

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

CIVIL SERVICE COMMISSION

One Ashburton Place – Room 503
Boston, MA 02108
(617) 727-2293

DANELL FRENCH,
Appellant

v.

G1-13-112

TOWN OF PLAINVILLE,
Respondent

Appearance for Appellant:

Pro Se

Appearance for Respondent:

David C. Jenkins, Esq.
Kopelman and Paige, P.C.
101 Arch St., 12th Fl.
Boston, MA 02110

Commissioner:

Cynthia A. Ittleman, Esq.¹

DECISION

Pursuant to the provisions of G.L. c. 31, § 2(b), the Appellant, Danell French (“Appellant” or “Ms. French”) filed a timely appeal with the Civil Service Commission (“Commission”) on April 26, 2013 against the Town of Plainville (“Town,” “Respondent,” or “Appointing Authority”), contesting the Town’s decision to remove her name from the Certifications issued following the 2011 police exam as accepted by the state’s Human Resources Division (“HRD”) in accordance with the Personnel Administration Rules (“PAR”) promulgated by HRD, for original appointment to the position of Permanent Intermittent Police Officer.

¹ The Commission acknowledges the assistance of Beverly J. Carey, Esq. in the drafting of this decision.

Procedural History

A pre-hearing conference was held on May 21, 2013 at the offices of the Commission. A full hearing was initially scheduled for August 22, 2013 and both parties appeared. However, when asked to sign stipulated facts that the parties had previously agreed to, Ms. French left the hearing. The same day, the Commission issued an Order to Show Cause on why her appeal should not be dismissed for want of prosecution. Ms. French responded to the Order on or about August 28, 2013 and explained that she that she had been apprehensive about signing anything and had consulted an attorney and was prepared to go forward, to which the Town filed an Opposition. On or about August 29, 2013, the Commission granted the Motion to Show Cause and required Ms. French to notify the Commission forthwith if she would be represented by counsel at the rescheduled full hearing. On or about September 11, 2013, the Town filed a Motion to Dismiss for Failure to Follow Commission Orders because the Town had not received notification regarding whether Ms. French had obtained counsel. This Motion was denied. By letter dated September 20, 2013, Ms. French informed the Commission that she would proceed with her hearing *pro se*. On or about September 24, 2013, the Town filed a Motion to Dismiss for Failure to Follow Commission Orders, stating that Ms. French failed to inform the Commission and the parties of her intentions to obtain legal counsel. This Motion was also denied, as Ms. French indicated in her letter to the Commission that she would proceed with the full hearing *pro se*. A full hearing was held on October 7, 2013 at the offices of the Commission.² The witnesses were sequestered.³ The hearing was digitally recorded; the parties

² By letter dated September 27, 2013, Ms. French raised several allegations against the Town and the Town's attorney in regards to which she requested that the Commission conduct an investigation. As Ms. French had a full hearing in which she was given the opportunity to fully present her case and submit evidence, no investigation is needed. Further, under G.L. c. 31, s. 2(a) the Commission has "... complete discretion regarding whether and to what extent it investigates civil service employees and actions of appointing authorities. ..." Erickson v Civil Service Commission and Town of Rockland, Suffolk Superior Court, Civil Action number 2013-00639-D (Nov. 3, 2014).

were provided copies of the recording and the Commission retained a copy of the recording.⁴

The parties submitted recommended decisions on or about November 12, 2013. For the reasons stated herein, the appeal is denied.

FINDINGS OF FACT

Based on the eighteen (18) exhibits entered⁵ into evidence⁶, the stipulations of the parties, the testimony of:

Called by the Town:

- Mr. Joseph Fernandes, Town Administrator;
- Mr. James Alford, Chief of Police (Interim), Plainville Police Department;

Called by the Appellant:

- Mr. Scott Gallerani, Sergeant, Plainville Police Department;
- Mr. James Floyd, Detective, Plainville Police Department;
- Ms. Danell French, Appellant;

and taking administrative notice of all matters filed in the case, including the parties' submissions prior to the full hearing⁷ and pertinent statutes, regulations, caselaw and policies, a preponderance of the credible evidence and reasonable inferences therefrom, establishes the following findings of fact:

³ The Standard Adjudicatory Rules of Practice and Procedure, 801 CMR §§ 1.00, *et seq.*, apply to adjudications before the Commission with Chapter 31 or any Commission rules taking precedence.

