



DECISION OF THE CIVIL SERVICE COMMISSION

CSC DKT. NO. 2018-944
OAL DKT. NO. CSV 00226-18

(SLK)

Having considered the record and the Administrative Law Judge's initial decision, and having made an independent evaluation of the record, including a thorough review of the exceptions and reply, the Civil Service Commission (Commission), at its meeting on May 9, 2019, accepted and adopted the Findings of Fact and Conclusion as contained in the attached Administrative Law Judge's initial decision.

DISCUSSION

The appellant was terminated via a release letter dated September 8, 2017, based upon a letter from the City Administrator that he was not of the moral character to be a Fire Fighter due to manipulating a document used for his application to the academy. Upon the appellant's appeal to the Commission, the matter was transmitted to the Office of the Administrative Law (OAL) for a hearing as a contested case.

In her decision, the ALJ found that it was undisputed that the appellant met the Plainfield Fire Department's residency requirement. Initially, as part of the

pre-employment process in May 2017, the appellant provided six documents to prove his residency at two separate addresses in Plainfield. However, when asked for more documentation, he provided a roller hockey alliance insurance card (Document), from a roller hockey league where both the appellant and another cadet participated, which he modified by adding his actual Plainfield address and identification number. The original Document did not have any address or identification number on it. Upon being questioned about the Document, the appellant admitted to the Investigator that he added his actual address and identification number. Additionally, the appellant testified that he did so because he felt "pressured" because he did not have any further proof of his Plainfield residence. The hiring committee recommended that the appellant should not be hired due to the altered document. However, the Fire Chief decided to give the appellant a second chance, just as the Chief had been given as a recruit, and hired the appellant. The Fire Chief explained that he was impressed by the appellant's dedication to build camaraderie with his fellow cadets as the appellant chose to attend the fire academy a second time and was not required to do so because he had previously graduated a fire academy and achieved a Level 2 Fire Certificate, when only a Level 1 Fire Certificate was required.

The appellant started the fire academy on June 9, 2017. Subsequently, after an e-mail was received from a citizen questioning the residency of some of the cadets, the appellant's residency was re-investigated in July 2017. The ALJ found that the allegation concerning the appellant's residency was not true. The appellant graduated the fire academy on September 8, 2017 without incident. However, as the appellant admitted during the July investigation that he had modified the Document, the Director of Public Safety informed the Fire Chief that the appellant was to be terminated on September 11, 2017, his first day of work. Despite protest, the Fire Chief followed through and terminated the appellant and two other cadets after only working three or four hours. The ALJ concluded that the appointing authority's termination was not proper as the appellant's actions did not significantly impinge upon the character and morals of being a Fire Fighter when he simply inserted truthful information, his accurate address and identification number, on the Document, which was the seventh document he submitted to prove his Plainfield residency. Specifically, the ALJ concluded that the appellant did not alter the Document in a material way that would speak to his character or morals. Accordingly, the ALJ reversed the removal and ordered that the appellant to be reinstated and receive back pay and other benefits.

In the appointing authority's exceptions, it asserts that it was not the appointing authority's burden to prove that the appellant altered the Document in a material way, but it was the appellant's burden to prove that he did not falsify the Document under *N.J.A.C. 4A:4-6.1(a)6*. The appointing authority argues that not only was the appellant removed for altering the document, but he was also removed for lying to investigators. Specifically, the appellant told the hiring committee in

May 2017 he could not produce the Document on the fire headquarters' computer because "it's only on the home computer." However, the appellant testified that he could have pulled up the document on the computer, but he did not do so because the Document would not have his address on it. Additionally, the ALJ concluded that the appellant altered the document out of "laziness." However, laziness is antithetical to being a Fire Fighter. Additionally, Fire Fighters are held to a higher standard than others who serve in public office and the appellant's actions are contrary to this standard. Moreover, the appointing authority presents prior Commission decisions where the Commission denied the appeals of eligibles from their removals from eligible lists for falsification where the appellants did not accurately or completely fill out their employment applications. Additionally, it indicates that the Fire Chief did not have the authority to give the appellant "a second chance." Instead, the Fire Chief should have notified the City Administrator and the Director of Public Safety concerning the appellant's situation as it was only the Director of Public Safety who had the authority to hire. Therefore, the appointing authority was not acting in bad faith in terminating the appellant as neither the City Administrator nor the Director of Public Safety were aware of the appellant's actions until the July investigation and it was only then could they have pursued the appellant's termination.

In the appellant's reply to exceptions, the appellant asserts that the appointing authority continues to change its rationale for terminating the appellant. Initially, it indicated that the appellant was terminated for altering the Document which it claimed was given to the appellant from another cadet.¹ However, the Director of Public Safety was unable to testify as to which document was falsified. Further, the Director of Public Safety admitted that the July investigation did not reveal any new information and was just a rehashing as to what was already known. The appellant argues that this proves that the appointing authority acted in bad faith as it already knew in May 2017, a month before the appellant attended the fire academy, about the modification of the Document, and the appellant was not fired until September 2017, on his first day of work. Further, no one testified that the Document was a forgery and the ALJ was correct when she concluded that the simple addition of his correct address to a legitimate document verified and supplied by an independent agency was not a forgery and not a cause for termination. Additionally, the ALJ found that the appellant had sufficiently proved his residency and did not need this additional document, but was pressured to provide it. Further, the Fire Chief testified as to why he wanted to give the appellant and the other cadets a second chance. Moreover, as the appellant had only been working for the appointing authority for three or four hours, he could not be terminated based on his performance during his working test period (WTP), which is further evidence of the appointing authority's bad faith.

¹ The appellant and the other cadet both denied during their testimony that the Document was the other cadet's. Instead, the appellant testified that the modified Document was his own.

