

B-10



STATE OF NEW JERSEY

In the Matter of Mickey D. Wedgest,
County Correction Officer (C9975M),
Mercer County

FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION

CSC Docket No. 2015-571

List Removal

ISSUED: JUL 17 2015 (JET)

Mickey D. Wedgest, represented by Stuart J. Alterman, Esq., appeals the attached decision of the former Division of Classification and Personnel Management (CPM),¹ which found that the appointing authority had presented a sufficient basis to remove the appellant's name from the County Correction Officer (C9975M), Mercer County eligible list for falsification of his employment application and for failure to maintain residency.

The appellant took the open competitive examination for County Correction Officer (C9975M), Mercer County, achieved a passing score, and was ranked on the subsequent eligible list. Applicants were required to maintain continuous residency in Mercer County up to the date of appointment. See *N.J.A.C. 4A:4-2.11(e)1*. The appellant's name was certified to the appointing authority on September 18, 2013. In disposing of the certification, the appointing authority requested the removal of the appellant's name based on his failure to maintain residency in Mercer County from the closing date of the examination (*i.e.*, August 31, 2010) to the date of appointment. Specifically, the appointing authority asserted that its background investigation, which included interviewing various neighbors, revealed that the appellant does not live in Ewing, New Jersey. Rather, the appellant and his wife live in Morrisville, Pennsylvania. Moreover, the appellant falsified his employment application since he provided documentation indicating that his permanent address is in Ewing. The appellant appealed the removal of his name to CPM, and asserted, among other things, that he maintained continuous residence in Ewing. CPM

¹ Now the Division of Agency Services.

upheld the appointing authority's request to remove the appellant's name from the subject eligible list.

On appeal to the Civil Service Commission (Commission), the appellant asserts that he currently lives in Ewing and the appointing authority has not provided any evidence to show that he does not live in Mercer County. The appellant adds that the appointing authority only partially reviewed the administrative rules and removed him based on his relationship with his wife pursuant to *N.J.A.C. 4A:4-2.11(c)3*. The appellant explains that his parents own the home at the Ewing address and his wife owns the home at the Morrisville address, and he does not own either home. The appellant adds that he continues to live in Ewing with his parents and he spends the majority of his time there. Further, the appellant argues that his certification² and the documentation he submitted on appeal confirm that he has maintained continuous residency in Ewing since the August 2010 closing date. Specifically, he submits a copy of his driver's license issued on July 31, 2013, a credit union statement dated May 1, 2014, a remittance request for mileage reimbursement dated May 16, 2014, a certificate of healthcare coverage dated June 9, 2014, a retirement enrollment document dated July 10, 2014, a COBRA notice dated June 9, 2014, and a voided check. The appellant also provides a voter registration form which indicates that he voted in the 2008 and 2012 general elections, and copies of his February 2008, November 2009, November 2010, November 2011, November 2012, November 2013, and July 2014 bank statements. The documentation indicates that the appellant's address is in Ewing. In addition, the appellant avers that the appointing authority removed the investigator who completed the background check in this matter from his position. Moreover, the appellant states that the findings in *In the Matter of Charles E. Barron* (MSB, decided June 2, 1998) and *In the Matter of Stephen J. Wenger* (MSB, decided March 22, 1994) are factually similar to his case and support his arguments on appeal.

In response, the appointing authority, represented by Kristina A. Chubenko, Assistant County Counsel, maintains that the appellant falsely indicated on his application that he resides in Ewing so he would be found eligible for the subject examination. Further, the appointing authority contends that the background investigation revealed that the appellant's permanent address is not the Ewing address. Rather, the background investigation confirmed that the appellant is currently a tenant in Morrisville, Pennsylvania, which is the address where his wife lives. In this regard, the background investigation revealed that the appellant lives with his wife and children in Morrisville and he splits his time between his wife and

² The appellant's certification indicates that he is currently living at the Ewing address and he has maintained continuous residency there at all times before and after the closing date of the announcement.

his parents.³ The appointing authority adds that the appellant did not provide a court order or other evidence to show that he is separated from his wife, and the background investigator confirmed that the appellant is not separated. In addition, the investigator conducted a home visit to the Ewing address and the only item found that belonged to the appellant was a bag of laundry.⁴ Moreover, the appointing authority asserts that it correctly determined the appellant's name should be removed pursuant to *N.J.A.C. 4A:4-2.11(c)3*.

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 legal residence. Post office box numbers shall not be acceptable; and
6. Whether the school district attended by children living with the individual is the same as the claimed residence.

