



**Before:** Judge Francesco Buffa

**Registry:** Nairobi

**Registrar:** Wanda L. Carter

RASCHDORF

v.

SECRETARY-GENERAL  
OF THE UNITED NATIONS

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**JUDGMENT ON RECEIVABILITY**

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**Counsel for Applicant:**

Self-represented

**Counsel for Respondent:**

Fatuma Mninde-Silungwe, AS/ALD/OHR, UN Secretariat

## **Introduction**

1. On 21 December 2023, the Applicant, a former Political Affairs Officer with the United Nations Assistance Mission for Iraq (“UNAMI”) filed an application contesting:

a. Decision A - The United Nations Controller’s decision of 11 October 2023 denying a claim for compensation under Appendix D to the Staff Rules;

b. Decision B - The Advisory Board on Compensation Claims (“ABCC”) recommendation of 30 June 2023 rejecting the Applicant’s Appendix D claim of 12 November 2020; and

c. Decisions C and D - The ABCC Secretariat’s decisions of 11 October and 19 October 2023, upholding the Controller’s refusal to constitute a new medical board to appeal the decision not to waive deadlines and allow corrections of alleged procedural mistakes by the Organization.

2. The Applicant also appeals the following consequential decisions:

a. Decision E1 - The 30 May 2019 communication from the UNAMI Chief of Mission Support (“CMS”) informing her that her fixed-term appointment (“FTA”) would not be extended beyond 31 May 2019 because she had exhausted her sick leave entitlements;

b. Decision E2 – The notification dated 28 May 2019 from UNAMI Human Resources (“HR”) informing her that they had been informed to initiate her check out process unless she reported back to her duty station before 31 May 2019;

c. Decision E3 – The notification dated 26 June 2019 from the Head, Medical Entitlements, Division of Healthcare Management and Occupational Safety and Health Office of Support Operations (“DHMOSH”), informing her that she did not meet the requirements to be recommended for disability to the United Nations Joint Staff Pension Fund (“UNJSPF”);

- d. Decision E4 - The 'non-decision' by the CMS of June 2019;
  - e. Decision E5 - The 'likely' decision of the Regional Security Coordinator to request and authorize the travel of an incapacitated staff member; and
  - f. Decision E6 – All DHMOSH decisions from April 2019 onwards insofar as they specify a crucial component of administrative decisions, including the non-determination in relation to Appendix D in the termination decision itself and the subsequent lack of a ST/AI/2019/1 (Resolution of disputes relating to medical determinations) process that emerged out of the incomplete termination decision. She also challenges the delay in all other medical determinations and administrative actions.
3. The Respondent filed a reply on 29 January 2024, in which it argued that the application was not receivable.
  4. The Applicant responded to the Respondent's arguments on receivability on 3 April 2024.
  5. The case was assigned to the undersigned Judge on 5 August 2024.
  6. On 24 September 2024, the Applicant filed a motion requesting anonymity to protect the privacy of her medical information.
  7. On 25 September 2024 the Tribunal issued Order No. 131 (NBI/2024) in which the Applicant's request for anonymity was denied. The parties were informed that the Tribunal would first decide the issue of receivability.

#### **Summary of the relevant facts**

8. The Applicant joined the Organization on 1 April 2004. She served as a Political Affairs Officer with UNAMI. Her appointment was renewed successfully until she separated from the service of the Organization on 31 May 2019.
9. In April 2019, she was diagnosed with a medical condition and went on certified sick leave. On 10 April 2019, the Applicant exhausted her sick leave

entitlements and was, accordingly, placed on sick leave without pay for the period of 11 April to 31 May 2019.

10. On 16 April 2019, DHMOSH informed the Applicant that her medical condition did not meet the criteria for recommending disability benefits under the UNJSPF Regulations and Rules.

11. On 31 May 2019, she was separated from service upon exhaustion of her certified sick leave entitlement.

12. The Applicant requested a review of the 16 April 2019 DHMOSH decision under ST/AI/2019/1 and, on 9 January 2020, DHMOSH informed her that she did not qualify for referral for consideration of a disability benefit because she was fit to work in selected duty stations, i.e., she was not incapacitated for further service.

13. On 21 October 2020, the Applicant submitted a Claim for Compensation under Appendix D of the Staff Rules (P.290 form) to the Kuwait Joint Support Office (“KJSO”), where she indicated the date of her injury as 11 April 2019. The form was forwarded to the ABCC Secretariat for its review.

14. On 4 November 2020, the ABCC Secretariat informed KJSO that the submission of the claim was past the deadline and that a waiver of the deadline could only be granted for exceptional circumstances, it requested that the Applicant provide additional information regarding such exceptional circumstances.

15. By letter dated 6 November 2020, the Applicant provided her response to the ABCC Secretariat which included an explanation as to why she had chosen 11 April 2019 as the incident date, but that she considered that the correct date was 14 September 2020 upon completion of the ST/AI/2019/1 review process.

