

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

S.S., Appellant

and

PEACE CORPS, TONGA, Employer

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**Docket No. 07-1553
Issued: November 1, 2007**

Appearances:
Appellant, 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 May 15, 2007 appellant filed a timely appeal from Office of Workers' Compensation Programs hearing representative decision dated February 21, 2007. Under 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this appeal.

ISSUE

The issue is whether appellant met his burden of proof to establish that he sustained an abdominal condition while serving in the Peace Corps.

FACTUAL HISTORY

On December 28, 2005 appellant, a 32-year-old former Peace Corps volunteer, filed a Form CA-2 occupational disease claim alleging that he sustained an abdominal hernia as a result of his service in Tonga from November 12, 2003 through November 15, 2005. He stated that he began to experience severe pain in his left lower back and abdomen on approximately September 14, 2005. Appellant consulted a local physician who administered blood work and obtained a computerized axial tomography (CAT) scan, both of which were negative. He

returned to the United States and underwent more blood work and another CAT scan on December 27, 2005.

In a report dated October 14, 2005, Dr. Stephanie Weinrauch, a general practitioner and the attending physician in Tonga, noted that appellant had been experiencing four weeks of left upper quadrant abdominal pain, radiating to the left groin. She stated that her initial assumption was a microscopic hernia but two subsequent urinalysis had been negative for blood. Appellant experienced no change in bowel habits and no nausea or vomiting. Dr. Weinrauch advised that appellant had minor tenderness but no abdominal mass and no spinal or musculoskeletal signs, abdominal ultrasound and x-rays were normal. With regard to her diagnosis, Dr. Weinrauch indicated that no cause had been found for appellant's ongoing low grade abdominal pain.

In a report dated January 10, 2006, Dr. David L. Hammer, a Board-certified in family practice, reviewed appellant's history of treatment and the December 27, 2005 computerized tomography scan. He stated:

“He has fat in the left inguinal canal and he also has a suggestion of having prior inguinal herniography on the right. He is to follow through with a surgical consultation which is not available at this time. Until all the data is available, it is unknown what the definitive diagnosis is and what the recommendation should be....”

In a January 10, 2006 addendum, Dr. Hammer stated:

“Additional data shows no hernia on the left, old hernia repair on the right. He has a Lipoma of the spermatic cord apparently and no evidence of hernia as relates to Peace Corps service. He also has evidence of renal calculi as suspected during service.”

In a letter dated January 27, 2006, the Office advised appellant that it required a firm diagnosis of his claimed abdominal condition and a medical report describing the causal relationship between the claimed condition and factors of his Peace Corps service. The Office informed appellant that he had 30 days to submit the requested evidence. Appellant did not submit any additional evidence within 30 days.

By decision dated May 4, 2006, the Office denied the claim, finding that the evidence of record failed to establish that appellant had an abdominal condition which was causally related to his Peace Corps employment. The Office found that he failed to submit sufficient medical evidence to establish a diagnosis or a causal relationship between his claimed condition and his Peace Corps service.

By letter dated August 31, 2006, appellant requested an oral hearing, which was held on December 19, 2006. He submitted an undated report from Dr. Valerie Archer, a general practitioner, who documented appellant's treatment for abdominal pain, beginning on September 13, 2005 through December 21, 2006. Dr. Archer indicated that she initially saw appellant on December 21, 2006, after he returned to the United States. She advised that appellant had ongoing pain, varying in intensity, which seemed to be related to spinal movement in an indirect way; however, she noted no spinal abnormality. Dr. Archer indicated that the pain

was aggravated by pressing in the lumbar, renal, inguinal and upper abdominal areas and was associated with bowel movements. She diagnosed bowel pathology either in the sigmoid or splenic flexure of the colon or related to his hernia. Dr. Archer recommended faecal occult blood tests, a barium enema or colonoscopy. She concluded that the cause of the pain had not been adequately established and recommended further tests to exclude serious pathology in his bowel.

