



STATE OF NEW JERSEY

In the Matter of David Leal,
Fire Fighter (M1556T), Newark

**FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION**

CSC Docket No. 2019-1170

List Removal Appeal

ISSUED: SEPTEMBER 13, 2019 (JET)

David Leal, represented by Bette R. Grayson, Esq., appeals the removal of his name from the Fire Fighter (M1556T), Newark, eligible list on the basis of failure to maintain residency.

The appellant took the open competitive examination for Fire Fighter (M1556T), achieved a passing score, and was ranked on the subsequent eligible list. The appellant's name was certified on December 6, 2016 (OL161405). 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 in Newark. Specifically, the appointing authority alleged that, although the appellant's address at the time of the certification was [REDACTED], [REDACTED], Newark, the background investigation revealed that the appellant did not continuously live at that address from the closing date up to the date of certification. It is noted that applicants were required to maintain continuous residency in Newark¹ from the August 31, 2015 closing date of the announcement up to the date of appointment. See *N.J.A.C. 4A:4-2.11(c)1*. The Fire Fighter (M1556T) list expired on March 28, 2019.

¹ Newark City Ordinance 6 S+FJ, effective July 6, 1994, provides that all applicants for appointment to the Police Department or Fire Department shall be qualified for appointment as required by law, ordinance and Civil Service rules and regulations. Additionally, it requires that all applicants for appointment shall be residents of Newark from the announced closing date of the Civil Service examination up to and including the date appointment in accordance with *N.J.A.C. 4A:4-2.11(b)1*.

In its request to remove the appellant from the list, the appointing authority provided the appellant's motor vehicle history indicating that on November 19, 2015, he changed his address from [REDACTED], Kearny to [REDACTED], Newark; on February 23, 2016, he changed his address from [REDACTED] Newark to [REDACTED], Newark; and on December 9, 2016, the appellant changed his address from [REDACTED], Newark, to [REDACTED], Newark. The appointing authority also indicated that the appellant's motor vehicle history reflects a February 15, 2016 motor vehicle violation for speeding and that he was involved in three motor vehicle accidents on November 4, 2014, on October 20, 2007, and on November 13, 2010.

Additionally, the appointing authority's background investigation revealed that the appellant listed on the employment application his addresses from January 2016 to the closing date as [REDACTED], Newark; from September 2014 to December 2015 as 86 Astor Street, Newark; from October 2013 to August 2014 as [REDACTED], Kearny; from August 2007 to October 2013 as [REDACTED], Newark; and from 1986 to August 2007 as [REDACTED], Kearny. The appointing authority indicated that the appellant's voter's registration form shows that he listed his address on January 12, 2005 as [REDACTED], Kearny; on December 17, 2015 as [REDACTED], Kearny; and on June 24, 2016 as [REDACTED], Newark.² The appointing authority's background check of the Accurint program³ revealed that the appellant's address is [REDACTED], Kearny, and the appellant's 2014 W-2 tax records issued from North Jersey Diagnostics Center indicate the appellant's address as [REDACTED], Kearny.

The appointing authority indicated that in 2015, three of the appellant's employers maintained different addresses for the appellant, including [REDACTED], Kearny and [REDACTED], Newark. However, in 2016, one of the appellant's employers maintained his address as [REDACTED], Newark. Additionally, the appointing authority interviewed a neighbor who initially stated that the appellant was living for at least 11 years at [REDACTED] Kearny. However, the aforementioned neighbor submitted a letter to the appointing authority retracting her statement with respect to the [REDACTED] address. Moreover, the appellant listed in his background investigation questionnaire that he has been residing at [REDACTED] Newark since January 2016, which was confirmed by the appointing authority on May 18, 2017. As such, the appointing authority determined that, based on the information obtained from the background investigation, the appellant was not a resident of Newark at the time of the closing date of the application.

² Other than the information listed in the appointing authority's background report, it did not provide any substantive documentation with respect to the appellant's voting records from the Hudson County Election Board.

³ The Accurint internet computer program is a locate-and-research tool available to government, law enforcement and commercial customers.

