

U. S. DEPARTMENT OF LABOR
Employees Compensation Appeals Board

In the Matter of AARON S. TROUTMAN and PEACE CORPS,
Lithuania

*Docket No. 97-2651; Submitted on the Record;
Issued August 24, 1999*

DECISION and ORDER

Before MICHAEL J. WALSH, GEORGE E. RIVERS,
A. PETER KANJORSKI

The issue is whether appellant has met his burden of proof to establish that his dental condition was sustained in the performance of duty while serving in the Peace Corps.

On March 3, 1997 appellant, then a 24-year-old former Peace Corps volunteer,¹ filed a claim for compensation alleging that during his tour in Lithuania he was advised in August 1996 that his impacted lower wisdom teeth required removal. He further alleged that the Peace Corps medical officer suggested that he wait until he returned to the States to have his wisdom teeth extracted.²

The record includes a report of a March 31, 1994 preservice dental examination that revealed appellant's teeth, numbered 1, 16, 17 and 32, were impacted at the time. The report further indicated that there was no inflammation present and that ideally, the teeth should be removed, but that the problem was not acute.

On March 18, 1997 the employing establishment submitted a February 13, 1997 report from Dr. David H. Spiegelman, a dental consultant. He noted that appellant's impacted wisdom teeth were a preexisting condition and as such, he did not recommend approval of payment for extraction. On April 10, 1997 the Office referred the claim to Frank L. Shuford Jr., an Office dental consultant, who similarly concluded that appellant's dental condition preexisted his Peace Corps service and that appellant's service was not a cause of his impacted teeth.

By letter dated April 18, 1997, the Office advised appellant that his impacted wisdom teeth preexisted his Peace Corps service and that the medical evidence failed to demonstrate any

¹ The record indicates that appellant served in the Peace Corps from August 16, 1994 through September 1, 1996.

² Upon returning to the States, appellant was similarly advised by Dr. J.W. Holmes, a dental consultant, to have his four wisdom teeth extracted. The cost of the procedure was estimated to be \$895.00.

deterioration caused by his Peace Corps activities. Appellant was further advised to submit a dentist's reasoned medical opinion regarding the relationship of the claimed dental condition to the factors of Peace Corps service. Under a cover letter dated April 29, 1997, appellant submitted the records of his preservice dental examination of March 31, 1994. Additionally, appellant explained that while his dental condition predated his service in the Peace Corps, his impacted wisdom teeth became an acute problem during his period of service.

On May 29, 1997 the Office denied appellant's claim on the basis that his dental condition preexisted his service in the Peace Corps and that his current need for treatment was unrelated to his service in the Peace Corps. The Office further noted appellant's own admission that his dental condition deteriorated "not because of, but rather during" his Peace Corps service.

The Board finds that the Office properly determined that appellant failed to establish that his claimed dental condition was sustained in the performance of duty while serving in the Peace Corps.

Section 10.605 of Title 20 of the Code of Federal Regulations provides in relevant part:

"(a) Any injury suffered by a volunteer during any time when the volunteer is located abroad shall be presumed to have been sustained in the performance of duty and any disease or illness contracted during such time shall be presumed to be proximately caused by the employment, except the presumption shall be rebutted by evidence that:"

* * *

(2) The disease or illness is shown to have preexisted the period of service abroad; or

(3) The disease or illness or condition claimed is either a manifestation of symptoms of or consequent to a preexisting congenital defect or abnormality."³

The regulation further provides:

"(c) If a disease or illness or claimed condition, or episode thereof, comes within exception paragraph (a)(2) or (a)(3) of this section, the volunteer has the burden of proving by the submission of substantial, probative and reasoned medical evidence that it was proximately caused by factors of ... Peace Corps service, or that the condition was materially aggravated, or accelerated or precipitated by factors of Peace Corps service."⁴

³ 20 C.F.R. § 10.605.

⁴ 20 C.F.R. § 10.605(c); *see Joe T. Williams*, 44 ECAB 518 (1993).

In the instant case, the medical evidence indicates that appellant's dental condition predated his entry into the Peace Corps. In appellant's March 31, 1994 preentry dental examination, Dr. Shelby E. Thompson, a dental consultant, clearly indicated that his four wisdom teeth; numbered 1, 16, 17 and 32, were impacted at the time. He further noted that "Ideally these should be removed but at this time there is not an acute problem." Consequently, appellant is not entitled to the presumption under section 10.605(a).⁵ Moreover, appellant has not presented any medical evidence that would establish a causal relationship between his dental condition and his Peace Corps service. There is no indication in the record that appellant's dental condition was materially aggravated, accelerated or precipitated by factors of his Peace Corps service. None of the doctors who either examined appellant or reviewed his dental records offered an opinion relating his current dental condition to his service in the Peace Corps. Consequently, the Office properly denied appellant's claim for dental benefits.

The May 29, 1997 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, D.C.
August 24, 1999

Michael J. Walsh
Chairman

George E. Rivers
Member

A. Peter Kanjorski
Alternate Member

⁵ 20 C.F.R. § 10.605(a).