



**STATE OF NEW JERSEY**

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

In the Matter of Harry Tisch,  
Economic Development  
Representative 1 (C0964W), Mercer  
County

List Removal Appeal

CSC Docket No. 2020-1347

**ISSUED: JUNE 19, 2020 (SLD)**

Harry Tisch appeals the Mercer County’s (Mercer) request to remove his name from the eligible list for Economic Development Representative 1 (C0964W), on the basis that he failed to respond to the certification notice.

The appellant, a disabled veteran, took and passed the open competitive examination for Economic Development Representative 1 (C0964W), which had a closing date of September 4, 2018. The resulting eligible list of four names promulgated on August 1, 2019 and expires on July 31, 2022. The appellant’s name was certified to the appointing authority on August 5, 2019. In disposing of the certification, the appointing authority requested the removal of the appellant’s name on the basis that he failed to respond to the certification notice dated August 12, 2019. Agency records indicate that the appointing authority also requested the removal of the third listed eligible and indicated that as the certification was incomplete, no appointment would be made. The appointing authority noted that the provisional employee, whose name did not appear on the certification, remained in the title provisionally. Agency records indicate that a second certification (OL200221), containing the names of the remaining two eligibles was certified of February 24, 2020 as a “Priority Provisional” certification.<sup>1</sup> However, this certification has not yet been disposed of and agency records indicate that the provisional employee is still serving in the subject title.

<sup>1</sup> A “Priority Provisional” certification is issued when an individual who is not an incomplete eligible list is provisionally appointed to the subject position and an individual remaining on an incomplete list indicates that they are willing to accept a provisional appointment.

On appeal to the Civil Service Commission (Commission), the appellant submits a sworn, notarized statement indicating that he received the subject certification notice on August 12, 2019, and that he responded.

The appointing authority, despite being provided the opportunity, did not present any arguments or documentation for the Commission's review.

## 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 her 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, the appellant has rebutted that presumption in submitting her sworn, notarized statement. *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 appointing authority requested the removal of the appellant's name from the eligible list for Economic Development Representative 1 (C0964W) on the basis of his failure to respond to the August 5, 2019 certification. However, the appellant has submitted a sworn, notarized statement, attesting to the fact that he did receive the certification notice and that he responded. As such, the appellant has supported his burden of proof in this matter and it is appropriate that his name be restored to the subject eligible list.

Moreover, since the record indicates that a provisional employee is still serving in the title and restoring the appellant's name will result in a complete list, the Civil Service Commission (Commission) orders the Priority Provisional certification be cancelled. Further, the Commission orders that a new certification be issued. As the appellant is a disabled veteran, absent any disqualification factors under *N.J.A.C.* 4A:4-4.7, his appointment would be mandated from the new certification pursuant to *N.J.S.A.* 11A:4-8 and *N.J.S.A.* 11A:5-6.<sup>2</sup>

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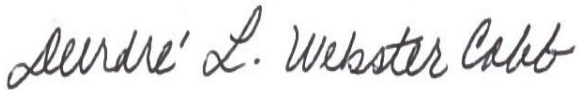
<sup>2</sup> However, the Commission notes that *N.J.A.C.* 4A:4-4.2(c)2i provides that when fewer than three interested eligibles are certified and no provisional currently serving in the title is listed on the certification, the appointing authority may either: make a permanent appointment; make a provisional appointment from the list; make a provisional appointment of another qualified person if no eligible on the list is interested; or vacate the position/title. Thus, should the new certification be rendered incomplete, the appellant's appointment would not be mandated.

**ORDER**

Therefore, it is ordered that this appeal be granted, and the appellant's name be restored to the subject eligible list. Additionally, it is ordered that the Priority Provisional certification be cancelled, and a new certification be issued.

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  
17<sup>TH</sup> DAY OF JUNE, 2020



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