On appeal, the appellant maintains that he maintained residency in Newark up until and after the closing date of the announcement. In support, he provides an affidavit dated October 19, 2018, stating that at the time he was interviewed for the subject position, he was informed that it was suspicious that he had been living at two addresses in Newark. The appellant adds that he explained to the appointing authority that he had vacated his apartment at [REDACTED] as his roommate, who was also his cousin, had passed away, and he subsequently moved into his girlfriend's home at [REDACTED], Newark. The appellant explains that he does not understand why living at two Newark addresses in succession caused the appointing authority to question his status as a Newark resident. The appellant adds that he has no plans to move from the [REDACTED] address. In support, he provides documentation to show that he continuously resided in Newark, including a Geico Automobile Insurance card, and utility bills reflecting the [REDACTED] address.

In response, the appointing authority, represented by Courtney Durham, Assistant Corporation Counsel, maintains that the appellant's name should be removed from the eligible list for failure to maintain residency in Newark. Specifically, the appellant listed in the employment application that his addresses were [REDACTED] Newark from January 2016 to the closing date, [REDACTED], Newark from September 2014 to December 2015, [REDACTED], Kearny from October 2013 to August 2014, 93 Somme Street, Newark from August 2007 to October 2013, and [REDACTED] from 1986 to August 2007. However, the appointing authority explains that the appellant's voter registration records reveal that his addresses were [REDACTED], Kearny as of January 12, 2005; [REDACTED] as of December 17, 2005; and [REDACTED], Newark as of June 24, 2016. As such, the appointing authority states that the voter registration records confirm that his residency was in Kearny as of the closing date. The appointing authority adds that its background check also revealed that the appellant's current address is [REDACTED], Kearny. However, it explains that his motor vehicle history shows that he changed his address several times. In this regard, his motor vehicle history indicates that he changed his address on November 19, 2015 to [REDACTED], Kearny; on February 23, 2016 to [REDACTED], [REDACTED] Newark; and on December 9, 2016 to [REDACTED] Newark. The appointing authority contends that the February 23, 2016 address change listed on his motor vehicle record is contrary to the information he provided in this matter.

Additionally, the appointing authority asserts that the appellant did not provide any substantive evidence to show that he resided at [REDACTED], Apartment 2, Newark, after the lease at 86 Astor Street was terminated on December 31, 2015. The appointing authority contends that, although the appellant submitted an affidavit from his girlfriend's mother indicating that he has been residing at the [REDACTED] address, there is no substantive evidence, such

as paystubs and bank statements, to prove that he continuously lived there after the termination of his lease at the [REDACTED] address. The appointing authority contends that while the appellant submitted a W2 form which reflects the [REDACTED] address, it is dated March 19, 2016. As such, the appointing authority questions why the appellant did not provide any documentation to show his residency for January and February of 2016. The appointing authority adds that there is no evidence to show that the appellant spent the majority of his time in Newark after the termination of his lease at the [REDACTED] address on December 31, 2015. The appointing authority explains that the appellant did not change the address currently reflected on his driver's license until 11 months after he had moved from the [REDACTED] address. It states that, although the appellant provided information to show he was receiving mail in Newark, such information did not substantially establish that he was living in that jurisdiction after the closing date. As such, the appointing authority maintains that the appellant provided misleading information in an attempt to establish that he has been living in Newark up until and after the closing date.

In response, the appellant states that the appointing authority erroneously argues that his motor vehicle history reflects that he changed his address to [REDACTED] Kearny on November 19, 2015. Rather, the appellant contends that his driver's license was issued on November 19, 2015 with an address of [REDACTED], Newark, which also confirms that he did not change his motor vehicle records to the [REDACTED] on February 23, 2016.⁴ The appellant contends that it appears that the Hudson County Election Board's computer system updated the appellant's records to the [REDACTED] on December 17, 2015, which does not confirm that he voted at the time he was living at that address.⁵ Additionally, the appellant asserts that the information he submitted to the appointing authority confirms that he has lived in Newark since the closing date. In this regard, he provided such documentation including car insurance records, automobile purchase records, a respiratory care license, income tax returns, credit card bills, rental receipts, electric bills, phone bills, and an EZ pass bill which reflect Newark addresses. The appellant's affidavit states that he has maintained two separate addresses in Newark from August 15, 2015 to the present, and he provides a certification from a neighbor who contends that he has not seen the appellant go to work from the [REDACTED] since 2014. The appellant also provides a certification indicating that he vacated the [REDACTED] address in February 2016, which is what was reported on the employment application. As such, the appellant asserts that he has maintained residency in Newark since September 1, 2014.

