



**STATE OF NEW JERSEY**

In the Matter of Dominic Gitto, Fire  
Fighter (M2201D), Atlantic City

CSC Docket No. 2024-1791

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

List Bypass Appeal

**ISSUED: July 3, 2024 (SLK)**

Dominic Gitto appeals the bypass of his name on the Fire Fighter (M2201D), Atlantic City, eligible list.

By way of background, the appellant appeared in the 53<sup>rd</sup> rank on the subject eligible list, which promulgated on April 28, 2023, and expires on April 27, 2025. The appellant's name was certified on August 10, 2023 (OL231028). A total of 120 names were certified. The first through 51<sup>st</sup> ranked candidates were either appointed, removed, or interested in future certifications only. The 52<sup>nd</sup> ranked candidate was generally bypassed, the appellant was bypassed due to residency, and several lower ranked candidates were appointed.

On appeal, the appellant indicates that he called this agency and was advised that his name was "taken off" the subject Fire Fighter (M2201D), Atlantic City open competitive eligible list. He states that he is appealing because he is a legal Atlantic City resident. The appellant presents that, for his residency check, an Atlantic City Police Officer came with him to his residence, and he opened the door with his key. Additionally, the appellant highlights that he votes in Atlantic City and his driver's license indicates his Atlantic City residence. Further, the appellant encloses an affidavit of residency that was provided by his landlord, who is his great uncle, which confirms his residence. Moreover, the appellant submits voting letters from the county registrar and income tax forms to demonstrate his address. He states that there was drastic damage to the sewer line at his residence that caused him to be

displaced as the entire plumbing system under the townhouse was gutted and inhabitable until fixed.<sup>1</sup> The appellant notes that he is the 53<sup>rd</sup> ranked candidate on the subject eligible list, and he requests to be appointed immediately because he is losing his spot because of this alleged mistake in his residency. He claims that he would have been appointed if not for this mistake.

In response, the appointing authority, represented by Steven S. Glickman, Esq., states that an eligible may be removed from an eligible list upon consideration that based upon a candidate's background and recognizing the nature of the position, a person should not be eligible for appointment. It presents that in February 2018, the appellant pled guilty to careless driving and notes that driving is an occupational requirement. Therefore, the appointing authority states that having a good driving history is important. Additionally, while the appointing authority indicates that without more, the appellant's driving record might not support bypassing him, it was unable to confirm the appellant's residency through a residency check. Accordingly, since Atlantic City residency is a requirement for employment, it asserts that it appropriately bypassed the appellant. The appointing authority argues that the appellant has not met his burden of proof, and it submits its background residency check report (report) regarding the appellant's residence and the appellant's certified driver's abstract to support its bypass of the appellant on the subject eligible list.

In reply, the appellant contends, based on the appointing authority's report, that the investigation was approached with the premise to find him ineligible rather than report the elements that prove his residency. He states that the residency rule seems to require "continuous residency;" however, he believes that there is a flaw in this standard. He notes that he is a college student who lives at home, but he questions the continuous residency requirements for those students who live at school. The appellant argues that if the appointing authority and this agency accept "continuous residence" for those students, then why was he not accepted as having "continuous residence." He indicates that because he has a busy life between school, work, and social engagements, he is frequently not home, and he believes that he should be treated the same as other college students.

Additionally, the appellant asserts that the report had inaccuracies. He presents that he was home on January 25, 2024, until 7:00 p.m. The appellant submits a picture from his home which places him at his Atlantic City residence on January 26, 2024, at 11:39 a.m. He questions the methods of the investigation as the report indicates that none of the neighbors answered their doors when he knocked. However, since the appellant was home, if the investigator knocked, it was not loud enough for him to hear, which he finds suspicious. Further, while his great uncle was not home on January 24, 2024, the appellant submitted an affidavit of residency which confirms that the appellant lived there. Additionally, the report indicates that the investigator wanted confirmation from the neighbors that there were water leaks

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<sup>1</sup> This statement was indicated in the appellant's March 11, 2024, email to this agency.

within the residence and implies that if he received this confirmation, this would have satisfied his residency requirement. Therefore, the appellant submits statements from his neighbors that confirms his residency. Moreover, he presents that when he opened the door for the investigator on January 24, 2024, he informed him that there were massive water leaks the day before, and he submits documentation to not only show that his residence was affected but so was his neighbor. Additionally, the appellant submits a statement from an Atlantic City Fire Fighter who attests to the appellant's Atlantic City residence. He asserts that the documentation that he submits on appeal demonstrates that he has continuous Atlantic City residency.

Further, the report indicates that the investigator spoke to his great uncle's caretaker, and the appellant states that she is in and out of the house randomly. He notes that the caretaker confirmed that he lived there and asserts that the investigator left out significant details that support his residency. Specifically, the appellant asserts that the caretaker informed the investigator:

Yes, Dominic lives here. He has been sleeping on the couch lately because the plumbing problem has caused disarray in Ron's house...I don't keep tabs on him because I'm in and out and my schedule is so hectic as well.

