

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

CIVIL SERVICE COMMISSION
One Ashburton Place - Room 503
Boston, MA 02108
(617) 727-2293

MARK CECIETA,
Appellant

v.

E-15-36

HUMAN RESOURCES DIVISION,
Respondent

Appearance for Appellant:

Galen Gilbert, Esq.
294 Washington Street, Suite 351
Boston, MA 02108

Appearance for Respondent:

Melinda T. Willis, Esq.
Labor Counsel
Human Resources Division
One Ashburton Place, Room 211
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Commissioner:

Paul M. Stein¹

DECISION

Pursuant to G.L. c. 31, § 2(b), the Appellant, Mark Cecieta (“Mr. Cecieta”), appeals to the Civil Service Commission (“Commission”) from the decision of the Massachusetts Human Resources Division (“HRD”) denying his request for so-called “402A” preference on the eligible list for the position of Firefighter. Mr. Cecieta’s appeal was timely. A pre-hearing was held on March 10, 2015 at the offices of the Commission. On May 6, 2015, HRD submitted a Motion for Summary Decision (“Motion”), which the Appellant opposed. The motion was denied without

¹ The Commission acknowledges the assistance of Law Clerk Todd M. Hirsch in the drafting of this decision.

prejudice and a full evidentiary hearing was held on June 2, 2015 at the offices of the Commission.² The hearing was digitally recorded, with copies provided to the parties.³

Findings of Fact

Giving appropriate weight to the documents in evidence (Exhibits 1 through 32), the stipulations of the parties, the testimony of the one witness called by the Appellant (Francine Cecieta), and as well as inferences reasonably drawn from the evidence as I find credible, I make the following findings of fact:

1. William Cecieta, father of the Appellant, was a firefighter for the Town of Saugus.
(Stipulated Facts)
2. On November 24, 1985, William Cecieta was struck by a car while in performance of his duties as a Firefighter. As a result of this accident, William Cecieta sustained severe injuries to his right leg. (Exhs. 3, 4, & 14; Testimony of Francine Cecieta)
3. On March 19, 1986, William Cecieta was admitted to Beverly Hospital for ankle surgery. At that time, he received an electrocardiogram (ECG), which was diagnosed as normal. (Exh. 17)
4. William Cecieta filed for accidental disability benefits based on the injuries to his right leg. He was examined by a medical panel on July 1, 1987 and was found to be disabled. The panel report makes no mention that a heart problem or a hypertension problem was a contributing factor to his disability at the time of the examination or that he had ever sought or received treatment for heart disease. (Exh. 8)

² The Standard Adjudicatory Rules of Practice and Procedure, 801 CMR §§ 1.00, *et seq.*, apply to adjudications before the Commission with Chapter 31 or any Commission rules taking precedence.

³ If there is a judicial appeal of this decision, the plaintiff in the judicial appeal would be obligated to supply the court with a transcript of this hearing to the extent that he/she wishes to challenge the decision as unsupported by the substantial evidence, arbitrary and capricious, or an abuse of discretion. In such cases, this CD should be used by the plaintiff in the judicial appeal to transcribe the recording into a written transcript.

5. William Cecieta was retired in 1987 under the provisions of G.L. c. 32, § 7 because of a disabling condition caused by problems with his right leg. (Exhs. 8 & 11)
6. William Cecieta first sought medical treatment for heart disease when he went to see Dr. Robert Rokowski on October 25, 1993.⁴ At the time, William Cecieta presented with evidence of extensive heart damage and cardiomyopathy. A catheterization revealed diffused coronary artery disease as well as poor heart function. Mr. Cecieta was found to have ventricular tachycardia and was given medication to control his heart rhythm. Dr. Rokowski also noted that William Cecieta had a “longstanding history of hypertension” and “a strong family history for coronary artery disease.” (Exhs. 8, 20, 22, & 23)
7. As stated on the Death Certificate, William Cecieta died on March 11, 1994 as a result of Ventricular Arrhythmia of ten minute duration and a Severe Cardiomyopathy of six months duration. (Exhs. 2 & 8)
8. After William Cecieta died, his widow, Francine Cecieta, sought survivor’s accidental death benefits under G.L. c. 32 § 9, on the grounds that her husband had died of injuries in the line of duty. Dr. Rokowski supported this application with his opinion that William Cecieta’s heart condition, which resulted in his death, was a “direct consequence of the trauma which led to his retirement.” (Exhs. 23 & 28)
9. Dr. Boucher, M.D., who had examined William Cecieta on December 2, 1993 and again on December 22, 1993, agreed with Dr. Rokowski’s assessment (Exhs. 8, 21 & 27)
10. Dr. Kenneth Gershengorn, a Board Certified Cardiologist, was designated by the Public Employee Retirement Administration (“PERA”) to review the records of William Cecieta

