

B-13

STATE OF NEW JERSEY

In the Matter of Eliezer Mota, Police
Officer (S9999R), Jersey City

FINAL ADMINISTRATIVE
ACTION
OF THE
CIVIL SERVICE COMMISSION

CSC Docket No. 2016-3651

List Removal Appeal

ISSUED: **JAN 20 2017** (SLK)

Eliezer Mota appeals Jersey City's request for the removal of his name from the eligible list for Police Officer (S9999R), Jersey City, on the basis of an unsatisfactory driving record, falsification of his application, and residing outside the residency scope.

By way of background, the appellant's name appeared on certification OL150794 in the 31st position that was issued to the appointing authority on June 25, 2015. In disposing of the certification, the appointing authority requested the removal of the appellant's name, contending that he had an unsatisfactory driving record¹, falsified his application, and resided outside the residency scope. Specifically, the background report indicated that the appellant listed in his notarized application that his residence was [REDACTED] Avenue in Jersey City and that his prior addresses were [REDACTED] Street in Jersey City and several prior addresses in Bayonne. However, it presented several documents that revealed that his address was in Union City after the September 4, 2013 closing date for the subject examination. These documents included his 2013 Federal Tax Return, his 2013 New Jersey Tax Credit Worksheet, a lease agreement signed by the appellant and his girlfriend on January 31, 2015, a May 15, 2014 bill from the Higher Education Assistance Authority, and

¹ Initially, the appointing authority sought to remove the appellant's name from the eligible list for falsification. In support of its actions, the appointing authority highlighted that the appellant's failure to maintain continuous residency in Jersey City through the date of appointment was cause for removal. Further, based on documents that the appellant presented on appeal in response to the falsification charge, the appointing authority additionally sought to remove the appellant's name for an unsatisfactory driving record.

three civil lawsuits from a landlord/tenant dispute. Additionally, the appellant's Motor Vehicle "Address Change History" reflected a Bayonne address as of July 3, 2015 until it was changed to Jersey City. The appellant had provided an August 28, 2015 statement to the appointing authority in an attempt to explain the situation by stating that his name was on documents indicating that he had a Union City address to help his then girlfriend, and now wife, who is also the mother of his child, pay the rent for her Union City address, but that he only slept there on the weekends. However, the appointing authority found the appellant did not fully explain the inconsistencies between the various documents to demonstrate that he maintained continuous residency in Jersey City. Moreover, it highlighted that the appellant had been in several car accidents, including after the September 4, 2013 closing date, had numerous traffic violations and had his license suspended.

On appeal, the appellant presents he lived at the [REDACTED] Street address in Jersey City from February 2006 until February 2015 which is well documented by vehicle titles, his driver's license, and various police reports. He indicates that he moved to [REDACTED] Avenue in Jersey City, but signed the Union City lease because this is where his girlfriend wanted to live because she felt safer living there than in Jersey City and that the landlord required him to sign it. However, the appellant maintains he continued to live at the [REDACTED] Street address. He states that his driver's license, car insurance, car lease agreement, and bank accounts all list Jersey City as his address. The appellant submits police reports for accidents that he was involved in that took place in September 2009, January 2012, January 2014, and January 2015 which show Jersey City as his address. Additionally, he presents a letter from Motor Vehicles, his driver's abstract, and his driver's license that was issued in 2013 which show [REDACTED] Street as his address. Moreover, his lease shows that he moved to [REDACTED] Avenue in Jersey City in February 2015. The appellant explains that the landlord/tenant civil filings related to his girlfriend having trouble paying the rent in Union City and his name was on the lease. Thereafter, he married his girlfriend and they filed a joint tax return so that she could receive the refund check to use for their child. Further, he states that the joint filing automatically triggered the Higher Education Assistance Authority to send his bill to the Union City address. He attaches his 2012, 2013, and 2014 W2 forms which show Wade Street as his address.

In reply, the appointing authority, represented by Jeremy Farrell, Corporation Counsel, argues that even if the appellant has sustained his burden of proof regarding his residency, he still should be removed for his unsatisfactory driving record. It emphasizes that someone who has numerous accidents, numerous other motor vehicle violations, and had his driver's license suspended does not project the requisite level of discipline required of a police officer.

In response, the appellant acknowledges that he has been in five car accidents during his 12 year driving record. However, he states that he did not receive any tickets for unsafe driving for any of these accidents and none of them were his fault.

The appellant indicates that he does not have any points on his license and his license was suspended once for failure to pay a parking ticket, which he promptly rectified. He acknowledges that he did receive one parking ticket, one failure to wear a seatbelt ticket, and a failure to produce documentation required for a passenger endorsement for his commercial license. He explains that he applied for multiple endorsements, including a passenger endorsement, in order to increase his chances of getting a job. However, once he received his current commercial position, he no longer needed the passenger endorsement and he did not send in the necessary paperwork for the commercial passenger endorsement. He argues that these violations are not relevant and do not show a pattern of disregard for the law.

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 the closing date up to and including the date of appointment.

