and Omar Melo, who was also the property owner, "by the Spring of 2011[3]" in an apartment on Oliver Street in Newark. Dylan leased the apartment from Melo beginning May 1, 2010. The appellant submits a copy of the lease. Moreover, the appellant notes that Brett is also a USMC veteran and his background was investigated by different investigators who correctly calculated the time period in which he was required to establish residency. In that regard, the appellant states that Brett separated from the USMC on June 26, 2011 and "his investigation began as of December 6, 2011." Brett, who ranked as the 39th veteran on the same certification as the appellant, was appointed as a Fire Fighter effective July 23, 2012.

Additionally, the appellant indicates that he was apparently removed from the subject eligible list because he "broke residency in July of 2011," when he changed his address to Atlantic Highlands on his license in order to complete paperwork for employment with Triple Canopy, Inc.. The appellant submits a copy of a Training and Deployment Agreement with Triple Canopy, Inc., which was

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[2] On appeal to CPM, the appellant explained that the Atlantic Highlands address is his parents' home and he has designated all of his military records to be sent there.

[3] In his appeal to CPM, the appellant specified that he "moved in with Dylan in April 2011 after [he] got out of the service and did some travelling."

signed only by him on September 20, 2011. He states that Triple Canopy. Inc., is a private security firm which hires military veterans to perform security work in Iraq. He was scheduled to "deploy" in October 2011, but the deployment was cancelled. The appellant also argues that if there was an actual problem with his residency, he would not have been sent for fingerprinting during pre-employment processing, which was the step before taking the medical and psychological examinations. The appellant notes that he was appointed as a Fire Fighter with the North Hudson Regional Fire and Rescue, and there was no issue with his residency in Newark. Personnel records indicate that the appellant was appointed effective February 28, 2013. The appellant states that despite this employment, he is still interested in being a Fire Fighter for the City of Newark.

Furthermore, the appellant clarifies that he planned on living in Newark at North 6th Street upon his discharge from the military and that is why he applied for a position with the City of Newark. However, his brother Dylan later moved to Oliver Street, where the appellant "moved into after [his] separation from the military in February 19, 2011." In addition, the appellant explains that his father and Dylan were securing him and his other brother Brett an apartment while they were deployed. In support of his appeal, the appellant submits documentation, as indicated above, and other documents regarding his military service.

In response, the appointing authority, represented by Meredith A. Accoo, Assistant Corporation Counsel, contends that the appellant did not maintain continuous residency in Newark from March 31, 2010 up to and including the date he could have been appointed. Additionally, it asserts that there is no statutory or regulatory support in Civil Service law or rules for an exemption to this requirement for veterans. The appointing authority submits that the appellant broke residency from July 29, 2011 until October 27, 2011 and resided in Atlantic Highlands as demonstrated by his Motor Vehicle Services Address Change History. It is noted that a review of this document, dated April 9, 2012, reveals that the appellant's mailing and residential address was in Atlantic Highlands as of October 15, 2010 when it was changed to a North 6th Street, Newark, address. It was then changed back to the Atlantic Highlands address on July 29, 2011. The address was again changed on October 27, 2011 to the Oliver Street address in Newark, which is reflected as the appellant's "current" address.

The appellant responds that he supplied the appointing authority with numerous documents, such as bank documents, bills, car registration, car insurance, paystubs, voter registration, and affidavits of Melo and neighbors which demonstrated that the appellant lived in Newark. He also presented the appointing authority with an affidavit, certifying that he is a resident of Newark. The appellant submits this information on appeal. In further support of his appeal, the appellant certifies that he has been a resident of Newark since his separation from the USMC in February 2011. He further certifies that from July 29, 2011 until

October 27, 2011, his "primary and only residence" was at Oliver Street. The appellant also submits notarized statements from his brothers Dylan and Brett, attesting to the fact that they lived with the appellant at the Oliver Street address in Newark from July 29, 2011 until October 27, 2011, the time period the appointing authority questions. Brett further states that he and the appellant maintain their military records at their parents' home in Atlantic Highlands "because it is a stable address that will not be changing during [their] 8 year commitment to the Marine Corp[s]." Additionally, the appellant's father, Albert J. Maresca, Jr., a Fire Captain with the City of Newark, certifies that the appellant moved out of his Atlantic Highlands home on February 19, 2007 when the appellant joined the USMC, but his sons keep their military contact address with him. Maresca indicates that his wife is their sons' power of attorney. In addition, the appellant presents a Juror Summons for March 12, 2014 sent to him from the Superior Court of New Jersey, Essex County. Finally, the appellant alleges that the appointing authority "wanted to get to the children of the Fire Director and Fire Chief, and were looking to knock off candidates that were ahead of them by any means." Therefore, the appellant requests restoration to the subject eligible list and a retroactive date of appointment with back pay and appropriate salary step placement.