⁴ If there is a judicial appeal of this decision, the plaintiff in the judicial appeal would be obligated to supply the court with a transcript of this hearing to the extent that he/she wishes to challenge the decision as unsupported by substantial evidence, arbitrary or capricious, or an abuse of discretion.

⁵ Exhibit 15, a 3-page, unsigned letter not on police stationary and dated Dec. 10, 2013 was allowed into evidence, over Ms. French's objection, indicating that I would give the document the weight it is due. In her post-hearing memorandum, Ms. French asked that Ex. 15 be stricken. The document appears to be a summary of events at the peer interview of Ms. French. Chief Alford testified that he had received the document after the peer interview, lending support to the document. However, since Ms. French produced a recording of the peer interview when she filed her appeal, I gave limited weight to Ex. 15.

⁶ Consistent with Massachusetts Statewide Retention Schedule 02-11, §§ B5 2(b) and/or B5 3(g), these exhibits and the entire case record will be retained either at the offices of the Commission or at the State Records Center for six (6) years after final case activity/case closure. Thereafter, the entire case file will be destroyed. A copy of this decision, however, will be retained permanently by the Commission.

⁷ This includes documents submitted by the Appellant when she filed this appeal, such as recordings of the Town's Peer Interview of the Appellant, interview of the Appellant by the Board of Selectman.

1. Ms. French lived in Foxborough, MA, off and on, beginning in or about 2002 until at least July, 2008. (Exs. 2, 3, 17; Administrative Notice (Peer Interview Recording produced by Appellant))
2. As of the time of the hearing before the Commission, Ms. French resided in Plainville, MA. (Ex. 2; Testimony of Ms. French)
3. Ms. French has honorably served as a member of the US military. From approximately August 1999 to April 2000, Ms. French completed basic training with the Rhode Island National Guard. Beginning on or about May 2000, Ms. French attended US Army Military Police School and graduated in or about September 2000. Ms. French served as a military police officer with the Rhode Island National Guard beginning on or about September 2000 until April 2001, when she was honorably discharged. Beginning on or about April 2001 until July 2002, Ms. French served as a military police officer with the US Army and received an honorable discharge. Between approximately January 2005 and April 2005, Ms. French was stationed at Fort Knox, KY, where she was a military police officer. She was honorably discharged. From approximately August 2010 until March 2011, Ms. French served as a military police officer with the Massachusetts Army National Guard. She received an honorable discharge. As of the date Ms. French completed her application for employment with the Town (November 5, 2012), she was a member of the US Army Individual Ready Reserve (IRR) since approximately March 2011. (Exs. 2, 12)
4. From approximately July 2008 until May 2011, Ms. French and her mother were homeless and lived in Ms. French's motor vehicle. (Exs. 3 & 17; Testimony of Ms. French)
5. As of September 2009, HRD has delegated much of the civil service appointment process to the Town. (Ex. 1)

6. The Town has a Board of Selectmen that consists of three (3) elected members. (Testimony of Mr. Fernandes)
7. The Town's process for appointing police officers is as follows: first, background checks are conducted on the candidates; next, the candidates participate in a peer interview panel consisting of two (2) or three (3) police officers, but not the police chief; after the peer interviews take place, the Board of Selectmen receives copies of all documents and reports that have been compiled with respect to each of the candidates and conducts interviews in open session, which are broadcast on local television. (Testimony of Mr. Fernandes)
8. On or about October 15, 2009, Ms. French purchased a motor vehicle in Norwood, MA. On the purchase agreement, Ms. French's address is listed as Foxborough, MA. (Ex. 18)
9. Between approximately November 2010 and June 2011, Ms. French was employed by Barnes & Noble in Walpole, MA, where she was the Lead Assistant Manager of the Starbuck's Café. (Ex. 2)
10. Ms. French took and passed the examination for entry level police officer on or about April 30, 2011. (Ex. 3)
11. For purposes of establishing residency preference in the Town, the relevant time period for the 2011 Police Officer examination was April 30, 2010 to April 30, 2011, the one-year period preceding the date of the examination. (G.L. c. 31, § 58; Exs. 7 & 13; Administrative Notice)
12. In 2010 and 2011, Ms. French paid excise taxes on her motor vehicle in Foxborough.
(Testimony of Ms. French; Ex. 4)
13. Throughout the relevant residency preference time period of April 30, 2010 to April 30, 2011, Ms. French was a member of the North Attleboro YMCA. (Testimony of Ms. French; Ex. 14)

