

In the Matter of Evelyn Eggert, Department of Health and Senior Services
DOP Docket No. 2006-3665
(Merit System Board, decided March 14, 2007)

Evelyn Eggert, a Health Care Services Evaluator/Nurse with the Division of Health Care Quality and Oversight, Department of Health and Senior Services, represented by David A. Gies, Esq., appeals the denial of sick leave injury (SLI) benefits.

On a November 15, 2005 Employer's First Report of Accidental Injury or Occupational Disease, the appellant reported that, at approximately 2:15 p.m., she was a front seat passenger in a State car which was struck on the driver's side by another vehicle and forced off the road. The appellant indicated that she experienced neck, back, and right arm pain, numbness, and tingling. The appellant was evaluated by Dr. Thomas Seck, a State-authorized physician, on November 28, 2005 and diagnosed with cervical strain and radiculopathy. Dr. Seck noted that the appellant had a relevant past history of degenerative cervical disc disease. The appellant was prescribed local heat, home exercises, physical therapy and medications. The appellant followed up with Dr. Seck on December 5, 2005 and December 12, 2005 and he maintained the diagnosis and treatment plan. Dr. Seck did not authorize the appellant off duty. The appointing authority denied the appellant's request for SLI benefits on the basis that she was on her lunch break at the time of the accident. *See N.J.A.C. 4A:6-1.6(e)2.*

On appeal to the Merit System Board (Board), the appellant presents that she was a passenger in a State-owned and operated vehicle when it was struck by another car. The appellant states that her supervisor, Sara Lynn Sked, a Supervising Health Care Evaluator, was the operator of the vehicle. The appellant argues that Sked had asked the appellant, and other subordinates, to go to lunch in order to discuss job responsibilities. After the lunch, the group was returning to the office and the vehicle was hit. The appellant provides a copy of the police accident report with her appeal.

In response, the appointing authority provides documentation from Kevin P. Jennings, Administrative Director, Division of Health Care Quality and Oversight. In pertinent part, Jennings presented that the group, including the appellant, could not be considered to be returning from a lunch time staff meeting. Jennings explained that management must agree to, acknowledge, and/or facilitate a meeting because an off-site meeting could be considered an extension of the workplace. Thus, issues such as injuries, sexual harassment, and insubordination that could occur during the meeting would be considered a workplace event, and liability and responsibility would

be the State's. In this case, Jennings' investigation found that management was never advised of the meeting. Additionally, Jennings determined that management did not require attendance at the meeting or that the attendees eat at the Sticky Wicket. Further, he explained that if management required or sponsored the meeting, the attendees would have been compensated for the time they were required to attend. The attendees were not compensated. Jennings also noted that the topic of discussion was not subject to management agenda or review, nor was feedback required. Thus, Jennings concluded that the appellant was involved in a motor vehicle accident while on lunch and that whatever topic was discussed was up to the parties. It is noted that Jennings admonished the individual attendees for the use of a State vehicle to go to lunch when at their official work station.

In a supplemental submission, the appellant specifically requests 12.5 hours of SLI benefits for medical treatment received on November 28, 2005, December 2, 2005, and December 20, 2005. The appellant also explains that this request includes time for physical therapy on December 14, 2005, December 16, 2005, and December 21, 2005. However, the appellant did not respond to the appointing authority's submission.

CONCLUSION

According to uniform SLI regulations, in order to be compensable, an injury or illness resulting in disability must be work related and the burden of proof to establish entitlement to SLI benefits by a preponderance of the evidence rests with the appellant. See *N.J.A.C. 4A:6-1.6(c)* and *N.J.A.C. 4A:6-1.7(h)*. *N.J.A.C. 4A:6-1.6(e)2* provides that injuries which occur during lunch or break periods are not compensable, however, employees who are required by the appointing authority to remain at a particular job location during lunch and/or work-break shall not be precluded from receiving SLI benefits.

The appointing authority denied the appellant's request for SLI benefits on the basis that her injury occurred during her lunch break. Although the appellant argues that she was on duty at the time of the incident as she was returning from a lunch time meeting, the appointing authority has provided documentation that it did not authorize an off-site lunch time staff meeting. In *In the Matter of Theresa Kelleher* (MSB, decided April 7, 2004), the appellant argued that she was injured on her lunch break but that she was engaged in work-related duties since she was making bank deposits of checks received by the appointing authority and dropping off office mail at the post office. The Board determined that the appellant was not entitled to SLI benefits since at the time of the accident, the appellant was not authorized to go to the post office or bank since the appointing authority

had a policy that specifically limited these duties to field personnel. Similarly, in this matter, even if the appellant was performing work-related duties, there is no evidence in the record that the appointing authority authorized an off-site lunch time meeting. Therefore, the denial of SLI benefits for the time period in question was proper and the appellant has not established her entitlement to such benefits.

ORDER

Therefore, it is ordered that this appeal be denied.

This is the final administrative determination in this matter. Any further review should be pursued in a judicial forum.