Upon its *de novo* review of the record, the Commission agrees with the ALJ regarding the charges. The Commission finds that the appellant's modifying the Document by providing his actual address and identification number on it does not indicate that he lacks the character and morals to be a Fire Fighter. Further, even assuming, *arguendo*, that the appellant's actions were considered sufficient grounds to be removed for falsification, the time to remove the appellant was in May 2017 before he was hired and entered the fire academy in June 2017. This is consistent with the list removal appeals that the appointing authority cites. Further, while the appointing authority argues that the Fire Chief did not have the authority to hire the appellant and he should have consulted with the Director of Public Safety and the City Administrator before making the decision to give the appellant "a second chance," it is not the appellant who should be held liable for any failure on the appointing authority's part to follow its internal procedures as it would be inequitable to remove him after having successfully completed the fire academy for something that was known to it prior to hiring him and authorizing him to enter the fire academy with the other cadets.

Additionally, the Commission notes that the appellant's WTP is not at issue. When major discipline is taken against an employee undergoing a WTP, the provisions of *N.J.A.C. 4A:2-2.1, et seq.* apply. Thus, issues of bad faith are not germane and, as in all such matters, it is the appointing authority's burden of proof to provide evidence that the employee is guilty of the charges.

Since the charges have been dismissed, the appellant is entitled to mitigated back pay, benefits, and seniority and reasonable counsel fees pursuant to *N.J.A.C. 4A:2-2.10* and *N.J.A.C. 4A:2-2.12*. However, regarding back pay, the record reveals that the appellant was removed while still in his WTP. See *N.J.A.C. 4A:4-5.2(d)*. Specifically, the appellant only served three months of his one-year WTP. In *In the Matter of Rosalind Candelaria* (MSB, decided November 10, 1998), where the Commission reversed the termination of an employee who was in her WTP, the Commission found that the appellant was only entitled to receive back pay, benefits and seniority from the date of termination until the remainder of the WTP as it could not be assumed that she would have passed the WTP. See also, *In the Matter of Jennifer Mortimer* (MSB, decided April 26, 2006). In these cases, the charges were related to the appellants' performance. However, this matter is distinguishable from those cases as the appellant had just completed the academy and had only worked for the appointing authority for three to four hours before being terminated and the allegations were not related to his work performance. Therefore, the same concerns about the appellant's performance and the ability to successfully complete his WTP do not exist. Considering this background, the Commission finds that the appellant is entitled to receive back pay, benefits and seniority for the remainder of the original WTP, from September 8, 2017 to June 9, 2018. Further, the appellant must complete the remaining nine months of his WTP upon reinstatement. Upon successful completion of his new WTP, the appellant

shall additionally receive mitigated back pay from the end of his original WTP, June 9, 2018, until the date of his reinstatement.

This decision resolves the merits of the dispute between the parties concerning the disciplinary charges and the penalty imposed by the appointing authority. However, in light of the Appellate Division's decision, *Dolores Phillips v. Department of Corrections*, Docket No. A-5581-01T2F (App. Div. Feb. 26, 2003), the Commission's decision will not become final until any outstanding issues concerning back pay or counsel fees are finally resolved. In the interim, as the court states in *Phillips, supra*, if it has not already done so, upon receipt of this decision, the appointing authority shall immediately reinstate the appellant to his position.

ORDER

The Civil Service Commission finds that the action of the appointing authority in removing the appellant was not justified. The Commission therefore reverses that action and grants the appeal of Christopher D'Amico. The Commission further orders that appellant be granted back pay, benefits, and seniority from September 8, 2017 to June 9, 2018. The amount of back pay awarded is to be reduced and mitigated as provided for in *N.J.A.C. 4A:2-2.10*. Proof of income earned and an affidavit of mitigation shall be submitted by or on behalf of the appellant to the appointing authority within 30 days of issuance of this decision. Further, the appellant must complete the remaining nine months of his WTP upon reinstatement. Additionally, upon successful completion of his new WTP, the appellant shall receive mitigated back pay from the end of his original WTP, June 9, 2018, until the date of his reinstatement.

The Commission further orders that counsel fees be awarded to the attorney for appellant pursuant to *N.J.A.C. 4A:2-2.12*. An affidavit of services in support of reasonable counsel fees shall be submitted by or on behalf of the appellant to the appointing authority within 30 days of issuance of this decision. Pursuant to *N.J.A.C. 4A:2-2.10* and *N.J.A.C. 4A:2-2.12*, the parties shall make a good faith effort to resolve any dispute as to the amount of back pay and counsel fees. However, under no circumstances should the appellant's reinstatement be delayed pending resolution of any potential back pay or counsel fee dispute.

The parties must inform the Commission, in writing, if there is any dispute as to back pay and counsel fees within 60 days of issuance of this decision. In the absence of such notice, the Commission will assume that all outstanding issues have been amicably resolved by the parties and this decision shall become a final administrative determination pursuant to *R. 2:2-3(a)(2)*. After such time, any further review of this matter shall be pursued in the Superior Court of New Jersey, Appellate Division.

DECISION RENDERED BY THE
CIVIL SERVICE COMMISSION ON
THE 9th DAY OF MAY, 2019



Deirdré L. Webster Cobb
Chairperson
Civil Service Commission

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and
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Attachment



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CSV 00226-18

AGENCY REF. NO. 2018-944

**IN THE MATTER OF CHRISTOPHER D'AMICO,
CITY OF PLAINFIELD (FIRE DIVISION).**

Nicholas J. Palma, Esq., for petitioner Christopher D'Amico (Palma Law Firm,
attorneys)

Little E. Rau, Esq., for respondent City of Plainfield (Ruderman, Horn, &
Esmerado attorneys)

Record Closed: February 15, 2018

Decided: April 2, 2019

BEFORE DANIELLE PASQUALE, ALJ:

STATEMENT OF THE CASE

Christopher D'Amico (appellant) appeals from disciplinary action taken by respondent, City of Plainfield Fire Division (respondent), to remove him from his position as a firefighter. The removal was based upon a letter from the Business Administrator that he was not of the moral character to be a firefighter due to manipulating a document used for his application to the academy.

