

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

RICHARD K. RHODES, Appellant)	
)	
and)	Docket No. 05-08
)	Issued March 3, 2005
PEACE CORPS, Ecuador, Employer)	
)	

Appearances:
Richard K. Rhodes, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chairman
COLLEEN DUFFY KIKO, Member
DAVID S. GERSON, Alternate Member

JURISDICTION

On September 23, 2004 appellant filed a timely appeal from an Office of Workers' Compensation Programs' decision dated July 28, 2004, that denied modification of a March 15, 2002 decision terminating his compensation and medical benefits. 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 the Office met its burden of proof in terminating appellant's compensation and medical benefits.

FACTUAL HISTORY

This case was previously before the Board.¹ By decision dated June 18, 2004, the Board remanded the case for reconstruction and proper assemblage.

¹ Docket No. 04-206 (order remanding case issued June 18, 2004).

On July 19, 2000 appellant, then a 46-year-old former Peace Corps volunteer,² filed a traumatic injury claim alleging that on January 14, 2000 he injured his right shoulder when he fell from a bicycle while working in Ecuador. He underwent right shoulder surgery on July 12, 2000. Appellant also filed a claim for malaria and a right knee condition.³ The Office subsequently accepted his claim for malaria,⁴ a rotator cuff tear and a right knee sprain. Appellant was placed on the periodic compensation rolls to receive compensation for temporary total disability effective July 18, 2000.

In a December 20, 2001 report, Dr. Michael D. Slomka, a Board-certified orthopedic surgeon and Office referral physician, provided a history of appellant's right shoulder and right knee conditions, findings on examination and x-ray results. He diagnosed a postoperative right rotator cuff injury and right knee osteoarthritis secondary to repeated trauma. Dr. Slomka stated:

“The right shoulder injury including the tear has resolved. Current objective findings include the scar. With respect to the right knee, any knee sprain certainly has resolved but the underlying problem is arthritis in the knee which is related to four previous surgeries and the etiology which required those surgeries.

“There is no objective evidence showing that either of these injuries is specifically related to [appellant's] work factors. Certainly, the history of shoulder problems from the bicycle fall is a reasonable one, however, his condition is now such that he could be working doing full unrestricted activities with his right shoulder. With respect to the right knee [appellant's] current condition is due to the underlying arthritic condition rather than the aggravation of this condition which occurred from jumping on and off moving buses. He will require additional treatment and perhaps even total knee replacement surgery for this knee based upon the objective findings on examination and x-ray. However, this will be based upon the preexisting ... arthritic condition.

“The subjective complaints appear to outweigh the objective findings to some extent. Certainly, [appellant] can be working in a sitting position with respect to his right knee and he should be doing any and all activities with respect to the right shoulder.

“I believe that [appellant] is not capable of doing previous Peace Corps work which would involve jumping on and off moving buses because of the arthritis in his knee and I do not believe that the right shoulder is a factor in limiting or preventing his work.

² Appellant worked for the Peace Corps in Ecuador until July 15, 2001.

³ Appellant alleged that he sustained an aggravation of his preexisting right knee arthritis beginning in December 1999, because of the custom in Ecuador to jump from moving buses upon reaching one's destination. He rode buses to work daily.

⁴ Appellant's malaria was caused by the parasite *Plasmodium falciparum*.

“There are no specific restrictions on [appellant’s] activities, work or otherwise, specifically based on the 1999 injury; but there would be restrictions based upon the preexisting arthritis.

“I believe that the restrictions are permanent and that he will probably come to a total knee replacement on the basis of the arthritis in his right knee.”

In a report dated January 4, 2002, Dr. Joe E. Whitaker, a Board-certified internist and Office referral physician, provided findings on examination and opined that appellant’s malaria had resolved.

On February 4, 2002 the Office advised appellant that it proposed to terminate his wage-loss compensation and medical benefits based on the opinions of Dr. Whitaker and Dr. Slomka that he had no continuing disability or medical condition causally related to his accepted employment injuries.

By decision dated March 15, 2002, the Office terminated appellant’s compensation and medical benefits effective March 23, 2002.

Appellant requested reconsideration and submitted additional evidence.