Also, the appellant highlights that the report indicates that, "The applicant did not have any clothes in the upstairs bedroom closet or dresser." He states that although it was obvious to the investigator that because of the plumbing, the home was in shambles with items scattered throughout the home, it is not clear why the investigator made such a grossly inaccurate statement because he literally pulled his clothes from the bedroom closet and presented them to the investigator. Moreover, there was also evidence of his clothes splayed across the piles of clothes on the bedroom floor as well, and the investigator did not put in the report that he presented his toothbrush when asked. He notes that his certified driver abstract incorrectly lists, as part of his history, that he previously lived at a certain Egg Harbor Township address, and he submits a letter that he sent to the Motor Vehicle Commission to correct this. The appellant reiterates that he had a key to the residence when the investigator came to his home, which also demonstrates his residency. He emphasizes that his driver's license and voting record prove his continuous Atlantic City residence. Further, he contends that the appointing authority admits that his driving record is acceptable. The appellant requests that he be immediately hired. In the alternative, he requests a hearing at the Office of Administrative Law. The appellant attaches various documents to support his case.

## CONCLUSION

*N.J.A.C.* 4A:4-2.11(e)1 provides that when an appointing authority requires residency as of the date of appointment, residency must be continuously maintained

from closing date up to and including the date of appointment. *See N.J.A.C. 4A:4-4.7(a)7.*

*N.J.S.A. 11A:4-8, N.J.S.A. 11A:5-6, and N.J.A.C. 4A:4-4.8(a)3i* (“Rule of Three”) allow an appointing authority to select any of the top three interested eligibles from an open competitive list, provided that disabled veterans and then veterans shall be appointed in their order of ranking.

*N.J.A.C. 4A:2-1.1(d)* provides that except where a hearing is required by law, this chapter or *N.J.A.C. 4A:8*, or where the Civil Service Commission (Commission) finds that a material and controlling dispute of fact exists that can only be resolved by a hearing, an appeal will be reviewed on a written record.

In cases of this nature where dual motives are asserted for an employer’s actions, an analysis of the competing justifications to ascertain the actual reason underlying the actions is warranted. *See Jamison v. Rockaway Township Board of Education, 242 N.J. Super. 436 (App. Div. 1990).* In *Jamison, supra* at 445, the court outlined the burden of proof necessary to establish discriminatory or retaliatory motivation in employment matters. Specifically, the initial burden of proof in such a case rests on the complainant who must establish discrimination or retaliation by a preponderance of the evidence. Once a *prima facie* showing has been made, the burden of going forward, but not the burden of persuasion, shifts to the employer to articulate a legitimate non-discriminatory or non-retaliatory reason for the decision. If the employer produces evidence to meet its burden, the complainant may still prevail if he or she shows that the proffered reasons are pretextual or that the improper reason more likely motivated the employer. Should the employee sustain this burden, he or she has established a presumption of discriminatory or retaliatory intent. The burden of proof then shifts to the employer to prove that the adverse action would have taken place regardless of the discriminatory or retaliatory motive. In a case such as this, where the adverse action is failure to promote, the employer would then have the burden of showing, by preponderating evidence, that other candidates had better qualifications than the complainant.

Moreover, the “Rule of Three” allows an appointing authority to use discretion in making appointments. *See N.J.S.A. 11A:4-8 and N.J.A.C. 4A:4-4.8(a)3ii.* As long as that discretion is utilized properly, an appointing authority’s decision will not be overturned. *Compare, In re Crowley, 193 N.J. Super. 197 (App. Div. 1984)* (Hearing granted for individual who alleged that bypass was due to anti-union animus); *Kiss v. Department of Community Affairs, 171 N.J. Super. 193 (App. Div. 1979)* (Individual who alleged that bypass was due to sex discrimination afforded a hearing). Additionally, an appellant has the burden of proof in these matters. *See N.J.A.C. 4A:2-1.4(c).*

In the instant matter, the report indicates that during an announced residency check on January 24, 2024, the appellant did answer the door; the kitchen was completely empty with holes in the wall and floor; he stated that there had been a water leak, which the detective could not corroborate with neighbors; the living room was packed with furniture and items; and the appellant did not have any clothes in the upstairs bedroom closet or dresser. Additionally, the appellant stated that he resided with his great uncle who was not present at the time. Thereafter, on January 25, 2024, the investigator detective made an unannounced visit. A female answered the door and stated that the appellant was not present; she did not know where he was; the appellant stayed on the couch; and she did not know if he stayed there last night. Further, the investigator made an unannounced visit on January 26, 2024, and there was no answer. Therefore, based on the aforementioned, at the time the appointing authority made its decision, it had legitimate concerns as to whether the appellant maintained continuous residency in Atlantic City as required.

