United States Department of Labor
Employees' Compensation Appeals Board

J.D., Appellant	)	
	)	**Docket No. 08-2453**
and	)	**Issued: September 17, 2009**
U.S. PEACE CORPS, Nkubu, Kenya, Employer	)	

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On September 15, 2008 appellant filed a timely appeal from a July 2, 2008 decision of the Office of Workers' Compensation Programs that denied his claim. 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 met his burden of proof to establish that he sustained an employment-related injury on November 8, 1999.

FACTUAL HISTORY

On May 7, 2000 appellant, then a 31-year-old volunteer, filed a Form CA-1, traumatic injury claim, alleging that he sustained a bruised spine when he was thrown against a metal bar while riding a minibus on a rough road in Kenya on November 8, 1999.[1] His volunteer service began in September 1999 and ended in December 2002. Appellant filed a second traumatic

[1] The employing establishment did not forward this claim form to the Office. However, by report dated July 22, 2005, it acknowledged that the claim had been submitted.

injury claim for this incident on July 12, 2005.[2] In an attached statement, he reported that he worked in a rural Kenyan village and that the back injury left him in pain for several weeks but not enough to warrant a trip to Nairobi for medical treatment. Appellant described the conditions in Kenya, noting that he traveled by bicycle or local transport buses while in the Peace Corps. Over his two years of service, he had numerous urological and kidney tests and was diagnosed with chronic prostatitis. Appellant saw an urologist upon his return to the United States and, in 2004, was treated by Dr. Ronald M. Laub, Board-certified in anesthesiology, for pain management, who advised that bulging discs and chronic prostatitis caused similar symptoms and that a magnetic resonance imaging (MRI) scan performed in July 2004 demonstrated a bulging L5-S1 disc. He noted that epidural injections relieved his back pain but that it was aggravated by light exercise. Appellant attributed his current back condition to the November 8, 1999 incident. He also alleged that his bicycle and travel over rough road conditions aggravated his back condition.

By letter dated July 25, 2005, the Office informed appellant of the evidence needed to support his claim and asked that the employing establishment respond. It submitted medical records, including appellant's preemployment physical examination on January 18, 1999 indicating that he had a history of low back strain in 1985. The employing establishment clinic notes dated November 21 and 22, 1999 noted appellant's complaints of low-grade fever, joint aches, abdominal cramps and diarrhea. A November 24, 2000 clinic note reported appellant's complaints of back and pelvic pain and provided a history that he injured his back in a minibus one-year prior. On November 27, 2000 Dr. Robert C. Davidson, area medical officer, noted a two-week history of pelvic pain and diagnosed prostatitis. In December 2000 and January 2001, appellant was seen for gastrointestinal problems and general malaise. On February 27, 2001 Dr. Davidson described appellant's urological symptoms and treatment up to that date.

In February 2001, appellant had a urological consultation and chronic prostatitis was diagnosed. He continued to have pelvic symptoms and was treated for chronic bacterial prostatitis. By report dated August 11, 2001, Dr. Davidson noted that appellant advised that feelings of forcing urine had returned with some occasional pain and that he had injured his back in a minibus. Appellant described recurrent fatigue, midsection discomfort and low-grade fever with slight general pain and noted that he fell off a ladder and hurt his left knee and lower back the previous week. On examination, Dr. Davidson noted a boggy prostate with urethral discharge and a positive stool. He diagnosed chronic prostatitis. A November 15, 2002 report noted appellant's description that, in June 2002, he was thrown over the handlebars of a bicycle, injuring his left hand ring finger and right wrist. In close-of-service medical evaluations on November 15, 2002, appellant provided a history that his back was injured in a minibus. Dr. Davidson noted a history of a vehicle accident in 2000, reinjure recently, with moderate soreness, occasional stomach pain and chronic prostatitis, in remission, diagnosed chronic epididymitis and recommended a urology consultation.

