

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ANTHONY VALLEJOS and PEACE CORPS,
Washington, DC

*Docket No. 00-1657; Submitted on the Record;
Issued June 18, 2001*

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
MICHAEL E. GROOM

The issues are: (1) whether appellant has met his burden of proof in establishing that he sustained consequential injuries to his right knee, right heel injuries and developed a Baker's cyst in the performance of duty; and (2) whether the Office of Workers' Compensation Programs properly denied appellant's request for a review of the written record.

On December 2, 1994 appellant, then a 40-year-old foreman ranch hand injured his left knee when he stepped into a hole. The Office accepted the claim as a sprain of the left knee and left leg and later expanded this to include left foot fungus, left knee synovitis, severe end-stage degenerative arthritis of the left knee with subluxation, recurrent dermatophytosis of the left foot, recurrent left knee sprain, left shoulder sprain and right wrist sprain. He did not stop work.¹

On March 18, 1999 appellant submitted a notice of traumatic injury alleging that on June 8, 1998 his right knee gave out and he fell on his right side. He indicated that his left knee condition had worsened and this had affected his right knee.

On March 18, 1999 appellant also filed a claim alleging that on June 9, 1998 he developed a Baker's cyst below his left knee as a result of putting weight on the knee.

On June 8, 1999 appellant submitted a notice of traumatic injury alleging that he injured his right heel as a result of having to put his weight on his right leg because of work-related injury to his left knee.²

Accompanying appellant's claim's were radiology reports dated December 5, 1994, October 24, 1995 and January 4, 1996, interpreted by Dr. Helio Calvo Yelsi, a medical certification dated March 3, 1998 prepared by Dr. Fernando Motero Bray, a medical report dated

¹ Appellant was a employing establishment volunteer in Paraguay from September 23, 1993 to March 21, 1996.

² On the CA-1 appellant refers to x-ray reports of his right heel, however, these reports are not in the record.

March 4, 1998 prepared by Dr. Raul B. Avila, a medical report dated November 24, 1998 prepared by Dr. Paredes C. Augusto³ and various employing establishment medical records. The x-ray report of both knees dated December 5, 1994, revealed left knee arthrosis with a joint pinch but did not show signs of traumatic lesions. The x-ray report of both knees dated October 24, 1995, revealed left knee arthrosis with joint pinch. The x-ray report of both knees dated January 4, 1996, revealed left knee arthrosis with narrowing of the joint space and internal displacement of the femur with external luxation of the patella. The medical certification dated March 3, 1998 prepared by Dr. Bray indicated appellant was treated for a fungus infection of his toe nails in July 1994, June 1995 and January 1996. The medical report dated March 4, 1998 prepared by Dr. Avila indicated appellant sustained an injury his left knee on December 2, 1994 and was treated for left knee luxation. He noted that x-rays were taken on December 5, 1994, October 10, 1995 and January 4, 1996. The medical report dated November 24, 1998 prepared by Dr. Augusto, indicated that appellant was treated for localized joint pains. He diagnosed appellant with arthrosis of the left knee joint with displacement and injury to the menisci on both sides. Dr. Augusto indicated appellant's condition required surgery.⁴

By letter dated September 10, 1999, the Office requested additional medical evidence from appellant stating that the initial information submitted was insufficient to establish appellant's current condition's were causally related to the accepted work-related injury of December 2, 1994. The Office advised appellant of the type of medical evidence needed to establish this claim. The Office specifically requested that appellant submit information regarding his activities since leaving the employing establishment on March 21, 1996.

Subsequently, appellant submitted various medical records, many of which were duplicates of those already in the file and were in Spanish, which documented appellant's persistent left knee condition and foot fungus condition. He also submitted a narrative letter dated September 13, 1999 and a letter dated October 30, 1999, prepared by an employing establishment nurse. The September 13, 1999 letter, indicated that appellant submitted medical records documenting his left knee condition and foot fungus condition. He indicated that he could not afford to travel to the doctor for treatment as there are none within close proximity to his home. Appellant noted he would be visiting a physician for treatment of his right knee condition, right heel condition and Baker's cyst in six months. The October 30, 1999 letter from the employing establishment nurse indicated that appellant was not receiving correspondence from the Office in a timely manner and requested the Office provide appellant with additional time to respond to the Office's letter's.

In a decision dated November 10, 1999, the Office denied appellant's claim as the medical evidence failed to establish that appellants' condition's were causally related to the accepted work-related injury of December 2, 1994.

³ Drs. Bray, Avila and Augusto are all licensed physician's in Paraguay, however, they are not Board-certified physicians in the United States.

⁴ The above medical records were initially submitted to the Office in Spanish and subsequently translated into English.

Appellant submitted narrative statements dated November 15 and December 10, 1999. Appellant noted that his left knee and foot fungus condition's had worsened. He indicated that his right knee injury, Baker's cyst and right heel are all related to his original injury of December 2, 1994. Appellant indicated in his letter of December 10, 1999, that he was seeking treatment for his right knee, Baker's cyst and right heel, however, the specialist cancelled his visit to the clinic where appellant was a patient.

