



STATE OF NEW JERSEY

FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION

In the Matter of Julio Aponte III,
Management Assistant (M0220U),
City of East Orange

List Removal Appeal

CSC Docket No. 2017-3955

ISSUED: OCT 06 2017 (HS)

Julio Aponte III appeals the removal of his name from the eligible list for Management Assistant (M0220U), City of East Orange on the basis of his failure to appear for an interview.

The appellant, a veteran, took and passed the open competitive examination for Management Assistant (M0220U), which had a closing date of April 14, 2016. The resulting eligible list promulgated on August 25, 2016 and expires on August 24, 2019. The appellant's name was certified to the appointing authority on August 29, 2016. In disposing of the certification, the appointing authority requested the removal of the appellant's name on the basis of his failure to appear for an interview. Specifically, the appointing authority indicated that a letter was sent to the appellant that indicated he was scheduled for an interview on October 11, 2016 but that he failed to appear for the scheduled interview. Agency records indicate that one lower-ranked eligible on the August 29, 2016 certification was appointed, effective November 29, 2016. Agency records also indicate that a certification was issued on June 26, 2017, but the disposition of this certification has not yet been recorded by this agency.

On appeal to the Civil Service Commission (Commission), the appellant submits a sworn, notarized statement in which he states the following. Upon receipt of the certification disposition notice indicating his removal from the subject eligible list, he went to the City of East Orange human resources office and was told that the office had mailed out a letter, filed in the office's records, with the scheduled interview date. The appellant noticed there were two copies of that letter

and asked if the second copy was the one that was supposed to be mailed out to him. He also asked if there was any record or logbook indicating the mailing of the letter with the person in charge and recorded date or if there were any records indicating that the office called him for the scheduled interview as he did not have any voicemails concerning the scheduled interview. As a result, the appellant did not receive the letter indicating his scheduled interview date.¹

In response, the appointing authority states that it requested the removal of the appellant's name from the subject eligible list because he did not appear for his interview and submits a copy of the letter advising him of the October 11, 2016 interview date, which it states was mailed to the appellant's current address.

CONCLUSION

N.J.A.C. 4A:4-4.7(a)11 allows the Commission to remove an eligible's name from an eligible list for other valid reasons. *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. It is initially noted that the appointing authority has the authority and ability to require potential new hires to undergo preemployment processing to ensure that the candidate is qualified for appointment. Such preemployment processing may include any and all conditions necessary for an appointing authority to assess a candidate's qualifications. Further, this information is important as it serves the important function of informing the appointing authority as to any significant differences between the candidates that may assist it in the selection process. See *In the Matter of Laura C. Bonilla* (MSB, decided September 7, 2005); *In the Matter of Bruce C. Cooke* (MSB, decided May 8, 2001); *In the Matter of James Smith* (MSB, decided April 24, 2001).

The appointing authority requested the removal of the appellant's name from the eligible list for Management Assistant (M0220U) on the basis of his failure to appear for an interview. However, the appellant has submitted a sworn, notarized statement in which he states that the City of East Orange human resources office had two copies of the letter indicating his scheduled interview date and that he questioned whether the second copy was supposed have been mailed to him. The appointing authority has not persuasively rebutted this statement. Additionally, in his sworn, notarized statement, the appellant also attests to the fact that he did not receive the appointing authority's letter advising him of the scheduled interview date. 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);

¹ The appellant states that a copy of his sworn, notarized statement was sent to the appointing authority.

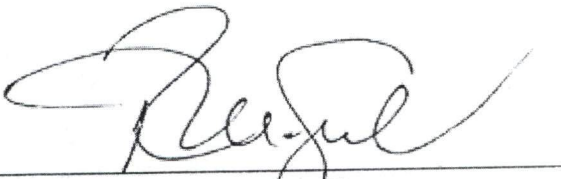
Szczesny v. Vasquez, 71 N.J. Super. 347, 354 (App. Div. 1962); *In the Matter of Joseph Bahun*, Docket No. A-1132-00T5F (App. Div. May 21, 2001). Thus, the appellant has met his burden of proof, and it is appropriate that his name be restored to the subject eligible list. Moreover, because a lower-ranked eligible was appointed effective November 29, 2016 and the appellant is a veteran, his appointment is mandated, provided that he first passes an updated background check. See N.J.S.A. 11A:4-8 and N.J.S.A. 11A:5-6. However, while the appointing authority must immediately appoint the appellant should he pass the updated background check, it is not required to displace any currently employed individual in appointing the appellant.

ORDER

Therefore, it is ordered that this appeal be granted and Julio Aponte III's name be restored to the eligible list for Management Assistant (M0220U), City of East Orange so that he may continue with the selection process. Absent any disqualification issue ascertained through an updated background check, the appellant's appointment is otherwise mandated. Additionally, it is ordered that if the appellant is appointed, upon the successful completion of his working test period, his record will reflect a retroactive appointment date of November 29, 2016 for salary step placement and seniority-based purposes 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 4TH DAY OF OCTOBER, 2017



Robert M. Czede, Chairperson
Civil Service Commission

Inquiries
and
Correspondence

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

- c. Julio Aponte III
William Senande
Kelly Glenn