



STATE OF NEW JERSEY

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

In the Matter of Pietro Velardi, Fire
Fighter (M1513T), Clifton

CSC Docket No. 2019-2690

Request for Reconsideration

ISSUED: APRIL 18, 2019 (CSM)

Pietro Velardi, represented by Craig Gumpel, Esq., requests reconsideration of the attached decision rendered on February 20, 2018, concerning his removal from the Fire Fighter (M1513T), Clifton eligible list due to his failure to appear for the Physical Performance Test (PPT).

By way of background, the petitioner’s name appeared on the Fire Fighter (M1513T) eligible list that was certified to Clifton (OL171449) on December 12, 2017. All candidates on the certification were contacted via email and scheduled to take the PPT. The petitioner was sent an email on January 12, 2018 and told he had been scheduled to take the PPT on February 13, 2018. The petitioner did not appear for the PPT, and his name was removed from all Fire Fighter lists on which his name appeared. In denying the petitioner’s appeal, the Civil Service Commission (Commission) found that as it was each candidate’s responsibility to check their email, including spam folders, for the notification, that this agency’s January 12, 2018 scheduling email was not returned as “undeliverable” by the computer system, and the petitioner was provided an explanation of the PPT scheduling process when he competed in the multiple-choice portion, he failed to satisfy his burden of proof.

On reconsideration, the petitioner submits an affidavit indicating that he did not receive the email notification. He underscores that the first time he became aware that the scheduling email was issued to the candidates was on January 12, 2018 when he received a copy of the Commission’s prior decision in this matter at the end of February 2019. The petitioner explains that the email address he provided on his application is a “family email address” used by him for important

communications. He states that he checked the email address on a regular and frequent basis, including his inbox folder, spam folder, junk mail and deleted mail and never received the notice advising him that the PPT was scheduled. In further support, the petitioner states that he communicated with his email provider, AOL, regarding messages received at the family email address, and it conducted a search for any email coming from the PPT scheduling address in its database. The petitioner provides a copy of emails dated March 1, 2019 and March 12, 2019 from AOL Email Support, indicating that AOL did a search and was unable to find any email coming from the PPT scheduling address to his family email address. Given that he has affirmed that he checked the email account and AOL's search was unable to find an email coming from the PPT scheduling address, the petitioner requests that his name be restored to the Fire Fighter eligible list and that he be added to any outstanding certifications for Belleville.

It is noted that the petitioner's name appeared at rank 33 on the now expired Fire Fighter (M1503T), Belleville eligible list. It is also noted that certification OL190203 was issued to Belleville on March 1, 2019, prior to the expiration of the list, with a disposition due date of September 3, 2019.

CONCLUSION

N.J.A.C. 4A:2-1.6(b) sets forth the standards by which a prior decision may be reconsidered. This rule provides that a party must show that a clear material error has occurred or present new evidence or additional information not presented at the original proceeding which would change the outcome of the case and the reasons that such evidence was not presented at the original proceeding.

N.J.A.C. 4A:4-4.7(a)6 provides that an eligible's name 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 the an appointing authority's decision to remove his name from an eligible list was in error.

In the instant matter, the petitioner's name was removed from all the Fire Fighter eligible lists on which his name appeared since he did not appear for the PPT that was scheduled for him in response to the certification for Clifton. The record clearly indicates that the petitioner signed the 2015/2016 Fire Fighter Memo of Understanding Regarding the Physical Performance Examination on October 24, 2015 indicating that he understood that if his name:

is certified and scheduled to take the PPT, I understand that I must appear on my scheduled test date, with all required materials, ready to

be tested, otherwise I will be removed **from all Fire Fighter eligible lists.** (emphasis added).

However, the petitioner presents on reconsideration that the first time he became aware that the scheduling email was issued to the candidates was on January 12, 2018 when he received a copy of the Commission's prior decision in this matter at the end of February 2019. Accordingly, the petitioner provided an affidavit on reconsideration attesting that he checked his email address on a regular and frequent basis, including his inbox folder, spam folder, junk mail and deleted mail and never received the notice advising him that the PPT was scheduled. Although agency records confirm that an email was sent to him on January 12, 2018 scheduling him for the PPT, the petitioner also provided evidence that AOL Email Support conducted a search and was unable to find any email coming from the PPT scheduling address to his family email address.

