



**STATE OF NEW JERSEY**

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

In the Matter of D.O., Fire Fighter  
(M1557T), North Hudson Fire  
and Rescue

List Removal Appeal

CSC Docket No. 2019-894

**ISSUED: SEPTEMBER 11, 2019 (DASV)**

D.O. appeals his rejection as a Fire Fighter candidate by the North Hudson Fire and Rescue and its request to remove his name from the eligible list for Fire Fighter (M1557T) on the basis of psychological unfitness to perform effectively the duties of the position.

By way of background, the appellant's name was certified on May 23, 2017 from the Fire Fighter (M1557T), North Hudson Fire and Rescue, eligible list, which promulgated on March 11, 2016 and expired on March 10, 2019. In disposing of the certification, the appointing authority requested the removal of the appellant's name on the basis that he was not psychologically fit to perform effectively the duties of the position. A Certification Disposition Notice (notice of removal), dated July 16, 2018, was sent to the appellant.<sup>1</sup> A notice of removal for psychological reasons informs candidates that should they wish to file an appeal, they may do so within 20 days from the date of the notice. *See N.J.A.C. 4A:4-6.5(c)2*. Thus, an appeal of removal for psychological reasons from the May 23, 2017 certification was due on or before August 6, 2018. By way of sworn notarized statements, dated August 30, 2018, and postmarked August 30, 2018 and August 31, 2018, the appellant requested an appeal for "reinstatement of [his] name on the certification list for firefighters." A subsequent sworn notarized statement, dated September 21, 2018, was filed with a September 22, 2018 postmark. The appellant indicated that he never received notification of his right to appeal the Fire Fighter (M1557T),

<sup>1</sup> It is noted that the May 23, 2017 Notice of Certification was sent to the appellant at his Clinton Place address. The appellant changed his address to Brook Street with this agency on December 12, 2017, and it was updated on July 3, 2018, prior to his notice of removal.

North Hudson Fire and Rescue, removal. However, he stated that a Fire Captain from the North Hudson Fire and Rescue advised him of his failed psychological examination “during the first week of October 2017” and that he “did not appeal since [he was] told it was only the North Hudson list” and he was “really interested in joining the Hackensack Fire Department.” The appellant further asserted that, on August 28, 2018, he received a telephone call from the Fire Chief of the Hackensack Fire Department, inquiring as to whether he was appointed to another jurisdiction since he was not on the City of Hackensack’s certified list.<sup>2</sup> The appellant then called the Civil Service Commission (Commission) and discovered that he was removed from the entire Fire Fighter (M9999T) eligible list due to his failed psychological examination. Additionally, in his sworn statement, the appellant stated that he was “also appealing the psych exam [he] took in September 19, 2017.” He explained that it “was not an easy day” since it was the same day that his father passed away two years earlier. In support of his request for an appeal, the appellant submitted a letter from Dr. J. de Alwis, a psychiatrist, advising that the appellant was evaluated on September 17, 2018 and presented no symptoms of Post-Traumatic Stress Disorder (PTSD) or mood issues. The appellant was previously diagnosed with PTSD and received individual therapy up until March 15, 2016. Moreover, the appellant noted that he is currently a Bergenfield Fire Fighter<sup>3</sup> and “was unaware” that he was required to respond to the Borough of Bergenfield certification (OL161011) This certification was from the Fire Fighter (M1504T), Borough of Bergenfield, eligible list, which was issued on August 22, 2016 and disposed of on September 13, 2017. The appellant’s name was removed for failing to respond to the Notice of Certification. He did not file an appeal at that time.

Thereafter, agency staff advised the appellant that his request for an appeal of his removal for psychological reasons from the Fire Fighter (M1557T), North Hudson Fire and Rescue, eligible list could not be granted as it was untimely pursuant to *N.J.A.C. 4A:2-1.1(b)* and *N.J.A.C. 4A:4-6.5(c)2*. Therefore, the appeal file was closed.

In response, the appellant requests that this matter be re-opened. He reiterates that he received a telephone call from a Fire Captain with North Hudson Fire and Rescue in October 2017. He was only verbally informed of his failed psychological examination and did not receive notice from the Commission as to his right to appeal. He argues that he “cannot appeal anything over the phone [he] can only appeal in writing. This is why [he] wrote in [his] sworn statement ‘I didn’t

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<sup>2</sup> Agency records indicate that the appellant had been certified earlier on August 22, 2016 from the Fire Fighter (M1504T), City of Hackensack, eligible list. However, no appointments were made from that certification and the appellant’s name was retained.

<sup>3</sup> The appellant received a regular appointment as a Fire Fighter with the Borough of Bergenfield effective November 25, 2008.

appeal it' because [he] was told verbally over the phone and nothing physical in writing." It is noted that this statement is not sworn.

## CONCLUSION

*N.J.A.C.* 4A:4-6.5(a) states in part that an appointing authority may request that an eligible's name be removed from an eligible list due to disqualification for medical or psychological reasons which would preclude the eligible from effectively performing the duties of the title. Additionally, *N.J.A.C.* 4A:4-6.5(c) provides that upon receipt of satisfactory documentation, appropriate Commission staff shall notify the eligible that:

1. He or she has been disqualified for appointment;
2. He or she may file an appeal with the [Commission] within 20 days of such notification;
3. If no appeal is received within the specified time, his or her name will be removed from the eligible list; and
4. If the eligible does file an appeal, an opportunity will be provided to submit a report from a physician, psychologist or psychiatrist of his or her own choosing.

