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STATE OF NEW JERSEY

In the Matter of Alfonso Padilla,
Sheriff's Officer (S9999R), Hudson
County

FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION

CSC Docket No. 2017-2361

List Removal Appeal

ISSUED: APR 24 2017 (CSM)

Alfonso Padilla, represented by Jeffrey Berezny, Esq., requests additional relief regarding the removal of 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 address provided by 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 coded as "undeliverable as addressed." On July 1, 2016, the postal authorities indicated that the unclaimed, maximum hold time had expired and it returned the certified letter to the appointing authority as unclaimed. Since the letter was returned as undeliverable and the appellant did not call the Training Unit within the indicated time or after, the appointing authority removed the appellant's name from the list due to his failure to complete pre-employment processing. The appellant appealed the matter of his removal from the list and in February 2017 the Division of Agency Services administratively restored his name to the subject list for prospective employment opportunities only.

On appeal, the appellant states that although his name was restored to the list, he has already suffered prejudice because the appointing authority made appointments beyond his position on the certification. In this regard, the appellant notes that his name was listed in the 189th position on the certification, but eligibles who were lower ranked positions were permanently appointed. As such, he maintains that the sole remedy of restoring his name for future certifications was inadequate and he requests that the subject list be revived in order for his name to be certified at time of the next certification for Sheriff's Officer, Hudson County. The appellant explains that on March 13, 2017, he went to the Bayonne Post Office Headquarters and was informed that no certified mail correspondence or regular mail had been left there for him to pick up. Further, he states that on March 15, 2017, he provided the certified mail tracking number utilized on the appointing authority's letter to the postal authorities who indicated that there was a notice there for him to pick up a package. However, when he explained that he did not receive the notice, the postal representative advised him that "it could have possibly blown off the door" and that the normal practice of providing two follow-up notices did not occur as the post office was shorthanded that time of year.

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.

N.J.A.C. 4A:4-3.4(a)3 and (a)5 provide that an eligible list may be revived to correct an administrative error or for good cause.

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 he never received notice from the postal authorities that the appointing authority had sent him the certified. In support, the appellant acknowledges that the postal authorities advised him that there was a notice sent for him to pick up the mail but explains that it possibly could have "blown off the door." Indeed, the United States Post Office Tracking system confirms that the appellant's certified letter was received at the post office on June 7, 2016 and that it was properly addressed to his address of record. Although the appellant states that the postal authorities advised him that it did not send two follow-up notices as is its normal practice, this does not evidence an error on part of the appointing authority.

Additionally, while the appellant claims the equitable remedy provide by Agency Services prejudices him since lower ranked eligibles were appointed from

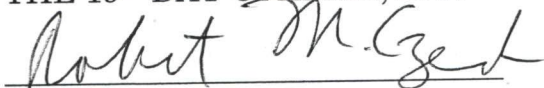
the list, this was clearly not the case as he was restored prior to the expiration of the list. Regardless, the circumstances of this case do not evidence either an administrative error on the part of the appointing authority or good cause on which to revive the now expired eligible list the next time the appointing authority requests a certification for Sheriff's Officer. Indeed, the appointing authority took all reasonable steps necessary to notify the appellant of the scheduled pre-employment processing during the life of the list and it would prejudice the appointing authority to provide the requested remedy when it committed no error. 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). Therefore, there is no basis on which to grant the appellant the additional remedies he seeks.

ORDER

Therefore, it is ordered that this request 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 19th DAY OF APRIL, 2017



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