

In the Matter of Clinton Falwell,
DOP Docket No. 2005-1699
(Merit System Board, decided May 18, 2005)

Clinton Falwell, a Human Services Technician at Trenton Psychiatric Hospital, Department of Human Services, appeals the denial of sick leave injury (SLI) benefits.

The appellant alleges that he suffered a work-related injury to his lower back on September 14, 2004, when he attempted to restrain an agitated patient. On September 14, 2004, the appellant was examined by Dr. Michael Makowsky, a State-authorized physician, who diagnosed him with a lower back strain and authorized him out of work. Dr. Makowsky also noted that the appellant had sustained a previous lower back injury in 2002. Specifically, the record indicates that the appellant sustained a work-related injury to his lower back on May 22, 2002 for which he received SLI benefits from May 22, 2002 through March 25, 2003. The medical documentation in the record demonstrates that the appellant was previously diagnosed with a lower back strain. In addition, the appellant filed a Workers' Compensation claim relating to his May 22, 2002 injury, and, on May 19, 2004, he entered into a settlement regarding that claim, which indicates a "17½% partial total disability, orthopedic in nature, for the residuals of a chronic post-traumatic lumbosacral strain." The record reflects that the appellant was out of work and received Workers' Compensation benefits due to the instant injury from September 18, 2004 through November 14, 2004, November 24, 2004 through November 29, 2004, and December 21, 2004.

The appointing authority denied the appellant SLI benefits, relying on *N.J.A.C. 4A:6-1.6(c)2*, which states that preexisting illnesses, diseases and conditions aggravated by a work-related accident or condition of employment are not compensable when such aggravation was reasonably foreseeable.

On appeal to the Merit System Board, the appellant does not dispute that he previously sustained a back injury, and that the instant injury constituted an aggravation of that prior injury. However, the appellant argues that he is required to physically intervene when a patient becomes agitated and becomes a potential danger to himself or others. He emphasizes that, if he does not do so, his job will be at risk. The appellant also asserts that aggravating his prior injury in this fashion should not be considered reasonably foreseeable.

In response, the appointing authority maintains that the appellant's instant injury constituted an aggravation of the injury sustained in the May

22, 2002 incident, and it was reasonably foreseeable for him to aggravate his injury while performing his job duties.

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(c)2* provides that preexisting illnesses, diseases and conditions aggravated by a work-related accident or condition of employment are not compensable when such aggravation was reasonably foreseeable. The reasonably foreseeable standard has been interpreted by the Board and the Appellate Division of the Superior Court. *See In the Matter of Brian Langdon*, Docket No. A-6512-98T5 (App. Div. October 10, 2000); *In the Matter of Nan Long-Seavey*, Docket No. A-652-96T1 (App. Div. April 27, 1998); *In the Matter of Patricia Culliton*, Docket No. A-4886-89T3 (App. Div. April 8, 1992). For example, in *In the Matter of Brian Langdon, supra*, the Appellate Division found that it was reasonably foreseeable for a Correction Sergeant with a prior knee injury, which a doctor said would never return to the normal state that was present prior to the injury but who was cleared to return to work without limitation, to aggravate that injury when responding to an emergency call. Further, in *In the Matter of Nan Long-Seavey, supra*, the Appellate Division found that an automobile accident was a reasonably foreseeable event for a Public Health Representative whose job duties required that she do substantial car travel and who had a history of neck and back problems.

In the instant matter, the appointing authority contends that the appellant's lower back injury constituted a reasonably foreseeable aggravation of a preexisting injury. In support of its position, the appointing authority submits several medical reports documenting the appellant's prior injury to his lower back and his diagnosis with a lower back strain. Initially, the appellant does not dispute that his present injury is an aggravation of his 2002 lower back injury, and the medical documentation supports such an assessment. With regard to foreseeability, since the appellant works at a psychiatric hospital in a position that requires significant client contact, it is clearly reasonably foreseeable to aggravate his preexisting back injury due to a patient's attack during the course of his regular work duties. *See In the Matter of John Powell* (MSB, decided July 7, 1998) (SLI benefits denied where injury to lower back as a result of client assault was found to be an aggravation of a preexisting condition); *See also In the Matter of Bonnie Ashburn* (MSB, decided July 11, 2000); *In the Matter of Eunice Enyioha* (MSB, decided August 29, 2000). Given the nature of the appellant's position

and the nature of his previous back injury, it was reasonably foreseeable for him to aggravate his lower back injury in this manner. Finally, the appellant is not entitled to SLI benefits if he aggravated a preexisting work-related injury, since it is not the intention of the SLI program to award benefits to an employee indefinitely or for recurring periodic disabilities and reinjuries after the one-year period. *See N.J.A.C. 4A:6-1.6(b)3.* Accordingly, a thorough review of the record indicates that the denial of SLI benefits by the appointing authority was proper and consistent with uniform SLI criteria and the appellant has failed to meet his burden of proof in this matter.

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.