

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of CHARLES S. HAMILTON and PEACE CORPS,
OFFICE OF MEDICAL SERVICES, Washington, DC

*Docket No. 99-1792; Submitted on the Record;
Issued October 13, 2000*

DECISION and ORDER

Before WILLIE T.C. THOMAS, MICHAEL E. GROOM,
VALERIE D. EVANS-HARRELL

The issue is whether appellant has established that his extraction and replacement of implants and full crowns for his teeth numbered 30 and 31 were causally related to his employment.

On October 19, 1998 appellant filed a claim for an occupational disease, Form CA-2, alleging that on October 12, 1998 he sustained a loss of his crown, which was related to his employment. Appellant stopped working for the employing establishment on September 15, 1994.

Appellant explained that, on June 1, 1989, while working for the employing establishment in Botswana, based on a dentist's recommendation, he had a crown placed on one of his molars.¹ The crown gave him trouble until April 1992 when it fell off and, due to an infection that, spread in his jaw, appellant underwent surgery and the crown was reattached. Appellant stated that, on October 11, 1994, while he was in Great Britain returning from a tour of service in Gambia, the crown fell off again. An employing establishment official told him to seek medical assistance in the United States. On February 13, 1995 the dentist informed him that the length of roots left on the tooth as a result of the previous procedure were insufficient and recommended a specialist for possible implants. On October 12, 1998 appellant stated that while eating a sandwich the crown fell off again.

In a medical report dated April 11, 1992, Dr. Costa Nicolopoulos, a dentist, stated that he was treating appellant for management of the cyst periapical to tooth number 30. Based on examination and x-rays, he noted that the root for tooth number 30 was previously treated in 1988 with fractured endodontic instrument in mesio-buccal canal; there was a large plus 7 millimeter radiolucency periapical to distal root; and tooth number 31 was previously

¹ The record indicates that appellant served in the employing establishment from March 20, 1989 to June 10, 1992 and from August 15, 1992 to September 15, 1994.

apicoectomized in the U.S., with periapical radiolucencies evident. Dr. Nicolopoulos diagnosed radicular cyst periapical to tooth number 30 and periapical granuloma to tooth number 31. He noted that appellant underwent surgery on April 9, 1992 including an apicoectomy of tooth number 30 and a reapiectomy of tooth number 31, and stated that, if the apicoectomies failed, tooth number 30 or number 31 or both should be extracted and implants inserted.

A health record, dated February 13, 1995, stated that appellant's teeth numbered 30 and 31 had apicoectomies done all the length of the roots and were insufficient. The record stated that there were radiolucent areas present indicative of chronic infection and recommended that appellant see a specialist for possible implants. Appellant also submitted progress notes dated January 10, 1985 through July 11, 1997. The progress note dated February 13, 1995, stated that appellant's nerve roots were short and might require implants in the future.

In a medical report dated October 20, 1998, Dr. William J. Burke, a dentist, stated that he had given appellant emergency treatment for a dental problem on October 15, 1998. He stated that appellant's crown on tooth number 30 had come off and an x-ray of the area revealed that tooth number 30 had blunted roots from previous endodontic surgery, there was root canal treatment and post and core build up for placement of a crown, periapical pathology at the apexes of tooth number 30 and significant bone loss mesial to tooth number 30. Dr. Burke stated that he advised appellant that tooth number 30 had a questionable prognosis along with tooth number 31. He recommended three options for treatment.

In a report dated October 26, 1998, appellant's treating dentist, Dr. Robert W. Emery, noted that appellant had lesions and periodontal disease in teeth number 30 and number 31 and that the lesions were a result of treatment appellant received while he was working for the employing establishment. He recommended, *inter alia*, extraction of teeth number 30 and number 31 and placement of implants in those areas.

In a report dated November 23, 1998, a second opinion physician, Dr. David Spiegelman, a dentist, stated that, prior to appellant's working for the employing establishment, appellant had root canal therapy on tooth number 30 and an apicoectomy on tooth number 31. He stated that the 1992 x-rays showed sufficient length of root structure to support teeth number 30 and number 31. Dr. Spiegelman stated that, at the present time, there was insufficient root structure to support these teeth and extraction was needed. He emphasized that, contrary to appellant's assertion, the surgery he had while working for the employing establishment did not leave him with short roots because the x-rays showed there was sufficient root structure after the surgery. Dr. Spiegelman stated that appellant's roots were too short because of resorption caused by the untreated cysts around teeth number 30 and number 31. He stated that, if appellant had completed the recommended treatment of apicoectomies on teeth number 30 and number 31 at the time of his examination in 1994, the periapical infections in the area would have been eliminated. Dr. Spiegelman stated that the teeth suffered root resorption due to appellant's neglect.

By letter dated December 15, 1998, the Office of Workers' Compensation Programs requested additional information from appellant including a comprehensive medical report from his treating physician identifying his medical condition, the cause of the medical condition and, if he found the medical condition work related, an explanation for his finding.

By letter dated January 7, 1999, appellant requested that all x-rays upon which Dr. Spiegelman based his opinion be released to Dr. Emery. He also stated, in response to Dr. Spiegelman's report, that when he was examined by the employing establishment in 1994 they did not authorize apicoectomies.

