



In the Matter of Patrick Giles,
Motor Vehicle Commission

CSC Docket Nos. 2018-835

: **STATE OF NEW JERSEY**
:
:
: **FINAL ADMINISTRATIVE**
: **ACTION**
: **OF THE**
: **CIVIL SERVICE COMMISSION**
:
:
: **Administrative Appeal**

ISSUED: FEBRUARY 14, 2020 (BW)

Patrick Giles, a Senior Repairer with Motor Vehicle Commission, represented by Timothy Rudolph, International Federation of Professional and Technical Engineers, Local 195, requests that the Civil Service Commission (Commission) reinstate the appeal of his 45 working day suspension, which was dismissed on the basis of the appellant’s failure to appear at his October 31, 2017 settlement conference.

The appellant timely appealed his 45 working day suspensions to the Commission which transmitted the matter to the Office of Administrative Law (OAL) as a contested case. The OAL scheduled the matter for a settlement conference on October 31, 2017, and sent a notice to this effect to the appellant at his Trenton, New Jersey address on October 17, 2017. On the scheduled date, the appellant did not appear. Based on this absence, the OAL issued a “Failure to Appear” notice which indicated that the appellant had not signed in at OAL or otherwise telephoned to request an adjournment. There is no indication in the record that the Failure to Appear notice was returned as undeliverable by the postal authorities. On November 1, 2017, the matter was returned to the Commission for a final decision.

In support of the appellant’s request to reinstate his appeal, he states that he never received notice of the October 31, 2017 settlement conference. It is noted that the appellant’s address on his appeal submissions is the same as that used by the

OAL to send the notice of the settlement conference. It is also noted that the appellant received the OAL's "Failure to Appear" notice which was sent to the same address.

On November 17, 2017, staff of the Division of Appeals and Regulatory Affairs advised the appellant by letter of the need to submit an affidavit or notarized statement indicating that he never received the notices of the settlement conference. This request was sent to the appellant at the same address. To date, no such documentation has been forthcoming from the appellant, and the letter requesting the affidavit/notarized statement has not been returned as undeliverable by the postal service.

Although provided the opportunity to respond to the appellant's statement on appeal, the appointing authority has not done so.

CONCLUSION

In this matter, the appellant has not sustained his burden of proof. The OAL indicated that it sent the notice to the appellant at his last known address. Moreover, 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). In this regard, the Commission 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 individual. 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. However, in this instance, the Commission notes that the appellant's address did not change from the time the OAL sent notice of the settlement conference to the time the appellant filed his request to have his appeal reinstated. Moreover, the appellant has not responded to the Commission's request to submit a sworn statement averring that he did not receive the notice. Accordingly, given that the appellant has not presented the Commission with any substantive evidence to excuse his absence, his appeal is dismissed based on his failure to appear at the October 31, 2017 settlement conference.

ORDER

Therefore, it is ordered that Patrick Giles's request to reinstate his appeal be denied and his appeal be dismissed.

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 FEBRUARY, 2020



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