

CASE NO. 6337 CRB-4-19-7 : COMPENSATION REVIEW BOARD  
CLAIM NO. 400101328

JOSEPH L. GAUDETT, JR. : WORKERS' COMPENSATION  
CLAIMANT-APPELLANT COMMISSION

v. : SEPTEMBER 8, 2021

CITY OF BRIDGEPORT/POLICE  
DEPARTMENT  
EMPLOYER  
SELF-INSURED

and

PMA MANAGEMENT CORPORATION  
THIRD-PARTY ADMINISTRATOR  
RESPONDENTS-APPELLEES

APPEARANCES:

The claimant was represented by David J. Morrissey, Esq., Morrissey, Morrissey & Rydzik, LLC, 203 Church Street, P.O. Box 31, Naugatuck, CT 06770.

The respondents were represented by Joseph J. Passaretti, Jr., Esq., Montstream Law Group, LLP, 655 Winding Brook Drive, P.O. Box 1087, Glastonbury, CT 06033.

This Petition for Review from the July 2, 2019 Findings and Order by Randy L. Cohen, the Commissioner acting for the Fourth District, was heard April 30, 2021 before a Compensation Review Board panel consisting of Commission Chairman Stephen M. Morelli and Commissioners Brenda D. Jannotta and David W. Schoolcraft.<sup>1</sup>

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<sup>1</sup> We note that one motion for extension of time and four motions for continuance were granted during the pendency of this appeal.

# OPINION

STEPHEN M. MORELLI, CHAIRMAN. The claimant has appealed from the Findings and Order (finding) reached by Commissioner Randy L. Cohen (commissioner), in this matter, which determined the claimant was ineligible for benefits under General Statutes § 7-433c at the time he filed his claim for benefits in 2015.<sup>2</sup> The commissioner found that, while the claimant had been eligible for these benefits at the time of his original hiring as a Bridgeport police officer in 1983, prior to filing his claim he had retired from that position and was rehired as police chief in 2010. The commissioner further found the claimant had retired and been rehired, and therefore, due to General Statutes § 7-433c (b), the commissioner determined the claimant was not eligible for heart and hypertension benefits at the time of his claim. The claimant argues that the evidence could only support one conclusion: that his employment with the Bridgeport

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<sup>2</sup> General Statute § 7-433c states: “(a) Notwithstanding any provision of chapter 568 or any other general statute, charter, special act or ordinance to the contrary, in the event a uniformed member of a paid municipal fire department or a regular member of a paid municipal police department who successfully passed a physical examination on entry into such service, which examination failed to reveal any evidence of hypertension or heart disease, suffers either off duty or on duty any condition or impairment of health caused by hypertension or heart disease resulting in his death or his temporary or permanent, total or partial disability, he or his dependents, as the case may be, shall receive from his municipal employer compensation and medical care in the same amount and the same manner as that provided under chapter 568 if such death or disability was caused by a personal injury which arose out of and in the course of his employment and was suffered in the line of duty and within the scope of his employment, and from the municipal or state retirement system under which he is covered, he or his dependents, as the case may be, shall receive the same retirement or survivor benefits which would be paid under said system if such death or disability was caused by a personal injury which arose out of and in the course of his employment, and was suffered in the line of duty and within the scope of his employment. If successful passage of such a physical examination was, at the time of his employment, required as a condition for such employment, no proof or record of such examination shall be required as evidence in the maintenance of a claim under this section or under such municipal or state retirement systems. The benefits provided by this section shall be in lieu of any other benefits which such policeman or fireman or his dependents may be entitled to receive from his municipal employer under the provisions of chapter 568 or the municipal or state retirement system under which he is covered, except as provided by this section, as a result of any condition or impairment of health caused by hypertension or heart disease resulting in his death or his temporary or permanent, total or partial disability. As used in this section, “municipal employer” has the same meaning as provided in section 7-467.

(b) Notwithstanding the provisions of subsection (a) of this section, those persons who began employment on or after July 1, 1996, shall not be eligible for any benefits pursuant to this section.”

police department was uninterrupted and, therefore, he never lost eligibility for these statutory benefits. The commissioner concluded that there had been a break in service as a result of the claimant having to retire his original post so as to accept the post of police chief.