⁴ The appellant also confusingly states that the address listed on his license was changed to the [REDACTED] address on November 19, 2015.

⁵ The appellant does not provide any substantive documentation with respect to his voting records from the Hudson County Election Board.

In support, the appellant provides an affidavit dated April 2, 2019, which states that the Hudson County Election Board and the Motor Vehicles Commission (MVC) listed erroneous information with respect to his places of residency. Specifically, the appellant asserts that he has no idea why the voter's registration form lists his address at [REDACTED], Kearny as his address. He adds that his parents reside at [REDACTED], Kearny and they have continuously resided at that address since he was 10 years old. The appellant contends that the Hudson County Election Board likely made a mistake with respect to his address, and the December 17, 2015 update reflecting the [REDACTED] was a result of an update of its computer system, and the error pertaining to the [REDACTED] address was corrected. With respect to his driver's license, the appellant explains that he initially believed that he had made an online address change reflecting [REDACTED], Newark.⁶ However, he subsequently learned that he was required to make the address change at a local MVC office. As such, a driver's license reflecting the [REDACTED] was issued on November 19, 2015. The appellant states that such information refutes the appointing authority's argument that he changed his address to [REDACTED] on November 19, 2015. The appellant adds that, on February 22, 2016, he changed his driver's license to reflect the [REDACTED], Newark address.⁷ The appellant states that he purchased a Jeep on June 27, 2015, and his address at that time was [REDACTED], Newark. The appellant provides a certification from Joao Azevedo, who indicates that the appellant, after he moved, would pick up mail at the [REDACTED] that was not forwarded to the [REDACTED]. The appellant provides certifications from his neighbor, Blas Camacho, indicating that he did not live in Kearny. The appellant adds that he provided a copy of his Associate's degree from Bergen County Community College that he received on May 22, 2014 to the appointing authority. The appellant explains that the W2 form reflecting the [REDACTED] address was issued on January 31, 2016, which reflects the income he earned in 2015. He adds that his tax return reflecting the [REDACTED] address was filed on March 19, 2016. The appellant states that his Automobile Insurance card reflects that he was living at the [REDACTED] address since September 2014. The appellant states that his Respiratory Care license was initially issued to him in February 2016 reflecting the [REDACTED] address, and it was renewed in February 2018 reflecting the [REDACTED] address. The appellant states that his credit card bills for 2015 and 2016 reflect Newark addresses. The appellant contends that he supplied rent receipts reflecting that he lived at the [REDACTED] address to the appointing authority. Accordingly, he maintains that he has continuously lived in Newark since September 1, 2014.⁸

⁶ The appellant does not provide the date that he attempted to make the online address change, or any evidence that he attempted to do so.

⁷ The appellant did not provide a copy of his driver's license reflecting the [REDACTED].

⁸ In support, the appellant submits a July 26, 2017 affidavit that he provided to the appointing authority, indicating that he leased an apartment with his cousin at [REDACTED].

Additionally, the appellant submits documentation to show that he lived at [REDACTED] address, including a Chase Mileage Plus United credit card bill from August 2015; a Chase Freedom credit card bill from August 2015; a TD Bank savings account statement from July 1, 2015 to September 30, 2015; and a TD Bank Convenience checking account statement. He also provides documentation to show that he lived at [REDACTED] including his 2015 and 2016 federal and State tax returns; a Chase Mileage Plus United credit card bill from March 2016 and January 2017; a Chase Freedom credit card bill from February 2016 and May 2017; a TD Bank Convenience Savings Account statement from January 1, 2016 through March 31, 2016 and from January 1, 2017 through March 31, 2017; and a TD Bank Convenience Checking Account statement for April 2016 and June 2017. He adds that he was living at [REDACTED] when he obtained a license.⁹ The appellant acknowledges that, although he submitted an online application for the license, he did not remember to change the address until he received the renewal application by e-mail.