14. It is the policy and practice of the Plainville Police Department (“PPD”) to conduct overnight patrols throughout the Town. If an officer encounters suspicious vehicles or a vehicle parked on property outside of normal business hours, the officer is to investigate. When an officer encounters someone parked in a car overnight, for example, the officer enters information into a master card system. The information typically includes the person’s name, date of birth, and license. (Testimony of Chief Alford)
15. Between approximately 2009 to April 2011, there were no master card entries for Ms. French. There are no reports that any PPD officers encountered Ms. French in her car at any point during the applicable time period for establishing residency. (Testimony of Chief Alford)
16. In May 2011, approximately one month after the residency window of April 30, 2010 to April 30, 2011, Ms. French moved into a physical residence with her mother in Plainville. (Testimony of Ms. French)
17. On or about October 25, 2011, nearly six (6) months after the applicable time period for establishing residency had elapsed, Ms. French completed an Official Voter Registration Form listing an address in Plainville. (Ex. 16)
18. In October 2011, after the relevant time period for establishing residency, Ms. French began receiving veteran’s benefits from the Town of Plainville for August-September of that year. (Testimony of Mr. Fernandes)
19. Between approximately February 2 and February 22, 2012, Ms. French and HRD exchanged numerous emails related to Ms. French’s request to change her residency to Plainville. (Ex. 1)
- 1) This correspondence began with Ms. French’s email to HRD, dated February 2, 2012, in which she requested that her residency status be changed from non-resident to resident of Plainville. (Exs. 3 & 17)

20. In an email dated February 6, 2012, HRD informed Ms. French, *inter alia*, that she may be eligible for residency preference in a particular community, including as it applies to veterans, and directed her to a link with more information about the criteria that must be met in order to qualify. (Exs. 3 & 17)
21. In an email message from Ms. French to HRD, dated February 7, 2012, Ms. French told HRD, *inter alia*, that during the one year prior to the 2011 police officer examination, from April 30, 2010 to April 30, 2011, she was homeless and resided in her motor vehicle. (Exs. 3 & 17)
22. In an email message dated February 8, 2012, HRD responded to Ms. French's February 2 email, reiterating the reasons that she did not qualify for the military residency preference. HRD also wrote: "If you feel that you can prove to the Appointing Authority that you resided in Plainville from April 30, 2010 to April 30, 2011 (regardless of whether or not you lived in a home, vehicle, or anywhere else), then please resubmit your request" (Ex. 3) HRD then described to Ms. French the specific information Ms. French needed to submit, which included a statement with a detailed listing of all the addresses and dates at which she resided at each address. In this email message, HRD also noted, "we will accept wherever your vehicle was registered if that is where you resided at any time during the timeframe." (Exs. 3 & 17)
23. In an email dated February 13, 2012, Ms. French responded to HRD's February 8 email message. In this correspondence, Ms. French stated that she wished to claim residency in either Plainville or Foxborough, depending on HRD's judgment. Ms. French went on to write that, in 2010 and prior to 2010, there were times that she was parked and sleeping in her vehicle in Foxborough and notes that her vehicle registration and excise taxes were filed in Foxborough. In this email message, Ms. French stated that she parked and slept in her

vehicle in Plainville at Target and Stop & Shop until they closed, then moved to Burger King or McDonalds until they closed or at a “car stop or drive around until stores opened” but she did not report specific dates when she parked at those locations. She also states that in 2010 and earlier, she received Chapter 115 veteran’s benefits from Foxborough. (Exs. 1, 3 & 17)

