



STATE OF NEW JERSEY

In the Matter of Robert Gillo, Fire
Fighter (M1580T), West Orange

CSC Docket No. 2017-1383

FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION

List Removal Appeal

ISSUED: SEP 22 2017 (SLK)

Robert Gillo appeals West Orange's removal of his name from the eligible list for Fire Fighter (M1580T), West Orange, on the basis that he falsified his application, did not complete the pre-employee process and resided outside of the residency scope.

The appellant took the open competitive examination for Fire Fighter (M1580T), achieved a passing score, and was ranked on the subsequent eligible list. In seeking his removal, the appointing authority indicated that the appellant failed to prove that he lived in West Orange. Specifically, a background check indicated that he was the owner of a property in Morris Plains where he lived with his wife. Further, on question 36 on his background investigation questionnaire (BIQ), he stated that he moved out of Morris Plains in June 2015, while on question 36, he stated that he moved to West Orange in August 2015. Additionally, in an August 30, 2015 police report, where the appellant was involved in a domestic dispute with his wife, the report indicates that the appellant remained at the Morris Plains address while his wife left. Moreover, his voter registration indicated that he was registered to vote in Morris Plains until June 6, 2016, which is the week he filled out the BIQ. In addition, his motor vehicle insurance card lists Morris Plains as his address. Further, during three early morning weekday and one Sunday daytime exterior checks, his and his wife's cars were found at the Morris Plains address. The appellant also submitted a 2015 W-2, which listed Morris Plains as his address, while his 2015 tax return lists both himself and his wife living in West Orange. The appointing

authority also noted that he failed to submit the police report from the August 30, 2015 incident, a police report from a 1995 incident, and two motor vehicle accidents from 2011 on his BIQ.

On appeal, the appellant states that he has resided in West Orange since August 1, 2015 due to the separation from his wife. He indicates that, although he owns the Morris Plains property, he is allowing his wife to stay there until the divorce is finalized and then he will sell the property. The appellant acknowledges that he did not properly change all his documentation to his West Orange address due to the stress of his marital issues. He submits his car insurance policy, which was effective June 7, 2016, that reflects West Orange as his address. The appellant presents that he changed his voter registration to West Orange in June 2016 shortly after his interview. He contends that the reason his car was spotted at the Morris Plains address was that he was travelling back and forth between properties to keep the peace with his wife and maintain the property. The appellant states that he did not supply the police report from the August 30, 2015 incident because he did not know that there was a police report for this matter and emphasizes that he told the appointing authority about the incident. He explains that the discrepancy regarding his answers to questions 33 and 36 on his BIQ regarding when he moved to West Orange was a mistake and he reiterates that he moved to West Orange on August 1, 2015. The appellant presents that although he was uncertain about how to obtain a motor vehicle abstract, he did provide on his BIQ that he received a speeding violation and had two car accidents. He attaches bills, statements, and other documents to show that West Orange is his address. The appellant indicates that he no longer wishes to be considered for a position with the appointing authority's fire department. However, he requests that his record with the Civil Service Commission (Commission) be cleared and be in good standing.

In reply, the appointing authority submits its documentation that supports its position as described above.

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)6*, allows the Commission to remove an individual from an eligible 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)6 provides that the name of an eligible may be removed from an eligible list for non-compliance with the instructions listed on the notice of certification.

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's background clearly provides a basis for removal from the subject list. For the subject examination, residency in West Orange was required from the August 31, 2015 closing date through appointment. Although the appellant claims that he has been a resident in West Orange since August 1, 2015, the record indicates otherwise. On August 30, 2015, the day before the closing date, the appellant was involved in a domestic incident with his wife at their Morris Plains

home. The police report indicates that the appellant had been married for two months and that the couple had been residing together for the past three years. There is no mention that the appellant resided somewhere else. The report also states that his wife voluntarily left the property to stay elsewhere, which seems unusual if the appellant resided elsewhere. The appellant has not provided any formal separation agreement and is the owner of the Morris Plains property. The appellant's motor vehicle registration, which was good through May 2017, and his insurance registration, from September 1, 2015 to September 1, 2016, also states that Morris Plains is the appellant's address. The appellant's 2015 W-2 indicates that his address is Morris Plains. Further, on his BIQ, the appellant answered one question representing that he moved out of Morris Plains in June 2015 and then on a different question, he stated that he had moved to West Orange in August 2015. Moreover, the background investigation revealed on four separate occasions, including Thursday, June 2 at 5:30 a.m., that his car was parked at the Morris Plains address. Additionally, the appellant has not presented any evidence that supports his position that he moved to West Orange on August 1, 2015 as the banks statements, car insurance, change of voter registration, driver's license change, credit report, and phone bill that he submits indicating that he resides in West Orange are all dated well after the closing date.

While the appellant explains he made a mistake on his application when he gave two different dates on his application regarding when he moved to West Orange and he did not provide the police report for the August 30, 2015 incident to the appointing authority because he did not know it existed, the residency information pertaining to eligibility for the subject Fire Fighter position that the appellant failed to disclose or selectively disclosed is considered material and should have been accurately indicated on his employment application and his failure to do so warrants his removal. *See In the Matter of Brian J. McGrane* (MSB, decided April 25, 2007). Further, the Commission notes that the appellant submits 2015 tax returns that indicate that both he and his wife lived in West Orange, while the appellant is claiming that they were separated with his wife living in Morris Plains while he lived in West Orange. However, 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 separated from his wife, he had the opportunity to indicate that he and his wife were separated on their tax returns, but chose not to do so. *See In the Matter of John Capinigro, Jr.* (CSC, decided October 19, 2016). Similarly, the appellant had the opportunity to inform the responding police officer during the August 30, 2015 incident that he lived in West Orange and his wife lived in Morris Plains, but failed to do so. The public expects a Fire Fighter to present a personal background that exhibits respect for the law and the rules. *See In the Matter of Jose Rivera, III* (CSC, decided July 13, 2017). Further, while the appointing authority has submitted

significant evidence indicating that the appellant lived in Morris Plains, the earliest documentation that the appellant submits to support his claim that he lived in West Orange is in 2016, which is well after the closing date. Consequently, the appellant has failed to prove that he lived in West Orange as of the closing date.

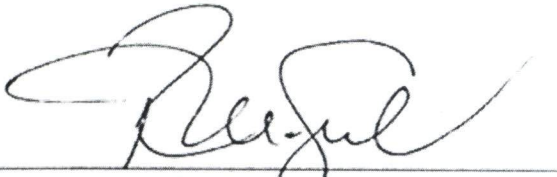
Accordingly, the appellant has not met his burden of proof in this matter and the appointing authority has shown sufficient cause for removing his name from the (M1580T) eligible list.

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 20th DAY OF SEPTEMBER, 2017



Robert M. Czedh, Chairperson
Civil Service Commission

Inquiries
and
Correspondence

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

c: Robert Gillo
Robert Parisi
Kelly Glenn

It is a pleasure to meet you here in the
city of New York, and to see you
in the city of New York.

I am very glad to see you here in the
city of New York, and to see you
in the city of New York.

Yours truly,

John F. Kennedy

I am very glad to see you here in the
city of New York, and to see you
in the city of New York.

I am very glad to see you here in the
city of New York, and to see you
in the city of New York.

I am very glad to see you here in the
city of New York, and to see you
in the city of New York.

I am very glad to see you here in the
city of New York, and to see you
in the city of New York.

I am very glad to see you here in the
city of New York, and to see you
in the city of New York.

I am very glad to see you here in the
city of New York, and to see you
in the city of New York.

I am very glad to see you here in the
city of New York, and to see you
in the city of New York.