B-12

STATE OF NEW JERSEY

FINAL ADMINISTRATIVE ACTION OF THE CIVIL SERVICE COMMISSION

In the Matter of Jeremy Embs,
Fire Fighter (M2510M),
City of Cape May

CSC Docket No. 2015-272

List Removal Appeal

ISSUED: MAR 0 9 2015 (DASV)

Jeremy Embs, represented by Michelle J. Douglass, Esq., appeals the attached decision of the Division of Classification and Personnel Management (CPM),[1] which denied his appeal of his removal from the Fire Fighter (M2510M), City of Cape May, eligible list.

By way of background, the open-competitive examination for Fire Fighter (M2510M), City of Cape May, was announced with a closing date of March 31, 2010 and was open to residents of the City. 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 sixth on the resulting eligible list, which promulgated on December 13, 2011 and has an extended expiration date of December 12, 2015. On his examination application, dated March 9, 2010, the appellant listed a Cape May City address and residency code, which was 0502. Effective October 7, 2010, agency records indicate that the appellant changed his address to North Cape May. It is noted that, regardless of a change of address, residency is established as of the closing date of the announcement. On January 18, 2012, the appellant's name was certified with his North Cape May address.[2] In disposing of the certification, the appointing authority requested the appellant's removal from the list for his failure to meet the residency requirement. It submitted that the appellant's address, as listed on the certification, was in North Cape May, which is not within the municipal boundaries

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[1] CPM is now known as the Division of Agency Services.

[2] It is noted that, on June 9, 2014, the appellant requested a change of address from North Cape May to a different location in Cape May. The change was effective June 26, 2014.

of Cape May City. Rather, the property is physically located in the neighboring municipality of Lower Township.

In a letter dated June 17, 2014, the appellant appealed the removal of his name to CPM, explaining that the residents of Cape May have a zip code of 08204. Surrounding towns, such as North Cape May, also use the zip code of 08204. Additionally, the appellant stated that when the appointing authority contacted him, he advised that he resided in North Cape May. He acknowledged that since he did not reside in Cape May, he would be removed from the Cape May resident list. He informed the appointing authority that he wished to remain on the Cape May county-wide list. However, the appellant indicated that he had been removed "unintentionally." Thus, he requested reinstatement on the Cape May county-wide list based on his test score. CPM responded that the notice of removal was sent to the appellant on May 2, 2012, and his letter of appeal was postmarked June 18, 2014. Consequently, CPM determined that the appellant's appeal was untimely and could not be addressed.

On appeal to the Civil Service Commission (Commission), the appellant initially indicates that he never received a notice of removal. In support of his assertion, he submits a sworn notarized statement that he did not receive the notice and was unaware of the appointing authority's disposition of his name at the time of his removal. He only became aware of his removal in June 2014 when the resident portion of the subject eligible list was about to be exhausted. Under these circumstances, the appellant contends that good cause has been presented for the Commission to relax the 20-day time period in which list removal appeals must be filed. Moreover, the appellant asserts that he has been a Cape May County resident "at all times relevant." He indicates that candidates are classified based on tiers, where residents of the municipality are classified first and county residents are classified second.[3] The appellant argues that the appointing authority should have classified him as a "Tier 2" candidate and should not have removed him from the subject eligible list. Further, the appellant states that he has served as a part-time Fire Fighter with the City of Cape May since the summer of 2012 and his "long held career goal (and dream)" is to become a full-time permanent Fire Fighter.

It is noted that, in a letter dated June 9, 2014, the appointing authority wrote to this agency, indicating that it removed the appellant's name from the subject certification because he did not reside in Cape May. However, it stated that the appellant "should have remained on the Fire Fighter list for the County wide list."

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[3] *N.J.S.A.* 40A:14-10.1a states that in any municipality of this State, before any person shall be appointed as a member of the paid fire department or paid member of a part-paid fire department, the appointing authority may classify all the duly qualified applicants for the position or positions to be filled in the following classes:

I. Residents of the municipality.
II. Other residents of the county in which the municipality is situate.
III. Other residents of the State.
IV. All other qualified applicants.

The appointing authority requested that "the mistake" be reviewed and that the appellant's name be reinstated to the Cape May county-wide list based on his test score so that he may have an opportunity to be appointed from a future certification. CPM reviewed the matter and stated that although the appointing authority essentially intended to bypass the appellant's name, the record demonstrates that the appellant did not meet the residency requirement. CPM also suggested that the appellant may have falsified his examination application by providing a residency code that corresponds to Cape May and not Lower Township where he actually resided.[4]

CONCLUSION

Initially, *N.J.A.C.* 4A:2-1.1(b) provides that unless a different time period is stated, an appeal must be filed within 20 days after either the appellant has notice or should reasonably have known of the decision, situation or action being appealed. *N.J.A.C.* 4A:1-1.2(c) indicates that the Commission may relax these rules for good cause in a particular situation, on notice to affected parties, in order to effectuate the purposes of Title 11A, New Jersey Statutes.

In the instant matter, CPM denied the appellant's appeal as untimely. It found that the notice of removal was sent to the appellant on May 2, 2012, and his letter of appeal was postmarked June 18, 2014. However, the appellant contends that he did not receive the notice of removal and only became aware of his removal in June 2014 when the resident portion of the subject eligible list was about to be exhausted. In this regard, there is a presumption that mail correctly addressed, stamped and mailed was received by the party to whom it was addressed. *See SSI Medical Services, Inc. v. State Department of Human Services,* 146 *N.J.* 614 (1996); *Szczesny v. Vasquez,* 71 *N.J. Super.* 347, 354 (App. Div. 1962); *In the Matter of Joseph Bahun,* Docket No. A-1132-00T5F (App. Div. May 21, 2001). Nonetheless, in submitting a notarized statement under oath that he did not receive the notice of removal, the appellant has rebutted this presumption. Accordingly, since the appellant timely filed an appeal as soon as he discovered his removal, the merits of the appellant's appeal shall be reviewed.

