



STATE OF NEW JERSEY

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

In the Matters of Jonathan Ayala, *et al.*, Correction Officer Recruit
Juvenile Justice Commission
(S9999R)

List Removal Appeals

CSC Docket Nos. 2018-778, *et al.*

ISSUED: MARCH 29, 2018 (HS)

Jonathan Ayala, Ebere Chukwunyere, Alvin Davis, Julio Pena, Jr. and Kevin Perez appeal the removal of their names from the eligible list for Correction Officer Recruit Juvenile Justice Commission (S9999R) on the basis that they failed to respond to the certification notice. These appeals have been consolidated due to common issues presented.

The appellants, non-veterans, took and passed the open competitive examination for Correction Officer Recruit Juvenile Justice Commission (S9999R), which had a closing date of September 4, 2013. The resulting eligible list promulgated on May 2, 2014 and expired on March 22, 2017. The appellants' names were certified to the appointing authority on August 1, 2016. The notice date was August 8, 2016. In disposing of the certification, the appointing authority requested the removal of the appellants' names on the basis that they 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 was interested in the position.

On appeal to the Civil Service Commission (Commission), Ayala attaches his driver's license to show that he moved to North Bergen in September 2016. In this regard, his driver's license reflecting his North Bergen address indicates that it was issued on September 23, 2016. The certification notice was mailed on or about August 8, 2016, to his prior address in Morristown. Therefore, Ayala states that because of the move, he did not receive the certification notice and failed to respond in a timely fashion. He apologizes for the inconvenience that this may have caused.

Davis indicates that he could not respond to the certification notice because he is enlisted in the United States Army and was ordered overseas from June 24, 2016 to June 23, 2017. He notes his interest in the subject position. In support, Davis submits a copy of his military travel order.

Chukwunyere and Perez submit sworn, notarized statements indicating that they did not receive the certification notice. Pena submits a sworn, notarized statement indicating that he promptly responded to the certification notice stating his interest in the position.

In response, the appointing authority indicates that it agrees to restore the names of Ayala and Davis to the subject eligible list.

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 appellants' names from the eligible list for Correction Officer Recruit Juvenile Justice Commission (S9999R) on the basis of their failure to respond to the August 1, 2016 certification. However, Chukwunyere and Perez have submitted sworn, notarized statements, attesting to the fact that they did not receive the certification notice. Pena has also submitted a sworn, notarized statement, attesting to the fact that he promptly responded to the certification notice stating his interest in the position. While there is a presumption that mail correctly addressed, stamped and mailed was received by the party to whom it was addressed, Chukwunyere, Perez and Pena have rebutted that presumption in submitting their sworn, notarized statements. 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). With regard to Davis, he has provided a copy of his military order, which establishes he was overseas on active military duty. Moreover, the appointing authority agrees that Davis and Ayala's names should be restored to the subject eligible list. Thus, it is appropriate that the appellants' names be restored to the subject eligible list. Since the S9999R eligible list expired on March 22, 2017, it is appropriate to revive that list at the time of the next certification to allow the appellants to be considered for prospective appointment.

Finally, Ayala is cautioned that it is his responsibility to provide this agency with a current mailing address and his failure to do so may result in the removal of his name from future eligible lists.

ORDER

Therefore, it is ordered that these appeals be granted and the eligible list for Correction Officer Recruit Juvenile Justice Commission (S9999R) be revived in order for Jonathan Ayala, Ebere Chukwunyere, Alvin Davis, Julio Pena, Jr. and Kevin Perez to be considered for appointment at the time of the next certification for prospective employment opportunities only.

This is the final administrative determination in these matters. Any further review should be pursued in a judicial forum.

DECISION RENDERED BY THE
CIVIL SERVICE COMMISSION ON
THE 27TH DAY OF MARCH, 2018



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- c. Jonathan Ayala (2018-778)
- Ebere Chukwunyere (2018-638)
- Alvin Davis (2018-709)
- Julio Pena, Jr. (2018-706)
- Kevin Perez (2018-657)
- Josephine Piccolella
- Kelly Glenn
- Records Center