B-14

STATE OF NEW JERSEY

FINAL ADMINISTRATIVE ACTION OF THE CIVIL SERVICE COMMISSION

In the Matter of Michael Jallad,
Fire Fighter (M2554M),
City of Newark

CSC Docket No. 2014-1781

List Removal Appeal

ISSUED: OCT 0 3 2014 (DASV)

Michael Jallad, represented by Craig S. Gumpel, Esq., appeals the removal of his name from the Fire Fighter (M2554M), City of Newark, eligible list due to his failure to meet the residency requirement.

The open-competitive examination for Fire Fighter (M2554M), City of Newark, was announced with a closing date of March 31, 2010 and was open to residents of Newark. Applicants were required to maintain continuous residency up to the date of appointment. *See N.J.A.C.* 4A:4-2.11(e)1. The appellant, a nonveteran, passed the subject examination and ranked 117th 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 56th position on the certification. In disposing of the certification, the appointing authority requested the appellant's removal. It indicated that an investigation of the appellant was conducted which revealed that he had an unsatisfactory criminal record and did not meet the residency requirement. It submitted the section of the appellant's application where he listed his places of residency as follows: "Rowan University Housing" in Glassboro, New Jersey from September 2008 to May 2010; a location on Victoria Street in Glassboro from September 2010 to May 2012; apartments 4 and 5 on a Summer Avenue location in Newark from September 2009

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[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.

to October 2010 and October 2010 to January 2012, respectively; apartments 6 and 5 on a Madison Street location in Newark from January 2012 to October 2012 and October 2012 to the present, respectively. Additionally, the appointing authority presented the appellant's New Jersey Criminal History Detailed Record, which revealed that he had been arrested on February 10, 2011 on charges of burglary, theft, and receipt of stolen property. The latter two charges were dismissed, but the record noted the appellant's guilt on the charge of being a defiant trespasser. The appellant appealed to the Division of Classification and Personnel Management (CPM), which referred the matter to the Civil Service Commission (Commission) for direct review.

On appeal, the appellant initially notes that the investigation report indicated that he met the residency requirement, but was removed for a criminal record. However, when he contacted this agency, the appellant was informed that the report had contained an error and the sole reason for his removal was due to the residency issue and not his criminal record.[2] The appellant submits a certification, stating that the addresses in Glassboro were "merely secondary and temporary campus addresses for educational proposes only during the weekdays of the school year." He indicates that Rowan University is approximately 100 miles away from Newark and over a two hour drive. Although the appellant attended college full-time from 2008 through 2012, he asserts that he never established legal residency in Glassboro. Rather, the appellant moved to Newark in January 2009 where he first resided in his parents' properties on Summer Avenue and then on Madison Street. The parents have owned the apartments in these properties since 2001 and 1996, respectively, and do not require the appellant to pay rent. The appellant submits a copy of a Residential Lease Agreement between the appellant and Tomasa Jallad, his mother, for the Madison Street apartment beginning January 2012. The appellant certifies that he would commute back home to Newark on the weekends, holidays, and for the summer. He claims that he "has spent all of his non-academic time in Newark." Additionally, the appellant notes that representatives of the appointing authority advised him that his college residences "were an exception to the continuous residency requirement."

Furthermore, the appellant explains that he has lived on Madison Street since January 2011 and has had two roommates: Veronica Jost and Taylor Galloway. In a letter[3] dated December 23, 2013, Jost indicates that she is a resident of apartment 5 on the Madison Street location and has known the appellant for approximately seven years. She began living with the appellant in that location in December 2012. Jost further states that prior to moving in with the appellant in

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[2] The appointing authority responds that further investigation of the appellant's record indicates that his only conviction was for a disorderly persons offense "and therefore will not be discussed herein."

