

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

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

JOSEPH T. MCGUNIGLE,
Appellant

v.

E-18-153

HUMAN RESOURCES DIVISION,
Respondent

Appearance for Appellant:

Pro Se
Joseph T. McGunigle

Appearance for Respondent:

Mark Detwiler, Esq.
Human Resources Division
100 Cambridge Street, Suite 600
Boston, MA 02114

Commissioner:

Christopher C. Bowman

ORDER OF DISMISSAL

1. On August 22, 2018, the Appellant, Joseph T. McGunigle (Mr. McGunigle), filed an appeal with the Civil Service Commission (Commission), contesting the decision of the state’s Human Resources Division (HRD), to deny him “402B Preference” under G.L. c. 31, s. 26 as amended by Chapter 402 of the Acts of 1985.
2. Relevant to this appeal, the preference is given to those persons whose parent “has been retired at a yearly amount of pension equal to the regular rate of compensation which the ... police officer ... should have been paid had the ... police officer ... continued in said service at the grade held at the time of retirement, pursuant to a special act of the legislature in which said ... police officer ... is determined to be permanently or totally disabled; and ... in the case of a police officer, such police officer while in the performance of the police officer's duties and as a result of an assault on the police officer's person sustained injuries which resulted in the police officer being permanently and totally disabled ... “
3. The parties agree that no Special Act was ever passed regarding Mr. McGunigle’s father, who served as a Boston Police Officer.

4. The parties agree, however, that a Special Act was passed in 1997 (Chapter 64 of the Acts of 1997) stating in relevant part that: “ ... for the purpose of placement on the eligible list for appointment for the position of police officer in the city of Quincy, Joseph T. McGunigle shall be considered to be the son of a police officer as provided in Section 26 of chapter 31 of the General Laws; provided, however, that he passes the required written and physical examination for entrance to the police service ... “. (emphasis added)
5. Mr. McGunigle stated at the pre-hearing conference that, subsequent to the passage of the above-referenced Special Act, he was given the 402B preference (statewide) and was appointed as a Quincy Police Officer. He served as a Quincy police officer for fourteen (14) years and is now collecting a pension.
6. Mr. McGunigle has recently passed the civil service examination for firefighter and has asked HRD to provide him with 402B preference for firefighter, placing him at the top of eligible lists for firefighter.
7. Mr. McGunigle argued that Chapter 402B, coupled with the 1997 Special Act, require HRD to grant him this preference.
8. HRD argued that McGunigle does not meet the requirements of the 402B preference, standing alone, and/or in conjunction with the 1997 Special Act.
9. HRD submitted a Motion for Summary Decision. Mr. McGunigle submitted a reply / opposition.
10. On December 13, 2018, I held a motion hearing and heard oral arguments from both parties.

Analysis

For the reasons stated in HRD’s Motion for Summary Decision, Mr. McGunigle does not qualify for 402B preference. It is undisputed that, when Mr. McGunigle’s father retired from the Boston Police Department, he received the customary seventy-two (72) percent of his last year salary for retirement as opposed to “a yearly amount of pension equal to the regular rate of compensation which the ... police officer ... should have been paid had the ... police officer ... continued in said service at the grade held at the time of retirement.” Further, there is no Special Act of the Legislature ordering a retirement benefit at the higher amount. Finally, the Special Act referenced by Mr. McGunigle relates solely to him receiving hiring preference as a Quincy Police Officer. He received that benefit and is now retired. Neither the statute or the Special Act provides for any further hiring preferences, including that being requested here.

Conclusion

For these reasons, Mr. McGunigle's appeal under Docket No. E-18-153 is *dismissed*.

Civil Service Commission

/s/ Christopher Bowman
Christopher C. Bowman
Chairman

By a vote of the Civil Service Commission (Bowman, Chairman; Camuso, Ittleman, Stein and Tivnan, Commissioners) on April 11, 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:

Joseph T. McGunigle (Appellant)
Patrick Butler, Esq. (for Respondent)