⁴ I note that letterhead on which Dr. Rokowski provided reports in November 1994 and May 1994 indicate that he held Board Certification as a Cardiologist, but his name is listed on the letterhead with only the credential “MD” and not “F.A.C.C.,” as were his two colleagues (Fellow of the American College of Cardiologists). Thus, I make the inference that, when William Cecieta first sought treatment, Dr. Rokowski had been F.A.C.C. Board Certified, if at all, for only a short period of time.

and give his opinion as to the cause of death. In a February 23, 1995 report, Dr. Gershengorn mixed William Cecieta's health records with those of another patient. When the error was brought to his attention, he apologized, but still concluded that there was no causal link between Williams Cecieta's leg injury in 1985 and his death in 1994. (Exhs. 8 & 31; Testimony of Francine Cecieta)

11. In May 1995, a final opinion was obtained from Dr. Daniel Wistran, also a Board Certified Cardiologist, who reviewed the medical records and reported:

- "Trauma to a leg or extremity does not cause ischemic heart disease or severe congestive heart failure."
- "I would also quote Dr. Charles Boucher's assessment in December, 1993, where he says, 'he has no prior history of heart disease until the spring of 1993.'"
- "One does not fracture an ankle or leg and develop severe ischemic cardiomyopathy. The two are not related."
- "I'm sure this has been very difficult for both the Board as well as the family involved, but it is my objective opinion that there was no relationship between the fractured leg and ischemic heart disease."

(Exh. 30)

12. Based on the medical opinions, the Saugus Retirement Board denied Mrs. Cecieta's claim for accidental death benefits because William Cecieta's death was not causally related to his work, which is a statutory pre-requisite to qualifying for such benefits under G.L. c. 32. (Exh. 8)

13. Upon appeal, by decision dated December 19, 1995, a DALA administrative magistrate affirmed the Saugus Retirement Board's denial of Francine Cecieta's application for

accidental death benefits finding, specifically, that his death was not “the natural and proximate result of the injury or hazard on account of which [William Cecieta] was retired” and, therefore, his death was not “causally related to his work.” (Exh. 9)

14. On May 2, 1996, the Contributory Retirement Appeal Board (“CRAB”) unanimously adopted the findings and decision of the DALA administrative magistrate and affirmed the decision of the Saugus Retirement Board to deny accidental death benefits to Francine Cecieta. (Exhs. 8 & 9)
15. In 1996, the Legislature passed special legislation directing the Retirement Board of the Town of Saugus to pay Accidental Death benefits to the widow and children of William Cecieta. (Exhibits 6, 10, and 11)
16. The Appellant took the civil service exam for original appointment as a firefighter in Saugus. (Stipulated Facts)
17. In December 2012, the Appellant requested preferential placement on the eligibility list pursuant to the provisions of G.L. c. 31, §26, as amended by Chapter 402A of the Acts of 1985. (Exh. 7)
18. HRD denied the Appellant’s request on December 5, 2012, finding that William Cecieta’s death did not occur while responding to a fire or while at the scene of a fire. The Appellant did not contest or appeal this decision. (Exh. 7)
19. The Appellant took the 2014 Firefighter Examination in April 2014. He received a score of 98. (Exh. 5)
20. In December 2014, the Appellant again requested preferential placement on the eligibility list pursuant to the provisions of G.L. c. 31, §26, as amended by Chapter 402A of the Acts of 1985. In support of this request, the Appellant submitted a copy of his birth

certificate, a copy of his father, William Cecieta's, death certificate, a copy of the fire report regarding his father's death, a copy of the report from Melrose Wakefield Hospital regarding the 1985 accident, Appellant's passing grade notification, and a letter from the Town of Saugus Retirement Board stating that Mrs. Cecieta receives an Accidental Death Benefit in conformity with G.L. c. 32, §9. (Exh. 32)

