

COMMONWEALTH OF MASSACHSETTS
CIVIL SERVICE COMMISSION

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

Decision mailed: 8/12/08
Civil Service Commission

03

JEREMY LAFLAMME,
Appellant

v.

TOWN OF
SHREWSBURY,
Respondent

Case No.: G1-07-429

DECISION

After careful review and consideration, the Civil Service Commission voted at an executive session on August 7, 2008 to acknowledge receipt of the report of the Administrative Law Magistrate dated June 17, 2008. No comments were received by the Commission from either party. The Commission voted to adopt the findings of fact but not the conclusion and recommended decision of the Magistrate therein. A copy of the Magistrate's report is enclosed herewith.

CONCLUSION

Chapter 31: Section 58. Municipal police officers and firefighters; qualification

states in relevant part the following: "...No applicant for examination for original appointment to the police force or fire force of a city or town shall be required by rule or otherwise to be a resident of such city or town at the time of filing application for such examination; provided, however, that notwithstanding the provisions of any general or special law to the contrary, any person who receives an appointment to the police force or fire force of a city or town shall within nine months after his appointment establish his residence within such city or town or at any other place in the commonwealth that is within ten miles of the perimeter of such city or town. If any person who has resided in a city or town for one year

immediately prior to the date of examination for original appointment to the police force or fire force of said city or town has the same standing on the eligible list established as the result of such examination as another person who has not so resided in said city or town, the administrator, when certifying names to the appointing authority for the police force or the fire force of said city or town, shall place the name of the person who has so resided ahead of the name of the person who has not so resided; provided, that upon 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."

(This section replaced former G.L. c. 31 § 48A, which was repealed.)

The Human Resources Division (HRD) of the Commonwealth is charged by Chapter 31 with the responsibility of qualifying applicants for civil service exams, including the qualification of an applicant for the Residency Preference. HRD employs this following form for that purpose:

Worksheet - Residency Preference Claim & Employment Location Selection

PLEASE READ CAREFULLY

Massachusetts law (G.L. Chapter 31, Sec. 58) permits cities and towns to ask that residents be placed on entry-level police and firefighter eligible lists **before** nonresidents. A "resident" is a person who has lived in the same city or town for the **full year** before the **date of the examination**. For example, if you took an examination on April 27, 1996, you would have to live in a single city or town from April 27, 1995, to April 26, 1996, to claim residency.

IF YOU ARE CLAIMING RESIDENCY IN A CITY OR TOWN, YOU MAY ONLY CHOOSE *THREE* OTHER CITIES OR TOWNS.

IF YOU ARE **NOT** CLAIMING RESIDENCY IN ANY CITY OR TOWN, YOU MAY CHOOSE FOUR CITIES OR TOWNS. DO **NOT** FILL IN **ANY** NUMBERS OR MAKE **ANY** MARKS IN THE BLOCK FOR RESIDENCY PREFERENCE.

- Your **residence**, for the purpose of civil service law, is the place where you actually lived and intended as your **permanent home**. A temporary living place, such as a summer cottage, a school dormitory, a relative's or friend's house or apartment, etc., is **not** a residence.
- If you live at college during the school year, you may claim as your permanent residence that place where you reside during the rest of the year.
- If you were in the military, you may use the city or town where you lived when you entered the military if you returned to that city or town after you left the military, or, if you are still in the military, you intend to return to that city or town.
- If you move to another city or town at any time during the year before the examination, you do **not** qualify for residency preference in **any** city or town.

FILL IN **EVERY PART** OF THE FORM THAT APPLIES TO YOU. FILL IN THE NUMBERS **AND** THE CIRCLES INDICATING YOUR CHOICES. **DOUBLE-CHECK YOUR CHOICES AND THE NUMBERS YOU CHOSE. BE SURE THE CIRCLES YOU FILLED IN MATCH THE NUMBERS.**

CONSIDER THIS FORM **PART OF THE EXAMINATION**. DO NOT MAKE A **MISTAKE** IN YOUR RESIDENCE PREFERENCE CLAIM. IF YOU DO NOT FILL OUT THIS FORM CORRECTLY, YOUR NAME WILL NOT APPEAR ON CERTIFIED LISTS FOR APPOINTMENT, AND YOU MAY MISS EMPLOYMENT OPPORTUNITIES. WE MAY NOT ADD YOUR NAME TO AN OUTSTANDING CERTIFIED LIST IF YOU MAKE A MISTAKE. CITIES AND TOWNS INVESTIGATE APPLICANTS FOR FIRE AND POLICE POSITIONS. IF THEY FIND YOU ARE A NON-RESIDENT, THEY WILL NOT HIRE YOU AS A RESIDENT AND WILL REQUEST THAT YOUR PREFERENCE BE CANCELED.

