

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of BARBARA E. PEARCE and PEACE CORPS,
Papua, New Guinea

*Docket No. 97-2668; Submitted on the Record;
Issued November 1, 1999*

DECISION and ORDER

Before WILLIE T.C. THOMAS, BRADLEY T. KNOTT,
A. PETER KANJORSKI

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

On February 25, 1997 appellant, then a 68-year-old former Peace Corps volunteer,¹ filed a claim for compensation alleging that during her tour in Papua, New Guinea her dental condition deteriorated as a result of stress, poor diet and the inability to obtain proper treatment. Appellant described her dental condition as moderate to severe periodontitis, deterioration of her bridgework and corrosion, chipping and open contacts with respect to her posterior molars.

Appellant's preservice dental examination, conducted on April 19, 1994 revealed the presence of crowns on teeth numbered 3, 5, 7 through 10, 12, 13 and 28 through 30. Additionally, the examination report indicated that "tooth [number] 26 has a root canal in progress" and "teeth [numbered] 4 and 21 will be restored in [two] weeks."² The report further indicated the presence of slight calculus as well as "incipient" periodontoclasia. Finally, the report included the notation: "Patient should not need any major work during [the] next [two] years."

The record indicates that during appellant's two-year period of service in Papua, New Guinea, she received dental treatment from Dr. Jalal R. Mills on at least seven occasions beginning in January 1995. Dr. Mills provided a number of services to appellant, which included prophylaxis, at least one filling, root canal therapy and placing a full crown on appellant's lower premolar tooth. He last examined appellant on November 12, 1996 just prior

¹ The record indicates that appellant most recent tour of duty with the Peace Corps covered the period of November 16, 1994 through November 15, 1996.

² The required treatment for teeth numbered 4, 21 and 26 was completed in July 1994 prior to appellant's entering service.

to her departure from Papua, New Guinea. At that time, Dr. Mills noted problems with appellant's teeth numbered 12, 16, 35 and 36. He also expressed concerns regarding appellant's periodontal condition.

When appellant returned to the States, Dr. James R. Davis, examined her on December 11, 1996. Dr. Davis reported that appellant's posterior molars had severe amalgam corrosion, chipping and open contacts. He also noted that appellant's bridgework was deteriorating at the margins. Additionally, Dr. Davis noted that appellant had moderate to severe periodontitis.³ In a follow-up report dated February 18, 1996, he noted that appellant's "oral hygiene deteriorated during her service with the Peace Corps."

Appellant obtained another examination on January 15, 1997 from Dr. Gerald S. Williams, Jr., a periodontist, who diagnosed mild to moderate to severe periodontitis.⁴ Dr. Williams also recommended extracting teeth numbered 12 and 14 and he identified teeth numbered 2, 15, 18, 31 and possibly 26 and 27 as "guarded teeth." He further noted that the decay found under appellant's existing maxillary anterior bridge and the extraction of teeth numbered 12 and 14, would require a new prosthesis from teeth numbered 6 through 15.

In a report dated March 12, 1997, Dr. David H. Spiegelman, a Peace Corps dental consultant, found that appellant's periodontal disease was a preexisting condition and as such, he did not recommend approval of payment for any periodontal therapy. Dr. Spiegelman further noted:

"The dentist's report indicates that many crowns are needed due to old fillings, or old crowns with open margins. These are preexisting conditions. If there is no pathology evident, such as fractures or decay, then I do not recommend approval of treatment. The x-rays do not reveal pathology."

By letter dated March 25, 1997, the Office of Workers' Compensation Programs advised appellant that based on Dr. Spiegelman's report, her periodontitis preexisted her Peace Corps service and, therefore, approval for the recommended periodontal and restoration procedures could not be authorized. The Office further advised appellant to submit a dentist's reasoned medical opinion regarding the relationship of the claimed dental condition to the factors of Peace Corps service.