In the instant matter, the petitioner submitted an affidavit, attesting to the fact that he did not receive the email scheduling him for the PPT. While there is a presumption that mail correctly addressed, stamped and mailed was received by the party to whom it was addressed, the petitioner has rebutted that presumption in submitting his affidavit in this matter. 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). See also, *In the Matter of Joseph Zimmer* (CSC, decided November 15, 2017) (Commission restored appellant's name to list after he submitted a notarized sworn statement that he never received the email inquiring about his continued interest in position). Moreover, he has provided new evidence from AOL Email Support indicating that the email was not received at his family email address. Under these unique circumstances, the Commission will restore his name on a current basis to the expired Fire Fighter (M1503T) Belleville eligible list. Additionally, if his rank and score on that list are high enough, his name should be added to certification OL190203¹ and he be provided another opportunity to schedule and participate in the PPT.

This determination is limited to the facts of this situation and does not provide precedent for any other matter.

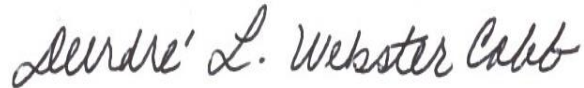
ORDER

Therefore, it is ordered that this request for reconsideration be granted and the petitioner's name be restored to the eligible list for Fire Fighter (M1503T), Belleville, and that his name be added to certification OL190203 to provide him with another opportunity to schedule and participate in the PPT.

¹ The last candidate listed on that certification is at rank 46.

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 APRIL, 2019



Deirdre L. Webster Cobb
Chairperson
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Attachment

c: Pietro Velardi
Craig Gumpel, Esq.
Kelly Glenn
Michael Johnson

He replied with a copy of a voluntary agreement between himself and Clifton which indicated that he would not seek employment with Clifton if they made no objection to the restoration of his name to the eligible list. He requested that the Commission acknowledge the agreement and “implement its terms which provide for the restoration of [his] name to all Firefighter eligibility lists to which his name appears, except for the City of Clifton.” He adds that he works for Belleville, and has a lifelong dream of being a Firefighter which was “cut short when he was notified by Civil Service that his name was removed from all firefighter eligibility lists because he failed to appear for the physical performance examination,” and that his failure to appear was not intentional. He maintains that he did not receive an electronic notice, and asks for reinstatement to the eligible list for (M9999T) on “equity grounds,” and as Clifton has no objections.

CONCLUSION

In reply, a 2015/2016 Fire Fighter Memo of Understanding regarding the Physical Performance Examination was provided to all candidates prior to taking the multiple-choice portion of the examination. Candidates were required to sign this form in order to continue with the examination process. The appellant signed this form on October 24, 2015 and was provided with a copy. This memo indicated that candidates would be contacted via email and scheduled to take the PPT. Therefore, they were specifically advised that it was their responsibility to keep a current email address on file with this Agency and should check spam folders for emails. Thus, ensuring proper receipt of the electronic notice was the candidate’s responsibility. Agency records confirm that an email was sent on January 12, 2018 to the email address provided by the appellant on his application. The email was not returned as “undeliverable” by the computer system, which would have indicated that an invalid email address was used. Prior methods of correspondence and personal circumstances have no bearing on this matter.

Additionally, the New Jersey Fire Fighter Examination (NJFFE) Post-Written Test Timeline and Candidate Responsibilities document was given to all candidates. This document stated that, “If you fail the PPT, do not show up for your scheduled PPT date and time, or do not provide a properly completed and signed medical clearance form, you will be removed from **ALL** firefighter lists.” See *N.J.A.C. 4A:4-2.15(b)2*. This form is also posted on the Commission’s website. Next, the understanding between Clifton and the appellant has no bearing on the matter, as the PPT is administered by the Commission, not Clifton. This agency indicated to Clifton that the appellant did not appear for his PPT exam. Clifton then provided a code on the certification indicating that this agency informed them that he was a no-show candidate. It was each candidate’s responsibility to check their email, including spam folders, for the notification. The appellant has not

satisfied his burden of proof in this matter and sufficient cause exists to remove his name from all of the Fire Fighter lists on which his name appears.

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 FEBRUARY, 2019



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