

**COMMONWEALTH OF MASSACHUSETTS**

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

BRIAN MINGOLELLI,  
Appellant

v.

E-18-023

HUMAN RESOURCES DIVISION,  
Respondent

Appearance for Appellant:

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Appearance for Respondent:

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Commissioner:

Christopher C. Bowman

**DECISION**

On February 6, 2018, the Appellant, Brian Mingoelli (Mr. Mingoelli), 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. Mr. Mingoelli’s appeal was timely. On April 10, 2018, I held a pre-hearing conference which was attended by Mr. Mingoelli, his counsel, his mother, counsel for HRD and counsel for the Boston Fire

Department.<sup>1</sup> On June 20, 2018, I held a status conference via phone. On August 3, 2018, I conducted a full hearing at the offices of the Commission.<sup>2</sup> The hearing was digitally recorded, with copies provided to the parties.<sup>3</sup>

## **FINDINGS OF FACT**

Giving appropriate weight to the documents in evidence (Exhibits 1 through 16), the stipulations of the parties, the testimony of the one witness called by the Appellant (Anne Mingoelli), as well as inferences reasonably drawn from the evidence as I find credible, I make the following findings of fact:

1. Brian Mingoelli is the son of Richard Mingoelli. (Stipulated Fact)
2. Richard Mingoelli was a Fire Lieutenant with the Boston Fire Department (BFD).  
(Stipulated Fact)
3. Lt. Mingoelli served with the BFD commencing in January 1986 and ending on August 6, 1999 upon his death. (Stipulated Fact)
4. In June 1996, Lt. Mingoelli experienced chest pains while climbing stairs at work. He came under the care of a cardiologist who performed a cardiac catheterization. An angiography demonstrated three vessel coronary occlusive disease and preserved left ventricular function.  
The test also revealed normal cardiac wall motion. (Exhibit 5)

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<sup>1</sup> It is noteworthy that counsel for the Boston Fire Department appeared at the pre-hearing conference to inform the Commission that the Boston Fire Department supports granting 402A preference to the son of deceased Boston Fire Lt. Richard Mingoelli.

<sup>2</sup> 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.

<sup>3</sup> 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. Lt. Mingolelli remained out of work for two months during the summer of 1996 while he underwent further medical testing. He was given medication and was cleared to return to work. (Exhibit 5)
6. Lt. Mingolelli returned to work in the late summer of 1996 and worked for three years without incident. (Exhibit 5)
7. On March 28, 1999, Lt. Mingolelli, while on duty, responded with his company to an alarm at the Italian Home for Children in Jamaica Plain. (Exhibit 5)
8. Lt. Mingolelli, accompanied by firefighter Frederick McGrath, both dressed in full working gear weighing in excess of 55 pounds, entered the building and Lt. Mingolelli ran up to the top floor of the three-story building to search for occupants. (Exhibit 5)
9. On the way down, Lt. Mingolelli appeared pale, suffered from shortness of breath, and felt a burning in his throat and chest. (Exhibit 5)
10. Lt. Mingolelli was treated at Milton Hospital that day by Dr. Cronin who ordered him not to return to work. (Exhibit 5)
11. Lt. Mingolelli never returned to work after March 28, 1999. (Exhibit 5)
12. Three days later, on March 31, 1999, Lt. Mingolelli underwent a second cardiac catheterization that again revealed the presence of coronary artery disease but also revealed a new motion abnormality, hypokinesis of the mid-inferior wall. (Exhibit 5)
13. Additionally, Lt. Mingolelli was diagnosed with diffuse coronary arteriosclerosis and coronary bypass surgery was not advised. (Exhibit 5)
14. For the next three months, Lt. Mingolelli remained at home, living a quiet existence, watching his diet and attempting very light exercise. (Exhibit 5)

15. On August 6, 1999, Lt. Mingolelli collapsed on the stairs of his home. He was rushed to South Shore Hospital where he died from an acute myocardial infraction. (Exhibit 5)
16. The death certificate for Richard Mingolelli lists as the immediate cause of death “coronary heart disease”. (Exhibit 5)
17. On August 16, 1999, Anne Mingolelli filed an application for a line of duty death benefit pursuant to G.L. c. 32, s. 100 as well as an application for accidental death benefits pursuant to G.L. c. 32. ss. 9 & 94. (Exhibit 5)
18. On December 10, 1999, fire fighter Frederick McGrath filed a report with the Boston Fire Department detailing the incident of March 28, 1999 when Lt. Mingolelli rushed up the stairs of the Italian Home for Children and then suffered from chest pain and shortness of breath. (Exhibit 5)
19. Also on December 10, 1999, the Boston Retirement Board wrote to Dr. Christine Campbell Reardon, a specialist in internal medicine, and requested that she review Lt. Mingolelli’s medical file and then render a report on the relationship, if any, between the injury of March 28, 1999 of chest pains and neck pains while investigating an alarm and his subsequent death on August 6, 1999 as a result of coronary artery disease. (Exhibit 5)
20. Dr. Reardon responded to the Board’s inquiry by letter dated December 14, 1999. In her letter, Dr. Reardon offered that in her opinion the “death of Lt. Mingolelli was not the direct result of the specific episode of chest pain he experienced on March 18, 1999.” Rather, Dr. Reardon opined that the episode of chest pain on March 28, 1999 was angina as a consequence of his coronary artery disease. (Exhibit 5)

