

NOTICE: Summary decisions issued by the Appeals Court pursuant to M.A.C. Rule 23.0, as appearing in 97 Mass. App. Ct. 1017 (2020) (formerly known as rule 1:28, as amended by 73 Mass. App. Ct. 1001 [2009]), are primarily directed to the parties and, therefore, may not fully address the facts of the case or the panel's decisional rationale. Moreover, such decisions are not circulated to the entire court and, therefore, represent only the views of the panel that decided the case. A summary decision pursuant to rule 23.0 or rule 1:28 issued after February 25, 2008, may be cited for its persuasive value but, because of the limitations noted above, not as binding precedent. See Chace v. Curran, 71 Mass. App. Ct. 258, 260 n.4 (2008).

COMMONWEALTH OF MASSACHUSETTS

APPEALS COURT

20-P-1228

JOSEPH MCGUNIGLE

vs.

CIVIL SERVICE COMMISSION & others.¹

MEMORANDUM AND ORDER PURSUANT TO RULE 23.0

This appeal concerns Joseph McGunigle's request for preferential hiring status for a position as a firefighter in Quincy. The human resources division (division) denied the request and McGunigle appealed to the Civil Service Commission (commission), which dismissed his appeal. After review in the Superior Court, a judge granted judgment on the pleadings in favor of the commission and the other defendants. McGunigle appeals. We affirm.

Background. We briefly summarize the facts found by the hearing commissioner. McGunigle's father, George,² was injured

¹ The Chairman of the Civil Service Commission and Patrick Butler.

² We use first names to avoid confusion.

in the line of duty, and retired from the Boston police department in 1982. George was awarded accidental disability benefits that entitled him to a yearly amount of pension equal to seventy-two percent of the annual rate of his regular compensation. See G. L. c. 32, § 7 (2) (a) (ii). In 1997, the Legislature passed a special act that entitled Joseph to a preferred position on the eligible list for Quincy police officers.³ See St. 1997, c. 64. Joseph was granted preferential status and subsequently was hired and served as a Quincy police officer until his retirement in 2012.

In 2018, after taking the civil service examination for firefighters, Joseph twice applied to the division for "402B preference."⁴ The division denied his requests because George's

³ The special act stated:

"Notwithstanding the provisions of any general or special law or rule of regulation to the contrary, 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 [G. L. c. 31, § 26]; provided, however, that he passes the required written and physical examination for entrance to the police service" (emphasis added).

⁴ General Laws c. 31, § 26, as amended by St. 1985, c. 402, § 1, enables a child of a police officer who passes the required written and physical examinations to receive a statutory preference in placement on all entry-level police officer or firefighter eligible lists if the police officer was permanently and totally disabled in the line of duty and if through a special act of the Legislature, the police officer received a

pension was not equal to one hundred percent of an active police officer's salary, and there was no "Special Act passed by the Massachusetts Legislature that authorize[d] the payment of full salary" to George. See G. L. c. 32, § 7 (2) (a) (ii). Joseph appealed the decision of the division to the commission, which after a hearing, dismissed the appeal, concluding that Joseph failed to meet the statutory requirements for a 402B preference. The commission concluded, inter alia, that the scope of Joseph's special act was limited to preference on an eligible Quincy police officer list.

Discussion. "[W]e review the commission's decision under G. L. c. 31, § 44," and it "will be upheld unless it is 'unsupported by substantial evidence[,] . . . arbitrary or capricious, an abuse of discretion, or otherwise not in accordance with the law.'" Boston Police Dep't v. Civil Serv. Comm'n, 483 Mass. 461, 469 (2019), quoting G. L. c. 30A, § 14 (7). "Substantial evidence is 'such evidence as a reasonable mind might accept as adequate to support a conclusion.'" Boston Police Dep't, supra, quoting G. L. c. 30A, § 1 (6). "The party appealing bears a heavy burden because we give due weight to the experience, technical competence, and specialized knowledge of the commission" (quotations and citations omitted). Spencer v.

retirement pension equal to the regular rate of compensation had the police officer continued in service.

Civil Serv. Comm'n, 479 Mass. 210, 215 (2018). "This standard of review is highly deferential to the agency on questions of fact and reasonable inferences drawn therefrom." Brackett v. Civil Serv. Comm'n, 447 Mass. 233, 242 (2006), quoting Flint v. Commissioner of Pub. Welfare, 412 Mass. 416, 420 (1992).

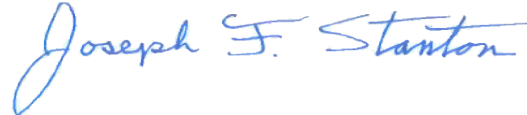
Joseph argues that he was wrongfully denied 402B preference because the division had previously awarded this status to him and his special act, which never expires, applies to both police officers and firefighters. We are not persuaded. First, the commission properly concluded that Joseph did not meet the statutory requirements. See G. L. c. 31, § 26. Although George was injured in the line of duty, he did not receive benefits equal to the one hundred percent of his salary as required by statute. And Joseph did not present, and does not argue, that there was a special act granting George a full salary pension. That the division granted him 402B preference in the past is of no moment. See Ralph v. Civil Serv. Comm'n, 100 Mass. App. Ct. 199, 209 n.9 (2021). Finally, the plain language of the special act awarded Joseph preferential hiring status as a police officer, not a firefighter.⁵ Based on the foregoing, we conclude

⁵ Inasmuch as Joseph argues that he should be granted 402B preference because another similarly situated applicant received such preference, this claim is belied by the record. The other applicant was granted preferential status based on the explicit language of special legislation to which that applicant was the beneficiary.

that the commission's decision was free from legal error, supported by substantial evidence, and not arbitrary or capricious. Accordingly, there was no error in the judgment affirming the commission's decision.⁶

Judgment affirmed.

By the Court (Vuono, Blake & Englander, JJ.⁷),



Clerk

Entered: November 1, 2021.

⁶ "To the extent that we have not addressed any other points raised, it is not because we have not considered them; rather [there is] nothing in them that requires discussion" (quotation and citation omitted). Northern Sec. Ins. Co. v. R.H. Realty Trust, 78 Mass. App. Ct. 691, 698 n. 16 (2011).

⁷ The panelists are listed in order of seniority.