³ The appointing authority notes that appellant admitted on appeal that "since his move back in with his parents in or around June 2011, he and his girlfriend decided to marry."

⁴ The appointing authority notes that the Ewing address did not have a bed for the appellant. It also notes that there is only a 2.9 mile distance between the Ewing address and the Morrisville address.

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. Further, *N.J.A.C. 4A:4-4.7(a)1*, in conjunction with *N.J.A.C. 4A:4-6.1(a)6*, allows the removal an eligible's name from an employment list when he or she has made a false statement of any material fact or attempted any deception or fraud in any part of the selection or appointment process. *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.

Initially, the appointing authority argues that the appellant's appeal should be dismissed as untimely. The Commission is not persuaded. CPM's decision is dated August 11, 2014 and it was received by the appellant on August 14, 2014. Therefore, the appellant's appeal postmarked September 3, 2014 was submitted within the required 20 day time period. Therefore, the Commission will address the appellant's appeal.

In the instant matter, the appellant asserts that his primary residence is located in Ewing and he has continuously lived there after the August 31, 2010 closing date. The appointing authority disputes that the appellant's residency in Mercer County was continuous, as his wife owns a house in Morrisville, Pennsylvania, and she lives there with the appellant's children. *N.J.A.C. 4A:4-2.11(e)1* requires the appellant to maintain continuous residence from August 31, 2010 up to and including the date of appointment. Residence means a single legal residence. See *N.J.A.C. 4A:4-2.11(c)*. The record reflects that the appellant does not own either residence in Ewing or in Morrisville. Nonetheless, considering the factors set forth in *N.J.A.C. 4A:4-2.11(c)*, the documentation submitted by the appellant on appeal is insufficient to show that he has maintained continuous residency in Mercer County since August 2010. The appellant has not rebutted the appointing authority's contention that he stated in the June 30, 2014 correspondence that "since his move back in with his parents in or around 2011, he and his girlfriend decided to marry." He also did not rebut the appointing authority's contention that he "splits his time between his residence with his parents, and his wife's residence in Pennsylvania." Indeed, in his appeal

submission to the Commission, the appellant asserts that he spends more time in Ewing, approximately four nights per week, than he does in Pennsylvania. Thus, it is evident the appellant has not continuously resided in Mercer County.

Further, the majority of information submitted from the appellant, including his credit union statement, healthcare coverage form, COBRA notice, and mileage reimbursement form, indicate 2014 dates. The appellant's driver's license was issued in July 2013. As such, the documentation indicating 2013 and 2014 dates does not confirm that the appellant has continuously maintained residency in Ewing since August 2010. In regard to the voter registration records, that information establishes that the appellant voted in the 2008 and 2012 general elections. As it is unrebutted that the appellant moved back to Ewing in July 2011, the 2008 and 2012 voter registration records are not sufficient to show that he maintained continuous residency in Ewing since August 2010. Regarding the copies of the appellant's bank statements that reflect various dates between February 2008 and July 2014, such information, in and of itself, does not sufficiently demonstrate that he maintained continuous residency in Ewing. Other than the bank statements, and as will be discussed more fully below, the appellant has not submitted any other substantive information to show that he maintained continuous residency in Ewing since August 2010. Thus, the appellant's argument that he has maintained continuous residency in Mercer County is not persuasive.

Moreover, it is questionable whether the majority of the appellant's time is spent in Ewing. The appointing authority argues that a background investigation confirmed that the appellant spends more time with his wife in Pennsylvania rather than with his parents in Ewing. Although the appellant argues that he spends more time with his parents, he does not dispute that his wife and children live in Morrisville. Further, the appointing authority argues that a home investigation revealed that the only item found that belonged to the appellant at his parent's home in Ewing was a bag of laundry, which the appellant does not dispute. The appellant has not provided any evidence, such as a court order, to show that he is separated from his wife or estranged from his children. Given that the appellant admits that his wife owns the Morrisville home, it is highly unlikely that her living situation in Morrisville is temporary.

The appellant's reliance on *In the Matter of Charles E. Barron, supra* and *In the Matter of Stephen J. Wenger, supra*, is misplaced as those decisions are factually distinguishable from this matter. In *Barron*, the former Merit System Board found that a witness refuted the appointing authority's assertion that the appellant in that matter did not maintain residency in Atlantic City, and the appellant also provided convincing proofs, including evidence that he maintained a business in Brigantine and was separated from his wife during the timeframe in question, which was sufficient to restore his name to the eligible list. In *Wenger*, it was determined that the appellant provided sufficient documentation, including a

Selective Service acknowledgement letter, a medical services bill, a computer printout, a transmittal document for a Sears credit card, and a photocopy of an election registration, to show that he maintained continuous residency in Burlington Township during the timeframe in question. In contrast, as noted above, the documentation provided by the appellant does not address the gap in continuous residency, which is a basis to remove his name, or establish that Ewing is his primary legal residence.

