

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

PAUL E. THAMS, Appellant

and

**PEACE CORPS,
Cameroon, Employer**

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**Docket No. 04-1019
Issued: April 26, 2005**

Appearances:

Dale W. Pedersen, Esq., for the appellant

Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

COLLEEN DUFFY KIKO, Member
DAVID S. GERSON, Alternate Member
A. PETER KANJORSKI, Alternate Member

JURISDICTION

On March 8, 2004 appellant filed a timely appeal from an Office of Workers' Compensation Programs' decision dated January 22, 2004, denying his claim for disability from July 2, 1995 to February 18, 2000. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant's disability from July 2, 1995 to February 18, 2000 was causally related to his February 1994 employment injury.¹

¹ On December 11, 1995 appellant changed his legal name to Paul Eric Staritz-Thams. However, he advised the Office that he did not wish to have his name changed in his compensation file.

FACTUAL HISTORY

This case was previously before the Board.² By order dated August 26, 2003, the Board remanded the case because the Office's delay in issuing an April 1, 2003 decision, denying appellant's August 21, 2002 request for reconsideration, precluded a right to a merit review by the Board.

On March 1, 1999 appellant, then a 47-year-old Peace Corps volunteer,³ filed an occupational disease claim alleging that he developed severe lung congestion, coughing and difficulty breathing in February 1994, due to an allergic reaction to mold fungi, animal hair, house dust mites and wood dust while serving in the Peace Corps. On February 18, 2000 he filed a claim for disability for the period July 2, 1995 to February 8, 2000. The Office accepted his claim for tropical pulmonary eosinophilia,⁴ respiratory wheezes and extrinsic asthma⁵ and requested additional evidence regarding his dates of disability.

In reports dated November 21, 27 and 30, 1995, Dr. Kenneth S. Greenberg, an internist specializing in infectious diseases, provided test results and diagnosed persistent pulmonary eosinophilia secondary to filariasis.⁶ He noted that appellant had a history of smoking.

In reports dated August 9, 1999 and April 18, 2000, Drs. Andreas Schlanstein and Claudia Savaser, physicians specializing in lung and bronchial medicine and allergies, stated that appellant was exposed to dust pollution while working in Cameroon between June 1993 and July 1995 and noted that mold fungi pollution was probably also present due to the humid environment. They noted that appellant developed shortness of breath and bronchitis in 1994. Drs. Schlanstein and Savaser indicated that appellant's exposure to high levels of dust pollution under humid conditions while in the Peace Corps led to an exacerbation of his chronic obstructive bronchitis and an inability to work. They indicated that they first treated appellant on February 12, 1996, after his hospitalization from January 28 to February 7, 1996, for chronic obstructive bronchitis.

By decision dated September 12, 2000, the Office denied appellant's claim for disability, between July 2, 1995 and February 18, 2000, on the grounds that the evidence of record failed to

² Docket No. 03-1439, order remanding case (issued August 26, 2003).

³ Appellant worked as a woodshop teacher from September 1, 1993 to July 1, 1995.

⁴ Tropical pulmonary eosinophilia is a subacute or chronic form of occult filariasis occurring in the tropics and characterized by episodic nocturnal wheezing and coughing, strikingly elevated numbers of eosinophils (a structure, cell or histologic element readily stained by the dye eosin, especially a granular leukocyte with a nucleus usually having two lobes connected by a thread of chromatin and cytoplasm, containing coarse, round granules, uniform in size) and diffuse reticulonodular infiltrations of the lung. See DORLAND'S *Illustrated Medical Dictionary*, 564 (27th ed. 1988).

⁵ Asthma is a condition marked by recurrent attacks of paroxysmal dyspnea (spasms of breathing difficulty) with wheezing due to spasmodic contraction of the bronchi (the larger air passages of the lungs). Extrinsic asthma is caused by an environmental factor, usually an allergy. *Id.* at 158.