By decision dated February 21, 2007, an Office hearing representative affirmed the May 4, 2006 decision.

LEGAL PRECEDENT

Section 10.730 of Title 20 of the Code of Federal Regulations pertains to conditions of coverage of Peace Corps volunteers while serving abroad and provides, in part, as follows:

“(a) Any injury sustained by a volunteer or volunteer leader while he or she is located abroad 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:”

* * *

“(2) The illness is shown to have preexisted the period of service abroad;
or

(3) The injury or illness claimed is either a manifestation of symptoms of, or consequent to, a preexisting congenital defect or abnormality.

“(b) If the presumption that an injury or illness was sustained in the performance of duty is rebutted as provided by paragraph (a) of this section, 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 described in paragraph (a)(2) or (3) of this section, 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 Corps service.”¹

ANALYSIS

The evidence establishes that appellant served in the Peace Corps from November 2003 through November 2005. While Peace Corps volunteers are entitled to a presumption that any

¹ 20 C.F.R. § 10.730.

injury sustained while abroad or illness contracted is presumed to be proximately related to the employment, the presumption will arise if no injury or illness is diagnosed. Without a firm medical diagnosis it is not possible to ascertain whether the condition was preexisting or congenital. Appellant alleged that he sustained an abdominal hernia while performing his service. However, the medical evidence of record does not establish that appellant sustained an abdominal hernia or any other specific condition causally related to his Peace Corps service.

The report of Drs. Weinrauch and Hammer indicated that appellant experienced abdominal pain and had sustained an abdominal condition. However, the physicians failed to provide a definitive diagnosis of appellant's condition. Dr. Weinrauch noted in an October 2005 report that appellant had experienced four weeks of left upper quadrant abdominal pain, radiating to the left groin. She advised that appellant had experienced no change in bowel habits, no nausea or vomiting, no abdominal mass and no spinal or musculoskeletal signs. Dr. Weinrauch stated that appellant underwent an abdominal ultrasound and x-rays, the results of which were normal. She concluded that no cause had been found for appellant's ongoing low-grade abdominal pain. Dr. Hammer noted that appellant had fat in the left inguinal canal and indicated that he had a prior right hernia repair. He found that appellant had no evidence of hernia related to his Peace Corps service. Neither, Dr. Weinrauch nor Dr. Hammer was able to state a firm diagnosis or the cause of appellant's abdominal pain. These reports, therefore, are of limited probative value. The Office, therefore, properly denied claim in its May 4, 2006 decision.

Dr. Archer noted ongoing, abdominal pain with varying degrees of intensity. Although appellant's pain was apparently indirectly related to spinal movement, Dr. Archer noted no spinal abnormality. She advised that the abdominal pain was aggravated by pressing in the lumbar, renal, inguinal and upper abdominal areas and was associated with bowel movements. Dr. Archer diagnosed bowel pathology either in the sigmoid or splenic flexure of the colon or related to his prior hernia. She recommended faecal occult blood tests, a barium enema or colonoscopy. Dr. Archer stated that the cause of appellant's abdominal pain had not been adequately established and recommended further tests to exclude serious pathology in his bowel. Her report again did not present an opinion describing a diagnosis of appellant's condition, such that the origin of the condition could be determined. She was unable to identify the cause of appellant's abdominal pain. Appellant, therefore, failed to provide a rationalized, probative medical opinion which provided a diagnosis, which could then presumptively be related to his Peace Corps service.

The Office advised appellant of the evidence required to establish his claim; however, he failed to submit such evidence. Consequently, appellant has not met his burden of proof.

Accordingly, appellant has failed to meet his burden of proof to show that he sustained an abdominal condition while serving in the Peace Corps.

CONCLUSION

The Board finds that appellant has failed to meet his burden of proof to establish that he sustained an abdominal condition, related to factors of his Peace Corps service.

ORDER

IT IS HEREBY ORDERED THAT the February 21, 2007 decision of the Office of Workers' Compensation Programs' be affirmed.

Issued: November 1, 2007
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