N.J.A.C. 4A:4-3.2(a)1 states that when an announcement is open to more than one local jurisdiction, the resulting list of eligibles shall be separated into sub-lists by the residency requirements as provided by applicable law and ordinance. *N.J.A.C.* 4A:4-2.11(c) provides that where residence requirements have been established in local service in addition to the New Jersey State residency requirement, residence with regard to local service requirements means a single legal 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*

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[4] North Cape May is part of Lower Township.

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. Finally, *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 present case, there is no dispute that there is a residency requirement in the City of Cape May. Applicants were required to establish residency by March 31, 2010, which was the closing date of the Fire Fighter (M2510M), City of Cape May, examination. When the appellant applied for the examination on March 9, 2010, he listed a Cape May address and appropriately listed the residency code of Cape May on his application. To that extent, he did not falsify his application nor should he have been classified as a "Tier 2" candidate since he was a resident of Cape May as of the closing date. Moreover, although the appellant changed his address to North Cape May, effective October 7, 2010 prior to the January 18, 2012 certification, his name was already established in the City of Cape May's resident eligible list as the sixth ranked candidate. Thus, the appellant's name was properly certified to the appointing authority from the resident sub-list despite his new address in North Cape May and regardless of his Cape May zip code. The appointing authority then correctly removed the appellant's name from the subject eligible list for his failure to meet the residency requirement, *i.e.,* his lack of continuous residency in Cape May.

The appellant does not dispute the basis for the foregoing removal, but he argues that he should have remained on the subject eligible list as a Cape May County resident. However, the appellant established his residency in Cape May City at the time of his application. It is emphasized that residency is established as of the closing date of the announcement. Therefore, he was not ranked among the Cape May County eligibles. Once the appointing authority presented a sufficient basis for the appellant's removal, his name was appropriately removed from the Fire Fighter (M2510M), City of Cape May, eligible list. Candidates are not placed twice on an eligible list. They are either a resident or not a resident and are appropriately classified as such upon issuance of an eligible list. Thus, there has not been a "mistake" as indicated by the appointing authority. Nevertheless, the appointing authority is requesting that the appellant be restored to the eligible list and he be ranked based on his test score on the county sub-list for an opportunity to be appointed from a future certification. There is no Civil Service law or rule which mandates the return of a non-resident eligible, who has been removed due to his or

her municipal residency, to the county sub-list. By the same token, there is no Civil Service law or rule which prohibits it. Therefore, based on the appointing authority's willingness to consider the appellant on a future certification of the subject eligible list and given that the appellant has represented that he has continuously resided in Cape May County since the examination closing date and he has worked for the City of Cape May as a part-time Fire Fighter since 2012, and could prove to be a valuable asset to the department, there is good cause to restore the appellant's name to the Fire Fighter (M2510M), City of Cape May, eligible list. However, the appellant will be re-ranked as a non-resident and his name will appear on the county sub-list and certified at the time of the next certification of the eligible list.[5] Accordingly, the appellant's appeal is granted. The Commission notes that the decision in this matter is based on unique circumstances and shall not serve as a precedent for other matters.

ORDER

Therefore, it is ordered that this appeal be granted and the appellant's name restored to the Fire Fighter (M2510M), City of Cape May, eligible list. It is further ordered that the appellant be re-ranked on the county sub-list and his name certified at the time of the next certification of the eligible list, for prospective employment opportunities only.

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 4TH DAY OF MARCH, 2015

Robert M. Czech

Robert M. Czech
Chairperson
Civil Service Commission

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[5] Agency records indicate that the Fire Fighter (M2510M), City of Cape May, eligible list was certified on January 22, 2015 with the names of 22 eligibles from the county sub-list. The eligibles are ranked on the list from 12 to 43. The certification is outstanding and is not due until July 22, 2015. Upon his restoration and based on his test score, the appellant's name will appear between the eligibles ranked 51 and 52.

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: Jeremy Embs
Michelle J. Douglass, Esq.
Bruce A. MacLeod
Kenneth Connolly

Chris Christie
Governor
Kim Guadagno
Lt. Governor

STATE OF NEW JERSEY
CIVIL SERVICE COMMISSION
DIVISION OF CLASSIFICATION AND PERSONNEL MANAGEMENT
P. O. Box 314
Trenton, New Jersey 08625-0313

Robert M. Czech
Chair/Chief Executive Officer

July 9, 2014

Mr. Jeremy B. Embs
[redacted]

RE: Title: Fire Fighter - Jurisdiction: Cape May
Symbol: M2510M - Certification No: OL120105 - Certification Date: 01/18/2012

Dear Mr. Embs:

This is in response to your correspondence dated June 17, 2014, in which you are contesting the removal of your name on the subject certified list.

The Appointing Authority disposed of the subject certification requesting removal of your name in accordance with *N.J.A.C.* 4A:4-4.7(a)7, which permits the removal of an eligible candidate's name from the eligible list for discontinuance of an eligible's residence in the jurisdiction to which an examination was limited or for a title for which continuous residency is required.. A Certification Disposition Notice informing you of the removal was sent to you on May 2, 2012. In addition, the notice indicated you had 20 days from the notice date to appeal the Appointing Authority's action. Your appeal was postmarked June 18, 2014; more than two years after the notice date. Consequently, your appeal is considered untimely and cannot be addressed.

In accordance with Merit System Rules, you may appeal this decision to the Division of Appeals and Regulatory Affairs (DARA) within 20 days of the 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,

Debra A. Porter
Senior Management Assistant

c: Bruce A. MacLeod, City Manager