

B-28



STATE OF NEW JERSEY

In the Matter of David Thomas,
Public Information Assistant
(M0284R), City of Elizabeth

FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION

CSC Docket No. 2014-2984

List Removal Appeal

ISSUED: APR - 2 2015 (WR)

David Thomas appeals the attached decision of the Division of Classification and Personnel Management (CPM)¹, which found that the appointing authority had presented a sufficient basis to remove the appellant's name from the Public Information Assistant (M0284R), City of Elizabeth, eligible list due to his failure to respond to the Notice of Certification.

The appellant, as the first-ranked non-veteran eligible on the eligible list was certified (OL131054) to the appointing authority on August 8, 2013. The notice date was August 15, 2013. It is noted that the eligible list promulgated on August 1, 2013 and expires on July 31, 2016. In disposing of the certification, the appointing authority requested that the appellant's name be removed from the eligible list on the basis that he failed to respond to the Notice of Certification.² The appellant appealed to CPM, which consequently denied his appeal. Agency records indicate that the second-ranked eligible on the subject certification was appointed, effective November 8, 2013.

On appeal to the Civil Service Commission (Commission), the appellant states in a sworn, notarized statement that he received the Notice in August 2013

¹ CPM is currently known as the Division of Agency Services.

² 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."

and replied to it on August 14, 2013 via the United States Postal Service, but not through certified mail.³

Despite the opportunity, the appointing authority did not respond.

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 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 sworn, notarized statement indicating that he had mailed a response to it. Accordingly, the appellant has sustained his burden of proof and should be restored to the Public Information Assistant (M0284R), City of Elizabeth, eligible list.

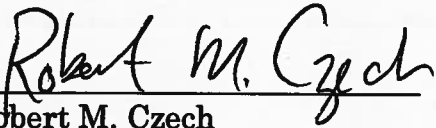
ORDER

Therefore, it is ordered that this appeal be granted, and the appellant's name be reinstated to the eligible list for Public Information Assistant (M0284R), City of Elizabeth, for prospective employment opportunities only.

This is the final administrative determination in this matter. Any further review should be pursued in a judicial forum.

³ It is the practice of the Civil Service Commission that Notices are mailed out approximately one week before the "notice date" indicated on the Notice. Therefore, it is possible for an eligible to respond to the appointing authority before the notice date listed on the Notice.

**DECISION RENDERED BY THE
CIVIL SERVICE COMMISSION ON
THE 1st DAY OF APRIL, 2015**


Robert M. Czech
Chairperson
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: David Thomas
Bridget Zellner
Kenneth Connolly



Chris Christie
Governor
Kim Guadagno
Lt. Governor

STATE OF NEW JERSEY
CIVIL SERVICE COMMISSION
DIVISION OF CLASSIFICATION AND PERSONNEL MANAGEMENT
P. O. Box 313
Trenton, New Jersey 08625-0313

Robert M. Czech
Chair/Chief Executive Officer

May 7, 2014

David Thomas

**Title: PUBLIC INFORMATION
ASSISTANT
Symbol: M0284R
Jurisdiction: ELIZABETH
Certification Number: OL131054
Certification Date: AUGUST 8, 2013**

Initial Determination: Removal – No response to certification notice

This is in response to your correspondence contesting the removal of your name from the above-referenced eligible list.

The Appointing Authority requested removal of your name in accordance with *N.J.A.C. 4A:4-4.7(a) 6*, which permits the removal of an eligible candidate's name from the eligible list for non-compliance with the instructions listed on the notice of certification.

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. Therefore, the Appointing Authority's request to remove your name has been sustained and your appeal is denied.

Please be advised that 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.

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 (C.44:10-55 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 Record Appeals Unit
PO Box 312
Trenton, NJ 08625-0312**

**Sincerely,
For the Director,**

**Cheryl Andrews
Human Resource Consultant 2**

c: Bridget Zellner

