

**United States Department of Labor
Employees' Compensation Appeals Board**

D.W., Appellant

and

PEACE CORPS, Washington, DC, Employer

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Docket No. 07-174

Issued: March 26, 2007

Appearances:

Appellant, pro se

Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chief Judge

DAVID S. GERSON, Judge

MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On October 24, 2006 appellant filed a timely appeal from an October 27, 2005 Office of Workers' Compensation Programs' merit decision, denying his claim for hemochromatosis and an October 11, 2006 decision denying his request for reconsideration. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the claim.

ISSUES

The issues are: (1) whether appellant's hemochromatosis is causally related to factors of his federal employment; and (2) whether the Office abused its discretion in denying appellant's request for reconsideration.

FACTUAL HISTORY

On July 19, 2005 appellant, then a 59-year-old Peace Corps volunteer, filed an occupational disease claim alleging that he developed hemochromatosis¹ due to his work in Togo, West Africa. He stated that in March 2005 he developed chest tightness, sweats, nausea and headaches that lasted 10 days and was diagnosed as a virus. Appellant returned to work in Togo, West Africa but became ill again and was transported to Washington, DC on April 17, 2005 with a diagnosis of possible renal failure. He was later diagnosed with hemochromatosis.

On June 3 and 29, 2005 Dr. Kris Ramprasad, a Board-certified internist specializing in gastroenterology, examined appellant and diagnosed hemochromatosis. He recommended treatment by periodic phlebotomies (incision of a vein for the letting of blood) to reduce the level of iron saturation in the blood. Dr. Ramprasad noted that appellant had a remote family history of hemochromatosis.

On July 28, 2005 Dr. Kenneth Kim, an employing establishment physician, stated that appellant served in the Peace Corps in Cote D'Voire (Ivory Coast) from June 11 to October 15, 2002 and in Togo from October 16, 2002 to May 7, 2005. He indicated that hemochromatosis was caused by an inherited disorder involving iron metabolism and appellant's employment did not cause or exacerbate his condition.

On August 8, 2005 the Office asked appellant to provide additional evidence, including a comprehensive medical report explaining how his inherited condition of hemochromatosis was aggravated by factors of his employment.

On August 19 and September 19, 2005 Dr. David L. Hammer, an employing establishment physician, indicated that appellant's medical history when he began his Peace Corps service included hypertension, asthma, gastroesophageal reflux disease (GERD) with Barrett's esophagitis and colonic polyps. Appellant did not disclose his congenital condition of hemochromatosis, a condition that usually affects the males in a family and presents in the affected individual's fifth decade.² Dr. Hammer stated that appellant's employment did not cause or aggravate his inherited hemochromatosis. He stated that appellant's iron overload was not caused by diet, a consequence of malaria prophylaxis or excessive vitamin usage and was not a condition unique to West Africa.

By decision dated October 27, 2005, the Office denied appellant's claim on the grounds that the evidence did not establish that his hemochromatosis was causally related to his employment.

¹ Primary hemochromatosis is an iron overload in bodily tissues, a disorder in which excessive iron is deposited in the parenchymal cells (the functional elements of an organ, as distinguished from its framework), causing tissue damage and dysfunction of the liver, pancreas, heart and pituitary gland. See DORLAND'S *Illustrated Medical Dictionary* (27th ed. 1988), 747, 751, 1231; see also *The Merck Manual of Diagnosis and Therapy* 1146 (16th ed. 1992).

² Dr. Hammer noted that appellant's family background of hemochromatosis was demonstrated by his genetic profile and blood tests showing mutation.

Appellant requested reconsideration. He argued that his hemochromatosis was directly related to his living conditions in West Africa. Appellant contended that the virus he contracted in March 2005 and the effects of an iron deficient diet for three years contributed to his hemochromatosis.

