



6. On 27 September 2017 and 10 January 2017, the parties filed joint motions praying for suspension of proceedings to enable them to pursue informal resolution of the Applicant's claim. The Tribunal granted the motions and suspended proceedings until 28 February

13. On 9 June 2011, the Applicant filed a claim for compensation under Appendix D in relation to the diagnosis of polyradioculopathy/polyneuritis. The Applicant requested a waiver of the time-limit set out in art. 12 of Appendix D.

14. By a memorandum dated 27 June 2011, a UNHCR Senior Human Resources Associate forwarded the Applicant's claim to the Officer Responsible, ORCC/CCS.

15.

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Submissions

Applicant

25. The Applicant's case is that:

a. The Administration did not provide any reasons with regards to its determination that his illness was unrelated to his work at UNHCR. The absence of reasons in the memorandum from the ORCC/CCS disadvantaged him because he was unsure as to what evidence or additional information was required for his appeal to the ABCC.

b. The ABCC failed to follow its own rules to his detriment. Under art. 16(d)(i) and (ii) of Appendix D, the ABCC is supposed to consist of three representatives of the Administration appointed by the Secretary-General and three representatives of the staff appointed by the Secretary-

Respondent

27. The Respondent's case is that the application should be dismissed because:

a. UNHCR met its obligation to ensure that the Applicant understood the documentation he was required to provide as proof in support of his claim but the Applicant did not meet the burden of proof as required by art. 15 of Appendix D. The Applicant failed to establish a causal link between his work with UNHCR and his diagnosis of polyradioculopathy/polyneuritis as is required by art. 2(a) of Appendix D. He merely provided a chronology of his illness without any material evidence (e.g. a medical opinion, documents, etc.) and requested that the Administration infer that the timing of his illness is indicative that his service with UNHCR was the cause of his illness.

b. At every step of the process, the Applicant was provided a reason for the rejection of his claim, that is the absence of a link between his condition and his service with UNHCR.

c. The Applicant's medical condition was assessed on various occasions by medical doctors and given proper consideration. The final advice provided by a United Nations medical officer confirmed that the

36. The issue now is whether a medical board should have been established in this case.

37. The general principles governing the payment of compensation for service incurred injury are to be found in ST/SGB/Staff Rules/Appendix D/Rev.1 (Rules governing compensation in the event of death, injury or illness attributable to the performance of official duties on behalf of the United Nations), which in art. 2(a) and (b) states that.

The following principles and definitions shall govern the operation of these rules:

(a) Compensation shall be awarded in the event of death, injury or illness of a staff member which is attributable to the performance of official duties on behalf of the United Nations, except that no compensation shall be awarded when such death, injury or illness has been occasioned by:

(i) The wilful misconduct of any such staff member; or

(ii) Any such staff member's wilful intent to bring about the death, injury or illness of himself or another;

(b) Without restricting the generality of paragraph (a), death injury or illness of a staff member shall be deemed to be attributable to the performance of official duties on behalf of the United Nations in the absence of any wilful misconduct or wilful intent when:

(i) The death, injury or illness resulted as a natural incident of performing official duties on behalf of the United Nations; or

(ii) The death, injury or illness was directly due to the presence of the staff member, in accordance with an assignment by the United Nations, in an area involving special hazards to the staff member's health or security, and occurred as the result of such hazards; or

(iii) The death, injury or illness occurred as a direct result of

“the ABCC correctly followed the procedure applicable to medical claims, whether it properly directed its mind to the relevant issues, whether the evidence on which it based its determination was adequate or flawed.”

39. The Tribunal has held in the past that its judicial review does not include interfering with an expert decision based on well-founded evidence or substitution of the views of the medical service with its own.⁵

40. In the current case, in making its recommendation of 11 June 2013, the ABCC, while taking into consideration the Applicant’s statement and his medical reports, relied particularly on the advice of Dr. Mike Rowell, then Medical Director, United Nations Medical Services Division (MSD), and his conclusion that there was no indication that the Applicant’s illness was directly related to his service with UNHCR. The Tribunal is reproducing below the advice provided to the ABCC by Dr. Rowell in his memorandum dated 4 April 2013.

1. Your memo requesting advice as detailed above refers.

Whether the claimant’s illness/injuries polyradiculopathy/polyneuritis can be considered to be directly related to his service, including the decision to not undertake an exit medical examination?

2. No. There is no clear indication of the condition from a medical practitioner. If the claimant’s description of polyradiculopathy/polyneuritis is accepted as is, there is no indication it is directly related to his service, including the non-performance of an exit medical. It is most likely the claimant’s illness is due to two other significant medical illnesses which are unrelated to his service.

3. As the condition is not assessed as service incurred, medical expenses etc are not further considered.

41. Dr. Rowell’s advice is bewildering because on one hand he states that there is no clear indication of the Applicant’s illness pp10(A)21(p9(ot)-2()-1020(m)37()-43

Additionally, although Dr. Rowell concluded that the Applicant's condition was not related to his service, he did not specify the "two other significant medical illnesses" that were unrelated to the Applicant's UNHCR service but presumably caused his condition.

42. Tribunal finds that the evidence on which the ABCC based its determination of 11 June 2013 was inadequate because Dr. Rowell's advice was vague and not based on well-founded evidence.

43. It is not the function of the Tribunal to put itself in the position of a medical practitioner by diagnosing medical conditions and making pronouncements on the cause of said conditions. Such assessments are properly left to medical professionals.

Procedural delay

44. The record shows that the recommendation of the ABCC was approved on behalf of the Secretary-General on 16 July 2013. However, the Applicant was not informed of the outcome until 25 June 2014 when he wrote to the UNHCR Human Resources Associate to inquire about his case. The Respondent has not provided a reason for this delay.

Conclusions

45. The Tribunal concludes that there are medical aspects to this case that should be dealt with by medical professionals. It is understandable that the Applicant is weary of waiting for resolution of a claim that he filed in 2011. However, with all the ambiguities raised by Dr. Rowell and the Applicant's physician, the Tribunal considers it will be a miscarriage of justice for it to merely

Judgment

46. The case is remanded to the ABCC, with the concurrence of the Secretary-General of the United Nations, for establishment of a medical board in accordance with art. 17(b) of Appendix D and for correction of the procedures relating to art. 16 of Appendix D.

47. In accordance with art. 10.4 of the UNDT Statute, which allows payment of compensation for procedural delay, the Applicant is awarded three months' net base salary for the unexplained delay between 16 July 2013, the date the Secretary-General decided on his claim, and 25 June 2014, the day the Applicant was informed of the Secretary-General's decision. The payment is to be based on his salary as of the date of his separation from service.

48. The compensation awarded to the Applicant shall be paid within 60 days of this judgment becoming executable. Interest will accrue on the total sum from the date of recovery to the date of payment. If the total sum is not paid within the 60-day period, an additional five percent shall be added to the US Prime Rate