CONCLUSION

N.J.A.C. 4A:4-2.11(c) provides that where residence requirements have been established in local service in addition to the New Jersey State residency requirement, residence with regard to local service requirements 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.

In the instant matter, the appellant indicates that he lived on Oliver Street in Newark as of April 2011. Specifically, he states that prior to that time, including the examination closing date, he had been deployed to Afghanistan from December 2008 to July 2010. He also states that from February 2007 until February 2010, he lived at Camp LeJuene in North Carolina. He was not discharged until February 19, 2011 and travelled until he moved into the Oliver Street address with his brothers. Although the appellant certifies that he was a resident of Newark since his separation in February 2011, he indicates that he did not move into the Oliver Street address until April 2011. The appellant further certifies that from July 29, 2011 until October 27, 2011, his "primary and only residence" was at Oliver Street. The appointing authority bases its request to remove the appellant from the subject eligible list on the assertion that the appellant broke residency from July 29, 2011 until October 27, 2011.

Initially, the time period in which the appellant must meet the residency requirements must be determined. The appellant cites SCRA, 50 *U.S.C.A.* §501 *et seq.*, for the proposition that he had up to six months to establish residency in Newark to be eligible for appointment. However, this law does not afford the appellant the protection he suggests. 50 *U.S.C.S. app.* §502 provides that:

The purposes of this Act are

(1) to provide for, strengthen, and expedite the national defense through protection extended by this Act to servicemembers of the United States to enable such persons to devote their entire energy to the defense needs of the Nation; and

(2) to provide for the temporary suspension of judicial and administrative proceedings and transactions that may adversely affect the civil rights of servicemembers during their military service.

Moreover, Section 705 of SCRA, Guarantee of residency for military personnel, which the appellant cites, pertains to voting. It does not relate to the establishment of residency for Civil Service appointments. Therefore, *N.J.A.C.* 4A:4-2.11(e)1 controls and the appellant was required to maintain continuous residency from March 31, 2010, the examination closing date, up to and including the date of appointment. There is no indication in the record that the appellant's was a resident of Newark on March 31, 2010. Although the appellant was serving with the USMC and was deployed, his "Home of Record at Time of Entry" on February 2007 was in Atlantic Highlands. Furthermore, the appellant's mailing and residential address was recorded in his Motor Vehicle Services Address Change History as Atlantic Highlands on October 15, 2010 when it was changed to North 6th Street. It is noted that the address change history also casts doubt on whether the appellant was living at the Oliver Street location in April 2011. In that regard, had the appellant been living on Oliver Street beginning in April 2011, the appellant should have changed his address to Oliver Street, notwithstanding the appellant's explanation that he initially intended to live at North 6th Street and that is why he applied for a position with the City of Newark. Moreover, the change history indicates he changed his address back to Atlantic Highlands on July 29, 2011. Furthermore, the documents the appellant presents reflect dates after March 31, 2010 and do not convince the Commission that he was a resident of Newark at the closing date or that he maintained continuous residency. Lastly, the residence of the appellant's brothers or the investigation of their backgrounds has no bearing as to whether the appellant himself met the residency requirement.

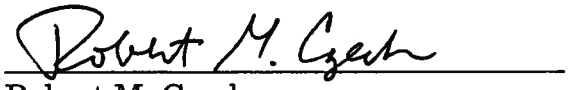
Therefore, under these circumstances, the appointing authority has presented a sufficient basis to remove the appellant's name from the Fire Fighter Fire Fighter (M2554M), City of Newark, eligible list due to his failure to meet the residency requirement. Accordingly, the appellant has failed to meet his burden of proof in this matter.

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 13TH DAY OF AUGUST, 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: Albert J. Maresca III
Meredith A. Accoo, Assistant Corporation Counsel
Julien X. Neals
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

October 3, 2013

Albert J. Maresca III
[redacted]

RE: Title: Fire Fighter - Jurisdiction: Newark
Symbol: M2554M - Certification No: OL120609 - Certification Date: 05/01/12

Dear Mr. Maresca:

This is in response to your correspondence contesting the removal of your name from the above-referenced eligible list.

The Appointing Authority requested removal of your 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 up to and including the date of 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 your Motor vehicle Address Change History which indicates that subsequent to the examination announcement closing date of March 31, 2010, you resided at [redacted] Atlantic Highlands, NJ. Based on this information, the Appointing Authority states that you did not maintain continuous residency in the City of Newark.

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 name to the eligible list. Therefore, the Appointing Authority's decision to remove your name has been sustained and your 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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