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7. On 16 April 2019, DHMOSH informed Ms. Raschdorf that based on the medical information that had been provided by her physician, DHMOSH could not recommend her case to the UNSPC for consideration of her eligibility for disability benefits from the UNJSPF because her conditions were not of a severity and impairment that would prevent her from being able to perform her duties for longer than a year.

8. On 27 and 30 May 2019, the UNAMI Chief of Mission Support informed Ms. Raschdorf that in accordance with Administrative Instruction ST/AI/2005/3 (Sick Leave), upon the exhaustion of her full pay and half pay sick leave entitlements, her fixed-term appointment would not be extended beyond its expiry date of 31 May 2019.

9. On 12 June 2019, Ms. Raschdorf submitted additional medical documentation to DHMOSH in support of her request to be recommended to the UNSPC for consideration of her eligibility for disability benefits from the UNJSPF.

10. On 26 June 2019, DHMOSH responded to Ms. Raschdorf, informing her that the information contained in the new documents she had submitted did not alter the determination that her medical condition would not render her eligible for a disability benefit from the UNJSPF.

11. Ms. Raschdorf challenged the evaluation by DHMOSH in accordance with the provisions of Administrative Instruction ST/AI/2019/1 (Resolution of disputes relating to medical determinations). Between July and November 2019, an Independent Medical Practitioner (IMP) examined Ms. Raschdorf and reported to DHMOSH that she should not work in field conditions. The report, however, did not indicate that her medical condition prevented her from working in duty stations located away from the field.

12. On 14 September 2020, following additional correspondence with Ms. Raschdorf, DHMOSH informed her that the review process pursuant to ST/AI/2019/1 had concluded. Based on that review, DHMOSH confirmed that it would not submit Ms. Raschdorf's case to the UNSPC with a recommendation for an award of disability benefits under the Regulations and Administrative Rules of the UNJSPF. The basis for this was because the IMP had not concluded that her medical condition rendered her incapable of working on a long-term basis for the Organization in the capacity for which she was qualified, but rather had only confirmed that she was incapable of working in certain field conditions.

13. On 28 October 2020, Ms. Raschdorf submitted a claim for compensation under Appendix D to the Staff Rules (Rules governing compensation in the event of death, injury, or illness attributable to the performance of official duties on behalf of the United Nations) (Appendix D) to the ABCC.

14. On 5 November 2020, and again on 12 November 2020, the ABCC informed Ms. Raschdorf that her submission was time-barred under Article 2.1 of Appendix D. She became aware of the medical condition which provided the basis for her claim for compensation on 11 April 2019, at the latest, when she submitted the medical report by her physician to DHMOSH, and her submission to the ABCC was more than a year later than that date.

The Dispute Tribunal Judgment

15. On 17 January 2022, the UNDT issued its Judgment dismissing the application in its entirety. The Dispute Tribunal held that contested decision 1 and co omemi208 Td[(.9 (y)-08.9 ()]TAc -0.02(r

Submissions

Ms. Raschdorf's Appeal

19. Ms. Raschdorf contends that the Dispute Tribunal erred in finding her application was

not receivable [D/11/12/054 (5) (1) (a) 0. Tc 0.0352)Tjne1.67ossee1.6 fr2a-c(1)].6 (d)2d678 0 85

29. Staff Rule 11.2(a) confirms that staff members wishing to formally contest an administrative decision alleging non-compliance with their contract of employment or terms of appointment, including all pertinent Regulations and Rules pursuant to Staff Regulation 11.1 (a), shall, as a first step, submit to the Secretary-General in writing a request for a management evaluation of the administrative decision.

30. The Appeals Tribunal has consistently held that, except for decisions made pursuant to advice from technical bodies and disciplinary decisions, requesting management evaluation is a required first step in the process.¹ The Dispute Tribunal cannot waive this requirement. Therefore, the issue is whether contested decisions 1 and 3 were made pursuant to advice from technical bodies or as part of a disciplinary process.

31. With regard to the non-renewal of Ms. Raschdorf's appointment (contested decision 1), she argues that it was a disciplinary measure and taken subsequent to advice from a technical body, which excuses the requirement for management evaluation.

32. There is no evidence that the non-renewal and separation from service was as a result of a finding of misconduct that would lead to a disciplinary measure pursuant to the Staff Regulations and Rules. No disciplinary proceedings had been initiated against Ms. Raschdorf.

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Lawfulness of contested decision 2 (DHMOSH's decision not to recommend her for a disability pension to UNSPC)

40. In the impugned Judgment, the Dispute Tribunal held DHMOSH's decision to not recommend Ms. Raschdorf for a disability pension to UNSPC was rational, proportional, and untainted by procedural errors, and, therefore, lawful.

41. The Appeals Tribunal has consistently held that³

When judging the validity of the Secretary-General's exercise of discretion in administrative matters, the Dispute Tribunal determines if the decision is legal, rational, procedurally correct, and proportionate. The UNDT 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 Dispute Tribunal to substitute its own decision for that of the Secretary-General.

42. Ms. Raschdorf submits that the Dispute Tribunal erred in its Judgment (i) by ignoring procedural errors made by the Administration in the course of the ST/AI/2019/1 process; and (ii) by ignoring the report of the IMP and refusing to consider whether her medical condition rendered her unable to perform her duties as a Political Affairs Officer.

43. Article 33(a) of the UNJSPF Regulations requires proof of incapacitation before a recommendation can be made to the UNSPC for a disability pension. It provides that “[a] disability benefit shall, subject to article 41, be payable to a participant who is found by the Board to be incapacitated for further service in a member organization reasonably compatible with his or her abilities, due to injury or illness constituting an impairment to health which is likely to be permanent or of long duration”.

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medical one, is to remand the case back to the ABCC to convene a medical board to consider the original determination.⁴

45. In terms of the process, Ms. Raschdorf says there were ier

49. Further, the review procedure under ST/AI/2019/1 was followed and allowed Ms. Raschdorf to challenge medical determinations made by the Administration concerning sick leave entitlements and her medical condition by requesting independent reviews. The Administration followed the steps in this administrative issuance including DHMOSH issuing the terms of reference, which Ms. Raschdorf did not contest, and recommending the IMP, which she did not oppose. The IMP sent his report to Ms. Raschdorf and DHMOSH.

50. Further to the final decision on 1 September 2020, DHMOSH confirmed it had reviewed the IMP report which in their assessment confirmed their previous determination that Ms. Raschdorf did not qualify for the recommendation for disability benefit because she was still fit to work in selected duty stations, and therefore, was not incapacitated for further service. In the 15 November 2019 IMP report, the IMP endorsed the recommendations of the consultant in respiratory medicine who had previously reported that it was “unlikely” that “she will be able to return to the field for her operations as a UN employee” but she “might be able to do light office work in a duty station with a more moderate climate in the future after the completion of respiratory rehabilitation, like Geneva, Vienna or NY”. There is no error in the interpretation that this did not amount to “incapacitation” to work.

51. Based on this evidence, the Dispute Tribunal did not err in fact or law in finding that Ms. Raschdorf has not demonstrated that DHMOSH committed any procedural errors in arriving at contested decision 2.

52. Ms. Raschdorf also contends that the

Judgment

54. The Appellant's appeal is dismissed, and Judgment No. UNDT/2022/004 is hereby affirmed.

Original and Authoritative Version: English

Decision dated this 24th day of March 2023 in New York, United States.

(Signed)

Judge Sandhu, Presiding

(Signed)

Judge Knierim

(Signed)

Judge Gao

Judgment published and entered into the Register on this 11th day of May 2023 in New York, United States.

(Signed)