

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

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**S.C., Appellant**

**and**

**PEACE CORPS, VOLUNTEER SERVICES,  
Washington, DC, Employer**

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**Docket No. 14-383  
Issued: May 28, 2014**

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

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

COLLEEN DUFFY KIKO, Judge  
MICHAEL E. GROOM, Alternate Judge  
JAMES A. HAYNES, Alternate Judge

**JURISDICTION**

On December 6, 2013 appellant filed a timely appeal from a September 27, 2013 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act<sup>1</sup> (FECA) and 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 an occupational disease in the performance of duty.

On appeal, appellant contends that the evidence he submitted is sufficient to establish a paracentral annular fissure at L5-S1 as a direct result of his volunteer service in the Ukraine from sleeping on bad beds, long train rides and work-related travel with heavy backpacks and luggage.

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<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

## **FACTUAL HISTORY**

On July 1, 2013 appellant, then a 27-year-old former Peace Corps volunteer, filed a Form CA-2 an occupational disease while he served in the Ukraine. In a narrative statement, appellant related that he first noticed his back pain in April 2010 during his preservice training. He slept on a very uncomfortable and uneven couch as suggested by his host family. Later, appellant moved to a bed, but the lack of back support did not help. He traveled frequently and carried around luggage and backpacks, which further aggravated his back condition. Appellant's tour of duty lasted from March 29, 2010 to June 27, 2012.

In a Peace Corps medical evaluation report dated March 29, 2012 appellant described slight back pain with stiffness in the morning. An unidentifiable physician stated that appellant's back pain was caused by the use of an uncomfortable bed and stretching in the morning relieved the pain. On June 26, 2012 an unidentifiable physician stated that appellant was still having back pain but it was better than in March 2012.

In a July 12, 2013 letter, OWCP notified appellant of the deficiencies of his claim. It afforded him 30 days to respond to its inquiries and to submit additional evidence.

Appellant submitted a July 19, 2013 narrative statement, reiterating that during his volunteer service in Ukraine he slept on cots that rested on spring-supported frames that dipped like a hammock and had back discomfort every single morning he woke up. He stated that he would do a specific stretch and would have to crack his back in a certain way for the pain to dissipate, but when he sat upright in a chair there would be some back discomfort.

In a February 28, 2013 report, Dr. Eun A. Kim, a Board-certified family practitioner, obtained a history that appellant was in Ukraine for the Peace Corps and believed his back pain was from sleeping in bad beds. Dr. Kim diagnosed back, right shoulder and right elbow pain with psoriasis.

An x-ray of the lumbosacral spine dated February 28, 2013 revealed indistinctness of the mid aspect of the articular process of L5. Dr. Mithilesh Singh, a Board-certified radiologist, stated that the "[f]inding may represent spondylosis. It is, however, not definitely noted on the oblique views."

A March 7, 2013 magnetic resonance imaging (MRI) scan obtained by Dr. Myung-Soo Lee, a radiologist, revealed a left paracentral annular fissure at L5-S1. The MRI scan was otherwise unremarkable of the lumbar spine.

By decision dated September 27, 2013, OWCP denied appellant's claim. It found that the work exposures occurred as alleged but that the medical evidence was insufficient to establish his lumbar condition was caused by his Peace Corp volunteer service.

## **LEGAL PRECEDENT**

FECA provides that an injury or illness sustained by a Peace Corps volunteer when he or she is outside the United States shall be presumed to have been sustained while in the performance of duty and proximately caused by federal employment. This presumption may be

rebutted by evidence demonstrating that the injury or illness: (1) was caused by the volunteer's willful misconduct or intent to bring about injury to self or another; (2) was proximately caused by the volunteer's intoxication by alcohol or illegal drugs; (3) preexisted the period of service abroad; or (4) manifested symptoms of, or consequent to, a preexisting congenital defect or abnormality.<sup>2</sup> If the presumption is rebutted by evidence showing that the injury or illness preexisted the period of service abroad or manifested symptoms of, or consequent to, a preexisting congenital defect or abnormality, the volunteer may still prove his or her claim and be entitled to compensation if he or she submits substantial, probative and rationalized evidence establishing that the injury or illness was proximately caused or materially aggravated, accelerated or precipitated by factors or conditions of Peace Corps service.<sup>3</sup>

While Peace Corps volunteers are normally entitled to the presumption that an injury or illness sustained while abroad is proximately related to federal 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.<sup>4</sup>