Dr. Christopher M. Magee, a Board-certified orthopedic surgeon, stated in a March 20, 1998 report that appellant was examined regarding his application for employment in the Peace Corps and he “seem[ed] not to be having significant problems with his right knee.”

In a September 23, 2002 report, Dr. Koco Eaton, appellant’s attending Board-certified orthopedic surgeon, stated that he underwent right knee arthroscopy on July 29, 2002. He stated that appellant’s right knee was in “very bad shape” with his meniscus almost completely deteriorated and much of the coating cartilage on the femur and tibia bones was absent. Dr. Eaton stated:

“[Appellant] stated that he ... had four previous arthroscopic procedures to his right knee.⁵ Nevertheless, the last of these four right knee procedures was done in 1992, ... more than 10 years ago. [Appellant] asserts that before he entered the Peace Corps and in between 1992 and 1999, he regularly played many sports including softball and basketball, he jogged and ran and he regularly hiked up mountains. Given the present state of his knees⁶ and even with a knee replacement procedure ..., he can no longer perform any of these activities. The erosion of bone cartilage, the meniscus damage and the bone wear that I observed when I probed into each of his knees is very consistent with the repeated hard landings and poundings that were likely the result of [appellant’s] need to leap off slow-moving buses on a daily basis ... between 1999 and 2000, ... while a Peace Corps volunteer in Ecuador.

⁵ The record indicates that appellant underwent arthroscopic surgery in 1981, 1990 (two surgeries) and 1992.

⁶ Appellant also has a nonwork-related left knee condition.

“After my latest procedure on July 29, [2002] [appellant] indicated that much of his previous night-time pain associated with his right knee had been alleviated. But, both before and after this latest procedure, [he] indicates that there is still pain with each footstep

“Over a period of many months, [appellant] most likely endured constant and severe degradation to his knees while serving as a Peace Corps volunteer in Ecuador.”

By decision dated and finalized February 24, 2003, the Office hearing representative affirmed the Office’s March 15, 2002 decision.

Appellant requested reconsideration and submitted additional evidence.

In an April 17, 2003 letter, Dr. Eaton stated that appellant’s need to jump from slow-moving buses while working for the employing establishment would have permanently aggravated any previous condition existing in his right knee. He continued:

“This aggravation to [appellant’s] knees would have significantly contributed to the conditions that I observed inside his left knee in July 2001 and his right knee in July 2002. Aggravations of these types would also be permanent by crushing, tearing and/or wearing down the knee meniscus. At their extreme, they would lead to a bone-on-bone condition. The meniscus tear that I observed when I went into his left knee and the bone-on-bone condition observed inside his right knee are very consistent with day-after-day, month-after-month repetitive hard landings on the knee joints. His daily work requirement, needing to jump off slow-moving buses in South America undoubtedly would have contributed to these conditions. If the orthopedic statement of March 1998 is correct, then the damage observed in his knees had to have occurred in between 1999 and 2001 (for the left knee) and 1999 and 2002 (for the right knee).

“Although [appellant] had four minor prior one-day right knee scope procedures, the last and fourth of those procedures was seven years before volunteering for the Peace Corps ... Appellant was active in many sports in between that fourth and last, knee scope and the beginning of his Peace Corps service. It is virtually impossible for [him] to have been so active in sports for seven years (*i.e.*, 1992-1999), with the knee conditions similar to those that I observed after his Peace Corps [s]ervice.

“I must differ with the opinion of Dr. Slomka stating, ‘[appellant’s] current condition is related to those four previous arthroscopic procedures [done 10 to 20 years ago] and the etiology stemming from those procedures.’ My most logical conclusion is that [his] current knee conditions are attributable ... to his daily requirement to jump off slow moving buses over a protracted period of 16 months

between 1999 and 2000. Furthermore, [appellant's] left knee had never required a scoping procedure until after he departed from the [employing establishment].”

Dr. Eaton opined that appellant had continuing right knee problems related to his Peace Corps service.

By decision dated September 17, 2003, the Office denied modification of its February 24, 2003 decision.

Following remand of the case by the Board, the Office record and reissued its September 17, 2003 decision on July 28, 2004.