21. In letters dated February 10, 2000 and October 26, 2000, Dr. Ramaswamy, Lt. Mingolelli's cardiologist, opined that his patient's death from a myocardial infarction on August 6, 1999 directly resulted from his work-related stressful incident. (Exhibit 5)
22. The Boston Retirement Board awarded Anne Mingolelli accidental death benefits pursuant to G.L. c. 32, ss. 9 & 94. By letter of January 18, 2000, the Boston Retirement Board denied the Petitioner's claim for line of duty death benefit pursuant to G.L. c. 32, s. 100. (Exhibit 5)
23. Anne Mingolelli filed a timely appeal of the Boston Retirement Board's decision with the Contributory Retirement Appeal Board (CRAB). (Exhibit 5)
24. On July 9, 2001, Dr. Robert Campbell, a cardiologist associated with the Mount Auburn Hospital, after reviewing Lt. Mingolelli's medical records offered that "it is my cardiac opinion that the death of Lieutenant Richard D. Mingolelli very likely is related to the injury sustained by Lt. Mingolelli in the line of duty on March 28, 1999. It was only after that incident that Lieutenant Mingolelli's medical records demonstrate evidence of myocardial dysfunction. The previous catheterization in 1996 demonstrated normal wall motion ... it is my opinion that his death was potentially and probably highly likely the direct result of the injury sustained while performing his duty as a Boston firefighter." (Exhibit 5)
25. On July 10, 2002, a Magistrate from the Division of Administrative Law Appeals (DALA), conducted a full evidentiary hearing regarding Anne Mingolelli's appeal. (Exhibit 5)
26. On September 30, 2002, relying on the opinions of Dr. Karthik Ramaswamy and Dr. Robert Campbell, both board certified cardiologists, DALA reversed the decision of the Boston Retirement Board and ordered that Ms. Mingolelli be awarded a line of duty death benefit in accordance with the provisions of G.L. c. 32, s. 100. (Exhibit 5)

27. On December 3, 2002, CRAB, a three-member Board then-comprised of the Commissioner of Public Health, a Governor's Appointee and an Assistant Attorney General, issued a decision which stated, in its entirety:

"The appeal of Anne Mingoelli from a decision of the Boston Retirement Board denying her application for a line of duty death benefit in accordance with G.L. c. 32, s. 100, was heard by the Division of Administrative Law Appeals.

The DECISION of the Administrative Magistrate is incorporated herein by reference and its Findings of Fact 1-25 are adopted by this Board as our own.

Under the provisions of G.L. c. 32, S. 100, the Petitioner is entitled to benefits if her deceased firefighter husband's death was the result of his sustaining injuries while at the scene of a fire. We concur with the Magistrate the facts as found demonstrate that the benefits sought should be awarded here.

On March 28, 1999, Lt. Mingoelli wearing full working gear entered a burning building and ran up two flights of stairs searching for occupants of the building. Finding of Fact 9. On the way down, he appeared pale, suffered from shortness of breath, and felt a burning in his throat and chest. Finding 10. He never returned to work thereafter. Finding 12. Three days later he underwent a heart surgery procedure which revealed a new abnormality. Finding 13. He passed away a little more than four months later after collapsing at home. Finding 16.

Two doctors have opined that there was direct causal relationship between the March 28, 1999 incident and Lt. Mingoelli's death. Another did not. The Magistrate afforded credibility to the two. As a matter of law, that was her right. Accordingly, we do not disturb her findings, and for all the reasons set forth therein, affirm her decision.

This matter is, therefore, remanded to the Respondent with directions to award G.L. c. 32, s. 100 benefits to the Petitioner." (emphasis added) (Exhibit 6)

28. The Public Employee Retirement Board Administration Commission (PERAC) awarded Accidental Death Benefits pursuant to G.L. c. 32, § 100 to Anne Mingoelli with an effective date of August 6, 1999. (Stipulated Fact)

29. On April 16, 2016, Brian Mingoelli took and completed the open competitive (written) portion of the examination for the position of firefighter, administered by HRD. (Stipulated Fact)