PROCEDURAL HISTORY

Appellant was terminated via a release letter dated September 8, 2017. Appellant filed an appeal to the Civil Service Commission, which was granted on September 28, 2018.

The appeal was transmitted to the Office of Administrative Law (OAL), on January 9, 2018, for hearing as contested cases pursuant to N.J.S.A. 52:14B-1 to -15 and N.J.S.A. 52:14F-1 to -13. Prehearing telephone conferences were held on January 31, 2018, and April 2, 2018. Hearings were held on April 5, May 14, and July 11, 2018. Post-hearing summations were submitted by Appellant on November 29, 2018, and Respondent on November 30, 2018. A final telephone conference was held on February 15, 2019, when the tribunal learned of potential resolution for another cadet. To preserve any conflict with potential settlement, I asked the parties if they wanted a written opinion. The parties expressed that they desired a written opinion, and the record was closed accordingly.

FACTUAL DISCUSSION

A. Summary of Trial Testimony:

Trial Testimony of Corey Henry

Corey Henry testified credibly on behalf of respondent. Henry has been a firefighter with the City of Plainfield for eleven years. Henry also screens applicants for the City of Plainfield Fire Department as part of his duties. He testified credibly as corroborated later that the hiring background check were historically done by the PFD. He took an online training class on how to perform background checks. He testified that one of the requirements he screens applicants for is the residency requirement. Applicants must be a resident of the municipality before taking the Civil Service Examination.

Henry was part of the hiring committee that evaluated the firefighter cadet applicants for D'Amico's class. The hiring committee's role is to make recommendations to Deputy Chief Courtney after application materials are received and a background check is performed. Deputy Chief Courtney would then make the hiring recommendation to Frank Tidwell, the Fire Chief. Chief Tidwell had the authority to accept or reject the recommendation.

Henry testified that he performed checks at the addresses listed on D'Amico's application to prove past residencies in Fanwood and Plainfield. D'Amico lived in Fanwood, New Jersey, until July of 2015. He lived at xxxx Sleepy Hollow Lane, Plainfield, from July of 2015 to April of 2016. To establish residency at this address, he submitted a room rental agreement, a student statement from PNC Bank, a Sportsplex at Metuchen payment document, and a Roller Hockey Alliance insurance document.

Through visits to the various residences listed on the application, Henry concluded that in April of 2016, D'Amico moved and was currently residing at xxx Charlotte Road in Plainfield. To show proof of residency at xxx Charlotte Road in Plainfield, D'Amico submitted an AmeriHealth Card, a Voter Acknowledgment Card, a pay statement from Sunrise Shoprite Liquors, and his driver's license. Henry testified that these documents were sufficient for purposes of the background check at the time of the investigation.

In addition to the documents above, Henry asked D'Amico to submit more documentation for xxx Charlotte Road. This documentation was J-7(a), Mr. D'Amico's Roller Hockey League Identification Card. Henry noticed that it looked identical to J-7(b), a Roller Hockey League Identification Card belonging to another cadet, Maxwell Jones. Henry alleged that D'Amico's card looked "edited, like he copied and pasted and changed a couple numbers on it and put his name." Henry testified that Maxwell Jones stated, upon questioning about the similar paperwork, that he gave D'Amico his information. Henry called D'Amico into his office to pull the membership up on the computer, and D'Amico was unable. Eventually, D'Amico admitted to Henry that he altered the paperwork. He took Jones's name off and put his name on the document

and changed the reference number at the top of the document. However, Henry noted that D'Amico stated it was his actual address and actual ID number.

Henry testified that he discussed the issue with Deputy Chief Courtney and Lieutenant Owens. Deputy Chief Courtney gave D'Amico the option of signing a waiver to remove himself from the list of applicants from the fire department, as a consequence of submitting false documentation. D'Amico did not sign the waiver. Henry testified that he, Lieutenant Owens, and Deputy Chief Courtney then brought the application booklets to Chief Tidwell and recommended that D'Amico should not be hired based on the false documentation. Chief Tidwell listened to the recommendations, but stated that "everyone deserves a second chance," and that ultimately it was his decision on whether to hire D'Amico. Upon questioning from the Court, Henry testified that the recommendation to not hire D'Amico was solely because of the one falsified document, not because of a residency failure. Again, he confirmed the added information was accurate and truthful.

On cross-examination, Henry testified that Chief Tidwell decided to hire both Jones and D'Amico, and "cut them a break." Henry testified that since the exam date was October 15, 2015, and Mr. D'Amico moved into Plainfield in July of 2015 prior to the date of the examination, he would be properly cleared for residency purposes. He testified that despite being asked for multiple documentation for his residency, the committee still requested more documentation. This documentation included his driver's license, an FBI criminal history check, a voter ID card, bank statement, and rent receipts. D'Amico's application requested "written documents made through minimum of five." There was no question to the authenticity of any of the documents besides the Roller Hockey Alliance document. Henry also testified that the Roller Hockey Alliance documents show that both Jones and D'Amico were members. He testified that the document for the SMG Sportsplex at Metuchen shows that D'Amico made three separate payments to the rink. Henry testified that the committee did not actually investigate whether D'Amico was playing hockey at this rink.

