



STATE OF NEW JERSEY

In the Matter of Paul Proctor, Police
Officer (M0047D), Freehold Township

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

CSC Docket No. 2023-1601

List Removal Appeal

ISSUED: June 28, 2023 (HS)

Paul Proctor appeals the removal of his name from the eligible list for Police Officer (M0047D), Freehold Township on the basis of failure to meet the residency requirement.

The appellant, a non-veteran, took and passed the open competitive examination for Police Officer (M0047D), which had a closing date of February 28, 2022 and was open to residents of (1) Freehold Township; (2) Monmouth County; and (3) New Jersey. The resulting eligible list promulgated on November 10, 2022 and expires on November 9, 2023. The appellant's name was certified to the appointing authority on November 29, 2022 (OL221457). In disposing of the certification, the appointing authority requested the removal of the appellant's name on the basis of failure to meet the residency requirement. Specifically, the Motor Vehicle Services Address Change History indicated that the appellant did not change his address from Freehold Borough to Freehold Township until March 24, 2022.

On appeal to the Civil Service Commission (Commission), the appellant offers several documents that he maintains confirms his residency. Included among the documents is a driver's license reflecting a Freehold Township address issued May 11, 2022.

In response, the appointing authority reiterates the information contained in the Motor Vehicle Services Address Change History and adds that tax records for the Freehold Township address show a deed date of April 26, 2022. The appointing

authority notes the requirement that residency had to have been established by the closing date.

In reply, the appellant acknowledges that he did not immediately update his driver's license to the Freehold Township address but insists this does not mean that the address was not his primary residence. He maintains that as of January 2022, he spent the majority of his non-working time there, and it was the center of his domestic life as he had moved there with his wife. Although the appellant acknowledges that he does not have an exact move date, he maintains that he and his wife began to transition to the Freehold Township address in early January 2022 and considered it their primary residence prior to January 28, 2022. He states that their prior home, in Freehold Borough, was listed for sale on March 5, 2022 and sold on April 22, 2022. Then, they began the process to purchase the Freehold Township property and ultimately closed on the home on June 8, 2022.

Additionally, the appellant proffers that even if the appointing authority proved that he was not a Freehold Township resident but was a Freehold Borough resident as of the closing date, his name should not have been removed from the eligible list altogether. Rather, he should have only been repositioned on the list along with Monmouth County residents.

Further, the appellant maintains that he was improperly removed from the subsequently-issued January 24, 2023 certification (OL230093) for failure to respond to the certification notice.

CONCLUSION

N.J.A.C. 4A:4-3.2(a)1 states that when an announcement is open to more than one local jurisdiction, the resulting list of eligibles shall be separated into sub-lists by the residency requirements as provided by applicable law and ordinance. *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
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:4-6.3(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, the Commission finds that the appellant has not convincingly shown that he was a Freehold Township resident as of the February 28, 2022 examination closing date. In this regard, among the standards to be used in determining local legal residence are whether the locations in question are owned or rented and 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. The deed date for the Freehold Township property is April 26, 2022, which is after the closing date. The Motor Vehicle Services Address Change History indicated that the appellant did not change his address from Freehold Borough to Freehold Township until March 24, 2022, which is after the closing date. And while the appellant presents a driver's license reflecting a Freehold Township address on appeal, the license was not issued until May 11, 2022, again after the closing date. On appeal, the appellant insists that Freehold Township was his primary residence, notwithstanding that he did not immediately update his driver's license. The Commission cannot definitively find as such. In this regard, 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 Freehold Township resident as of the examination closing date.

The Commission next addresses the appellant's contention that rather than being removed from the eligible list altogether, he should at least have been moved to the Monmouth County sub-list. Here, when the appellant applied for the examination, he listed a Freehold Township address. As such, his name was appropriately placed on the resident sub-list, not the county sub-list. Thus, his name was properly certified from the resident sub-list. The appointing authority then correctly removed the appellant's name from the subject eligible list for his failure to meet the residency requirement, for the reasons discussed earlier. The appellant argues that he should then have at least remained on the list as a Monmouth County resident. However, the appellant had represented that his residency was in Freehold Township at the time of the application. Therefore, he was not ranked among the Monmouth County eligibles. Once the appointing authority presented a sufficient basis for the appellant's removal, his name was appropriately removed from the Police Officer (M0047D), Freehold Township eligible list. Candidates are not placed twice on an eligible list. They are either a resident or not a resident and are appropriately classified as such upon issuance of an eligible list. There is no Civil Service law or rule that mandates the return of a non-resident eligible, who has been removed due to his municipal residency, to the county sub-list.

Finally, as the Commission is upholding the removal of the appellant's name from the November 29, 2022 (OL221457) certification, the Commission need not address the removal of the appellant's name from the subsequently-issued January 24, 2023 certification (OL230093).

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 28TH DAY OF JUNE, 2023

Allison Chris Myers

Allison Chris Myers
Chairperson
Civil Service Commission

Inquiries
and
Correspondence

Nicholas F. Angiulo
Director
Division of Appeals and Regulatory Affairs
Civil Service Commission
Written Record Appeals Unit
P.O. Box 312
Trenton, New Jersey 08625-0312

c: Paul Proctor
Peter Valesi
Division of Human Resource Information Services