

*In the Matter of Manuel Jose DeCastro,*  
*Department of Corrections*  
DOP Docket No. 2003-3415  
**(Merit System Board, decided January 7, 2004)**

Manuel Jose DeCastro, a former Senior Correction Officer at East Jersey State Prison, Department of Corrections (DOC), requests reconsideration of the final decision of the Merit System Board (Board) rendered on April 10, 2002, which denied the petitioner sick leave injury (SLI) benefits. It is noted that the petitioner received an ordinary disability retirement, effective May 1, 2002.

By way of background, on February 21, 2001, the petitioner filed an Employer's First Report of Accidental Injury or Occupational Disease indicating that he was experiencing a mental illness as a result of being a victim of sexual harassment and retaliation. He requested SLI benefits for an indefinite period of time beginning February 2, 2001. It is noted that the petitioner filed a discrimination complaint against former Correction Lieutenant Denise Baker,<sup>1</sup> alleging that she sexually harassed him and retaliated against him. He also complained that Senior Correction Officer Khalil Saahd discriminated against him on the basis of his race. The petitioner is Caucasian and Saahd and Baker are African American. An investigation was conducted by the Equal Employment Division (EED) with the Department of Corrections, which found that in May 2000, Baker rubbed her lower back and buttocks across the petitioner's groin and also engaged in inappropriate physical contact with other employees.<sup>2</sup> However, the investigation did not substantiate the petitioner's other claims.

The appointing authority denied the petitioner's request under *N.J.A.C. 4A:6-1.6(c)3*, which provides that illnesses which are generally not caused by a specific work-related accident or condition of employment, are not compensable

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<sup>1</sup> Baker retired from State service effective May 31, 2002.

<sup>2</sup> As a result of the EED's finding, Baker was charged with a violation of the New Jersey State Policy Prohibiting Discrimination, Harassment, or Hostile Environments in the Workplace, conduct unbecoming a public employee, and inappropriate physical contact of an employee. After a hearing at the Office of Administrative Law, the matter came before the Board on January 29, 2003. The Board sustained the charges and, notwithstanding Baker's retirement, imposed a penalty of a 30-day suspension for record purposes. *See In the Matter of Denise Baker* (MSB, decided January 29, 2003). It is further noted that the petitioner appealed the EED's determination to the Board, arguing that he was also retaliated against by Baker and was called a racist by Saahd. Supposedly Saahd had said that there was a "witch-hunt" to get Baker and the underlying problem was probably due to racism. However, the Board found that other than the substantiated claim of sexual harassment, the petitioner failed to present substantive evidence to support his claims of further violations of the State Policy. *See In the Matter of Manuel Jose DeCastro* (MSB, decided January 29, 2002).

except when the claim is supported by medical documentation that clearly establishes the injury or illness is work related.

On appeal to the Board, the petitioner argued that he was entitled to SLI benefits since the medical documentation clearly showed that his illness was work related. At its meeting on October 10, 2001, the Board concluded that there were conflicting interpretations of medical documentation in the record and referred the matter to the Medical Review Panel (Panel) for a determination as to whether the medical documentation supported the petitioner's claim that his illness was work related. The Panel conducted a meeting on February 7, 2002. The petitioner was present at the meeting as well as the members of the Panel: Edward E. Johnson, Ph.D., and Frank A. Jones, Jr., M.D. The report by the Panel discussed all submitted medical evaluations of the petitioner, including reports from Perry Shaw, M.D., Anthony J. Papania, Psy.D., and Carol A. Dobrzynski, M.D. The Panel concluded that the medical documentation did not support the petitioner's claim that his illness was work related as defined in *N.J.A.C. 4A:6-1.6(c)5*. The Panel stated that the petitioner's "description is of anger, rather than panic attacks, with psychological testing suggesting that an argumentative and angry orientation toward the world is characteristic of his long-term functioning, preceding the incident. Symptoms were much delayed in onset from the time of the incident, and occurred in a context that suggests his response is one of anger rather than panic or depression." The Board accepted and adopted the findings and conclusions as contained in the Panel's report and recommendation and denied the petitioner's appeal. *See In the Matter of Manuel Jose DeCastro* (MSB, decided April 10, 2002).

In his request for reconsideration, the petitioner submits a transcript of an oral decision made by Bradley W. Henson, Sr., Judge of Compensation, rendered on March 10, 2003 in connection with the petitioner's Workers' Compensation claim. Judge Henson found that the petitioner's allegations of sexual harassment and retaliation by Baker were substantiated by the testimony of the petitioner and the petitioner's witnesses. Judge Henson also found that a remark made by Saahd tagged the petitioner as a racist. As to whether the petitioner's psychiatric impairment was a result of these incidents, Judge Henson reviewed the medical reports of Drs. Papania and Shaw (which were also reviewed by the Panel) and found that the petitioner was unable to work. He further found that the petitioner's psychological condition was caused by stresses which were peculiar to the work environment. Therefore, Judge Henson granted the petitioner Workers' Compensation benefits (temporary disability and medical benefits) for his stress beginning March 10, 2001. The petitioner maintains that based on Judge Henson's decision, he is entitled to SLI benefits. Additionally, he states that the appointing authority offered him a pension, which he claims is evidence that his disability is work related. Moreover, the petitioner states that the Board relied on the report and recommendation of the Panel; however, he reminds the Board that Dr. Johnson fell asleep during the Panel meeting.

It is noted that the record does not indicate that Judge Henson reviewed the Panel's report and recommendation. It is further noted that the petitioner filed a claim for permanent disability benefits. However, on August 19, 2003, the petitioner and the appointing authority entered into a settlement agreement whereby the petitioner received \$150,000 and, in exchange, the petitioner agreed not to pursue his claim. It is noted that the settlement agreement did not affect the petitioner's claim for SLI benefits and did not preclude him from seeking relief from other forums based on the same incidents.