By report dated March 20, 2003, Dr. Jeffrey A. Moody, a Board-certified urologist, noted that appellant had a two-year history of right scrotal pain and occasional positive urine and

[2] The record indicates that appellant has a second claim, adjudicated under file number xxxxxx335 for a November 10, 2000 injury, with accepted conditions of lumbago and prostatitis. He indicated that he filed for his back condition under this claim, but that it was rejected by the Office.

semen cultures. He diagnosed apparently chronic right epididymitis. In a June 23, 2004 report, Dr. Laub noted appellant's history of prostatic pain and, in 2000, having been struck in the back with an iron bar on a public vehicle. Following this injury, appellant began to develop low back pain in association with testicular and saddle pain that was nearly completely relieved with Celebrex. He recommended an MRI scan.[3] A July 19, 2004 MRI scan of the lumbar spine demonstrated Grade 1 spondylolisthesis at L5-S1 secondary to bilateral pars defects, diffuse bulging degenerated L5-S1 disc with no definite nerve root compression and slight hypertrophy of multiple facets, greatest at L4-5. On August 10, 2004 and June 28, 2005 Dr. Laub performed epidural injections. In an undated letter to appellant's congressional representative, he noted appellant's report that he injured his back in Kenya and had experienced back pain since. Dr. Laub noted the MRI scan findings and that appellant had a diminished S1 reflex of the left ankle and advised that prostatitis-like symptoms could be caused by a bulging disc. He stated that appellant was most likely misdiagnosed by the employing establishment and that his symptoms had been caused by the bulging disc.

In a July 22, 2005 report, Dr. David L. Hammer, the employing establishment chief of clinical programs, noted that appellant had served in Kenya from September 23, 1999 until December 2, 2002. He advised that a review of appellant's medical record showed a long and persistent history of prostatitis and nothing relevant to a back injury except a claim form filled out in May 2000. Dr. Hammer opined that the disc bulge diagnosed in 2004 was not related to appellant's volunteer service, noting that he had a normal evaluation on close of service. An attached problem list advised that appellant was diagnosed with an upper respiratory infection and bacterial diarrhea in November 1999, presumptive giardiasis in December 1999 and prostatitis in November 2000.

By decision dated August 29, 2005, the Office denied appellant's claim on the grounds that the medical evidence was insufficient to establish that his volunteer service contributed to his claimed back condition.

On June 2, 2006 appellant requested reconsideration. He advised that he had been in Kenya from July 16 to August 10, 2005 and was now responding to the July 25, 2005 Office development letter. Appellant described his volunteer duties and noted that he initially tried to obtain treatment for his back condition through his chronic prostatitis claim but, upon recommendation by the Office, filed a new claim for the November 8, 1999 back injury.[4] He stated that he aggravated his back in February 2005 when demonstrating proper bent-knee squat technique to students in his weight lifting club and, in June 2005, aggravated his back while doing light-yard work. Appellant was seen by his primary care physician for these aggravations.[5] He also noted that he is a mountaineer and had climbed numerous Colorado peaks and Mount Kenya, was a mountain biker, skier, snowshoe and former assistant gym

[3] Dr. Laub later corrected the date of the injury to 1999.

[4] Appellant noted that the Office authorized the July 2004 MRI scan and August 2004 epidural injection but denied the December 2004 epidural injection.

[5] Appellant is a middle school teacher and sponsors the weight lifting club.

manager and had always been in excellent shape. Appellant also provided an illness history, copies of medical records and a screening report for pain management dated June 23, 2004. In a February 5, 2005 report, Dr. Mark Walton, a Board-certified osteopath specializing in family practice, noted that appellant injured his lower back while lifting weights causing lumbosacral/sacroiliac pain. He diagnosed acute lumbar myositis/strain. In a June 14, 2005 report, Dr. Vernon Rubick, a Board-certified osteopath specializing in family practice, noted appellant's complaints of low back pain. He diagnosed degenerative disc disease. In a May 17, 2006 report, Dr. Laub advised that appellant was under his care for groin and back pain related to an injury he suffered in Kenya. He noted the MRI scan findings and opined that appellant's groin pain, previously diagnosed as prostatitis was "in fact probably" referred pain from an L5-S1 disc injury caused by a motor vehicle accident that occurred in Kenya while he was a volunteer.