30. On July 22, 2016 , Brian Mingolelli took and passed the Entry Level Physical Abilities Test (ELPAT) portion of the examination. (Stipulated Fact)
31. On June 12, 2016, Brian Mingolelli wrote to HRD and requested preference under G.L. c. 31, § 26 amended by Chapter 402 of the Acts of 1985 (402A Preference). (Stipulated Fact)
32. On August 1, 2016, HRD denied Brian Mingolelli’s request for 402A Preference. (Stipulated Fact)
33. On November 18, 2016, HRD notified Brian Mingolelli that he passed the examination for firefighter. (Stipulated Fact)
34. On December 2, 2016, Brian Mingolelli requested that HRD grant him 402A Preference. (Stipulated Fact)
35. On December 13, 2016, HRD denied Mr. Mingolelli’s request for 402A Preference. (Stipulated Fact)
36. Just short of seventeen (17) years passed between the death of Lt. Mingolelli and his son’s request to be granted a 402A preference. (Stipulated Facts) During that time, Lt. Mingolelli’s treating cardiologist, Karthik Ramaswamy, M.D., passed away. (Testimony of Anne Mingolelli)
37. Ms. Mingolelli was unable to obtain any records from the attorney who represented her at DALA as he has retired. (Testimony of Anne Mingolelli)

*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).

*Prior Commission Decisions Related to 402A Appeals*

In Boncek v. Human Resources Division, 12 MCSR 123 (1999), the Commission found that the son of a firefighter for the Town of Dedham who had died of carcinomatosis was not entitled to a hiring preference since the father had not died as the result of an accident occurring while



responding to a fire or at the scene of the accident. The Commission stated in part: “Since there is no evidence that the Appellant’s father died as the result of an accident occurring while he was responding to a fire or accident while at the scene of the accident, the Appellant is not eligible for preferential hiring status pursuant to G.L. c. 31, s. 26.” Further the Commission stated: “The Appellant’s submission of his father’s death certificate at the pre-hearing conference clearly established that the Retirement Board granted death benefits for Mrs. Boncek based on the presumptions contained in G.L. c. 32, s. 94B. The language of G.L. c. 31, s. 26 specifically excludes the granting of preference to the Appellant under these circumstances.”

In Grindle v. Human Resources Division, 14 MCSR 97 (2001), the Commission concluded in relevant part that “... It is clear that the Legislature did not intend the provisions [of Section 26] to apply to a death, which was the result of an accident that occurred during a training procedure.”

In Pantazelos v. Human Resources Division, 15 MCSR 38 (2002), the Commission, after a full hearing, concluded that an applicant’s police officer father’s death was caused by an on-duty assault that occurred eleven (11) days prior to this death.<sup>4</sup> Further, the Commission stated in part that: “... Officer Duggan [a police officer who witnessed the assault]’s testimony, coupled with the State Board of Retirement’s findings that Edward Pantazelos sustained an injury, is sufficient evidence to substantiate that Officer Pantazelos did suffer an assault on January 2, 1990 which resulted in his death.”

In O’Rourke v. Human Resources Division, 16 MSCR 14 (2003), the Commission, after a full hearing, overruled HRD and determined that the son of a Boston police officer whose father had

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<sup>4</sup> In regard to a police officer father’s death, Section 26 states in relevant part that, “... 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 was killed or sustained injuries which resulted in the police officer’s death ...”

died in 1991 from heart failure following a 1982 heart attack sustained while subduing a defendant in court was entitled to 402A preference.

In Ceceita v. Human Resources Division, 28 MCSR 352 (2015), the Commission, after a full hearing, upheld HRD's decision to deny the Appellant 402A preference stating in part that two (2) doctors "... provided convincing opinions that support the conclusion that there is simply no 'no relationship' between [the father]'s death in 1994 and his [injury while at the scene of a fire]."

#### *HRD's Arguments*

First, HRD argues that, since Ms. Mingolelli was *initially* awarded retirement benefits under G.L. c. 32, § 94, the Appellant is no longer eligible for 402A preference given the language in Section 26 of the civil service law which states: "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."

Second, HRD argues that the record does not support a finding that Lt. Mingolelli was responding to a *fire*. Thus, since Section 26 specifies that the preference only be given when, "while at the scene of a fire was killed or sustained injuries which resulted in the firefighter ...." and because the Appellant failed to produce evidence showing that his deceased father was responding to an actual fire, HRD argues that the Appellant does not qualify for the preference.

Third, HRD argues that the record does not support that Lt. Mingolelli suffered an injury at the scene of a fire *which resulted in his death*. HRD argues that the Commission should not rely on the conclusions in the CRAB decision for various reasons, including that, according to HRD,

while the language in G.L. c. 32, § 100 may have similarities to G.L. c. 31, § 26, they have entirely different beneficiaries and goals.

### *Appellant's Arguments*

The Appellant argues that HRD ignored the CRAB decision and, without any additional medical evidence, erroneously reached an opposite conclusion when it denied the Appellant 402A preference after conducting its own de novo review that the Legislature never envisioned HRD conducting.