Upon reviewing the record, we are satisfied the commissioner could have reasonably determined the claimant's original service with the Bridgeport police department concluded in 2010 and with that event, his eligibility for § 7-433c benefits ceased. The position of police chief was materially different than that of police officer, was not a subject of internal promotion, and the claimant received his full retirement benefits at the time of his 2010 retirement. The claimant testified that in order to be hired to his new employment as police chief, he had to retire from his existing job. Testimony to the contrary by the claimant and a former city personnel director was not found reliable by the commissioner and she had the right not to find this testimony reliable. Therefore, we affirm the finding.

We will summarize the findings. The commissioner found the claimant was originally hired as a Bridgeport police officer in 1983 and successfully passed a pre-employment physical. He continued in various capacities as a police officer, and in October 2008, was named acting chief of the department by the mayor. He remained part of the pension plan for police officers and a member of the bargaining unit for police officers as acting chief. His permanent rank remained deputy chief because, pursuant to the City of Bridgeport Charter (Charter), the permanent chief of police in Bridgeport had to be chosen pursuant to a competitive examination open to any applicant meeting appropriate occupational qualifications and was not a promotional step within the

department hierarchy. The claimant participated in the selection process for police chief and was ultimately chosen by then-Mayor Finch for this post. Pursuant to the Charter, the post had a five-year term of service. The city and the claimant worked with their counsel to draft an employment contract for this position, commencing December 20, 2010 and ending December 20, 2015. The negotiated agreement and the police pension plan required the claimant to file for retirement on December 20, 2010. The claimant also resigned from the police union at this time. In December of 2011, the claimant completed a form provided by the city to apply for retirement benefits. This form noted that the claimant was retiring from the police department effective December 20, 2010. The city's Retirement Board met and approved this pension with the effective retirement date of December 20, 2010, and the claimant collected a payout against his unused vacation, holiday, and personal leave as well as a retirement pension.

The claimant's contract as chief of police ran from December 20, 2010 until December 20, 2015. The claimant however remained in the position of chief of police until March 1, 2016, at which time he voluntarily negotiated his departure as chief of police. Prior to leaving his post but subsequent to being treated for a cold in early 2015, the claimant was observed with an elevated blood pressure reading. The claimant was prescribed medication for hypertension by a physician on February 23, 2015, and continued to work without disability as police chief until his departure. He filed a claim pursuant to § 7-433c on February 18, 2016. After retiring as police chief, the claimant once again received a payout for unused vacation and personal time he accrued during his tenure as police chief, but also signed a consultancy agreement wherein he agreed to provide services to the city for three years at an annual rate of \$125,000.

The commissioner outlined the divergent position the parties took based on this record:

43. The respondents' position is that the claimant was initially employed by the City of Bridgeport as a police officer from July 20, 1983 until his retirement of December 20, 2010. That the claimant's new date of hire as chief of police, December 20, 2010, is beyond the July 1, 1996 repeal of C.G.S. Section 7-433c(b).
44. The claimant's position is that although he was granted a pension, as was his right, he at no time resigned or retired as a police officer. That the claimant was actively employed as a member of the Police Department without interruption from 1983 until 2016.

Findings, ¶¶ 43-44.

Based on this record, the commissioner concluded as follows:

- A. The Claimant was initially employed by the city of Bridgeport as a police officer from July 20, 1983 until his retirement of December 20, 2010. The Claimant's retirement of December 20, 2010 and his subsequent appointment to Chief of Police created a new date of hire of December 20, 2010 for the Claimant.
- B. The Claimant's acceptance and appointment to the position of Chief of Police was a distinct and separate position from his prior employment with the Bridgeport Police Department.
- C. The Claimant's new date of hire, December 20, 2010, was beyond the July 1, 1996 repeal of C.G.S. § 7-433c(b). Accordingly, the claimant is ineligible for benefits pursuant to C.G.S. Section 7-433c(b).
- D. The Claimant was diagnosed and prescribed medication to treat hypertension by Dr. Israel on February 23, 2015.

Conclusions, ¶¶ A-D.