On October 11, 2005 Dr. Alan Bickel, a Board-certified urologist noted appellant's history of prostatitis.[6] He diagnosed interstitial cystitis. In an October 24, 2005 report, Dr. Bickel noted that appellant had symptoms of interstitial disease during his volunteer work in Kenya of dull lower back, abdominal and genital pain spreading to the right hip which were classic for interstitial cystitis (prostatitis). He further noted that appellant had laboratory work consistent with interstitial cystitis and that he had reported a public vehicle accident. Dr. Bickel advised that the back injury did not cause appellant's interstitial cystitis but could aggravate the condition.

In a July 5, 2006 letter to appellant's congressional representative, Dr. Laub noted appellant's report of the November 8, 1999 injury while riding in a minibus. Dr. Laub described appellant's symptoms and treatment and diagnosed lumbar disc displacement, lumbar disc degeneration, lumbar stenosis and testicular pain, opining that they were consistent with the reported injury on November 8, 1999 when he was thrown against a protruding metal bar that caused vertebra compression resulting in disc material bulging out in the L5-S1 region. Dr. Laub again opined that appellant's condition was misdiagnosed as prostatitis.

By decision dated October 24, 2006, the Office denied modification of the August 25, 2005 decision. It found the medical evidence insufficient to establish his claim.

On October 9, 2007 appellant requested reconsideration and submitted a publication regarding interstitial cystitis. On September 12, 2007 Dr. Moody advised that he began seeing appellant in March 2003, and had not seen him since December 2003. He advised that physical examination and testing did not indicate the presence of active epididymitis or prostatitis and he referred appellant to Dr. Laub, who diagnosed a bulging lumbar disc on an MRI scan. Dr. Moody stated that "it is definitely possible that lower back injury can lead to nerve injury/irritation that can lead to symptoms that will mimic chronic prostatitis or epididymitis.

By letter dated January 14, 2008, the Office requested that Dr. Laub provide an explanation as to how the November 8, 1999 minibus incident caused appellant's bulging disc at L5-S1 when the MRI scan and other reports indicated that it was degenerative in nature. Dr. Laub did not respond.

[6] Dr. Bickel was an Office referral physician in appellant's prostatitis claim. *Supra* note 2.

In a July 2, 2008 decision, the Office denied modification of the prior decisions.

LEGAL PRECEDENT

Section 10.730 of Office regulations provides that any injury sustained by a Peace Corps volunteer or volunteer leader while 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 the illness is shown to have preexisted the period of service abroad or the injury or illness claimed is either a manifestation of symptoms of, or consequent to, a preexisting congenital defect or abnormality. 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. The claimant may then be entitled to compensation if 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. While Peace Corps volunteers are entitled to a presumption that any injury sustained while abroad or illness contracted is presumed to be proximately related to the employment, the presumption will not 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.[7]

ANALYSIS

The evidence establishes that appellant served in the Peace Corps in Kenya from September 1999 to December 2002. While Peace Corps volunteers are entitled to a presumption that any injury sustained while abroad or illness contracted is presumed to be proximately related to the employment, the presumption will not 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.[8] On May 7, 2000 appellant submitted a traumatic injury claim, alleging that he sustained a bulging disc at L5-S1 caused by a 1999 incident in which he hit his spine on a rod while riding local transportation in Kenya. The Board finds, however, that the medical evidence of record does not establish that appellant sustained a bulging disc or back condition causally related to his Peace Corps service.

