



**STATE OF NEW JERSEY**

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

In the Matter of Mark Castano Fire  
Fighter (M1873W), Teaneck

List Removal Appeal

CSC Docket No. 2023-2198

**ISSUED:** July 3, 2024 (SDW)

Mark Castano appeals the removal of his name from the eligible list for Fire Fighter (M1873W), Teaneck on the basis that he failed to respond to the certification notice.

The appellant, a non-veteran, took and passed the open-competitive examination for Fire Fighter (M1873W), which had a closing date of August 31, 2018. The resulting eligible list promulgated March 29, 2019 and expired on April 19, 2023.<sup>1</sup> The appellant’s name was certified to the appointing authority on July 18, 2022 with a notice date of July 25, 2022. 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. Certification notices instruct individuals to write to the appointing authority within five business days of the notice date to let it know whether or not the individual was interested in the position.

In support of his appeal to the Civil Service Commission (Commission), the appellant submits a sworn, notarized statement indicating that he has responded to all certification notices that he had received from the appointing authority, including the instant certification.

<sup>1</sup> Agency records indicate that the subject eligible list was extended until April 19, 2023.

In response, the appointing authority, represented by Mark A. Tabakin, Esq., indicates that although it did not receive a response from the appellant, it does not object to the restoration of his name to the subject eligible list, upon proof of response.

### 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.

The appointing authority requested the removal of the appellant's name from the eligible list for Fire Fighter (M1873W) on the basis of his failure to respond to the July 25, 2022 certification notice. However, the appellant has submitted a sworn, notarized statement, attesting to the fact that he responded to the subject certification. Where there is a presumption that mail correctly addressed, stamped and mailed was received by the party to whom it was addressed, in this matter, the appellant's sworn, notarized statement indicating that he did, indeed, send a response that was apparently not received by the appointing authority, is sufficient to satisfy his burden of proof. *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). Thus, it is appropriate that his name be restored to the subject eligible list.

### ORDER

Therefore, it is ordered that this appeal be granted and the eligible list for Fire Fighter (M1873W), Teaneck, be revived in order for appellant to be considered for appointment at the time of the next certification 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 3<sup>RD</sup> DAY OF JULY, 2024




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