Under cover letter dated June 9, 1997, appellant submitted a May 27, 1997 report from Dr. Allen Black, and a May 31, 1997 report from Dr. Lloyd E. Parmley, Dr. Black conducted his

³ Dr. Davis provided a February 25, 1997 estimate of services that totaled \$6,061.00. The recommended services included periodontal scaling and root planing, root canal therapy, soft tissue grafts and crown work on eight of appellant's teeth.

⁴ Dr. Williams recommended scaling and root planing, as well as osseous surgery at an estimated cost of \$3,224.00.

own examination on May 27, 1997 and reviewed Dr. Mills' November 12, 1996 report.⁵ He reported that when he examined appellant prior to her departure to Papua, New Guinea, the decay currently noted on teeth numbered 3, 7 and 8 was not present. Dr. Black further stated that this problem was greatly accelerated by the poor living conditions in Papua, New Guinea. With respect to appellant's periodontal condition, he explained that although appellant received extensive periodontal work in the past, the very difficult living conditions she endured abroad hastened her periodontal problems. Dr. Black further noted that this could have been prevented with better living standards and more regular care from a periodontist. Finally, he explained that the condition of appellant's teeth numbered 19 and 20 was not the result of her years in Papua, New Guinea since "amalgams wear regardless of where you live."

Appellant's periodontist, Dr. Parmley, reported that when he treated her in 1993 she had "generalized moderate periodontitis." However, based on his May 29, 1997 examination, Dr. Parmley indicated that appellant's condition had progressed to "generalized advanced periodontitis." He explained that the major factor in controlling periodontal disease is continued care, which appellant did not receive during her Peace Corps service. Dr. Parmley further explained that the lack of care resulted in a service-related deterioration of her periodontitis. He concluded that "the changes in [appellant's] periodontal condition are due to her Peace Corps service and could have been prevented if she had been able to receive continued periodontal care."

On June 30, 1997 the Office referred appellant's claim to Dr. Frank L. Shuford, Jr., an Office dental consultant. In a report dated July 20, 1997, Dr. Shuford explained that periodontal disease is a chronic inflammation and/or degeneration of the dental periosteum, alveolar bone and tooth cementum, characterized by loosening of the teeth, resorption of the alveolar and recession of the gingivae. He noted that while the disease can be arrested, it cannot be cured. Dr. Shuford further noted that once the disease is contracted, it requires episodic treatment. He concluded that appellant's chronic periodontal disease preexisted her service in the Peace Corps and that her service did not exacerbate this condition. Dr. Shuford attributed the observed changes in appellant's condition to preexisting conditions and normal wear and tear.

In a decision dated July 24, 1997, the Office denied appellant's claim on the basis that her current need for extensive dental treatment was due to her preexisting periodontal disease. The Office based its decision on the opinion of its consultant, Dr. Shuford.

The Board has duly reviewed the case record on appeal and finds that the case is not in posture for a decision.

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

⁵ Dr. Black indicated that the tooth numbering system utilized in the States was slightly different from the system employed by Dr. Mills in Papua, New Guinea. Dr. Black explained that Dr. Mills reference to tooth number 12 actually corresponds to tooth number 7. Additionally, Dr. Black noted that tooth 16 corresponds to tooth number 3, teeth 42 and 43 are numbers 26 and 27 and teeth 35 and 36 are actually numbers 19 and 20.

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.”⁶

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.”⁷

In the instant case, the medical evidence indicates that appellant’s periodontal disease predated her Peace Corps service in Papua, New Guinea.⁸ Appellant’s periodontist, Dr. Parmley, reported that when he treated her in 1993 she had “generalized moderate periodontitis.” Moreover, appellant’s April 19, 1994 preentry dental examination clearly indicated the presence of “incipient” periodontoclasia. Consequently, appellant is not entitled to the presumption under Section 10.605(a) that her periodontal disease was proximately caused by her employment.⁹

The question remains as to whether appellant’s preexisting condition “was materially aggravated, or accelerated or precipitated by factors of Peace Corps service.”¹⁰ Three of appellant’s treating dentists, Drs. Davis, Parmley and Black, attributed the deterioration of her dental condition to her service in Papua, New Guinea.¹¹ In contrast, the Office’s consultant, Dr. Shuford, found that appellant’s Peace Corps service did not exacerbate her

⁶ 20 C.F.R. § 10.605.

