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STATE OF NEW JERSEY

FINAL ADMINISTRATIVE ACTION  
OF THE  
CIVIL SERVICE COMMISSION

In the Matter of Joseph Mesday,  
Judiciary Clerk Driver (SO395R),  
Vicinage 3-Burlington County

List Removal Appeal

CSC Docket No. 2014-3109

ISSUED: FEB -9 2015 (LDH)

Joseph Mesday appeals his removal from the Judiciary Clerk Driver (SO395R), Vicinage 3-Burlington County, eligible list due to his late response to the Certification Notice.

The appellant's name was certified to the appointing authority from the subject eligible list on October 4, 2013. According to the certification, Certification Notices ("Notices") dated October 11, 2013, were sent to the eligibles with instructions to notify the appointing authority in writing, within five business days from the date of the Notice, if they were interested in being considered for the position. Applicants were further instructed that failure to respond within that time frame would result in their name being removed from the eligible list. In disposing of the certification, the appointing authority removed the appellant's name due to his late response.

On appeal to the Civil Service Commission (Commission), the appellant argues that he did not receive the Notice until October 18, 2013 because of mail delays with the post office. The appellant maintains that he immediately mailed his response indicating his interest in the subject position. In support, he submits his letter of interest to the appointing authority dated October 18, 2013.

In response, the appointing authority maintains that the appellant's removal from the certification list was warranted. The appointing authority argues that applicants were to respond within five business days from the Notice date, which would have been October 18, 2013. Moreover, the appointing authority contends

that although the appellant dated his letter October 18, 2013, his envelope was not postmarked until October 22, 2013, and was received in its office on October 23, 2013. In support, the appointing authority submits a copy of the postmarked envelope and the appellant's letter of interest. In addition, the appointing authority asserts that it is not responsible for any issues the applicant may have experienced with his mail delivery. Thus, the appellant's removal from the certification was not in error because he failed to respond within five business days.

### 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 the appellant from an eligible list was in error. It is further noted that it is the practice of this agency's Certification Unit to mail the Notice six calendar days **before** the date printed on the Notice.

In the instant matter, the appellant's name was removed from the eligible list due to his failure to contact the appointing authority within five business days from the date of the Notice. Though the appointing authority argues that applicants had until October 18, 2013 to respond to the Notice, this is incorrect. As a result of Columbus Day falling on October 14, 2013, applicants had until October 21, 2013 to respond to the Notice. The appellant claims he responded to the Notice on the day he received it. However, other than his assertion, the appellant failed to provide any documentation that he mailed his response on October 18, 2013. Moreover, the documentation submitted by the appointing authority indicates that the appellant mailed his response on October 22, 2013. This was beyond the five business day response period indicated on the Notice. Accordingly, the appellant has not met his burden of proof in this matter and the appointing authority has presented sufficient justification for removing his name from the Judiciary Clerk Driver (SO395R), Vicinage 3-Burlington County, eligible list.

### 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 4<sup>TH</sup> DAY OF FEBRUARY, 2015

*Robert M. Czech*

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