

Case No. UNDT/NY/2019/022

Judgm26.7e No. UNDT/NY/

of Dr. Rowell wrote that cardiac symptoms were diagnosed on 8 March 2005 and likely developed in 24-48 hours prior to the diagnosis. Dr. Rowell also noted that since the Applicant continued to have ongoing regular reviews with cardiologists, who ordered cardiac testing and prescribed cardiac medication, it would be unlikely for such treatment to have continued over 10 years from March 2005 without a medical provider enquiring about, commenting on or explaining the reason for ongoing cardiac investigations and the use of heart failure medication in a relatively young man. Dr. Rowell also wrote that there was no medical support provided for exceptional circumstances.

14. On 11 January 2019, the Secretary of ABCC informed the Applicant that there

In the contested decision, the Secretary of ABCC wrote that his office consulted MSD and both his office and MSD reviewed all the materials, medical reports, e-mails and the letter the Applicant submitted since 2017. Reiterating what Dr. Rowell wrote in the memorandum dated 6 December 2018, the Secretary of ABCC concluded that onset of the illness was March 2005 and thus over 11 years past the deadline (i.e. four months from onset of illness) and time-barred.

15. The Secretary of ABCC also noted that while the Applicant claims that e912()] TJET@.00000

al determines if the decision is legal, rational, procedurally correct, and proportionate. The Tribunal can consider whether relevant matters have been ignored and irrelevant matters considered, and also examine whether the decision is absurd or perverse. But it is not the role of the Dispute Tribunal to consider the correctness of the choice made by the Secretary-General amongst the various courses of action open to him. Nor is it the role of the Tribunal to substitute its own decision for that of the Secretary-General.

46. When it comes to a medical issue, the Appeals Tribunal held in *Karseboom* 2015-UNAT-601 that the Dispute Tribunal is not competent to make medical findings, and therefore, if there is any procedural flaw relating to a medical issue, the Dispute Tribunal must remand the case to a competent medical body.

47. The Applicant claims that congestive heart failure, which is the subject of his claim, is a progressive disease and it may not manifest itself at the time of the original causal event, like in this case. The Applicant submits that he was never diagnosed or treated for congestive heart failure until 2011 and he only became aware of the connection between the 2005 illness and his congestive heart failure in the fall of 2017 when his cardiologist reviewed his full medical file.

48. The Respondent submits that the Secretary of ABCC reasonably concluded, based on advice from MSD, that the March 2005, as demonstrated by the 2005 medical report. The Respondent further submits that the decision that there were no exceptional circumstances is reasonable in view of the length of the delay, the responsibility of staff members to be aware of the time limit to submit claims under Appendix D, and the medical advice provided by MSD.

49.

finds that the Secretary-General reasonably exercised his discretion to conclude that -barred and no exceptional circumstances existed in this case.

60. Therefore, the Tribunal finds that the Secretary-General did not abuse his discretionary authority in concluding that there were no exceptional circumstances