The commissioner, therefore, dismissed the claim for benefits as barred by the statute. The claimant filed a motion to correct. This motion sought to find the claim was within the terms of the statute asserting that there had been no break in service for the claimant between his date of hire and his retirement as police chief in 2016. The motion

also sought to add findings that the claimant was a uniformed police officer during his tenure as chief and had maintained himself in good standing with the Police Officer Standing and Training council (POST) as a police officer during this period. It also sought to add testimony from the claimant and David Dunn, the city's former personnel director, that there had been no break in service. The commissioner denied this motion in its entirety. The claimant also filed a motion for articulation seeking to have the commissioner expound upon her reasoning for finding the claimant's original employment had ended, which she also denied.

The standard of deference we are obliged to apply to a commissioner's findings and legal conclusions on appeal is well-settled. "The trial commissioner's factual findings and conclusions must stand unless they are without evidence, contrary to law or based on unreasonable or impermissible factual inferences." Russo v. Hartford, 4769 CRB-1-04-1 (December 15, 2004), *citing* Fair v. People's Savings Bank, 207 Conn. 535, 539 (1988). Moreover, "[a]s with any discretionary action of the trial court, appellate review requires every reasonable presumption in favor of the action, and the ultimate issue for us is whether the trial court could have reasonably concluded as it did." Burton v. Mottolese, 267 Conn. 1, 54 (2003), *quoting* Thalheim v. Greenwich, 256 Conn. 628, 656 (2001). "This presumption, however, can be challenged by the argument that the trial commissioner did not properly apply the law or has reached a finding of fact inconsistent with the evidence presented at the formal hearing." Christensen v. H & L Plastics Co., Inc., 5171 CRB-3-06-12 (November 19, 2007).

The claimant argues that the facts in this matter would not permit the commissioner to conclude that he retired from his position as police officer and was

rehired to a new position as police chief. He argues that his retirement was merely an administrative formality due to the terms of the city pension fund to enable him to accept the chief of police post and his service should not have been deemed terminated in 2010.

The respondents argue that by negotiating a new employment contract and being paid his outstanding pension benefits from his years of service that the claimant essentially made an election of remedies to accept a different position than he had held since 1983 and that he had been paid out as of his 2010 retirement all the benefits he was entitled to from that employment. The commissioner was persuaded by the respondents' argument and we believe she had sufficient grounds to find this position persuasive.

We look to the claimant's testimony at the formal hearing. He acknowledged that the police chief in Bridgeport was hired based on specific provisions in the Charter which were materially different than those that were employed when hiring other police officers and that this involved a nationwide search for candidates. See January 25, 2017 Transcript, p. 40. When the claimant accepted the post of police chief, he signed an employment contract. This contract outlined all the terms of his new employment, as he acknowledged.

Attorney Driscoll: Okay. And your benefits are only outlined in that agreement. If there was something else that you wanted, you wouldn't be entitled to those benefits; correct? In other words, you have to rely on the contract for the terms of your employment; right?

Claimant: Yes.

Id., pp. 42-43.

Counsel for the respondents continued to point out that the claimant would have to relinquish some rights he held as a police officer to become chief.

Attorney Driscoll: I just want to make sure that the record is crystal clear on the quid pro quo aspect of this. You knew that you could not work as the Chief of Police for the City of Bridgeport in the official capacity of the contract unless you retired from the pension, and from your old position as deputy Chief; right?

Claimant: I knew that the Chief could not be a member of the bargaining agreement, and I agreed to resign from the union. I did not know initially that I could not continue to be a member of the Police Pension Plan, but it spells out in the Police Pension Plan that any member, any sworn member of the Bridgeport Police Department can be a member of Police Pension Plan B except for the Chief of Police. So at that point it was brought to my attention that I needed to take my pension because I could no longer be a member of that pension plan.

Attorney Driscoll: And you knew that before you signed the contract.

Claimant: Yes.

Id., pp. 58-59.

This line of questioning continued:

Attorney Driscoll: You could have made a choice to be the deputy Chief and stay in the pension; right? You made a choice; right?

Claimant: Absolutely

Attorney Driscoll: And when you filed for that retirement, it was a regular retirement; correct?

Claimant: Yes

Attorney Driscoll: Okay. And is it fair to say - -

Claimant: It was regular pension that I requested.

Id., pp. 61-62.