NOTE: This is a worksheet, not the actual form. You **MUST** transfer the information from your worksheet onto the actual form which you will receive at the exam site on the testing date.

THIS WORKSHEET WILL NOT BE ACCEPTED OR PROCESSED IN PLACE OF THE ACTUAL FORM.

This HRD residency claim form clearly states that the intension of the applicant is an important aspect of determining the residency choice. The form also states that permanency or "...the place where you actually lived *and intended as your permanent home.*" (Emphasis added). "A temporary living place, ..., is **not** a residence." The form also emphatically states that this declaration of residence is "...for the purpose of civil service law." (Emphasis added)

The HRD residency claim form is certainly a guide which most applicants would look to for help in making the proper residency claim for civil service purposes. It is apparent that the applicant may make only one residency claim for civil service preference purposes, while still able to choose three to four other cities or towns for consideration.

The Appellant supported his claim of permanent residency in the Town of Shrewsbury with strong indicia of long term intention and actual facts associated with permanent residency.

He is 30 years of age, was raised in Shrewsbury and graduated from Shrewsbury High School, (Exhibit 16). Except for the time he spent in college, (New Hampshire and Mass.) he has claimed a residence and home at 35 Grace Avenue, Shrewsbury, which is owned by his parents. Since his youth he has maintained and occupied a bedroom at this address. Over the years before his claim of residency here, he occupied a one-bedroom apartment, measuring 15' X 26', for which he paid money toward the electric bills.

The Appellant was employed in a series of short-term, possibly temporary jobs, for approximately six years before he took this civil service firefighter exam on June 10, 2006.

He was employed as a flight instructor at Daniel Webster College in Nashua, NH, from July 31, 2000 through May 14, 2004. He was also employed as a firefighter in the Town of Milford, NH from September, 2002 through May, 2004. He attended Daniel Webster College in Nashua NH, for graduate studies. On May 17, 2004 he began employment as a pilot at the Barnstable Municipal Airport in Hyannis, MA. When he began working in Hyannis, he rented a one-bedroom 16' X 16' apartment in a single family home at 401A Cotuit Road in Marston Mills, MA as a Tenant-at-Will. He continues to use that apartment. He is single and lives there alone. In 2004, he spent approximately one-half his nights in Marston Mills and one-half his nights in Shrewsbury. On June 4, 2004, he applied for a position as a call firefighter in the Town of West Barnstable. He listed the Marston Mills address when applying. He began working as a call firefighter in West Barnstable, in September, 2004, working on call two nights per week. In 2005 and early 2006, the Appellant worked two jobs on Cape Cod and spent less than one-half his time in Shrewsbury.

However, during this time the Appellant also maintained strong indicia of permanent residency in Shrewsbury. His automobile insurance policy address was Shrewsbury. His

Mass. Driver's license used the Shrewsbury address since 2004. He paid automobile excise taxes to the Town of Shrewsbury. He is a registered voter in Shrewsbury since 2004. His Federal Aviation Administration license to pilot a train or plane uses the Shrewsbury address. The Shrewsbury Town Street Listing includes the Appellant at that address. His US Dept. of Transportation first class Medical Certificate lists the Shrewsbury address. His joint account with his father, at the Shrewsbury Federal Credit Union, used the Shrewsbury address in 2005 and in 2007.

The Appellant has substantially established his residency in Shrewsbury by producing evidence which corroborates his long term intention of continuing it as his place of residence. The Appellant has also shown substantial conformity with the facts and factors normally associated with and indicative of residency. He has produced evidence which shows his long term establishment of residency in Shrewsbury, by factors listed by the Secretary of the Commonwealth for the establishment of residency. See the following guide. (Exhibit 5)

Welcome to Massachusetts!

A Practical Guide to Living in the State

Massachusetts, located in the heart of New England, is the region's most populous state. Lively urban areas, picturesque seaside communities, and tiny rural towns offer a unique ambiance which each year attracts many new residents. This webpage is designed to provide people contemplating a move to Massachusetts and those who have recently come here with specific information on the practical aspects of residency. I hope that new residents and those considering a move to the Bay State find this webpage a good source of useful information.