24. In an email message from HRD to Ms. French, dated February 17, 2012, HRD informed Ms. French that it was still not clear where she was living during the relevant time period of April 30, 2010 to April 30, 2011 and requested that Ms. French clarify if she resided in Plainville or both Plainville and Foxborough during the applicable timeframe. (Exs. 3 & 17)
25. In an email message from Ms. French to HRD, also dated February 17, 2012, Ms. French asserted, *inter alia*, that from April 30, 2010 to April 30, 2011, she was homeless and resided in her vehicle in Plainville. Ms. French noted that from March 2010, and dates prior, she was homeless and resided in her vehicle in Foxborough. (Exs. 3 & 17)
26. By email message dated February 21, 2012, HRD informed Ms. French that, based on the information she provided, her residency was updated to Plainville, as requested. (Exs. 3 & 17)
27. The eligible list created from the 2011 police officer examination would expire on November 1, 2013. (Ex. 1)
28. On or about October 1, 2012, the Town requested a Certification from HRD in order to appoint two (2) permanent, intermittent police officers. (Ex. 1)
29. On or about October 16, 2012, HRD issued Certification No. 00305 to the Town. Ms. French’s name appeared on this Certification with a rank of thirteen (13). (Ex. 1)
30. On November 5, 2012, Ms. French signed her application for employment as a police officer in the Town in the presence of a notary public. On the application, Ms. French

asserts that she has lived in Plainville since May 2011, which was one month after the applicable residency preference time period. (Ex. 2)

31. The Town received approximately seven (7) applications to fill two (2) positions.

(Testimony of Mr. Fernandes) The Town considered five (5) candidates, including two (2) candidates ranked higher than the Appellant and two (2) ranked below her. (Administrative Notice, Recording of Town Board of Selectman vote to ask HRD to remove Appellant and another candidate from certifications for lack of residency preference, produced by Appellant)

32. A preliminary background investigation was conducted by an officer of the PPD with respect to Ms. French, along with other candidates. The Chief of Police assigned Detective Floyd to conduct the interview of Ms. French. (Testimony of Mr. Fernandes) In an undated letter, on PPD letterhead, the results of the background investigation on Ms. French were submitted to the Chief of Police. (Ex. 7) Mr. Fernandes also received a copy of this report. (Testimony of Mr. Fernandes) The investigation showed, *inter alia*, “several inconsistencies with residency” within the Town and incorrect or outdated information on Ms. French’s employment application. Specifically, Ms. French listed several P.O. Boxes in the residency portion of the application and the town does not consider P.O. Boxes to be valid residential addresses. (Ex. 7; *see also* Ex. 2)

33. In a letter dated December 3, 2012, the Chief of Police at the PPD notified Ms. French that she was scheduled to appear before a peer review committee for an interview for the next step in the selection process, on December 10, 2012. This letter noted that, following the peer interviews, the Chief of Police will discuss the interviewers’ recommendations and view the recordings of the interviews. (Ex. 6)

34. On or about December 10, 2012, Ms. French's peer interview was conducted at approximately 6:30 PM and an interviewer prepared a report later the same day. (Ex. 15)
- The report was prepared by one of the sergeants who was present for the interview, by compiling the notes of all three (3) officers who participated. (Testimony of Sgt. Gallerani)
35. During the peer interview, Ms. French was asked when she moved to the Town. Ms. French responded that she moved to the Town in May 2011. (Testimony of Sgt. Gallerani; Ex. 15)
- In addition, Ms. French's application indicated that she did not live in the Town when she took the police officer exam and she told the panel that she was homeless at the time of the exam. (Ex. 15)
36. Prior to Ms. French's interview with the Board of Selectmen, Chief Alford was informed by Detective Floyd that he could not determine if Ms. French was a resident of the Town during the relevant time period. Chief Alford shared the information concerning Ms. French's residency with the Town Administrator. (Testimony of Chief Alford)
37. On or about January 14, 2013, Mr. Fernandes contacted HRD via email in order to request an extension of time to make appointments from Certification No. 00305. On or about January 15, 2013, HRD responded to Mr. Fernandes' request, instructing him of the procedure for extension requests post-delegation.⁸ HRD no longer approves extension of time requests on Certifications issued under the Certification delegation process, which included Certification No. 00305 issued to the Town. Approval for such an extension would be at the discretion of the Appointing Authority for the PPD and it is the responsibility of the Town to keep the selection process documented. (Ex. 1)

⁸ In 2009, HRD delegated some of its role in the initial hiring process to certain cities and towns. However, as noted in Carroll v Stoneham, 27 MCSR 511 (2104), the decision to remove an individual from current and future certifications under PAR.09 shall be made by HRD notwithstanding delegation.

