

STATE OF NEW JERSEY

FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION

In the Matter of L.L.,
Correction Officer Recruit (S9988U),
Department of Corrections

CSC Docket No. 2019-3240

Request for Reconsideration

ISSUED: AUGUST 16, 2019 (DASV)

L.L. requests reconsideration of the attached final decision of the Civil Service Commission (Commission), rendered on March 27, 2019, which upheld the removal of her name from the Correction Officer Recruit¹ (S9988U), Department of Corrections, eligible list.

As set forth in the attached decision, the Department of Corrections removed the petitioner's name from the subject eligible list on the basis that she was found "psychologically unsuitable for the position of Correction Officer Recruit." The petitioner and her attorney filed two letters of appeal. In response, a letter, dated January 16, 2018, was sent to the petitioner's attorney and to the appointing authority acknowledging the appeal. In regard to the former, the Commission indicated that when an appellant is represented by counsel, correspondence is sent only to the attorney of record unless otherwise noted. The petitioner was advised in the January 16, 2018 letter that should she wish to submit a report and recommendation from a New Jersey licensed psychologist or psychiatrist, she may do so within 90 calendar days from the filing of the appeal to the Commission pursuant to *N.J.A.C. 4A:4-6.5(e)*. The petitioner did not do so. By certified letter, dated January 24, 2018, the appointing authority forwarded its response to the appeal with supporting documentation to the petitioner's attorney. The supporting documentation included the pre-employment psychological report. By letter, dated June 11, 2018, agency staff sent the petitioner's attorney a letter, indicating that no substantive documentation had been received within the timeframe allowed to refute the findings of the pre-employment psychological examination. Therefore, since there was no basis to disturb the findings, the appeal file was closed. The

¹ Pursuant to *N.J.S.A. 11A:2-11.1*, effective May 1, 2018, the title of Correction Officer Recruit was retitled to Correctional Police Officer.

petitioner's attorney requested that the matter be re-opened, as he maintained that he did not receive notice prior to the June 11, 2018 letter. However, upon its review, the Commission initially noted that while it is customary for this agency to send notice to the parties, Civil Service rules require only that the appellant be provided with the opportunity to submit a report from a physician, psychologist or psychiatrist of his or her own choosing. The Commission found that the petitioner had sufficient opportunity to submit a report throughout the pendency of her appeal. Moreover, none of the letters sent to the petitioner's attorney was returned to the Commission as undeliverable. The Commission determined that the petitioner had not rebutted the presumption of mailing. Therefore, it concluded that the petitioner failed to show good cause to justify relaxing the requirements of *N.J.A.C. 4A:4-6.5(e)*. Accordingly, the petitioner's appeal was denied.

In the instant matter, the petitioner indicates that she received the Commission's decision and maintains that the "conclusion of being psychological unsuitable is unjust and without basis." She further states that she is "mentally, physically and emotionally competent" and was not provided with "a fair opportunity to be evaluated by a psychologist to prove [she] was treated unfairly and unjust." Furthermore, she was "not notified as to why [she] was denied."² She notes that she was represented by an attorney who did not receive written communication. She also did not receive any written documentation. In conclusion, the petitioner reiterates her request to be evaluated by a psychologist and asks that she have "a fair hearing." It is noted that the petitioner does not submit an independent psychological evaluation as to her suitability for a Correction Officer Recruit position.

It is further noted that, despite the opportunity, the appointing authority did not respond.

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.

² As noted above, the petitioner's attorney was sent the pre-employment psychological report. *N.J.A.C. 4A:4-6.5(d)1* states that [t]he appointing authority shall also furnish to the appellant's attorney or to a New Jersey licensed psychologist or psychiatrist of the appellant's choice upon request all of the information supplied to the [Commission]. The regulation does not direct that the report be sent to the petitioner.