The claimant, therefore, acknowledged that in order to obtain the post of police chief he first had to retire from his current post. While he argues that this was merely a procedural formality and should not be considered a break in service with the Bridgeport

police department, the evidence herein is that he received substantial financial compensation subsequent to retirement which he would not have received in the absence of having retired. See Respondents' Exhibit 8. Moreover, the documentary evidence herein demonstrates that the chief's job had duties defined under the Charter which were materially different than those the claimant had previously as a uniformed officer, and it further entitled him to additional retirement benefits.

We look first to the Charter, where pursuant to Chapter 13, Section 1 (a), the police chief acts at the behest of the mayor to exercise "operational control" of the police department. Respondents' Exhibit 1. In Chapter 13, Section 4 (b) (1), the Charter makes clear that prior service in the Bridgeport Police Department is not a requirement to be appointed chief. Indeed, there is no requirement in the Charter that a police chief in Bridgeport needs to have any prior police service within the state of Connecticut, or indeed, any stated requirement that a police chief must have previously served as a uniformed officer on any police department. Chapter 13, Section 5 outlines the duties of the chief. We take notice that these duties are primarily of an administrative and policy making executive nature, including implementing the direction of elective and appointed city leadership. The collective bargaining agreement in force between the city and police union at the time of the claimant's retirement and rehiring establishes in Section II the obligations of the chief to impose discipline against rank and file officers. See Respondents' Exhibit 2. The employment contract negotiated between the claimant and the city at the time of his hiring as police chief outlined the claimant's role as an executive answerable to the mayor for implementing policy. This language contained in Article I of the agreement was consistent with the duties outlined in the Charter. See

Claimant's Exhibit F. The terms of this agreement included a list of insurance coverage required under the contract, but contained no reference to § 7-433c. See Article III, Section C. Section D of this agreement stated unequivocally that "[t]he Chief of Police will file for *retirement* and pension rights." (Emphasis added.) *Id.* It also qualified the claimant to membership in a pension system unavailable to any other member of the police department, the ICMA Retirement System, upon being hired as chief.

Prior to executing his employment contract as Chief of Police, the claimant was advised by the respondent's Civil Service Commission that, although he could serve as acting chief while retaining his permanent rank as deputy chief, "[t]he designation as "acting" Chief of Police indicates a temporary situation. You cannot be regarded as having vacated your Deputy Chief position unless you succeed in becoming the permanent Chief of Police." Respondents' Exhibit 14. As a result, we believe that the "permanent" post of chief of police was a materially different position than any other post within the Bridgeport Police Department and that anyone who was hired to this post had to make a willful election to relinquish whatever employment benefits he or she previously were entitled to if they were a Bridgeport police officer. *Id.*

The claimant in his motion to correct argued that he remained a uniformed member of the police force and did not relinquish his certification under the state POST Council. We believe the commissioner, based on the other evidence in this matter, could reach a conclusion that the claimant retired in 2010 from the employment that he had in 1996 when all future hires to police service in Connecticut were barred from § 7-433c eligibility.<sup>3</sup> The claimant argues that it was error for the commissioner to have not

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<sup>3</sup> As the legislative history behind Public Act 96-231 makes clear the public policy behind this change in the statute was that "anyone who was hired after July 1st would know that they would not be under such

accepted the testimony of Dunn, a former Bridgeport personnel director, that the claimant remained a “regular member” of the police force after 2010. September 6, 2017 Transcript, p. 10. We believe this testimony is inconsistent with the documentary evidence, and the commissioner was under no obligation to rely upon Dunn’s testimony. See Huertas v. Coca Cola Bottling Company, 5052 CRB-1-06-2 (January 22, 2007), *citing* Tartaglino v. Dept. of Correction, 55 Conn. App. 190, 195 (1999), *cert. denied*, 251 Conn. 929 (1999).<sup>4</sup>

We have reviewed the precedent on eligibility to 7-433c benefits. We note that they have long been described as “special compensation, or even an outright bonus, to qualifying policeman and firemen.” Grover v. Manchester, 168 Conn. 84, 88 (1975). Our tribunal and Appellate Court have recently had to deal with an eligibility question as to a dispute over whether a claimant had been hired as a fireman prior to the cutoff date for eligibility to this bonus. See Clark v. Waterford, 6339 CRB-2-19-7 (July 15, 2020), *aff’d*, 206 Conn. App. 223 (July 27, 2021), *appeal pending*, S.C. 210136 (August 10, 2021). However, the issues addressed therein are not directly pertinent to the issue at hand.

