

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of NATALIE ORETSKY-COHEN and PEACE CORPS,
PEOPLE'S REPUBLIC OF CHINA

*Docket No. 03-1423; Submitted on the Record;
Issued September 23, 2003*

DECISION and ORDER

Before ALEC J. KOROMILAS, DAVID S. GERSON,
MICHAEL E. GROOM

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

On September 11, 2001 appellant, then a 59-year-old former Peace Corps volunteer, filed a notice of occupational disease alleging that she sustained a number of dental conditions, including tooth pain, tooth extraction and fillings as a result of her service from 1999 to 2001.

Appellant claimed that on October 12, 2000 she informed the physician's assistant for the Peace Corps in Chengdu, China, Kandice S. Christian, that she had developed a sensitivity to hot and cold food and beverages and Ms. Christian told her that unless it interfered with her ability to teach lessons she did not have to see a dentist. On February 16, 2001 appellant claimed that she informed Ms. Christian that a bridge on the upper right side of her mouth had become loose and that she was experiencing acute sensitivity and pain.

Dental records dated prior to appellant's Peace Corps service from Dr. Josh F. Tintner, a dentist, revealed that appellant had bridges removed and replaced for teeth numbers 18 through 21 in October 1997 and had new crowns inserted on tooth number 13 and tooth number 29 in September 1998.

In a note dated December 24, 1999, Ms. Christian stated that appellant had fractured tooth number two and that the rough edges of the tooth were wounding her tongue and that she would be immediately evacuated to Thailand for treatment. She noted that appellant also had pain in the gingival over the lying root, which perhaps was indicative of an infection. Additional progress notes indicated that appellant may have had a root canal and crown work done in Bangkok, Thailand.

Dr. Chavalit Kiatruangkrai,¹ a dentist, indicated in a December 29, 1999 report, that the filling on tooth number three had broken and that there was a large cavity underneath. He suggested that appellant have a root canal before the tooth is covered with a new crown.

Dr. Chen Xiumei, a dentist, indicated in a January 3, 2001 report, that he was treating appellant for a chipped tooth and that she had “An enamel defect on lingual and distal side of tooth number 14; rough edge; no pain; [g]ingival recession to 1/3 of number 14 (lingual side).” He performed an “occlusal adjustment” under local anesthesia.

In a May 15, 2001 report, Dr. Mao,² a dentist, indicated: “Porcelain crown has detached from tooth number 30. Small defect in tooth where crown was seated.” He noted that he resealed the crown with zinc phosphate cement.

Upon return to the United States appellant consulted Dr. Bruce Milner, a dentist, for her termination from the Peace Corps dental examination and for an estimate of necessary dental repair. He estimated that appellant’s dental repair would cost approximately \$11,100.00.

Dr. David Spiegelman, a dentist for the Peace Corps, stated that appellant’s personal dentist needed to provide additional information regarding her tooth condition, specifically which surfaces needed to be treated and why.

By letter dated April 5, 2002, the Office of Workers’ Compensation Programs informed appellant that under the Federal Employees’ Compensation Act as related to Peace Corps volunteers, dental problems were considered contracted abroad if comparison with the preinduction dental examination showed a new dental condition or service-related deterioration of a prePeace Corps service dental condition. The Office found that appellant’s dental condition preexisted her Peace Corps service and that the medical evidence showed that any tooth deterioration was not caused by Peace Corps activities. The Office allowed appellant 30 additional days to submit a dentist’s reasoned medical opinion regarding the relationship of the claimed dental conditions to factors of her Peace Corps service.

Appellant claimed that she waited for two years “in good faith” to return home to see a dentist because she did not want to “make a fuss” or disrupt her teaching obligations in China. She believed that since her dental problems occurred during her time as a Peace Corps volunteer that the Peace Corps would pay the expenses.

By decision dated May 6, 2002, the Office denied appellant’s claim for compensation for a dental condition, finding that the evidence of record did not establish that the claimed dental condition was related to factors of her Peace Corps service.

The Board finds that appellant has failed to meet her burden of proof to establish that her dental conditions of tooth extraction, tooth pain and a need for tooth fillings were causally related to factors of her federal employment.

¹ The Board notes that this dentist is most likely in Thailand.

² His full name was not indicated.

Section 8142(c)(3) of the Act³ provides that an injury sustained by a Peace Corps volunteer, when she is outside the United States, is deemed proximately caused by her employment, unless the injury or disease is caused by willful misconduct of the volunteer, caused by the volunteer's intention to bring about the injury or death of herself or of another or proximately caused by the intoxication of the injured volunteer.