Trial Testimony of Carl Riley

Carl Riley next testified on behalf of respondent. Riley has been employed as the Director of Public Safety for the City of Plainfield since January of 2014. He oversees the fire division with policy and hiring.

Riley testified that on September 8, after D'Amico went through and graduated the fire academy, he directed Fire Chief Tidwell through an email to serve Chris D'Amico with a termination letter. The decision to send the email was made by Rick Smiley, the City Administrator. Riley testified that the termination decision resulted from an investigation of Chris D'Amico by Captain O'Brien of the Plainfield Police Department in July of 2017. Riley instructed Captain O'Brien to investigate D'Amico after receiving an email from a citizen, Abbygale Albert, who overheard at Plainfield's Fourth of July parade that a couple of fire cadets did not actually reside in the City of Plainfield.

Riley testified that Captain O'Brien created an Official Report after reviewing the hiring process that the fire department conducted for Chris D'Amico's cadet class. Based upon the investigation, three total cadets, including D'Amico, "raised some concerns." As a result of the investigation, D'Amico was interviewed on tape by Captain O'Brien and Lieutenant Sylvester of the Plainfield Police Department. Riley testified that during this interview, D'Amico admitted that he provided a false document for his address on the one document in question.

On cross-examination, Riley testified that during the investigation, it was discovered that Abbygale Albert denied ever sending the email. Riley also testified that the altered document that was the reason for D'Amico's termination was already reported in D'Amico's recruit file issued by Firefighter Corey Henry on May 15, 2017. He testified that that the July investigation did not divulge any new information but was rather a rehashing of what was already known in May. Riley testified that D'Amico was not terminated because of the document in May of 2017, and still granted rights to go to the Academy in June. Riley testified that Chief Tidwell objected to terminating the cadets.

Trial Testimony of Police Captain Kevin O'Brien

Kevin O'Brien testified for the respondent. He has been Captain of the Police Division of Plainfield since January of 2016, and has been employed with the City of Plainfield since 2000. He was lieutenant from 2012 to 2016. He was involved with the investigation involving Mr. D'Amico in 2017 after receiving the email from Abbygale Albert questioning the status of new firefighter cadets. He testified that Albert claimed that she did not author the email, but that did not alter the course of the investigation regarding D'Amico. After looking into the residency of the cadets, Chris D'Amico's application became a concern because of the roller hockey document. O'Brien looked further into the Roller Hockey Alliance document that Firefighter Henry had questioned D'Amico about.

He recorded an interview that he conducted with Lieutenant Sylvester in which he questioned D'Amico on July 18, 2017. In the interview, O'Brien gained insight as to D'Amico's reasons for why he altered the document. D'Amico told him in the interview that he had no other documents to prove residency in addition to all the others previously provided.

As a result of the investigation, he created a written report for the police director, Carl Reilly, on July 27, 2017. It was his conclusion that D'Amico be separated from employment. He testified that the doctoring of the document, in his opinion, made D'Amico unfit to be a firefighter.

On cross-examination, O'Brien testified that the fire department conducted the background checks and the residency requirements for D'Amico before he entered the academy. He stated that but for the email from constituent Abbygale Albert, no police investigation would have been made into D'Amico's application. O'Brien candidly testified that he listed reasons in his report of why D'Amico shouldn't be hired that went beyond the original scope of the report which was supposed to be residency. O'Brien admitted there was no issue as to D'Amico satisfying his residency requirement.

Trial Testimony of Fire Chief Frank Tidwell

Frank Tidwell testified on behalf of the petitioner. Tidwell has been with the Fire Department in Plainfield for thirty-eight years, and for the past eight years he has served as Chief. Tidwell testified that candidates for the Plainfield Fire Department must take the civil service test and provide documentation to meet the residency requirement. From there, the City then chooses the number of firefighters they plan to hire and starts a more detailed vetting process, including a criminal record check, driver history, employment history, proof of residency, and a personal interview.

Tidwell candidly and credibly testified that when the vetting process is complete, the Chief has the final decision-making power as to who to hire or not based on the results of the process. In D'Amico's case, the hiring committee consisted of Lieutenant Owens, Firefighter Pineda, and Firefighter Corey Henry. The hiring committee is supposed to submit its recommendation to the operations deputy chief, who was Deputy Chief Jeff Courtney. Deputy Chief Courtney would then meet with Chief Tidwell to discuss the recommendations.

Chief Tidwell relayed that the hiring committee had concerns with Cadet D'Amico. The committee stated that his fourth proof of residency was possibly misleading. D'Amico inserted his xxxx Sleepy Hollow address on the Roller Hockey Alliance document. However, it was undisputed that D'Amico had proofs of residency for Plainfield at both xxxx Sleepy Hollow and xxx Charlotte. Tidwell then credibly testified that he believed that adding his actual address to the document was not a valid reason to not hire D'Amico as a firefighter. He testified that D'Amico showed ambition, motivation, and a desire to be a firefighter before he even came to the department. D'Amico had a level-two fire certification, which requires more training and more hours than a typical level-one graduate from the fire academy. Additionally, D'Amico took it upon himself to enter the fire academy with his fellow Plainfield cadets, even though he did not need to in order to be part of the team. Chief Tidwell credibly testified that he was impressed at that initiative, and that ultimately overrode any minor alteration of that one document.

Tidwell candidly testified that he himself was "given a break" as a young recruit.

After taking the civil service test for the Plainfield Fire Department and passing, he forgot to show up for his psychological test due to sleep deprivation and raising young children. This would have disqualified him from the process, but the City Public Safety Director at the time gave him another chance. He told the hiring committee in D'Amico's case this story and kept D'Amico in the process for employment with the department.

