

B-26



STATE OF NEW JERSEY

FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION

In the Matter of John Gervato, Fire
Prevention Specialist (M0558R), City
of Hoboken

List Removal Appeal

CSC Docket No. 2015-295

ISSUED: APR - 2 2015 (WR)

John Gervato appeals the attached decision of the Division of Classification and Personnel Management (CPM)¹, which found that the appointing authority had presented a sufficient basis to remove the appellant's name from the Fire Prevention Specialist (M0558R), City of Hoboken, eligible list due to his failure to respond to the Notice of Certification.

The appellant, as the second-ranked non-veteran eligible on the eligible list was certified (OL131525) to the appointing authority on November 18, 2013. The notice date was November 25, 2014.² It is noted that the eligible list promulgated on November 14, 2013 and expires on November 13, 2016. In disposing of the certification, the appointing authority requested that the appellant's name be removed from the eligible list on the basis that he failed to respond to the Notice of Certification.³ The appellant appealed to CPM, which consequently denied his appeal. Agency records indicate that two lower-ranked eligibles on the subject certification were appointed, effective November 26, 2013.

¹ CPM is currently known as the Division of Agency Services.

² It is the practice of the Civil Service Commission that Notices are mailed out approximately one week before the "notice date" indicated on the Notice. Therefore, it is possible for an eligible to respond to the appointing authority before the notice date listed on the Notice.

³ The instructions on the back of the Notices state that an individual must 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 and failure to contact the appointing authority in writing would automatically result in the appointing authority's request for the removal of the individual's name from the list. Finally, the Notice states in bold letters, "[f]ailure to follow these instructions will result in the removal of your name from the list."

On appeal to the Civil Service Commission (Commission), the appellant states in a sworn, notarized statement that he replied to the Notice on November 26, 2013 and hand delivered the response in a closed envelope to Quentin Wiest, Business Administrator. The appellant further indicates that he submitted his response "while [he] was attending a meeting for another matter." In support of his appeal, the appellant submits a copy of his response to the Notice.

In response, the appointing authority contends that while it did receive a letter from the appellant on November 26, 2013, it was not his response to the Notice. Rather, the appointing authority states that the appellant submitted a letter of resignation from his position as a Plumbing Subcode Official. Finally, the appointing authority asserts since the appellant submitted his response one day after the Notice date, "it is highly unlikely that [he] would have even received his notice in the mail to be able to reply the very next day." In support, the appointing authority submits a copy of the appellant's letter of resignation.

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 or her name from an eligible list was in error.

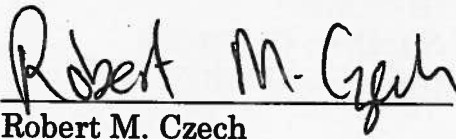
In the instant matter, the appointing authority requested the removal of the appellant's name from the subject eligible list on the basis that he failed to respond to the Notice of Certification. In this regard, there is a presumption that mail correctly addressed, stamped and mailed was received by the party to whom it was addressed. 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). However, although the appointing authority indicates it did not receive the appellant's response, the appellant submits a sworn, notarized statement indicating that he submitted it via hand delivery. Finally, while the appointing authority argues that it is "highly unlikely" that the appellant replied to the Notice because his alleged response was one day after the Notice date, as noted above, it is this Agency's practice to mail Notices approximately one week before the Notice date. Therefore, it is possible that the appellant received the Notice before the Notice date. Accordingly, the appellant has sustained his burden of proof and should be restored to the Fire Prevention Specialist (M0558R), City of Hoboken, eligible list.

ORDER

Therefore, it is ordered that this appeal be granted, and the appellant's name be reinstated to the eligible list for Fire Prevention Specialist (M0558R), City of Hoboken, 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 1st DAY OF APRIL, 2015**



**Robert M. Czech
Chairperson
Civil Service Commission**

**Inquiries
and
Correspondence**

**Henry Maurer
Director
Division of Appeals
and Regulatory Affairs
Civil Service Commission
Written Records Appeals Unit
P.O. Box 312
Trenton, New Jersey 08625-0312**

Attachment

**c: John Gervato
Michael Korman
Kenneth Connolly**



STATE OF NEW JERSEY
CIVIL SERVICE COMMISSION

DIVISION OF CLASSIFICATION AND PERSONNEL MANAGEMENT
P. O. Box 313
Trenton, New Jersey 08625-0313

Chris Christie
Governor
Kim Guadagno
Lt. Governor

Robert M. Czech
Chair/Chief Executive Officer

July 16, 2014

John P. Gervato

Title: FIRE PREVENTION SPECIALIST
Symbol: M0557R
Jurisdiction: HOBOKEN
Certification Number: OL131525
Certification Date: NOVEMBER 18, 2013

Initial Determination: Removal – No response to certification notice

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 has been sustained and your appeal is denied.

Please be advised that 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.

Please be advised that 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. 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 Director,



Cheryl Andrews

Human Resource Consultant 2

c: Quentin Wiest

