

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of SEAN D. CLANCY and PEACE CORPS,  
Ashghabat, Turkmenistan

*Docket No. 99-1531; Submitted on the Record;  
Issued October 2, 2000*

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DECISION and ORDER

Before MICHAEL J. WALSH, MICHAEL E. GROOM,  
A. PETER KANJORSKI

The issue is whether appellant has met his burden of proof to establish that he has any work-related disability causally related to his service in the Peace Corps.

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

On January 5, 1998 appellant, then a 25-year-old former Peace Corps volunteer, filed an occupational disease claim alleging that he contracted a gastrointestinal tract infection with bloody drainage following a fall on his tail bone while serving in the Peace Corps in Turkmenistan. He indicated that he fell in January 1997 and left the country in September 1997. By letter dated March 5, 1998, the Office of Workers' Compensation Programs accepted that appellant sustained a coccyx contusion and parasitic infestation causally related to his Peace Corps service and informed him of the type evidence needed to establish wage-loss disability. By decision dated April 10, 1998, the Office found that he had no incapacity for work due to the accepted conditions.

On May 3, 1998 appellant requested a hearing and submitted medical evidence. At the November 16, 1998 hearing, appellant was represented by his father, an attorney, and testified regarding his condition. He stated that he was seeking wage-loss compensation for the period October 28, 1997 to April 1998. In a January 29, 1999 decision, the Office hearing representative affirmed the April 10, 1998 decision. On February 12, 1999 appellant, through counsel, requested reconsideration and submitted an additional medical report. On April 25, 1999 appellant filed an appeal with the Board. By decision dated April 29, 1999, the Office denied modification of the prior decision.

Initially, the Board notes that the decision issued by the Office on April 29, 1999 was issued subsequent to April 25, 1999, the date that appellant filed an appeal with the Board. The Board and the Office may not have concurrent jurisdiction over the same issue in the same case.<sup>1</sup> As the April 29, 1999 decision was a decision denying modification of the prior decision over

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<sup>1</sup> *Douglas E. Billings*, 41 ECAB 880 (1990).

which the Board had taken jurisdiction, the decision addressed the same issues that would be addressed by the Board on appeal. The April 29, 1999 Office decision is, therefore, null and void.

The relevant medical evidence includes reports from the Peace Corps clinic in Turkmenistan. A report dated January 29, 1997 provided a history that appellant had fallen and injured his tail bone. A contused coccyx was diagnosed. A March 3, 1997 clinic note reported symptoms of diarrhea with food poisoning being diagnosed. In June 1997 appellant returned to the United States for dental work and, in a report dated June 27, 1997, Dr. Mitchell Dunn, a Board-certified internist, advised that a stool culture demonstrated blastocystis. Appellant then returned to Turkmenistan and a September 18, 1997 clinic note reported complaints of a six-month history of acute diarrhea. Irritable bowel syndrome was diagnosed. Appellant then returned to the United States.

Dr. John Norwood, a Board-certified internist, provided a report dated March 30, 1998 in which he advised:

“[Appellant] was examined by me on December 23, 1997. He was found to have an infected cyst. He had fallen [in] January 1997 while in Turkmenistan (former USSR) and subsequently developed drainage and infection. X-rays are normal. The infected cyst is being treated with antibiotics and has improved but not completely resolved. The infection is likely related to unsanitary conditions. The lesion was noted to soak through his underwear with purulent/bloody drainage on a daily basis.”

Dr. Norwood provided a report dated May 18, 1998 in which he further stated:

“From October 1997 to April 1998 [appellant] suffered from an infected cyst which developed while he was a member of the Peace Corps in the former USSR. He had chronic and copious amounts of purulent material draining into his clothing on a chronic basis. As a result of the fetid drainage, [he] was unemployable. His condition is now much improved after appropriate antibiotic treatment. His condition likely developed as a result of unsanitary conditions in the former USSR.”

Section 10.730 of Title 20 of the Code of Federal Regulations provides in relevant part:

“(a) Any injury sustained by a volunteer or volunteer leader while he or she is located abroad 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. However, this presumption will be rebutted by evidence that:”

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

“(3) The injury or illness or condition claimed is a manifestation of symptoms of, or consequent to, a preexisting congenital defect or abnormality.”

The regulation further provides:

“(c) If an injury or illness, or episode thereof, comes within one of the exceptions described in paragraph (a)(2) or (3) of this section, 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.”<sup>2</sup>

In the instant case, the Office accepted that a coccyx contusion and parasitic infestation were related to appellant’s Peace Corps service. The Board finds that, based upon the opinion of Dr. Norwood, the development of appellant’s cyst and diarrheal conditions was also attributed to the injury sustained while he was serving in the Peace Corps. The case will therefore be remanded for the Office to determine the period appellant was disabled due to the accepted conditions, to be followed by a *de novo* decision.

The decision of the Office of Workers’ Compensation Programs dated January 28, 1999 is hereby set aside and the case remanded for further proceedings consistent with this opinion.

Dated, Washington, DC  
October 2, 2000

Michael J. Walsh  
Chairman

Michael E. Groom  
Alternate Member

A. Peter Kanjorski  
Alternate Member

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<sup>2</sup> 20 C.F.R. § 10.730 (1999); *see Joe T. Williams*, 44 ECAB 518 (1993).