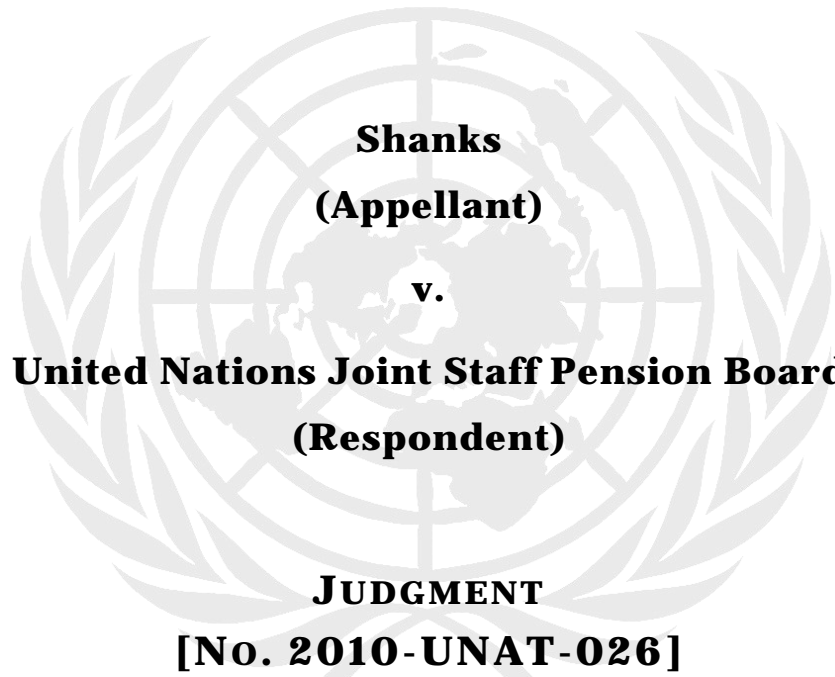




UNITED NATIONS APPEALS TRIBUNAL
TRIBUNAL D'APPEL DES NATIONS UNIES



Shanks
(Appellant)
v.
United Nations Joint Staff Pension Board
(Respondent)
JUDGMENT
[No. 2010-UNAT-026]

Before: Judge Inés Weinberg de Roca, Presiding
Judge Rose Boyko
Judge Luis María Simón

Case No.: 2010-031

Date: 30 March 2010

Registrar: Weicheng Lin

Counsel for Appellant: Bart Willemsen

Counsel for Respondent: Dulcie Mapondera

JUDGE INÉS WEINBERG DE ROCA, Presiding.

Synopsis

1. Because the Appellant, Rebecca Shanks (Shanks), failed to produce the medical information when requested to update the medical evidence there is no basis for reversing the decision of the Standing Committee of the United Nations Joint Staff Pension Fund (UNJSPF or Fund) not to reconsider its own decision that the criteria for a disability benefit were met.

Facts and procedure

2. On 26 April 2006, Shanks, a former staff member with the United Nations Development Programme (UNDP), was awarded a disability benefit by the United Nations Staff Pension Committee (UNSPC), following a car accident on 27 September 2004.

3. On 17 May 2006, a notification letter was sent to Shanks advising her of the UNSPC decision that she was incapacitated for further service and that her eligibility for continued disability benefit would be reviewed in April 2008.

4. On 30 June 2006, Shanks expressed her objection to the UNSPC assessment that she met the established criteria for incapacity and was therefore entitled to the UNJSPF disability benefits under article 33 of the UNJSPF Regulations. She submitted a formal request for review to the UNSPC on 14 August 2006.

5. On 20 April 2007, UNSPC considered Shanks's request for review, but decided to uphold its decision of 26 April 2006.

6. On 26 June 2007, Shanks appealed the UNSPC decision to the Standing Committee of the United Nations Joint Staff Pension Board (UNJSPB), which on 11 July 2007 upheld the UNSPC's decision.

7. By letter dated 20 March 2008, the UNJSPF secretariat advised Shanks of the need for a medical report on the current state of her health in preparation for the scheduled UNSPC review of her eligibility for continued disability benefit. As no new medical information was submitted, the UNSPC deferred the review to 19 November 2008, when it decided to suspend the disability benefit as Shanks had again failed to submit the required medical update.

