

B-4



STATE OF NEW JERSEY

In the Matter of David P. Hart, Sr.
County Correction Sergeant
(PC2075R), Camden County

FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION

CSC Docket No. 2015-3224

List Removal Appeal

ISSUED: DEC 18 2015 (JET)

David P. Hart, Sr., represented by Stuart J. Alterman, Esq., appeals the removal of his name from the County Correction Sergeant (PC2075R), Camden County, eligible list.

The appellant took the promotional examination for County Correction Sergeant, achieved a passing score, and was ranked on the subsequent eligible list. The appellant's name was certified to the appointing authority on January 26, 2015. In disposing of the certification, the appointing authority requested the removal of the appellant's name from the eligible list on the basis of failure to respond to the notice of certification.

On appeal to the Civil Service Commission (Commission), the appellant maintains that he responded to the notice of certification. Specifically, the appellant asserts that he was interviewed for the position and he notified the appointing authority at that time of his continued interest in the position. As such, the appellant requests that his name be restored to the eligible list.

In support, the appellant provides a certification which indicates, among other things, that he wrote a letter to the appointing authority expressing his continued interest in the position. Moreover, the certification indicates that the appellant reiterated his interest in the position at the time he was interviewed for the position.

In response, the appointing authority asserts, among other things, that the appellant was removed from the list for failure to respond to the notice of certification. In support, it provides copies of 12 letters of interest it received as a result of the certification.

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.

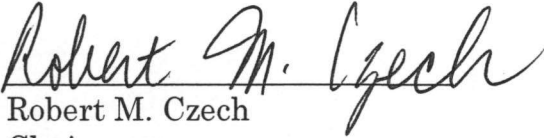
In the instant matter, the appointing authority requested the removal of the appellant's name from the subject eligible list on the basis that he failed to respond to the notice of certification. The appellant provides a certification stating that he wrote a letter to the appointing authority expressing his continued interest in the position and that he was interviewed by three people. 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 Certification in Lieu of Oath, which may be submitted in lieu of an affidavit, oath or verification. See *R. 1:4-4(b)*. Accordingly, the appellant has shown sufficient justification to restore his name to the list.

ORDER

Therefore, it is ordered that this appeal be granted and the appellant's name be restored to the list 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 16th DAY OF DECEMBER, 2015



Robert M. Czech
Chairperson
Civil Service Commission

Inquiries
and
Correspondence

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

c: David P. Hart
Stuart J. Alterman, Esq.
Frank E. Cirii
Joe Hill
Joseph Gambino