Sincerely,
William Francis Galvin
Secretary of the Commonwealth

Residency

There is no formal procedure for establishing a legal residence in Massachusetts. Voter registration, automobile registration, a driver's license, the appearance of a person's name on a city or town street list, and rent, utility, mortgage or telephone bills normally provide tangible proof of residence.

However, individual public or private agencies or institutions may have their own requirements for proof of residence. A one-year residency requirement is imposed in order to qualify for state tuition rates at state colleges and universities, and a six-month residency is required for community colleges.

The Appellant applied for a position with the Town of West Barnstable on May 30, 2006, using the Marston Mills address on the application. Neither the Barnstable Municipal Airport nor the West Barnstable Fire District has a residency requirement for employment in the positions which the Appellant was employed. It does not appear that the Town of West Barnstable has a residency requirement for the position which the Appellant applied in May, 2006.

The Appellant was employed in a series of short-term or temporary jobs, mainly on Cape Cod and used a temporary address, (Tenant at Will) to be near by those jobs. Some of those jobs (firefighter and call firefighter) seem to be in preparation for a permanent full time position as a firefighter. The Appellant never claimed the civil service residency preference for any other job in any other municipality.

It is acknowledged that people may maintain more than one: home, address, residence or even domicile (citizenship) and not spend a majority of their time at any one of the locations. We are only concerned here with the qualification of the Appellant to claim the civil service preference with the Town of Shrewsbury.

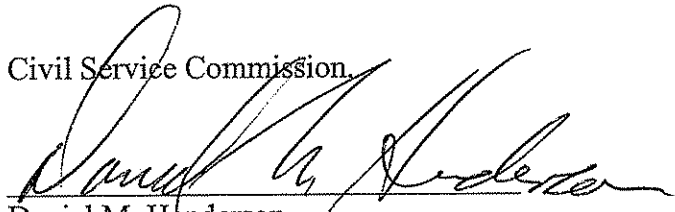
The Appellant intentionally and assiduously maintained the substantial indicia of permanent residency in Shrewsbury for many years, including the relevant period of June 10, 2005 to June 10, 2006

Wherefore, The Appointing Authority's Motion to Dismiss is denied, thus the Appellant's appeal is *allowed* and it is ordered that his name shall be restored to the existing and/or next certified eligible list which is requested by the Town of Shrewsbury for an original appointment to the position of firefighter. The Appellant's name shall be restored to

the top of said eligibility list(s) and shall remain on top of said list(s) for the same amount or period of eligibility that he would have had, as if his name had not been removed from the list for non residency.

The purpose of this order is that the Appellant receive the same amount of eligibility that he would have had, and that he has at least one opportunity for consideration, for appointment.

Civil Service Commission.



Daniel M. Henderson,
Commissioner

By a 3-2 vote of the Civil Service Commission (Bowman, Chairman voted NO; Henderson voted Yes, Marquis voted No, Stein voted Yes and Taylor voted Yes, Commissioners) on August 7, 2008.

A true record. Attest.



Christopher C. Bowman
Chairman

Either party may file a motion for reconsideration within ten days of the receipt of a Commission order or decision. Under the pertinent provisions of the Code of Mass. Regulations, 801 CMR 1.01(7)(I), the motion must identify a clerical or mechanical error in the decision or a significant factor the Agency or the Presiding Officer may have overlooked in deciding the case. A motion for reconsideration shall be deemed a motion for rehearing in accordance with G.L. c. 30A, § 14(1) for the purpose of tolling the time for appeal.

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

Notice to:
Robert S. Adler, Atty.
T. Philip Leader, Atty
John Marra, Atty. HRD
Shelly Taylor, Esq.DALA

COMMONWEALTH OF MASSACHUSETTS

Division of Administrative Law Appeals

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COMMONWEALTH OF MASS
CIVIL SERVICE COMMISSION

Tel: 617-727-7060
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June 16, 2008

Christopher Bowman, Chairman
Civil Service Commission
One Ashburton Place, RM 503
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Robert S. Adler, Esquire
Seder and Chandler, LLP
339 Main Street
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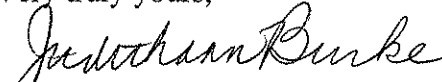
T. Philip Leader, Esquire
34 Mechanic Street
Worcester, MA 01608

Re: *Jeremy LaFlamme v. Town of Shrewsbury*, G-07-429, CS-08-201

Dear Mr. Chairman, Mr. Adler and Mr. Leader:

Enclosed please find the Recommended Decision that is being issued today. The parties are advised that, pursuant to 801 CMR 1.01(11)(c), they have 30 days to file written objections to the Recommended Decision with the Civil Service Commission, which may be accompanied by briefs.

