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STATE OF NEW JERSEY

FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION

In the Matter of Robert J. Carter,
Fire Fighter (M2554M),
City of Newark

CSC Docket No. 2014-2024

List Removal Appeal

ISSUED: **OCT 24 2014** (DASV)

Robert J. Carter, represented by Catherine M. Elston, 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 an unsatisfactory background report.

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. The appellant, a nonveteran, passed the subject examination and ranked 139 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 78th position on the certification. In disposing of the certification, the appointing authority requested the appellant's removal due to an unsatisfactory criminal history and failure to meet the residency requirement. It submitted the appellant's criminal history report, which revealed 12 arrests between March 1998 and November 2006 when he was 20 to 26 years old on charges of possessing alcohol under the legal age, marijuana, and drug paraphernalia; loitering, obtaining, and selling a controlled dangerous substance (CDS); manufacturing and distributing heroin/cocaine; possessing and distributing a hypodermic needle; theft; wrongful impersonation; and obtaining a CDS by fraud. While certain charges were

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.

dismissed due to a conditional discharge or an acquittal, the other charges against the appellant resulted in guilty findings, fines, probation, six felony convictions, suspensions of his driver's license, and a total of 158 days of jail time credit. The appellant also violated probation twice. Additionally, the appointing authority submitted a Motor Vehicle Services Address Change History, dated March 22, 2013, which revealed that on October 5, 2010, the appellant changed his address from a Freehold, New Jersey, location to a Huntington Terrace, Newark, address. On May 7, 2011, he changed his address back to the Freehold location. Then on November 15, 2012, the appellant's address changed to Lentz Avenue in Newark, which is recorded as his current address. The appellant appealed to the Division of Classification and Personnel Management (CPM), maintaining that his arrests "were the result of a serious drug dependency" and he has since rehabilitated himself. He also claimed that he was a resident of Newark at all relevant times and submitted to the appointing authority "a copy of [his] lease, power bills, cable bills, credit card statements, tax returns, and vehicle registration, to prove residency."² However, CPM found that the appellant's arrest record and his acknowledgement of the incidents presented valid reasons to remove the appellant from the subject eligible list due to an unsatisfactory background report.

The appellant appealed to the Civil Service Commission (Commission), reiterating that his criminal record was due to a drug dependency which he has since overcome. In support of his appeal, the appellant submitted a certification, information regarding his work history, and 14 letters of recommendation, including letters from current and former members of the Newark Fire Department. As to his residency, the appellant certified that he moved to the Huntington Terrace, Newark, location on October 5, 2010 and remained there until October 21, 2012, when he moved to the Lentz Avenue, Newark, address, which is his current residence. During the move, the appellant stated that he lost his license, and in order to obtain a replacement, he presented his old license with the Freehold address to the Motor Vehicle Commission. He indicated that the Motor Vehicle Commission made a mistake and used his old address. Thus, the appellant asserted that there was an error on his Motor Vehicle Services Address Change History. He maintained that he had been "a resident of Newark since well before taking the original Civil Service Exam."³ It is noted that the appellant did not present supporting documentation as to his residency, other than his certification and one letter of recommendation which reported that the appellant "has been and is currently a resident of the City of Newark."

The appointing authority, represented by Emily Truman, Assistant Corporation Counsel, responded that the appellant's criminal record provides a

² These documents were not provided to the Civil Service Commission.

³ The written examination was held on October 14, 2010, and the performance portion of the test was administered on April 5, 2011.

clear basis to remove him from the subject eligible list, despite the fact that the appellant overcame his drug addiction. As to the appellant's residency, the appointing authority emphasized that the appellant did not change his address to Newark on his driver's license until October 5, 2010, which was approximately seven months after the examination closing date. Further, while the appointing authority noted that the appellant provided a "reasonably plausible excuse" regarding his address change in 2011, it maintained that the appellant still failed to meet the Newark residency requirement. The appointing authority underscored the appellant's admission in his certification that he moved to Huntington Terrace, Newark, on October 5, 2010.

It is noted that, based upon the representations made by the appellant, it was requested that he provide substantive evidence that he had been a resident of Newark since the March 31, 2010 examination closing date. In response, the appellant submitted a 2009 1099-MISC statement reflecting his Huntington Terrace, Newark, address. He stated that "[d]ue to the passage of time, [he] could retrieve only the enclosed 1099."