The Appellant argues that G.L. c. 32, § 100 and G.L. c. 31, § 26, when read together, stand for the proposition that, when benefits are awarded to the spouse under Section 100 of Chapter 32, the Legislature intended for 402A preference to be awarded to the son or daughter under Section 26 of Chapter 31.

### *Analysis*

In regard to whether Lt. Mingoelli sustained injuries “at the scene *of a fire*” as required by Section 26, I reach the reasonable inference that he was at the scene of a fire, based on the following findings in the DALA decision:

1. “On March 28, 1999, Lt. Mingoelli, while on duty, responded with his company to an alarm at the Italian Home for Children in Jamaica Plain. (Exhibit 5)
2. ***Lt. Mingoelli***, accompanied by firefighter Frederick McGrath, both ***dressed in full working gear weighing in excess of 55 pounds, entered the building and Lt. Mingoelli ran up to the top floor of the three-story building to search for occupants.*** (Exhibit 5)
3. On the way down, Lt. Mingoelli appeared pale, suffered from shortness of breath, and felt a burning in his throat and chest. (Exhibit 5)”

While these findings do not explicitly state that Lt. Mingolelli was at the scene of a fire, the fact that Lt. Mingolelli was running up to the top floor of a three-story building, with 55 pounds of gear on, to search for occupants, makes it more likely than not that he was indeed at the scene of a fire that day in Jamaica Plain.<sup>5</sup>

In regard to whether the evidence shows that Lt. Mingolelli sustained injuries at the scene of the fire in Jamaica Plain *that resulted in his death*, that specific issue was already litigated before a veteran DALA Magistrate who credited the testimony of two (2) cardiologists and concluded that there was a causal relationship between the injury sustained at the fire and Lt. Mingolelli's death. CRAB specifically adopted the findings of the Magistrate on these key findings. While HRD argues that the DALA / CRAB matter pertained to benefits under Section 100 of Chapter 32, the decision specifically referenced the issue of a *causal relationship between the injuries sustained by Lt. Mingolelli at the scene and his death*, the same issue before us in Section 26. I have given great weight to the findings of the Magistrate and CRAB on this specific issue and have adopted those relevant findings of the Magistrate into my decision. HRD has not shown sufficient evidence as to why the Commission should reach a different conclusion on the issue of causal relationship than that reached by DALA and CRAB.

Finally, HRD's argument that, since Ms. Mingolelli was *initially* awarded retirement benefits under G.L. c. 32, § 94, the Appellant is no longer eligible for 402A preference, is misplaced. As HRD is aware, that decision was superseded by a subsequent decision awarding Ms. Mingolelli benefits under Section 100 retroactively, making that initial decision moot. Further, while I did not rely on this in making my decision here, I am not convinced that the awarding of benefits

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<sup>5</sup> As this issue was not raised by HRD until the submission of post-hearing briefs, I re-opened the record and allowed Ms. Mingolelli to submit an affidavit regarding her knowledge about whether Mr. Mingolelli was "at the scene of a fire" in Jamaica Plain on March 28, 1999. Her affidavit confirms that he was indeed at the scene of a fire. However, I would have reached the same conclusion on this issue even without the affidavit.

under Section 94 prohibits a son or daughter of a firefighter from receiving 402A preference under Section 26. Rather, Section 26 states in relevant part that: “ ... 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.” (emphasis added) To me, that language does not appear to prevent a son or daughter, whose parent qualified for benefits under Section 94, from showing, by a preponderance of the evidence, independent of the statutory presumption, that this his or her parent’s death or disablement meets the requirements of Section 26 of Chapter 31. While not explicitly stated, it appears that the Commission reached that conclusion in O’Rourke, referenced above. In all of the Commission decisions cited which reference the non-applicability of Section 94, the Commission appears to have *separately* concluded that, aside from the non-applicability of Section 94, the facts regarding the parent’s death, as reviewed by the Commission, did not qualify the Appellant for 402A preference.

#### *Conclusion*

Boston Fire Lieutenant Richard Mingoelli died as a result of injuries sustained in the line of duty. The Legislature, seeking to recognize the service and sacrifice of such public servants, enacted legislation that grants hiring preference to Lt. Mingoelli’s son, Brian Mingoelli. For this reason, the Appellant’s appeal under Docket No. E-18-023 is hereby ***allowed***. Pursuant to Chapter 310 of the Acts of 1993, the Commission hereby orders that HRD, shall, forthwith, and on a going-forward basis, provide Brian Mingoelli with the so-called 402A hiring preference.

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 December 6, 2018).

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)

Patrick Butler, Esq. (for Respondent)

Louis Scapicchio, Esq. (Boston Fire Department)

Connie Wong, Esq. (Boston Fire Department)