

B-8



STATE OF NEW JERSEY

In the Matter of Joseph Zimmer,
Senior Postal Clerk (S0648U),
Montclair State University

FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION

CSC Docket No. 2017-3897

List Removal Appeal

ISSUED: **NOV 17 2017** (SLK)

Joseph Zimmer appeals Montclair State University's decision to remove his name from the Senior Postal Clerk (S0648U), Montclair State University, eligible list on the basis of his failure to complete pre-employment processing.

The appellant took the open competitive examination for Senior Postal Clerk (S0648U), achieved a passing score, and was ranked on the subsequent eligible list. The appointing authority indicated that the appellant failed to respond to an April 11, 2017 e-mail confirming his interest in the position and to submit required documentation. Therefore, in disposing of the certification, the appointing authority removed the appellant's name, contending that he did not complete pre-employment processing.

On appeal, Mr. Zimmer submits a notarized sworn statement indicating that he never received the April 11, 2017 e-mail or any other communication from the appointing authority asking him to re-confirm his interest and to provide documents. He emphasizes that if he had received such communication he would have responded. He complains that e-mail is a poor choice of communication and contends that the appointing authority should have contacted him by mail or phone. He requests that he be appointed and receive seniority and a retroactive appointment date effective June 22, 2017.

In reply, the appointing authority submits its April 11, 2017 e-mail that shows that it was sent to the appellant's confirmed e-mail address and that it required pre-

employment documents that the appellant did not provide. It emphasizes that it did not receive a response that the e-mail was undeliverable. It highlights that it has successfully used e-mail with numerous applicants as e-mail allows it to expedite the process and provides proof as to when it sends communications.

CONCLUSION

N.J.A.C. 4A:4-4.7(a)11 allows the Civil Service 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 the appointing authority's decision to remove the appellant's name from the eligible list was in error.

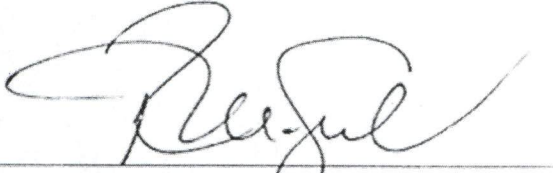
In the instant matter, the appellant submitted a notarized sworn statement indicating that he never received the e-mail asking him to re-confirm his interest and submit required documentation. While there is a presumption that an e-mail that is correctly addressed and not returned as undeliverable was received by the party to whom it was addressed, the appellant has rebutted that presumption in submitting his notarized statement in this matter. See e.g., *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). Thus, it is appropriate to restore the appellant to the eligible list. However, the appellant is not entitled to an appointment as individuals whose names merely appear on a list do not have a vested right to appointment. See *In re Crowley*, 193 N.J. Super. 197 (App. Div. 1984), *Schroder v. Kiss*, 74 N.J. Super. 229 (App. Div. 1962). The only interest that results from placement on an eligible list is that the candidate will be considered for an applicable position so long as the eligible list remains in force. See *Nunan v. Department of Personnel*, 244 N.J. Super. 494 (App. Div. 1990). With respect to the appellant's other comments, there is nothing improper with the appointing authority using e-mail as a form of communication. The Commission notes that there is no guarantee that regular mail will be received and e-mail is an efficient and common form of communication. Additionally, while the appellant has met his burden of proof, there is no evidence that the appointing authority made an error in this matter as the e-mail address that the appellant provided is the e-mail address that the appointing authority used. Therefore, if the appellant is ultimately appointed, he is not entitled to a retroactive appointment date.

ORDER

Therefore, it is ordered that this appeal be granted, and the appellant's name be restored to the list for Senior Postal Clerk (S0648U), Montclair State University, 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 15th DAY OF NOVEMBER, 2017



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