

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

LAURABETH G. BARLAND, Appellant

and

PEACE CORPS, Washington, DC, Employer

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Docket No. 05-748

Issued: August 23, 2005

Appearances:

Laurabeth G. Barland, pro se

Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chief Judge

DAVID S. GERSON, Judge

MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On February 14, 2005 appellant filed a timely appeal from the Office of Workers' Compensation Programs' merit decision dated November 16, 2004 denying her claim of an injury causally related to employment factors. 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 has met her burden of proof to establish that she sustained a hip condition while serving in the Peace Corps.

FACTUAL HISTORY

On July 26, 2004 appellant, then a 25-year-old Peace Corps volunteer, filed an occupational disease claim alleging that her left hip pain and arthritic condition were due to the hiking she did while working with Silva, a competitive hiking unit, in May 2002. She first became aware of her condition in August 2003 and realized it was caused or aggravated by her employment on July 3, 2004. The record reflects that appellant served in Romania from February 13, 2002 to April 7, 2004.

The employing establishment submitted copies of its medical records. In a November 18, 2003 entry, a medical officer noted that appellant had experienced left hip pain since June 2003. The x-ray revealed changes suggestive of arthritis in the lower lumbar region and periarticular osseous condensation at the level of the left sacroiliac joint and the level of the symphysis pubis. A diagnosis of left femoral joint arthritis was provided. A medical officer reported that, since August 2002, appellant experienced right hip pain when on long walks and on high heels.

In a June 25, 2004 treatment note, Dr. John A. Romito, a Board-certified family practitioner with a specialty in orthopedic surgery, noted that appellant was a distance runner and had been having pain in the left hip for the last two years. An impression of soft tissue inflammation about her hip, probably of the hip capsule and some in the rectus femoris tendon” was provided. Dr. Romito recommended pain medication and that running be avoided. In a July 23, 2004 treatment note, Dr. Romito stated that appellant was being evaluated for hip tendinitis and noted some improvement in her condition. He also recommended continued use of pain medication along with pool exercises and no running.

By letter dated September 8, 2004, the Office advised appellant that the evidence submitted was insufficient to demonstrate that her claimed left hip condition arose out of her service with the employing establishment. The Office informed appellant of the type of factual and medical evidence needed to support her claim and requested that she submit such evidence within 30 days.

Appellant responded to the Office’s request for additional factual information in statements dated September 27 and October 7, 2004. Duplicative copies of the employing establishment’s medical records were also provided.

By decision dated November 16, 2004, the Office denied appellant’s claim on the grounds that the medical evidence of record failed to establish that appellant’s hip conditions were caused or aggravated by factors of her federal employment.

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.¹ 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

¹ 5 U.S.C. §§ 8101-8193, § 8142.

abnormality.² 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.³

ANALYSIS

The evidence establishes that appellant served in the Peace Corps from February 2002 to April 2004 and that she alleged that her left hip condition arose during her service. The medical evidence of record consists largely of the employing establishment's treatment notes and Dr. Romito's reports, reveal that appellant's complaints concerning her hips began in the spring/summer months of 2002 while she was serving as a Peace Corps volunteer. There is no medical evidence prior to appellant's service in 2002 addressing whether she had any hip condition that preexisted her Peace Corps service or evidence a preexisting congenital defect or abnormality. The record is further devoid of any evidence that appellant's hip condition arose through any misconduct on appellant's part. The Office also did not purport to rebut the presumption of coverage. The medical evidence of record supports that appellant's complaints concerning her hips and diagnosed left hip condition arose during her service as a Peace Corps volunteer. The presumption under section 8142(c)(3) of the Act is applicable in this case.

The Office improperly placed the burden of proof on appellant to establish causal relationship, without rebutting the presumption of causal relationship.⁴ The case will be remanded for the Office to further develop the claim consistent with this decision and, after such development as deemed necessary, issue a merit decision of appellant's claim.

CONCLUSION

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

² 20 C.F.R. § 10.730(a).

³ 20 C.F.R. § 10.730(b).

⁴ See *Paul C. Thompson*, 52 ECAB 329 (2001).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated November 16, 2004 is set aside and remanded for further development consistent with this decision.

Issued: August 23, 2005
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

David S. Gerson, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board