21. HRD denied this request because the same request had previously been denied in 2012 on the grounds that the Appellant's father had not died from injuries suffered in the line of duty. (Exhs. 7 & 32)

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.

The Appellant must prove, by a preponderance of the evidence, that his parent's death was caused by an injury sustained in a work-related accident. Gillis v. Boston Police Department, 19 MCSR 95 (2006). A contention is proved by a preponderance of the evidence "if it is made to appear more likely or probable in the sense that actual belief in its truth, derived from the evidence, exists in the mind or minds of the tribunal notwithstanding any doubts that may still linger there." Tucker v. Pearlstein, 334 Mass. 33, 35-36 (1956). The trier of fact must be convinced that a proposition is more than simply possible, but that it is more likely than not to be true. See Sergeant v. Mass. Accident Co., 307 Mass. 246, 251 (1940); Continental Assurance Co. v. Diorio-Volungis, 51 Mass.App.Ct. 403, 408 (2001).

Analysis

The question before the Commission is whether the Appellant's father, William Cecieta, died of heart damage that was caused by an injury suffered in the line of duty.

In November 1985, William Cecieta suffered an injury to his right leg. Nine years passed between the date of this injury and William Cecieta's ultimate death in 1994. Appellant has not proven, by a preponderance of the evidence, that there is a link between this injury and the ventricular arrhythmia and severe cardiomyopathy that ultimately led to his death, nine years later. There are other contributing factors, such as high cholesterol and family medical history that are cited in the record that could have caused William Cecieta to suffer a heart attack. The evidence shows that four months after the accident, in March 1986, William Cecieta was experiencing no heart trouble, as highlighted by his normal electrocardiogram. Furthermore, in November 1993, a doctor's report states that William Cecieta had a long history of hypertension and a strong family history of coronary heart disease. The Death Certificate states that his heart disease had a course of six months prior to his death. Both Dr. Gershengorn and Dr. Wisran

provided convincing opinions that support the conclusion that there is simply “no relationship” between William Cecieta’s death in 1994 and his 1987 leg injury. Therefore, the Commission cannot conclude that the Appellant is entitled to preferential placement because the Appellant lacks proof, by a preponderance of the evidence, that his father’s death was caused by an injury suffered in the line of duty.

The fact that the legislature was persuaded to enact special legislation to carve out an exception to the requirements of the retirement law, Chapter 32, so that the Saugus Retirement Board was authorized to pay death benefits to Mrs. Cecieta, is not a sufficient reason to grant a Section 402A preference under civil service law, Chapter 31. The special act is silent on the subject of Chapter 31 rights. Nothing in that legislation warrants HRD, or the Commission, to disregard the clear statutory requirements for granting a 402A preference, placing the preferred candidate ahead of all other candidates, including veterans, who had earned a higher score on the civil service examination. The evidence simply does not show that William Cecieta “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” as required by G.L. c. 31 §26, the statutory prerequisite for granting a 402A preference.

Conclusion

In sum, HRD correctly concluded that William Cecieta’s death was not the result of a work-related injury within the meaning of G.L. c. 31 §26. Therefore, the appeal of Mr. Mark Cecieta, under Docket Number E-15-36, is hereby *dismissed*.

Civil Service Commission

/s/ Paul M. Stein

Paul M. Stein
Commissioner

By a vote of the Civil Service Commission (Bowman, Chairman; Ittleman, McDowell & Stein, Commissioners on July 23, 2015).

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:

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Melinda T. Willis, Esq. (for Respondent)