



**STATE OF NEW JERSEY**

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

In the Matter of Luis Soto,  
Fire Fighter (M1856W),  
Newark

CSC Docket No. 2024-757

List Removal Appeal

**ISSUED: September 25, 2024 (MC)**

Luis Soto appeals his removal from the Fire Fighter (M1856W), Newark eligible list for failure to respond to the certification notice.

By way of background, the appellant a non-veteran, took and passed the open competitive examination for Fire Fighter (M1856W), which had a closing date of August 31, 2018. The resulting eligible list promulgated on March 29, 2019, and expired March 28, 2021. The appellant's name was certified (OL221497) on December 8, 2022, to the appointing authority. Certification notices dated December 15, 2022, were sent requiring the candidates to respond within five days of the notice date to the appointing authority. Subsequently on January 5, 2023, an email was sent to his email address of record, stating he was scheduled to take the Physical Performance Test (PPT) on January 19, 2023. The document also states make-up requests with supporting documentation must be submitted to this agency's Make-up unit within five business days of receipt of the notice to be considered. Agency records indicate that the appellant did not appear for the PPT.<sup>1</sup> 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.<sup>2</sup>

In his October 5, 2023, appeal, the appellant claims that he responded to the December 15, 2022, certification notice and submits a certified mail receipt in

<sup>1</sup> There is no record that the appellant submitted a request for a make-up.

<sup>2</sup> Agency records indicate that he was also removed due to failure to appear for the PPT.

support.<sup>3</sup> The appellant also submits a January 15, 2023, sworn notarized statement indicating that he was “requesting to defer for the title for Newark, NJ certification dated on December 18, 2022, certification # OL221497 due to an injury.”

Additionally, the appellant submits a second sworn notarized statement dated January 8, 2024, claiming that he mailed his response on December 8, 2022, by certified mail. The statement indicates, “that I wasn’t able to attend on October 27, 2022, due to a right Achilles injury. Also, for the same reason I missed the physical assigned date on January 19, 2023.”

Despite an opportunity to do so, the appointing authority did not present any arguments for review.

## 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 an error.

The appointing authority requested the removal of the appellant’s name from the subject eligible list on the basis of his failure to respond to the December 8, 2022 certification. However, the appellant has submitted a sworn, notarized statement, attesting to the fact that he responded to the certification. While there is a presumption that mail correctly addressed, stamped and mailed was received by the party to whom it was addressed, the appellant has not rebutted that presumption in submitting several sworn, notarized statement. *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). In this regard, the certification notice expressly instructs candidates to contact the appointing authority within five days of the date of notice. However, the appellant has failed to provide any documentation in support of his contention that he properly responded to the appointing authority. Instead, he submits a January 19, 2023, United States Postal Service (USPS) tracking receipt which indicates he mailed something to this agency.<sup>3</sup> Moreover, with regard to the appellant’s second sworn statement, in which he claims that he responded on December 8, 2022, that he “could not attend on October 27, 2022” due to an injury, it does not appear this “response” was in relation to the instant certification. In this regard, although the certification was issued on December 8, 2022, notices were not sent until after that date and there was nothing he would have been requested to appear for on October 27, 2022, that could have been related to the

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<sup>3</sup> It is noted that the (USPS) tracking receipt indicates that the letter was mailed January 19, 2023, and was addressed to this agency.

instant certification. Accordingly, the appellant has not met his burden of proof in this matter.

**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 25<sup>TH</sup> DAY OF SEPTEMBER, 2024



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