

*In the Matter of Samantha Verwilt, Office of the Public Defender*  
CSC Docket No. 2010-2960  
**(Civil Service Commission, decided October 6, 2010)**

Samantha Verwilt, an Assistant Deputy Public Defender 3 with the Office of the Public Defender, represented by Kevin A. Terhune, Esq., appeals the denial of sick leave injury (SLI) benefits.

The appellant alleges that she sustained work-related injuries to her neck, right knee, right wrist, right shoulder, and left hip on February 5, 2010, when she was involved in a motor vehicle accident. The record reflects that the appellant was engaged in work-related activities in Fayetteville, North Carolina, when her vehicle ran off the roadway and struck a sign and the median of the roadway. On the date of her injury, the appellant was treated in the emergency room. In a report dated February 8, 2010, Dr. Sudha Garla diagnosed the appellant with a neck sprain and contusions on her right knee, right wrist, right shoulder, and left hip. Dr. Garla authorized the appellant to return to work with restricted duties, including no repetitive movements, no lifting greater than 10 pounds, no carrying greater than 10 pounds, and no driving. On the night of February 15, 2010, the appellant was treated in the emergency room for vertigo and authorized out of work for one day. In a February 17, 2010 report, Dr. Garla authorized the appellant out of work. Dr. Alan Colicchio, a neurologist, authorized the appellant to return to full duty on February 23, 2010. The record reflects that the appellant was out of work utilizing her personal sick leave on February 8, 2010, on February 11, 2010, and from the afternoon of February 16, 2010 until February 23, 2010.

The appointing authority denied the appellant's request for SLI benefits, relying on *N.J.A.C. 4A:6-1.6(c)6*, which provides an injury or illness is not compensable when the appointing authority has established that the employee has been grossly negligent. Specifically, the appointing authority asserted that the appellant was issued a traffic summons for "failing to maintain lane control within a single lane while driving on a street with clearly marked lanes for traffic."

On appeal, the appellant argues that she is not guilty of the offense set forth in the traffic summons. She emphasizes that the police report regarding her accident specifically states that it is not intended to be a determination of fault in the accident. The appellant maintains that she was driving in a rainstorm, and her vehicle "jumped the lip of the road and went down the slope onto the grass median." She speculates that she may have hit an ice patch or began hydroplaning on the wet road, and she argues that this alone does not establish that she exercised anything less than reasonable care under the circumstances. Further, the appellant emphasizes that she was traveling on unfamiliar roads in a rental car, the weight and handling of which were different than her usual vehicle. In a supplemental submission, the appellant asserts that the traffic summons against her was

dismissed, and she submits documentation to that effect. She also contends that an estimate of her rate of speed at the time of the accident, without more, is not sufficient to support a finding of gross negligence.

The appointing authority contends that, even if the traffic summons was dismissed, the appellant admitted that she was traveling in excess of the posted speed limit at the time the accident occurred. In this regard, the appellant stated that she was traveling 60 miles per hour, and the appointing authority submits a letter from W.L. Jernigan, Jr., Division Traffic Engineer for the North Carolina Department of Transportation, who confirms that the speed limit in the area of the appellant's accident was 55 miles per hour. Likewise, according to the police report of the appellant's accident, her estimated rate of speed was 60 miles per hour. In addition, the appointing authority emphasizes that the appellant admitted that the road conditions were dangerous at the time of her accident, and she should have been traveling less than the posted speed limit under those conditions.

## 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(j)*. *N.J.A.C. 4A:6-1.6(c)6* provides that an injury or illness is not compensable if an appointing authority establishes that gross negligence of the claimant contributed to the injury or illness.

The gross negligence standard, in the context of the SLI program, means that benefits are appropriately denied when the claimant engaged in conduct which placed him or her at a substantial risk of harm. For example, in *In the Matter of John Severino* (Merit System Board, decided August 29, 2000), SLI benefits were denied to an employee who placed himself at a substantial risk of harm by placing his hand in a milk-packaging machine while it was still running despite being trained to turn the machine off prior to effecting repairs. Further, in *In the Matter of Thomas Thompson* (MSB, decided June 8, 2005), SLI benefits were denied to a Senior Parole Officer who sustained a gunshot wound to his hand as a result of his failure to follow proper procedures in securing his weapon.

Additionally, it is an appellant's burden of proof to provide evidence that his or her actions when the accident occurred did not subject him or her to a substantial risk of harm. If such a showing is made, SLI benefits cannot be denied based on gross negligence. See *In the Matter of Mary Montgomery* (MSB decided May 9, 2000) (SLI granted to Trenton Psychiatric Hospital employee found not to be grossly negligent where employee accidentally dropped a cup containing chemicals, causing the chemicals to splash into the employee's eyes). See also, *In the Matter of William*

*Elbertson* (MSB, decided June 6, 2000) (SLI granted to Bayside State Prison employee found not to be grossly negligent when he slipped and fell on a wet floor while walking through a doorway).

In the instant matter, the appointing authority denied the appellant's request for SLI benefits, contending that her gross negligence contributed to her motor vehicle accident. Initially, while the receipt of a traffic summons is usually considered *prima facie* evidence of gross negligence, it must be recognized that the appellant's summons was dismissed. Nevertheless, the appellant admittedly was traveling in excess of the posted speed limit, and the police report confirms that she was traveling 60 miles per hour in a 55 mile per hour zone. She also describes adverse weather and road conditions that were present at the time of her accident. Given all the circumstances, including the appellant's rate of speed, her unfamiliarity with her vehicle and the roads she was traveling, and the road conditions as described, the Commission finds that the appellant placed herself at a substantial risk of harm at the time of the accident. *See also, In the Matter of Donnell Alexander* (CSC, decided August 5, 2009) (Although the appellant did not receive a traffic summons, the police report established that his failure to yield to oncoming traffic caused the motor vehicle accident); *In the Matter of Julio Escobar* (CSC, decided November 6, 2008) (Although appellant did not receive a traffic summons, his admission that he disregarded a stop sign established that his gross negligence caused his motor vehicle accident). Therefore, the Commission agrees that the appellant was grossly negligent. 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 her 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.