COMMONWEALTH OF MASSACHUSETTS

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

v. E-20-033

HUMAN RESOURCES DIVISION,
Respondent

Appearance for Appellant: Paul T. Hynes, Esq.
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Commissioner: Christopher C. Bowman

DECISION

On February 25, 2020, the Appellant, Matthew Raven (Appellant), 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.[1] On March 17, 2020, I held a remote pre-hearing conference via videoconference which was attended by the Appellant, his co-counsel

[1] The Standard Adjudicatory Rules of Practice and Procedure, 801 CMR §§ 1.00, *et seq.*, apply to adjudications before the Commission with G.L. c. 31, or any Commission rules, taking precedence.

and counsel for HRD. On March 31, 2020 and May 14, 2020, the parties filed cross Motions for Summary Decision with attachments. On July 1, 2020, I held a remote motion hearing via videoconference which was digitally recorded.[2] Later that day, I issued a Procedural Order, keeping the record open for the parties to submit additional information, including any information related to the legislative history regarding the statute that is the subject of this appeal. I received relevant additional information from the parties through September 18, 2020.

The following facts appear to be undisputed:

1. Matthew Raven is the son of Anthony and Mary Raven.
2. Anthony Raven (Firefighter Raven) was a member of the Newburyport Fire Department (NFD), a position he was appointed to in 1984.
3. On April 21, 2016, Firefighter Raven was employed and working as a firefighter with the NFD when he responded to an alarm of fire at a home on Chapel Street in Newburyport. While there, it was determined that a home was on fire.
4. The NFD engaged in fire suppression actions at the home on Chapel Street and the fire was extinguished.
5. Firefighter Raven completed his shift that day and returned home.
6. On April 26, 2016, medics were called to the home of Firefighter Raven. He was taken by ambulance to a local hospital and died.
7. Mary Raven, Firefighter Raven's wife, applied to the Newburyport Retirement Board (NRB) for benefits pursuant to G.L. c. 32, § 100 (death in the line of duty benefits).

[2] CDs of the full hearing were provided to the parties. If there is a judicial appeal of this decision, the plaintiff in the judicial appeal becomes obligated to use the CD to supply the court with the stenographic or other written transcript of the 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.

8. The NRB assigned a hearing officer to make findings on Ms .Raven's application. On August 20, 2019, that hearing officer conducted a hearing at which evidence was submitted on the issue of the cause of Firefighter Raven's death.
9. The hearing officer took live testimony from Ms. Raven; Lt. Barry Salt and Lt. Stephen Hamilton, both of whom were present at the scene of the April 21, 2016 fire; and a PERAC assigned cardiologist who had conducted a review of Firefighter Raven's medical records.
10. The hearing officer, Attorney Michael Sacco, issued a 14-page "Recommended Decision" which contained numerous findings and conclusions. The hearing officer's recommended decision stated in relevant part that:

    "The circumstantial and direct evidence allows a reasonable fact-finder to draw the necessary inferences and to find by the evidence's preponderance that it is more likely than not that Firefighter Raven suffered a myocardial infarction on April 21, 2016, with the late effects resulting in his April 26, 2016 death."

    …

    " … [B]ased on my review of this case's facts, M.G.L. c. 32, § 100 and the interpretative case law involving not only line of duty death benefits but what constitutes a personal injury, I find that Firefighter Raven suffered an injury while in the performance of his duties on April 21, 2016 while at a fire scene that proximately caused his death on April 26, 2016 …".
11. On September 11, 2019, the NRB accepted the findings and recommendation of the hearing officer.
12. The Public Employee Retirement Administration Commission (PERAC) approved NRB's decision, with an effective date of October 4, 2019, the line of duty death benefits that Ms. Raven sought pursuant to G.L. c. 32, § 100.
13. On March 24, 2018, the Appellant, Firefighter Raven's son, took the open competitive examination for the position of firefighter, administered by HRD, and received a score of 97.

14. On November 1, 2018, the Appellant was notified by HRD that he had received a passing score on the firefighter entrance examination, which would result in his name being placed on the eligible list for firefighter, including any list or Certification that would be sent to the NFD to fill firefighter vacancies.
15. In December 2019, the Appellant submitted documentation to HRD, seeking to receive the "402A" hiring preference pursuant to G.L. c. 31, § 26. Included in the documentation that the Appellant provided to HRD was the hearing officer's Recommended Decision and the NRB and PERAC decisions adopting the hearing officer's Recommended Decision.
16. On February 21, 2020, HRD sent notice to the Appellant that it was denying his request for a 402A preference stating that "[t]he documentation submitted indicates that your parent'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." (emphasis added)

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.[3] 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 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]."