[3] The appellant refers to the letters of Galloway and Jost as certifications; however, they are not certified.

apartment 5, she spent time with him at both the Madison Street address at apartment 6 and at apartment 5 on Summer Avenue. Moreover, between 2011 and 2012, Jost indicates that most of the time spent at apartment 5 on Summer Avenue was during the weekends and, once the appellant moved to apartment 6, they "spent a lot of time together." Additionally, the appellant includes a letter, dated December 23, 2013, from Galloway, stating that she previously resided with the appellant at apartment 6 on Madison Street for two months beginning in January 2012 until apartment 5 "became free." Galloway and the appellant relocated to apartment 5 in October 2012 because it was larger. Galloway notes that she lived there while attending Montclair State University until October 2013, and it is her understanding that the appellant and Jost still reside there. Furthermore, the appellant submits a notarized statement, dated December 29, 2013, from Manuel Andujar, who states that he resides in apartment 4 on Summer Avenue and has been living there for over 20 years. He is a family friend of the Jallads. Andujar also indicates that from September 2009 to October 2010, the appellant resided with him, mostly spending the weekends at the apartment when he was home from college. Additionally, Andujar states that in early 2012, the appellant moved to apartment 5 and sees the appellant "on occasion" when he visits.

Moreover, the appellant asserts that he moved from his childhood home in Flanders when he was 18 years old and the time spent in Newark has exceeded any other location. He argues that although his relationship with his parents is closer than the persons whom he resided with, this factor should not be applicable in his case since he moved from his parents' home when he was an adult. He emphasizes, however, that his landlord are his parents. Furthermore, the appellant states that he has been a resident of Newark for almost five years now and "maintains strong family ties in the community." Regardless of whether he is appointed to the position of a Fire Fighter in Newark, he will remain a resident in Newark in the property owned by his parents. He states that "there is no incentive to reside in Flanders." The appellant also notes that he does not have any children. Thus, he indicates that the factor which considers the location of the school district of the children living with the applicant is not applicable to him. Moreover, the appellant submits copies of the following documents which reflect the apartment 5, Madison Street, address: a County of Essex Voter Acknowledgment Card with a registration date of January 13, 2012; an undated letter from Rowan University requesting information on faculty members from graduates by January 15, 2014, his 2011 and 2012 W-2 statements from an employer in Clifton, New Jersey, a bank statement for the period between November 14, 2013 and December 13, 2013, and three gas and electric bills due in January, February, and April 2013. In addition, the appellant includes his Motor Vehicle Services Address Change History, dated October 31, 2013, which reveals that on January 13, 2012, he changed his address from apartment 4 on Summer Avenue to apartment 5. On February 15, 2012, he

changed his address to apartment 6 on Madison Street and then to apartment 5 on April 12, 2013, which is recorded as his current address.[4]

In addition, the appellant indicates that the appointing authority did not provide him with copies of all documentation sent to CPM as required by *N.J.A.C.* 4A:4-4.7(b)1 and 2. Rather, CPM provided the documentation, which included the residency page of his application. Therefore, the appellant maintains that the appointing authority's request to remove his name from the subject eligible list must be denied.[5] Accordingly, he indicates that his appointment should be "mandated with any back pay, retroactive benefits, including seniority, and attorney's fees to which he is entitled."

In response, the appointing authority, represented by Emily Truman, Assistant Corporation Counsel, asserts that the investigation of the appellant's background revealed that his primary residence was not in Newark as of the March 31, 2010 closing date. Rather, the appellant lived in Glassboro and Flanders. The appointing authority argues that the appellant's certifications and the statements he submits demonstrate that the appellant spent more time in Glassboro than he did in Newark from September 2008 until May 2012, since the appellant would only spend weekends, holidays, and the summer in Newark. Moreover, the appointing authority indicates that the appellant's voter registration history shows that he resided in Flanders (Mount Olive Township) until January 18, 2012. The appellant did not change his address to Newark until February 15, 2012. It is noted that a review of the appellant's voting history shows that he voted on June 2, 2009 in a primary election in Mount Olive Township. Additionally, the appointing authority presents the appellant's W-2 statement for 2010 which reflects the Flanders' address. Furthermore, the appointing authority contends that the appellant would not have claimed residency in Newark, nor would he continue to claim residency, if the residency requirement were eliminated. It emphasizes that the appellant's address on his driver's license was his parents' home in Flanders until January 20,

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[4] This document does not have entries prior to January 13, 2012.