It is noted that the strict timeframe to file medical and psychological disqualification list removal appeals is necessary given the unique implications a potentially meritorious appeal can have on the parties, *i.e.*, a mandated appointment of the eligible with a retroactive date of appointment. *See In the Matter of Stanley Kolbe, Jr.* (CSC, decided May 21, 2014) (Commission enforced prior order granting retroactive appointment to the appellant after a mandated appointment resulting from successfully appealing a failed psychological evaluation and dismissed the appointing authority's claims of fiscal constraints and recent layoff when three employees who ranked lower than the appellant on eligible list were not impacted by the layoff).

In the instant matter, the appellant maintains that he did not receive the notice of removal which provided him with information on his appeal rights. As noted above, agency records indicate that the appellant's address was updated prior to the notice of removal. Nonetheless, the appellant presents a sworn notarized statement that he did not receive the notice of removal. Thus, he has established that he did not receive the written notice of removal. However, the appellant received verbal notice. Therefore, the question to be answered is whether the appellant filed an appeal within a reasonable time of that verbal notice.

The Commission emphasizes that the purpose of time limitations is not to eliminate or curtail the rights of appellants, but to establish a threshold of finality. The Commission nevertheless has the discretionary authority to relax rules for good

cause. In that regard, *N.J.A.C.* 4A:1-1.2(c) provides that the rules may be relaxed for good cause in a particular situation, on notice to affected parties, in order to effectuate the purposes of Title 11A, New Jersey Statutes. Further, *N.J.A.C.* 4A:2-1.1(b) states that unless a different time period is stated, an appeal must be filed within 20 days after either the appellant has notice or *should reasonably have known of the decision, situation, or action being appealed*” [emphasis added]. Thus, it is appropriate for the Commission to consider whether the delay in asserting the appellant’s right to appeal was reasonable and excusable. See *Appeal of Syby*, 66 *N.J. Super.* 460 (App. Div. 1961) (construing “good cause” in appellate court rules governing the time for appeal) and *Atlantic City v. Civil Service Commission*, 3 *N.J. Super.* 57, 60 (App. Div. 1949) (describing the circumstances under which delay in asserting rights may be excusable). Among the factors to be considered are the length of delay and the reasons for the delay. *Lavin v. Hackensack Board of Education*, 90 *N.J.* 145 (1982).

As set forth in his sworn statement, the appellant states that the Fire Captain from the North Hudson Fire and Rescue advised him of his failed psychological examination during the first week of October 2017 and that he “did not appeal since [he was] told it was only the North Hudson list” and he was “really interested in joining the Hackensack Fire Department.” The appellant later argues that he could not appeal anything over the phone and that “is why [he] wrote in [his] sworn statement ‘I didn’t appeal it’ because [he] was told verbally over the phone and nothing physical in writing.” The appellant’s argument is not persuasive. First, his later statement is not sworn. Second, he appealed only when he discovered he was removed from the Fire Fighter (M9999T) pool of eligibles, which includes the jurisdiction of the City of Hackensack. Thus, it is clear that the appellant did not wish to file an appeal of his removal from the North Hudson Fire and Rescue (M1557T) eligible list when he received notice. Therefore, his request for an appeal on August 30, 2018, 11 months after receiving notice of his removal, is considered untimely and not reasonably filed pursuant to *N.J.A.C.* 4A:2-1.1(b). It is noted that 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). In other words, the appellant’s realization of the consequences of his failure to file a timely appeal, *i.e.*, removal from the pool of eligibles for Fire Fighter (M9999T), does not provide a reasonable excuse for his delay. Accordingly, the appellants appeal is untimely, and he has failed to show good cause to justify relaxing the requirements of *N.J.A.C.* 4A:4-6.5(c)2.

It is noted that because the appellant did not timely appeal his removal from the North Hudson Fire and Rescue (M1557T) eligible list, his name could no longer be certified to the City Hackensack. Pursuant to *N.J.A.C.* 4A:4-2.3(c), since his name was removed for cause, *i.e.*, a failed psychological examination for Fire

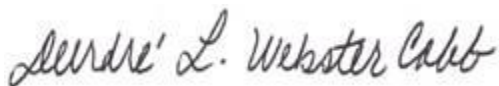
Fighter, the appellant's name must be removed from the pool of eligibles for Fire Fighter (M9999T), which includes the City of Hackensack's eligible list (M1528T). *See also N.J.A.C. 4A:4-4.7(g)* (When the Commission has accepted a single application for one or more title areas, pursuant to *N.J.A.C. 4A:4-2.3(c)*, an eligible whose name has been removed from the pool of eligibles for one jurisdiction or title area for cause shall be removed from the pool of eligibles for any other jurisdiction or title area). Furthermore, even if the appellant presented persuasive argument to allow him to file a late appeal of his removal from the North Hudson Fire and Rescue (M1557T) eligible list, there still would not appear to be a sufficient basis to grant relief. The record indicates that the appellant was removed from the August 22, 2016 certification (OL161011) of the Fire Fighter (M1504T), Borough of Bergenfield, eligible list for failure to respond to the Notice of Certification. The appellant's failure to respond and file a timely appeal of that removal provides for a separate valid basis to remove his name from the Fire Fighter (M9999T) pool of eligibles. Even if an appeal was accepted at this late juncture, the appellant's reasons for not responding is also not persuasive. Regardless of whether he is a current Bergenfield Fire Fighter, the Notice of Certification specifically instructs eligibles to write to the appointing authority within five business days of the date of the notice. *See e.g., In the Matter of Matthew Fields* (CSC, decided November 1, 2017) (Although the appellant claimed that he did not completely understand the requirement to respond to each certification notice, the Commission denied his appeal as the instructions on the certification notice clearly stated that the eligible must write to the appointing authority within five business days of the date of the notice). Accordingly, the relief that the appellant seeks cannot be granted.

### ORDER

Therefore, it is ordered that this appeal be dismissed as untimely.

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 10<sup>TH</sup> DAY OF SEPTEMBER, 2019



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