



STATE OF NEW JERSEY

FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION

In the Matter of Michael Dymek,
Police Sergeant (PM5096N),
Bergenfield

List Removal Appeal

CSC Docket No. 2015-3331

ISSUED: **OCT 21 2016** (HS)

Michael Dymek appeals the attached decision of the Division of Agency Services, which found that the appointing authority had presented a sufficient basis to remove the appellant's name from the Police Sergeant (PM5096N), Bergenfield eligible list on the basis that he failed to respond to the certification notice.

The appellant, a disabled veteran, took and passed the promotional examination for Police Sergeant (PM5096N), which had a closing date of September 2011. The resulting eligible list promulgated on August 7, 2014 and expires on August 6, 2017. The appellant's name was certified to the appointing authority on August 12, 2014 as the seventh ranked eligible. The notice date was August 19, 2014. 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.¹ Certification notices instruct individuals to write to the appointing authority within five business days of the date of the notice to let it know whether or not the individual was interested in the position.

¹ Agency records indicate that the appointing authority appointed the first ranked nonveteran eligible, effective September 16, 2014, from the August 12, 2014 certification. Subsequently, the second ranked nonveteran eligible was appointed, effective February 3, 2015, from the January 13, 2015 certification. Additionally, the fifth ranked nonveteran eligible was appointed, effective March 15, 2016, from the February 12, 2016 certification. On July 8, 2016, a certification containing three names, including the fourth, tenth and eleventh ranked nonveteran eligibles, was issued to the appointing authority. However, it has not yet been disposed of.

On appeal to the Civil Service Commission (Commission), the appellant submits a sworn, notarized statement in which he states, among other things, that “during the week of August 20, 2014,” he hand-delivered to the appointing authority a letter accepting the subject position.

The appointing authority, despite being provided the opportunity, did not present any arguments or documentation for the Commission’s review.

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 the appellant from an eligible list was in error.

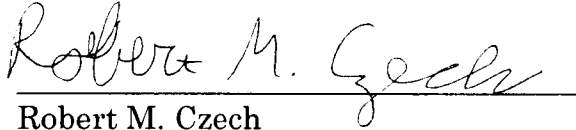
In the instant matter, the appointing authority requested the removal of the appellant’s name from the subject eligible list on the basis that he failed to respond to the certification notice. However, the appellant has submitted a sworn, notarized statement, attesting to the fact that he delivered to the appointing authority a written response to the certification notice “during the week of August 20, 2014.” A response delivered within such timeframe would have occurred within five business days of the notice date of the certification. It is noted that the first, second and fifth ranked eligibles, all of whom were nonveterans, were appointed. As the seventh ranked eligible, the appellant’s appointment was not required by *N.J.A.C.* 4A:5-2.2(d). Thus, although the appellant has met his burden of proof in this matter, it is appropriate to restore the appellant’s name to the subject eligible list for prospective employment opportunities only.

ORDER

Therefore, it is ordered that this appeal be granted and Michael Dymek’s name be restored to the eligible list for Police Sergeant (PM5096N), Bergenfield, for prospective employment opportunities only.

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 19TH DAY OF OCTOBER, 2016



Robert M. Czech
Chairperson
Civil Service Commission

Inquiries
and
Correspondence

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

Attachment

- c. Michael Dymek
- Corey Gallo
- Joe Hill
- Records Center



Chris Christie
Governor
Kim Guadagno
Lt. Governor

STATE OF NEW JERSEY
CIVIL SERVICE COMMISSION
DIVISION OF AGENCY SERVICES
P. O. Box 313
Trenton, New Jersey 08625-0313

Robert M. Czech
Chair/Chief Executive Officer

DATE: May 29, 2015

Michael F. Dymek

Title: Police Sergeant
Symbol: PM5096N
Jurisdiction: Bergenfield
Certification Number: PL140984
Certification Date: 8/12/14

Initial Determination: Removal – Non-response to certification

This is in response to your correspondence contesting the removal of your name from the above-referenced eligible list.

The Appointing Authority requested removal of your name in accordance with *N.J.A.C. 4A:4-4.7(a)6*, which permits the removal of an eligible candidate's name from the eligible list for non-compliance with the instructions listed on the Notice of Certification.

After a thorough review of our records and all the relevant material submitted, we find that there is **not** a sufficient basis to restore your name to the eligible list. Therefore, the Appointing Authority's request to remove your name is sustained and your appeal is **denied**.

In accordance with Civil Service Rules, you may appeal this decision to the Division of Appeals and Regulatory Affairs (DARA) within 20 days of the receipt of this letter. You must submit all proofs, arguments and issues which you plan to use to substantiate the issues raised in your appeal. Please submit a copy of this determination with your appeal to DARA. You must put all parties of interest on notice of your appeal and provide them with copies of all documents submitted for consideration.

Pursuant to P.L. 2010 c.26, effective July 1, 2010, there shall be a \$20 fee for appeals. Please include the required \$20 fee with your appeal. Payment must be made by check or money order only, payable to the NJ CSC.

Michael F. Dymek
May 29, 2015
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Persons receiving public assistance pursuant to P.L. 1947, c. 156 (C.44:8-107 et seq.), P.L. 1973, c.256 (C.44:7-85 et seq.), or P.L. 1997, c.38 (C.44:10-55 et seq.) and individuals with established veterans preference as defined by N.J.S.A. 11A:5-1 et seq. are exempt from these fees. Address all appeals to:

Henry Maurer, Director
Division of Appeals and Regulatory Affairs
Written Record Appeals Unit
PO Box 312
Trenton, NJ 08625-0312

Sincerely,
For the Acting Director,



Debra A. Porter
Senior Management Assistant