



STATE OF NEW JERSEY

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

In the Matter of Jason Kronemeyer,
Correctional Police Lieutenant
(PS9465I), Department of Corrections

Administrative Appeal

CSC Docket No. 2020-1635

ISSUED: JUNE 19, 2020 (SLD)

Jason Kronemeyer, represented by Donald C. Barbati, Esq, appeals his non-appointment on the Correctional Police Lieutenant (PS9465I), Department of Corrections (DOC) eligible list.

The examination for Correctional Police Lieutenant (PS9465I) was announced with a closing date of November 21, 2014. The resultant eligible list of 265 names, including the appellant, promulgated on September 10, 2015 and expired on January 17, 2019.¹ It is noted that the DOC has been given the authority to certify its own open-competitive and promotional lists. *See In the Matter of Department of Corrections Certifications* (CSC, decided October 2, 2013) and *In the Matter of Department of Corrections Certifications* (CSC, decided April 14, 2010) (DOC delegated the authority for open competitive certification processing of Correctional Police Officer, and promotional certification processing for Correctional Police Sergeant, Lieutenant, Captain and Director of Custody Operations). *See also, In the Matter of Ronald Sloan* (CSC, decided January 27, 2010). The DOC certified the PS9465I eligible list multiple times, including October 5, 2017 when it certified several names, including the appellant's name for a position at Mid-State Correctional Facility (Mid-State). However, the appellant did not respond to the certification notice. The appointing authority retained his name for future certifications.

¹ The expiration date was extended until the new list (PS6183I) promulgated. Agency records indicate that the appellant did not apply for the PS6183I examination.

On appeal to the Civil Service Commission (Commission), the appellant asserts that despite having Mid-State on his “wish list,” and being assured that no certifications were issued to that location, he discovered on December 19, 2019 that two lower ranked eligibles were appointed to the subject title in October 2017. Specifically, the appellant asserts that he updated his address and his “wish list” of locations he was interested in with the Custody Recruitment Unit (Recruitment) on November 16, 2015. However, on December 23, 2016, he received an email from Recruitment noting that he did not have a “wish list” on file, and inquiring about his interest in certifications for Enda Mahan Correctional Facility for Women, Mountainview Youth Correctional Facility, Garden State Youth Correctional Facility and the Adult Diagnostic and Treatment Center as it had not received a response from the appellant. The appellant asserts that he responded in January 2017 with his correct address and reiterated that his “wish list” was for all DOC facilities. Thereafter, he asserts that on January 9, 2018, he again received an email from Recruitment, inquiring about his interest in certifications for East Jersey State Prison (East Jersey), Northern State Prison (Northern State) and New Jersey State Prison as they had not received his response for those locations. The appellant maintains that he responded to Recruitment that he was not currently interested in Northern, and that he wanted to remain on the lists for all locations. The appellant also requested that Recruitment “confirm” that his wish list included Mid-State as he had never received a certification for that facility. In a January 11, 2018 email, Recruitment responded indicating that his address was listed as Villas, New Jersey, but if that was not correct to submit his correct address and update his address with his institution’s Human Resource department. In the appellant’s reply, dated the same date, he indicated that his current address was in Cape May Court House, and that the Villas address had not been his address since before the closing date of the subject examination. Recruitment responded in a January 11, 2018 email that it updated his address, but that “last year” they had updated the program for certifications, and the program pulls information from the candidates Human Resources’ file. Therefore, it requested that the appellant update his address with Human Resources to “avoid problems in future correspondence. In this matter, the appellant asserts that at the “time of correspondence,” his records were up to date with Human Resources.

Additionally, the appellant asserts that Recruitment assured him that only the three certifications for East Jersey, Northern State and New Jersey State Prison had been “issued between August 15, 2017 and January 9, 2018.” In this regard, the appellant asserts that he specifically referenced Mid State and asked that it be verified that he was active for all facilities. Furthermore, he asserts that in January 2019, he sent an email to Recruitment and specifically asked about certifications for Mid-State, to which Recruitment replied that no certifications were sent. In support, he submits copies of the emails. Consequently, the appellant maintains that since he was never offered the position, he has been denied over two years of seniority in the position of Correctional Police Lieutenant, as well as the associated step raises, and

he was denied the opportunity to apply for the examination for Correctional Police Major.

In response, the appointing authority initially asserts that it does not know why the appellant's address was not updated in 2015 as it is unsure if there was an administrative error, or a technical issue that caused the aging system to delete the address change. However, the appointing authority notes that it contacted the appellant in December 2016, as he had not responded to multiple certification notices and there was no "wish list" on file for him. The appointing authority notes that, after the appellant responded, his address was updated and his "wish list" was recorded. The appointing authority maintains that after the appellant's address was updated, the appellant, who was ranked 31, declined multiple certifications. However, in July 2017, it updated its certification database to a new system and during that conversion addresses for the candidates were pulled from the Human Resource Oracle database. The appointing authority notes that the appellant's address in the Oracle database was not changed from the Villas address until late 2017, after Recruitment had once again emailed the appellant as he had not responded to several certifications.

