

## STATE OF NEW JERSEY

In the Matter of Oliver Hernandez,
Fire Fighter (M1863W), Paterson

: CIVIL SERVICE CO

CSC Docket No. 2020-441

## FINAL ADMINISTRATIVE ACTION OF THE CIVIL SERVICE COMMISSION

**Examination Appeal** 

**ISSUED:** September 12, 2019 (RE)

Oliver Hernandez appeals the removal of his name from the Fire Fighter (M1863W), Paterson eligible list due to his failure to appear for the Physical Performance Test (PPT).

By way of background, the appellant's name appeared on the Fire Fighter (M1863W) eligible list and was certified to Paterson (OL190437) on April 16, 2019. All candidates on the certification were contacted via email and scheduled to take the PPT. The appellant was sent an email on May 30, 2019 stating that he had been scheduled to take the PPT on June 17, 2019, and was given the location of the exam, and a medical clearance form. He requested a make-up examination for military reasons and was approved for the next PPT test administration. He was sent a second email on July 8, 2019 stating that he had been scheduled to take the PPT on July 23, 2019 and was again given the location of the exam, and a medical clearance form. He did not appear for the PPT, and his name was removed from all Fire Fighter lists on which his name appeared.

In an appeal postmarked August 5, 2019, the appellant explains that after he received the July 3, 2019 email, he went on vacation from July 10 to 17, 2019. While he was gone, Paterson sent him a letter which he opened on his return. This letter indicated a scheduled meeting for July 25, 2019 and requested that he bring documents. He states that the stress of collecting documents had him misremember the date of the test administration for the PPT, and he thought it would be on July 27, 2019. After his meeting in Paterson, the appellant printed out his medical clearance form, and noticed the examination date was July 23, 2019. He requests to

be able to take a make-up examination as he is fit and ready for the duties of the position.

## CONCLUSION

*N.J.A.C.* 4A:4-2.9(a) states that make-up examinations for open competitive and general promotional testing, except for professional level engineering promotional examinations and public safety promotional examinations, may be authorized for the following reasons:

- 1. Error by the Civil Service Commission or Appointing Authority
- 2. Serious illness or disability of the candidate on the test date, provided the candidate submits a doctor's certificate specifying that the candidate was not able to take the test on that day for medical reasons;
- 3. Documented serious illness or death in the candidate's immediate family;
- 4. Natural disaster;
- 5. Prior vacation or travel plans outside of New Jersey or any contiguous state, which cannot be reasonably changed, as evidenced by a sworn statement and relevant documentation;
- 6. When required for certain persons returning from military service;
- 7. Other valid reasons.

*N.J.A.C.* 4A:4-2.9(e) states, in pertinent part, that a candidate must request, in writing, a make-up examination, within five days after the examination date due to one of the valid reasons set forth in (a).

In the instant matter, agency records confirm that an email was sent on July 8, 2019 to the email address provided by the appellant on his application, and the appellant clearly received this email. According to the New Jersey Fire Fighter Examination (NJFFE) Post-Written Test Timeline and Candidate Responsibilities document that was given to all candidates, "If you fail the PPT, do not show up for your scheduled PPT date and time, or do not provide a properly completed and signed medical clearance form, you will be removed from ALL firefighter lists." See N.J.A.C. 4A:4-2.15(b)2. This form is also posted on the Commission's website. Page 4 of the Fire Fighter Examination Administration Guide, which is available on the Commission's website, provides the make-up criteria and indicates that make-up requests, with supporting documentation, must be submitted in writing within five days of receipt of the test notification. See N.J.A.C. 4A:4-2.9(e). In this case, the test notification was July 8, 2019. The appellant contacted the Division of Administrative Services for a second make-up examination by email on July 30, 2019, seven days after the test administration, and filed an appeal postmarked August 5, 2019. As such, this appeal is untimely. Nevertheless, it was each candidate's responsibility to appear for the examination on their scheduled date, and misremembering the date is not a valid reason for a makeup. The appellant has not satisfied his burden of proof in this matter and sufficient cause exists to remove his name from all of the Fire Fighter lists on which his name appears.

## **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 10<sup>th</sup> DAY OF SEPTEMBER, 2019

Derdre' L. Webster Cabb

Deirdré L. Webster Cobb

Chairperson

Civil Service Commission

Inquiries Christopher S. Myers

and Director

Correspondence Division of Appeals and Regulatory Affairs

Civil Service Commission Written Record Appeals Unit

P. O. Box 312

Trenton, New Jersey 08625-0312

c: Oliver Hernandez Kelly Glenn