



STATE OF NEW JERSEY

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

In the Matter of Kyle West, Fire
Fighter (M1815W), Dover Township

CSC Docket No. 2023-2863

List Removal Appeal

ISSUED: February 28, 2024 (VJ)

Kyle West appeals the determination of Dover Township to remove his name from the eligible list for Fire Fighter (M1815W), on the basis that he failed to respond to the certification notice.

The appellant, a non-veteran, took and passed the open competitive examination for Fire Fighter (M1815W), which had a closing date of August 31, 2018. The resulting eligible list promulgated on March 29, 2019 and expired on April 19, 2023. The appellant's name was certified to the appointing authority on September 7, 2022, with a notice date of September 14, 2022. In disposing of the certification, the appointing authority requested the removal of the appellant's name on the basis that he failed to respond to the certification notice.

On appeal, the appellant states that he did not receive the September 14, 2022, certification notice and requests that his name be reinstated to the eligible list. In support, the appellant submits a sworn notarized statement attesting that he did not receive the notice.

In response, the appointing authority, represented by Anthony G. LoBrace, Esq. states that the appellant's name was removed because he did not respond to the certification, and it never received a letter of interest from him. Therefore, the appointing authority argues that aside from a sworn statement, the appellant has failed to put forth any evidence that he never received the notice. *See In the Matter of Charles B. Anderson* (MSB, decided November 20, 2001). The appointing authority argues that in that

matter, Anderson's appeal was denied because he presented no evidence other than the sworn statement that he did not receive his certification notice.

CONCLUSION

N.J.A.C. 4A:4-4.7(a)6 provides that an eligible's name may be removed from a list for "non-compliance with the instructions listed on the notice of certification." *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. Additionally, *N.J.S.A.* 11A:4-6 and *N.J.A.C.* 4A:4-3.4 provide that an eligible list may be revived in order to implement a court order or decision of the Civil Service Commission (Commission) in the event of a successful appeal instituted during the life of a list, to correct an administrative error, or for other good cause.

In the instant matter, the appellant claims that he did not receive the notification of certification. Although the appointing authority objects to restoring his name to the subject eligible list, the appellant has submitted a sworn, notarized statement, attesting to the fact that he did not receive the certification notice. While there is a presumption that mail correctly addressed, stamped and mailed was received by the party to whom it was addressed, the appellant has rebutted that presumption in submitting his sworn, notarized statement. See *SSI Medical Services, Inc. v. State Department of Human Services*, 146 *N.J.* 614 (1996); *Szczesny v. Vasquez*, 71 *N.J. Super.* 347, 354 (App. Div. 1962); *In the Matter of Joseph Bahun*, Docket No. A-1132-00T5F (App. Div. May 21, 2001). Additionally, the Commission does not find the appointing authority's reliance on *Anderson, supra*, to be persuasive. In this regard, Anderson's appeal was denied as he had indicated in his sworn statement that he had *failed* to update his address, thus causing his notice to be received late. It was Anderson's responsibility to timely update his address, which he acknowledged that he had failed to do, which resulted in the removal of his name from the eligible list. However, in the instant matter, the appellant's address of record at the time of his certification, and his current address, are the same. Accordingly, unlike in *Anderson*, there is no evidence that the failure of the appellant to receive his certification notice is in any way attributable to him. Thus, it is appropriate that his name be restored to the subject eligible list for prospective employment opportunities only.

ORDER

Therefore, it is ordered that this appeal be granted and the eligible list for Fire Fighter (M1815W), Dover Township, be revived in order for the appellant to be considered for prospective employment opportunities at the time of the next certification.

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 FEBRUARY, 2024

Allison Chris Myers

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