

B-21



STATE OF NEW JERSEY

In the Matter of James Nammoura,
Sheriff's Officer (S9999M), Hudson
County

FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION

CSC Docket No. 2014-1658

List Removal Appeal

ISSUED: **SEP 22 2014** (WR)

James Nammoura appeals the attached decision of the Division of Classification and Personnel Management (CPM) which found that the appointing authority had presented a sufficient basis to remove the appellant's name from the Sheriff's Officer (S9999M), Hudson County, eligible list due to his failure to respond to the Notice of Certification.

The appellant, a veteran, appeared on the eligible list for Sheriff's Officer (S9999M), Hudson County, and his name was certified (OL121125) to the appointing authority on August 20, 2012. The notice date was August 27, 2012. It is noted that the eligible list promulgated on June 10, 2011 and expired on May 1, 2014. In disposing of the certification, the appointing authority requested on February 22, 2013 that the appellant's name be removed from the eligible list on the basis that he failed to respond to the Notice of Certification.¹ The appellant appealed to CPM on July 12, 2013, which consequently denied his appeal as untimely. Agency records indicate that two lower-ranked individuals on the subject certification were appointed, effective February 11, 2013.

On appeal to the Civil Service Commission (Commission), the appellant states that he received the Notice on August 27, 2012 and replied to it on August 31,

¹ The instructions on the back of the Notices state that an individual must 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 and failure to contact the appointing authority in writing would automatically result in the appointing authority's request for the removal of the individual's name from the list. Finally, the Notice states in bold letters, "[f]ailure to follow these instructions will result in the removal of your name from the list."

2012 via the United States Postal Service (USPS). Upon receiving the notice of his removal from the subject eligible list, the appellant claims that he called the appointing authority and "received a copy of [his] response [to the Notice] from the administration personnel stating that there was an error due to a false time stamp on [his] letter." The appellant further states that he received a Notice on February 22, 2013, stating that his name had been removed from the eligible list for his failure to respond to the certification. However, the appellant claims that on February 26, 2013, he received another Notice that indicated the certification had been cancelled due to an error. The appellant states that he called CPM, who in relevant part, informed him that its decision sustaining the appointing authority's request to remove him from the eligible list was not sent to the appellant's correct address. In support of his contention, the appellant submits a February 22, 2013 Notice indicating his removal from certification OL121125 from the subject eligible list and a February 26, 2013 Notice indicating that certification OL130220 also for the subject eligible list was cancelled. The appellant also submits a USPS receipt which indicates that his reply to the Notice was mailed on August 31, 2012. It is noted that the USPS website indicates that an individual at the appointing authority's address signed for the appellant's letter on September 4, 2012.

In response, the appointing authority states that it did not receive the appellant's reply to the Notice until September 28, 2012. It asserts that it marks all of the mail it receives with a timestamp upon receipt. It also contends that the appellant was not told that his reply was marked with a false timestamp. In support, the appointing authority submits a copy of the appellant's reply and envelope bearing a September 28, 2012 timestamp.

CONCLUSION

N.J.A.C. 4A:4-6.6(a)1 provides that an appeal must be filed within 20 days of notice of the action, decision or situation being appealed. Although the appellant presents a substantive challenge regarding events that took place in August and September 2012, the Commission must initially address whether the appellant's appeal of his removal from the eligible list was timely filed. In the instant matter, the appellant claims that he received a Notice informing him of his removal from the eligible list on February 22, 2013, but received a second Notice on February 26, 2013 informing him that the certification had been cancelled. While these two notices concerned different certifications, the appellant clearly believed them to be the same. While the purpose of time limitations is to establish a threshold of finality, the Commission has the discretionary authority to relax rules for good cause. See *N.J.A.C. 4A:1-1.2(c)*. In this regard, it is appropriate to consider whether the delay in asserting his right to appeal was reasonable and excusable. *Appeal of Syby*, 66 *N.J. Super.* 460, 464 (App. Div. 1961) (construing "good cause" in appellate court rules governing the time for appeal); *Atlantic City v. Civil Service Com'n*, 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 Bd. of Educ.*, 90 N.J. 145 (1982). As indicated above, the appellant did not appeal his removal from the subject eligible list for some four months after he received the Notice on February 22, 2013 because it appears that he believed the Notice he received on February 26, 2013 cancelled the subject certification. In light of this and the apparent initial confusion regarding the appointing authority's receipt of the appellant's response to the subject certification, good cause exists to relax N.J.A.C. 4A:4-6.6(a)1.

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 or her name from an eligible list was in error.

