



UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NY/2023/001

Judgment No.: UNDT/2023/095

Date: 11 September 2023

Original: English

Before: Judge Joelle Adda

Registry: New York

Registrar: Isaac Endeley

RODRIGUEZ SANTORUM

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT

Counsel for Applicant:
Self-represented

Counsel for Respondent:
Adrien Meubus, LPAS/UNOG

Introduction

1. The Applicant, a staff member of the International Organization for Migration (“IOM”), filed an application contesting the rejections of his requests for after-service health insurance (“ASHI”) by (a) IOM and (b) the Health and Life Insurance Section (“HLIS”) in the United Nations Secretariat.
2. By Judgment No. UNDT/2023/064 dated 23 June 2023, the Tribunal held that the appeal against the decision of IOM was not receivable as administrative decisions of IOM do not fall under its jurisdiction, whereas the appeal against the decision of the HLIS was receivable.
3. Based on the reasons set out below, the Tribunal rejects the application.

Facts

4. By email of 8 September 2022, HLIS rejected the Applicant’s request of 23 February 2022 for ASHI as follows:

Dear [the Applicant’s first name],

Thank you again for your patience while waiting for our response.

We have reviewed your ASHI eligibility, and indeed the minimum requirements for ASHI have not been met upon your separation from IOM in April 2015:

[United Nations Office for the Coordination of Humanitarian Affairs for Iraq]: 16 January 2003 to 31 December 2004, Fixed term appointment covered under [United Nations] Worldwide (UNWW): January 2003

[United Nations Mission in Kosovo]: 01 July 2003 to 31 December 2004, Fixed term appointment covered under Medical Insurance Scheme: 01 July 2004 to 31 December 2004

[United Nations Office on Drugs and Crime/United Nations Office at Vienna]: 25 September 2010 – 31 December 2012, Fixed term appointment covered under UNWW: 01 November 2010 to 31 December 2012

IOM: 09 March 2013 to 04 April 2015, Fixed term appointment covered under IOM/Allianz [assumedly, this reference is to the global life and health insurance company]: 09 March 2013 to 30 April 2015

Based on the appointment or reappointment date, a minimum of 10 years of participation in the [United Nations] health plan under qualifying contracts (100-series, 200-series, [fixed-term appointment], continuing or permanent) is required.

The period of insurance participation under qualifying contracts: 4 years 11 months[.]

We regret to inform you that based on the details provided to us as reflected in certified memos, and in conjunction with the current ST/AI and ST/IC in force, you are not eligible for ASHI.

If you believe you have participated in the [United Nations Headquarters] administered insurance programs under the qualifying contracts with another [United Nations] agency, you must provide us with the necessary proof and we shall further review your case to determine eligibility.

Consideration

5. The Tribunal notes that the issue of the present case is whether at the time of applying for ASHI, the Applicant had a right to be enrolled in the scheme under the relevant legal framework of the United Nations, namely: ST/AI/2007/3 (After-service health insurance) and ST/IC/2022/9 (Renewal of the United Nations Headquarters-administered health insurance programme, effective 1 July 2022).

6. In the Applicant's closing statement dated 4 August 2023, he summarized his contentions as follows:

I. Factual background

... I challenge the administrative decision of the United Nations HLIS communicated by email of 09/08/2022 which denies my right to ASHI. The decision inaccurately considers only 4 years and 11 months of insurance participation under qualifying contracts.

... That HLIS in our exchange of emails inexactly states that 10 years of participation in the [United Nations] health plan under qualifying contracts is required for my case; in fact, with only five years of service I qualify to enroll in ASHI, according to [ST/AI/2007/3].

... That as per certificate of the [the Department of Operational Support] attached to their email of 05/16/2022, I was a staff member of [the former Department of Peacekeeping Operations (“DPKO”)] (UN General Secretariat) for 5 years, 5 months and 2 days without interruption of service between 1999 and 2004. The same certificate refers to an additional period of 9 months and 21 days between 2008 and 2009 also as staff of UNDPKO. All together gives a total of 6 years, 2 months, and 23 days.

... That the full contractual period indicated above must have been done in the Fixed Term Appointment (FTA) modality, fully eligible for ASHI entitlement. For the number of peacekeeping missions at that time, the employer’s plans and intentions were to be keeping the staff for periods longer than the criteria applicable for appointments of limited duration (ALD), which are only used for less than one year of service. In my case, with initially more than 5 years without interruption in service, an ALD will be a violation of the criteria, principles, and regulations applicable, as well as a direct breach of my labor and human rights as staff.

