



STATE OF NEW JERSEY

In the Matter of John D. West, Jr.  
Supervising Fire Prevention  
Specialist (PM1288U), Newark

FINAL ADMINISTRATIVE ACTION  
OF THE  
CIVIL SERVICE COMMISSION

CSC Docket No. 2017-3211

Administrative Appeal

ISSUED: AUG 18 2017 (JET)

John D. West, Jr. appeals his non-appointment from the Supervising Fire Prevention Specialist (PM1288U), Newark, eligible list.

The appellant, a veteran, took the promotional examination for Supervising Fire Prevention Specialist, achieved a passing score, and was ranked on the subsequent eligible list. The appellant's name was certified to the appointing authority on January 18, 2017. In disposing of the certification, the appointing authority did not consider the appellant's name from the eligible list as he responded late to the notice of certification.

On appeal to the Civil Service Commission (Commission), the appellant provides a sworn, notarized letter which indicates, among other things, that he did not receive the notice of certification. Further, the appellant maintains that he is a veteran and is still interested in the position. Finally, he indicates he did contact the appointing authority once he was informed about the certification.

In response, the appointing authority confirms that it received a late response from the appellant.

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:4-4.7(a)11 allows the removal of 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 or her name from an eligible list was in error.

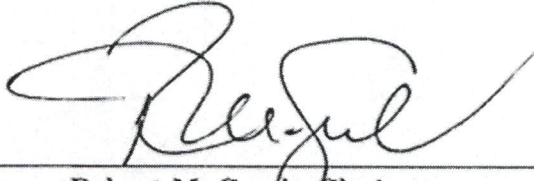
In the instant matter, the appointing authority did not consider the appellant's name from the subject eligible list on the basis of his late response to the notice of certification. The appellant provides a sworn, notarized letter stating that he did not receive the notice of certification. The Commission acknowledges that 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). It also recognizes that on occasion, such mail never reaches its intended destination. Generally, the Commission is willing to accept that if an individual is prepared to make a statement under oath, understanding all its implications and consequences, then it is proper to permit the presumption of receipt to be overcome. In actuality, there is no other alternative for an applicant. It is not possible to prove a negative, *i.e.*, that mail was not received. If the Commission did not accept a sworn statement averring that mail was not received, there would be no remedy at all for individuals who find themselves in this particular situation. In this case, the appellant submitted a sworn, notarized statement in Lieu of Oath, which may be submitted in lieu of an affidavit, oath or verification. See *R.* 1:4-4(b). Thus, the appointing authority appropriately did not request the appellant's removal from the list. However, the appellant is not entitled to any relief in this matter. In that regard, it was clearly permissible for the appointing authority to have not considered the appellant for the subject vacancy based on his late response. Further, as he was not the number one ranked veteran on the promotional list, his appointment was not mandated. See *N.J.A.C.* 4A:4-4.8(a)3ii. Moreover, the appellant's name remains on the list for future appointment consideration. Accordingly, his appeal is denied.

### 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 16<sup>th</sup> DAY OF AUGUST, 2017



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