It is noted that the appellant provides a lease agreement to show that he lived at the [REDACTED] beginning in September 2014, and documentation to confirm that he terminated that lease effective December 31, 2015. He also provides a 2015 federal tax return that reflects the [REDACTED], and bank statements, credit card statements, and other bills reflecting that he has lived at the [REDACTED] through 2018.

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:

Newark, from September 1, 2014 through August 31, 2016. The appellant explains that he shared rent and expenses at [REDACTED] and purchased a 2015 Jeep at that time. The appellant adds that his cousin unexpectedly passed away on December 21, 2015, and as a result, he was left as the sole individual paying rent at the [REDACTED] residence. The appellant states that he could not afford the apartment and, as such, the landlord agreed to cancel the appellant’s lease. Thereafter, the appellant contends that he moved in with his girlfriend at [REDACTED] Newark. The appellant states that, prior to living at [REDACTED] he lived at [REDACTED], Newark, and he was in school in 2013 and 2014 and was unable to pay his bills. As such, he moved in with his parents until he graduated and found work.

⁹ The appellant does not indicate which license he obtained in the affidavit. However, he appears to be describing his driver’s license.

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).

In the instant matter, the appellant asserts that his primary residence is located in Newark and he has continuously lived there since the August 31, 2015 closing date. He provides tax returns, W-2 forms, credit card bills, bank statements, a lease, rental receipts, and his driver's license in support of his claims. The appointing authority provides documentation, including the appellant's driver's history and witness certifications, to show that he did not maintain permanent residency in Newark. The appellant submitted a lease to show that he rented an apartment at [REDACTED], Newark effective September 1, 2014 and substantive documentation to show that he subsequently terminated the aforementioned lease on December 31, 2015. Further, the appellant provides substantive documentation to show that he moved into the [REDACTED] address after he had vacated the [REDACTED]. Although the appellant lived at both the [REDACTED] and the [REDACTED] address, such information is not sufficient to remove the appellant's name from the subject list. Rather, it only

confirms that the appellant lived at two addresses in Newark up until and after the August 31, 2015 closing date of the announcement. In fact, the owner of the [REDACTED] address submits a notarized statement indicating that the appellant has been living at that address since January 2016. *N.J.A.C. 4A:4-2.11(e)1* requires the appellant to maintain continuous residence from August 31, 2015 up to and including the date of appointment. Residence means a single legal residence. See *N.J.A.C. 4A:4-2.11(c)*. Although the record reflects a 2015 W2 record indicating a Kearny address, such information, in and of itself, does not confirm the appointing authority's contentions, as it appears to have been issued with an erroneous address. Additionally, the 2015 W2 form is contrary to the other documentation that was submitted by the appellant on appeal, including other 2015 W2 forms reflecting the [REDACTED], and 2015 federal and State tax returns reflecting the [REDACTED] address. Although the appointing authority's background check revealed a 2014 W2 reflecting a Kearny address, it did not submit such information in support of its claims. Moreover, regarding the appointing authority's arguments that the Hudson County Election Board records show that the appellant was living in Kearny, and while the appellant does not provide any substantive documentation to refute that contention, he opines that the Hudson County Election Board's computer system updated his erroneous address. While this piece of evidence does bring the appellant's continuous residency into question, the preponderance of the evidence in the record indicates that the appellant has satisfied his burden of proof absent proof that he voted in Kearny during that period in time.¹⁰

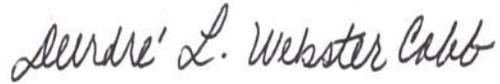
ORDER

Therefore, it is ordered that this appeal be granted. It is further ordered that the list for Fire Fighter (M1556T) be revived at the time of the next certification to allow David Leal's name to be considered at that time for prospective employment opportunities only.

This is the final administrative determination in this matter. Any further review should be pursued in a judicial forum.

¹⁰ Such evidence would establish either his residency in Kearny or establish that the appellant committed voter fraud, either of which would support his removal from the list.

DECISION RENDERED BY THE
CIVIL SERVICE COMMISSION ON
THE 10TH DAY OF SEPTEMBER, 2019



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