
UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NY/2021/038

Judgment No.: UNDT/2022/055

Date: 10 June 2022

Original: English

Before: Judge Joelle Adda

Registry: New York

Registrar: Morten Albert Michelsen, Officer-in-Charge

APPLICANT

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT

Introduction

1. The Applicant contests the decision of the acting United Nations Medical Director to deny his .
2. The Respondent contends that the application is not receivable, and in any event, without merits.
3. For the reasons set out below, the application is granted in part.

Facts

4. On 29 June 2018, the Applicant filed a claim for compensation under Appendix D of the Staff Rules to the Advisory Board on Compensation Claim ABCC .
5. By letter dated 6 November 2020, a Senior Medical Officer from the Division of Heal , with

follows regarding

I have reviewed the claim in detail, including recent medical reports and the statements provided by [the Applicant]. My determination is that his illness is not attributable the performance of official duties.

The claimant states his illness is secondary to regular workplace interactions, and acknowledges these interactions are not considered prohibited conduct.

Whilst there is no requirement to establish fault or negligence under Appendix D, there is a requirement to establish a link between the illness and the performance of duties. The claimant has not done so, emphasizing only routine normal work and common workplace interactions, and there remains a significant amount of uncertainty as to the cause:

- a. His illness could equally be due to factors at home or outside the workplace; or

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b. DHMOSH responded on 6 November 2020 that it was unable to make a determination because the Applicant had not met his burden of proof to establish that his illness is attributable to the performance of his duties . DHMOSH explained that psychiatrist/health professional, developed her opinion descriptions , without any knowledge of the workplace except as described by the claimant . DHMOSH further noted that [f]or such complex matters involving the evolution of psychiatric/psychological illness, this would normally preclude any assessment of causation by a health professional ;

c. DHMOSH advised the ABCC that, based on the notes of the a significant amount of uncertainty as to the cause matters extraneous to the workplac

e. [redacted] obligated to rely on another medical determination to [redacted] is baseless [redacted] here is no provision in Appendix D requiring the ABCC to rely on a medical determination. Further, in *Kisia* 2020-UNAT-1049, the Appeals Tribunal confirmed that the factual determination on whether an illness is service-incurred is a non-medical assessment

f. [redacted] Article 1.7(a)(ii) of Appendix D is mandatory and requires DHMOSH to provide a medical determination is baseless. Article 1.7(a)(ii) of Appendix D does not require DHMOSH to make a medical determination as to direct causation of an illness. The provision only states that a medical determination may include a determination of whether an illness is directly causatively related to the performance of official duties. Accordingly, a medical determination of causation is discretionary

g. Article 2.2 of Appendix D clearly states that the ABCC is responsible for determining causation in assessing whether an illness is self-incurred such an assessment does not require the ABCC to rely on a medical determination. Instead, it provides that, when appropriate, the ABCC can rely on recommendations or technical advice. Therefore, interpreting Article 1.7(a)(ii) as a mandatory medical determination would breach Article 2.2 it is clear from the structure of Appendix D that Article 2.2 supersedes Article 1.7(a)(ii) under the *Specialia generalibus derogant* rule (the specific derogates from the general). Article 1.7(a) is a general introductory article about the role of the medical division and is part of Section I Scope and General Provisions whereas Article 2.2 is a specific article about the Eligibility for coverage and is part of Section II requirements and conditions for coverage. Therefore, Article 1.7(a)(ii) is not mandatory and does not require DHMOSH to provide a medical determination

h. The Applicant has not met his burden of proof for DHMOSH to provide a medical determination claim that, by providing a medical note as requested by the Respondent, he met his burden of proof for DHMOSH to provide a medical determination is without merit. The medical note that the Applicant submitted was insufficient for DHMOSH to provide a medical determination. The suggestion that the Applicant submit such a medical note did not absolve the claimant of his obligation to fully establish his claim. It was not a commitment that the ABCC would find

causation, i.e. that, under service with the Organization

i. The ABCC is ultimately in charged with analyzing and determining a claim reviewed psychiatrist in mental health cases, the treating physician is not in a position to assess causation, the ABCC concluded that causation. The ABCC did not limit the scope of the evidence the claimant could submit in support of his claim to satisfy his burden of proof. The Applicant had the opportunity to provide independent evidence related to causation, but did not do so

j. DHMOSH made a medical determination is baseless clearly indicated that it was unable to make such a determination because the assessment of causation cannot be made by the there remains a significant amount of uncertainty as to the cause not provide additional evidence in support of his claim regarding causation, and, contrary to the the Applicant to produce additional evidence

k. The use of
November 2020

December 2020 letter, referred to

20 letter a the opinion

22. The Res *Kisia*, arguing that findings on causality are factual and non-medical assessments. The Tribunal, however, notes that the legal framework in this case was different as it concerned another and older version of Appendix D, and the case is therefore not relevant to the present case. Also, many of the findings of DHMOSH in the 6 November 2020 letter in the present case were indeed of a medical nature. The letter was further made under arts. 1.7(a) and art. 2.2(c) of Appendix D determination and , respectively, and therefore also involves a medical assessment.