The appointing authority argues that at no time did the appellant amend his wish list to Mid-State only. Moreover, it notes that although there were periods of time when the appellant's address was incorrect, there were periods of time when the certifications were sent to the correct address. Additionally, the appointing authority argues that the appellant was sent multiple Certification Notices to his correct address, and thus he was offered numerous opportunities for promotion, which he declined.² Furthermore, the appointing authority maintains that there was no intent to deceive the appellant, rather, Recruitment misunderstood the question the appellant asked when it replied that there were no recent certifications to Mid-State. Finally, the appointing authority asserts that the appellant's appeal is untimely as it occurred more than one year after the expiration date of the subject eligible list.

In response, the appellant reiterates his arguments and asserts that due to the appointing authority's administrative error, the list should be revived pursuant to *N.J.S.A. 11A:4-6* and *N.J.A.C. 4A:4-3.4*. He also asserts that he is entitled to a retroactive date of appointment, with all benefits and back pay. In this regard he maintains that he updated his address twice, and that he stopped receiving certifications after August 2017. He was then advised that an old address was again being utilized. The appellant maintains that despite his repeated inquiries regarding Mid-State, he was not advised that a certification was issued to that location. Rather, it was not until December 2019 that he ascertained that two eligibles who ranked lower than him were appointed to Mid-State. The appellant argues that as the appointing authority acknowledges that it failed to update his address on "several"

² The appointing authority indicates that the last appointment from the subject eligible list was made at rank 121.

occasions, it is clear that its actions constitute administrative error and warrant revival of the subject eligible list and his retroactive appointment. The appellant also argues that the appointing authority's failure to update and/or possess his correct address was a monumental failure, which deprived him of "numerous promotional opportunities, especially as it relates to Mid-State." The appellant argues that denying his appeal would "deprive [him] of a promotional opportunity to which he was entitled and would have received but for the administrative errors." Finally, the appellant disputes that his appeal is untimely. In this regard, he maintains that he "did not ascertain" that the two individuals were appointed to Mid-State until December 2019. The appellant asserts that he thereafter immediately filed the instant appeal.

CONCLUSION

N.J.A.C. 4A:4-6.6(a)1, which pertains to appeals of selection-related issues, provides that an appeal must be filed within 20 days of notice of the action, decision or situation being appealed. In the instant matter, the appellant claims that he "did not ascertain" that anyone was appointed to Mid-State until December 2019. As the appellant claims that he did not know any appointments were made to Mid-State until 2019, this matter will be accepted as timely.

N.J.A.C. 4A:4-1.10(c) states that an individual may receive a retroactive date of appointment to correct an administrative error, for an administrative delay or for other good cause. In the instant matter, the appellant requests a retroactive appointment from the subject eligible list to Mid-State. Specifically, the appellant argues that the appointing authority's failure to properly update his address and its failure to notify him that a certification was issued to Mid-State are administrative errors, and therefore, he is entitled to a retroactive appointment. The Civil Service Commission (Commission) does not agree. Although it is clear that several administrative errors were made by the appointing authority, the appellant is not entitled to an appointment. In this regard, individuals whose names merely appear on an eligible list do not have a vested right to appointment. *See In re Crowley*, 193 *N.J. Super.* 197 (App. Div. 1984), *Schroder v. Kiss*, 74 *N.J. Super.* 229 (App. Div. 1962). Rather, 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). Moreover, the Commission notes that no vested or other rights are accorded by an administrative error. *See Cipriano v. Department of Civil Service*, 151 *N.J. Super.* 86 (App. Div. 1977); *O'Malley v. Department of Energy*, 109 *N.J.* 309 (1987); *HIP of New Jersey v. New Jersey Department of Banking and Insurance*, 309 *N.J. Super.* 538 (App. Div. 1998). Therefore, the only remedy normally provided for similar such matters is a revival of the list to allow the appellant to be considered for appointment at the time of the next certification. *See e.g., In the Matter of Christopher Pellegrino, Fire Fighter (M1557T), North Hudson Regional Fire and Rescue (CSC,*

decided February 26, 2020); *In the Matter of Oshiel Hand, Boiler Operator (PM1084L)*, Jersey City School District (CSC, decided February 12, 2014). However, for the reasons discussed below, such a remedy is not warranted in this matter.

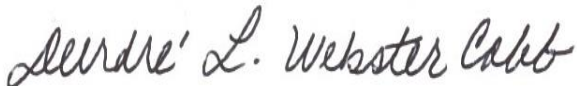
In this matter, the appellant maintains that his “wish list” of locations included **all** locations within DOC. However, although the appellant acknowledges that he received some of the certifications, the record evidences that he declined those positions. *N.J.A.C. 4A:4-4.7(a)3* provides that an eligible may be removed from an eligible list due to his or her inability, unavailability or refusal to accept an appointment. Therefore, the appellant’s failure to accept an appointment for any of the locations he was offered, especially given his professed initial interest in those locations on his “wish list,” would have been sufficient cause for the DOC to remove his name from the subject eligible list. *See In the Matter of Joseph Hutsebaut* (CSC, decided April 19, 2017). Consequently, since the appellant was provided multiple promotional opportunities, which he declined, the Commission finds no basis in this matter to revive the list and provide him with any further opportunity.

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
17TH DAY OF JUNE, 2020



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