



STATE OF NEW JERSEY

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

In the Matter of Alexander Richman,
Fire Fighter (M1874W), Trenton

List Removal Appeal

CSC Docket No. 2021-1772

**ISSUED: SEPTEMBER 24, 2021
(HS)**

Alexander Richman, represented by Edward H. Kerwin, Esq., appeals the removal of his name from the eligible list for Fire Fighter (M1874W), Trenton on the basis of an unsatisfactory driving record and failure to meet the residency requirement.

The appellant, a non-veteran, took and passed the open competitive examination for Fire Fighter (M1874W), which had a closing date of August 31, 2018. The resulting eligible list promulgated on March 29, 2019 and expires on March 28, 2022. The appellant's name was certified to Trenton on September 12, 2019. In disposing of the certification, Trenton requested the removal of the appellant's name on the bases of an unsatisfactory driving record and failure to meet the residency requirement. Specifically, Trenton asserted that the appellant had multiple moving violations, including a recent suspension for DWI, and he did not reside in Trenton by the examination closing date. In support, Trenton submitted a copy of the appellant's driver's license, issued December 2018 and showing a Lalor Street, Trenton address; excerpts from the appellant's preemployment application, which show that the appellant lived in West Windsor prior to living at the Lalor Street address; and a copy of the appellant's five-year driver abstract. The appellant's application was signed, sworn, and notarized and included the following attestation:

I, [the appellant,] being duly sworn, depose and say I am the above named person. I signed the foregoing statement. I personally read and printed by hand, answers to each and every question therein and I

do solemnly swear that each and every answer is full, true, and correct in every respect.

The driver abstract indicates the following violations: unsafe operation of a motor vehicle (August 23, 2015); DWI (May 27, 2017); failure to obey directional signal (November 9, 2017); and obstructing passage of other vehicle (May 24, 2019). It also indicates that the appellant's license was suspended between July 12, 2017 and October 10, 2017 due to the DWI violation.¹

On appeal to the Civil Service Commission (Commission), the appellant notes that on March 9, 2020, Trenton scheduled him for a preemployment physical examination to take place March 20, 2020. On July 14, 2020, Trenton scheduled him for a personal psychological interview to take place July 16, 2020 and psychological testing to take place July 18, 2020. The appellant maintains that upon information and belief, he successfully passed his medical and psychological examinations. He argues that Trenton, in subjecting him to those examinations, made him a conditional job offer. As a result, according to the appellant, Trenton cannot now rely upon any other issues to remove him from the eligible list and must appoint him immediately. The appellant seeks a retroactive date of appointment for salary step placement and all seniority-based purposes and counsel fees.

In response, Trenton acknowledges that a "procedural violation" was committed by the previous Fire Director but argues that this should not be grounds for reinstatement to the list when there are sufficient grounds for disqualification. Trenton states that the ability to operate a vehicle safely, following all laws regarding the same, is paramount to the position of Fire Fighter. Trenton reiterates that the appellant had multiple moving violations, including a recent suspension for DWI. Trenton also reiterates that the appellant, by his own disclosure, did not reside in the city by the examination closing date as he was required to. In support, Trenton provides a copy of a "Residency Investigation for [Trenton Fire Department] Applicant Alexander Richman" by the Mercer County Sheriff's Office; a copy of the appellant's five-year driver abstract; and excerpts from the appellant's preemployment application. In response to the application question directing him to "state each and every place in which you have lived during the past ten years beginning with your present address," the appellant indicated that he lived in West Windsor from 1996 to December 2018, at which point he started living at the Lalor Street address.

¹ Trenton also asserted that the appellant falsely stated on his preemployment application that his license had not been revoked or suspended, but the present record does not bear this out. As far as the record is concerned, the appellant's license was never revoked, and the appellant clearly disclosed his suspension due to DWI. The record does not reveal any other suspensions in the appellant's history.

In reply, the appellant states that notwithstanding his medical and psychological examinations, the former Fire Director sent him a letter dated September 4, 2020 advising:

Your skills and qualifications have been carefully reviewed and considered by our interview team and unfortunately, you were not selected for further consideration due to items found during your background check.