On November 15, 1999 appellant submitted two notices of traumatic injury alleging that on November 8, 1999 he sustained a left shoulder injury and right wrist injury when his left knee gave out and he fell on his right hand and left shoulder. On July 29, 2000 appellant submitted a notice of recurrence of disability alleging that on November 8, 1999 he sustained a left shoulder injury and right wrist injury when his left knee gave out and he fell on his right hand and left shoulder. The Office accepted appellant's claim for left shoulder sprain and right wrist sprain as consequential injuries of the accepted employment-related injury of December 2, 1994.

By letter postmarked December 14, 1999, appellant requested a review of the written record in the decision dated November 10, 1999.

Appellant indicated in a letter dated January 7, 2000, that he received the Office's decision dated November 10 on December 14, 1999. He indicated the mail system in Paraguay is inefficient and that it was impossible for him to comply with the 30-day response time set by the Office. Appellant requested that this be taken into consideration in the Office's decision. He also noted he was still being treated for his right knee, Baker's cyst and right heel.

By decision dated February 18, 2000, the Office denied appellant's request for a review of the written record. The Office found that the request was not timely filed. Appellant was informed that his case had been considered in relation to the issues involved and that the request was further denied for the reason that the issues in this case could be addressed by requesting reconsideration from the district office and submitting evidence not previously considered.

On July 27, 2000 appellant submitted a notice of recurrence alleging that on June 2, 2000 his left knee was swollen and he could not put any weight on his left leg. The Office accepted appellant's claim for recurrence for a left knee sprain.⁵

On July 29, 2000 appellant submitted a notice of recurrence alleging that since July 20, 1994 he had experienced a foot fungus, which had spread over his body. The Office accepted appellant's claim for recurrence for dermatophytosis of the foot.

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

⁵ On August 8, 2000 appellant underwent a magnetic resonance imaging scan of the left knee, which revealed multiple tears of both menisci, severe degenerative arthritis in the knee joint, subluxation of the knee joint suggesting an anterior cruciate ligament (ACL) tear and a prominent popliteal cyst. In a medical report dated August 10, 2000, Dr. Jonathan Burg, Board-certified in physical medicine and rehabilitation, indicated appellant sustained an ACL tear as a result of his work-related injury of December 2, 1994. Dr. Burg noted a popliteal cyst. He recommended surgery to repair the ACL tear. The case was referred to the district medical adviser, who indicated in a note dated October 12, 2000, that he would not authorize a total knee replacement until further x-rays were performed.

Section 10.730 of Title 20 of the Code of Federal Regulations⁶ 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 Federal Employees' Compensation Act.⁷ It provides that an injury sustained by a Peace Corps volunteer when he is outside the United States is deemed proximately caused by his employment, unless the injury or illness was caused by the claimant's willful or intentional misconduct, 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.

In this case, the evidence shows that appellant served in the employing establishment from September 23, 1993 to March 21, 1996. It is not disputed that appellant injured his left knee when he stepped into a hole on December 2, 1994. The Office accepted appellant's claim for a sprain of the left knee and left leg and later expanded this to include left foot fungus, left knee synovitis, severe end-stage degenerative arthritis of the left knee with subluxation, recurrent dermatophytosis of the left foot, recurrent left knee sprain, left shoulder sprain and right wrist sprain. Appellant has alleged that he sustained consequential injuries to his right knee, right heel and developed a Baker's cyst below his left knee causally related to his original injury he sustained in 1994 while performing his service and has provided some medical evidence in this regard. The Office did not obtain any medical evidence which rebutted the presumption of causal relationship. The Office, in this case, however, denied appellant's claim on the grounds that the causal relationship was not established. The Office thus, denied appellant the presumption of causal relationship but it did not fully explain the reasoning for this denial.

Sections 10.730(b) and (c) of the applicable regulations⁸ explain that if the presumption is rebutted, then appellant may still be entitled to compensation by proving causal relationship. In this regard, the regulation provides as follows:

“(b) 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.

“(c) If an injury or illness, or episode thereof, comes within one of the exceptions ... 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 Corp service.”

⁶ 20 C.F.R. § 10.730.

⁷ 5 U.S.C. § 8142.

⁸ 20 C.F.R. § 10.730(b) and (c).

In this case, there was no medical evidence of record which rebutted the presumption of causal relationship. The medical evidence either did not address the cause of appellant's claimed condition or supported causal relationship. The Office, therefore, improperly placed the burden of proof on appellant to establish causal relationship, without rebutting the presumption of causal relationship.

This case must be remanded to the Office for further development. On remand, the Office shall determine which if any of the alleged consequential injuries are causally related to the December 2, 1994 accepted injury.⁹ Following this and such further development as deemed necessary, the Office shall issue an appropriate merit decision.

The November 10, 1999 decision of the Office of Workers' Compensation Programs is hereby set aside and the case is remanded to the Office.

Dated, Washington, DC
June 18, 2001

David S. Gerson
Member

Willie T.C. Thomas
Member

Michael E. Groom
Alternate Member

⁹ In view of the Board's disposition of the merit issue in the claim, it is not necessary to address whether the Office properly denied a written review of the record.