Very truly yours,



Judithann Burke
Administrative Magistrate

THE COMMONWEALTH OF MASSACHUSETTS

Suffolk, ss.

Division of Administrative Law Appeals

Jeremy LaFlamme,
Appellant

v.

Civil Service Docket No. G-07-429
DALA No. CS-08-201

Town of Shrewsbury,
Appointing Authority

Appearance for Appellant:

Robert S. Adler, Esquire
Seder & Chandler, LLP
339 Main Street
Worcester, MA 01608-1585

Appearance for Appointing Authority:

T. Philip Leader, Esquire
34 Mechanic Street
Worcester, MA 01608

Administrative Magistrate:

Judithann Burke

RECOMMENDED DECISION

Pursuant to M.G.L.c. 31 s. 2(b), the Petitioner, Jeremy LaFlamme, had appealed from the February 8, 2008 decision of the Human Resources Division (HRD) which upheld the December 17, 2007 decision of the Appointing Authority, Town of Shrewsbury, removing his name from the open entry level firefighter requisition list, essentially bypassing him from appointment to the position of firefighter in the Town of Shrewsbury. (Exhibits 7 and 8). The appeal from the decision of the Appointing Authority was filed on December 21, 2007. (Exhibit 2).

The Appointing Authority filed a Motion to Dismiss the appeal and a supporting memorandum of law on February 4, 2008 on the basis that the Town Manager in the

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Town of Shrewsbury failed to certify that the Appellant, an applicant for the position of firefighter in the Town of Shrewsbury, was a resident of Shrewsbury for a full year preceding the date of the examination. A hearing on the Motion to Dismiss was held on April 2, 2008 at the offices of the Division of Administrative Law Appeals (DALA), 98 North Washington Street, Boston, MA.

At the hearing, twenty four (24) exhibits were marked, including Stipulations of Fact (Exhibit 1). The Appellant testified in his own behalf. Both parties stated their arguments for the record. One tape was made of the proceedings. The record was left open for the filing by the Appointing Authority of a Proposed Decision and the Appellant's response. The last of these documents was received on April 11, 2008, thereby closing the record.

FINDINGS OF FACT

Based upon the testimony and documents submitted at the hearing in the above-entitled matter, I hereby render the following findings of fact:

1. The Appellant, Jeremy LaFlamme, 30 y.o.a., was raised in Shrewsbury, MA. He resided in the family home owned by his parents at 35 Grove Avenue with the exception of his college years at Bridgewater State College and his graduate studies at Daniel Webster College in Nashua, NH. Following the completion of his education, during his overnight stays at his parent's home, the Appellant has occupied a one-bedroom apartment that measures 15'x 26'. He has paid money toward the electric bills at this address. (Testimony and Exhibit 12).

2. The Appellant took the open Civil Service examination in 2004. (Testimony).

3. The Appellant was employed as a flight instructor at the Daniel Webster College from July 31, 2000 through May 14, 2004 when he left that position to take another job. (Testimony and Exhibit 17).

4. The Appellant also worked as a firefighter in the Town of Milford, NH, from September 2002 through May 2004. (Id.).

5. On May 17, 2004, the Appellant began employment as a pilot with Cape Air/Nantucket Airlines. He was based at the Barnstable Municipal Airport in Hyannis, MA. (Id.).

6. When he began working in Hyannis, MA, the Appellant rented a one-room 16' x 16' apartment in a single family home at 401A Cotuit Road in Marstons Mills, MA as a tenant at will. He continues to use this apartment. He is single and lives there alone. (Testimony).

7. In 2004, the Appellant spent 3-4 nights per week in Marstons Mills and 3-4 nights per week in Shrewsbury. He worked Tuesdays through Fridays. He would often leave Shrewsbury at 4:00 AM on a Tuesday morning in order to arrive at work in Hyannis at 5:30 AM. He would return to Shrewsbury on Friday afternoons. The distance between the 35 Grove Avenue, Shrewsbury, address and West Barnstable is approximately 95 miles. (Testimony and Exhibit 20).

8. On June 4, 2004, the Appellant applied for the position of call firefighter in the Town of West Barnstable. He listed 401A Cotuit Road as his residential address. The apartment is approximately two miles from the fire station. The Petitioner was hired as a call firefighter in September 2004, and, he was on-call two nights per week.

(Exhibits 6 and 17).

