

CSC
B-4



STATE OF NEW JERSEY

FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION

In the Matter of Christopher Kyer,
Correction Officer Recruit (S9988R),
Department of Corrections

List Removal

CSC Docket No. 2015-1688

ISSUED: MAY 26 2015 (HS)

Christopher Kyer appeals the attached decision of the Division of Agency Services (Agency Services), which found that the appointing authority had presented a sufficient basis to remove the appellant's name from the Correction Officer Recruit (S9988R), Department of Corrections eligible list on the basis of his failure to complete pre-employment processing.

The appellant took the open competitive examination for Correction Officer Recruit (S9988R), achieved a passing score and was ranked as a non-veteran on the subsequent eligible list. The eligible list promulgated May 23, 2013 and expires May 22, 2015. The appellant's name was certified to the appointing authority on March 17, 2014. In disposing of the certification, the appointing authority requested the removal of the appellant's name on the basis of his failure to complete pre-employment processing. Specifically, the appointing authority asserted that the appellant was scheduled to attend pre-employment processing on June 5, 2014, but he failed to appear. As a result, the appellant's name was removed from the subject eligible list. The appellant appealed to Agency Services. Agency Services found that the appointing authority had sufficiently documented and supported its request to remove the appellant's name from the subject eligible list.

On appeal to the Civil Service Commission (Commission), the appellant claims that he never received an e-mail or mailed notice to attend pre-employment processing on June 5, 2014. He states that he remains interested in the position and is ready and available to attend pre-employment processing. In support, the appellant submits his March 18, 2014 e-mail response to the notice of certification;

the March 18, 2014 e-mail from the appointing authority confirming receipt of the appellant's response to the notice of certification; a list of the e-mails he received from May 21, 2014 through August 14, 2014; the results of a search of his e-mail account for e-mails to or from the appointing authority, conducted on August 14, 2014 which showed only the March 18, 2014 e-mails; and a list of two e-mails in his spam folder as of August 14, 2014, neither of which were from the appointing authority.

In response, the appointing authority asserts that the appellant cannot prove that he did not receive the appointing authority's notice to attend pre-employment processing. Specifically, the appointing authority maintains that it sent the appellant an e-mail on May 8, 2014 scheduling him for pre-employment processing on June 5, 2014. It argues that the list of e-mails provided by the appellant is insufficient to show that he did not receive the appointing authority's May 8, 2014 e-mail. It further argues that the certification notice clearly indicated that candidates were required to attend the scheduled appointments in order to be considered for appointment, the information would be sent via e-mail only and therefore applicants were to check their e-mail daily. In support, the appointing authority provides the affidavit of the employee who was responsible for sending certification notices, responding to e-mails received and scheduling pre-employment processing.

CONCLUSION

N.J.A.C. 4A:4-4.7(a)11 allows the Commission to remove an eligible's name from an eligible list for other valid reasons. *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.

In the instant matter, the appointing authority removed the appellant's name from the subject eligible list on the basis that he did not appear for pre-employment processing. The appellant maintains that he never received notification from the appointing authority regarding his scheduled date for pre-employment processing. Nevertheless, the record clearly indicates that the appointing authority sent the appellant an e-mail on May 8, 2014 scheduling him for pre-employment processing, and thus, there is a presumption that the appellant received it. The documentation submitted by the appellant is inconclusive as evidence to show that he did not receive the appointing authority's scheduling e-mail. In this regard, the listing of the e-mails he received begins on May 21, 2014, after the date of the scheduling e-mail. In addition, the search of the appellant's e-mail account for e-mails to or from the appointing authority and the listing of spam e-mails are both dated August 14, 2014, representing a time gap of more than three months from the date of the scheduling e-mail. Thus, the fact that the scheduling e-mail happens to not appear

in the particular printouts the appellant has presented on appeal cannot be taken as dispositive evidence of non-receipt. The appellant may, for example, have received the scheduling e-mail but deleted it at some point in the interim. The appellant's argument on appeal is problematic given that he essentially attempts to prove a negative, *i.e.*, that a particular notice was not received. Although it is not possible to prove a negative, the Commission is generally willing to accept that if an individual is prepared to make a statement under oath, understanding all its implications and consequences, then it is proper to permit the presumption that a notice was received to be overcome. However, since, in this case, the appellant, even after being provided the opportunity, did not submit a sworn statement or substantial evidence indicating that the notice to appear for pre-employment processing was not received, he has not met his burden of proof in this matter. Accordingly, the appellant's name was properly removed from the Correction Officer Recruit (S9988R), Department of Corrections 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 20TH DAY OF MAY, 2015

Robert M. Czech

Robert M. Czech
Chairperson
Civil Service Commission

Inquiries
and
Correspondence

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

Attachment

- c. Christopher Kyer
James J. Mulholland
Kenneth Connolly



Chris Christie
Governor
Kim Guadagno
Lt. Governor

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

Robert M. Czech
Chair/Chief Executive Officer

November 24, 2014

Christopher Kyer

Title: Correction Officer Recruit
Symbol: S9988R
Jurisdiction: Department of Corrections
Certification Number: JU13D01
Certification Date: 05/23/13

Initial Determination: Removal – Did not appear/complete pre-employment processing

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:4-6.1(a) 4*, which permits the disqualification of an eligible candidate's name from the eligible list when one has failed to pass preliminary examination procedures.

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.

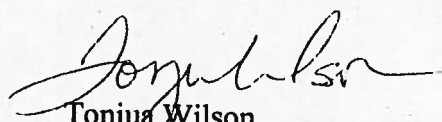
Please be advised that in accordance with Civil Service Rules, you may appeal this decision to the Division of Division of Appeals & Regulatory Affairs (DARA) within 20 days of the receipt of this letter. You must submit all proofs, arguments and issues which you plan to use to substantiate the issues 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 & Regulatory Affairs (DARA)
Written Record Appeals Unit
PO Box 312
Trenton, NJ 08625-0312

Sincerely,



Tonjua Wilson
Human Resource Consultant
State Certification Unit

For Joe M. Hill Jr. Assistant Director
Division of Classification & Personnel Management

C James Mulholland, Director
File

