UNITED NATIONS APPEALS TRIBUNAL
TRIBUNAL D'APPEL DES NATIONS UNIES

Judgment No. 2019-UNAT-974

Abu Salah

(Appellant)

v.

Commissioner-General
of the United Nations Relief and Works Agency
for Palestine Refugees in the Near East

(Respondent)

JUDGMENT

Before:	Judge Dimitrios Raikos, Presiding Judge Martha Halfeld Judge Graeme Colgan
Case No.:	2019-1275
Date:	25 October 2019
Registrar:	Weicheng Lin

Counsel for Mr. Abu Salah:	Self-represented
Counsel for Commissioner-General:	Michael Schoiswohl

JUDGE DIMITRIOS RAIKOS, PRESIDING.

1. Mr. Ayman Mohammad Abu Salah, an Emergency Social Worker with the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA or Agency) requested that he be transferred to an office job in the interest of his health and family. A medical board was convened to assess his fitness for his duty within the Agency. After four evaluations, the Medical Board concluded that Mr. Abu Salah was unfit for continued service with the Agency. Mr. Abu Salah's service was accordingly terminated on medical grounds. Mr. Abu Salah contested the termination decision. The UNRWA Dispute Tribunal (or UNRWA DT) dismissed his application, finding that no reasons had been advanced to show that the termination decision was the product of substantive or procedural irregularity. For reasons set forth herein, we affirm the UNRWA Dispute Tribunal's Judgment.

Facts and Procedure

2. Effective 11 February 2009, Mr. Abu Salah began to work for the Agency under a fixed-term appointment as an Emergency Social Worker, Grade 10, with the Emergency Programme in the Gaza Field Office (GFO). He still held this position in 2016.

3. In the present appeal, Mr. Abu Salah states that, on 9 October 2016, he submitted a request for "a break from the field [] work for a limited period of time" due to family and health reasons. In his UNRWA DT application, Mr. Abu Salah stated that he was exhausted by the continuous field work and requested a transfer to an office position.

4. On 20 October 2016, the Head, Field Human Resources Office, GFO (H/FHRO/G) requested that a medical board be convened to evaluate Mr. Abu Salah's physical fitness for continued service with the Agency in his current post or in any other post.

5. A Medical Board composed of three doctors (Dr. Taysier El-Amassie as Chairperson, Dr. Khalil Hamad and Dr. Moh'd Yazji as Members) was convened to examine Mr. Abu Salah. The Medical Board's findings dated 5 December 2016 were that Mr. Abu Salah was unfit for the time being for duties, that he should be re-evaluated after three months, and that he should continue with medications regularly.

6. After a mental state examination on 1 April 2017, the Medical Board concluded that Mr. Abu Salah was still unfit for duties, that he sh

13. On 3 January 2018, in response to Mr. Abu Salah's request for decision review, the DUO/G affirmed the decision to terminate his appo intment on medical grounds. He stated that he had considered all of the information available but was unable to identify any reason to change the termination decision.

14. On 15 February 2018, Mr. Abu Salah filed an application with the UNRWA Dispute Tribunal against the decision to terminate his appointment on medical grounds.

15. In Judgment No. UNRWA/DT/2019/020, th e UNRWA Dispute Tribunal dismissed Mr. Abu Salah's application. The UNRWA DT noted that after Mr. Abu Salah had requested a transfer based on a medical report indicating hi s incapacity to continue performing his duties

never attended any evaluation session with him, yet he signed off on all the medical examination reports. It should be noted that Dr. El-Amassie is ready to testify before the Appeals Tribunal to the effect that the procedure followed by the Medical Board was incomplete and inadequate.

19. After he was evaluated by the Medical Board on 20 September 2017, Mr. Abu Salah saw two qualified psychiatrists at the "Governmental Psychiatric Hospital" for psychological evaluation. Contrary to the conclusions reached by the Medical Board, the two psychiatrists found Mr. Abu Salah "possess[ed] a psychological integrity … and [was] able to practice [his] work normally". The Chairperson of the Medical Board refused to keep this report in Mr. Abu Salah's file.

20. The reports issued by the Medical Board were "unfair" and the outcome of a "personal bias". If he had indeed had the medical condition since he was 17 years old as diagnosed by the Chairperson of the Medical Board, how was it possible for Mr. Abu Salah to have worked for the Agency for more than 13 years with a satisfactory and successful performance and without any hospital or clinical record of such a disorder? In this connection, Mr. Abu Salah submits two certificates of training that he attended in 2013 and 2015 and a letter of appreciation and gratitude for his extraordinary service during the July-August 2014 conflict in Gaza.