9. Neither the Barnstable Municipal Airport nor the West Barnstable Fire District have a strict residency requirement. (Exhibits 18 and 19).

10. Sandra Wright, Assistant Town Clerk in the Town of Shrewsbury, has certified that the Appellant has been a registered voter in Shrewsbury since August 9, 2004. (Exhibit 10).

11. In 2005 and early 2006, the Petitioner worked two jobs on Cape Cod and he spent less than half of his time in Shrewsbury. He would often stay in Marstons Mills on the weekends in order to socialize. (Testimony and Exhibit 6).

12. From August 12, 2004 through September 29, 2007, the Petitioner listed the Shrewsbury address on his automobile insurance policy. (Exhibit 13).

13. Since 2004, the Petitioner's Massachusetts driver's license has indicated the Shrewsbury address. He has paid his automobile excise taxes to the Town of Shrewsbury. (Exhibit 9).

14. The Appellant's 2004 and 2008 pilot's licenses have indicated the Shrewsbury address. (Id.).

15. The Petitioner's bank statements for the periods May 1, 2005 to May 31, 2005 and March 1, 2007 to March 31, 2007, pertaining to a joint account he has with his father at the Shrewsbury Federal Credit Union, list the Shrewsbury address. (Exhibit 14).

16. On May 30, 2006, the Petitioner applied for a position with the Town of West Barnstable. He listed the Marstons Mills address on the application. (Exhibit 16).

17. The Appellant took the Civil Service examination on June 10, 2006. He was advised via Announcement No. 8012 that:

...if residency preference was requested by a municipality, applicants who resided in that municipality for the entire twelve month period immediately preceding the date of the examination would be entitled to have their names placed on the eligible list ahead of non-residents. Applicants who have had a break in residence or have moved from one community to another within the twelve month period preceding the date of the examination will not be entitled to claim residence preference in any community. Applicants will complete a residence preference form at the test site. Verification of residency will be made by the municipality.

(Exhibit 4).

18. The Appellant applied for a position with the Town of Shrewsbury Fire Department on August 9, 2006. He listed 35 Grace Avenue in Shrewsbury as his address. He did not mention the Marstons Mills address in the application. (Exhibit 3).

19. On August 11, 2006, the Petitioner was hired as a full time Operations Specialist at the Barnstable Municipal Airport. The Marstons Mills address was listed on the Employee Action Form. (Exhibit 15).

20. During a November 2007 employment interview with the Shrewsbury Town Manager, the issue of the Appellant's residency was raised. The Appellant submitted that he was a resident of Shrewsbury. (Testimony).

21. The Appointing Authority was required to certify that the Appellant was a resident of the Town of Shrewsbury for one year prior to the date of the Civil Service examination (June 10, 2005-June 10, 2006). The Town Manager authorized a police

investigation into the issue of the Appellant's residence. (Exhibit 6).

22. The Appointing Authority determined that the Appellant was not a resident of Shrewsbury for the one year period preceding the date of the Civil Service examination. On December 17, 2007, the Town Manager requested that Luz Henriquez of the Human Resources Division either immediately remove the Appellant from the Open Entry Level firefighter requisition list, or, that she confirm that he may use the Shrewsbury address. This letter was copied to the Appellant. He did not receive a separate letter from the Appointing Authority. (Exhibits 7 and 23).

23. On December 21, 2007, the Appellant appealed from the determination of the Appointing Authority. (Exhibit 2).

24. The Human Resources Division removed the Appellant's name from the Open Entry List on February 8, 2008. The Appellant was advised of his appeal rights in this letter. (Exhibit 8).

CONCLUSION AND RECOMMENDED DECISION

I recommend that the **Motion to Dismiss be ALLOWED** on procedural and substantive grounds.

A. Procedural Grounds

At the outset, it must be noted that the Civil Service Commission does not have jurisdiction in this case. The Appellant filed his appeal from the decision/action of the Appointing Authority on December 21, 2007. The decision/action from which he appealed was not a final decision/action. Rather, it was a request by the Appointing Authority that the Human Resources Division do one of two things: remove his name

from the Open Service List, or confirm that he could use the Shrewsbury address. The Appellant received a copy of the letter to Ms. Henriquez. He did not receive a personalized letter addressed to him therein notifying him of any final decision/action. Nonetheless, he filed his appeal on December 21, 2007 on a Bypass Appeal Form pursuant to G.L. c. 31 2(b), therein indicating that the "Appointing Authority's decision/action had caused actual harm to his employment status".