... Furthermore, the administrative decision disputed lists as admissible to be counted towards ASHI, starting in 2003, contractual periods with UN-DPKO, [United Nations Office on Drugs and Crime], and IOM, which all together stand for a total of 6 years, 3 months, and 11 days. Even under these restrictive criteria I will qualify for ASHI.

... The Respondent is misleading the Tribunal when [saying]: “On 10 February 2022, although not a staff member of the United Nations at the time, the Applicant...”. I emphasize that I was at this precise time serving as staff member with the United Nations.

... The Respondent [...] also wrongly concludes that for benefiting from ASHI “...he must be enrolled in a United Nations headquarters-administered—the previous underlined is nowhere in STA/AI/2007/3 but added by the Respondent—health insurance program at the time of his retirement...”. The regulation [ST/AI/2007/3] governing this expressly includes a contributory health insurance plan of other organizations in the common system under which staff members may be covered by special arrangements between the United Nations and those organizations.

... I also rebut the declaration of the Respondent [that] says, “The Applicant is not in service with the United Nations, and he does not currently contribute to a health insurance plan of the United Nations...”. In fact, I am currently and since 2021 in active service under an FTA contract-type with UNMIGRATION/IOM, which comes with affiliation to their [United Nations System] health insurance plan (ALLIANZ) and contribution to the [United Nations Joint Staff Pension

Fund (“UNJSPF”)]. All this time must also be counted towards ASHI, and indeed the HLIS in our exchange of emails—already shared with the tribunal—counted my previous service with IOM as valid and qualifying towards ASHI.

... Regarding the timeliness of my application, it is worth to inform the Tribunal that in my current situation, I am eligible at any moment of my choice to opt for retiring, receiving regular monthly benefits from UNJSPF. This may happen whenever, until my mandatory age of retirement in April 2025.

II. Rules and Regulations support

... The conditions established in ST/AI/2007/3, Section 2, (b), (ii) have been fulfilled in my case to benefit from ASHI, and this shall be the interpretation of the strict words of the rule. In addition, if there would be a need to clarify it, the interpretation must always be in favor of the employee as the weakest part in the case, in line with labor law principles. As the respondent rightly says [...] “ASHI is available only: i) as a continuation of previous active service coverage in a contributory health insurance plan of the United Nations; and ii) without interruption between active service and retirement status”. This will be undoubtedly my situation at retirement.

... As a result of A/RES/70/296 ... the IOM became a related organization to the United Nations and since then full member of the [United Nations System.] Furthermore, Article 10 of the Annex Agreement referring to “Personnel Arrangements” establishes that “The United Nations and the International Organization for Migration agree to consult whenever necessary concerning matters of common interest relating to the terms and conditions of employment of staff ...”. The referred harmonization has not been properly done and there is the source of my rights to be neglected by the [United Nations System].

7. The Respondent, in essence, contends that the application is without merit because the Applicant did not contribute to a health insurance plan in the United Nations and his application was also untimely.

8. The Tribunal notes that under art. 7.1 of ST/AI/2007/3, an application for ASHI “may be submitted to the office administering the after-service health insurance plan up to 31 days prior to separation but no later than 31 days following the date of separation”. Article 65 of ST/IC/2022/9 further specifies that, “Staff members are reminded that, among the eligibility requirements for after service health insurance coverage, the applicant must be enrolled in a United Nations scheme at the time of

separation from service. Enrolment in the after-service health insurance programme is not automatic. Application for enrolment must be made within 31 days before or 31 days after the date of separation”.

9. The Applicant submits in his application that before starting his current employment with IOM, his most recent employment within the United Nations System ended on 4 April 2015, when he “took early retirement” from his former job with IOM. This information is confirmed by the contested decision. According to a “Certificate of Service” dated 23 June 2023 from a “Resource Management Officer” of IOM, the Applicant started working again with IOM on 21 October 2021, where he has worked ever since on fixed-term appointments, which “will be renewed” until the date of his retirement on 4 April 2025.

10. With reference to the relevant legal framework, no matter what status is given to the Applicant’s previous and/or current employment with the IOM in the context of the ASHI scheme, at the relevant time of applying for ASHI, the Applicant was not within a time period of 31 days before or after separation when an application for ASHI must be submitted.

11. Accordingly, even if the terms of the contested decision were misleading, the Applicant had no right to be enrolled in the ASHI scheme when he applied for it.

Conclusion

12. The application is rejected.

(Signed)

Judge Joelle Adda

Dated this 11th day of September 2023

Entered in the Register on this 11th day of September 2023

(Signed)

Isaac Endeley, Registrar, New York