

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ROBERT HENRY and PEACE CORPS,
VOLUNTEER SERVICE, Washington, DC

*Docket No. 03-832; Submitted on the Record;
Issued August 21, 2003*

DECISION and ORDER

Before ALEC J. KOROMILAS, COLLEEN DUFFY KIKO,
WILLIE T.C. THOMAS

The issue is whether appellant met his burden of proof to establish that he sustained an injury in the performance of duty during his service as a Peace Corps volunteer.

On May 27, 2002 appellant, a 50-year-old former Peace Corps volunteer, filed an occupational disease claim alleging that he had increased amylase levels as a result of his Peace Corps service from July 17, 2000 to May 7, 2002. Appellant was medically evacuated from Cape Verde in West Africa to Washington, DC, on May 7, 2002 for unexplained weight loss.

In support of his claim appellant submitted medical records from the Peace Corps, a personal statement, and medical reports from Dr. William F. Frank, a Board-certified family practitioner. The medical record indicates that appellant had a problem with alcohol consumption and agreed to cease his use of alcohol while he was serving in the Peace Corps.

In a progress note dated May 8, 2002, Dr. Frank indicated that appellant had returned from West Africa and had a large tumor removed from his back and that he had been losing weight and had been tested for human immunodeficiency virus [HIV]. In a progress note dated May 15, 2002, he stated: "Weight loss when [appellant] was in a calorie deprived state, hypoamylasemia, mildly elevated in the mid 150 range, cigarette smoker, mild anemia, warts on feet and healing abscess on back."

A laboratory test report dated May 21, 2002 indicated that appellant tested positive for Hepatitis A and Hepatitis B antibodies. The report was not signed by a physician.

In a report dated May 31, 2002, Dr. Frank stated:

"[Appellant] is a patient of mine who recently returned from Africa while in the Peace Corps. Currently we are working up an elevated amylase level as well as an abnormal CAT [computerized axial tomography] scan of his pancreas as well

as a healing ulcer on his back from an abscess. Currently we think he may have a parasitic infection.”

By letter dated July 17, 2002, the Office of Workers’ Compensation Programs informed appellant that the information received was insufficient to determine whether he was eligible for compensation benefits because a condition had not yet been diagnosed in connection with his Peace Corps employment. The Office requested that appellant provide additional comprehensive medical reports containing a diagnosis and a physician’s opinion, with medical rationale, on the cause of his condition. The Office afforded appellant 30 days from the date of the letter to submit additional evidence.

By decision dated August 20, 2002, the Office denied appellant’s claim for compensation on the grounds that the medical evidence was insufficient to establish that he sustained an injury as a result of his volunteer duties in the Peace Corps.¹ The Office found that appellant actually experienced the claimed condition but noted that the medical evidence did not contain a diagnosis within the meaning of the Federal Employees’ Compensation Act.

The Board finds that appellant did not meet his burden of proof to establish that he sustained an injury in the performance of duty during his service as a Peace Corps volunteer.

Section 10.730 of Title 20 of the Code of Federal Regulations² 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.³ It provides that an injury sustained by a Peace Corps volunteer when he 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.⁴ 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.⁵

¹ Appellant submitted additional evidence after the Office’s August 20, 2002 decision. However, the Board cannot consider such evidence for the first time on appeal. *See* 20 C.F.R. § 501.2(c).

² 20 C.F.R. § 10.730.

³ 5 U.S.C. § 8142(c)(3).

⁴ 20 C.F.R. § 10.730(a).

⁵ 20 C.F.R. § 10.730(b).

In this case, the record does not establish that appellant sustained a diagnosed injury or illness in the performance of duty. The evidence shows that appellant served in the Peace Corps from July 2000 to May 2002. Appellant has alleged that he sustained elevated amylase levels while performing his service. The Office accepted that appellant experienced elevated amylase levels but found that the medical evidence did not establish that a condition was actually diagnosed in connection with his service in the Peace Corps. Dr. Frank, an attending Board-certified family practitioner, indicated in his first progress note that appellant had returned from West Africa because he had been losing a tremendous amount of weight and had a tumor removed from his back and had also been tested for HIV. In his second progress note, he indicated “hypoamylasemia” and noted that appellant’s amylase levels were “mildly elevated” in the mid 150 range. In his last report, he stated that he was “working up” an elevated amylase level and that appellant had had an abnormal CAT scan of his pancreas. He also stated that he “thinks” appellant “may have a parasitic infection.” Dr. Frank’s progress notes are of little probative value in establishing fact of injury because they do not contain a definitive diagnosis. Dr. Frank indicated “increased amylase levels,” but this is merely a diagnostic test result. “Hypoamylasemia” is the medical term for the abnormal amylase levels and is not a valid diagnosis. Appellant submitted no additional medical evidence containing a medical diagnosis or a physician’s opinion on the cause of his condition and therefore he did not raise the presumption that he sustained a specific injury or illness in the performance of duty.

Appellant has not submitted probative medical evidence with a definitive diagnosis. As such, the presumption that an illness was sustained in the performance of duty cannot arise.

The August 20, 2002 decision of the Office of Workers’ Compensation Programs is hereby affirmed.

Dated, Washington, DC
August 21, 2003

Alec J. Koromilas
Chairman

Colleen Duffy Kiko
Member

Willie T.C. Thomas
Alternate Member