

advised in the letter that should he wish to submit a report and recommendation from a New Jersey licensed physician, he may do so within 90 calendar days from the filing of the appeal to the Commission pursuant to *N.J.A.C.* 4A:4-6.5(e). This letter was *not* returned as undeliverable.

4. By letter, dated October 4, 2018, agency staff sent the appellant a letter indicating that although the appellant was provided with an opportunity, no substantive documentation had been received within the timeframe allowed to refute the findings of the pre-appointment medical examination. A copy of the documentation was provided to the appellant with the letter. In that regard, staff noted the time requirement set forth in *N.J.A.C.* 4A:4-6.5(e) in filing an independent medical report. Accordingly, since the appellant had not submitted such a report, he was advised that there was no basis to disturb the appointing authority's determination. Therefore, the appeal file was closed. It is noted that, with the October 4, 2018 letter, staff provided the appellant with the medical documentation that the appointing authority submitted to support his removal from the subject eligible list. The documentation included a Physician's Physical Examination Report, which noted that the appellant had an abnormal blood chemistry result and a positive urine drug screen. In regard to the latter, the appellant tested positive for marijuana.

Thereafter, the appellant retained counsel and in a letter, dated October 25, 2018, the appellant's attorney advised that the appellant never received notice that he should provide medical documentation in response to the removal request. It is noted that no sworn statement was submitted attesting to the foregoing. However, the appellant received the October 4, 2018 letter closing his appeal. Therefore, the appellant requested that his case be re-opened so that he may have an opportunity to provide the medical documentation and his appeal can be fully considered. In a supplemental letter, dated November 2, 2018, the appellant's attorney requested a copy of the medical records "so that a medical review and evaluation can be done." The appellant's attorney was advised that a copy of the medical records was sent to the appellant with the October 4, 2018 letter. Thereafter, no further information was received by the Commission.

CONCLUSION

N.J.A.C. 4A:4-6.3(b) states that the appointing authority shall have the burden of proof in medical or psychological disqualification appeals. Additionally, in order to facilitate the timely processing of these types of appeals, the Commission

amended *N.J.A.C.* 4A:4-6.5(e), effective June 21, 2017, to require that the appellant, if he or she chooses to do so, to submit a report from a physician or psychologist/psychiatrist to rebut the appointing authority's report within 90 calendar days of filing of the appeal. *See* 49 *N.J.R.* 492. These timeframes were designed to facilitate the opportunity for the parties to establish a contemporaneous record of an eligible's medical or psychological condition at the time of appointment for the Commission to consider. Nonetheless, *N.J.A.C.* 4A:4-6.5(f) indicates that the Commission may extend the time period for filing the required reports for good cause. Furthermore, *N.J.A.C.* 4A:4-6.5(g) indicates that the Commission shall either conduct a written record review of the appeal or submit medical disqualification appeals to the Medical Examiners Panel for its report and recommendation. As such, the adjudication of medical appeals is a lengthy process. Specifically, the process consists of compiling the record which allows the appellant up to 90 days to submit an independent medical evaluation as noted above; scheduling a meeting with the Medical Examiners Panel; awaiting the Medical Examiners Panel's report to be issued; permitting parties to submit exceptions and cross exceptions to the report and recommendation within 10 and five days of receipt, respectively; and issuing the Commission's final determination. If the Commission determines that a candidate was improperly rejected for the position, the remedy provided is a mandated appointment to the position with a retroactive date of appointment for seniority and salary step purposes. Therefore, in order to ensure a fair process to all parties, it is imperative that the timeframes established throughout the process are strictly enforced.

In the instant matter, the appellant through his attorney maintains that he did not receive notice prior to the October 4, 2018 letter closing his appeal. Presumably, the appellant did not receive the June 14, 2018 letter sent to the parties which acknowledged the appellant's appeal and provided information regarding the processing of such an appeal. However, that letter was not returned as undeliverable. Moreover, the appellant did not submit a sworn statement that he did not receive the letter. In that 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). The appellant has not rebutted this presumption. Nonetheless, while it is customary for this agency to send notice to the parties of a pending medical disqualification appeal, Civil Services rules require only that the appellant be provided with the opportunity to submit a report from a physician of his or her own choosing. *See N.J.A.C.* 4A:4-6.5(c) and *N.J.A.C.* 4A:4-6.5(c). The appellant had sufficient opportunity to submit a report throughout the pendency of the appeal. It is incumbent upon an appellant to pursue his or her appeal and comply with the applicable timelines. Lack of knowledge of Civil Service law or rules is not excusable. In that regard, failure to recognize or to explore the legal basis for an

appeal, without more, does not constitute good cause to extend or relax the time for appeal under the Commission's rules. See *Savage v. Old Bridge-Sayreville Med. Group*, 134 N.J. 241, 248 (1993) (Ignorance of the specific basis for legal liability did not operate to extend time to initiate legal action). Moreover, as noted above, a contemporaneous record of an eligible's medical condition at the time of appointment should be presented to the Commission for consideration. The appellant was provided with the pre-employment medical documentation, but he submits no information whatsoever to challenge his abnormal blood chemistry results. Therefore, under these circumstances, the appellant has failed to show good cause to justify relaxing the requirements of *N.J.A.C.* 4A:4-6.5(e). Consequently, the appellant has not submitted substantive documentation within the timeframe allowed to refute the findings of the pre-employment medical examination which found that he was not medically suited for a Police Officer position.

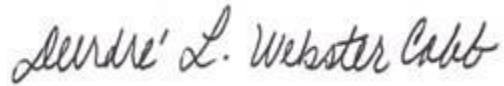
Lastly, it is noted that the record indicates that the appellant tested positive for marijuana. Pre-appointment drug tests are not considered medical examinations under the Americans with Disabilities Act, 42 *U.S.C.A.* sec. 12114(d)1. The ADA expressly requires that a job offer be made before any individual is required to submit to a medical or psychological examination. See 42 *U.S.C.A.* sec. 12112(d)(3). In this case, the appellant submitted to a medical examination in addition to having a positive drug test which cannot be ignored. In that regard, *N.J.A.C.* 4A:4-4.7(a)1, in conjunction with *N.J.A.C.* 4A:4-6.1(a)3, states that an eligible who is physically unfit to effectively perform the duties of the position may be removed from the eligible list. *N.J.A.C.* 4A:4-4.7(a)1, in conjunction with *N.J.A.C.* 4A:4-6.1(a)9, provides that an eligible may be removed from an eligible list for other sufficient reasons as determined by the Commission. The appellant seeks a Police Officer position. As set forth in the job specification, a Police Officer patrols a designated area to provide assistance and protection for persons, to safeguard property, to assure observance of the law, and to apprehend law-breakers. An un rebutted positive drug screen presents an impediment to the appellant's physical ability to perform these law enforcement duties. Accordingly, given the foregoing, there is not a basis to disturb the appellant's removal from the Police Officer (S9999U), City of Newark, 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 12TH DAY OF JUNE, 2019



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