



STATE OF NEW JERSEY

In the Matter of Robert Raymond,
Police Officer (S9999A), Elizabeth

FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION

CSC Docket No. 2022-794

List Removal Appeal

ISSUED: May 2, 2022 (HS)

Robert Raymond, represented by Robert K. Chewning, Esq., appeals the removal of his name from the eligible list for Police Officer (S9999A), Elizabeth on the basis of falsification of the preemployment application.

The appellant, a non-veteran, took and passed the open competitive examination for Police Officer (S9999A), which had a closing date of August 31, 2019. The resulting eligible list promulgated on May 15, 2020 and expires on May 14, 2023.¹ The appellant's name was certified to Elizabeth on April 15, 2021. In disposing of the certification, Elizabeth requested the removal of the appellant's name due to falsification of his preemployment application. Specifically, Elizabeth asserted that the appellant indicated on his May 2021 preemployment application that his address from 2017 through the present was in Elizabeth. However, tax year 2019 documents, *i.e.*, Forms W-2, 1099-MISC, and 1040, all reflected a Brick address. The Motor Vehicle Services Address Change History indicated that the appellant did not change his address to Elizabeth until February 2020. Although the appellant did possess a driver's license reflecting an Elizabeth address, the license was not issued until February 2020. Further, records from the New Jersey Department of State, Division of Elections indicated that the appellant did not register to vote in Union County, where Elizabeth is located, until May 2021.

¹ The list was extended one year to May 14, 2023.

On appeal to the Civil Service Commission (Commission), the appellant maintains that Elizabeth's decision to remove him from the list was arbitrary and lacked any basis.

In response, Elizabeth, represented by Daniel M. Santarsiero, Esq., maintains that the reliable government records described earlier unequivocally establish that the appellant did not accurately state his address on his application. Elizabeth also highlights that the appellant's tax professional sent his 2019 federal and State tax returns to the Brick address. Elizabeth argues that the records it relied upon relate to the appellant's representations to the government and that those records demonstrate that the appellant was not truthful on his application. Additionally, Elizabeth notes that it has a residency requirement ordinance that requires continuous residency from the examination closing date up to and including the appointment date. Thus, Elizabeth argues that even absent a false statement on the application, the appellant does not meet the residency requirement and could have had his name removed from the eligible list for that independent reason. In support, Elizabeth submits various exhibits.

In reply, the appellant admits that he failed to timely update his mailing address but insists, in a certified statement, that he has been an Elizabeth resident since July 2017. In support, the appellant also submits certified statements from his parents and his landlord, who certify that the appellant has lived in Elizabeth since July 2017. He further submits his personal bank account statements from January 2018 to November 2021. He argues that the statements provide evidence of his performing activities that confirm he has lived in Elizabeth since well before the examination closing date, which activities include monthly withdrawals for rent and daily payments to gas stations, convenience stores, clothing stores, and restaurants in Elizabeth.² The appellant maintains that the information he has supplied should remove any doubt as to whether he lived in Elizabeth since before the examination closing date. As such, the appellant argues that he did not falsify his application. In the alternative, the appellant contends that this matter should be referred to the Office of Administrative Law (OAL) for a hearing as a contested case because there are disputed material facts that will require an Administrative Law Judge to determine the credibility of the appellant, his parents, his landlord, and others.

CONCLUSION

N.J.A.C. 4A:4-2.11(c) provides, in pertinent part, that where residence requirements have been established in local service, residence means a single legal residence. The following standards shall be used in determining local legal residence:

1. Whether the locations in question are owned or rented;

² It is noted that the appellant's bank account statements covering the August 13, 2019 to September 10, 2020 period are addressed to Brick.

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.

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.

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 name from an eligible list was in error.

Upon review of the record, the Commission finds that the appellant has not convincingly shown that he was an Elizabeth resident as of the August 31, 2019 examination closing date. In this regard, one of the standards to be used in determining local legal residence is 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. See *N.J.A.C.* 4A:4-2.11(c)5. The appellant's tax year 2019 documents reflected the *Brick* address. The appellant did not register to vote in Union County until May 2021. And while the appellant did possess a driver's license reflecting an Elizabeth address, the license was not issued until *February 2020*, months after the closing date. On appeal, the appellant offers an admission that he failed to timely update his mailing address. This explanation,

however, does not actually resolve the issue of the appellant's residency definitively in his favor. In this regard, State law requires a motorist who moves within New Jersey to report the address change within one week. *See N.J.S.A. 39:3-36* ("A licensed operator shall notify the chief administrator [of the New Jersey Motor Vehicle Commission] of any *change in residence within one week* after the change is made") (emphasis added). The Commission's decision in *In the Matter of Patrick O'Hara* (CSC, decided January 13, 2010) is also instructive. In that case, O'Hara was required to establish continuous residence in Newark from the August 31, 2006 examination closing date. O'Hara's Motor Vehicle Services Address Change History showed an address change from Cliffside Park to Newark on November 7, 2007. The Commission rejected O'Hara's representation that he "simply did not get around to changing his address until November 2007." The Commission instead found that O'Hara, who claimed he leased a Newark address on April 12, 2006 but did not change his motor vehicle record until November 7, 2007, was not a resident as of the examination closing date in light of *N.J.S.A. 39:3-36*. For the same reason, the Commission cannot conclusively find that the appellant was an Elizabeth resident as of the examination closing date.

In the alternative, the appellant argues that given the certified statements he, his parents, and his landlord have provided on appeal, this matter should at least be transmitted to the OAL for a hearing so that the credibility of these and other parties may be determined. The Commission does not agree. List removal appeals are generally treated as reviews of the written record. *See N.J.S.A. 11A:2-6b*. Hearings are granted in those limited instances where the Commission determines that a material and controlling dispute of fact exists that can only be resolved through a hearing. *See N.J.A.C. 4A:2-1.1(d)*. However, this is not such an instance because of the inconsistencies in the appellant's *own* documents and presentation of evidence. For example, the appellant already represented to the federal and State government that his address was in Brick when he filed his 2019 tax returns. Additionally, the appellant presented years' worth of bank statements on appeal to demonstrate his *Elizabeth* residency, yet the statements covering August 13, 2019 to September 10, 2020—a period that notably includes the examination closing date—are addressed to *Brick*. As such, the Commission finds no basis to grant him the benefit of a hearing.

In light of the foregoing, it is unnecessary for the Commission to determine whether the appellant falsified his preemployment application.

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 27TH DAY OF APRIL 2022

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