

*In the Matter of Michael Scates,
Department of Corrections*

DOP Docket No. 2007-1980

(Merit System Board, decided April 25, 2007)

Michael Scates, a Senior Correction Officer with South Woods State Prison, Department of Corrections, appeals the denial of sick leave injury (SLI) benefits.

On a May 19, 2006 Employer's First Report of Accidental Injury or Occupational Disease, the appellant indicated that he experienced a painful tightening of his right lower back after he jumped out of a chair and pushed through some doors responding to an emergency code. The appellant was treated in the Emergency Room. On May 22, 2006, the appellant followed up with South Jersey Occupational Health (SJOH) and was diagnosed with a lumbar strain and muscle spasm. SJOH indicated that the appellant's injury was not an aggravation of a preexisting condition. An MRI indicated that the appellant had a small central disc herniation at L5-S1, thus, SJOH referred the appellant to Premier Orthopaedic Associates of Southern Jersey (Dr. John B. Catalano) for an orthopedic consultation on June 16, 2006. Dr. Catalano diagnosed the appellant with a herniated disc and angular tear of the lumbar spine, authorized the appellant off-duty, and treated him with trigger point injections. In his report, Dr. Catalano noted that the appellant indicated that he never injured his back before and had no other work-related or motor vehicle accident history. However, he did note that the appellant had a right knee scope in the past and therapy for that condition. The appellant underwent epidural steroid injections which failed to provide him with any relief. As such, Dr. Kimberley Smith-Martin, also of Premier Orthopaedic Associates, referred him for a surgical evaluation.

On September 5, 2006, the appellant was evaluated by Dr. Richard Strauss, a neurosurgeon. Dr. Strauss opined that the appellant's symptoms were "not those of a straight forward lumbosacral radiculopathy due to a herniated disc" and that his symptoms were "suggestive of discogenic mechanical low back pain due to advanced degenerative disc disease at L5-S1." Dr. Strauss recommended a lumbar discography. Dr. Strauss also noted that it was his opinion that the appellant was:

led to believe by his pain management specialist that he suffers from a simple herniated disc, amenable to a simple microdiscectomy. He was unaware of his advanced lumbosacral degenerative disc disease, and the possible need for an arthrodesis. He was understandably disappointed that his

lumber spine condition is more complex, and may require a more extensive surgical procedure.

On October 26, 2006, the appellant followed up with Dr. Strauss, who indicated that he was “entirely asymptomatic prior to the work-related injury of May 19, 2006.” Thus, he indicated that the appellant’s condition was causally related to his work injury. Dr. Strauss also noted that the appellant was in favor of undergoing a transforaminal lumbar interbody arthrodesis to treat his condition.

The appointing authority granted the appellant’s request for SLI benefits from May 20, 2006 to October 10, 2006. However, based on Dr. Strauss’ report indicating that the appellant’s low back injury was due to an advanced degenerative condition, it denied the appellant’s request for continued SLI benefits from October 11, 2006 until his return to work based on the appellant’s aggravation of a preexisting condition. *See N.J.A.C. 4A:6-1.6(c)2.* It is noted that the appellant has received Workers’ Compensation benefits since October 14, 2006 and is still out of work.

On appeal to the Board, the appellant states that at no point in Dr. Strauss’ report does he indicate that the cause of his pain was as a result of a preexisting condition. Additionally, he states that his follow up with Dr. Strauss affirmed the results of a discography and that the best odds for recovery and return to normalcy was the transforaminal lumbar interbody arthrodesis.

In response, the appointing authority states that it discontinued the appellant’s SLI benefits effective October 11, 2006 based on Dr. Strauss’ report indicating that the appellant’s condition was due to an advanced degenerative condition. Moreover, it states that Dr. Strauss’ report of October 26, 2006, which causally related the onset of pain from the advanced degenerative disc disease at L5-S1 to the incident of running to a code and pushing through doors, did not alter its decision to discontinue SLI benefits. Thus, since running to a code would be reasonably foreseeable for a Senior Correction Officer, the appointing authority maintains that the aggravation of the appellant’s advanced degenerative disc disease does not entitle him to SLI benefits. The appointing authority also notes that the appellant is currently receiving Workers’ Compensation benefits.

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. *N.J.A.C.* 4A:6-1.6(b)3 generally limits the recovery of SLI benefits to a period of one year after the initial date of the injury or illness.

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. Oct. 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 denied the appellant's request for continued SLI benefits contending that his injury was an aggravation of a preexisting condition. The appellant argues that the medical record demonstrates that his condition is consistent with his workplace injury, not related to any degenerative process.

Based on Dr. Strauss' reports, the record supports the appointing authority's assertion that the appellant's injury constituted an aggravation of a preexisting injury. However, the record does not show that the appellant's injury was reasonably foreseeable as outlined above. See *In the Matter of Daniel DeCore* (MSB, decided September 7, 2005) (Appellant's aggravation of a preexisting degenerative arthritis of the cervical spine was not foreseeable as appellant did not know he suffered from such condition); *In the Matter of David H. Hunterdon* (MSB, decided May 7, 2003) (Even if it had been established that appellant's injury was an aggravation of a preexisting condition, the injury was not reasonably foreseeable since appellant was unaware of his condition and the medical documentation did not refute appellant's condition); *In the Matter of Patricia Siwczak* (MSB, decided October 23, 2002) (SLI benefits granted to appellant with preexisting degenerative changes in her lumbosacral spine since she was unaware of her condition at the time of her work-related injury); *In the Matter of Leonard Carter* (MSB, decided August 14, 2001) (Appellant's injuries resulting from

involvement in a work-related motor vehicle accident were not reasonably foreseeable since his preexisting medical condition was unknown to him at time of the accident). Indeed, there is no evidence in this case that the appellant was aware of his preexisting condition at the time of the incident in question. Without such a showing, the appellant has sustained his entitlement for SLI benefits from October 11, 2006 and for all times that he was medically authorized off-duty until May 19, 2007. *See N.J.A.C. 4A:6-1.6(b)3.*

ORDER

Therefore, it is ordered that this appeal be granted.

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