The appellant argues that in subjecting him to the medical and psychological examinations, Trenton made him a conditional job offer. He maintains that Trenton had all the background information in its possession prior to sending him for his psychological examination and that it cannot rely on this information to support his removal from the eligible list. The appellant contends that Trenton is not relying on information that was discovered between July 18, 2020, the date of the final medical or psychological test to which he was subjected, and September 4, 2020, the date of the letter advising that he had not been selected for further consideration due to items found during his background check. Thus, according to the appellant, he must be appointed immediately.

The appellant nevertheless maintains that on his preemployment application, he inadvertently used the date he changed his driver's license and registration instead of the date he moved into the Lalor Street address. The appellant states that one C.B. recommended that he contact one M.D. to rent a room in Trenton and that he moved to Trenton to fulfill the residency requirements to be hired by its Fire Department. The appellant maintains that he established Trenton residency by the examination closing date by renting a room on Lalor Street from M.D. Specifically, he states that he paid \$200 per month for an attic bedroom and use of common areas. He points to a bank account statement for the August 11, 2018 to September 7, 2018 period showing the Lalor Street address. C.B. writes:

. . . to acknowledge that from sometime starting in August 2018 and going thru September of 2019, I saw [the appellant] at . . . Lalor Street in Trenton. I believe our work schedules were different, but I did see him coming and going at different times. At the time I lived next door to that address.

One W.J. writes: "In [e]arly August of 2018 I . . . helped [the appellant] move his furniture into . . . Lalor Street in Trenton. I [a]lso visited him there several times prior to him moving to Clark Street[, Trenton]."² The appellant indicates that he resided at Clark Street from January 2020 to January 2021, at which time he

² The letters by C.B. and W.J. are unsworn.

moved to Pin Oak Drive, Trenton.³ The appellant maintains that he has spent all his time at his Trenton residences since August 2018 except for the rare occasion when he slept at his parents' house in West Windsor, stopping to visit his parents, and to use the laundry. He contends that it is reasonable for a single son to stay over at his parents' house occasionally without being prejudiced in an application for a public employment position. The appellant asserts that his time in Trenton since August 2018 has exceeded that in any other location. He states that he has lived in Trenton alone. The appellant also states that he plans to remain a Trenton resident regardless of whether he is appointed to a Fire Fighter position.

In support, the appellant submits his certified statement and various exhibits.

CONCLUSION

N.J.A.C. 4A:4-2.11(c) provides, in pertinent part, that where residence requirements have been established in local service, residence means a single legal residence. The following standards shall be used in determining local 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 (see section 4 of P.L. 2003, c. 246), 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

³ The appellant provides his lease agreements for the Clark Street and Pin Oak Drive locations but does not provide any lease agreement for the Lalor Street location or statement from M.D.

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(e)1 states that unless otherwise specified, residency requirements shall be met by the announced closing date for the examination. 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:4-4.7(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.

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 name from an eligible list was in error.

Upon review of the record in this matter, the Commission finds that the appellant has not convincingly shown that he was a Trenton resident as of the August 31, 2018 examination closing date. The pertinent question on the preemployment application was phrased clearly: it directed the appellant to "state each and every place in which you have lived during the past ten years beginning with your present address." In response to the question, the appellant unmistakably indicated that he lived in West Windsor from 1996 to December 2018, at which point he started living at the Lalor Street, Trenton address. On appeal, the appellant attempts to explain that response by stating that he inadvertently used the date he changed his driver's license and registration instead of the date he moved into the Lalor Street address. This explanation, however, does not actually resolve the issue of the appellant's residency definitively in his favor. In this regard, one of the standards to be used in determining local legal residence is 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. See *N.J.A.C.* 4A:4-2.11(c)5. While the appellant's driver's license indeed shows the Lalor Street address, the license was not issued until *December* 2018, months after the closing date. It cannot be ignored that State law requires a motorist who moves within New Jersey to report the address change within one week. See *N.J.S.A.* 39:3-36 ("A licensed operator shall notify the chief administrator [of the New Jersey Motor Vehicle Commission] of any *change in residence within one week* after the change is made.") (emphasis added). The Commission's decision in *In the Matter of Patrick O'Hara* (CSC, decided January 13, 2010) is also instructive. In that case, O'Hara was required to establish continuous

residence in Newark from the August 31, 2006 examination closing date. O'Hara's Motor Vehicle Services Address Change History showed an address change from Cliffside Park to Newark on November 7, 2007. The Commission rejected O'Hara's representation that he "simply did not get around to changing his address until November 2007." The Commission instead found that O'Hara, who claimed he leased a Newark address on April 12, 2006 but did not change his motor vehicle record until November 7, 2007, was not a resident as of the examination closing date in light of *N.J.S.A.* 39:3-36. For the same reason, the Commission cannot conclusively find that the appellant was a Trenton resident as of the examination closing date.

