



Case No.: UNDT/NY/2010/091

Judgment No.: UNDT/2012/167

Date: 6 November 2012

Introduction

1. This is a judgment on a preliminary issue regarding the receivability of the Applicant's claim that she was unlawfully denied compensation for injuries sustained as a result of a vehicular accident while on official duty. The administrative decision, which is being contested, was made on the recommendation of the Advisory Board on Compensation Claims ("ABCC") on 25 August 2010 and was notified to the Applicant on 27 August 2010.

2. It is the Applicant's case that the accident, whilst driving her private vehicle, was incurred in the course of service with the United Nations as she was commuting from the United Nations Headquarters to her home in the borough of the Bronx, New York, USA. The Respondent resists the claim on the basis that there were no errors of law or fact committed by the ABCC when rejecting the Applicant's claim for compensation since the ABCC found that the Applicant did not travel by the most direct route possible (the accident occurred).)T

determined in accordance with the proper interpretation of the meaning of art. 17 of Appendix D to the Staff Rules.

5. This case was assigned to the undersigned Judge on 25 October 2012.

Consideration

Appendix D to the Staff Rules (ST/SGB/Staff Rules/appendix D/Rev.1)—Rules governing compensation in the event of death, injury or illness attributable to the performance of official duties on behalf of the United Nations

6. Article 17 sets out the procedure for such appeals and provides as follows (emphasis added):

(a) Reconsideration of the determination by the Secretary-General of the *existence of an injury or illness attributable to the performance of official duties*, or of the type and degree of disability *may* be requested within thirty days of notice of the decision; provided, however, that in exceptional circumstances the Secretary-General may accept for consideration a request made at a later date. The request for *reconsideration shall be accompanied by the name of the medical practitioner* chosen by the staff member to represent him on the medical board provided for under paragraph (b);

(b) A medical board shall be convened to consider and to report to [the ABCC] on the medical aspects of the appeal. The medical board shall consist of: (i) a qualified medical practitioner selected by the claimant; (ii) the Medical Director of the United Nations or a medical practitioner selected by him; (iii) a third qualified medical practitioner who shall be selected by the first two, and who shall not be a medical officer of the United Nations;

(c) [The ABCC] shall transmit its recommendation together with the report of the medical board to the Secretary-General who shall make the final determination;

(d) If after reviewing the report of the medical board and the recommendations of [the ABCC], the Secretary-General alters his original decision in favour of the claimant, the United Nations will bear the medical fees and incidental expenses; if the original decision is sustained, the claimant shall bear the medical fees and the incidental

expenses of the medical practitioner whom he selected and half of the medical fees and expenses of the third medical practitioner on the medical board. The balance of the fees and expenses shall be borne by the United Nations;

(e) Whenever an appeal under this article involves also an appeal against a decision of the Joint Staff Pension Board, the medical board established under the Regulations and Rules of the Joint Staff Pension Board and such medical board's shall be utilized to the extent possible for the purposes of this article.

The preliminary question of receivability

7. In accordance with Order No. 158 (NY/2012) the sole issue for determination

13. The Tribunal observes that the grounds upon which the Applicant's benefit

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b. The parties are to confirm that they are agreeable to the determination of the substantive merits of the claim on the documents;

c. The Applicant is to file and serve:

i. The police report of the accident;

ii. The statement that the Applicant gave to United Nations Safety and SecurityJe dervice; and