



**STATE OF NEW JERSEY**

In the Matter of Robert Scanniello,  
Fire Fighter (M1818W), Elizabeth

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

CSC Docket No. 2021-1493

List Removal Appeal

**ISSUED: NOVEMBER 22, 2021 (PS)**

Robert Scanniello appeals the removal of his name from the eligible list for Fire Fighter (M1818W), Elizabeth, on the basis that he resided outside of the residency scope.

The appellant took the open competitive examination for Fire Fighter (M1818W), 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 Elizabeth continuously from the closing date through the date of the certification. Specifically, it indicated that he moved to South Carolina after the August 31, 2018, closing date for the subject examination. Additionally, copies of the application were provided in which the appellant listed a South Carolina address from January 28, 2019 through March 11, 2019. Furthermore, it was indicated on the application that the appellant was employed by the Charleston Fire Department between January 28, 2019 and March 11, 2019.

On appeal, the appellant states that he has been a resident of Elizabeth for over five years. Additionally, he submits two lease agreements that demonstrates that he began leasing an apartment in Elizabeth starting on September 1, 2018, and another lease agreement beginning July 29, 2020, and he submits bank statements for 2018, 2019 and 2020 from Capital One as evidence that he resides in Elizabeth. The appellant also submits a copy of his driver's license with an expiration date of

May 31, 2021, and pay stubs from the City of Elizabeth from 2019. Additionally, he provides copies of 2018 tax returns, a 2018 gas bill from Elizabethtown Gas, a 2020 W2 Wage Statement, and a New Jersey Firearms Purchaser Identification Card with an issuance date of March 14, 2018. All the material that has been submitted have Elizabeth addresses.

In response, the appointing authority, represented by Robert J. Lenahan Jr. Esq., relies on its background report which indicates that the appellant resided in South Carolina from January 28, 2019, to March 11, 2019. It also stated that he was a full-time member of the Charleston, South Carolina Fire Department during that same time period. It further argues that when the appointing authority requires residency as of the date of appointment, residency must be continuously maintained from the closing date up to and including the appointment. It asserts that the applicant had two legal residences, one in Elizabeth up to January 28, 2019, and one in South Carolina from January 28, 2019, to March 11, 2019. Additionally, it contends that there is no question that the appellant was a resident in South Carolina during the time he worked for the Charleston Fire Department. The fact that Charleston does not require residency for the job is immaterial because it is not being determined whether the applicant is a resident of South Carolina, but whether he resided in Elizabeth during his time in South Carolina.

In reply, the appellant argues that he was never a legal resident of South Carolina and states that the only evidence was the address that was listed on the application. He adds that he did not want to omit the fact that he was in South Carolina at the time. The appellant further asserts that on his application he was instructed to "List all addresses that you have lived in for the past 10 years." Had it asked for legal residence he would have not included the South Carolina address since he was never a legal resident of South Carolina based on the determining factors spelled out in *N.J.A.C. 4A:4-2.11*. Furthermore, the appellant states that he was on a paid leave of absence from the City of Elizabeth at the time and continued to receive paychecks every pay period. He adds that he had been a dedicated employee for the City of Elizabeth since January 1, 2017, while working countless hours, days and weeks during the pandemic without missing a day of work. He further contends that he was working in South Carolina under a conditional offer of employment.

## 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.

In the instant matter, residency in Elizabeth was required from the August 31, 2018 closing date through appointment. Although the appellant claims that he has been a resident in Elizabeth since 2017, the appellant's submissions do not prove the appellant had **continuous** residency in Elizabeth from the August 31, 2018, closing date. Since the appellant took a position in South Carolina with the Charleston Fire Department from January 28, 2019 to March 11, 2019 it is clear that, as he reported on his application, he resided in South Carolina at that time. The fact that the position he secured was conditional and he returned to Elizabeth is immaterial. During the months in question, he resided outside of Elizabeth. Moreover, the Civil Service Commission (Commission) rejects the appellant's argument that his South Carolina address was not his "legal residence" under *N.J.A.C. 4A:4-2.11(c)*. While the appellant's documentation indicates he apparently kept his residency in Elizabeth on paper while working in South Carolina, the most important factor in this case, where it is his **continuous residency** that is in question, is found in

*N.J.A.C.* 4A:4-2.11(c)1. Under that section, it is clear that the appellant resided at the address in South Carolina for a six week period while employed by the Charleston Fire Department. Thus, while that residence ultimately was temporary, there is no dispute that he exclusively resided at that location after the closing date. As such, for the purposes of *N.J.A.C.* 4A:4-2.11(c), the Commission finds that was his legal residency during that period of time. 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 Fire Fighter (M1818W) eligible list.

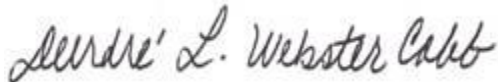
One final comment is warranted, official personnel records indicate that the appellant took a three-month paid sick leave from the City of Elizabeth and secured a position with the Charleston Fire Department. This would appear to be a misuse of such leave. See *N.J.A.C.* 4A:6-1.3(g) and *In the Matter of Woodbridge Fire District #1 Sick Leave Policy* (CSC, decided January 13, 2010). Assuming that this was somehow permitted by Elizabeth under its policies or a contract provision, Elizabeth is ordered to cease granting such leaves in the future.

### 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 17<sup>TH</sup> DAY OF NOVEMBER 2021



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