⁶ Filariasis is a diseased state due to the presence of filariae (the larval forms of mosquitoes) within the body. *Id.* at 631.

establish that his disability was causally related to his accepted employment-related tropical eosinophilia, respiratory wheezes and extrinsic asthma.

On January 18, 2001 appellant requested reconsideration and submitted additional evidence.

In a report dated December 19, 2000, Dr. Joseph F. Aman, a general practitioner, provided a history of appellant's condition and stated that there was a causal relationship between appellant's working conditions while serving in the Peace Corps and his extrinsic asthma and pulmonary eosinophilia. He stated:

"Since 1994 [appellant] has been unable to work in his usual/customary working environment.... [H]e can no longer work in the company of any of [the allergens: mites, molds, yeast, spores, hardwood dust, animal hair, dander, feathers, proteins and perfumes] which in Cameroon caused day-to-day breathlessness and two major life-threatening attacks of acute, progressive cough, wheeze, dyspnea and respiratory shutdown."

* * *

"Since February 1994 [appellant] has been ... disabled with constant breathlessness in his field of work: he is currently ... disabled and, barring medical miracles, will remain ... disabled for the future owing to air trapping by hyperactive (allergen-sensitive) airways (extrinsic asthma). If he resumes his work in his customary work environment he can be expected at once to develop breathlessness on effort and at rest and could suffer an acute life-threatening asthma attack."

* * *

"On July 2, 1995 further work activities in the ... Cameroon woodworking shops were not possible because of the extrinsic asthma and tropical pulmonary eosinophilia which he had developed there on the job. These working conditions would cause him to have several breathing problems in the workshop atmosphere which were aggravated by his living conditions.... He developed those medical conditions as of the time he left the Peace Corps assignment ... on July 1, 1995. These medical conditions have in no way improved or gone away and are permanent. He is permanently unable to supervise woodworking shop work as he did in ... Cameroon; he is further permanently disabled from working in atmospheres which recreate those same or similar conditions."

By decision dated July 31, 2001, the Office denied modification of its September 12, 2000 decision on the grounds that the evidence of record did not establish that appellant was disabled from July 2, 1995 to February 18, 2000 due to his accepted employment injury. On October 24, 2001 appellant requested reconsideration and submitted additional evidence.

In a report dated August 30, 2001, Dr. Horst Huckauf, a physician specializing in lung and bronchial medicine, allergies and cardiology, provided a history of appellant's condition and

diagnosed allergic asthma. He noted that appellant was hospitalized for 10 days in January 1996, for chronic obstructive lung disease caused by a respiratory tract infection and was diagnosed with hypersensitivity to cat and dog hair, house dust mites and mold fungi. Dr. Huckauf stated:

“Prior to the Peace Corps assignment, [appellant] was healthy. A medical examination then confirmed that [he] was free from any disease. The [Office] acknowledges that [appellant] acquired an allergic asthma caused by allergens during his Peace Corps service in a woodwork shop. In spite of leaving the workplace in Cameroon, [appellant] continued to have a nonspecific bronchial hyper reactivity due to asthma disease. The consequence of this lesion is that nonspecific stimuli as well as allergens will trigger the disease and induce severe attacks of dyspnea and cough. Even though [appellant] is taking asthma medication, these attacks can unexpectedly and rapidly occur and may be life-threatening. Woodwork shops and other such industrial environments not only present these stimuli and allergens, but they increase their ability to provoke a bronchial hyperreactivity reaction by making them more airborne. From my point of view as a specialist for lung diseases, [appellant] is not allowed to work in a woodwork shop or any environment where he is daily or intermittently exposed to industrial dust provoking airway narrowing. [Appellant] has been on the full array of anti-asthma medication since February 1996 and certainly from that time (based on the medical evidence presented by Dr. Schlanstein) to this day he was and is now medically unable to work in a woodshop or any similar environment. Accepting the fact that the disease started in Cameroon (which the [Office] does) and that he had only beta2- agonists (Salbutamol) to cope with it, should clearly demonstrate that he was totally unable to work in the Cameroon woodshop since his attacks began in 1994 and was, unknowingly, at great risk when he did so. Based on my examination and tests ... the [Office’s] acceptance of the fact that this disease started in Cameroon, the medical tests and opinions provided by Dr. Schlanstein and [appellant’s] affidavit and consultations, it is my medical opinion that [appellant] was totally unable to work at the woodwork shop in Cameroon, has not been able to work in a woodwork shop since leaving the Peace Corps and cannot now work in a woodwork shop or any similar environment. In addition to provoking the asthmatic attacks, working in such atmospheres increases the danger that chronic irreversible obstruction will occur.”