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

⁸ As previously noted, appellant’s most recent tour of duty with the Peace Corps covered the period of November 16, 1994 through November 15, 1996.

⁹ 20 C.F.R. § 10.605(a).

¹⁰ 20 C.F.R. § 10.605(c).

¹¹ Drs. Mills and Williams did not offer an opinion regarding the cause of appellant’s dental condition.

periodontal condition.¹² He concluded that the observed changes in appellant's condition were due to preexisting conditions and normal wear and tear.

Appellant bears the burden of establishing by the weight of the reliable, probative and substantial evidence that the condition for which she claims compensation was caused or adversely affected by her employment.¹³ This burden includes the necessity of furnishing rationalized medical opinion evidence showing a causal relationship between the alleged condition and factors of her employment. Such evidence must be based upon a proper medical and factual background and a specific and accurate history of employment incidents or factors alleged to have caused or exacerbated the claimed condition.¹⁴

In the instant case, there remains an unresolved conflict in the medical evidence between the opinions of Drs. Parmley and Shuford. Section 8123(a) of the Federal Employees' Compensation Act provides that if there is disagreement between the physician making the examination for the Office and the employee's physician, the Office shall appoint a third physician who shall make an examination.¹⁵

While the reports of Drs. Black and Davis are insufficiently rationalized to satisfy appellant's burden,¹⁶ Dr. Parmley offered a rationalized opinion on May 31, 1997. He stated as follows:

"I examined and treated [appellant] in 1993. At that time she had generalized moderate periodontitis. On May 29, 1997 I again examined [appellant] and she had progressed to generalized advanced periodontitis. She progressed from Case Type II to Case Type III. The major factor in controlling periodontal disease is continued care (Supportive Periodontal Treatment), which [appellant] did not receive during her Peace Corps service. This resulted in a service-related deterioration of her periodontitis. Because of this deterioration, [appellant] will require extensive periodontal and restorative treatment including scaling, root planing, extraction of teeth, osseous surgery, implant placement and restoration of numerous teeth."

As previously noted, Dr. Parmley concluded that "the changes in [appellant's] periodontal condition are due to her Peace Corps service and could have been prevented if she had been able to receive continued periodontal care."

¹² Dr. Spiegelman did not specifically address the issue of whether appellant's Peace Corps service exacerbated her preexisting conditions.

¹³ *Diane Williams*, 47 ECAB 613, 616 (1996).

¹⁴ *Id.*

¹⁵ 5 U.S.C. § 8123(a); *e.g.*, *William C. Bush*, 40 ECAB 1064 (1989).

¹⁶ *George Randolph Taylor*, 6 ECAB 986, 988 (1954) (the Board found that a medical opinion not fortified by medical rationale is of little probative value).

The Office's consultant, Dr. Shuford, similarly noted that periodontal disease, once contracted, requires episodic treatment. He also noted that the disease "can be arrested, but not cured." However, unlike Dr. Parmley, Dr. Shuford concluded that "Peace Corps service did not exacerbate" appellant's preexisting chronic periodontal disease. He specifically attributed the changes in appellant's dental condition to "normal wear and tear."

In light of the conflict between the opinions of Drs. Parmely and Shuford, the Office should have referred the claim to an impartial specialist for resolution of the issue in accordance with section 8123(a) of the Act.¹⁷ Accordingly, the case is remanded to the Office for referral of appellant, the case record and a statement of accepted facts to an appropriate impartial dental specialist. After such further development of the record as the Office deems necessary, the Office shall issue a *de novo* decision.

The July 24, 1997 decision of the Office of Workers' Compensation Programs is, hereby, set aside and the case is remanded for further consideration consistent with this opinion.

Dated, Washington, D.C.

November 1, 1999

Willie T.C. Thomas
Alternate Member

Bradley T. Knott
Alternate Member

A. Peter Kanjorski
Alternate Member

¹⁷ 5 U.S.C. § 8123(a)