



**STATE OF NEW JERSEY**

**FINAL ADMINISTRATIVE ACTION  
OF THE  
CIVIL SERVICE COMMISSION**

In the Matter of Steve Zatko, Jr., Fire  
Captain (PM1111S), Elizabeth

Administrative Appeal

CSC Docket No. 2019-2558

**ISSUED: July 12, 2019** (SLD)

Steve Zatko, Jr., represented by Patrick P. Toscano, Jr., Esq., appeals his removal from the list for Fire Captain (PM1111S), Elizabeth Fire Department eligible list due to his failure to respond to the certification.

The subject examination was announced with a closing date of August 21, 2014. The resultant eligible list of 57 names, including the appellant who was the ninth ranked eligible, promulgated on January 7, 2016 and expired on January 6, 2019. In disposing of the December 4, 2018 certification, the appointing authority removed the appellant due to his failure to respond to the December 11, 2018 certification notice.

On appeal to the Civil Service Commission (Commission), the appellant argues that his removal was “illegal and unsupported by the attendant circumstances.” Specifically, he asserts that he responded by certified mail on December 11, 2018 which was “received/acknowledged by that office on December 12, 2018.” In support, he submits a copy of the certified mail receipt, postmarked December 12, 2018.

In response, the appointing authority, represented by Raymond T. Bolanowski, First Assistant City Attorney, asserts that it did not receive any response from the appellant. It also notes that the United States Postal Service (USPS) indicates that the item associated with the certified mail receipt provided by the appellant on appeal was returned to the original sender. In support, it submits a print out from the USPS tracking system which indicates that it attempted to

deliver the letter on December 15, 2018, but had “no access to delivery location,” that it returned the letter as unclaimed on January 2, 2019 and it was delivered to the original sender on January 14, 2019. Therefore, it asserts that it acted in accordance with Civil Service law and rules in removing the appellant from the subject eligible list.

In response, the appellant asserts that “it is now clearer than ever” that he was “not at fault in any way” as he believed that his response was received. Therefore, he contends that it would be “wholly and completely unfair and prejudicial to remove his name” from the subject eligible list.

### 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:4-6.3(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 the appellant’s name from an eligible list was in error. 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 the instant matter, the record indicates that the appellant sent his response to the appointing authority via USPS certified mail. However, the USPS tracking system indicates that it was unable to deliver the letter as it did not have access to the address and it returned it to the original sender. Since the appellant has established that he mailed a letter to the appointing authority on December 12, 2018, he has supported his burden of proof in this matter. However, individuals whose names merely appear on an eligible list do not have a vested right to appointment. *See In re Crowley*, 193 *N.J. Super.* 197 (App. Div. 1984), *Schroder v. Kiss*, 74 *N.J. Super.* 229 (App. Div. 1962). Rather, the only interest that results from placement on an eligible list is that the candidate will be considered for an applicable position so long as the eligible list remains in force. *See Nunan v. Department of Personnel*, 244 *N.J. Super.* 494 (App. Div. 1990). Thus, while the Civil Service Commission will grant the appellant’s appeal, it is appropriate that his name be restored to the subject eligible list, for prospective employment opportunities only.

### ORDER

Therefore, it is ordered that this appeal be granted and the list for Fire Captain (PM1111S), Elizabeth be revived in order for the appellant to be considered for appointment at the time of the next certification 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 9TH DAY OF JULY, 2019



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