38. Following the peer interview, on or about January 15, 2013, the Town's Board of Selectmen interviewed Ms. French in open session and the interview was broadcast on local television. (Testimony of Mr. Fernandes) During the Board of Selectmen ("Board") interview, the issue of Ms. French's residency came up and the Town Administrator noted that there were residency questions, although he did not want to explicitly mention that she was homeless to avoid any embarrassment. At a subsequent Board meeting, the board voted to petition HRD to remove Ms. French's name from the Certification⁹ as, according to the Town, Ms. French was not a resident of Plainville from April 30, 2010 to April 20, 2011. (Testimony of Mr. Fernandes) At the same time, the Board voted to ask HRD to remove the name of the candidate listed above Ms. French for the same reason. By this time, the first candidate on the signed list withdrew. The Town thereafter appointed the two (2) candidates (both of whom had established their residence for the one year prior to the examination) listed below the Appellant. (Administrative Notice, Recording of Town vote produced by Appellant)
39. In a letter from the Town to HRD dated February 27, 2013, the Town requested to have Ms. French's name removed from current and future Certifications, relating to the 2011 exam, pursuant to PAR .09(2). (Ex. 1) specifically, Town Administrator Fernandes wrote,

At its meeting of January 29, 2013, the Plainville board of Selectmen voted to challenge the Residency Preference status of [redacted] candidate [redacted] on the above referenced list [Requisition Number 00305], and as a consequence, have [redacted in original] name removed from this and future requisitions pursuant to PAR.09. The [redacted in original] name [redacted in original] in question [redacted] Danell C. French. [paragraph redacted in original]

Danell C. French – Ms. French's application listed [redacted by this Commission] Plainville, MA as her residential address from May 2011 to present. The residency requirement period applicable to this employment application was April 30, 2010 to April 30, 2011. For that period of time, Ms. French affirmed that her address was P.O. Box [redacted by this Commission], Sharon, MA. That address was also listed for the

⁹ Though not specified in the meeting, the vote was to remove Ms. French's name from the certification in the form of a PAR .09 removal request to HRD.

period of July 2008 to May 2011. For the prior period of February 2007 to July 2008, she listed [redacted] Street, Foxboro, MA as her residential address.

In an email to your office on February 2, 2012, Ms. French requests that her residency status be changed to Plainville because 'I moved to their jurisdiction on May 1st, 2011, (sic)(technically April 26, 2011). By way of explanation during her interview, Ms. French stated that during the relevant residency period (April 30, 2010 to April 30, 2011) she was living in an automobile. She could not provide an address in Plainville which served as her residence. Notwithstanding her claim of homelessness, in June of 2010 she was able to buy a new Toyota. Tax records show she registered and garaged the car to her [redacted] Street, Foxboro address and indeed paid Foxboro excise taxes on the car for 2010 and 2011. It was not until October of 2011 that the Toyota was registered to and listed as garaged in Plainville. Additionally, court records [redacted by this Commission] which was commenced in [redacted by this Commission] Court on July 12, 2012, show that her address was listed as [redacted by this Commission] Foxboro.

The Courts and the Commission have found that the term 'reside' as it pertains to these circumstances is used to designate the physical location of the employee's house or other dwelling place. *Doris v. Police Commissioner of Boston*, 374 Mass. 443, 445 (1978) (sic); *Crete v. City of Lawrence*, 18 MCSR 22, 23 (2005)(sic)

For all of the above reasons, the Town wishes to deny the residency status of the above candidate[redacted in original] and, as a consequence, asks that [redacted in original] name[redacted in original] be removed from the certification, while reserving our rights in the future to bypass these candidates (sic) as may be appropriate should you rule differently as to their (sic) residency status.

(Id.)

40. In a letter from HRD to the Town Administrator dated March 11, 2013, HRD informed the

Town that Ms. French's name would be removed from Certification No. 00305, as follows,

in part,

With regard to the Town's request for removal of the above candidates under Personnel Administration rule (PAR) .09 due to the failure to verify a claim of residence preference, HRD shall remove the claim and notify the candidates accordingly.
(Ex. 1)

41. In a letter from HRD to Ms. French, dated May 6, 2013, HRD notified Ms. French that her

name had been removed from the current Plainville Police Officer Residents list, pursuant to

PAR .09(2) as follows, in part,

Enclosed please find a copy of a letter from the Appointing Authority for the Town of Plainville Police Department requesting this office to PAR.09 remove your name from the current Plainville Police Officer Residents list.

