

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

C.S., Appellant	)	
	)	
and	)	Docket No. 23-0191
	)	Issued: June 21, 2023
PEACE CORPS VOLUNTEER SERVICES,	)	
Washington, DC, 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  
JANICE B. ASKIN, Judge  
JAMES D. MCGINLEY, Alternate Judge

**JURISDICTION**

On November 23, 2022 appellant filed a timely appeal from an October 13, 2022 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 a brain tumor causally related to the accepted employment exposure.

**FACTUAL HISTORY**

On December 5, 2021 appellant, then a 37-year-old international cooperation volunteer, filed an occupational disease claim (Form CA-2) alleging that he developed a brain tumor due to his exposure to residual radiation from the Chernobyl nuclear incident while spending three

---

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

months training in Chernigov and 24 months on site at Khartsyzsk. He first became aware of his condition on June 1, 2021, but did not realize that it had been caused or aggravated by his employment until November 15, 2021.

In support of his claim, appellant submitted discharge and hospital records dated from June 9 through 18, 2021 from a hospital, New Zealand regarding his treatment of a large right frontal dural-based lesion, with right craniotomy and excision of tumor. The records indicated that appellant had presented with a progressive headache, worsening over the last month, with one month of concentration issues, one week of personality changes, with probable quickly-recovering absence-type seizures, and a few days of vomiting. Appellant also submitted a World Health Organization treatise on doses of ionizing radiation and the increased risk of death from solid cancers.

A July 23, 2021 surgical report noted that appellant underwent right craniectomy for infected bone flap. The report noted that appellant had undergone a prior craniotomy for resection of a very large right frontal meningioma. Following surgery there was evidence of gross infection of the bone flap.

In a letter dated December 9, 2021, Carlotta Smith, a nurse, provided an agency statement noting that appellant had served for two years in Ukraine from 2010 to 2012 and that he had filed a FECA claim alleging that his meningioma brain tumor was due to his exposure to radiation while on mission. She advised OWCP that she was unable to access appellant's Peace Corp chart and, thus, his prior medical history was unknown. Ms. Smith detailed appellant's work history, noting that he had lived 80 kilometers from the area in Ukraine where the Chernobyl Nuclear disaster occurred, and where a low level of radiation remained. She noted appellant's diagnosis of the brain tumor and subsequent treatment. Ms. Smith also reported that appellant continued to live in New Zealand and planned to move back to the United States.

On December 10, 2021 OWCP received a narrative statement wherein appellant noted his address in Auckland, New Zealand. Appellant alleged that he had been diagnosed with large dural right frontal lobe brain tumor and he had been informed by his physicians that the tumor might have been growing for one to two years undetected. He related his Peace Corps history in Ukraine including his training and where he lived. Appellant attributed his brain tumor to his low-level radiation exposure while working for the Peace Corps in Ukraine. He further related that the removal of his tumor had been covered by New Zealand's national healthcare and that he would require medical care and annual magnetic resonance imaging scans upon his return to the United States.

In a development letter dated December 10, 2021, OWCP informed appellant that the evidence of record was insufficient to establish his occupational disease claim. It advised him regarding the medical and factual evidence required to establish his claim. In a development letter of even date, OWCP requested the employing establishment to comment on appellant's statements and whether it agreed with his allegations. It also requested that the employing establishment provide records regarding appellant's radiation exposure. OWCP afforded both parties 30 days to provide the information requested.

In response to OWCP's development letter, appellant asserted that OWCP's request that he provide a letter from a medical professional that his tumor had been caused by his service in Ukraine was unreasonable. He alleged that his claim was similar to the link between smoking and lung cancer. Appellant argued that it was well known that radiation causes tumors and that he had been exposed to low level radiation while in Ukraine.

A December 21, 2021 employing establishment statement from Ms. Smith reiterated that the original Peace Corps medical records for appellant were not located at the Federal Record Center, therefore whatever had been uploaded completed the medical record documentation.

On April 6, 2022 OWCP referred appellant, together with a statement of accepted facts, medical record, and list of questions, to Dr. Josef A. Ottowicz, a Board-certified neurologist, to provide an opinion on whether the diagnosed brain tumor was causally related to accepted employment factors.

In a May 10, 2022 memorandum of telephone call (Form CA-110) appellant requested that the second opinion appointment be cancelled as he was living in New Zealand and could not travel due to his brain surgery and cost of ticket to the United States. In e-mail correspondence of even date, OWCP advised appellant that it had cancelled his second opinion evaluation appointment. It asked when he would be able to travel back to the United States so that a second opinion evaluation could be scheduled.

By decision dated October 13, 2022, OWCP denied appellant's claim finding that he failed to establish that the diagnosed medical condition was causally related to the accepted employment exposure.

### **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>

---

<sup>2</sup> *Id.* at § 8142(c)(3); 20 C.F.R. § 10.730(a); *see also M.C.*, Docket No. 19-0624 (issued December 8, 2020); *S.C.*, Docket No. 14-0383 (issued May 28, 2014).

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

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

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

The evidence establishes that appellant served in the Peace Corps from 2010 to 2012 in Ukraine and that he has alleged that his meningioma brain tumor was due to his exposure to low level radiation while serving in Ukraine. The medical evidence of record consists of reports from a hospital in New Zealand diagnosing very large frontal meningioma.

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.<sup>5</sup> The presumption under section 8142(c)(3) of FECA is applicable in this case.

OWCP failed to apply the presumption as outlined by FECA and its implementing regulations. Therefore, the case will be remanded for OWCP to further develop the claim consistent with the appropriate procedures. Following this and other such further development as deemed necessary, OWCP shall issue a *de novo* merit decision of appellant's claim.

### CONCLUSION

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

---

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

<sup>5</sup> *Supra* note 2.

**ORDER**

**IT IS HEREBY ORDERED THAT** the October 13, 2022 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further proceedings consistent with this decision of the Board.

Issued: June 21, 2023  
Washington, DC

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

Janice B. Askin, Judge  
Employees' Compensation Appeals Board

James D. McGinley, Alternate Judge  
Employees' Compensation Appeals Board