



STATE OF NEW JERSEY

In the Matter of Michael Kowalski,
Department of Corrections, Bayside
State Prison

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

CSC Docket No. 2024-2100

Administrative Appeal

ISSUED: February 26, 2025 (AMR)

Michael Kowalski, a Senior Correctional Police Officer, Bayside State Prison, Department of Corrections, represented by Louis Barbone, Esq.,¹ requests to reinstate the appeal of his removal, effective March 13, 2024, which was dismissed on the basis of his failure to appear at the June 27, 2024, prehearing telephone conference at the Office of Administrative Law (OAL).

By way of background, the appellant timely appealed his removal to this agency which transmitted the matter to the OAL as a contested case. The OAL scheduled the matter for a prehearing telephone conference on June 13, 2024, and sent a notice, dated June 5, 2024, to this effect to the appellant and Bayside State Prison. In a letter dated June 6, 2024, Elizabeth A. Davies, Deputy Attorney General, indicated her representation of Bayside State Prison and requested an adjournment due to a scheduling conflict. The Administrative Law Judge granted the adjournment and the OAL sent a notice dated June 10, 2024 rescheduling the telephone conference for June 27, 2024. On the scheduled date, the appellant failed to appear. The OAL issued a Failure to Appear notice which indicated that the appellant failed to appear at the scheduled proceedings. On July 10, 2024, the matter was returned to the Civil Service Commission (Commission) for a final decision, with a notice giving the parties 13 days to present any excuse to this agency for failure to appear at the OAL proceedings.

¹ It is noted that the appellant was not represented by an attorney at the time this matter was pending in the Office of Administrative Law.

In support of the appellant's request for reinstatement of his appeal, the appellant indicates that he did not appear as a result of not receiving the aforementioned June 10, 2024 notice. He asserts that while he received the June 6, 2024 letter, indicating that the June 13, 2024 telephone conference was to be rescheduled, and the July 10, 2024 Failure to Appear notice, he did not receive the June 10, 2024 notice. In support of his request, he submits copies of the June 6, 2024 letter and July 10, 2024 notice. On December 9, 2024, the appellant submitted a certification affirming that his phone service, which also comprised his internet access, was discontinued in June and July 2024 due to his inability to pay the bill. As a result, he indicates that he did not receive any emails during that time, including email notification regarding the June 27, 2024 prehearing telephone conference.

In response, Bayside State Prison, presents that the appellant has been receiving mail at his home address of record based on his receipt of the June 6, 2024 letter requesting the adjournment and the Notice of Failure to Appear. Bayside State Prison emphasizes that the June 10, 2024 notice was not only mailed to the appellant but also mailed to his home address. Given all the facts presented, the appointing authority recommends that the appellant's request be denied.

CONCLUSION

In this matter, the appellant has not sustained his burden of proof. The Commission acknowledges the presumption that mail correctly addressed, stamped and mailed is generally received by the party to whom it was addressed. *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). It also recognizes that on occasion, such mail never reaches its intended destination. Generally, the Commission is 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 of receipt to be overcome. In actuality, there is no other alternative for an applicant. It is not possible to prove a negative, *i.e.*, that mail was not received. If the Commission did not accept a sworn statement averring that mail was not received, there would be no remedy at all for individuals who find themselves in this particular situation. *See In the Matter of Neil Nelson* (MSB, decided January 26, 2005).

In this matter, the appellant provides a certification, not a sworn statement, stating that he did not receive the June 10, 2024 notice as he did not receive **emails** during June and July 2024 due to his lack of internet service. However, he does not indicate anything regarding his receipt of regular mail during that timeframe. Given that the appellant received the June 6, 2024 letter and the Notice of Failure to Appear at his home address, Bayside State Prison emphasizes that the June 10, 2024 notice indicating the June 27, 2024 adjourned conference date was not only emailed but also mailed to his home address of record. The Commission agrees, and that, per the above standard, the appellant has not sufficiently refuted the presumption of

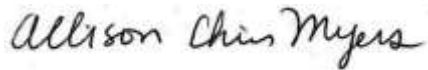
mailing. Moreover, even if the letter was sent only via email, it was the appellant's responsibility to ensure that he timely notified OAL of an updated email or mailing address to send documents. The fact that he did not does not persuade the Commission that he should be given the opportunity to reinstate his appeal. Accordingly, his request is denied.

ORDER

Therefore, it is ordered that Michael Kowalski's request to reinstate his appeal be denied and his appeal be dismissed.

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 26TH DAY OF FEBRUARY, 2025



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