CONCLUSION

N.J.S.A. 11A:4-11 and *N.J.A.C. 4A:4-4.7(a)4i* provide that an eligible's name may be removed from an eligible list when an eligible has a criminal record which includes a conviction for a crime which adversely relates to the employment sought. The following factors may be considered in such determination:

- a. Nature and seriousness of the crime;
- b. Circumstances under which the crime occurred;
- c. Date of the crime and age of the eligible when the crime was committed;
- d. Whether the crime was an isolated event; and
- e. Evidence of rehabilitation.

The presentation of a pardon or an expungement shall prohibit removal from a list, except for law enforcement, correction officer, juvenile detention officer, firefighter or judiciary titles and other titles as the Chairperson of the Commission or designee may determine. See *N.J.A.C. 4A:4-4.7(a)4ii*.

Further, *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.

In the instant matter, the City of Newark has a residency requirement, which had to be met by the March 31, 2010 examination closing date. The record indicates that, although the appellant claims that he has been a resident of Newark at all relevant times, he indicated in his certification that he moved to the Huntington Terrace, Newark, location on October 5, 2010. Moreover, while he states that he

has been "a resident of Newark since well before taking the original Civil Service Exam," the written examination was held on October 14, 2010 and the performance portion of the test was administered on April 5, 2011. Thus, the appellant's statements do not establish that he was a resident of Newark as of the March 31, 2010 examination closing date. In addition, considering the applicable factors set forth in *N.J.A.C. 4A:4-2.11(c)*, the appellant has not shown that he owns a Newark property or even rented a location as of the examination closing date. He also has not submitted documentation to prove his Newark residency, such as a driver's license, motor vehicle registration, or voter registration card or other documents with a Newark address prior to the examination closing date. Rather, he presents his 2009 1099-MISC statement. This document does not sufficiently prove that the appellant maintained continuous residency as of March 31, 2010, when he admits in his certification to moving to the Huntington Terrace, Newark, location on October 5, 2010. Furthermore, the appellant's certification does not explain the period of time before October 5, 2010, nor do the letters of recommendation the appellant submits. It is emphasized that the appellant was given an opportunity to submit additional information, but he has failed to present substantive evidence that he was a resident of Newark as of the examination closing date.

Therefore, under these circumstances, the appointing authority has presented a sufficient basis to remove the appellant's name from the 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.

It is noted that since the appellant's name is being removed for the foregoing reason, it is not necessary to determine whether his background, which consists of arrests and convictions, presents an additional basis to remove him from the subject 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 22ND DAY OF OCTOBER, 2014

Robert M. Czech

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: Robert J. Carter
Catherine M. Elston, Esq.
Michael Greene
Emily Truman, Assistant Corporation Counsel
Michael Greene
Kenneth Connolly



STATE OF NEW JERSEY
CIVIL SERVICE COMMISSION
DIVISION OF CLASSIFICATION & PERSONNEL MANAGEMENT
P. O. Box 313
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Chris Christie
Governor
Kim Guadagno
Lt. Governor

Robert M. Czech
Chair/Chief Executive Officer

February 21, 2014

Catherine M. Elston
C. Elston & Associates, LLC
3350 Route 138
Building 2, Suite 123
Wall, NJ 07719

RE: Robert J. Carter v. City of Newark
Title: Fire Fighter
Jurisdiction: City of Newark
Symbol: M2554M
Certification No: OL130280
Certification Date: 07/23/12

Initial Determination: Removed – Unsatisfactory Background Report

Dear Ms. Elston:

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 name in accordance with N.J.A.C. 4A:4-4.7(a)11, which permits the removal of an eligible candidate's name from the eligible list for "valid reasons as determined by the Chairperson of the Civil Service Commission or designee". In support of its decision, the Appointing Authority provided a copy of Mr. Carter's arrest record which includes numerous arrests and convictions for possession of controlled substances. Mr. Carter's statement(s) confirm that these incidents occurred.

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 the appeal is denied.

In accordance with Merit System Rules, this decision may be appealed 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

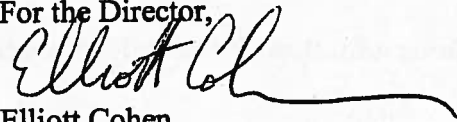
put all parties of interest on notice of your appeal and provide them with copies of all documents submitted for consideration.

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
Human Resource Consultant
Local Placement Services

c: Julien X. Neals

Julien X. Neals
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