



STATE OF NEW JERSEY

In the Matter of Christopher Pacheco,	:	FINAL ADMINISTRATIVE ACTION
Police Officer (S9999U), Kearny	:	OF THE
	:	CIVIL SERVICE COMMISSION
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CSC Docket No. 2018-3153	:	List Removal Appeal
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ISSUED: NOVEMBER 2, 2018 (JET)

Christopher Pacheco appeals the removal of his name from the Police Officer (S9999U), Kearny, eligible list on the basis of failure to maintain residency.

The appellant took the open competitive examination for Police Officer (S9999U), achieved a passing score, and was ranked on the subsequent eligible list. The appellant's name was certified on March 30, 2017 (OL170370). In disposing of the certification, the appointing authority requested the removal of the appellant's name from the eligible list on the basis of failure to maintain residency. Specifically, the appointing authority's background investigation revealed that the appellant's address is [REDACTED] Street, First Floor, Plainfield. It is noted that applicants were required to maintain continuous residency in Kearny or Newark¹ from the August 31, 2016 closing date of the announcement up to the date of appointment. See *N.J.A.C. 4A:4-2.11(c)1*.

In its request to remove the appellant from the list, the appointing authority maintains that the appellant lived at [REDACTED] Street, Plainfield. In support, it provides documentation including a vehicle registration with an expiration date of May 2018, an automobile insurance card with an effective date of May 7, 2017 and expiration date of November 7, 2017, a State Police Fingerprint Identification

¹ It is noted that Kearny ordinance 10-1.1 requires candidates to maintain residency from the following jurisdictions with hiring preference provided to (1) residents of the Town of Kearny and the City of Newark; (2) Hudson and Essex Counties; (3) State of New Jersey; and (4) United States of America.

System Automated Applicant Record dated May 1, 2017, a driver's license effective November 26, 2013 with an expiration date of November 30, 2017, a driver's abstract dated May 2, 2017, and a personal check, which reflect the appellant's address at [REDACTED] Street, 1st floor, Plainfield. Additionally, the appointing authority asserts that the appellant did not provide an address change history to the Division of Motor Vehicles, as his May 2, 2017 driver's abstract indicates an address of [REDACTED] Street, 1st Floor, Plainfield, New Jersey. Moreover, the appointing authority states that the background investigation revealed that the appellant was arrested on three occasions and had an unsatisfactory background.

On appeal, the appellant maintains that he has lived at [REDACTED] Apartment 1E, Newark since May 2016. In support, the appellant provides a copy of a commercial driver's license dated September 18, 2017 to November 20, 2021, a lease with a term of June 1, 2016 to May 31, 2017, a vehicle registration that expires in October 2018, an automobile insurance card with an effective date of May 7, 2018 and expiration date of November 7, 2018, an electric bill dated April 17, 2018, and two paystubs, which show an address of [REDACTED] Apartment 1E, Newark.

Despite being provided with the opportunity, the appointing authority did not provide a response.

CONCLUSION

N.J.A.C. 4A:4-2.11(c) provides that residency requirements shall be met by the announced closing date for an examination, and *N.J.A.C.* 4A:4-2.11(c)1 provides "[w]hen 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(b) 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 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.

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). Further, *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 has not established by a preponderance of the evidence that he was residing in Newark. Residence means a single legal residence. *See N.J.A.C. 4A:4-2.11(c)*. 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 Newark. Although the appellant submits various information including a lease, automobile insurance card, commercial driver's license, and a driver's registration, the documentation in the record effectively rebuts this assertion. *N.J.S.A. 39:3-36* requires a motorist who moves within New Jersey to report an address change within one week. The appellant's Motor Vehicle Address Change History clearly indicates that he did not change his address from a Plainfield address to a Newark address as reflected in his May 2, 2017 driver's abstract. Since the appellant claims to have been living in Newark since August 2016, it is clear that he did not update the Motor Vehicle Address Change Form to reflect a Newark address within one week as required. As such, the address was not changed until after the August 31, 2016 closing date of the announcement. Based on this fact alone, it would have been reasonable for the appointing authority to conclude that the appellant did not continuously reside in Newark. Thus, it was appropriate for the appointing authority to remove the appellant from the eligible list on that basis. *See In the Matter of Patrick O'Hara, Fire Fighter (M2377H), Newark* (CSC, decided January 13, 2010).

Additionally, the documentation the appellant provides on appeal do not conclusively reflect that the appellant continuously lived in Newark after the

August 31, 2016 closing date. In this regard, the lease in the record does not provide substantive evidence that he maintained a primary legal residency in Newark as of the August 31, 2016 closing date. The appellant's motor vehicle registration, driver's license, and automobile insurance card that he provides on appeal also do not indicate that he resided in Newark by the August 31, 2016 closing date of the examination.

Since the appellant has been removed from the list for the reasons noted above, it is unnecessary to address his criminal record or background.

Therefore, the appointing authority has presented a sufficient basis to remove the appellant's name from the Police Officer (S9999U), Kearny eligible list for failure to meet the residency requirement and 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 31st DAY OF OCTOBER, 2018



Deirdre L. Webster Cobb
Chairperson
Civil Service Commission

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