At that time the Appellant filed his appeal, his case was not ripe for review. The December 17, 2007 decision of the Appointing Authority, although contrary to his own viewpoint, was not a final decision/action. The Human Resources Division still had the option at that time to conclude that the Appellant could use the Shrewsbury address and remain on the Open Civil Service list.

The Appellant received his first indication of any final decision on February 8, 2008 when he was notified by the Human Resources Division that it had determined that the reasons submitted by the Appointing Authority were acceptable for removing his name from the resident's list and placing it on the non-resident list. The Appellant was notified of his right to appeal within sixty days of receipt of the notice. He was directed to a website from which he could obtain an appeal form. The Appellant never filed an appeal from the February 8, 2008 decision of the Human Resources Division.

Jurisdiction may be raised at any time during the context of Civil Service proceedings. Inasmuch as the Appellant filed a premature appeal with the Civil Service Commission on December 21, 2007, and because he failed to file a timely appeal from

the final decision/action of the February 8, 2008 Human Resources Division, I recommend that the Civil Service Commission dismiss this appeal for lack of jurisdiction.

B. Substantive Grounds

Should the Civil Service Commission retain jurisdiction in this case, I recommend that the Appointing Authority's **Motion to Dismiss** be **ALLOWED** on substantive grounds. The Appointing Authority has cited G.L. c. 31 s. 58 for the proposition that the Administrator (now HRD), when certifying names from an eligibility list, for original appointment to the Fire Department of a town may place the names of persons who have resided in that town for one year immediately prior to the date of the examination ahead of the name of any person who has not so resided, provided the Appointing Authority makes a request to the Administrator for such priority. In the present case, the Town of Shrewsbury made such a request. The Appointing Authority was correct in its conclusion that the Appellant was not a resident of Shrewsbury during the time period from June 10, 2005 to June 10, 2006, the one-year period immediately prior to the Civil Service examination.

The Appellant is correct in his contention that the issue for determination in this appeal is "whether the Appointing Authority has sustained its burden of proving that there was reasonable justification for the action taken". City of Cambridge v. Civil Service Commission, 43 Mass. App. Ct. 300, 304 (1997). "Reasonable justification" is defined as "adequate reasons supported by credible evidence, when weighed by an unprejudiced mind, guided by common sense and by correct rules of law". Selectmen of

Wakefield v. Judge of First District Court of East Middlesex, 262 Mass. 477, 482 (1928) and Commissioners of Civil Service v. Municipal Court of the City of Boston, 359 Mass. 214 (1971). Pursuant to G.L. c. 31 s. 2(b), the Appointing Authority must prove by a preponderance of the evidence that the reasons assigned for the bypass were “more probably than not sound and sufficient”. Mayor of Revere v. Civil Service Commission, 31 Mass. App. Ct. 315 (1991).

After a careful review of all of the testimonial and documentary evidence in this case, I have concluded that the Appointing Authority has met its burden of proving that its reason for the bypass of the Appellant was “more probably than not sound and sufficient”. The Appointing Authority demonstrated by a preponderance of the evidence that he did not reside in Shrewsbury, MA for the entire year preceding the June 2006 Civil Service examination. Notwithstanding the Shrewsbury addresses on the Petitioner’s driver’s license, pilot’s license, automobile insurance, joint bank account, the Appellant physically resided in Marstons Mills in close proximity to his two employers during the critical time period. By his own admission, the Appellant spent more than half of his time (202+ days) from June 2005 through June 2006 in Marstons Mills. He worked two jobs on Cape Cod, full time plus, during that period. He also stayed on the Cape during many of his off hours in order to socialize. He was a physical resident of Marstons Mills. See Doris v. Police Commissioner of Boston, 374 Mass. 443, 333 (1978).

The Appellant readily utilized the Marstons Mills address for purposes of

obtaining and maintaining employment on Cape Cod. He did not hesitate to omit mention of the Shrewsbury address. During the same period, he utilized his parents' address when he applied for employment in Shrewsbury in early 2006. He can't have it both ways. He can't reside in two places. During the period in question, he was living more than half of the time on Cape Cod. He was not a physical resident of Shrewsbury despite his many ties to that area. The findings of the Appointing Authority were not arbitrary or capricious.

In conclusion, I recommend that the Appointing Authority's Motion to Dismiss the appeal because the Appellant was not a resident of Shrewsbury from June 10, 2005 to June 10, 2006 be allowed.

Division of Administrative Law Appeals,
BY:


Judithann Burke
Administrative Magistrate

DATED: June 16, 2008