Moreover, in a March 11, 2024, email to this agency, the appellant stated that there was drastic damage to his residence due to sewer line problems which caused him to be displaced as the entire plumbing system under the house in the townhouse's system was gutted and inhabitable until fixed. It is noted that there is nothing in the record that indicates whether the appellant lived in Atlantic City during this time of displacement. Additionally, a review of certification OL231028 indicates that there was only one higher ranked candidate who was bypassed. Therefore, under the "Rule of Three," even if the Commission was to find that the appellant met the residency requirement, his name could have been bypassed pursuant to the appointing authority's selection discretion absent any unlawful motive, and there would be no basis for a retroactive appointment. Nonetheless, the appointing authority has presented a legitimate reason to bypass the appellant due to the lack of clarity of the appellant's residence at the time it made its decision. In that regard, individuals whose names merely appear on a list do not have a vested right to appointment. *See In re Crowley*, 193 N.J. Super. 197 (App. Div. 1984). The only interest that results from placement on an eligible list is that the candidate will be considered for an applicable position so long as the eligible list remains in force. *See Nunan v. Department of Personnel*, 244 N.J. Super. 494 (App. Div. 1990). Accordingly, the record indicates that the appointing authority's appointments complied with the "Rule of Three."

Furthermore, other than speculation that the investigator approached the investigation of his residency "with the premise that to find him ineligible," the appellant has not alleged that the appointing authority's bypass was based on discrimination, retaliatory, or some other illegal or invidious motivation. Additionally, even if the appellant is making such a claim, he has not specified why the appointing authority acted with invidious motivation nor has he presented any evidence to support such a claim.

Concerning the appellant's comments about college students who live at their schools during the school year, in those cases, applicants would provide their college address on their employment applications or otherwise inform the appointing authority which would explain why they were not living at home at the time of the residency check. However, in this case, there is nothing in the record that indicates that the appellant informed the appointing authority about his alleged temporary displacement from his Atlantic City residence. Further, based on the investigator's report, as well as the appellant acknowledging that he was displaced from his Atlantic City residence, it was reasonable for the investigator to conclude that there were concerns about the appellant's residency.

Moreover, the appellant questions why the investigator left out details in his report which supports his claim that he met the residency requirements. For example, the appellant submits a very specific statement from the caretaker of the owner of his residence where she allegedly confirms that the appellant lives at the residence in question, was sleeping on the couch due to water problems, and she does not know where the appellant is because she does not keep tabs on him as she frequently goes in and out of the house while the investigator only stated that the appellant was not present, she did not know where he was, he stays on the couch, and she did not know if he stayed there last night. Additionally, the appellant questions the report which indicates that the appellant did not have any clothes in his bedroom while the appellant claims he presented clothes from his bedroom to investigator and, due to the plumbing issue, the investigator could see that his clothes were splayed across piles in the bedroom. He also questions why the report did not indicate that he showed the investigator his toothbrush. Additionally, since the appellant did not hear the investigator knock on his neighbors' door while trying to corroborate that his residence had water damage, he labels the investigator's attempt as "suspicious." Therefore, it seems, at minimum, the appellant is accusing the investigator, an Atlantic City Police Department Detective, of preparing a sloppy or misleading report, and potentially accusing the Detective of something more nefarious. However, while the appellant submitted various documents to support his appeal, it is noted that the appellant was not present at the time of the caretaker's statement, nor did he submit a signed statement from the caretaker that confirms the specificity of her statement. Further, none of the appellant's exhibits confirm what the appellant presented to the investigator when he visited on January 24, 2024, and it is not "suspicious" that one does not hear the knocking on a neighbor's door even if at home at the time.

Accordingly, as the issue is not whether the appellant maintained continuous residence in Atlantic City, but rather whether the appointing authority made its decision based on legitimate business reasons at the time of its decision to bypass him, the appellant has not met his burden of proof in this matter. Further, as the appellant has not alleged with any specificity that the appointing authority made its decision to bypass him based on illegal or invidious motivations or presented any

evidence to support such an allegation, there are no material facts that warrant a hearing. Finally, as the appellant was merely bypassed on the certification, his name remains on the list and will appear on any subsequent certifications of the list for prospective employment opportunities where he will be able to further establish his residency with Atlantic City, if still in question.<sup>2</sup>

### 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 3<sup>RD</sup> DAY OF JULY, 2024

*Allison Chris Myers*

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Allison Chris Myers  
Chairperson  
Civil Service Commission

Inquiries  
and  
Correspondence

Nicholas F. Angiulo  
Director  
Division of Appeals and Regulatory Affairs  
Civil Service Commission  
Written Record Appeals Unit  
P.O. Box 312  
Trenton, New Jersey 08625-0312

c: Dominic Gitto  
Anthony Swan  
Steven S. Glickman, Esq.  
Division of Human Resource Information Services  
Records Center

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<sup>2</sup> The Commission also notes for the appointing authority's benefit that the appellant's 2018 careless driving infraction alone would not be sufficient to remove him from the list.