In light of the foregoing, the appellant's bank account statement for the August 11, 2018 to September 7, 2018 period showing the Lalor Street address; C.B.'s statement that he "saw [the appellant] at . . . Lalor Street [and saw] him coming and going at different times;" and W.J.'s statement that he "helped [the appellant] move his furniture into . . . Lalor Street [and] visited him there several times prior to him moving to Clark Street [in January 2020]" cannot conclusively establish the appellant's Trenton residency as of the closing date.

Additionally, the appellant has presented no argument that a driver's license is not essential for the position and the appellant's driving record is relevant to the position sought. This record includes one violation during the life of the eligible list and a DWI, a serious violation of the motor vehicle laws, with an associated license suspension. Such conduct is indicative of the appellant's exercise of poor judgment, which is not conducive to the performance of the duties of a Fire Fighter. *See In the Matter of William Bryant, Jr.* (MSB, decided July 25, 2000).

Firefighters are not only entrusted with the duty to fight fires; they must also be able to work with the general public and other municipal employees, especially police officers, because the police department responds to every emergency fire call. Any conduct jeopardizing an excellent working relationship places at risk the citizens of the municipality as well as the men and women of those departments who place their lives on the line on a daily basis. An almost symbiotic relationship exists between the fire and police departments at a fire.

Karins v. City of Atlantic City, 152 *N.J.* 532, 552 (1998).

Therefore, the appellant's failure to meet the residency requirement and his unsatisfactory driving record constitute sufficient cause to remove his name from the subject eligible list.

However, the record indicates that Trenton also subjected the appellant to medical and psychological examinations. Pursuant to the Americans with

Disabilities Act (ADA), 42 U.S.C. § 12112(d)(3), no medical or psychological examination may be conducted prior to rendering a conditional offer of employment. *See also*, the Equal Employment Opportunity Commission's *ADA Enforcement Guidelines: Preemployment Disability Related Questions and Medical Examinations* (October 10, 1995). Those guidelines state, in pertinent part, that in order for a conditional offer of employment to be "real," the employer is presumed to have evaluated all information that is known or should have reasonably been known prior to rendering the conditional offer of employment. This requirement is intended to ensure that the candidate's possible hidden disability or prior history of disability is not considered before the employer examines all of the relevant non-medical information. In this case, Trenton did not strictly conform to the precise requirements of the ADA. It administered a medical examination to the appellant on March 20, 2020 and a psychological examination on July 16 and 18, 2020. Yet on September 4, 2020, the appellant was advised that the interview team had reviewed and considered his skills and qualifications and that he was not selected for further consideration due to items found during his background check. In other words, Trenton scheduled and completed the appellant's medical and psychological examinations but apparently did not conclude its review of his background until sometime later. By proceeding in this fashion, Trenton did not have the opportunity to fully review the appellant's background before conducting the medical and psychological examinations. Consequently, Trenton did not comply with the technical requirement of rendering a conditional offer of employment, based upon a complete review of the candidate's background, prior to administering the medical and psychological examinations. While Trenton would be well served to revise its candidate evaluation procedures to avoid having this issue raised in future cases, based upon the totality of the circumstances presented in this matter, the appellant's failure to meet the residency requirement and his unsatisfactory driving record constitute sufficient cause to remove his name from the eligible list. *See In the Matter of Scott Gordon* (MSB, decided December 18, 2002); *In the Matter of Curtis L. Dorch* (MSB, decided September 25, 2002). *See also, In the Matter of Jemar Bennett* (CSC, decided June 30, 2021).

The Commission emphasizes that it in no way condones Trenton's actions in this case. In this regard, the Commission directs Trenton to strictly comply with the requirements of the ADA in all future cases.

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 22 DAY OF SEPTEMBER, 2021

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