In Mingolelli v. Human Resources Division, 31 MCSR 360 (2018), HRD denied the Appellant's request for 402A preference based, in part, on its conclusion that that the firefighter had not sustained injuries *while at the scene of a fire* that resulted in his death. The Commission overturned HRD's decision, concluding in part that the firefighter, based on the findings of a hearing officer at the Division of Administrative Law Appeals (DALA): a) did suffer injuries at the scene of a fire, citing the hearing officer's report that the firefighter, on the way down a flight of stairs at the scene, appeared pale, suffered from shortness of breath, and felt a burning in his throat and chest; and b) those injuries caused the firefighter's death. As part of the Mingolleli

[3] 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 …"

appeal, HRD filed a motion for reconsideration arguing, in part, that the Commission had overlooked information suggesting that there was no actual fire at the scene that day. As part of that motion, HRD wrote the following:

> "A firefighter cannot both 'respond' to an alarm of fire and be present at the 'scene' of a fire, because *these are two distinct locations and events*. *Thus, once Lt. Mingolelli arrived at 1125 Centre Street on March 28, 1999, he was no longer 'responding' to an alarm of fire, and had arrived at the scene. Therefore, the analysis under G. L. c. 31, § 26 shifts,* and the relevant issue before the Commission was whether an actual fire had occurred at the scene when Lt. Mingolelli arrived. However, *the Commission's decision has overlooked this distinction, and has erroneously read the two clauses as one,* noting that Lt. Mingolelli 'responded to an alarm of fire' and then concluding that he suffered injury at the 'scene' of a fire." (emphasis added)

HRD's Argument

Here, HRD argues that, Section 26 of Chapter 31, *as amended by Chapter 402 of the Acts of 1985,* limits the 402A firefighter preference to "only those children whose firefighter parents were killed or injured as the result of an accident *while responding to an alarm of fire or while at the scene of a fire*."

According to HRD, to qualify for 402A preference here, Section 26 requires the Appellant to demonstrate that an 'accident' *while at a fire scene* was the cause of his father's death and that the phrase "the result of an accident" as it appears in the [current] statute is not a mistake by the Legislature or a mere joining phrase to the remaining part of the statute. According to HRD, the term 'accident' in this context is meant to convey that the firefighter must be involved in an unintended, unique event that occurred *at the fire scene*. In support of this argument, HRD, partly at my request, completed an exhaustive review of the legislative history of Section 26 of Chapter 31 and Section 100 of Chapter 32, which I have carefully reviewed and considered.

In its brief, HRD also makes two arguments previously raised in Mingolelli: that the conclusions of the Newburyport Retirement Board should have no bearing on HRD's decision to award 402A preference and that, if a firefighter (or his/her spouse) receives retirements benefits

under the "heart / lung" presumption of G.L. c. 32, § 94, their child is no longer eligible for 402A preference under G.L. c. 31, § 26.[4]

Appellant's Argument

The Appellant argues that HRD's interpretation of the statute is wrong as, according to the Appellant, the law grants preference to surviving children of firefighters whose lives were lost due to either an accident or an injury and that the statute does not limit the preference to deaths caused by an accident. In support of this argument, the Appellant submitted a sworn affidavit from the former legislator who served as House Chairman of the Joint Committee on Public Service when Section 26 was amended in 1985. The former legislator wrote in relevant part that: " … Chapter 402 of the Acts of 1985 was enacted in an effort to extend a hiring preference to the sons and daughters of certain public safety officials who were killed in the line of duty under circumstances that the hearing officer in Raven v. Newburyport found to exist."

The Appellant also argues that HRD erred as a matter of law by substituting its judgement for that of the NRB and PERAC regarding the causation of Firefighter Raven's death, stating: "the need to relitigate the cause of a parent's death would have unsettling consequences from the surviving family members of public safety officers who would be faced with having to 'prove' their parent's line of duty death anew notwithstanding the that the matter had bene decided often times in long ago, binding legal proceedings before the agency charged with making such determinations."

Analysis

As a preliminary matter, I recognize the weightiness of the circumstances underlying this appeal: Anthony Raven's untimely death occurred only five (5) short years ago. In regard to

[4] As part of the motion hearing regarding this matter, HRD stated that, had the Appellant's father died of a result of injuries caused by an accident at the scene of the fire, HRD would have granted the Appellant's request for 402A preference.

whether Firefighter Raven sustained injuries at the scene of the fire in Newburyport that resulted in his death, that specific issue was already litigated before a hearing officer designated by the Newburyport Retirement Board who concluded that "Firefighter Raven suffered an injury while in the performance of his duties on April 21, 2016 while at a fire scene that proximately caused his death on April 26, 2016." The hearing officer's recommended decision, which contained this finding, was adopted by the NRB and PERAC. While HRD argues that the matter before the NRB and PERAC pertained to benefits under Section 100 of Chapter 32, the decision specifically referenced the issue of a *causal relationship between the injuries sustained by Firefighter Raven at the scene and his death*, the same issue before us in Section 26. Based on the circumstances here, including the fact that HRD did not review and/or produce any evidence beyond what was considered by the NRB and PERAC, it is appropriate to give preclusive effect to their above-referenced finding. See Green v. Town of Brookline, 53 Mass. App. Ct. 120 (2001) ("the [DIA] judge erred as a mater of law by failing to give preclusive effect to the finding of a hearing officer for the Civil Service Commission in a prior proceeding that the town had just cause to discipline and then terminate the employee, where the issue of the town's bona fides with respect to personnel actions was identical in both proceedings.")

