



STATE OF NEW JERSEY

In the Matter of John Shaw, Fire
Lieutenant (PM1067V), Township of
Belleville

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

CSC Docket No. 2022-135

Request for Reconsideration

**ISSUED: DECEMBER 20, 2021
(SLD)**

The Township of Belleville (Belleville), represented by David L. Epstein, Esq., requests reconsideration of the final administrative decision, rendered on June 2, 2021, which granted John Shaw’s appeal of his removal from the eligible list for Fire Lieutenant (PM1067V), Belleville, on the basis that he failed to respond to a certification notice.

The history of this matter can be found in, *In the Matter of John Shaw, Fire Lieutenant (PM1067V), Township of Belleville* (CSC, decided June 2, 2021). In that matter, Belleville had requested that Shaw’s name be removed from the subject eligible list on the basis that he failed to respond to the certification notice for the January 7, 2021 (PL210018) certification. On appeal, Shaw maintained that he had responded to the certification in January 2021, and prior to him being recalled to active military duty on February 26, 2021. In support, he submitted a sworn, notarized statement indicating the foregoing. Shaw also asserted that on February 24, 2021, he received a letter, while on duty, from the Chief that he was prohibited from serving as an “acting” lieutenant while his file was being reviewed due to a promotional certification. He maintained that on February 25, 2021, he received a phone call from the Deputy Chief asking if he had received anything in the mail from the Civil Service Commission (Commission) or Belleville. Shaw explained that he understood the question to refer to the letter he received at work the day before, and so he responded that he had not corresponded with either. In response, Belleville argued that Shaw’s assertions on appeal were inconsistent since during the phone call Shaw specifically stated that he did not receive the notice of certification. In granting Shaw’s appeal, the Commission noted that as Shaw had submitted a sworn, notarized statement that he had responded, and Belleville failed to submit any evidence in support of its assertions.

In support of its request for reconsideration, Belleville argues that the Commission overlooked evidence and that its decision was in clear error. Specifically, it argues that the Commission placed too much emphasis on Shaw's "sworn" statement, and disregarded "credibility" issues within Shaw's "story." Moreover, it contends that other than Shaw's "word" he provided no "proof" that he timely responded to the certification notice.

Belleville claims that it did not realize that it needed to submit a sworn statement in support of its arguments, as the letter received from the Division of Appeals and Regulatory Affairs (DARA) indicated that Shaw could submit a sworn statement, and that Belleville could submit "arguments" in response. Moreover, Belleville noted in its response that it had an audio recording of the telephone conversation, yet it was not advised to submit the recording. In this matter, it submits a copy of a transcript of the February 25, 2021, phone call in which the Deputy Chief asked Shaw if he had received a certification notice within the "past 30 days." Shaw indicates he had not, and requests if the notice could be emailed to him as he has had numerous problems with his mail. Shaw then notified the Deputy Chief that he had just received notice that he was being involuntarily reactivated to military duty and was waiting for the formal notice. Belleville claims that the transcript of the telephone call clearly establishes that Shaw stated he did not receive the certification notice and thus his sworn statement could not have been true.

Additionally, it maintains that Shaw originally stated to it that he never received the certification, yet in his sworn statement he "purportedly" remembered the conversation in which he made that claim, and "attempted" to explain away the discrepancy. Belleville asserts that Shaw's "lack of candor and honesty" should serve as an independent basis to reject his claims. In this regard, Belleville notes that Shaw failed to provide any "objective proof" of his January 10, 2021 response, and offered his "speculation" that there was a problem with the mail prior to even having received its response to his appeal. Belleville also reiterates that it has never received his response. Moreover, it maintains that Shaw's statement should not have been accepted as "proof of mailing" as it did not indicate when, where or how his response was mailed, and thus, Belleville's statement that it did not receive the notice was more than sufficient to rebut Shaw's assertion to the contrary. *See SSI Medical Services, Inc. v. State Department of Human Services*, 146 N.J. 614 (1996).

In response, Shaw reiterates that he misunderstood what the Deputy Chief was referencing in the telephone conversation. Additionally, he maintains that in the seven weeks between his response to the notice, and the February 25, 2021 telephone call, two people on the certification had already been appointed and there was no reason for him to believe that he would be contacted with regard to that certification or that his response was never received. In this regard, he notes that at no point before that phone call had he had any conversation with Belleville regarding

the January 7, 2021 certification. Moreover, the only conversation he had had related to his “acting” Lieutenant appointment was the day before the telephone conversation, which also led to his misunderstanding of the telephone conversation.

CONCLUSION

N.J.A.C. 4A:2-1.6(b) sets forth the standards by which a prior decision may be reconsidered. This rule provides that a party must show that a clear material error has occurred or present new evidence or additional information not presented at the original proceeding which would change the outcome of the case and the reasons that such evidence was not presented at the original proceeding. A review of the record in the instant matter reveals that reconsideration is not justified.

In the instant matter, Belleville reiterates its previous arguments that Shaw told the Deputy Chief in a February 25, 2021, telephone conversation that he had not received the certification notice, and therefore his sworn statement to the Commission was not truthful. In support, it now submits a transcript of the February 25, 2021 telephone call. However, the transcript of the telephone conversation does not disprove that Shaw misunderstood the conversation. In this regard, it must be noted that the Deputy Chief never mentions the date of the certification notice or the date of the certification. Rather, the Deputy Chief clarifies his question by asking if Shaw had received a certification notice within the “past 30 days.” However, according to the record, the telephone conversation was on February 25, 2021, yet the certification notices were dated January 7, 2021, much more than 30 days prior to the date of the telephone conversation. Furthermore, Shaw explains that appointments had already been made from the certification at issue, and he had just spoken with the Deputy Chief regarding the termination of his “acting” position the day before, yet, the February 25, 2021, telephone conversation was the first time Belleville contacted him regarding the certification. Although Belleville argues that Shaw’s “sworn statement” did not contain sufficient information and therefore, the Commission should not have accepted it as proof of mailing, the Commission does not agree. The Commission has consistently accepted a sworn statement as proof of mailing, where, as here, there is no other proof that could be provided. In this regard, there is no Civil Service rule or law that requires eligibles to keep a copy of their response, or requires the response to be mailed with a return receipt or by certified mail. Thus, many times when determining whether a response has been mailed or a certification notice has been received, a sworn statement is the only evidence or proof that an eligible can provide. In the prior matter, Shaw was the only party to provide a sworn statement. Although Belleville claims it did not realize that it could submit a sworn statement, it maintains that its mere statement that the telephone conversation was recorded, and its claims concerning that telephone conversation, should be sufficient to support Shaw’s removal. However, as previously noted, the Commission did not doubt the conversation took place or that Shaw had “denied” receiving the certification notice. Rather, the Commission accepted Shaw’s assertion

that he misunderstood the conversation. Further, as noted above, the transcript of the telephone conversation does not establish that the Deputy Chief was clear that he was referring to the January 7, 2021 certification notice. On the contrary, the Deputy Chief clarifies his question as to whether Shaw had received “a certification notice” within the “past 30 days.” The transcript also reveals that Shaw requested a copy of the notice be emailed to him, as he had problems with his mail. Therefore, based on the foregoing, Belleville has not supported its burden of proof in this matter, and its request for reconsideration is denied.

ORDER

Therefore, it is ordered that this request 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 15TH DAY OF DECEMBER, 2021

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