Nonetheless, we do note that various cases have distinguished between types of employment at a police department and found that certain positions are outside the scope of § 7-433c. In Neron v. Meriden, 5689 CRB-8-11-10 (September 4, 2012), the claimant

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law because it would be discontinued for **any** new hires . . .” and that was being done as “[t]his would bring some sort of relief to the municipalities.” Statement of Senator Louis DeLuca, Sen. Proc. Vol. 39, Part 8, pp. 2570-71 (April 25, 1996). (Emphasis added.)

<sup>4</sup> Dunn has subsequently plead guilty to making false statements to federal authorities, a federal criminal offense, in regard to the hiring of another Bridgeport police chief. See Press Release, U.S. Attorney’s Office, Southern District of New York, Bridgeport Police Chief and Personnel Director Plead Guilty to Rigging City’s Police Chief Search (October 5, 2020), available at <https://www.justice.gov/usao-sdny/pr/bridgeport-police-chief-and-personnel-director-plead-guilty-rigging-city-s-police-chief> (last visited August 31, 2021) (press release has been uploaded to claimant’s appeal file).

was a police officer at the time he filed his claim for benefits and asserted that as he had obtained POST certification and was employed as an auxiliary police officer by the respondents prior to the cutoff date for eligibility under § 7-433c (b) and that he qualified for § 7-433c benefits, notwithstanding that he was not hired as a full time police officer by the respondents until January 1997. The record indicated that he had been a regular police officer for another municipality while eligibility for the statute was in effect, however, he had left that post prior to July 1, 1996. Based on this record we reviewed the difference in duties between auxiliary officers and full-time officers and determined “[t]he trial commissioner’s conclusion herein that the claimant’s activities did not make him a regular member of the Meriden police department was a reasonable conclusion based on the law and the evidence.” Id.

We faced a somewhat similar scenario in Genesky v. East Lyme, 4600 CRB-8-02-12 (December 8, 2003), where the claimant, a constable for the town of East Lyme, claimed eligibility for benefits under § 7-433c. We affirmed the trial commissioner’s determination that as the claimant was not a “regular member of a paid municipal police department”, he was outside the ambit of this statute. Id. Noting that § 7-433c was bonus legislation, we concluded that, “the eligibility requirements set out in the statute must be strictly construed” and “we have the fact that the claimant’s duties as a police officer/constable differ from those of a ‘regular member of a paid municipal police force.’” Id. Therefore, we affirmed the dismissal of the claim as being outside the jurisdiction of the statute. Our Supreme Court affirmed this decision, see Genesky v. East Lyme, 275 Conn. 246 (2005). In doing so, it noted that, “[a]lthough a constable may be considered a police officer under § 7-294a and may perform some of the same duties

as a regular member of a paid municipal police department, the two positions are fundamentally different.” (Footnote omitted.) *Id.*, 260-61.

As we noted, the post of police chief under the Charter has different pension rights than the regular members of the department, has administrative and policy duties that are outside the scope of regular members of the department, and is hired through a process wherein there is no obligation that the successful candidate has been previously certified as a police officer in the state of Connecticut. Had the claimant filed his claim while serving as acting police chief, and prior to his retirement, we believe he would be eligible for § 7-433c benefits. However, he elected to accept a voluntary retirement from that position and the terms of his employment contract as chief indicate that this retirement was a condition precedent to being hired for a five-year term as police chief. The trial commissioner found that this retirement constituted a break in service which terminated his eligibility for § 7-433c benefits. The purpose of § 7-433c (b) was to deny heart and hypertension coverage to “any new hires” after July 1, 1996, and as the claimant was retired as a regular member of the police department and was hired to a new position in 2010, he was outside the scope of this statute. Statement of Senator Louis DeLuca, Sen. Proc. Vol. 39, Part 8, pp. 2570-71 (April 25, 1996).

There is no error; the July 2, 2019 Findings and Order of Randy L. Cohen, the Commissioner acting for the Fourth District, is accordingly affirmed.

Commissioners Brenda D. Jannotta and David W. Schoolcraft concur in this Opinion.