### ANALYSIS

Appellant was a Peace Corps volunteer in Ukraine from March 29, 2010 to June 27, 2012. He filed an occupational disease claim for a low back condition sustained while abroad. The presumption arises that appellant, as a Peace Corps volunteer, sustained an employment-related injury while in the performance of duty. As noted above, this presumption is rebuttable.<sup>5</sup> The case record does not establish that appellant's condition preexisted his period of service abroad, was a preexisting congenital defect or the result of his willful misconduct, intent to bring about injury to himself or another or intoxication by alcohol or illegal drugs. To establish his claim, appellant must submit substantial medical evidence proving that his back condition was proximately caused or materially aggravated, accelerated or precipitated by work factors.<sup>6</sup>

Rationalized medical opinion evidence is generally required to establish causal relationship. The opinion of the physician must be based on a complete factual and medical background, must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.<sup>7</sup> The Board finds that the medical evidence does not sufficiently establish that factors of appellant's Peace Corps service caused or contributed to his back condition. In a February 28, 2013 report, Dr. Kim merely diagnosed back pain and indicated that appellant believed that it arose from sleeping in bad beds during his Peace

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<sup>2</sup> 5 U.S.C. § 8142(c)(3); 20 C.F.R. § 10.730(a).

<sup>3</sup> 20 C.F.R. § 10.730(b)-(c).

<sup>4</sup> See *S.S.*, 59 ECAB 152 (2007).

<sup>5</sup> See *supra* note 2.

<sup>6</sup> See *Charles S. Hamilton*, 52 ECAB 110, 114-15 (2000); *A.W.*, Docket No. 13-648 (issued June 4, 2013).

<sup>7</sup> See *I.J.*, 59 ECAB 408 (2008).

Corps service in Ukraine. He did not provide a firm diagnosis or a rationalized opinion explaining how factors of appellant's Peace Corps service, such as sleeping on bad beds, frequent travel and carrying backpacks and luggage, caused or aggravated his back pain. Dr. Kim noted that appellant's condition possibly occurred while he was in Ukraine, but such generalized statements are speculative and do not establish causal relationship. They merely repeat appellant's allegations and are unsupported by adequate medical rationale explaining how his physical activity at work actually caused or aggravated the diagnosed conditions.<sup>8</sup> The Board finds that the report from Dr. Kim is insufficient to establish that appellant sustained an employment-related injury.

In Peace Corps medical evaluation reports dated March 29 and June 26, 2012 from an unidentifiable physician noted that appellant's back pain was caused by the use of an uncomfortable bed. These forms, lacking proper identification, cannot be considered as probative evidence. A medical report may not be considered as probative medical evidence if there is no indication that the person completing the report qualifies as a physician as defined in FECA.<sup>9</sup> Therefore, appellant did not meet his burden of proof with these submissions.

Dr. Singh's February 28, 2013 x-ray and Dr. Lee's March 7, 2013 MRI scan, offered limited probative value on the issue of causal relationship. Neither of the diagnostic reports addressed whether appellant's service in the Peace Corps caused or contributed to his back condition.<sup>10</sup> In the absence of rationalized medical opinion evidence, appellant failed to meet his burden of proof.

On appeal, appellant contends that the evidence he submitted is sufficient to establish that he sustained a paracentral annular fissure at L5-S1 a direct result of his volunteer service in Ukraine from sleeping on bad beds, long train rides and work-related travel with heavy backpacks and luggage. The Board has held that the mere fact that appellant's symptoms arise during a period of employment or produce symptoms revelatory of an underlying condition does not establish a causal relationship between his condition and his employment factors.<sup>11</sup> The Board finds that the medical evidence of record is insufficient to establish that appellant's Peace Corps service caused or contributed to his low back condition.

### CONCLUSION

The Board finds that appellant has not met his burden of proof to establish that he sustained an occupational disease while in the performance of duty.

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<sup>8</sup> See *K.W.*, Docket No. 10-98 (issued September 10, 2010).

<sup>9</sup> See *Merton J. Sills*, 39 ECAB 572 (1988). See also *Bradford L. Sutherland*, 33 ECAB 1568 (1982).

<sup>10</sup> See *J.F.*, Docket No. 09-1061 (issued November 17, 2009); *S.E.*, Docket No. 08-2214 (issued May 6, 2009).

<sup>11</sup> See *Richard B. Cissel*, 32 ECAB 1910, 1917 (1981); *William Nimitz, Jr.*, 30 ECAB 567, 570 (1979).

**ORDER**

**IT IS HEREBY ORDERED THAT** the September 27, 2013 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 28, 2014  
Washington, DC

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

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

James A. Haynes, Alternate Judge  
Employees' Compensation Appeals Board