In the instant matter, the appointing authority requested the removal of the appellant's name from the subject eligible list on the basis that he failed to respond to the Notice of Certification. In this regard, 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). However, although the appointing authority indicates it did not receive the appellant's response, the appellant submits a USPS receipt which shows that he mailed his reply to the Notice on August 31, 2012. Additionally, the USPS website indicates that his letter was signed for at the appointing authority's address on September 4, 2012. Accordingly, the appellant has sustained his burden of proof and should be restored to the Sheriff's Officer (S9999M), Hudson County, eligible list. Moreover, because two lower-ranked eligibles were appointed effective February 11, 2013 and the appellant is a veteran, his appointment is mandated, provided that he first passes an updated background check. See N.J.S.A. 11A:4-8 and N.J.S.A. 11A:5-6. However, while the appointing authority must immediately appoint the appellant should he pass the updated background check, it is not required to displace any currently employed individual in appointing the appellant.

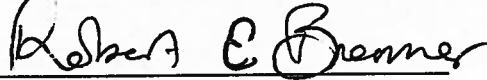
ORDER

Therefore, it is ordered that the eligible list for Sheriff's Officer (S9999M), Hudson County, be revived so that the appellant may continue with the selection process and upon successful completion, be immediately appointed. If appointed, upon the successful completion of his working test period, the Commission orders

that the appellant be granted a retroactive date of appointment to February 11, 2013. This date is for salary step placement and seniority-based purposes only.

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 SEPTEMBER, 2014**



**Robert E. Brenner
Member
Civil Service Commission**

**Inquiries
and
Correspondence**

**Henry Maurer
Director
Division of Appeals
and Regulatory Affairs
Civil Service Commission
Written Records Appeals Unit
P.O. Box 312
Trenton, New Jersey 08625-0312**

Attachment

**c: James Nammoura
Frank Schillari
Kenneth Connolly**



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NOV 000016

Received
NOV 12 2013
By CSC/SLO

Chris Christie
Governor
Kim Guadagno
Lt. Governor

STATE OF NEW JERSEY
CIVIL SERVICE COMMISSION
DIVISION OF CLASSIFICATION AND PERSONNEL MANAGEMENT
P. O. Box 314
Trenton, New Jersey 08625-0313

Robert M. Czech
Chair/Chief Executive Officer

October 24, 2013

James Nammoura



RE: Title: Sheriff's Officer
Jurisdiction: Hudson County - Symbol: S9999M
Certification No: OL121125 - Certification Date: 8/20/2012

Dear Mr. Nammoura:

This is in response to your July 8, 2013 correspondence contesting the removal of your name on the referenced certification list.

On February 22, 2013, a Certification Disposition Notice was sent advising you that the Appointing Authority disposed of the subject certification requesting removal of your name for non-response to the Notification of Certification. The disposition notice indicated you had 20 days to appeal this action. Pursuant to *N.J.A.C. 4A:2-1.1(b)*, 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. Your appeal was received by this office on July 12, 2013; more than four months after the date of the disposition notice.

After a thorough review of our records and all the relevant material submitted, we find that there is not a sufficient basis to restore your name to the eligible list. Specifically, your appeal is untimely. Therefore, the Appointing Authority's request to remove your name has been sustained and your appeal is denied.

In accordance with Civil Service Rules, you may appeal this decision to the Division of Appeals and Regulatory Affairs (DARA) within 20 days of the receipt of this letter. You must submit all proofs, arguments, and issues which you plan to use to substantiate the issues raised in your appeal. Please submit a copy of this determination with your appeal to DARA. You must put all parties of interest on notice of your appeal and provide them with copies of all documents submitted for consideration.

Mr. James Nammoura

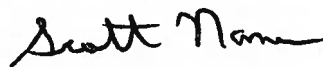
October 24, 2013

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Please be advised that pursuant to P.L. 2010 C.26, effective July 1, 2010, there shall be a \$20 fee for appeals. Please include the required \$20 fee with your appeal. Payment must be made by check or money order only, payable to the NJ CSC. Persons receiving public assistance pursuant to P.L. 1947, C. 156 (C.44:8-107 et seq.), P.L. 1973, c.256 (C.44:7-85 et seq.), or P.L. 1997, c.38 (C44:10-55 et seq.) and individuals with established veterans preference as defined by N.J.S.A. 11A:5-1 et seq. are exempt from these fees. Address all appeals to:

Henry Maurer, Director
Division of Appeals and Regulatory Affairs
Written Appeals Record Unit
PO Box 312
Trenton, NJ 08625-0312

Sincerely,
For the Director,



Scott Nance, Supervisor
Local Certification Unit

c: Frank X. Schillari, Sheriff