[5] *N.J.A.C.* 4A:4-4.7(b) provides that "1. Upon request of the eligible or upon the eligible's appeal, the appointing authority shall provide the eligible with copies of all materials sent to the appropriate Commission representative. 2. If the appointing authority fails to provide either the appropriate Commission representative or the eligible with copies of materials, the request for removal **may** be denied." [Emphasis added.] However, the appellant's argument fails since it is clear that *N.J.A.C.* 4A:4-4.7(b)2 does not require this agency to automatically deny a request for removal if an appointing authority fails to provide the required material to the candidate or this agency. Rather, it states that the Commission *may* deny such a request. Thus, even though the appointing authority did not submit the requested documentation to the appellant previously, the appellant received the documentation from CPM and the matter is now before the Commission with complete documentation. *See In the Matter of Joseph Branin* (MSB, decided April 6, 2005); *In the Matter of Irving Frederick Grevious* (MSB, decided May 19, 2004); *In the Matter of Michael Rubine, Police Officer (M5507T), North Bergen* (MSB, decided September 10, 1998).

2010.[6] It asks why, if it were true that the appellant moved out of his parents' home in 2008 to attend college, he did he not change his address for nearly two years on his driver's license and update his address on his W-2 statement. Additionally, the appointing authority also asks why the appellant took nearly four years to change his address on his voter registration. Moreover, it indicates that the appellant did not list an alternate address from September 2008 until September 2009, but yet he claims that he moved out of his parents' Flanders home in 2008. The appointing authority submits that a "more reasonable and supportable explanation" for the foregoing questions is that the appellant maintained his permanent residency at his parents' house in Flanders when he began attending college and did not become a full-time permanent resident of Newark until after graduation in May 2012. In addition, the appointing authority indicates that there is "no independent proof" other than the appellant's parents stating that he resided full-time in Newark. Further, the appellant does not pay rent or own property in Newark. Thus, he does not have any property ties in Newark. The appointing authority claims that the appellant "could easily move back" to Flanders or Glassboro or to Clinton, where he is employed. Therefore, it maintains that the appellant has failed to demonstrate that he met the residency requirement and his appeal should be denied.

In reply, the appellant certifies that his permanent residence has continuously been in Newark since January 1, 2009. Regarding his voter registration, he states that when he updated his driver's license information online in January 2010, he checked off a box indicating that he also elected to change his voter registration information. As for his W-2 statement, the appellant indicates that his former employer did not update his personnel records. Further, he explains that his earnings in 2010 were "minimal" because he was attending college full-time and his employer used his parents' address. The appellant also believed "it would be safer" to have his wage and tax records continue to go to his parents' address while he was attending college. Moreover, the appellant responds that paying rent may provide proof of residency, but it "does not point to proof of non-residency." Additionally, the appellant reiterates that he was advised by the Fire Director and an investigator that his college residency would be an exception to the residency requirement. He also claims that he contacted this agency and was again informed that attending college would not affect his residency as long as he had not changed his legal address. Further, he maintains that he has provided "independent proof" of his residency in Newark other than the statements made by his parents, such as his certification, documents, and the statements of Andujar, Jost, and Galloway. In conclusion, the appellant states that "[t]here are simply no documents like tax returns, paychecks, drivers' licenses, voter registrations, or other similar documents

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[6] The appointing authority submits the appellant's Motor Vehicle Services Address Change History, dated March 14, 2013, which includes the January 20, 2010 entry.

which would support an intention to reside anywhere other than Newark, where [he] resided beginning in January 2009.[7]

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. 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

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[7] The appellant notes that the examination announcement was amended with a "closing date" of May 29, 2010. Thus, he contends that residency should be established by the date. However, the amended announcement specifically indicates that "Eligibility must be established by March 31, 2010." Accordingly, the appellant's contention is without merit.

that unless otherwise specified, residency requirements shall be met by the announced closing date for the examination. When an appointing authority requires residency as of the date of appointment, residency must be continuously maintained from the closing date up to and including the date of appointment. Additionally, *N.J.A.C.* 4A:4-4.7(a)7 provides that discontinuance of an eligible's residence in the jurisdiction to which an examination was limited or for a title for which continuous residence is required is a cause for disqualification from an eligible list. *N.J.A.C.* 4A:4-6.3(b), in conjunction with *N.J.A.C.* 4A:4-4.7(d), provides that the appellant has the burden of proof to show by a preponderance of the evidence that an appointing authority's decision to remove his or her name from an eligible list was in error.

