

UNITED NATIONS DISPUTE TRIBUNAL



Introduction

1. On 6 July 2019, the Applicant filed an application contesting the Secretary-General's decision of 1 May 2019 to deny his claim for compensation under Appendix D to the Staff Rules for injuries and illnesses in relation to an incident that occurred on 27 July 2013. The decision was communicated to the Applicant by the Secretary of the Advisory Board on Compensation Claims (ABCC).

2. On 10 July 2019, the Respondent filed a motion for summary judgment on the basis that the application is not receivable because the Applicant has not requested management evaluation of the contested decision. The Respondent states that the application does not fall within the two exceptions to the requirement to seek management evaluation contained in staff rule 11.2(b).

Factual and procedural background

3. The following outline of facts only reflects those circumstances of this case that are relevant to the issue of the receivability.

4. On 27 July 2013, the Applicant was involved in a car accident at the main entrance of the United Nations Headquarters in New York.

5. On 25 November 2013, the Applicant submitted a claim for compensation under Appendix D to the ABCC.

6. On 8 May 2015, the Secretary of the ABCC informed the Applicant that

8. On 19 June 2015, the Applicant also submitted a request for management evaluation of the denial of his claim for compensation under Appendix D.

9. On 15 July 2015, the Management Evaluation Unit notified the Applicant that his request for management evaluation was considered not receivable on the grounds that art. 17 prescribes a specific procedure for reconsideration of the decision based on the ABCC recommendation and that the Applicant requested reconsideration under art. 17 of Appendix D.

10. On 22 July 2015, the Applicant filed the first application before the Tribunal contesting the decision to deny his claim for compensation under Appendix D (Case No. UNDT/NY/2015/046).

11. On 16 March 2016, the Dispute Tribunal rejected the above-mentioned application as premature in *Kisia* UNDT/2016/023, considering that the Applicant had requested reconsideration under art. 17 of Appendix D and the final decision had not been taken by the Secretary-General. The Dispute Tribunal stated that the judgment was without prejudice to any further proceedings before the Tribunal.

12. On 4 October 2016, the Applicant filed the second application contesting the same decision after withdrawing his request for reconsideration under art. 17 of Appendix D (Case No. UNDT/NY/2016/048).

13. On 7 February 2019, in *Kisia* UNDT/2019/019, the Dispute Tribunal found the application receivable and rescinded the contested decision and remanded the

Consideration

16. In the present case, the Respondent moved for summary judgement on the

contest a decision based on considerations other than a medical determination shall submit a written request for management evaluation.

24. The language of ST/AI/2018/7, which took effect after the revision of the Appendix D, can be understood in light of the revision of the appeal procedures in the Appendix D. Under the previous iteration of Appendix D, the appeal procedure was governed by art. 17, which caused considerable procedural uncertainties that were only resolved by subsequent judgments. This Tribunal summarized the jurisprudence of the Appeals Tribunal in *Kisia* UNDT/2019/019 as follows:

39. In *Kisia*, pursuant to staff rule 11.2(b), a staff member can appeal the CDEE management evaluation (see *Dahan* 2018-UNAT-861, para. 21, citing *Baron* 2012-UNAT-479).

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41. In *Baracungana* 2017-UNAT-725, the Appeals Tribunal held that art. 17 of Appendix D does not require a staff member to request that a medical board be convened, but merely provides an option to bring his or her case before a medical board and instituting such a request is not a condition of receivability of the application for judicial review:

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25. The revised Appendix D makes either a reconsideration process under art. 5.1 or a management evaluation process mandatory. In other words, a claimant needs to request either a reconsideration of medical determinations or a management evaluation under the revised Appendix D. Considering that the revised Appendix D took effect on 1 January 2018, the question is then whether the revised Appendix D made the management evaluation process mandatory.

Conclusion

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