Tidwell testified that D'Amico and the rest of the recruits began the academy on June 9. About a month later, Tidwell got an email from the public safety director, Carl Reilly, that an email was received by the above-mentioned Abbygale Albert, a civilian, stating that she overheard at the Fourth of July Parade that some of the cadets do not live in Plainfield.

Tidwell testified that he went to Abbygale Albert's address to get to the bottom of the accusations. She denied ever being at the parade. She said that someone must have hacked her e-mail. She did not provide an answer when Tidwell asked her if she knew or previously dated any firefighters. She signed a memorandum stating that she was not at the parade and that she did not send an email a few months later on September 13, 2017.

As a result of the email from Abbygale Albert, Director Reilly wanted to repeat the investigation of Chris D'Amico, who was one of the cadets named in the e-mail. Tidwell directed Deputy Chief Courtney to investigate, and the investigation was then turned over to Captain O'Brien. The cadets, including D'Amico, graduated on September 8, and no word was heard about the status of the investigation from July up until the September graduation. Without receiving the results of the investigation, Tidwell received a letter from Director Carl Reilly that D'Amico was to be terminated on Monday, September 11, his first day of work, after successfully completing and graduating from the Academy.

Tidwell testified emphatically that he did not agree with this directive. He sent an e-mail to Director Reilly stating his opposition and even met with the Mayor regarding the directive to fire D'Amico. Ultimately, he stated that none of what has ensued has

changed his opinion that D'Amico should not have been fired.

On cross-examination, Tidwell testified that he was facing pending discipline and a departmental hearing for the events that unfolded with D'Amico and two other recruits. He was facing major suspension and a possible demotion. The Chief also stated that he is embroiled in litigation for various reasons with the City. He testified that he provided D'Amico with a copy of Abbygale Albert's email questioning the residency of the cadets. Regarding the documents needed for residency for incoming cadets, he testified that a minimum of five documents were needed for proof of address. He testified that the altered document was a minor issue in his opinion, and he did not feel it was necessary to check in with Carl Reilly if the decision to hire D'Amico was appropriate or not.

I found Chief Tidwell's testimony to be honest, credible, detailed, and brave in that he was willing to tell the truth even though he was currently involved with litigation personally with the town. He took a risk, in my opinion, to do what he felt was the right thing.

Trial Testimony of Maxwell Jones

Maxwell Jones next testified for the petitioner. On July 1, 2015, Jones moved to Plainfield with D'Amico to meet the residency requirements for the Civil Service exam for the Plainfield fire department. They moved to xxxx Sleepy Hollow Lane in Plainfield. Jones and D'Amico resided at xxxx Sleepy Hollow Lane until April 11, 2016. D'Amico and Jones then moved to xxx Charlotte Road in Plainfield. Jones lived at xxx Charlotte Road until August of 2016, and then moved back in with his parents. D'Amico continued to reside at the Charlotte Road residence.

Jones testified that he and D'Amico played roller hockey together at Sportsplex in Metuchen, New Jersey. Jones explained that the Roller Hockey Alliance is the insurance company that the roller hockey league obtains insurance through. Every player is required to have insurance. Jones testified that he submitted that insurance document for the required residency documents for the Plainfield Fire Department. At

the time that Jones was submitting proof of residency to Plainfield Fire Department, around September 14, 2015, he was still residing at Sleepy Hollow Lane with D'Amico. Jones informed D'Amico that he used the insurance document as one of the proofs of residency.

Jones testified that he did not give a copy of his Roller Hockey Alliance insurance to D'Amico. He did not tell anyone from the Police or Fire Department that he gave it to D'Amico. Jones told Firefighter Henry, when questions about the document arose in the initial background check, that he informed D'Amico he could use the document as proof of residency. However, he did not give him a copy. His testimony was clear and credible.

Jones began the academy on June 9, 2017, the same day as D'Amico. He was questioned about the email from Abbygale Albert in July of 2017. He and D'Amico graduated the academy on September 8, 2017, without incident. Jones was then terminated on September 11, 2017, along with D'Amico.

On cross-examination, Jones testified that D'Amico told him, after Captain O'Brien's investigation, that he typed in his actual address on his own respective Roller Hockey Insurance form with his actual roller hockey ID number.

Trial Testimony of Christopher D'Amico

By way of background, Petitioner Christopher D'Amico attended Scotch Plains-Fanwood Highschool. At the time he attended high school, he resided at x Oak Court in Fanwood, New Jersey with his parents. He graduated Caldwell College in Caldwell, New Jersey in 2010 with a degree in Criminal Justice. While in college and for a few years after, he worked various odd jobs. In 2014, he entered the Union County Fire Academy for the first time after being a member of the Fanwood Fire Department for about a year on a volunteer basis. At the time, he was still residing with his parents in Fanwood. He graduated with a Firefighter II certificate, which was the requirement for that department as relayed by the Union County Fire Academy. Upon graduation, he obtained employment with the Fanwood Fire Department. He worked there for a couple

of months and sought another department as he was performing primarily desk-duty-type work and wanted to be in the field.

In order to clarify a ministerial error on his application, D'Amico testified credibly and it is not disputed that he moved to xxxx Sleepy Hollow Lane in Plainfield on July 1, 2015. He testified that the date on his application for Plainfield Fire Department that he lived on Sleepy Hollow Lane until April of 2017 was a typo. He clarified convincingly that he left that address on April 11 of 2016. On April 11, 2016, D'Amico moved to xxx Charlotte Road in Plainfield, New Jersey. When applying for the Plainfield Fire Department initially, D'Amico submitted six proofs of residency in total for both addresses. He submitted the proofs of residency before the required return date of May 3. It was then and is now never disputed that he fulfilled the residency requirement. Thus, I mention it here to clarify that as much testimony was taken it was of no moment as residency is not an issue.