8. On 24 November 2008 Shanks requested the UNJSPB Standing Committee to reconsider its decision upholding the UNSPC decision to award her a disability benefit. Shanks produced a medical officer's report dated 7 April 2006 that was part of the original submission to the UNSPC for determination of her eligibility for disability benefits. Shanks claimed that the said document had only recently become available. In her view, a medical conclusion in the medical officer's report of 7 April 2006 "misrepresented" Shanks's medical condition and the findings of her attending physician. Consequently, neither the UNSPC nor the UNJSPB Standing Committee had all relevant and accurate information before they took their decisions on 26 April 2006 and 11 July 2007, respectively. Shanks again requested the UNJSPF Standing Committee to review the UNSPC's decision based on the new evidence and the "inherent power" of the Standing Committee to review its own decisions.

9. The UNJSPF secretariat advised Shanks that the UNJSPB Standing Committee had no inherent power to reconsider its own decisions, and that the recourse was with the former United Nations Administrative Tribunal (Administrative Tribunal) should she wish to challenge the determination.

10. On 29 May 2009, the secretariat of the Administrative Tribunal received an appeal from Shanks against the decision of the UNJSPB Standing Committee not to reconsider its decision in her regard. The filings before the Administrative Tribunal were completed with the filing of Shanks's Written Observations on 4 December 2009. The case was subsequently transferred to this Court after the Administrative Tribunal's abolition at the end of 2009.

Submissions

Shanks's Appeal

11. While the UNJSPF Regulations and Rules do not provide for reconsideration of decisions taken by the Standing Committee, the Standing Committee should rely on the well-established general principle of law and use its inherent power to revise its previous decision if facts are discovered that were not available at the time of the decision and which were a decisive factor in the decision-taking.

12. Shanks had no recourse available to appeal the UNJSPB Standing Committee decision to the former Administrative Tribunal because she was time-barred.

13. Shanks's request to the UNJSPF Standing Committee to reconsider its own decision of 11 July 2007 was also motivated by her desire to avoid a costly and time-consuming application to the former Administrative Tribunal.

UNJSPF's Answer

14. The normal procedure for appealing a decision of the UNSPC was followed in the present case. It should be noted that there is only provision for UNSPC to review its own decisions in accordance with Section K.1 of the UNJSPF's Administrative Rules, but no provision for review by the UNJSPB Standing Committee of its own decisions.

15. Shanks did not request the establishment of a medical board prior to the review of her case by the UNSPC on 26 April 2006. By the time she made such a request on 27 April 2008 the UNSPC and the UNJSPB Standing Committee had reviewed her case in accordance with the medical evidence presented to the UNSPC at the time of its initial determination on 26 April 2006.

16. Shanks failed to provide any new evidence regarding her medical condition or factual circumstances at the time of the UNSPC decision on 26 April 2006 that should have been submitted to the UNJSPF Standing Committee and resulted in the Standing Committee overturning the decision of the UNSPC.

Considerations

17. The initial decision of the UNSPC was that the threshold was met to establish that Shanks had a disability. This finding was again upheld by the UNSPC when asked to reconsider its finding. Subsequently this was confirmed by the Standing Committee of the UNJSPB which now declines to revisit this matter, there being no authority for it to entertain a further appeal of its own decision.

18. Shanks was asked to present updated medical information to support her request for a review of her case, which she failed to provide.

19. In the instant case, any information, whether or not available in 2006, could have been submitted when she was required to update the medical evidence in March 2008. She was advised to obtain a medical report that would show whether she had in fact recovered from the injuries suffered in the car accident in 2004. Instead of obtaining a medical report, Shanks merely reiterated that she disputed the initial finding of disability. The benefit was suspended for lack of updated medical information.

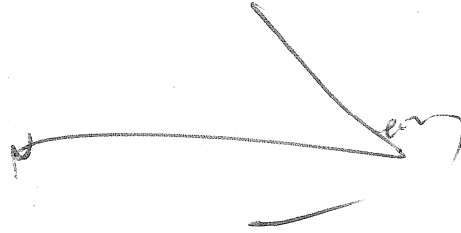
20. This Court affirms the Standing Committee decision on the grounds that no prejudice existed against Shanks, since she had an opportunity to present updated medical evidence within the scope of the review of her case.

Judgment

21. This Court dismisses the appeal.

THE UNITED NATIONS APPEALS TRIBUNAL

Case No. 2010-031



Judge Weinberg de Roca, Presiding



Judge Boyko



Judge Simón

Dated this 30th day of March 2010 in Geneva, Switzerland.

Original: English

Entered in the Register on this 26th day of April 2010 in New York, United States.



Weicheng Lin, Registrar, UNAT