By decision dated January 15, 2002, the Office denied modification of its July 31, 2001 decision on the grounds that the evidence of record failed to establish that appellant’s disability from July 2, 1995 to February 18, 2000 was causally related to factors of his employment.

On August 21, 2002 appellant requested reconsideration and argued that he had met his burden of proof. He submitted copies of medical reports previously of record.

By decision dated April 11, 2003, the Office denied appellant’s request for reconsideration on the grounds that the evidence submitted was not sufficient to warrant further merit review.

As noted above, by order dated August 26, 2003, the Board remanded the case for a merit decision.

By decision dated January 22, 2004, the Office denied modification of its September 12, 2000 decision on the grounds that the medical evidence did not establish that his disability for the period July 2, 1995 to February 18, 2000 was causally related to his employment injury.

LEGAL PRECEDENT

Section 10.730 of Title 20 of the Code of Federal Regulations 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.⁷ Section 10.730 provides that an injury sustained by a Peace Corps volunteer while he or she is located 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. However, this presumption will be rebutted by evidence that the injury or illness was caused by the claimant's willful misconduct, intent to bring about the injury or death of self or another, or was proximately caused by the intoxication by alcohol or illegal drugs of the injured claimant; or 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.

An award of compensation may not be based on surmise, conjecture, speculation or appellant's belief of causal relationship.⁸ Appellant has the burden of establishing by the weight of the reliable, probative and substantial evidence that he sustained an injury in the performance of duty and that his disability was caused or aggravated by his employment.⁹

The Board notes that the term "disability," as used in the Act means incapacity, because of an employment injury, to earn the wages that the employee was receiving at the time of injury.¹⁰ Whether a particular injury caused an employee disability for employment is a medical issue which must be resolved by competent medical evidence.¹¹ When the medical evidence establishes that the residuals of an employment injury are such that, from a medical standpoint, they prevent the employee from continuing in the employment held when injured, the employee is entitled to compensation for any loss of wage-earning capacity resulting from such incapacity.¹²

⁷ 5 U.S.C. §§ 8101-8193, § 8142.

⁸ *William Nimitz, Jr.*, 30 ECAB 567 (1979).

⁹ *Daniel R. Hickman*, 34 ECAB 1220 (1983).

¹⁰ *Patricia A. Keller*, 45 ECAB 278 (1993).

¹¹ *See Debra A. Kirk-Littleton*, 41 ECAB 703 (1990).

¹² *Clement Jay After Buffalo*, 45 ECAB 707 (1994).

ANALYSIS

In this case, the Office accepted that appellant sustained tropical pulmonary eosinophilia, respiratory wheezes and extrinsic asthma while serving in the Peace Corps between September 1, 1993 and July 1, 1995. However, the Office denied appellant's claim for disability between July 2, 1995 and February 18, 2000 on the grounds that the medical evidence did not establish that his disability was causally related to his accepted conditions.

In reports dated November 27 and 30, 1995, Dr. Greenberg provided test results and diagnosed persistent pulmonary eosinophilia secondary to filariasis. However, he did not indicate any periods of disability resulting from the accepted condition of pulmonary eosinophilia. Therefore, this report is not sufficient to establish that appellant was disabled from July 2, 1995 to February 18, 2000, due to his employment injury.