With regard to the actual document at issue, D'Amico admitted apologetically that he added the address of xxxx Sleepy Hollow Lane in Plainfield to his Roller Hockey Alliance Document. Other than adding his accurate address to the document, he testified that he did not alter anything else, including his reference number supplied by the Roller Hockey Alliance. He testified that he added his address to the document because he was being pressured by Lieutenant Owens to supply more documents for residency for his application to the Plainfield Fire Department, even though he already provided six documents. He testified credibly and humbly and it is undisputed that the address was accurate, as he lived there at the time.

D'Amico confirmed that during the application process, he submitted documents to the hiring committee. He testified that regarding his application, the only issue he was questioned about was the Roller Hockey Alliance document by Firefighter Henry. He admitted to Firefighter Henry at the initial application process that he added his accurate address to the document. As a result, Deputy Chief Courtney told D'Amico he could either bow out and take the test again later or be put through a psychological examination. After the meeting with Firefighter Henry, he then met with Chief Tidwell who stated that he was going to give D'Amico a "second chance," as he was once

given, despite the issue he considered minor with the Roller Hockey Alliance document.

D'Amico testified that he then voluntarily entered the academy for employment with the Plainfield Fire Department. Despite already obtaining his level I and level II firefighter certificate, he attended the academy to build comradery with the people he was being hired with. While in the academy, during the investigation launched by the "parade-going" constituent Abbygale Albert, he was questioned by Police Captain O'Brien. He was so forthcoming that he admitted to an old shoplifting incident and trying marijuana. Both of which were not the reason for his removal. He was also told about the e-mail sent by Abbygale Albert and questioned about his Roller Hockey Alliance card. He was not terminated at that point and was permitted to graduate from the academy.

On September 11 when he went in for his first day of work, D'Amico was surprised to learn that he was being terminated. After working for several hours, the Fire Chief announced that he was being instructed against his advice to let three recruits go, including D'Amico. The Chief expressed again that it was not his decision.

On cross-examination, D'Amico testified credibly that he did not realize the ministerial errors in the dates on his application until being questioned by the police officers. Although he felt pressured, D'Amico agreed that the hiring committee was within its rights to ask for documents they deemed necessary to complete the application. He testified that he did not pull up the Roller Hockey Document in front of Firefighter Henry when asked because unlike Maxwell Jones, he knew his would have been a version with no address on it. It was not clear if he simply never inputted his address initially.

B. FINDINGS OF FACT

Accordingly, and based upon due consideration of testimony but also the documentary evidence presented at the hearing, and having had the opportunity to observe the demeanor of the witnesses and assess their credibility, I **FIND** the following **FACTS**:

1. It is undisputed that Petitioner Christopher D'Amico met the two-year residency requirement in Plainfield, New Jersey and thus met the residency requirements for the civil service exam to obtain employment with the Plainfield Fire Department.
2. D'Amico and Jones resided at xxxx Sleepy Hollow Lane until April 11, 2016. At that point, they then moved to xxx Charlotte Road, also in Plainfield, New Jersey. D'Amico lived there up to and including graduation and thereafter.
3. In Plainfield, a fire cadet has to establish that he or she has lived in Plainfield from the date of the closing of the civil service exam to the date of his or her appointment, which D'Amico did.
4. To prove residency, candidates may submit a minimum of five documents to the Plainfield Fire Department which display a Plainfield address. These documents are then checked by the Plainfield Fire Department's hiring committee in the ordinary course. Upon approval of residency and overall background check; the Fire Chief makes a decision on whether to recommend a cadet to the academy regardless of hiring committee's recommendation.
5. D'Amico provided six documents to the initial hiring committee, which consisted of Firefighters only for proof of address. One of those documents was a Roller Hockey Alliance Insurance membership card. Firefighter Corey Henry, who is part of the hiring committee, noticed that D'Amico's Roller Hockey Alliance Insurance document was strikingly similar to Maxwell Jones's as the ID numbers were virtually the same, being off by a single number. D'Amico and Jones play in the same adult roller hockey league and signed up at the same time.
6. Upon questioning by Firefighter Henry, D'Amico admitted Henry that he

added his address to his actual document. He testified credibly that he felt "pressured" to do so because he did not have many other forms of proof of address at that time and had submitted many prior to.

7. D'Amico testified credibly as was corroborated by evidence provided by D'Amico that the document was his, his address was accurate and his ID number was also accurate.
8. When Firefighter Henry was made aware that D'Amico doctored the document, he discussed the issue with Lieutenant Owens and Deputy Chief Courtney, who are also members of the hiring committee. As part of their responsibilities, they recommended to Chief Frank Tidwell that they would not hire D'Amico as a result of the altered document.
9. Frank Tidwell took the hiring committee's recommendation into consideration. However, he was inclined to give D'Amico a second chance. Chief Tidwell felt compassion for D'Amico, as he almost lost his chance at employment with the Plainfield Fire Department because he missed a scheduled examination during the application process. He wanted to pay it forward to D'Amico. Tidwell also expressed that D'Amico has shown dedication to the Department. D'Amico already went through the Fire Academy once, receiving a Firefighter II certification. However, Tidwell expressed D'Amico demonstrated a strong desire to build comradery with his fellow firefighters by entering the academy again. In his rightful authority, Tidwell decided to go against the committee's recommendation and allow D'Amico to enter the Academy.
10. D'Amico's recruit class entered the Academy on June 9 of 2017. About a month later, the Director of Public Safety of Plainfield, Carl Reilly, was made aware of an email from a "concerned citizen," Abbygale Albert. Albert expressed that she overheard a group of cadets saying that they did not live in Plainfield, which violates the residency requirement, at the Fourth of July parade that year.