The Human Resources Division has determined that the reasons provided are acceptable for removing the Plainville residence preference code from your record. You have a right to appeal this determination by filing your appeal, in writing, within sixty calendar days of receipt of this notice, with the Civil Service Commission (Ex. 1)

42. Ms. French timely filed the instant appeal. (Administrative Notice)

DISCUSSION

Applicable Law

Pursuant to G.L. c. 31, § 2(b), the Commission has the authority to “hear and decide appeals by a person aggrieved by any decision, action, or failure to act by the administrator. . . .” Furthermore, G.L. c. 31, § 2(b) states, in pertinent part: “No decision of the administrator involving the application of standards established by law or rule to a fact situation shall be reversed by the commission except upon a finding that such decision was not based upon a preponderance of evidence in the record.”

The Commission must affirm an appointing authority’s decision unless there was “no reasonable justification for the action taken.” City of Cambridge v. Civil Serv. Comm’n, 43 Mass.App.Ct. 300, 304 (1997), *rev. den.*, 426 Mass. 1102 (1997). Reasonable justification is established when such an action is “done upon adequate reasons sufficiently supported by credible evidence, when weighed by an unprejudiced mind, guided by common sense and correct rules of law.” Comm’rs of Civil Service v. Municipal Ct., 359 Mass. 211, 214 (1971) (quoting Selectmen of Wakefield v. Judge of First Dist. Ct. of E. Middlesex, 262 Mass. 477, 485 (1928)).

“In its review, the [C]ommission is to find the facts afresh, and in doing so, the [C]ommission is not limited to examining the evidence that was before the appointing authority.” City of Beverly v. Civil Serv. Comm’n, 78 Mass.App.Ct. 182, 187 (2010) (quoting City of Leominster v. Stratton, 58 Mass.App.Ct. 726, 728 (2003), *rev. den.*, 440 Mass. 1108 (2003)).

“The [C]ommission’s task, however, is not to be accomplished on a wholly blank slate.”

Falmouth v. Civil Serv. Comm’n, 447 Mass. 814, 823 (2006). The issue for the Commission is

“not whether it would have acted as the appointing authority had acted, but whether there was reasonable justification for the action taken by the appointing authority in the circumstances found by the [C]ommission to have existed when the appointing authority made its decision.”

Watertown v. Aria, 16 Mass.App.Ct. 331, 334 (1983), *rev. den.*, 390 Mass. 1102 (1983). As a result, “the [C]ommission owes substantial deference to the appointing authority’s exercise of judgment in determining whether there was ‘reasonable justification’ shown.” City of Beverly, 78 Mass.App.Ct. at 188. “Such deference is especially appropriate with respect to the hiring of police officers. In light of the high standards to which police officers appropriately are held, appointing authorities are given significant latitude in screening candidates” *Id.* (citing Cambridge v. Civil Service Commission, 43 Mass.App.Ct. 300, 305 (1997), and cases cited)(other citations omitted).

“In making that analysis, the [C]ommission must focus on the fundamental purposes of the civil service system – to guard against political considerations, favoritism, and bias in governmental employment decisions. . . .” City of Cambridge v. Civil Serv. Comm’n, 43 Mass.App.Ct. at 304 (citing Murray v. Second Dist. Ct. of E. Middlesex, 389 Mass. 508, 514 (1983); Kelleher v. Personnel Adm’r of the Dept. of Personnel Admin., 421 Mass. 382, 387 (1995); Police Comm’r of Bos. v. Civil Serv. Comm’n, 22 Mass.App.Ct. 364, 370 (1986), *rev. den.*, 329 Mass. 1103 (1986)). “When there are, in connection with personnel decisions, overtones of political control or objectives unrelated to merit standards or neutrally applied public policy, then the occasion is appropriate for intervention by the [C]ommission.” City of Cambridge, 43 Mass.App.Ct. at 304. “It is not within the authority of the [C]ommission, however, to substitute its judgment about a valid exercise of discretion based on merit or policy

considerations by an appointing authority.” City of Cambridge, 43 Mass.App.Ct. at 304 (citing Sch. Comm’n of Salem v. Civil Serv. Comm’n, 348 Mass. 696, 698-99 (1965); Debnam v. Belmont, 388 Mass. 632, 635 (1983); Comm’r of Health & Hosps. of Bos. v. Civil Serv. Comm’n, 23 Mass.App.Ct. 410, 413 (1987)).

