



**STATE OF NEW JERSEY**

In the Matter of Rodney Williams,  
Battalion Fire Chief (PM2163W),  
Plainfield

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

CSC Docket No. 2023-795

List Removal Appeal

**ISSUED: March 15, 2023 (HS)**

Rodney Williams appeals the removal of his name from the eligible list for Battalion Fire Chief (PM2163W), Plainfield, on the basis that he failed to respond to the certification notice.

The appellant, a non-veteran, took and passed the promotional examination for Battalion Fire Chief (PM2163W), which had a closing date of September 30, 2018. The resulting eligible list promulgated on October 3, 2019 and expired on October 2, 2022. A certification consisting solely of the appellant’s name was issued to the appointing authority on April 11, 2022 (PL220465) with a notice date of April 19, 2022. The certification disposition due date was July 11, 2022, but the appointing authority did not return the certification until September 28, 2022. 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. Certification notices instruct individuals to write to the appointing authority within five business days of the date of the notice to let it know whether or not the individual is interested in the position.

On appeal to the Civil Service Commission (Commission), the appellant maintains that his name was removed from the eligible list in error as he in fact responded to the certification notice in a timely fashion. The appellant argues that the appointing authority did not dispose of the certification per Civil Service rules, including *N.J.A.C. 4A:4-4.2(c)2i*, and requests the opportunity to fill the position and receive all back pay and pension credits. In support, the appellant provides a copy of

his April 18, 2022 letter to the appointing authority referencing certification PL220465 and indicating his interest in the position of Battalion Fire Chief. The letter was stamped received by the appointing authority on April 18, 2022.

In response, the appointing authority acknowledges that the certification was incorrectly disposed of and that the appellant in fact wrote a letter of interest in a timely manner. The appointing authority states that the appellant should have been retained on the eligible list with no appointments being made as the certification was incomplete and a provisional employee, Reginald Peace,<sup>1</sup> was serving in the title.

It is noted that a new eligible list for Battalion Fire Chief (PM3393C), Plainfield, consisting of 10 names, promulgated on February 16, 2023 and expires on February 15, 2026. A certification, currently outstanding, consisting of eight names, including Peace, was issued to the appointing authority on February 21, 2023 (PL230209).<sup>2</sup>

## 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 his name from an eligible list was in error.

The appointing authority requested the removal of the appellant's name from the eligible list for Battalion Fire Chief (PM2163W) on the basis of his failure to respond to the April 11, 2022 certification notice. However, the appellant has submitted a copy of his letter of interest. Additionally, the appointing authority has acknowledged that the certification was incorrectly disposed of; that the appellant in fact wrote a letter of interest in a timely manner; and that the appellant should have been *retained* on the eligible list with no appointments being made as the certification was incomplete and a provisional employee was serving in the title. Thus, it is appropriate that the appellant's disposition be corrected to show that he was retained on the eligible list with no appointments being made as the certification was incomplete and a provisional employee was serving in the title. However, notwithstanding the appointing authority's delay in returning the certification and its incorrect disposition, the Commission declines to grant any further relief as, per the below discussion, no further meaningful remedy is available.

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<sup>1</sup> Agency records indicate that Peace commenced the provisional appointment on January 1, 2022 and continues to serve in that capacity.

<sup>2</sup> Agency records indicate that the appellant was admitted to the PM3393C examination but was a no-show at the oral component.

Assuming, *arguendo*, the appointing authority had returned the disposition of the certification correctly on July 11, 2022, the appellant would have been entitled to have a certification with his name issued to the appointing authority for a priority provisional appointment. The appointing authority would have been required to dispose of such certification in accordance with *N.J.A.C.* 4A:4-4.2(c)2i, which provides:

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.

Notably, the appointing authority would *not* have been required to appoint the appellant provisionally—let alone permanently—under the regulation because it also had the right to *vacate* the position. In short, the appellant would not have been entitled to an appointment from the April 11, 2022 certification and would not have been entitled to one from the hypothetically issued priority provisional certification either. The appellant in fact did not possess a vested property interest in the position. 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). Therefore, the appellant is not entitled to a retroactive appointment date. He is also not entitled to any back pay. In this regard, *N.J.A.C.* 4A:2-1.5(b) provides that, in all appeals other than disciplinary and good faith layoff appeals, back pay may be granted as a remedy where an appointing authority has unreasonably failed or delayed to carry out an order of the Commission or where the Commission finds sufficient cause based on the particular case. *N.J.A.C.* 4A:2-1.5(b) further provides that a finding of sufficient cause may be made based on an appointing authority's bad faith or invidious motivation. *See also In the Matter of Anthony Hearn*, 417 *N.J. Super.* 289 (App. Div. 2010) (In the absence of a rule to define "sufficient cause" for purposes of the application of *N.J.A.C.* 4A:2-1.5(b), the court evaluated the various merits of Hearn's case and concluded that sufficient cause had been established). While it is true that the appointing authority's return of the April 11, 2022 certification was delayed, this does not supply sufficient cause to grant back pay where the appellant was not entitled to an appointment and there is no evidence that the appointing authority acted in bad faith or with invidious motivation. The case for additional relief is further undermined by the expiration of the PM2163W list and promulgation of the new PM3393C list as there is now a complete certification (PL230209) from which the position encumbered by Peace may be filled.

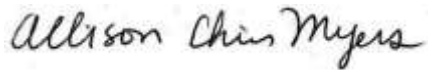
As a final matter, the Commission notes that it has no jurisdiction over the appellant's request for pension credits. The appellant may wish to consult the Department of the Treasury, Division of Pensions and Benefits.

**ORDER**

Therefore, it is ordered that the appellant's disposition on the April 11, 2022 certification (PL220465) be corrected to show that he was retained on the eligible list with no appointments being made as the certification was incomplete and a provisional employee was serving in the title.

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 15<sup>TH</sup> DAY OF MARCH, 2023



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