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UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NY/2023/007/T  
Order No.: 018 (NY/2024)  
Date: 15 February 2024  
Original: English

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**Before:** Judge Joelle Adda

**Registry:** New York

**Registrar:** Isaac Endeley

DIOUF NDIAYE

v.

SECRETARY-GENERAL  
OF THE UNITED NATIONS

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**ORDER  
ON RECEIVABILITY**

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**Counsel for Applicant:**  
Shubha Suresh Naik, OSLA

**OSLA**

## **Introduction**

1. The Applicant is the widow of a former staff member who served with the .  
By an application filed on 8 March 2023, she contests the decision to deny her claim under Appendix D of the Staff Regulations and Rules of the United Nations for compensation in respect of the death of her husband on 8 February 2017, which she claims was service-incurred. The decision was made by

he was medically evacuated to Paris, France where he passed away on 8 February 2017. The Applicant contends that h death was attributable to his service with the United Nations in the sense that he died because of the poor quality of the medical care he received in Bamako. She maintains that had he not been serving in Bamako, he would almost certainly have survived.

8. By letter dated 8 December 20 at the United Nations Office in Geneva informed the Applicant that based on a medical determination made by the Division of Healthcare Management the ABCC had recommended the rejection of her claim filed under Appendix D, and the United Nations Controller endorsed the recommendation.

9. On 10 January 2023, the Applicant requested a review of the medical determination under sec. 5.1 of Appendix D.

10. On 6 February 2023, she filed a management evaluation request, defining the decision to be evaluated as the [d]ecision by the ABCC, reached on non-medical grounds . On 9 February 2023, the Management Evaluation Unit rejected her request as non-receivable and on



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## **Article 5.2**

### **Review and appeal of administrative decisions**

Claimants wishing to contest a decision taken on a claim under the present rules, to the extent that the decision was based on considerations other than a medical determination, shall submit to the Secretary-General a written request for management evaluation in accordance with staff rule 11.2.

20. Under arts. 5.1 and 5.2, claimants are required to submit a request for reconsideration of the medical determination when the administrative decision is based upon such a determination; however, to the extent that the decision was based





24. As stated above, under art. 5.1 of Appendix D, claimants wishing to contest

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Applicant relies upon is not persuasive.

his decision

2022, close to  
this period, she suffered from an

ember  
She further submits that during  
the claim.

31. In his motion on receivability, the Respondent does not challenge the  
t related to the award of damages for  
the delay in reaching a decision by the ABCC. In fact, the Respondent does not  
directly address the issue of delay or the request for damages, but only states that  
all other claims contained in the application, except for the medical determination  
under Appendix D,

32. The Tribunal does not consider the request for the award of  
damages resulting from the delay as ancillary to the medical determination. By  
making this request, the Applicant does not challenge the substance of the  
of Instead, the focus is on  
the amount of time it took to reach the decision. As the Appeals Tribunal has stated,  
it is possible to grant a claimant compensation for delay even if the underlying  
decision is lawful (see *AAM*, paras. 61 and 62). Accordingly, the Tribunal finds that  
this request for the award of damages is not ancillary to the medical determination.

*On the request to refer the matter for possible investigation and accountability*

33. Pursuant to art.

service-incurred death of husband is dismissed as not receivable  
*ratione materiae*;

36. The request for the award of damages relating to the delay in reaching a decision by the ABCC is receivable; and

37. The request to refer the matter to the Secretary-General for possible investigation and accountability is receivable.

38. By **3:00 p.m. on Friday, 1 March 2024**, the Respondent is to file his reply on the merits, which is to be eight pages maximum, using font Times New Roman,

the award of damages relating to the delay in making a recommendation by the ABCC and in reaching a decision by the Controller.

39. Upon receipt of the above-referred submission, the Tribunal will issue the relevant instructions for further case management.

*(Signed)*

Judge Joelle Adda

Dated this 15<sup>th</sup> day of February 2024

Entered in the Register on this 15<sup>th</sup> day of February 2024

*(Signed)*

Isaac Endeley, Registrar, New York