Initially, the petitioner requests "a fair hearing." However, *N.J.A.C.* 4A:4-6.5(g) indicates that the Commission shall either conduct a *written record review* of the appeal or submit psychological appeals to the Medical Review Panel for its report and recommendation. It is noted that hearings, where live testimony is taken, are granted in those limited instances where the Commission determines that a material and controlling dispute of fact exists which can only be resolved through a hearing. See *N.J.A.C.* 4A:2-1.1(d). In this case, the Commission finds no material issue of disputed fact which would require a hearing. See *Belleville v. Department of Civil Service*, 155 *N.J. Super.* 517 (App. Div. 1978). In the prior matter, the Commission noted that when an appellant is represented by counsel, correspondence is sent to the attorney of record. None of the letters sent to the petitioner's attorney was returned as undeliverable. Additionally, the appointing authority mailed the pre-employment psychological report to the petitioner's attorney. The petitioner did not respond with an independent psychological evaluation to dispute this pre-employment psychological report. Therefore, there is no basis to transmit this matter to the Office of Administrative Law for a hearing or to the Medical Review Panel for its report and recommendation. It is noted that the Commission utilizes the Medical Review Panel which is composed of psychological medical professionals who review each case where there is a dispute among professionals as to the psychological suitability of a candidate. In this case, the only psychological report that had been received was the Department of Corrections' report which indicated that the petitioner is psychologically unsuitable for the Correction Officer Recruit position.

Moreover, the petitioner has not presented any new evidence demonstrating good cause to relax the time requirements to submit an independent psychological report. The Commission's prior decision thoroughly addressed that issue. Further, a mere statement from the petitioner that she is "mentally, physically and emotionally competent" is insufficient to find her psychologically suited for the position. The Commission emphasizes that it does not question the petitioner's mental state or her suitability for any other position. Rather, it found that the Department of Corrections had met its burden of proof to remove the petitioner from the subject eligible list due to psychological reasons. In that regard, the appointing authority presented the pre-employment psychological report and the petitioner did not challenge it in a timely manner. Therefore, no material error has occurred. Accordingly, the Commission finds no grounds on which to grant reconsideration of its prior decision.

ORDER

Therefore, it is ordered that this request for reconsideration 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 14TH DAY OF AUGUST, 2019

Deirdre L. Webster Cobb

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Chairperson
Civil Service Commission

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Attachment

c: L.L.
Veronica Tingle
Kelly Glenn



STATE OF NEW JERSEY

 FINAL ADMINISTRATIVE
 ACTION OF THE
 CIVIL SERVICE COMMISSION

In the L.L., Correction Officer
 Recruit (S9988U), Department of
 Corrections

List Removal Appeal

CSC Docket No. 2018-1923

ISSUED: MARCH 29, 2019 (DASV)

L.L., represented by Robert T. Pickett, Esq., appeals the removal of her name from the eligible list for Correction Officer Recruit¹ (S9988U), Department of Corrections, on the basis of psychological unfitness to perform effectively the duties of the position.

The relevant facts are as follows:

1. By letter, dated December 22, 2017, the Department of Corrections removed the appellant's name from the subject eligible list on the basis that she was found "psychologically unsuitable for the position of Correction Officer Recruit."
2. The appellant appealed the removal to the Civil Service Commission (Commission) by way of two letters: one letter, dated January 2, 2018, was filed *pro se* and the other letter dated January 5, 2018 was filed by her attorney. Both appeal letters were postmarked January 8, 2018 and considered filed on that date. It is noted that the appellant's attorney requested that a copy of the appeal be marked as filed with the Commission and returned. As requested, agency staff returned the copy to the appellant's attorney on January 11,

¹ Pursuant to N.J.S.A. 11A:2-11.1, effective May 1, 2018, the title of Correction Officer Recruit was retitled to Correctional Police Officer.