N.J.A.C. 4A:4-2.11(c) provides that where residency requirements have been established, residence means a single legal residence. The following standards shall be used in determining 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, 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(h) provides that an applicant seeking to appeal a residency determination shall have the burden of proving his or her residency.

N.J.A.C. 4A:4-4.7(a)1, in conjunction with *N.J.A.C. 4A:4-6.1(a)9*, allows the Commission to remove an eligible's name from an eligible list for other sufficient reasons. Removal for other sufficient reasons includes, but is not limited to, a consideration that based on a candidate's background and recognizing the nature of the position at issue, a person should not be eligible for appointment. The Commission, in its discretion, has the authority to remove candidates from lists for law enforcement titles based on their driving records since certain motor vehicle infractions reflect a disregard for the law and are incompatible with the duties of a law enforcement officer. *See In the Matter of Pedro Rosado v. City of Newark*, Docket No. A-4129-01T1 (App. Div. June 6, 2003); *In the Matter of Yolanda Colson*, Docket No. A-5590-00T3 (App. Div. June 6, 2002); *Brendan W. Joy v. City of Bayonne Police Department*, Docket No. A-6940-96TE (App. Div. June 19, 1998).

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 Commission to remove 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:4-4.7(a)11 provides that an eligible may be removed from an eligible list for other valid reasons as determined by the Chairperson of the Civil Service Commission or designee.

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 appointing authority had sufficient reason to remove the appellant's name from the subject eligible list. The appellant needed to maintain continuous residence in Jersey City from September 4, 2013, the closing date of the subject announcement, to when he was considered for appointment. The appellant's 2013 Federal Income Tax Return, 2013 New Jersey Tax Credit Worksheet, lease agreement signed in January 2015, and a 2014 Higher Education Student Assistance Authority bill all indicate that the appellant resided in Union City after the closing date. Additionally, the appellant's Motor Vehicle Services Address Change History indicates that his residential address in July 2015 was in Bayonne. Notwithstanding all of this documentation indicating a Union City address, the appellant explains that it was his girlfriend who moved to Union City and he co-signed the lease even though he continued to reside in Jersey City. The Commission does not find the appellant's arguments persuasive. Specifically, he states that after the birth of their son and their subsequent engagement, they filed their taxes together as he wanted his wife

to receive the refund check to use for their child. However, the appellant's 2013 Federal Tax Return indicates that he was single and without any dependents. Therefore, there is no reasonable explanation as to why he would list Union City as his address if this was not his address.

Further, regardless of his reason, the Commission notes that a Federal Tax Return asks for the tax filer's address and then requires the filer to sign and date it. Further, per the tax return, the signatory represents, "Under penalties of perjury, I declare that I have examined this return and accompanying schedules, and to the best of my knowledge and belief, they are true, correct, and complete." In other words, while the appellant wants to now assert that he has continuously maintained his residence in Jersey City during the required period, he had the opportunity to indicate that he was a resident of Jersey City, but chose not to do so on his Federal Tax Return. Similarly, the appellant also had the opportunity to indicate that he was a resident of Jersey City on his 2013 New Jersey Tax Credit Worksheet, but failed to do. Additionally, the appellant has not provided any explanation as to why his Motor Vehicle "Address Change History" reflected a Bayonne address until July 3, 2015 until it was changed to Jersey City.

With respect to the appellant's driving record, the appellant acknowledged that he was involved in five motor vehicle accidents in his 12 year driving history including two accidents that occurred after the closing date. Additionally, his five-year driver abstract indicates that he received violations for failure to wear seat belt and maintenance of lamps in March 2010, unsafe operation of a motor vehicle in August 2010, and failure to wear seat belt in September 2012. Further, his license was suspended on November 23, 2013 under the Parking Offenses Adjudication Act and restored on December 6, 2013 after making payment.

Consequently, the totality of the appellant's background demonstrates that, at minimum, he lacks the judgment necessary for a municipal Police Officer. It is recognized that a municipal Police Officer is a law enforcement employee who must enforce and promote adherence within to the law. Municipal Police Officers hold highly visible and sensitive positions within the community and the standard for an applicant includes good character and an image of the utmost confidence and trust. It must be recognized that a municipal Police Officer is a special kind of employee. His primary duty is to enforce and uphold the law. He carries a service revolver on his person and is constantly called upon to exercise tact, restraint and good judgment in his relationship with the public. He represents law and order to the citizenry and must present an image of personal integrity and dependability in order to have the respect of the public. *See Moorestown v. Armstrong*, 89 N.J. Super. 560, 566 (App. Div. 1965), *cert. denied*, 47 N.J. 80 (1966). *See also In re Phillips*, 117 N.J. 567 (1990). The public expects municipal Police Officers to present a personal background that exhibits respect for the law and rules. Accordingly, the appellant has not met his burden of proof in this matter and the appointing authority has shown sufficient

cause for removing his name from the Police Officer (S9999R), Jersey City eligible list.

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 18th DAY OF JANUARY, 2017



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