In response, the appointing authority contends that the fact that Judge Henson reviewed similar information in connection with the petitioner's Workers' Compensation claim and came to a different conclusion does not demonstrate that a clear material error occurred in denying the petitioner's request for SLI benefits. Additionally, it argues that a decision made by another administrative agency does not constitute new evidence or additional information that would change the outcome of the petitioner's SLI claim. It notes that Judge Henson did not review the Panel's report and recommendation regarding the petitioner's SLI claim and states that Judge Henson is not a medical doctor or psychologist. Moreover, the appointing authority indicates that the petitioner is receiving his pension because he was allowed to retire under an ordinary disability retirement, and not an accidental disability retirement. It maintains that the petitioner was not entitled to an accidental disability retirement because he was not injured in the line of duty.

In response, the petitioner indicates that the appointing authority agreed to support his application for an accidental disability retirement. Moreover, he states that "the position of denying anything happened to me on the job is [a] losing position. Keep it up." It is noted that at its meeting on October 15, 2002, the Board of Trustees of the Police and Firemen's Retirement System (PFRS) denied the petitioner's application for accidental disability retirement. It found that the May 2000 incident with Baker and the incidents described by the petitioner as the reason for his absence beginning February 2, 2001 were not considered "traumatic events" under applicable case law and *N.J.S.A. 43:16A-7*, which provides that a member of PFRS is entitled to accidental disability benefits if the member is permanently and totally disabled as a direct result of a traumatic event occurring during and as a result of the performance of regular or assigned duties.<sup>3</sup> The Board

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<sup>3</sup> It is noted that the standard for a "traumatic event" for purposes of accidental disability retirement is different than the SLI standard for a traumatizing event. In order to be eligible for accidental disability retirement, a worker must demonstrate (1) that his or her injuries were not induced by the stress or strain of the normal work effort; (2) that he or she met involuntarily with the object or matter that was the source of the harm; and (3) that the source of the injury itself was a great rush of force or uncontrollable power. See *Kane v. Board of Trustees, Police and Firemen's Retirement System*, 100 N.J. 651, 663 (1985). Under the SLI program, an employee need only demonstrate that his or her psychological or psychiatric illness is a result of a "specific work-related accident or occurrence which traumatized the employee" and the claim is supported by medical documentation. See *N.J.A.C. 4A:6-1.6(c)5*. Additionally, the work-related accident or occurrence

of Trustees further found that the petitioner's disability was not the direct result of the incidents described. The petitioner appealed the Board of Trustees' determination and the matter was transmitted to the Office of Administrative Law for a hearing as a contested case. At its November 17, 2003 meeting, the Board of Trustees adopted the findings of fact and conclusions contained in the Administrative Law Judge's (ALJ) initial decision, dated October 31, 2003, which was consistent with the Board of Trustees' original determination. It is noted that with regard to the issue of direct causation, the ALJ found that the petitioner did not present legally competent medical testimony on the issue to support a finding that his disability was directly caused by the claimed incidents.

## CONCLUSION

*N.J.A.C.* 4A:2-1.6(b) sets forth the standards by which the Board may reconsider a prior decision. This rule provides that a party must show that a clear material error has occurred or present new evidence or additional information not presented at the original proceeding which would change the outcome of the case and the reasons that such evidence was not presented at the original proceeding. Moreover, 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 petitioner. 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)5 states that a psychological or psychiatric illness is not compensable, except when such illness can be traced to a specific work-related accident or occurrence which traumatized the employee thereby causing the illness, and the claim is supported by medical documentation.

In the instant matter, because the petitioner presents a decision from the Workers' Compensation court that determined his eligibility for Workers' Compensation benefits, it is appropriate for the Board to grant the petitioner reconsideration. However, for the reasons set forth below, the Board reaffirms its prior decision. The SLI program is a distinct and limited program separate from Workers' Compensation in which eligibility is more narrowly construed. In *Morreale v. State of New Jersey, Civil Service Commission*, 166 *N.J. Super.* 536 (App. Div. 1979), *cert. denied*, 81 *N.J.* 275 (1979), the Court held that the Workers' Compensation and SLI statutes have wholly different ends and purposes and the differences warrant different rules of construction in their application. While the petitioner's psychiatric condition was deemed work related for Workers' Compensation purposes, in order for the petitioner's condition to be compensable

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must be substantiated. For example, in *In the Matter of Marie Bennett*, 335 *N.J. Super.* 518 (App. Div. 2000), the Appellate Division found that an integrated pattern of prolonged sexual harassment at the workplace could be considered a sufficiently traumatizing "specific occurrence" for SLI purposes.

under the SLI program, it must not fall under any of the exceptions found in *N.J.A.C.* 4A:6-1.6 and *N.J.A.C.* 4A:6-1.7.

As previously decided by the Board, the petitioner's psychiatric condition is not compensable under *N.J.A.C.* 4A:6-1.6(c)5. The petitioner may disagree with the report of the Panel that his condition is one of anger, rather than panic attacks or depression; however, the petitioner has not submitted medical documentation that refutes the Panel's report and recommendation. Moreover, Judge Henson did not have the benefit of the Panel's report. Regarding Dr. Johnson, the Board previously acknowledged that Dr. Johnson briefly closed his eyes while Dr. Jones was interviewing the petitioner. However, the Panel had ample opportunity during the Panel meeting to clarify the issues in the case and observe the petitioner's demeanor in light of the medical documentation. Accordingly, under the circumstances presented, the Board grants reconsideration, but reaffirms its prior decision.

### **ORDER**

Therefore, it is ordered that upon reconsideration, the Board reaffirms its prior decision denying the petitioner SLI benefits.

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