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JOSEPH L. GAUDETT, JR. *v.* BRIDGEPORT
POLICE DEPARTMENT ET AL.
(AC 44987)

Alvord, Moll and Cradle, Js.

Syllabus

The plaintiff, a former chief of the defendant police department, appealed to this court from the decision of the Compensation Review Board, which affirmed the decision of the Workers' Compensation Commissioner dismissing his claim for benefits under the statute (§ 7-433c) governing compensation for municipal police officers or firefighters with hypertension or heart disease. The plaintiff had been hired as a police officer in 1983 and eventually was named acting chief. Following a competitive examination, the plaintiff was selected in 2010 as the chief of police, a nonunion position. His employment agreement for the position of chief and the police pension plan required him to file for retirement and pension rights pursuant to the city's pension plan. The employment agreement also stated that the occupant of the position of chief is a full-time regular uniformed member of the police department. While serving as the chief of police, the plaintiff was prescribed medication for hypertension by a physician and, following his departure from the position of chief in 2016, he filed a claim pursuant to § 7-433c. The plaintiff claimed that the board improperly affirmed the commissioner's decision that his appointment as the chief of police in 2010 constituted a new hire date, rendering him ineligible for benefits pursuant to § 7-433c (b), which precludes benefits to those persons who began employment on or after July 1, 1996. *Held* that the board erred in affirming the commissioner's decision that the plaintiff was not eligible for benefits pursuant to § 7-433c: the commissioner's finding that the plaintiff's acceptance of the chief of police position triggered a new date of hire was an unreasonable inference to draw, as the evidence demonstrated the material and undisputed fact that, despite the plaintiff's election for retirement benefits when he vacated the position of deputy chief of police, there was no break in his status as a regular member of the police department from the time of his hire in 1983 until his final retirement in 2016; moreover, the commissioner's conclusion that the plaintiff was ineligible for benefits because he was receiving pension benefits when he became the chief of police demonstrated an erroneous interpretation of § 7-433c, as the plain and unambiguous language of § 7-433c applies to any regular member of the police department, without limitation or qualification distinguishing claimants by pension status.

Argued January 12—officially released April 11, 2023

Procedural History

Appeal from the decision of the Workers' Compensation Commissioner for the Fourth District determining that the plaintiff was not eligible to receive certain benefits, brought to the Compensation Review Board, which affirmed the commissioner's decision, and the plaintiff appealed to this court. *Reversed; judgment directed; further proceedings.*

David J. Morrissey, for the appellant (plaintiff).

Joseph J. Passaretti, Jr., with whom, on the brief, was *Jennifer Hock*, for the appellees (defendants).

Opinion

CRADLE, J. The dispositive issue in this appeal is whether the plaintiff, Joseph L. Gaudett, Jr., began employment with the named defendant, the Bridgeport Police Department,¹ on or after July 1, 1996, for purposes of being eligible to receive benefits under General Statutes § 7-433c, the Heart and Hypertension Act, which affords benefits for any eligible regular member of a paid municipal police department who was hired before July 1, 1996.² The plaintiff, the former chief of police employed by the city of Bridgeport (city), appeals from the decision of the Compensation Review Board (board), which affirmed the decision of the Workers' Compensation Commissioner for the Fourth District (commissioner) dismissing his claim for benefits under § 7-433c on the ground that, although the plaintiff initially was hired as a police officer in 1983, the effective date of his employment as chief of police in 2010 constituted a new date of hire such that his claim for benefits was beyond the ambit of § 7-433c. The plaintiff claims that the board improperly affirmed the commissioner's decision because he was a regular member of the Bridgeport Police Department from 1983 until he retired from his position as the chief of police in 2016. We agree and, accordingly, reverse the decision of the board.

In affirming the decision of the commissioner, the board summarized the commissioner's findings as follows: "[T]he [plaintiff] was originally hired as a Bridgeport police officer in 1983 and successfully passed a preemployment physical. He continued in various capacities as a police officer and, in October, 2008, was named acting chief of the [Bridgeport Police 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 [Bridgeport Police] [D]epartment hierarchy. The [plaintiff] 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 [plaintiff] 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 [plaintiff] to file for retirement on December 20, 2010. The [plaintiff] also resigned from the police union at this time. In December of 2011, the [plaintiff] completed a form provided by the city to apply for retirement benefits. This form noted that the [plaintiff] was retiring from the police depart-

ment 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 [plaintiff] collected a payout against his unused vacation, holiday, and personal leave as well as a retirement pension.

“The [plaintiff]’s contract as chief of police ran from December 20, 2010, until December 20, 2015. The [plaintiff] 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 [plaintiff] was observed with an elevated blood pressure reading. The [plaintiff] 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 [plaintiff] 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.”

