

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of URSULA BEHLING and PEACE CORPS,
Washington, DC

*Docket No. 98-1293; Submitted on the Record;
Issued November 15, 1999*

DECISION and ORDER

Before MICHAEL J. WALSH, GEORGE E. RIVERS,
DAVID S. GERSON

The issues are: (1) whether the Office of Workers' Compensation Programs properly determined that appellant's postmenopausal bleeding was not sustained in the performance of duty; and (2) whether the Office properly determined that the accepted condition of urinary incontinence had ceased as of May 31, 1997.

On July 8, 1997 appellant, a Peace Corps volunteer, filed a claim alleging that she sustained an injury in the performance of duty. In a narrative statement dated July 16, 1997, appellant indicated that she began to have pain in her lower stomach while serving as a Peace Corps volunteer,¹ and medical testing done in March 1997, while in the Ukraine, had revealed blood in the urine.

By decision dated February 13, 1998, the Office determined that appellant's postmenopausal bleeding was a preexisting condition and appellant had not established that her condition was proximately caused by factors of her Peace Corps service. By letter of the same date, the Office advised appellant that it accepted precipitation of urinary incontinence, ceasing as of May 31, 1997.²

The Board has reviewed the record and finds that the Office properly determined that appellant's postmenopausal bleeding was not sustained in the performance of duty.

¹ The record indicates that appellant entered training on February 12, 1997 and terminated her Peace Corps service on May 31, 1997.

² Although appeal rights were not included, this letter clearly represents an adverse decision with respect to the duration of an accepted employment injury.

With respect to conditions of coverage for Peace Corps volunteers serving outside the United States, the Office's regulations state in pertinent 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 that the presumption will be rebutted by evidence that:

- (1) The injury or disease or illness was caused by the volunteer's willful misconduct, intent to bring about the injury or death or another, or was proximately caused by the intoxication by alcohol or illegal drugs of the injured volunteer; or
- (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.”

* * *

“(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 the factors of conditions of Peace Corps service, or that the condition was materially aggravated, or accelerated or precipitated by factors of Peace Corps Service.”³

In the present case, the medical evidence of record includes reports from Dr. Frederick R. Jelovsek, a gynecologist.⁴ In a report dated June 30, 1997, Dr. Jelovsek stated that appellant had recurrent problems with postmenopausal bleeding and had undergone at least three D & C's (dilatation and curettage) in the prior three or four years. In a report dated September 22, 1997, he indicated that appellant had been treated prior to her tour in the Peace Corps for postmenopausal bleeding and polyps, with appellant having undergone a D & C and hysteroscopy. Dr. Jelovsek reported that appellant on September 15, 1997 underwent a total abdominal hysterectomy and bilateral salpingo-oophorectomy “mainly because of her history of the recurrent postmenopausal bleeding.”

Therefore, the record indicates that, with respect to postmenopausal bleeding, the condition preexisted the period of service abroad. Under section 10.605(a)(2), appellant is not

³ 20 C.F.R. § 10.605.

⁴ The Board notes that although the record contains additional medical evidence, the Board is limited to review of evidence that was before the Office at the time of its final decision. 20 C.F.R. § 501.2(c).

entitled to the presumption that her condition was caused by her employment. She must establish, by the submission of probative medical evidence, that her condition was causally related to factors of her Peace Corps Service. Dr. Jelovsek does not provide an opinion relating his diagnosis to factors of her employment and, therefore, the Board finds that appellant has not met her burden of proof in this case.

With respect to the accepted condition, the Board finds that the Office did not meet its burden in determining that the condition had ceased by May 31, 1997.

Once the Office accepts a claim, it has the burden of justifying termination or modification of compensation.⁵ To terminate authorization for medical treatment, the Office must establish that appellant no longer has residuals of an employment-related condition which require further medical treatment.⁶

In this case, Dr. Jelovsek indicated that appellant had symptoms of urinary incontinence while she was in the Peace Corps, stating that there was no known precipitating event other than having to walk long distances in cold weather. The Office accepted urinary incontinence, but apparently determined that the condition ceased when appellant returned to the United States on May 31, 1997.⁷ The issue of when the accepted condition ceased, however, is a medical issue. He does not indicate that the condition had ceased on return to the United States; Dr. Jelovsek reported that appellant sought treatment in July 1997 because of urinary incontinence and he also indicated that the September 1997 surgery included abdominal suspension of the bladder due to urinary incontinence.

Since Dr. Jelovsek does not provide an opinion that the employment-related condition had ceased and there is no other probative medical evidence on the issue, the Board finds that the Office failed to meet its burden of proof in determining that the urinary incontinence had ceased as of May 31, 1997.

⁵ *Patricia A. Keller*, 45 ECAB 278 (1993).

⁶ *Furman G. Peake*, 41 ECAB 361 (1990).

⁷ There is no indication that the Office accepted any period of disability resulting from the accepted condition, nor does the record establish a period of disability causally related to urinary incontinence.

The decision of the Office of Workers' Compensation Programs dated February 13, 1998, with respect to postmenopausal bleeding, is affirmed. With respect to the determination that residuals of the employment-related urinary incontinence had ceased as of May 31, 1997, the February 13, 1998 decision is reversed.

Dated, Washington, D.C.
November 15, 1999

Michael J. Walsh
Chairman

George E. Rivers
Member

David S. Gerson
Member