



STATE OF NEW JERSEY

FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION

In the Matter of Cleveland
Alexander, Sheriff's Officer
(C0214D), Burlington County

CSC Docket No. 2023-2932

List Removal Appeal

ISSUED: February 28, 2024 (VJ)

Cleveland Alexander appeals the determination of the Burlington County Sheriff Department to remove his name from the eligible list for Sheriff's Officer (C0214D), on the basis that he failed to respond to the certification notice in a timely manner.

The appellant, a non-veteran, took and passed the open competitive examination for Sheriff's Officer (C0214D), which had a closing date of February 28, 2022. The resulting eligible list promulgated on November 10, 2022 and expired on November 9, 2023. The appellant's name was certified to the appointing authority on December 13, 2022, with a certification notice (Notice) date of December 20, 2022. The instructions on the back of the Notice state that an individual must write to the appointing authority within five business days of the date of the Notice to let it know whether or not the individual was interested in the position and failure to contact the appointing authority in writing would automatically result in the appointing authority's request for the removal of the individual's name from the list. Finally, the Notice states in bold letters, "**[f]ailure to follow these instructions will result in the removal of your name from the list.**"

On appeal, the appellant asserts that he responded to the Notice on December 21, 2022 and mailed it to the appointing authority on the same date. In support, he submits a sworn notarized statement and a copy of his response.

In response, the appointing authority states that the appellant's name was removed because he did not respond to the Notice by December 27, 2022, and that his response was therefore untimely. In support, it submits the appellant's envelope from his response with a stamp stating, "Received Burlington County Sheriff 2022 December 28 A 8:58."

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. Additionally, *N.J.S.A.* 11A:4-6 and *N.J.A.C.* 4A:4-3.4 provide that an eligible list may be revived in order to implement a court order or decision of the Civil Service Commission in the event of a successful appeal instituted during the life of a list, to correct an administrative error, or for other good cause.

Initially, prior to determining whether the appellant timely responded to the Notice, it must first be determined when that period ends. In this matter, the Notice date was December 20, 2022, which was a Tuesday. Therefore, in calculating when the five-business day period ends, the first day to be counted is Wednesday December 21, 2022.¹ The 24th, 25th and 26th were Saturday, Sunday and Christmas Day, and are therefore not counted as a business day. Accordingly, December 28th would have been the fifth business day and the last day the response could have been sent. The record in this matter establishes that the appellant's response to the Notice was received by the appointing authority on December 28, 2022.² Accordingly, the appellant timely responded to the certification notice and it is appropriate that the appellant's name be restored to the subject eligible list for prospective employment opportunities only.

ORDER

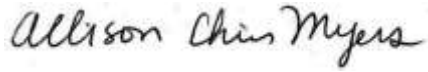
Therefore, it is ordered that this appeal be granted and the eligible list for Sheriff's Officer (C0214D), Burlington County, be revived in order for the appellant to be considered for prospective employment opportunities at the time of the next certification.

¹ Title 4A of the New Jersey Administrative Code is silent as to how count the time-period. However, the court rules provide that in computing any fixed period of time, the first day is not included. *See* New Jersey Court Rules 1:3-1.

² Although the appellant's response to the Notice was clearly mailed, there is no postmark including a date that is visible on the copy of the envelope that was submitted. Therefore, the date received is being utilized. However, the five-day response period does not provide that a response must be *received* within five-days, and therefore, the postmarked date should be used in determining whether or not a response was timely sent. In this matter, it is clear that the appellant's response would have had to be mailed well within five business days for the appointing authority to have received it within that same time-period.

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 28TH DAY OF FEBRUARY, 2024



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