LEGAL PRECEDENT

It is well established that, once the Office accepts a claim, it has the burden of justifying termination or modification of compensation.⁷ After it has been determined that an employee has disability causally related to his employment, the Office may not terminate compensation without establishing that the disability has ceased or that it is no longer related to the employment.⁸

The right to medical benefits for an accepted condition is not limited to the period of entitlement for disability. To terminate authorization for medical treatment, the Office must establish that a claimant no longer has residuals of an employment-related condition that require further medical treatment.⁹

ANALYSIS

The Office accepted three conditions as related to appellant's employment in the Peace Corps, malaria, a torn right rotator cuff and a right knee strain.

Dr. Whitaker, a Board-certified internist and Office referral physician, determined that appellant's accepted malaria condition had resolved based on a laboratory report showing no malarial parasites present in his blood. As there is no contradicting medical evidence of record, the Office properly terminated appellant's compensation and medical benefits relating to the accepted malaria condition.¹⁰

Dr. Slomka, a Board-certified orthopedic surgeon, determined that appellant's right rotator cuff tear had resolved and this opinion is not contradicted by any other medical evidence

⁷ *Mohamed Yunis*, 42 ECAB 325 (1991).

⁸ *Alfonso G. Montoya*, 44 ECAB 193 (1992).

⁹ *Wiley Richey*, 49 ECAB 166 (1997); *Furman G. Peake*, 41 ECAB 361 (1990).

¹⁰ Although Dr. Whitaker indicated that appellant had continuing problems with his right knee, he is not a specialist in this area. He is an internist, not an orthopedic surgeon. The opinion of a physician who has specialized training in a particular field of medicine has greater probative value on issues involving that particular field than opinions of other physicians. See *Sandra J. Robbins*, 34 ECAB 1120 (1983).

of record. He further found that appellant's right knee problems were caused by his preexisting arthritis for which he had undergone four surgical procedures prior to his Peace Corps service. However, in a March 20, 1998 report, regarding appellant's job application with the employing establishment, Dr. Magee, a Board-certified orthopedic surgeon, indicated that appellant was not having significant problems with his right knee. Dr. Slomka did not address this inconsistency in his report. Additionally, he indicated that appellant's work-related activity of having to jump on and off moving buses in Ecuador aggravated his preexisting arthritis. However, he did not explain when the aggravation ceased. The Office has not considered whether the work activity involving jumping on and off buses caused an aggravation of appellant's preexisting arthritis and, if so, when the aggravation ceased. Dr. Slomka indicated that appellant's right knee condition in 2001 was due to his preexisting arthritis rather than the aggravation of the arthritis caused by jumping on and off moving buses in Ecuador. However, he provided no medical rationale in support of his opinion that appellant's continuing right knee problems were caused by his preexisting condition rather than the more recent repetitive trauma in Ecuador. Due to these deficiencies, Dr. Slomka's report is not sufficient to establish that appellant has no residual disability or medical condition caused or aggravated by his work-related right knee strain, particularly in light of the fact that his attending orthopedic surgeon, also Board-certified, found that his right knee condition was permanently aggravated by the repetitive hard landings on his knee joints when getting on and off the buses in Ecuador.¹¹

CONCLUSION

The Board finds that the Office did not meet its burden of proof in terminating appellant's compensation and medical benefits causally related to his work-related right knee condition. Due to the deficiencies described above, the opinion of Dr. Slomka is not sufficient to establish that appellant had no continuing disability or medical condition causally related to his accepted right knee strain. Therefore, the Office's July 28, 2004 decision is reversed.¹²

¹¹ Dr. Eaton provided detailed medical rationale for his opinion as to causal relationship. (*See supra* Dr. Eaton's April 17, 2003 report in the text.)

¹² On appeal appellant indicated that he has filed a claim for a left knee condition. However, there is no final Office decision of record regarding a left knee injury. Therefore, the issue of a left knee injury is not before the Board on this appeal. 20 C.F.R. § 501.2(c)

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated July 28, 2004 is reversed.

Issued: March 3, 2005
Washington, DC

Alec J. Koromilas
Chairman

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member