

B-25



STATE OF NEW JERSEY

In the Matter of Marco Navarro,
Sheriff's Officer (S9999R), Hudson
County

FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION

CSC Docket No. 2017-2383

List Removal Appeal

ISSUED: APR 11 2017 (CSM)

Marco Navarro appeals the appointing authority's request to remove his name from the eligible list for Sheriff's Officer (S9999R), Hudson County, on the basis of his failure to appear for pre-employment processing.

By way of background, the subject list promulgated on May 2, 2014 and expired on March 22, 2017. The appellant's name appeared on the subject eligible list, which was certified to the appointing authority on May 19, 2016. In disposing of the certification, the appointing authority requested that the appellant's name be removed because he failed to appear for pre-employment processing. Specifically, it indicated that on June 8, 2016, it mailed a letter via certified mail to the appellant in response to his letter of interest. The letter sent to the appellant indicated that he was given until June 15, 2016, 3:00 p.m., to call the Training Unit and set up an appointment to begin the pre-employment process. The postal authorities indicated that the certified letter sent by the appointing authority was left at his address of record on June 9, 2016 since there was no one at home at the time of the delivery. However, the certified mail receipt signed by the appellant indicated that he picked up the letter on June 16, 2016. Since the appellant did not call the Training Unit within the indicated time or after, and the letter advised the appellant that if he did not respond his name would be removed from the list, the appointing authority removed the appellant's name from the list due to his failure to complete pre-employment processing.

On appeal, the appellant states that a neighbor contacted him on June 16, 2016 and indicated that he found a letter in his mail box that should have been delivered to the appellant. Upon receipt of the letter, the appellant indicated that

he called the appointing authority to explain the situation but was advised that he was a day late from the deadline. The appellant also states that he filed a complaint with the local post office, but was advised by the manager that even if it mistakenly placed his mail in the wrong mailbox, it could not provide him a letter indicating that a mistake was made. In a subsequent submission, the appellant states that his complaint to the post office was filed with the regional post office and he has not yet received the results of the investigation. The appellant provides a case number and states that the "complaint filed by me can be confirmed by calling the 1-800 number with the case number provided." Further, he asserts that the only thing that the appointing authority can prove is that it sent him a properly addressed letter on June 8, 2016, that a notice was left by the postal authorities to his address of record on June 9, 2016, and that he picked up his certified mail at the post office on June 16, 2016. The appellant concedes that all of these dates are accurate, but it does not explain the gap between June 8, 2016 and June 16, 2016. As such, the appellant maintains that his explanation of the events and the fact that he filed a complaint with the postal authorities satisfies his burden of proof.

CONCLUSION

N.J.A.C. 4A:4-4.7(a)11, in conjunction with *N.J.A.C. 4A:4-6.1(a)9*, allows the Civil Service Commission to remove an eligible's name from an eligible list for other sufficient 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 or her name from an eligible list was in error.

In the instant matter, the appellant concedes that he did not respond to the appointing authority's letter to schedule pre-employment processing by June 15, 2016. However, he asserts that he was unable to respond because the appointing authority's certified letter was mistakenly placed in his neighbor's mail and it was not given to him until June 16, 2016. In support, the appellant first states that a postal manager advised him that it could not provide him a letter indicating that a mistake was made in the delivery of his mail and then that he has not received a response to his subsequent complaint to the regional post office. Although the appellant provides a case number for his postal complaint, he has not provided a determination from the postal authorities indicating that his properly addressed certified mail notification was mistakenly delivered to the wrong mail box. Rather, the record reflects that the postal authorities left a certified mail pick up notice at the appellant's address of record on June 9, 2016.

Without any evidence that the certified mail notice did not reach its intended destination, it is irrelevant as to what happened after June 9, 2016 since other than his mere allegations, there is no evidence that the certified mail notice was not properly delivered. In this regard, here 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). Thus, in the absence of a sworn statement or other evidence indicating that the notice was not received or that the appellant received the notice and promptly responded in writing, the appellant has not met his burden of proof in this matter. Further, even assuming, *arguendo*, that the appellant was to provide such evidence, there is no remedy that Commission could provide as the subject list has expired.

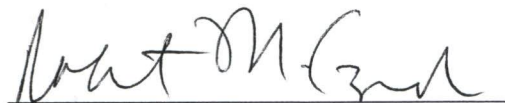
Therefore, the appointing authority has presented sufficient basis to remove the appellant's name from the Sheriff's Officer (S9999R), Hudson County eligible list.

ORDER

Therefore, it is ordered that this appeal be denied.

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 5TH DAY OF APRIL, 2017



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