

COMMONWEALTH OF MASSACHUSETTS

CIVIL SERVICE COMMISSION
One Ashburton Place - Room 503
Boston, MA 02108

ANDREW BENNETT,
Appellant

v.

E-18-191

HUMAN RESOURCES DIVISION,
Respondent

Appearance for Appellant:

Joseph G. Donnellan, Esq.
Rogal & Donnellan, P.C.
100 River Ridge Drive, Suite 203
Norwood, MA 02062

Appearance for Respondent:

Melinda Willis, Esq.
Labor Counsel
Human Resources Division
100 Cambridge Street: Suite 600
Boston, MA 02114

Commissioner:

Christopher C. Bowman

DECISION

On October 10, 2018, the Appellant, Andrew Bennett (Mr. Bennett), pursuant to G.L. c. 31, § 2(b), filed an appeal with the Civil Service Commission (Commission), contesting the decision of the state’s Human Resources Division (HRD) to deny his request for so-called “402A” preference on the eligible list for the position of firefighter. On November 20, 2018, I held a pre-hearing conference which was attended by counsel for Mr. Bennett and counsel for HRD. On December 17, 2018, HRD submitted a Motion for Summary Decision and Mr. Bennett filed a reply on February 19, 2018.

The parties agree to the following:

1. Mr. Bennett took and passed a civil service examination for firefighter.
2. Mr. Bennett requested preferential treatment on the eligible list for firefighter pursuant to G.L. c. 31, § 26, as amended by Chapter 402A of the Acts of 1985.
3. In support of his request, Mr. Bennett submitted a copy of his birth certificate, a copy of his father, Lieutenant Barry M. Bennett's, death certificate, a copy of the Cambridge Fire Department documentation regarding the circumstances of his father's death on November 3, 2003, a copy of a report from the Public Safety Officers' Benefit Office Claim Determination, Mr. Bennett's written examination and ELPAAT passing notifications, and a letter from the Public Employee Retirement Administration Commission (PERAC) stating that the Appellant's mother, receives an Accidental Death Benefit in conformity with G.L. c. 32, § 100.
4. The documentation indicated that Lt. Bennett's line of duty injury was a "needle stick" that resulted in the transmission of Hepatitis C. Lt. Bennett sustained this injury while cleaning up ALS IV equipment at the hospital, after he responded to a medical emergency.
5. HRD denied the Appellant's 402A claim, because the aforementioned documentation indicated that his father's death "did not occur as a result of an accident while responding to a fire or while at the scene of a fire."

Applicable Standard of Review

Pursuant to G.L. c. 31 § 2(b), the Commission has the power to hear and decide appeals from those persons aggrieved by the actions or inactions of HRD. A person is only aggrieved when "a decision, action, or failure to act on the part of the administrator was in violation of this chapter,

the rules or basic merit principles promulgated thereunder, and ... such person's rights were abridged, denied, or prejudiced in such a manner as to cause actual harm to the person's employment status."

The Appellant seeks preferential placement on the relevant eligibility list pursuant to G.L. c. 31, §26, which states in relevant part:

Notwithstanding any other provisions of this chapter or of any law, a son or daughter of a firefighter or a police officer who passes the required written and physical examination for entrance to the...fire service...shall have his or her name placed in the first position on the eligible list... for appointment to such fire or police service if...in the case of a firefighter, such firefighter while in the performance of his duties and as the result of an accident while responding to an alarm of fire or while at the scene of a fire was killed or sustained injuries which resulted in his death... For the purposes of determining the order of persons on eligible lists pursuant to this section, the presumptions created by section ninety-four, ninety-four A and ninety-four B of chapter thirty-two, shall not be applicable to the death or disablement of any firefighter or police officer whose son or daughter is eligible for appointment.

Analysis

Neither party argues that the accident which caused the death of the Appellant's father occurred while responding to *an alarm of fire* or at the scene of *a fire*. Rather, the nature of the call for service that day was a call for *medical* services and there was no fire at the scene. While the Appellant appears to make strong arguments why the statute should be amended to include such incidents in regard to 402A benefits, the Commission cannot ignore the plain language of the statute which limits such benefits to children of parents who die in the line of duty *while responding to an alarm of fire or at the scene of a fire*.

Conclusion

The Appellant's appeal under Docket No. E-18-191 is hereby ***dismissed***.

Civil Service Commission

/s/ Christopher Bowman

Christopher C. Bowman
Chairman

By a 4-1 vote of the Civil Service Commission (Bowman, Camuso, Ittleman, Stein, [YES]; Tivnan [NO]; on February 28, 2019).

Either party may file a motion for reconsideration within ten days of the receipt of this Commission order or decision. Under the pertinent provisions of the Code of Mass. Regulations, 801 CMR 1.01(7)(l), the motion must identify a clerical or mechanical error in this order or decision or a significant factor the Agency or the Presiding Officer may have overlooked in deciding the case. A motion for reconsideration does not toll the statutorily prescribed thirty-day time limit for seeking judicial review of this Commission order or decision.

Under the provisions of G.L. c. 31, § 44, any party aggrieved by this Commission order or decision may initiate proceedings for judicial review under G.L. c. 30A, § 14 in the superior court within thirty (30) days after receipt of this order or decision. Commencement of such proceeding shall not, unless specifically ordered by the court, operate as a stay of this Commission order or decision. After initiating proceedings for judicial review in Superior Court, the plaintiff, or his / her attorney, is required to serve a copy of the summons and complaint upon the Boston office of the Attorney General of the Commonwealth, with a copy to the Civil Service Commission, in the time and in the manner prescribed by Mass. R. Civ. P. 4(d)

Notice To:

Joseph Donnellan, Esq. (for Appellant)

Melinda Willis, Esq. (for Respondent)