In reports dated August 9, 1999 and April 18, 2000, Drs. Schlanstein and Savaser stated that appellant was treated for allergic asthma. They indicated that he had a positive reaction to mold fungi, animal hairs and house dust mites and his trouble breathing began during his work in the tropics while dealing with wood dust in an environment of extreme humidity. Drs. Schlanstein and Savaser stated that appellant was exposed to dust pollution while working in Cameroon between June 1993 and July 1995 and noted that mold fungi pollution was probably also present due to the humid environment. They noted that appellant developed shortness of breath and bronchitis in 1994 and his exposure to high levels of dust pollution under humid conditions while in the Peace Corps led to an exacerbation of his chronic obstructive bronchitis and an inability to work. However, the physicians did not specify any periods of disability causally related to appellant's work-related asthma. Therefore, their reports are not sufficient to discharge appellant's burden of proof.

In a report dated December 19, 2000, Dr. Aman provided a history of appellant's condition and stated that appellant could not work in his usual/customary working environment. He stated that appellant could not work in the presence of allergens such as mites, molds and wood dust, which in Cameroon caused daily breathlessness and two major life-threatening attacks of acute, progressive cough, wheeze, dyspnea and respiratory shutdown. Dr. Aman opined that appellant was permanently disabled from supervising woodshop work as he did in Cameroon and was further permanently disabled from working in atmospheres which recreated those same or similar conditions. However, Dr. Aman's report and opinion regarding appellant's disability is of diminished probative value for several reasons. He is a general practitioner rather than a pulmonary specialist and appellant's accepted conditions are pulmonary diseases. Dr. Aman did not perform any diagnostic tests to determine appellant's pulmonary status; instead he relied on a review of past medical reports and his interview with appellant. He opined that appellant was disabled for the entire period between July 2, 1995 and February 18, 2000 but, as noted above, the contemporaneous medical reports do not indicate dates of disability causally related to the accepted conditions and therefore cast doubt on the validity of Dr. Aman's opinion. His opinion as to appellant's disability is speculative as he did not treat appellant during the claimed period of disability. Due to these deficiencies, Dr. Aman's report is insufficient to establish that appellant was disabled from July 2, 1995 to February 18, 2000, due to employment-related pulmonary eosinophilia, respiratory wheezes and extrinsic asthma.

In his report dated August 30, 2001, Dr. Huckauf stated that appellant acquired an allergic asthma during his Peace Corps service in a woodwork shop. He indicated that appellant was hospitalized for 10 days in January 1996, for an exacerbation of chronic obstructive lung disease caused by a respiratory tract infection. Dr. Huckauf noted that in February 1996 appellant was found to be allergic to the hair of cats and dogs, house dust mites and mold fungi. He stated that appellant could experience sudden and severe attacks of dyspnea and coughing which could be life-threatening. Dr. Huckauf indicated that appellant could not work in a woodwork shop or any environment where he was exposed to industrial dust. However, appellant's respiratory infection occurred six months after he left the Peace Corps. It appears that appellant did not become disabled until the February 1996 respiratory infection. Consequently, a well-rationalized medical opinion is necessary on the causal relationship between his February 1996 respiratory infection and his Peace Corps service, along with an explanation as to why he was disabled between July 2, 1995 and February 18, 2000 due to his accepted medical conditions. In addition, the medical history given by Dr. Huckauf is not complete and accurate as it does not mention appellant's history of cigarette smoking. Due to these deficiencies, Dr. Huckauf's report is not sufficient to establish that appellant was disabled from July 2, 1995 to February 18, 2000, due to his employment-related conditions of tropical pulmonary eosinophilia, respiratory wheezes and extrinsic asthma.

CONCLUSION

The Board finds that appellant failed to provide rationalized medical evidence establishing that he was disabled between July 2, 1995 and February 18, 2000, due to his accepted tropical pulmonary eosinophilia, respiratory wheezes and extrinsic asthma.

ORDER

IT IS HEREBY ORDERED THAT the January 22, 2004 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 26, 2005
Washington, DC

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

A. Peter Kanjorski
Alternate Member