16. On 11 November 2020, the ABCC Secretariat indicated to KJSO that the deadline for submission could not be waived on the basis of the Medical Services completing an independent assessment of one’s condition as that was a different matter, it noted that Appendix D was clear that only medical incapacity could waive the deadline.

17. On 12 November 2020, the Applicant requested the ABCC to reconsider her claim and attached a new P.290 form, which indicated the date of injury as 14 September 2020.

18. On 24 November 2020, the Applicant filed an application with the UNDT contesting three decisions: (i) the administrative decision to not renew FTA beyond 31 May 2019; (ii) the 1 September 2020 decision of DHMOSH to not recommend her for a disability pension to the United Nations Staff Pension Committee (“UNSPC”) and to the ABCC; and (iii) the 5 November 2020 decision of the ABCC to reject her claim for compensation on the ground that her claim was time-barred.

19. On 17 January 2022, the UNDT, in Judgment No. UNDT/2022/004, found that the non-renewal decision and the ABCC decision were not receivable as the Applicant had not filed a request for a management evaluation and that the DHMOSH decision not to recommend her case for disability to the UNJSPF was lawful.

20. The Applicant appealed Judgment No. UNDT/2022/004, and, on 24 March 2023, the United Nations Appeals Tribunal (“UNAT”) dismissed her appeal in its Judgment No. 2023-UNAT-1343/Corr.1.

21. On 10 April 2023, the Applicant requested for a management evaluation of the non-decision on her request to the ABCC to review her disability claim of 12 November 2020. On 24 April 2023, the Management Evaluation Unit (“MEU”) found the request for a management evaluation moot as the ABCC Secretariat had agreed to present the Applicant’s case to the ABCC for a recommendation on whether the deadline should be waived in accordance with art. 2.1(e) of Appendix D.

22. On 1, 3, and 6 May 2023, the Applicant submitted three requests for management evaluation relating to emails sent to her by ABCC, the non-action of KJSO in forwarding her second P.290 form, and the lack of determination by DHMOSH on her eligibility for Appendix D. By letter dated 26 May 2023, the

MEU found these matters not receivable as they did not constitute administrative decisions.

23. On 30 June 2023, the Applicant's claim was presented to the ABCC at its 535<sup>th</sup> meeting.

24. On 11 October 2023, the ABCC Secretary advised the Applicant that the Board had considered her claim on 30 June 2023 at its 535<sup>th</sup> meeting, and the Controller had endorsed the Board's recommendation to deny the claim on behalf of the Secretary-General.

25. On 18 October 2023 and on 1 and 14 November 2023, the Applicant submitted three requests for management evaluation of: (1) the decision to deny her Appendix D claim; (2) an ABCC omission of 19 October 2023 not to correct the non-decision on a medical determination; and (3) five decisions related to the non-renewal of her appointment.

26. On 8 December 2023, the Under-Secretary-General for Management Strategy, Policy, and Compliance upheld the contested decision to deny the Applicant's Appendix D claim. She also upheld MEU's determination that the request for management evaluation of the alleged ABCC decision of 19 October 2023 and of the Applicant's separation from service were not receivable for being time-barred.

## **Consideration**

### *Decision A*

27. Decision A is the United Nations Controller's decision of 11 October 2023 denying the Applicant's claim for compensation under Appendix D to the Staff Rules.

28. The background to this decision is that in April 2019, the Applicant had been diagnosed with a service-incurred illness by her physician. This diagnosis was then endorsed by an independent expert in November and December 2019. As indicated above (para. 13), on 21 October 2020, the Applicant submitted a Claim for

Compensation under Appendix D of the Staff Rules (P.290 form) to KJSO, in which she noted the date of injury as 11 April 2019.

29. On 5 November 2020 and 12 November 2020, the ABCC informed the Applicant that her claim had been submitted beyond the deadline under art. 2.1 of Appendix D.

30. In her application to the UNDT dated 24 November 2020, the Applicant challenged, among others, the 5 November 2020 decision of the ABCC. Her application was rejected in Judgment No. UNDT/2022/004, and, on 24 March 2023, UNAT dismissed her appeal in its Judgment No. 2023-UNAT-1343.

31. The Applicant argues that the “ABCC decision of 5 November 2020 decision was now substituted through the decision[s] of 11 and 19 October 2023, that are now open for an appeal”. She bases this claim on the argument that she should have initially indicated in her P.290 form dated 21 October 2020 that the date of the onset of her illness was 14 September 2020 and not 11 April 2019. She further argues that a referral of the 14 September 2020 decision to the ABCC was still possible in this case, since it had not been previously reviewed by the UNDT and UNAT on the merits and that as a result, it was not a final decision in line with *res judicata*.

32. The 11 October 2023 decision informed the Applicant that the ABCC Board had found that the date of the onset of her illness was 11 April 2019, and not 14 September 2020 as she had argued in her request for reconsideration of the 5 November 2020 decision and that accordingly, her claim did not warrant reconsideration or reopening under Appendix D.