The medical evidence contemporaneous with the claimed November 1999 incident did not mention a bruised spine or any other back condition but rather discussed a low-grade fever, joint aches, abdominal cramps and diarrhea. While a November 2000 treatment note reported symptoms of back and pelvic pain and obtained a history that appellant injured his back on a minibus one-year prior, prostatitis was diagnosed. Appellant had positive laboratory findings and was diagnosed with chronic prostatitis while serving in the Peace Corps. At no time was a back condition diagnosed during his Peace Corps service. It was not until July 2004, one-and-a-

[7] 20 C.F.R. § 10.730; *see S.S.*, 59 ECAB ____ (Docket No. 07-1553, issued November 1, 2007).

[8] *Id*.

half years after his Peace Corps service ended, that an MRI scan demonstrated a bulging L5-S1 disc. Dr. Laub advised that appellant was most likely misdiagnosed by the employing establishment and that his symptoms all along had been caused by the bulging disc. However, he did not address the prior treatment for prostatitis or how the November 1999 minibus incident caused or contributed to a bulging disc. In assessing medical evidence, the weight of such evidence is determined by its reliability, its probative value and its convincing quality. The opportunity for and thoroughness of examination, the accuracy and completeness of the physician's knowledge of the facts and medical history, the care of analysis manifested and the medical rationale expressed in support of an opinion are facts, which determine the weight to be given to each individual report.[9] Dr. Laub did not state that he had reviewed the medical records from appellant's Peace Corps service or note that he had a history of rigorous physical activities including mountain climbing and skiing. He was asked by the Office to explain how the November 8, 1999 minibus incident caused the bulging disc at L5-S1 and review an MRI scan that indicated the condition was degenerative in nature. However, Dr. Laub did not respond. The Board finds the reports of Dr. Laub are insufficient to establish that appellant's back condition was caused by the November 1999 minibus incident.

In a February 5, 2005 report, Dr. Walton noted that appellant injured his back lifting weights. Dr. Rubick, in a June 14, 2005 report, diagnosed degenerative disc disease. Neither physician referenced appellant's prior Peace Corps service or advised that his back condition was caused by a November 1999 accident. In a July 22, 2005 report, Dr. Hammer noted his review of appellant's Peace Corp medical records and advised that these showed that he had a long and persistent history of prostatitis but nothing relevant to a back injury except a May 2000 claim form. He further noted that appellant had a normal physical examination on close of service. In an October 11, 2005 report, Dr. Bickel advised that appellant had symptoms of and laboratory work consistent with interstitial cystitis or prostatitis during his service as a volunteer in Kenya. He noted that a back injury did not cause the interstitial disease but could aggravate it. None of these physicians provided an opinion that appellant sustained a back condition while in the Peace Corps or that his current back condition was caused by the November 1999 minibus incident and are therefore insufficient.

Appellant submitted a publication regarding interstitial cystitis. The Board has long held that excerpts from publications have little probative value in resolving medical questions unless a physician shows the applicability of the general medical principles discussed in the articles to the specific factual situation at issue in the case.[10] There is no such evidence in this case.

Moreover, the medical evidence does not address how bicycling or other travel during appellant's Peace Corps service caused or aggravated his condition.[11] Accordingly, appellant has

[9] *Michael S. Mina*, 57 ECAB 379 (2006).

[10] *Roger Payne*, 55 ECAB 535 (2004).

[11] Medical evidence that does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship. *Willie M. Miller*, 53 ECAB 697 (2002).

failed to meet his burden of proof to establish that he sustained a back condition while serving in the Peace Corps.[12]

CONCLUSION

The Board finds that appellant has failed to meet his burden of proof to establish that he sustained a back condition causally related to factors of his Peace Corps service.

ORDER

IT IS HEREBY ORDERED THAT the July 2, 2008 decision of the Office of Workers' Compensation Programs be affirmed.

Issued: September 17, 2009
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

[12] *S.S., supra* note 7.