2018. This mailing was *not* returned to the Commission as undeliverable.

3. Thereafter, a letter, dated January 16, 2018, was sent to the appellant's attorney² and to the appointing authority acknowledging the appeal and advising that submissions are to be filed within 20 days of the date of the letter. Additionally, the appellant was advised in the letter that should she wish to submit a report and recommendation from a New Jersey licensed psychologist or psychiatrist, she may do so within 90 calendar days from the filing of the appeal to the Commission pursuant to *N.J.A.C. 4A:4-6.5(e)*. The January 16, 2108 letter sent to the attorney was *not* returned as undeliverable.
4. The appointing authority responded to the January 16, 2018 letter and submitted the appellant's pre-employment psychological report and recommendation. The report indicated that the appellant had not been found to be psychologically suited for a Correction Officer Recruit position. The submission was received by agency staff on January 24, 2018. By certified letter, dated January 24, 2018, the appointing authority forwarded its response to the appellant's appeal with supporting documentation to the appellant's attorney. However, no response to this submission was received by the Commission. It is noted that the United States Postal Service tracking record indicates that the certified mail was delivered on January 29, 2018 and "left with individual" at a West Orange, New Jersey location. The law firm of the appellant's attorney is located in West Orange.
5. By letter, dated June 11, 2018, agency staff sent the appellant's attorney a letter, indicating that although the appellant was provided with an opportunity, no substantive documentation had been received within the timeframe allowed to refute the findings of the pre-employment psychological examination. In that regard, staff noted the time requirement set forth in *N.J.A.C. 4A:4-6.5(e)* in filing an independent psychological report. Accordingly, since the appellant had not submitted such a report, she was advised that there was no basis to disturb the appointing authority's determination. Therefore, the appeal file was closed. The

² When an appellant is represented by counsel, correspondence is sent only to the attorney of record unless otherwise noted.

June 11, 2018 letter sent to the attorney was *not* returned as undeliverable.

In a letter, dated November 12, 2018, the appellant's attorney stated that neither he nor the appellant received "'Notice' dated prior to [the] June 11th Notice that her appeal had been dismissed for failure to provide an updated psychological assessment of her employability with the State Department of Corrections within 90 days from the date of the notice." Therefore, the appellant's attorney requested that the appellant be provided with the opportunity to submit an independent psychiatric assessment of her fitness to perform the duties of a Correction Officer Recruit. He maintained that no party would be prejudiced if the appellant was given "a fair and reasonable opportunity to show that she is fit for the job." The appellant's attorney further stated that the appellant had identified a "psychiatric expert" who could perform an assessment of her suitability within 10 days should the Commission reinstate her appeal.

It is noted that agency staff spoke with the appellant's attorney and he was to send a certification or affidavit that he did not receive the June 11, 2018 letter, as well as the January 24, 2018 and June 11, 2018 letters. However, no certified statement or affidavit was received.

CONCLUSION

N.J.A.C. 4A:4-6.3(b) states that the appointing authority shall have the burden of proof in medical or psychological disqualification appeals. Moreover, *N.J.A.C.* 4A:4-6.3(d) states that:

Upon receipt of a notice of an eligible's appeal, the appointing authority shall submit to the [Commission], within 20 days, all background information, including any investigations and all complete medical, psychological, and/or psychiatric reports that were the basis for the removal request.

1. The appointing authority shall also furnish to the appellant's attorney or to a New Jersey licensed psychologist or psychiatrist of the appellant's choice upon request all of the information supplied to the [Commission].
2. Any appointing authority failing to submit the required materials within the specified time may have its request for removal denied, and the eligible's name may be retained on the eligible list.

Additionally, in order to further facilitate the timely processing of these types of appeals, the Commission amended *N.J.A.C.* 4A:4-6.5(e), effective June 21, 2017, to require that the appellant, if he or she chooses to do so, to submit a report from a physician or psychologist/psychiatrist to rebut the appointing authority's report within 90 calendar days of filing of the appeal. *See* 49 *N.J.R.* 492. These timeframes were designed to facilitate the opportunity for the parties to establish a contemporaneous record of an eligible's medical or psychological condition at the time of appointment for the Commission to consider. In that regard, it is noted that based on longstanding administrative practice, a psychological assessment for employment in law enforcement is only considered valid for one year. *See In the Matter of Aleisha Cruz* (MSB, decided December 19, 2007), *aff'd on reconsideration* (MSB, decided April 9, 2008).

