



STATE OF NEW JERSEY

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

In the Matter of Thomas Jerakis,
Claims Adjudicator Supervisor,
Disability Determinations
(PS0927N), Department of Labor and
Workforce Development

Examination Appeal

CSC Docket No. 2021-1476

ISSUED: JUNE 7, 2021 (SLK)

Thomas Jerakis requests to take a make-up examination for Claims Adjudicator Supervisor, Disability Determinations (PS0927N), Department of Labor and Workforce Development.

By way of background, 55 employees applied for the subject examination and 54 were admitted, including Jerakis. On or around February 18, 2021,¹ Jerakis was sent notice that the test was to be administered on March 16, 2021. Further, on March 16, 2021, 49 candidates took the test, which resulted in 45 eligibles. The list expires on April 28, 2023.

On March 17, 2021, Jerakis emailed this agency to request a make-up examination. He indicated that he had been functioning at work in a diminished capacity due to bilateral ear infections. Jerakis presents that although his department emailed him on March 10, 2021 that this agency was scheduling test examination dates, the notice also indicated that further email notification would follow so he expected email confirmation through his work email. He also stated that he would expect written notification for such a high-level promotional examination. Jerakis noted that the notice that he received from this agency for prior examinations was through regular mail and he asserted that the notice he received for the subject

¹ Agency records indicate that the notice was sent on February 18, 2021. Jerakis' appeal indicates that the e-mail notice was dated March 9, 2021.

examination was poorly planned considering the current COVID-19 pandemic. He stated that on the date of his request for a make-up, he had discovered from a colleague that notice for the subject test administration was not sent by regular mail and it was only then he discovered this agency's March 9, 2021 email that was sent to his personal email. Jerakis explains that although he has been using the same personal email address for over 24 years, he indicates that it is no longer the best means for communication from this agency as he receives thousands of emails a month and 97 percent are junk. He noted that he is now closely monitoring his personal email.

In a March 18, 2021 response, this agency denied his request as it did not meet one of the specified criteria for a make-up-examination under *N.J.A.C. 4A:4-2.9* and he failed to inform this agency that he had a change of email address that he wanted to use to communicate with this agency.

On appeal, Jerakis argues that his request should be granted as an "other valid reason" under *N.J.A.C. 4A:4-2.9(a)7*. He presents that the sole notice from this agency regarding the test administration date was a March 9, 2021 email. He believes that the subject examination was among the first promotional examinations where the notice for the test administration date by this agency was issued solely by email. He notes that under *N.J.A.C. 4A:4-2.8(b)* candidates are to be notified in an appropriate manner of the time and place of the examination; however, he asserts that "appropriate manner" is too amorphous of a term to qualify email notification as acceptable at this time and "appropriate manner" is not defined under Civil Service law and rules. Jerakis emphasizes that he is unaware of any other time where this agency used email as its sole means of communication of a test administration date for a promotional examination as said notice had always been accompanied by regular mail. He presents that he was required to submit his first and second-level requests for a make-up examination by regular mail and yet this agency is not required to notify candidates of the test administration date for a promotional examination using the same standard. Therefore, Jerakis argues that this agency's communication requirements are not compliant with the principles of due process.

CONCLUSION

N.J.A.C. 4A:4-2.8(b) provides that candidates will be notified in an appropriate manner of the time and place of the examination, and of any postponement or cancellation.

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

1. Error by Civil Service Commission or the 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 services (see *N.J.A.C.* 4A:4-4.6A); and
7. Other valid reasons.

N.J.A.C. 4A:4-6.3(b) provides, in pertinent part, that the appellant shall have the burden of proof in examination appeals.

In this matter, Jerakis acknowledges that he received an email notification advising of him of the test administration date prior to that date, but requests to take a make-up examination because he did not discover the email notice until after the test was administered. He complains that this agency had previously sent such notices by regular mail and he did not discover the notice in question because his personal email is inundated with junk mail. Further, Jerakis presents that his employer advised him that he would receive a notice regarding the test administration date through his work email, but that notification was never sent. He argues that only sending him email notice to his personal email was not notice in an "appropriate manner" as required under *N.J.A.C.* 4A:4-2.8(b) and he believes that the lack of regular mail notice was particularly inappropriate due to the current COVID-19 pandemic. However, the Civil Service Commission (Commission) does not find Jerakis' arguments persuasive.

Initially, it is noted that *N.J.A.C.* 4A:4-2.8(b) does not specifically require that the notice in question be by regular mail. Instead, it only requires such notice to be in an "appropriate manner." While the definition of an "appropriate manner" is not defined, the mere fact that it is not defined and does not specifically require that the subject notice be sent by regular mail, implies that the notice could be "appropriate" by a method that is not regular mail. Further, it is noted that on this agency's website's "job application – tips and techniques," it states, "Please provide accurate information regarding your email address and mailing address. The NJCSC may send you information to one or both of these addresses." As such, the word "one" indicates that this agency might only communicate with candidates by email. Regardless, as part of the application process, Jerakis was asked to provide an email address and he did provide his personal email address. As such, it was an "appropriate manner" for this agency to have communicated with him using an email

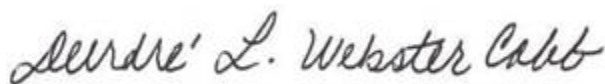
address that he provided as part of the application process. Moreover, due to current COVID-19 pandemic, this agency's staff was largely working remotely, and the use of electronic only communication has increased and not decreased due to these times. Additionally, the use of electronic only communication is consistent with the broader societal trends that were started well before the current pandemic. As such, the Commission finds that the use of email only communication to inform the candidates of the subject examination test administration date was an "appropriate manner" and it was Jerakis' responsibility to either closely monitor his personal email, which he provided and he indicates that he is now doing, or he should have provided this agency a different email address, such as his work email address. Concerning Jerakis' comments that he was expecting an email communication to his work email based on his department's email, this agency has no control over his department's communications to him. Regarding his statement that he would expect the subject notice to be by regular mail because it was such a high-level promotional examination, this agency's decision to communicate the subject notice via email only was not based on the level of the examination, but based on it being an "appropriate manner" given the practice of communication in modern times. Accordingly, the Commission does not find that Jerakis has provided an "other valid reason," and his request 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 2ND DAY OF JUNE, 2021



Deirdre L. Webster Cobb
Chairperson
Civil Service Commission

Inquiries
and
Correspondence

Allison Chris Myers
Director
Division of Appeals
and Regulatory Affairs
Civil Service Commission
Written Record Appeals Unit
P.O. Box 312
Trenton, New Jersey 08625-0312

c: Thomas Jerakis
Tennille McCoy
Division of Administrative Services
Records Center