HRD's argument that, since Ms. Raven was awarded retirement benefits under G.L. c. 32, § 94, the Appellant is no longer eligible for 402A preference, is misplaced. The awarding of benefits under Section 94 does not prohibit 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.

That leaves the final and most substantive issue regarding this appeal: how to interpret the amendments made to Section 26 of Chapter 31 made by the Legislature in 1985. Prior to being amended in 1985, Section 26 of Chapter 31 stated in relevant part:

> "Notwithstanding any other provision of this chapter or of any other law, a son or daughter of a firefighter or police officer who passes the required written and physical examination for entrance to the fire or police service shall, **if such firefighter or police officer was killed or died of injuries received in the performance of his duty,** have his or her name placed in the first position on the eligible list for appointment to such fire or police service." (emphasis added)

After being amended by Chapter 402 of the Acts of 1985, Section 26 of Chapter 31 now states in relevant part:

> "Notwithstanding any other provisions of this chapter or of any other law, a son or daughter of a firefighter or police officer who passes the required written and physical examination for entrance to the fire or police 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: (1) 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". (emphasis added)

The parties have starkly contrasting views regarding whether the 1985 amendments to Section 26 were meant to *limit* or *expand* the preference afforded to the sons and daughters of certain deceased firefighters. HRD argues the former, while the Appellant argues the latter.

After a careful review of all the evidence, I believe the correct interpretation is more in line with that stated by HRD in its motion for reconsideration in Mingolleli in which HRD stated in part that:

> "A firefighter cannot both 'respond' to an alarm of fire and be present at the 'scene' of a fire, because *these are two distinct locations and events. Thus, once Lt. Mingolelli arrived at 1125 Centre Street on March 28, 1999, he was no longer 'responding' to an alarm of fire, and had arrived at the scene. Therefore, the analysis under G. L. c. 31, § 26* ***shifts***, and the relevant issue before the Commission was whether an actual fire had occurred at the scene when Lt. Mingolelli arrived. However, *the Commission's decision has overlooked this distinction, and has erroneously read the two clauses as one*, noting that Lt. Mingolelli 'responded to an alarm of fire' and then concluding that he suffered injury at the 'scene' of a fire." (emphasis added)

While I am aware that HRD's above-referenced argument in Mingolelli was related to whether or not an actual fire occurred, their argument that there is a significant distinction between *responding to an alarm of fire* and *being present at the scene of a fire* suggests that the legislature did not intend to require that injuries sustained by a firefighter at the scene of fire must have been the result of an "accident" in order for that firefighter's son or daughter to qualify for the preference. Rather, it appears that the legislature, when it added the words "responding to an alarm of fire", intended to expand the circumstances which would qualify for a 402A preference, with certain limitations. Specifically, injuries leading to death while "responding to an alarm of fire" would only be a qualifying event in regard to the 402A preference if those injuries were sustained "as a result of an accident" (i.e. – a firefighter who is fatally injured in an automobile accident responding to an alarm of fire.)

I do not believe the legislature, through the 1985 amendment, meant to add a new requirement that injuries sustained at the scene of a fire *which resulted in a firefighter's death* must now be shown to have been the result of an "accident" at the fire scene. Put another way, I don't believe the legislative intent was to take away or reduce a preference already in place for the sons and daughters of deceased firefighters. Rather, as stated by the former legislator who was Chairman of the Public Service Committee at the time, Chapter 402 of the Acts of 1985, was indeed meant to grant a preference in the circumstances described here in which Anthony Raven sustained injuries at the scene of a fire which resulted in his death. The statute does not require his son to now show that those injuries, which resulted in his father's death, were sustained "as a result of an accident."

Conclusion

The Appellant's appeal under Docket No. E-20-033 is hereby ***allowed***. Pursuant to Chapter 310 of the Acts of 1993, the Commission hereby orders that HRD shall, forthwith, provide Matthew Raven with the so-called 402A hiring preference on the current eligible list for firefighter; and, on a going forward basis, provide the Appellant with the 402A hiring preference when he takes and passes the firefighter examination.

As part of this appeal, the Appellant raised the issue of whether, as a result of being denied the 402A preference, the Appellant may have been harmed due to certain reserve and/or full-time appointments that may have occurred in Newburyport while this matter was pending. The Appellant, either through a motion for reconsideration, or through a separate non-bypass equity appeal with the Commission (in which no additional fee would be required), either of which must be filed within 30 days of this decision, may request such additional relief as may be warranted for the Commission to consider.

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 November 19, 2020.

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 Donnellan, Esq. (for Appellant)
Paul Hynes, Esq. (for Appellant)
Patrick Butler, Esq. (for Respondent)
Regina Caggiano (HRD)