Remedies

23. The Applicant requests the following remedies:
- a. The decision of the ABCC and Controller denying Applicant's claim under Appendix D be rescinded and the claim be remanded to the ABCC for establishment of a Medical Board;
 - b. The Medical Board shall solely be provided the reports of Applicant's psychiatrist which were submitted to the ABCC ;
 - c. The Board members shall not independently examine Applicant but shall rely solely on the reports of Applicant's psychiatrist ;
 - d. Order that the relevant prescribed procedure be completed no later than 31 October 2021 ;
 - e. Alternatively, the Tribunal is requested to find that Applicant suffered a service-incurred disability and to direct Respondent to calculate and pay the

benefit entitlement for total disability under Article 3.2 of Appendix D that corresponds, retroactively from the date of the claim with interest ;

f. That interest be paid for the extraordinary delays (calculating the interest from January 2019 or five months after the submittal of the claim to the ABCC) ;

g. Order that the information and documentation requested to the Secretary of the ABCC be provided to Applicant ;

h. Order the payment of moral damages for the stress and moral damages for Respondent s unfair, unreasonable and illegal handling of Applicant's claim as well as for the significant delays and the serious and numerous procedural irregularities, at the highest end of the scale amounting to 2 years net base salary based on the supporting medical evidence

i. Refer this matter to the Secretary-General for possible action against the ABCC Secretary, DHMOSH, [United Nations] Medical Director, [United Nations] Controller, [Under-Secretary-General for Department of Management Strategy, Policy and Compliance to enforce accountability under 10.8 of its Statute ; and

j. Redact the public version of its judgment so as not to disclose details of the medical evidence which is confidential and sensitive .

24. In this regard, the Respondent

a. the decision of the Controller be rescinded and the claim be remanded cannot be granted because it is outside of the scope of this case as defined by the Dispute Tribunal in Order 043 (NY/2022) because the present case does not concern the decision of the controller

b. request for the establishment of a Medical Board and

fall within the scope of relief that the Dispute Tribunal may grant under Article 10(5) of its Statute . It is not the role of the Dispute Tribunal to define the scope of review by a medical board . Under art. 2.4 of ST/AI/2019/1, it is the role of the Medical Director to draft the terms of reference for such a board and the review process is at the discretion of the medical professionals reviewing the case

c. It is not the role of the Dispute Tribunal to determine that the
-incurred

5. As part of its judgement, the Dispute Tribunal may only order one or both of the following:

(a) Rescission of the contested administrative decision or specific performance, provided that, where the contested administrative decision concerns appointment, promotion or termination, the Dispute Tribunal shall also set an amount of compensation that the respondent may elect to pay as an alternative to the rescission of the contested administrative decision or specific performance ordered, subject to subparagraph (b) of the present paragraph;

(b) Compensation for harm, supported by evidence, which shall normally not exceed the equivalent of the applicant. The Dispute Tribunal may, however, in exceptional cases order the payment of a higher compensation for harm, supported by evidence, and shall provide the reasons for that decision.

Rescission under art. 10.5

26. The Tribunal notes that the contested administrative decision in the present case is the decision of the acting United Nations Medical Director of DHMOSH to deny the Controller of 30 December 2020 is not under review and therefore cannot be rescinded.

27. Instead, the logical consequence of rescinding the contested administrative decision would be to remand the case to DHMOSH for a new consideration in light of the decision of the Controller of 30 December 2020. As the basic legal premise for the contested administrative decision was flawed, the Tribunal find that this would be the most appropriate remedy in the present case (in line herewith, see the Appeals Tribunal in *Gueben et al.* 2016-UNAT-692, para. 48). In this regard, the Tribunal notes that it has no jurisdiction as to directing the work of a potential medical board or the ABCC.

28. As the present case does not concern appointment, promotion or termination, the Tribunal is not to set an amount for *in lieu* compensation.

Non-pecuniary damages

29. The Tribunal observes that under art. 10.5(b) of the Dispute Tribunal

- c. All other requests for remedies made by the Applicant are rejected.

(Signed)

Judge Joelle Adda

Dated this 10th day of June 2022

Entered in the Register on this 10th day of June 2022

(Signed)

Morten Albert Michelsen, Officer-in-Charge, New York Registry