On the basis of the foregoing, the commissioner concluded: “The [plaintiff] was initially employed by the city of Bridgeport as a police officer from July 20, 1983, until his retirement of December 20, 2010. The [plaintiff]’s retirement [on] December 20, 2010, and his subsequent appointment to chief of police created a new date of hire of December 20, 2010, for the [plaintiff]. . . . The [plaintiff]’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. . . . The [plaintiff]’s new date of hire, December 20, 2010, was beyond the July 1, 1996 repeal of . . . § 7-433c (b). Accordingly, the [plaintiff] is ineligible for benefits pursuant to . . . § 7-433c (b).” The commissioner, therefore, dismissed the claim for benefits as barred by the statute.

The plaintiff subsequently filed a motion to correct asking the commissioner to find that there had been no break in service for the plaintiff between his date of hire and his retirement as police chief in 2016. The plaintiff also sought to add findings that he 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 as a police officer during this period. The commissioner denied this motion in its entirety. The plaintiff also filed a motion for articulation seeking to have the commissioner expound upon her reasoning for finding that the plaintiff’s original employment had ended, which the commissioner also denied.

The plaintiff thereafter appealed from the decision of the commissioner to the board, which held that “the commissioner could have reasonably determined [that]

the [plaintiff'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 [plaintiff] received his full retirement benefits at the time of his 2010 retirement. The [plaintiff] testified that, in order to be hired to his new employment as police chief, he had to retire from his existing job." Accordingly, the board affirmed the ruling of the commissioner. This appeal followed.

The principles that govern our standard of review in workers' compensation appeals are well established.³ "The commissioner has the power and duty, as the trier of fact, to determine the facts . . . and [n]either the . . . board nor this court has the power to retry the facts. . . . The conclusions drawn by [the commissioner] from the facts found [also] must stand unless they result from an incorrect application of the law to the subordinate facts or from an inference illegally or unreasonably drawn from them. . . .

"The board sits as an appellate tribunal reviewing the decision of the commissioner. . . . The review [board's] hearing of an appeal from the commissioner is not a de novo hearing of the facts. . . . [I]t is [obligated] to hear the appeal on the record and not retry the facts. . . . On appeal, the board must determine whether there is any evidence in the record to support the commissioner's [decision]. . . . Our scope of review of [the] actions of the [board] is [similarly] . . . limited. . . . [However] [t]he decision of the [board] must be correct in law, and it must not include facts found without evidence or fail to include material facts which are admitted or undisputed." (Citation omitted; internal quotation marks omitted.) *DeJesus v. R.P.M. Enterprises, Inc.*, 204 Conn. App. 665, 676–77, 255 A.3d 885 (2021).

On appeal, the plaintiff argues that the commissioner erred in finding that the effective date of his employment as chief of police constituted a new hire date that was beyond the coverage of § 7-433c. As a threshold matter, in so finding, the commissioner also found that, "[i]n December of 2011, the [plaintiff] completed a form provided by the city to apply for retirement benefits. This form noted that the [plaintiff] was retiring from the police department effective December 20, 2010." This is inaccurate. That form, which is directed to the Bridgeport Police Department Pension Board, states in relevant part: "I respectfully request that I be retired effective December 20, 2010, and that the amount of my pension be determined by the applicable sections of the City Charter and the applicable pension agreement between the City of Bridgeport and Bridgeport, CT Police Department Employees, Local 1159 AFL-CIO." Notably, despite the plaintiff's request that he "be

retired effective December 20, 2010,” that form does not indicate that the plaintiff is *retiring from the police department*. That form simply reflects the plaintiff’s election of retirement benefits—his request for which was necessitated by the fact that the chief of police is not a union member and, therefore, may not participate in the union pension plan. The form did not signal a change in the plaintiff’s status as a regular member of the Bridgeport Police Department. In other words, although the plaintiff filed for and received retirement benefits when he vacated the position of deputy chief, he continued in his employ with the Bridgeport Police Department after December 20, 2010, only as the chief of police. Because the chief of police position is a non-union position, the plaintiff would not be covered under the collective bargaining agreement or enrolled in the union pension plan, once he became the chief of police. Accordingly, his employment contract required that he “file for retirement and pension rights pursuant to Bridgeport Pension Plan B.” He did so. Despite taking this contractually required administrative step, the plaintiff never ceased being a regular member of the Bridgeport Police Department. Indeed, his employment contract expressly stated that “the occupant of [the chief of police] position [is] a full-time regular uniformed member of the Bridgeport Police Department.”

To be sure, the position of police chief differs from other positions within the department in that it entails different responsibilities and is not a union position subject to the collective bargaining agreement or entitled to the same pension plan as the other positions. We disagree, however, that those factors triggered a break in the plaintiff’s status as a regular member of the police department. There simply was no period of time from the plaintiff’s hire in 1983 until his retirement in 2016 at which the plaintiff was not a regular member of the Bridgeport Police Department. The commissioner improperly failed to consider this material and undisputed fact. We conclude that the commissioner’s finding that the plaintiff’s acceptance of the chief of police position triggered a new date of hire is an unreasonable inference to draw from the evidence.

