

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of PAUL C. THOMPSON and PEACE CORPS,
Poland

*Docket No. 00-1695; Submitted on the Record;
Issued April 3, 2001*

DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,
MICHAEL E. GROOM

The issue is whether appellant has met his burden of proof to establish that he sustained certain dental conditions while serving in the Peace Corps.

On December 1, 1999 appellant, then a 32-year-old former Peace Corps volunteer, filed an occupational disease claim alleging that he sustained a number of dental conditions, including tooth decay and a chipped tooth, as a result of his service in Poland from 1995 through 1999. He also stated that he required authorization for possible dental work, including gum work and a new crown, which was causally related to his Peace Corps service. Appellant indicated that the quality of dental care in Poland was poor and access to dental care was substandard.

Appellant submitted a September 21, 1999 report from Dr. Leo S. Henrichsen, a dentist, which listed the dental treatment recommended by his treating dentist, including a scaling and root planning of all four quadrants and multiple restorations.

In a medical consultation report dated February 1, 2000, Dr. David H. Spiegelman, a dentist and consultant for the employing establishment, denied appellant's request for authorization for dental care costs, which exceeded \$1,000.00. Dr. Spiegelman stated that the x-rays he reviewed did not show bone loss or evidence of heavy calculus and he recommended disapproval for the requested treatment. Dr. Spiegelman related that appellant's examining dentist listed many teeth that he planned to restore and advised that most of the planned fillings were on surfaces which could not be verified with x-rays. Dr. Spiegelman recommended that appellant obtain a second opinion concerning the need for the requested treatment.

In a letter dated February 8, 1999, the Office of Workers' Compensation Programs advised appellant that it required a reasoned medical opinion regarding the relationship between the claimed dental condition and factors of his Peace Corps service. The Office informed appellant that he had 30 days to submit the requested evidence.

On March 8, 2000 the employing establishment received a dental report, x-rays and treatment notes from Dr. James W. Menzies, a dentist, who included an undated, handwritten note which stated:

“[Appellant’s] current dental condition was caused by lack of dental care during his four years of Peace Corps service.”

In a report dated March 9, 2000, Dr. Spiegelman approved authorization for teeth fillings on teeth numbers 7, 14, 15, 20 and 31, based on the showing of Peace Corps service-related tooth decay, but reiterated his denial of reimbursement for scale and root plane treatment, as he indicated that the x-rays did not show bone loss or evidence of heavy calculus.

By decision dated March 22, 2000, the Office denied appellant’s claim for a scaling and root planning of all four quadrants and multiple restorations, finding that the evidence of record failed to establish that these dental problems were causally related to his Peace Corps employment.

The Board finds that this case is not in posture for decision.

Section 10.730 of Title 20 of the Code of Federal Regulations¹ addresses the issue of the conditions of coverage for Peace Corps volunteers injured while serving outside the United States. This regulation interprets section 8142(c)(3) of the Federal Employees’ Compensation Act.² It therein provides that an injury sustained by a Peace Corps volunteer when he is outside the United States is deemed proximately caused by his employment, unless the injury or illness was caused by the claimant’s willful or intentional misconduct; the illness is shown to have pre-existed the period of service abroad; or the injury or illness claimed is a manifestation of symptoms of, or consequent to, a preexisting congenital defect or abnormality.

In this case, the evidence shows that appellant served in the Peace Corps from 1995 to September 1999. Appellant has alleged that he sustained a number of dental conditions while performing his service and has provided some medical evidence in this regard. The Office did not obtain any medical evidence which rebutted the presumption of causal relationship. The Office in this case, however, denied appellant’s claim on the grounds that causal relationship was not established. The Office denied appellant the presumption of causal relationship.

¹ 20 C.F.R. § 10.730.

² 5 U.S.C. § 8142.

Sections 10.730(b) and (c) of the applicable regulation³ explain that if the presumption is rebutted, then appellant may still be entitled to compensation by proving causal relationship. In this regard, the regulation provides as follows:

“(b) If the presumption that an injury or illness was sustained in the performance of duty is rebutted ... the claimant has the burden of proving by the submittal of substantial and probative evidence that such injury or illness was sustained in the performance of duty with the Peace Corps.

“(c) If an injury or illness, or episode thereof, comes within one of the exceptions..., the claimant may nonetheless be entitled to compensation. This will be so provided he or she meets the burden of proving by the submittal of substantial, probative and rationalized medical evidence that the illness or injury was proximately caused by factors or conditions of Peace Corps service, or that it was materially aggravated accelerated or precipitated by factors of Peace Corps service.”

In this case there was no medical evidence of record which rebutted the presumption of causal relationship. The Office therefore improperly placed the burden of proof on appellant to establish causal relationship, without rebutting the presumption of causal relationship.

This case must be remanded to the Office for further development. On remand, the Office shall exercise its discretion to determine which, if any, of the recommended dental treatments are medically necessary pursuant to section 8103 of the Act.⁴

³ 20 C.F.R. § 10.730(b)(c).

⁴ 5 U.S.C. § 8103.

The decision of the Office of Workers' Compensation Programs dated March 22, 2000 is hereby set aside and the case is remanded to the Office.

Dated, Washington, DC
April 3, 2001

Michael J. Walsh
Chairman

Willie T.C. Thomas
Member

Michael E. Groom
Alternate Member