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 she 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.⁶ 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.⁷

In this case, the evidence shows that appellant served in the Peace Corps from June 1999 to June 2001 and she alleges that her dental condition arose during her service. However, the medical evidence of record shows that appellant had dental conditions that preexisted her Peace Corps service.

The medical records dated prior to appellant's Peace Corps service from 1997 to 1998 indicate that she had previously experienced tooth and gum problems. A medical history and progress notes from Dr. Tintner indicate that appellant needed several bridges replaced as well as new crowns and that she had extensive tooth decay before her service.⁸ Specifically, the evidence shows that appellant had old bridges removed and new bridges inserted on teeth numbers 17, 18, 19, 20 and 21. Before the bridges were put on she also had extensive tooth decay removed from teeth numbers 18 and 20. Appellant also had crowns put on teeth numbers 13 and 29. Dr. Tintner also made an "incisal etch composite" on tooth number 9.

³ 5 U.S.C. § 8142(c)(3).

⁴ 20 C.F.R. § 10.730(b).

⁵ *See supra* note 3.

⁶ 20 C.F.R. § 10.730(a).

⁷ 20 C.F.R. § 10.730(b).

⁸ Some of these records are illegible.

Since evidence exists that appellant's dental condition preexisted the period of her service abroad, the presumption that her condition was sustained in the performance of duty is rebutted.⁹ Appellant has the burden of proving by the submittal of substantial and probative evidence that her condition was sustained in the performance of duty with the Peace Corps.¹⁰

In support of her claim, appellant submitted records from her dental visits with dentists in China and Thailand, during her service from 1999 to 2001. However, these dental records do not contain a rationalized medical opinion establishing a causal connection between her tooth condition and her Peace Corps service and are insufficient to meet appellant's burden of proof.

Dr. Kiatruangkrai indicated that he examined appellant on December 29, 1999 but did not provide a diagnosis for her condition. He noted that tooth number three had a broken filling and a big cavity and suggested two possible resolutions to the matter and suggested that appellant get a root canal. Dr. Kiatruangkrai also did not provide an opinion on the cause of appellant's tooth problems or relate her condition in any way to her service in the Peace Corps.

Dr. Xiumei indicated in a January 3, 2001 report, that appellant had an enamel tooth defect on the lingual and distal side of tooth number 14 with a rough edge, in addition to gingival recession to 1/3 of the tooth. His report only provides a diagnosis and does not provide an opinion on the cause of appellant's condition or relate it to her service in the Peace Corps. Dr. Xiumei also does not provide a factual and medical background of appellant's dental condition or even mention her service as a Peace Corps volunteer. His report does not establish that appellant sustained her dental condition in the performance of duty because the report is incomplete and he does not provide an opinion on the cause of the dental condition.

Dr. Mao indicated in a May 15, 2001 report, that appellant had a detached crown on tooth number 30 with a small defect in the tooth and that he reseated the crown; however, he did not indicate that the conditions were in any way related to appellant's Peace Corps service. He also did not discuss the factual and medical history of appellant's dental condition or provide an opinion on the cause of her dental problems. Moreover, he did not mention appellant's service as a Peace Corps volunteer or state that her condition was in any way related to her service. Dr. Mao's report is also incomplete and does not establish that appellant's tooth conditions arose during her federal employment.

Appellant also submitted progress reports from Ms. Christian, the physician's assistant for the Peace Corps, although a physician's assistant is not considered a "physician" within the meaning of the Act¹¹ and thus, her reports are of little probative value in establishing whether appellant's condition arose during her service.¹²

⁹ 20 C.F.R. § 10.730(a).

¹⁰ 20 C.F.R. § 10.730(b).

¹¹ 5 U.S.C. §§ 8101-8193.

¹² *John H. Smith*, 41 ECAB 444 (1990).

The Office notified appellant by letter dated April 5, 2002, that the evidence submitted was insufficient to meet her burden of proof and afforded her 30 additional days to submit a dentist's reasoned medical opinion regarding the relationship of the claimed dental condition to factors of her Peace Corps service. Appellant did not submit the requested medical evidence.

Since appellant did not submit any rationalized medical evidence establishing that her problems arose during her service in the Peace Corps, she did not meet her burden of proof and the Office properly denied her claim.

Accordingly, the May 6, 2002 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC
September 23, 2003

Alec J. Koromilas
Chairman

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member