11. There is no proof that the claims made by Abbygale Albert in her email to the city are true. She denied attending the parade and denied sending the email. I **FIND** that it was not credible and as such turned out not to be a true allegation.
12. The email from Abbygale Albert prompted Director Carl Reilly to instruct Captain O'Brien of the Plainfield Police Department to investigate the hiring process used for D'Amico's recruiting class. O'Brien conducted a recorded interview of D'Amico, along with Lieutenant Sylvester, on July 18, 2017. In the interview, D'Amico told O'Brien that he added his actual address to the Roller Hockey Insurance card because he did not have any other proofs of address. O'Brien crafted a memo to Reilly on July 27, 2017, stating the findings of the investigation and suggesting that D'Amico be separated from employment because doctoring the document made him unfit to serve.
13. D'Amico graduated the academy on September 8, 2017, without incident.
14. Chief Tidwell received a letter from Carl Reilly that D'Amico was to be terminated on Monday, September 11. Tidwell expressed his discontent with this decision in an email to Reilly and a meeting with the Mayor of Plainfield.
15. Ultimately, Tidwell followed through on the directive, and terminated D'Amico and two other cadets, including Maxwell Jones, on Monday, September 11, 2017. D'Amico against his will was terminated because of the doctored Roller Hockey Alliance document, and not because of a failed residency requirement or any other reason.

ANALYSIS AND CONCLUSIONS OF LAW

The Civil Service Act, N.J.S.A. 11A:1-1 to -12.6, governs a public employee's rights and duties. The Act is an important inducement to attract qualified personnel to

public service and is liberally construed toward attainment of merit appointments and broad tenure protection. Essex Council No. 1, N.J. Civil Serv. Ass'n v. Gibson, 114 N.J. Super. 576 (Law Div. 1971), rev'd on other grounds, 118 N.J. Super. 583 (App. Div. 1972); Mastrobattista v. Essex County Park Comm'n, 46 N.J. 138, 147 (1965). Governmental employers also have delineated rights and obligations. The Act sets forth that it is State policy to provide appropriate appointment, supervisory and other personnel authority to public officials so they may execute properly their constitutional and statutory responsibilities. N.J.S.A. 11A:1-2(b).

"There is no constitutional or statutory right to a government job." State-Operated Sch. Dist. of Newark v. Gaines, 309 N.J. Super. 327, 334 (App. Div. 1998). A civil service employee who commits a wrongful act related to his duties, or gives other just cause, may be subject to major discipline. N.J.S.A. 11A:2-6; N.J.S.A. 11A:2-20; N.J.A.C. 4A:2-2.2; N.J.A.C. 4A:2-2.3. The issues to be determined at the de novo hearing are whether the appellant is guilty of the charges brought against her and, if so, the appropriate penalty, if any, that should be imposed. See Henry v. Rahway State Prison, 81 N.J. 571 (1980); W. New York v. Bock, 38 N.J. 500 (1962). In this matter, Plainfield bears the burden of proving the charges against appellant by a preponderance of the credible evidence. See In re Polk, 90 N.J. 550 (1982); Atkinson v. Parsekian, 37 N.J. 143 (1962).

For reasonable probability to exist, the evidence must be such as to "generate belief that the tendered hypothesis is in all human likelihood the fact." Loew v. Union Beach, 56 N.J. Super. 93, 104 (App. Div. 1959) (citation omitted). Preponderance may also be described as the greater weight of credible evidence in the case, not necessarily dependent on the number of witnesses, but having the greater convincing power. State v. Lewis, 67 N.J. 47 (1975). Therefore, the tribunal must "decide in favor of the party on whose side the weight of the evidence preponderates, and according to the reasonable probability of truth." Jackson v. Del., Lackawanna and W. R.R. Co., 111 N.J.L. 487, 490 (E. & A. 1933).

Based upon the facts set forth above, I **CONCLUDE** that the respondent has not proven by a preponderance of the credible evidence that appellant was properly

terminated from the academy for the violation as it did not "significantly impinge upon the character and morals" of being a firefighter in Plainfield or otherwise when he was simply lazy in inputting truthful information, his accurate address, into his approximately seventh form of residency, his actual roller hockey alliance membership card. As noted above, his two-year Plainfield residency requirement was never in dispute; the credible testimony above revealed that it was his actual membership card, but it just did not include his address. It did, however, include his accurate roller hockey ID number and he simply inputted his accurate address as he credibly explained that he felt "pressured" to get the additional proof of residency to Plainfield. It was confirmed at hearing that he was not let go from the academy or the department for any other reason.

For the reasons set forth above and below, I **CONCLUDE** that Plainfield has not proved by a preponderance of the credible evidence that Christopher D'Amico altered the relevant document in a material way that would speak to his character or morals.

This new hire never had an incident at the fire academy or within the department except to voluntarily repeat his training, he never lied during the investigation instead showed me true remorse for what I can only conclude was laziness not moral ineptitude.

Pursuant to N.J.A.C. 4A:4-5.2, "Persons appointed to entry level . . . firefighter titles shall serve a 12-month working test period." Upon the successful completion of a working test period, appointments shall be permanent. An appointing authority may discipline a probationary employee during the working test period (WTP), but in doing so the appointing authority must follow civil service rules for major discipline and local rules for minor discipline. N.J.A.C. 4A:4-5.4(b). In the Matter of Wayne Hanns, Jr., City of Linden Police Dep't, 2017, 2017 WL 3332623 (EFPS July 28, 2017). In the event an employee has performed in an unsatisfactory manner during his/her working test-period, he/she may be terminated. N.J.S.A. 11A:4-15(c). Pursuant to N.J.A.C. 4A:2-4.3(b), the appellant has the burden of establishing that the action to release him/her at the end of the working test period was taken in bad faith. "Appellant must establish by a preponderance of the competent and credible evidence that the action terminating her at the end of her working test period was done in bad faith."

