
UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NY/2021/026

Judgment No.: UNDT/2022/051

Date: 25 May 2022

Original: English

Before: Judge Joelle Adda

Registry: New York

Registrar: Morten Michelsen, Officer-in-Charge

ARVIZU TREVINO

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT

Counsel for Applicant:

Self-represented

Counsel for Respondent:

Alan Gutman, ALD/OHR, UN Secretariat

Clémentine Foizel, ALD/OHR, UN Secretariat

The board noted the reports of your psychiatrist, outlining years of alleged abuse and attribution of the cause of your illness, but also noted the opinion of Medical that there is uncertainty about the cause of your illness which could be due to matters outside the workplace and is most likely endogenous. This is supported by the nature of the illness, the nature and evolution of your symptoms, and by their failure to resolve once removed from the stressors of the workplace. Accordingly, although having considered the reports of your psychiatrist, Medical assessed that normal interactions and difficulties at work did not cause your illness, but heightened your awareness and emphasis of them, leading them to be emphasized at the exclusion of other factors.

The board reviewed your psychiatrist's statements that your illness is caused by work, noting the statements were based on your descriptions, and that the psychiatrist does not have any knowledge of the workplace except as described by you. For such complex matters involving the evolution of psychiatric/psychological illness, Medical advised the board this would normally preclude any assessment of causation by a health professional.

The board noted that, while 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 board determined that you have not done so.

Consideration

Compliance (“the USG/DMSPC”) instead of the previous delegation to either the Under-Secretary-General for the Department of Management for claims over USD25,000 or the Controller for *de minimis* claims.

10. The importance of proper authority is stressed by the Appeals Tribunal in *Appellant 2021-UNAT-*

annex signed by the USG/DMSPC on 22 November 2019, it then follows that the authority to make decisions on

f. The only medical expert determination on record in this case are the reports of Applicant's psychiatrist. The Respondent, however, is essentially requesting the Tribunal to ignore "the only medical evidence available by an accredited specialized medical professional (psychiatrist) supported by medical examinations and tests (including neurological evaluations and lab work), as well as years of treatment, and that directly addresses the causation of the illness and disability, linking the work incidents to the illness and disability suffered by the Applicant". Instead, DHMOSH's medical determination is neither based on a "medical examination of the Applicant nor on medical tests performed on the Applicant", or conducted by "an accredited psychiatrist".

g. With reference to *Peglan* 2016-UNDT-059 and in breach of a fundamental principle of administrative law, there is "no consistency in the [United Nations] Administration's reliance on the reports from the Applicant's psychiatrist". DHMOSH had "relied entirely on the reports of the Applicant's psychiatrist to certify all 17 months of medical leave requests, and to support its expert medical determination as Medical Consultant" to the United Nations Joint Staff Pension Fund, as well as in other instances. If DHMOSH had "any doubts on these medical reports why then it never requested that Applicant be examined by another psychiatrist obtained by the United Nations for a second opinion";

h. The medical report by the Applicant's psychiatrist provided to the ABCC on 31 July 2018 met all "requirements of Appendix D, as well as the instructions provided directly by [United Nations] Administration to the Applicant, and clearly determine[d] the link of the unwelcome and improper work incidents and the Applicant's illness and disability";

“comply with the adversarial principle and the principle of *audi alteram partem*”; (iv) the “procedural and legal irregularities by the [United Nations] Administration in the handling of Applicant's Appendix D claim are so numerous and so serious in nature that are tantamount to a denial of due process, denial to access to justice, and an outright illegal denial of Applicant’s right to

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29. In any event, under *Applicant* 2021-UNAT-1133, the Tribunal has no authority to review the medical opinion of DHMOSH or its relevancy related to the Applicant's claim before the ABCC. As the contested decision correctly reflected the conclusions of this op

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Conclusion

40. The application is rejected.

41. In compensation for the unduly and inordinately protracted process in rendering the contested decision, the Applicant is awarded USD2,500 in accordance with art. 10.5(b) of the Statute of the Dispute Tribunal

42. The aforementioned compensation shall bear interest at the United States of America prime rate with effect from the date this Judgment becomes executable until payment of said compensation. An additional 5 percent shall be applied to the United States of America prime rate 60 days from the date this Judgment becomes executable.

(Signed)

Judge Joelle Adda

Dated this 25th day of May 2022

Entered in the Register on this 25th day of May 2022 In compensation for