Nonetheless, *N.J.A.C.* 4A:4-6.5(f) indicates that the Commission may extend the time period for filing the required reports for good cause. However, the 90-day period to submit a psychological or psychiatric report is not contingent upon the filing of the appointing authority's submission. *N.J.A.C.* 4A:4-6.5(e) specifically states that the appellant's report must be filed within 90 calendar days *of the filing of his or her appeal*. Furthermore, *N.J.A.C.* 4A:4-6.5(g) indicates that the Commission shall either conduct a written record review of the appeal or submit psychological appeals to the Medical Review Panel for its report and recommendation. In that regard, given the volume of psychological disqualification appeals received by the Commission each year in conjunction with the fact that the Commission utilizes the Medical Review Panel, psychological medical professionals who review each case, the adjudication of psychological appeals is a lengthy process that can take up to two years. Specifically, the process consists of compiling the record which allows the appellant up to 90 days to submit an independent psychological evaluation as noted above; scheduling a meeting with the Medical Review Panel which generally meets once a month to review a maximum of six cases; awaiting the Medical Review Panel's report to be issued; permitting parties to submit exceptions and cross exceptions to the report and recommendation within 10 and five days of receipt, respectively; and issuing the Commission's final determination. If the Commission determines that a candidate was improperly rejected for the position, the remedy provided is a mandated appointment to the position with a retroactive date of appointment for seniority and salary step purposes. Therefore, in order to ensure a fair process to all parties, it is imperative that the timeframes established throughout the process are strictly enforced.

In the instant matter, the appellant through her attorney maintains that she did not receive notice prior to the June 11, 2018 letter closing her appeal. Presumably, the appellant's attorney did not receive the January 16, 2018 letter sent to the parties which acknowledged the appellant's appeal and provided information regarding the processing of such an appeal. While it is customary for this agency to send notice to the parties of a pending psychological disqualification

appeal, Civil Services rules require only that the appellant be provided with the opportunity to submit a report from a physician, psychologist or psychiatrist of his or her own choosing. *See N.J.A.C. 4A:4-6.5(c)* and *N.J.A.C. 4A:4-6.5(c)*. The appellant had sufficient opportunity to submit a report throughout the pendency of the appeal. Although she contends that she did not receive the January 16, 2018 letter, the record reveals that the appointing authority timely forwarded its submission to her attorney by certified mail on January 24, 2018. No response was received. It is incumbent upon an appellant to pursue his or her appeal and comply with the applicable timelines. Lack of knowledge of Civil Service law or rules is not excusable. In that regard, failure to recognize or to explore the legal basis for an appeal, without more, does not constitute good cause to extend or relax the time for appeal under the Commission's rules. *See Savage v. Old Bridge-Sayreville Med. Group*, 134 N.J. 241, 248 (1993) (Ignorance of the specific basis for legal liability did not operate to extend time to initiate legal action). This is equally applicable in the instant matter where the appellant did not challenge the pre-employment psychological evaluation by way of expert rebuttal although the rules provide her with the opportunity to do so.

Furthermore, neither the January 16, 2018 or June 11, 2018 letter sent to the attorney was returned to the Commission as undeliverable. As requested, agency staff also sent a copy of the filed appeal to the appellant's attorney on January 11, 2018. Inexplicably, the appellant's attorney did not contact the Commission formally until his November 12, 2018 letter. Moreover, a certified statement or affidavit was not received to support the statements contained in the November 12, 2018 letter, which only referred to not receiving the January 16, 2018 letter. There is a presumption that mail correctly addressed, stamped, and mailed was received by the party to whom it was addressed. *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). The appellant has not rebutted this presumption. Therefore, under these circumstances, the appellant has failed to show good cause to justify relaxing the requirements of *N.J.A.C. 4A:4-6.5(e)*. Consequently, the appellant has not submitted substantive documentation within the timeframe allowed to refute the findings of the pre-employment psychological examination which found that she was not psychologically suited for a Correction Officer Recruit position. Accordingly, there is no basis to disturb that determination.

ORDER

Therefore, it is ordered that this appeal 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 27TH DAY OF MARCH, 2019



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