In this case, as he was starting his WTP he did nothing new but rather the initially accepted document became a reason to impeach his moral character yet again drudging up the same "old news."

ORDER

Accordingly, it is **ORDERED** that the disciplinary action noted in the letter of Termination dated September 8, 2017, of Plainfield Fire Division of the City of Plainfield, against appellant Christopher D'Amico is hereby **REVERSED** consistent with the decision set forth above. It is further **ORDERED** that appellant Christopher D'Amico is entitled to be reinstated and due any other benefits or back pay that would have otherwise accrued.

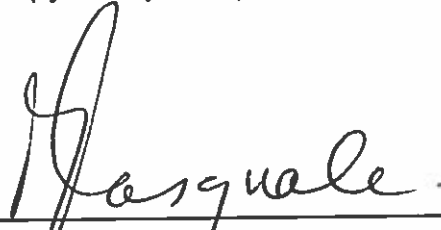
I hereby **FILE** my Initial Decision with the **CIVIL SERVICE COMMISSION** for consideration.

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, P.O. 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.

April 2, 2019

DATE



DANIELLE PASQUALE, ALJ

Date Received at Agency:

April 2, 2019

Date Mailed to Parties:

lr

APPENDIX

LIST OF WITNESSES

For Appellant:

Frank Tidwell
Maxwell Jones
Christopher D'Amico

For Respondent:

Corey Henry
Kevin O'Brien
Carl Riley
Kevin O'Brien

LIST OF EXHIBITS IN EVIDENCE

Joint:

- J-1 September 8, 2017, Email from Director Carl Riley to Fire Chief Tidwell with attached letter of termination for Christopher D'Amico
- J-2 September 27, 2017, letter from Mr. Palma to Civil Service Commission re: appeal of termination
- J-3 Personnel File of Christopher D'Amico, including employment application and related material (001-088)
- J-4 May 15, 2017, Memo from Deputy Fire Chief Courtney to "Recruit File" re: residency check investigation and interview of Christopher D'Amico in the present of FF Corey Henry investigatory materials
- J-5 May 15, 2017, Memo from FF Corey Henry to "Recruit File" re: supplemental information re: document provided by Christopher D'Amico as proof of residency
- J-6 May 3, 2017, Summary of FF Anthony Pineda re: background check of Christopher D'Amico

- J-7 Roller Hockey Alliance Membership Cards #139740 and #13967720 produced by Chris D'Amico and Maxwell Jones, respectively
- J-8 Email dated July 6, 2017, from Abbygale Albert to Director Carl Riley re: Residency Check Concerns
- J-9 Email dated July 6, 2017, from Mayor Adrian Mapp to Director Riley directing investigation of resident's concern
- J-10 July 27, 2017, Official Report (Redacted) of Captain Kevin O'Brien re: Cadet D'Amico
- J-11 Plainfield Fire Division Rules and Regulations (11/10/14) (33 pages)
- J-12 Receipt of Employee Handbook, signed by Christopher D'Amico, dated June 14, 2017
- J-13 City of Plainfield Employee Handbook (67 Pages)
- J-14 Plainfield City Municipal Ordinance (Selected portions): §§ 11:5.5, 11:5-6 (6 Pages) [Probationary Period – Right of Dismissal; Removal of Permanent Employee], Article 19 [Residency Requirements]
- J-15 N.J.A.C. 4A:5-2 Duration (of working test period)
- J-19 Residency Requirement in the City of Plainfield

For Appellant:

- A-2 Email dated September 14, 2015, from the Roller Hockey Alliance to Appellant, which includes Roller Hockey Alliance Membership Card dated September 14, 2015, with Reference Number 13967420; re: Appellant's Roller Hockey Alliance membership
- A-6 PNC Bank Student Plan Statement for account number ending in 9035 for the period of May 24, 2016, through June 22, 2016, re: Appellant's residency at xxx Charlotte Road, Plainfield, NJ
- A-7 New Jersey Voter Registration Application filled out by Appellant on April 27, 2017; re: Appellant's residency at xxx Charlotte Road, Plainfield, NJ
- A-8 Appellant's Pay Statement from Sunrise Shoprite Liquors, Inc. dated May 5, 2017, re: Appellant's residency at xxx Charlotte Road, Plainfield, NJ
- A-9 Navient–Department of Education Loan Servicing Account Summary dated November 5, 2017, for account number ending 096-1; re: Appellant's residency at xxx Charlotte Road, Plainfield, NJ

- A-11 New Jersey Civil Service Commission Job Specification for the position of Fire Chief re: Job Description of Fire Chief (Judicial notice)
- A-12 Email dated July 7, 2017, from Fire Chief Frank Tidwell to Carl Riley, Director of Public Affairs and Safety
- A-13 Memorandum signed by Ms. Abbygale Albert on September 13, 2017
- A-14 Inter-office Memorandum dated September 13, 2017, from Fire Chief Frank Tidwell to Carl Riley, Director of Public Affairs and Safety
- A-15 Inter-office Memorandum dated September 20, 2017, from Fire Chief Frank Tidwell to Rick Smiley, City Administrator
- A-20 Email dated May 31, 2018, from Daniel Maxwell of Roller Hockey Alliance to Little Rau, Esq. with two attachments

For Respondent:

- R-1 July 18, 2017, videotaped interview of Christopher D'Amico by Captain O'Brien and Lieutenant Sylvester