21. Mr. Abu Salah requests that the Appeals Tribunal call Dr. El-Amassie as a witness, establish a "transparent" Medical Board with a psychiatric specialty to assess his psychological health, and return him to work for the Agency.

The Commissioner-General's Answer

22. Mr. Abu Salah has failed to anchor his appeal on any of the grounds set forth in Article 2 of the Statute of the Appeals Tribunal with specific submissions. His "clarifications" are either a repetition of facts asserted before the UNRWA Dispute Tribunal or new facts aimed at disputing, for the first time, facts that were not in dispute before the UNRWA DT. As these claims are a mere repetition of previous arguments, Mr. Abu Salah's pleas should be dismissed as not receivable.

23. Mr. Abu Salah's objection to the facts as summarized by the UNRWA Dispute Tribunal in relation to his alleged request for a transfer to a clerical post, the Medical Board's taking the decision without seeing him, and his psychiatrists' report, is not credible.

24. Mr. Abu Salah's appeal should be dismissed insofar as it seeks to dispute, for the first time on appeal, the facts that remained undisputed before the UNRWA Dispute Tribunal. For instance, Mr. Abu Salah now alleges that he insisted on returning to work after the first evaluation by the Medical Board. He also alleges that none of the Medical Board Members are psychologists and were therefore not qualified to diagnose him. He further alleges that after the Medical Board's 20 September 2017 assessment, he went to the Governmental Psychiatric Hospital for evaluation, and the Chairperson of the Medical Board refused to keep the psychiatrists' report on file. These alleged events constitute new facts before the Appeals Tribunal.

25. Mr. Abu Salah failed to provide the UNRWA Dispute Tribunal, or for that matter, the Appeals Tribunal, with copies of the medical reports that support his allegation of medical fitness. He also failed to challenge or rebut certain facts as presented in the Respondent's reply before the UNRWA Dispute Tribunal, if he had indeed had reasons to contest them.

26. The UNRWA Dispute Tribunal did not err as a matter of fact or law that would require a reversal of its Judgment in the present case. There is no legal basis to consider the reliefs that Mr. Abu Salah is seeking on appeal.

27.

exercise the jurisdiction vested in it; (c) erred on a question of law; (d) committed an error of procedure, such as to affect the decision of the case; or (e) erred on a question of fact, resulting in a manifestly unreasonable decision.

33. The Appeals Tribunal emphasizes that the appeals procedure is of a corrective nature and, thus, is not an opportunity for a dissatisfied party to reargue his or her case. A party cannot merely repeat on appeal arguments that did not succeed before the lower court. The function of the Appeals Tribunal is to determine if the Dispute Tribunal made errors of fact or law, exceeded its jurisdiction or competence, or failed to exercise its jurisdiction, as prescribed in Article 2(1) of the Appeals Tribunal's Statute. An appellant has the burden of satisfying the Appeals Tribunal that the judgment he or she seeks to challenge is defective. It follows that an appellant must identify the alleged defects in the impugned judgment and state the grounds relied upon in asserting that the judgment is defective.[1]

34. On appeal, Mr. Abu Sala

Board about his fitness, drawing on the persuasive technical value of the latter, without making medical findings of its own, which it was not competent to make anyway.[4]

42. Further, we recall the holding of the former United Nations Administrative Tribunal in *Ali*:[5]

> … The Applicant also claims that the first Medical Board, convened in 1991, erred in its decision finding her fit for service. The Tribunal notes that the findings of a medical board, as an expert advisory body, are subject to a more limited review, since such findings are based on the technical medical knowledge of the Board's members. […] Furthermore, the decision by the Commissioner-General to accept the

45. It is obvious that Mr. Abu Salah was not satisfied with the UNRWA DT's decision. He has failed, however, to demonstrate any error in the UNRWA DT's finding that the Administration's decision to terminate his appointment on medical grounds was lawful, by proffering evidence that this decision was unreasonable, it resulted from an invalid exercise of the discretionary power of the Administration and/or it was tainted by improper motives or otherwise unlawful. He merely voices his disagreement with the UNRWA DT's findings and resubmits his contentions to this Tribunal. He has not met the burden of proof of demonstrating an error in the impugned Ju

Judgment

49. The appeal is dismissed and Judgment No. UNRWA/DT/2019/020 is hereby affirmed.

Original and Authoritative Version: English

Dated this 25th day of October 2019 in New York, United States.

(Signed)	(Signed)	(Signed)
Judge Raikos, Presiding	Judge Halfeld	Judge Colgan

Entered in the Register on this 20th day of December 2019 in New York, United States.

(Signed)

Weicheng Lin, Registrar