The commissioner’s conclusion that the plaintiff was ineligible for benefits because he was receiving pension benefits when he became police chief also demonstrates an erroneous interpretation of § 7-433c. It is well settled that “the traditional deference accorded to an agency’s interpretation of a statutory term is unwarranted when the construction of a statute . . . has not previously been subjected to judicial scrutiny [or to] . . . a governmental agency’s time-tested interpretation” (Footnote omitted; internal quotation marks omitted.) *Holston v. New Haven Police Dept.*, 323 Conn. 607, 612–13, 149 A.3d 165 (2016). Because the question of whether a claimant’s pension status disqualifies him from receiving benefits under § 7-433c

does not involve a time-tested agency interpretation, our review is plenary.

“Where the language of the statute is clear and unambiguous, it is assumed that the words themselves express the intent of the legislature and there is no need for statutory construction or a review of the legislative history.” (Internal quotation marks omitted.) *Brocuglio v. Thompsonville Fire District #2*, 190 Conn. App. 718, 740, 212 A.3d 751 (2019). Contrary to the commissioner’s reasoning, § 7-433c does not make any distinction between claimants who are receiving pension benefits and those who are not. The plain and unambiguous language of § 7-433c applies to any regular member of the police department, without limitation or qualification.

Although the issue of whether a claimant’s pension status is a factor in determining eligibility for benefits under § 7-433c has not been addressed in our jurisprudence, this court has rejected other attempts to interpret that statute as having a limitation that is not supported by its clear and unambiguous language. In *Bucko v. New London*, 13 Conn. App. 566, 537 A.2d 1045 (1988), the defendant sought to preclude the plaintiff from recovering benefits under § 7-433c on the ground that he was not a permanent member of the police department. This court held that “[n]owhere in § 7-433c is there a requirement that any appointment to the regular police force must be a ‘permanent’ appointment. The qualifiers ‘permanent’ or ‘temporary’ are not mentioned in the statute; the only stated prerequisite to the collection of benefits is that the claimant must be a ‘regular member of a paid municipal police department.’ ” (Emphasis in original.) *Id.*, 570.

Similarly, this court also has held that the clear and unambiguous language of § 7-433c does not limit benefits to those claimants who are employed by municipalities who work for a city or town that opts into a certain public retirement fund. See *Clark v. Waterford, Cohanzie Fire Dept.*, 206 Conn. App. 223, 261 A.3d 97, cert. granted, 338 Conn. 916, 259 A.3d 1181 (2021).⁴

The rationale underlying *Bucko* and *Clark* is applicable in this case. There is no language in § 7-433c to suggest that heart and hypertension benefits are not available to claimants who continue to serve as regular members of the police department while also receiving pension benefits for prior service with the same employer. In the absence of statutory language distinguishing claimants by pension status, the commissioner’s decision denying the plaintiff’s claim under § 7-433c on the ground that he was receiving pension benefits constituted an incorrect application of the law.

Moreover, § 7-433c (b) provides that those “who began employment on or after July 1, 1996, shall not be eligible for any benefits pursuant to this section.” In

light of the fact that the plaintiff had been continuously employed as a regular member of the Bridgeport Police Department since 1983, we disagree with the commissioner's determination that the plaintiff "began employment" with the Bridgeport Police Department when he became the chief of police in 2010. Accordingly, we conclude that the board erred in affirming the commissioner's decision that the plaintiff was not eligible for benefits pursuant to § 7-433c (b).

The decision of the Compensation Review Board is reversed and the case is remanded to the board with direction to reverse the decision of the Workers' Compensation Commissioner and to remand the case to the commissioner for further proceedings consistent with this opinion.

In this opinion the other judges concurred.

¹ PMA Management Corporation of New England, a third-party claims administrator, was also named as a defendant and joins in this appeal.

² General Statutes § 7-433c provides: "(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."

³ "[Our Supreme Court] has stated on many occasions that [t]he procedure for determining recovery under § 7-433c is the same as that outlined in chapter 568 [of the Workers' Compensation Act, General Statutes § 31-275 et seq.], presumably because the legislature saw fit to limit the procedural avenue for bringing claims under § 7-433c to that already existing under chapter 568 rather than require the duplication of the administrative machinery available" (Internal quotation marks omitted.) *Brocuglio v. Thompsonville Fire District #2*, 190 Conn. App. 718, 731, 212 A.3d 751 (2019).

⁴ Notably, in *Clark*, the board also found that the clear and unambiguous language of § 7-433c does not distinguish between part-time and full-time firefighters. *Clark v. Waterford, Cohanzie Fire Dept.*, supra, 206 Conn. App. 232. The town challenged the board's conclusion, but this court did not

reach that issue on appeal.