Residency Preference

The Town gives preference to candidates for civil service who have maintained a Plainville residence, as authorized by G.L. c. 31, § 58, which states, in pertinent part:

[U]pon written request of the appointing authority to the administrator, the administrator shall, when certifying names from said eligible list for original appointment to the police force or fire force of a city or town, place the names of all persons who have resided in said city or town for one year immediately prior to the date of examination ahead of the name of any person who has not so resided.

“The term ‘reside’ is used to designate the physical location of the employee’s house or other dwelling place.” Crete v. City of Lawrence, 18 MCSR 22, 23 (2005) (citing Doris v. Pol. Comm’r of Bos., 374 Mass. 443, 444 (1978)).

PAR .09 Removal

In accordance with PAR .09(2), an appointing authority can request that a candidate’s name be removed from current and future certifications issued pursuant to a given exam:

If an appointing authority concludes the appointment of a person whose name has been certified to it would be detrimental to the public interest, it may submit to the administrator a written statement giving in detail the specific reasons substantiating such a conclusion. The administrator shall review each such statement, and if he agrees, he shall remove the name of such person from the certification and shall not again certify the name of such person to such appointing authority for appointment to such position. For the purposes of this section, "appointments" shall include promotions.

(PAR .09(2))

The Respondent's Argument

The Town contends that there was reasonable justification to seek removal of Ms. French's name from the Certification, pursuant to PAR .09(2). During her background investigation, the PPD found several inconsistencies with respect to Ms. French's residency during the one (1) year period prior to the exam, from April 30, 2010 to April 30, 2011. Ms. French originally stated to HRD via email that she moved to the Town in May 2011. In another email message to HRD, Ms. French was not sure whether she would be considered a Plainville resident or a Foxborough resident. Furthermore, although the Appellant states that she parked in Plainville at business parking lots, the Town has a master card system into which officers are to create a record when they discover cars parked at businesses at various hours and there are no such records for Ms. French and/or her vehicle. Further, the Town provided credible testimony that if Ms. French was staying in her motor vehicle overnight in the Town, as she claims, it is unlikely that officers with the PPD did not have any contact with her. Due to the inconsistencies in the information provided by Ms. French and the evidence found by the Town, Ms. French's residency in the Town during the relevant time period could not be established and, therefore, the Town had reasonable justification to seek removal of Ms. French's name from the certification under PAR .09(2), which was accepted by HRD.

The Appellant's Argument

In her testimony before the Commission, Ms. French conceded that she could not prove that she lived in the Town during the relevant time period for establishing residency. However, she claims that the reason she cannot prove that she resided in the Town during the one (1) year prior to the exam is that she was homeless and living out of her motor vehicle. Ms. French submits that despite the fact that she did not have a physical address in the Town during the relevant time period, she did reside in her motor vehicle in Plainville, which should be

considered her “dwelling place” in accordance with Doris v. Pol. Comm’r of Bos., 374 Mass. 443, 444 (1978).

Analysis

Applying the cited law and PAR.09 to this appeal, the Town has established by a preponderance of the evidence that it had reasonable justification to determine that Ms. French did not qualify for the residency preference under G.L. c. 31, § 58 and to request that HRD remove her name from the certification in accordance with PAR .09(2). However, according to HRD’s letter to Ms. French, it did not remove her name from the Certification but removed her residency preference, which ranked her rank below candidates who had established their residence for the one year prior to the examination.

While Ms. French took issue with many aspects of the selection process she went through with the Town, the sole reason for removing her residency preference was her failure to establish residency in the Town during the relevant time period before the exam (April 30, 2010 through April 30, 2011).