33. The 11 October 2023 decision did not alter the 5 November 2020 decision which, as discussed above, has been litigated extensively by the Applicant. It is settled law “that the same cause of action cannot be adjudicated twice. Indeed, for

the stability of the judicial process, it is desirable that there is an end to litigation. Accordingly, “[t]he party who loses cannot re-litigate his or her case.”<sup>1</sup>

34. Insofar as Decision A has already been ruled upon by two judgments that are now final, this part of the application is not receivable, being *res judicata*.

*Decisions B, C and D*

35. These are the ABCC’s recommendation of 30 June 2023 rejecting the Applicant’s Appendix D claim of 12 November 2020; and the ABCC Secretariat’s decisions of 11 October and 19 October 2023, upholding the United Nations Controller’s refusal to constitute a new medical board to review the decision not to waive deadlines and allow corrections of alleged procedural mistakes by the Organization respectively.

36. The background to these decisions is that, on 12 November 2020, the Applicant requested the ABCC to reconsider her claim and attached a new P.290 form, which indicated the date of injury as 14 September 2020. The ABCC Secretariat presented the Applicant’s case to the ABCC Board for a recommendation on whether the deadline should be waived in accordance with art. 2.1(e) of Appendix D.

37. The Board considered the claim on 30 June 2023 at its 535<sup>th</sup> meeting and recommended that the claim be denied. The Board, having found that the date of the onset of the Applicant’s illness was 11 April 2019 and not 14 September 2020, determined that her claim did not warrant reconsideration or reopening under Appendix D.

38. The Board then considered whether the deadline could be waived under art. 2.1(e) of Appendix D. The Board determined that the Applicant’s claim did not meet the requirements for a waiver of the time limit as the delay was not the result

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<sup>1</sup> *Nath, Khanna, Joshi, Batra* UNDT/2017/052,060, 061, 077 citing to *Shanks* 2010-UNAT-026bis, para. 4; *Costa* 2010-UNAT-063, para. 4; *Beaudry* 2011-UNAT-129, paras. 16-17; *Masri* 2011-UNAT-163, para. 12; *Meron* 2012-UNAT-198, paras. 25-26; *Abbasi* 2013-UNAT-315, para.14; *Ghahremani* 2013-UNAT-351, para. 10; *Gakumba* 2014-UNAT-492, para.12; *Onana* 2015-UNAT-533, para. 43.



of incapacity, as required by art 2.1 of Appendix D. The Board decided that the Applicant's claim was time-barred by the one-year time limit incorporated in art. 2.2(a) of Appendix D and recommended to deny it. Consequently, it was decided that her claim was not receivable under art. 2.1 of Appendix D.

39. The Board's recommendation was subsequently endorsed by the United Nations Controller on behalf of the Secretary-General.

40. On 18 October 2023, the Applicant wrote to the ABCC Secretariat seeking clarification on the following:

a. Whether she could obtain a new medical determination through new ST/AI/2019/1 and Appendix D processes to correct the past non decision of the Medical Services Division ("MSD") on eligibility/non-eligibility.

b. Whether ABCC had any intention to ask MSD for a new medical determination in her case.

41. She received a response on 19 October informing her:

a. That her claim was denied because it was determined to be time-barred under Appendix D and that it did not meet the requirements for a waiver of the time limit.

b. The ABCC Secretariat would not ask DHMOSH (former MSD) to conduct a new medical determination or to establish a new ST/AI/2019/1 process.

c. That under art. 5.2 of Appendix D, claimants wishing to contest a decision taken on a claim to the extent that the decision was based on considerations other than a medical determination, should submit to the Secretary-General a written request for management evaluation in accordance with staff rule 11.2.

42. Article 2.1 of Appendix D requires a claimant to file an Appendix D claim within one year of the date on which the staff member becomes aware, or

reasonably should have been aware, of their service-incurred injury or illness. In the present case, there is ample evidence that the Applicant was aware of her medical condition by 11 April 2019.

43. Article 2.1(e) of Appendix D stipulates that only incapacity constitutes an exceptional basis to allow for a waiver of the one-year deadline. The Applicant had no incapacity that prevented her from filing her claim within the applicable deadline.

44. The Tribunal finds that the Applicant's challenges of Decisions B, C and D which are grounded on her Appendix D claim of 12 November 2020, were not receivable, being time-barred.

*Decisions E1 – E6*

45. These decisions are grounded on Decisions A – D. Since the latter have all been rejected as irreceivable, they cannot stand on their own and are also rejected.

**Conclusion**

46. In view of the foregoing, the Tribunal rejects the application in its entirety as irreceivable.

*(Signed)*

Judge Francesco Buffa

Dated this 4<sup>th</sup> day of December 2024

Entered in the Register on this 4<sup>th</sup> day of December 2024

*(Signed)*

Wanda L. Carter, Registrar, Nairobi