By decision dated October 11, 2006, the Office denied appellant's request for reconsideration on the grounds that the evidence did not warrant further merit review.³

LEGAL PRECEDENT -- ISSUE 1

Section 10.730 of Title 20 of the Code of Federal Regulations,⁴ addresses the issue of conditions of coverage for Peace Corps volunteers injured while serving outside the United States. This regulation interprets section 8142(c)(3) of the Act.⁵ It provides that an injury sustained by a Peace Corps volunteer, when he is outside the United States shall be presumed to have been sustained in the performance of duty and any illness contracted during such time shall be presumed to be proximately caused by the employment. This presumption will be rebutted by evidence that the injury or illness was caused by the claimant's willful misconduct or intent to bring about the injury or death of self or another; was proximately caused by the intoxication by alcohol or illegal drugs of the injured claimant; the illness is shown to have preexisted 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. 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.⁶

ANALYSIS -- ISSUE 1

Dr. Ramprasad diagnosed hemochromatosis and noted that appellant had a remote family history of hemochromatosis. Dr. Kim stated that hemochromatosis was caused by an inherited disorder involving iron metabolism. He stated that appellant's employment did not cause or exacerbate his condition. Dr. Hammer indicated that appellant's hemochromatosis was congenital, a condition that usually affects the males in a family and presents in the affected individual's fifth decade. He noted that appellant's family background of hemochromatosis was demonstrated by his genetic profile and blood tests showing mutation. Dr. Hammer stated that appellant's employment did not cause or aggravate his inherited hemochromatosis. He stated that appellant's iron overload was not caused by diet, a consequence of malaria prophylaxis or excessive vitamin usage and was not a condition unique to West Africa. Each of these physicians found that appellant's hemochromatosis was not causally related to his Peace Corps

³ Appellant submitted additional evidence on appeal. The Board's jurisdiction is limited to the evidence that was before the Office at the time it issued its final decision. See 20 C.F.R. § 501.2(c). The Board may not consider this evidence for the first time on appeal.

⁴ 20 C.F.R. § 10.730.

⁵ 5 U.S.C. § 8142.

⁶ 20 C.F.R. § 10.730(b).

service, but rather was due to a genetic family condition. The presumption of causal relationship afforded to Peace Corps volunteers is therefore rebutted in this case. Because appellant failed to provide any medical evidence establishing that his hemochromatosis was caused or aggravated by factors of his employment, he failed to meet his burden of proof.⁷ The Office properly denied his claim.

LEGAL PRECEDENT -- ISSUE 2

Section 8128(a) of the Federal Employees' Compensation Act⁸ vests the Office with discretionary authority to determine whether it will review an award for or against compensation. The Act states:

“The Secretary of Labor may review an award for or against payment of compensation at any time on [her] own motion or on application. The Secretary, in accordance with the facts found on review may --

(1) end, decrease, or increase the compensation awarded; or

(2) award compensation previously refused or discontinued.”

The Code of Federal Regulations provides that a claimant may obtain review of the merits of the claim by: (1) showing that the Office erroneously applied or interpreted a specific point of law; or (2) advancing a relevant legal argument not previously considered by the Office; or (3) constituting relevant and pertinent evidence not previously considered by the Office.⁹ When an application for review of the merits of a claim does not meet at least one of these requirements, the Office will deny the application for review without reviewing the merits of the claim.¹⁰

ANALYSIS -- ISSUE 2

In support of his request for reconsideration, appellant argued that his hemochromatosis was directly related to his living conditions in West Africa. He stated that the virus he contracted in March 2005 and the effects of an iron deficient diet for three years contributed to his hemochromatosis. The Board notes that lay individuals such as appellant are not competent to render a medical opinion.¹¹ Therefore, appellant's contention does not constitute relevant and pertinent evidence not previously considered by the Office. Appellant did not demonstrate that the Office erroneously applied or interpreted a specific point of law, advance a relevant legal

⁷ On August 8, 2005 the Office asked appellant to provide additional evidence, including a comprehensive medical report explaining how his inherited condition of hemochromatosis was aggravated by factors of his employment. However, appellant failed to provide such medical evidence.

⁸ 5 U.S.C. § 8128(a).

⁹ 20 C.F.R. § 10.606(b)(2).

¹⁰ 20 C.F.R. § 10.608(b).

¹¹ See *Robert J. Krstyen*, 44 ECAB 227 (1992).

argument or constitute relevant and pertinent evidence not previously considered. The Office properly denied his request for reconsideration.

CONCLUSION

The Board finds that appellant failed to establish that his hemochromatosis was causally related to his federal employment. The Board further finds that the Office did not abuse its discretion in denying appellant's request for reconsideration.

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated October 11, 2006 and October 27, 2005 are affirmed.

Issued: March 26, 2007
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

David S. Gerson, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board