In the instant matter, the appellant asserts that he moved to Newark in January 2009 while he was attending college full-time in Glassboro. Although he stayed in Glassboro, he "spent all of his non-academic time in Newark" and established residency there as of January 1, 2009. The appointing authority disputes the appellant's assertions, given that he does not have actual property ties to Newark, he did not update his motor vehicle records until 2010, voter registration until 2012, or his employment forms from 2010 with his Newark address.

The Commission has reviewed this matter and finds that the appellant has not shown that he was a legal resident of Newark as of the March 31, 2010 examination closing date. Initially, it is noted that the appellant's certified statements are suspect. He contends that he "has spent all of his non-academic time in Newark" and established residency there as of January 1, 2009. Notwithstanding that this period of time was before the examination closing date, the appellant's voting history shows that he voted on June 2, 2009 in a primary election in Mount Olive Township when he claimed his residency was in Newark. The appellant also did not change his residency to Newark until January 20, 2010. *See e.g., In the Matter of Patrick O'Hara* (CSC, decided January 13, 2010) (Commission found appellant 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 since *N.J.S.A.* 39:3-36 requires a motorist to report an address change within one week of move). In addition, the appellant certifies that he lived on Summer Avenue beginning in January 2009. However, Andujar submits a notarized statement that from September 2009 to October 2010, he resided with the appellant in apartment 4 at the Summer Avenue location. This information is inconsistent, as it is not clear what apartment the appellant supposedly lived in from January 2009 to August 2009.

Moreover, considering the standard set forth in *N.J.A.C.* 4A:4-2.11(c), the appellant does not own Newark properties; the properties in question belong to his parents. The appellant indicates that he stayed rent-free in these properties and

executed a lease between himself and his mother in January 2012, which is much later than the March 31, 2010 examination closing date. In 2010, if taken as true, the appellant merely stayed at his parents' property in Andujar's apartment for short periods of time. Andujar states that, at that time, the appellant mostly spent the weekends there when he was home from college. Further, it is difficult to believe that holidays were spent in Newark, as the appellant claims, when the appellant's parents reside in Flanders. The parents and the appellant obviously have a closer relationship than the appellant and Andujar, who is a family friend. Thus, the record does not demonstrate that time actually spent in Newark in 2010 exceeded that of other locations. In addition, the statements of Jost and Galloway do not lend much support to the appellant's appeal. Their statements refer to time periods in 2011 and 2012. Additionally, the documents the appellant presents reflect dates after March 31, 2010 and do not convince the Commission that he was a resident of Newark at the examination closing date. The Commission acknowledges that, for educational reasons, students may live away from their local legal residence. However, in this case, despite the appellant's assertion that he intends to remain a resident of Newark, the appellant's use of his parents' Newark property in 2010 (and possibly in 2011) was undoubtedly for employment purposes only and did not establish primary legal residence. As indicated in *Lightfoot*, *supra*, use of a residence for purposes of employment need does not make it a primary legal residence. *See also, In the Matter of Chad Batiuk,* Docket No. A-5593-05T5 (App. Div. September 28, 2007) (Appellant's convoluted residency saga was less than plausible and his use of a claimed township address was found to be utilized to deceive the appointing authority).

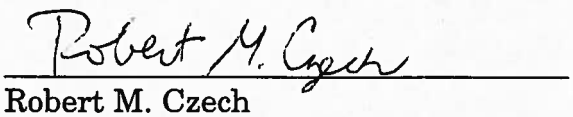
Therefore, under these circumstances, the appointing authority has presented a sufficient basis to remove the appellant's name from the Fire Fighter (M2554M), City of Newark, eligible list due to his failure to meet the residency requirement. Accordingly, the appellant has failed to meet his burden of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

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 1st DAY OF OCTOBER, 2014



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