



STATE OF NEW JERSEY

In the Matter of Perry Bakari,
Rehabilitation Counselor Mental
Health (S0460C), Statewide

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

CSC Docket No. 2024-705

List Removal Appeal

ISSUED: April 10, 2024 (HS)

Perry Bakari appeals the removal of his name from the eligible list for Rehabilitation Counselor Mental Health (S0460C), Statewide, on the basis that he failed to respond to the certification notice.

The appellant, a nonveteran, appeared on the Rehabilitation Counselor Mental Health (S0460C) eligible list, which promulgated on April 6, 2023 and expires on April 5, 2026. The appellant’s name was certified to the Trenton Psychiatric Hospital on April 10, 2023 (OS230202). In disposing of the certification, the appointing authority requested the removal of the appellant’s name on the basis that he failed to respond to the certification notice.

On appeal to the Civil Service Commission (Commission), the appellant insists that he responded to the certification notice. He notes that he attended an in-person interview on June 12, 2023; completed a full physical exam on August 21, 2023; and completed fingerprinting on August 25, 2023. The appellant further notes that following that process, he received a September 20, 2023 offer letter with an October 10, 2023 start date. However, per the appellant, the letter erroneously indicated that his appointment to Rehabilitation Counselor Mental Health was provisional, pending an open competitive examination. The appellant seeks restoration to the eligible list, effective prior to October 10, 2023.

In response, the appointing authority submits that the response it received from the appellant was not to the certification but rather to a Vacancy Announcement

for the same title that was posted around the same time (*i.e.*, March 29, 2023 to April 12, 2023) that the certification was issued. In that regard, in his April 6, 2023 emailed response, as well as an attachment that contained another written response, the appointing authority states that the appellant referenced the posting number that corresponds with the Vacancy Announcement (267-23). Nowhere did he mention a certification number or even reference having received a notice of a list being certified. Moreover, the appointing authority counters that in his appeal, the appellant has simply described part of its new employee preemployment process. As such, that process would exist in the same form and format for all new employees, regardless of whether they were being appointed from a certification or being hired from a Vacancy Announcement. Thus, the appointing authority maintains that the appellant's name was removed from the eligible list appropriately.

Nevertheless, the appointing authority states that since the appellant responded to the Vacancy Announcement and was in the process of being hired,¹ he should not be unduly penalized. To that end, the appointing authority requests that the Commission restore his name to the eligible list.

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 name from an eligible list was in error.

Upon review, the appointing authority appropriately requested the removal of the appellant's name from the eligible list for Rehabilitation Counselor Mental Health (S0460C) on the basis of his failure to respond to the certification notice. Notably, the appellant's response is dated April 6, 2023 – four days before the certification would even issue – and clearly references Vacancy Announcement posting number 267-23, not certification OS230202. Nevertheless, given the particular circumstances of this matter, namely the close timing between the Vacancy Announcement posting and the issuance of the certification; the appellant's responding to the Vacancy Announcement; and the appointing authority's request that his name be restored, it is appropriate to restore the appellant's name to the eligible list. However, there is not a sufficient basis to grant the appellant's request to retroactively restore his name prior to October 10, 2023. As such, his restoration is for prospective employment opportunities only.

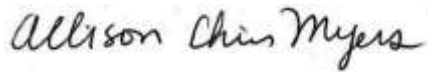
¹ Agency records indicate that the appellant served provisionally in the subject title from October 10, 2023 to October 27, 2023. It is noted that there is no vested property interest in a provisional title. See *O'Malley v. Department of Energy*, 109 N.J. 309 (1987).

ORDER

Therefore, it is ordered that the appeal be granted in part and the appellant's name be restored to the eligible list for Rehabilitation Counselor Mental Health (S0460C), Statewide, for prospective employment opportunities 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 10TH DAY OF APRIL, 2024



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