A preponderance of the credible evidence demonstrates that there were numerous inconsistencies with Ms. French’s residency during the relevant time period. In her correspondence with HRD in February 2012, Ms. French initially stated that she wished to claim residency in the Town, having moved there on May 1, 2011, after she took the police officer exam. After she later stated that she was homeless and living out of her motor vehicle, HRD requested further information about where Ms. French resided during the relevant time period. In an email message to Ms. French, HRD specifically mentioned that if Ms. French felt she could prove to the Appointing Authority that she resided in the Town from April 30, 2010 through April 30, 2011, “*regardless of whether or not you lived in a home, vehicle, or anywhere else,*” then Ms. French should resubmit her residency request. In addition, HRD stated that they

would require a “detailed listing” of the address or addresses where she resided during the applicable period and they would accept wherever her vehicle was registered, if that is where she resided at any time from April 30, 2010 through April 30, 2011. (Exs. 3 & 17)(emphasis added) Following that email message from HRD, Ms. French replied, stating that she wished to claim residency in either Plainville or Foxborough. Ms. French could not provide the exact dates and locations of where she slept every night but she listed a few locations where she stayed on a regular basis in Plainville. Ms. French also stated that there were times in 2010 that she stayed in her vehicle in Foxborough. Ms. French noted that her vehicle was registered in Foxborough and she paid excise taxes there as well. Ms. French further stated that she received veterans benefits from Foxborough “from 2010 and prior.” Following this email message from Ms. French, HRD responded, stating that it was still unsure as to where she actually resided during the relevant time period. Ms. French responded, stating that during the relevant time period she resided in her vehicle in Plainville.

On Ms. French’s application for employment at the PPD, she stated that she resided in the Town beginning in May 2011. Prior to that, Ms. French listed a P.O. Box in Sharon and an address in Foxborough. During the background check that was conducted on Ms. French by the PPD as part of the application process, her residency in the Town could not be determined. In addition, in her peer interview, Ms. French told the interview panel that she moved to the Town in May 2011. Furthermore, Ms. French’s vehicle was registered in Foxborough and she paid her excise taxes there during the relevant time period. The Town’s master card system showed no record of having encountered Ms. French and/or her vehicle at that time. In addition, the PPD police assigned to the overnight shift had no record of contact with Ms. French and/or her vehicle for the pertinent time period. Thus, while Ms. French claimed that she was living out of

her motor vehicle in Plainville between April 2010 and April 2011, it is unlikely that she could do so and yet have no record of any police contact for the entire year prior to the exam.

Given the information that the Town had regarding Ms. French's residency during the period of April 30, 2010 through April 30, 2011, the Town had reasonable justification to believe that Ms. French did not reside in the Town for the one (1) year prior to the examination and, thus, acted appropriately in determining that Ms. French was not a resident. The Town had asked HRD to remove Ms. French's name from the Certification as a resident but HRD instead removed only her residency preference.

In this instance, the Commission must affirm the Appointing Authority's and, hence, HRD's decision in response to the Town's request. It is important to note that the issue here is not that Ms. French was homeless but that Ms. French could not adequately demonstrate to the Appointing Authority where she was living during the relevant time period. The evidence shows that the Appellant did not reside in Plainville during the period in question. HRD having removed the Appellant's Plainville residency preference on the Certification in response to the Town's request, the Appellant's rank on the Certification was lowered such that the candidates with residency preference who ranked below the Appellant were now ranked above her and were selected as they were Plainville residents at the pertinent time. Thus, the Appellant was not bypassed.

Conclusion

For the foregoing reasons, the Appellant's appeal under Docket Number G1-13-112, pursuant to G.L. c. 31, § 2(b) is hereby ***denied***.

Civil Service Commission
/s/ Cynthia A. Ittleman

Cynthia A. Ittleman, Esq.
Commissioner

By a vote of the Civil Service Commission (Bowman, Chairman; Ittleman, McDowell, and Stein, Commissioners) on May 28, 2015.

Either party may file a motion for reconsideration within ten days of the receipt of this Commission order or decision. Under the pertinent provisions of the Code of Mass. Regulations, 801 CMR 1.01(7)(l), the motion must identify a clerical or mechanical error in this order or decision or a significant factor the Agency or the Presiding Officer may have overlooked in deciding the case. A motion for reconsideration does not toll the statutorily prescribed thirty-day time limit for seeking judicial review of this Commission order or decision.

Under the provisions of G.L. c. 31, § 44, any party aggrieved by this Commission order or decision may initiate proceedings for judicial review under G.L. c. 30A, § 14 in the superior court within thirty (30) days after receipt of this order or decision. Commencement of such proceeding shall not, unless specifically ordered by the court, operate as a stay of this Commission order or decision.

Notice:

Danell French (Appellant)

David C. Jenkins, Esq. (for the Respondent)

John Marra, Esq. (HRD)