In a memorandum of a telephone call dated January 20, 1999, the Office indicated that it was trying to determine which x-rays could be released.

By decision dated January 21, 1999, the Office denied the claim, stating that the medical evidence did not establish that the claimed condition of extracts and replacement with implants and full crowns for teeth number 30 and number 31 were related to factors of his federal employment.

By letter dated January 28, 1999, appellant requested reconsideration of the Office's decision and submitted a medical report from Dr. Emery dated March 23, 1999. In his report, Dr. Emery opined that there was justification for appellant's claim that the damage to his right posterior mandible and teeth number 30 and number 31 was a result of the dental treatment he received while working for the employing establishment. He stated that the August 3, 1988 x-rays showed endodontic treatment was performed on teeth number 30 and number 31 and the root length was normal. Dr. Emery stated that the employing establishment's records from April 11, 1992 indicated that a fracture endodontic instrument was present in tooth number 30, that there was a periapical cyst and that an apicoectomy had been performed on tooth number 31. He stated that the records also indicated that an apicoectomy had previously been performed on tooth number 31. Dr. Emery stated that he had no record or radiographs indicating when the surgery was performed on tooth number 31. He stated that radiographs "from this period" showed that the root length of teeth number 30 and number 31 were normal. Dr. Emery reviewed x-rays performed on October 12, 1994 which showed gross caries of tooth number 30 with periapical lesion and short clinic roots or teeth number 30 and number 31. He stated that the employing establishment's records from February 13, 1995 indicated that teeth number 30 and number 31 had periapical lesions with short root length and recommended implants. Dr. Emery further noted that between 1992 and 1994 appellant had surgery performed on teeth number 30 and number 31 while he worked for the employing establishment but he did not have those dental records. He concluded that appellant's teeth were in extremely poor shape in October 1994 and stated:

"No matter how you view the records available to [him] at this time, no matter what [appellant] did after 1994, he would have lost those teeth. I believe [appellant] is justified in his claim regarding teeth number 30 and number 31."

By decision dated April 23, 1999, the Office denied appellant's request for modification.

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

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.”²

The record establishes that appellant had endodontic treatment performed on teeth number 30 and number 31 on or around August 3, 1988 and, therefore, his dental problem was a preexisting condition. The presumption is, therefore, rebutted pursuant to section 10.730(a)(2) and appellant bears the burden of establishing a causal relation to his employment. This burden includes the submission of substantial, probative and reasoned medical evidence that appellant’s illness or injury was proximately caused, materially aggravated, accelerated or precipitated by factors of his Peace Corps service.³

In his November 23, 1998 report, the referral physician, Dr. Spiegelman emphasized that the surgery the employing establishment performed on appellant’s teeth in 1992 did not leave

² 20 C.F.R. § 10.730 (1999); *Joe T. Williams*, 44 ECAB 518, 520-21 (1993).

³ See *Earl D. Price*, 39 ECAB 1053 (1053).

appellant with short roots as post surgery x-rays showed that appellant's roots for teeth number 30 and number 31 were normal. He stated that appellant's roots were too short because of resorption caused by the untreated cysts around teeth number 30 and number 31. Dr. Spiegelman stated that appellant's teeth suffered root resorption due to appellant's neglect and improper, follow-up dental treatment.

In his October 26, 1998 report, appellant's treating dentist, Dr. Emery, stated that appellant had lesions and periodontal disease in teeth number 30 and number 31 and that the lesions were a result of treatment appellant received while he was working for the employing establishment.

In his March 23, 1999 report, Dr. Emery, opined that the damage to appellant's right posterior mandible and teeth number 30 and number 31 were due, in part, to the treatment he received while working for the employing establishment. He stated that the August 3, 1988 x-rays showed that the root length was normal but the employing establishment's records from April 11, 1992 indicated that a fracture endodontic instrument was present in tooth number 30, that there was a periapical cyst on that tooth and an apicoectomy had been performed on tooth number 31. He found that by October 12, 1994, the employing establishment's records showed short clinic roots of teeth number 30 and number 31.

Section 8123(a) of the Federal Employees' Compensation Act⁴ provides that, "[i]f there is disagreement between the physician making the examination of the United States and the physician of the employee, the Secretary shall appoint a third physician who shall make an examination."

The Board finds that a conflict exists between Dr. Spiegelman's opinion that the dental condition of appellant's teeth at number 30 and number 31 was not work related and Dr. Emery's opinion that appellant's dental condition was work related. The case, therefore, requires remand for an impartial medical specialist to resolve the conflict in the medical opinions. On remand, the Office should refer the case record with all relevant x-rays and medical records and a statement of accepted facts to an appropriate physician to reevaluate the evidence pursuant to section 8123(a) of the Act. Following this and such further development as the Office deems necessary, it shall issue a *de novo* decision.

⁴ 5 U.S.C. § 8123(a).

The decisions of the Office of Workers' Compensation Programs dated April 23 and January 21, 1999 are hereby set aside and the case is remanded for further consideration consistent with this opinion.

Dated, Washington, DC
October 13, 2000

Willie T.C. Thomas
Member

Michael E. Groom
Alternate Member

Valerie D. Evans-Harrell
Alternate Member