



UNITED NATIONS DISPUTE TRIBUNAL

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Case No.: UNDT/NBI/2014/014

Judgment No. UNDT/2015/111

Date: 16 November 2015

Original: English

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Before: Judge Coral Shaw

Registry:



9.



23. On 6 February 2012, the Applicant responded to the UNAMID Human Resources Section as follows:

Dear DM,

Thank you for your note of 19 December 2011 in which you requested additional information to be provided to ABCC, in order to process my claim for compensation.

I attached the P290 form duly completed.

There is no PA at the time of the injury because the injury occurred during a long period of time. As you know part of my job is loading and downloading goods. So what happen to my left shoulder was in fact because of the type of physical work I do for the use of the mission personnel.

There is no incident report as well because of the reason mention[ed] above.

The sick leave was already provided to you and it is in my medical file.

I attached the X-ray done by my medical doctor who determined my permanent disability.

Finally please note that the injury in my shoulder was in fact detected by the doctor of the Norwegian Deployable Hospital in MINURCAT II, Abeche as you can see from the medical records by Dr. Lt. Col. GM.

The treatment provided by the Norwegian Deployable Hospital MINURCAT II, Abeche was not up to the task to provide the necessary relieve (sic).

I was therefore requested to undergo further examination it was Professor N who through X-rays and further analyses determined

25. On 13 March 2012, UNAMID informed the Applicant that UNHQ in New York had notified it that:

[. . .] since you were unable to provide an incident report, it

29. On 12 November 2013, the ABCC met at its 46<sup>th</sup> meeting to consider the Applicant's claim requesting compensation under Appendix D for an injury claimed to ha

and the ABCC considers the request, based upon MSD's advice, and issues a recommendation (followed by a SG decision) regarding a claimant's request for a medical board. The ABCC's determination was based on evidentiary and not medical grounds. Where the issues in contention are not medical issues, a medical board is not appropriate.

In [the Applicant's] case, the ABCC recommendation and the SG decision were made on evidentiary and not medical grounds. Accordingly, the request for a medical board is not appropriate.

### Issues

35. There is no dispute that the Applicant suffered an injury which resulted in a disability. The question for the ABCC was whether the injury was caused by the [redacted] (the Applicant) or [redacted] (the Employer). The issues to be determined are:

- a. Was it lawful for the ABCC to recommend the denial of the Applicant's claim based on evidentiary grounds? Specifically, did the ABCC give the Applicant a sufficient opportunity to present evidence in support of his claims? In particular, whether the ABCC was obliged to call a hearing and allow the Applicant to call witnesses to test the evidence-28(r)-8(i)22(b)-11TJ ET Q q8 Tf 0 0 0eag and allow evidenc21 q Bw evidenc08 0 0 0



(a) Compensation shall be awarded in the event of ... injury ...  
of a staff member which is attributable to the performance of

(i) a personnel action form which includes index number, functional title, duty

grounds, specifically that the injury was not work related. Therefore the presence of the medical documentation from September 2009 would not in itself have satisfied the ABCC that the Applicant had injured his shoulder at work.

Respondent's submissions

47. On two occasions, the Applicant was provided with the opportunity to demonstrate that his injuries were service-incurred. The facts indicate that there is a seven month gap from the date of the alleged injury to the first record of the alleged injury.

48. While the Applicant sought pain medication for a shoulder ailment on 12 August 2009, this does not establish the date that he first sustained the injury and/or whether he did so while discharging work responsibilities.

49. The ABCC is tasked with finding the facts in order to determine whether a claimed injury or illness is service-incurred. Such determination includes reviewing contemporaneous documentation, including an incident



functions of ABCC include making recommendations to the Secretary General on claims for compensation. When reaching a decision on a claim for compensation, the Secretary General must consider two elements namely did the claimant suffer an injury and was the injury attributable to the performance of official duties on behalf of the United Nations

59. To properly exercise its functions and make sound recommendations, the ABCC must gather and evaluate the evidence in relation to both of these elements. The Tribunal holds that in this case it acted in accordance with its obligations.

60. In relation to the medical aspects of the claim, Appendix D provides for the convening of a Medical board upon a request for reconsideration of the





Conclusion

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