Regarding the appellant's argument that the appointing authority removed the background investigator from his position, even assuming the validity of the appellant's assertions, the appellant has not provided any substantive evidence to show that the investigation was somehow deficient, improperly conducted, and that it adversely affected the appointing authority's decision to remove his name from the eligible list. Therefore, given the totality of the circumstances, the documentation the appellant submits on appeal does not provide sufficient evidence that his primary legal residence has continuously been located in Ewing. As indicated in *Lightfoot, supra*, use of a residence for the purpose of employment does not make it a primary residence. *See also, In the Matter of Chad Batiuk*, Docket No. A-55593-05T5 (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).

Since the appellant has been removed from the subject eligible list for failure to meet the residency requirement, it is not necessary to address the issue of whether the appellant falsified his employment application.

Therefore, under these circumstances, the appointing authority has presented a sufficient basis to remove the appellant's name from the County Correction Officer (C9975M), Mercer County, eligible list due to his failure 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 15th DAY OF JULY, 2015



Robert M. Czech
Chairperson
Civil Service Commission

Inquiries
and
Correspondence

Henry Maurer
Director
Division of Appeals
& Regulatory Affairs
Civil Service Commission
Written Record Appeals Unit
P. O. Box 312
Trenton, New Jersey 08625-0312

Attachment

c: Mickey D. Wedgest
Stuart J. Alterman, Esq.
Kristina E. Chubenko, Esq.
Raissa L. Walker
Kenneth Connolly



STATE OF NEW JERSEY
CIVIL SERVICE COMMISSION

DIVISION OF CLASSIFICATION AND PERSONNEL MANAGEMENT
P. O. Box 313
Trenton, New Jersey 08625-0313

Robert M. Czech
Chair/Chief Executive Officer

Chris Christie
Governor
Kim Guadagno
Lt. Governor

August 11, 2014

Jessica L. Arndt
Alterman & Associates, LLC
8 South Maple Avenue
Marlton, NJ 08053

RE: Mickey D. Wedgest: Removed – Unsatisfactory Background Report

Title: County Correction Officer
Symbol: C9975M
Jurisdiction: Mercer County
Certification Number: OL131234
Certification Date: 09/18/13

Dear Ms. Arndt:

This is in response to your correspondence regarding the removal of your client's name from the County Correction Officer eligibility list in association with the certification cited above.

The Appointing Authority requested removal of your client's name in accordance with N.J.A.C. 4A:4-6.1(a)9, which permits the removal of an eligible candidate's name from the eligible list for "Other sufficient reasons". This includes, but is not limited to, an unsatisfactory background and failure to maintain residency. N.J.S.A. 11A:4-10 states eligibles may be questioned as to criminal convictions and pending criminal charges. Eligibles for law enforcement, firefighter, or correction officer titles may also be questioned as to any arrest.

In support of its decision, the Appointing Authority provided information which was determined by the Appointing Authority to be sufficient to remove your client's name. The information included a narrative report citing interviews with neighbors of Mr. Wedgest's stated residence at [REDACTED] Avenue, Ewing, NJ 08638 as well as neighbors of the residence of his wife at [REDACTED] Street, Morrisville, PA 19067. Pursuant to N.J.A.C. 4A:4-2.11(e)1, the Appointing Authority states that Mr. Wedgest failed to maintain continuous residency in the County of Mercer from the closing date of the announcement (August 31, 2010) up to the date he was considered for appointment. Additionally, since Mr. Wedgest signed a document for the Mercer County Correction Center Internal Affairs Unit that he resides in Mercer County, the Appointing Authority states that Mr. Wedgest has therefore falsified his application.

RECEIVED
AUG 14 2014

In your correspondence, you state that although Mr. Wedgest periodically stays at his family home in Morrisville, he has been a bona fide resident of Ewing since 2010. To substantiate his claim of Ewing residency, you indicate Mr. Wedgest is considered a NJ resident because he spent 183 nights in Ewing. However, you provide no information or documentation which shows Mr. Wedgest's name linked to the Ewing address between the closing date of the announcement and the date of certification.

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 client's 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, you may appeal this decision 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
Certifications Unit

Raissa L. Walker, Personnel Director
County Of Mercer, Division of Personnel
640 South Broad St, Po Box 8068
Trenton, NJ 08650

