UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NY/2024/022
Judgment No.: UNDT/2025/057
Date: 2 September 2025
Original: English

Before: Judge Solomon Areda Waktolla

Registry: New York

Registrar: Isaac Endeley

APPLICANT

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT

Counsel for Applicant:
Laurence C. Fauth

Counsel for Respondent:
Lucienne Pierre, AS/ALD/OHR, UN Secretariat
Tamal Mandal, AS/ALD/OHR, UN Secretariat

Introduction

1. The Applicant is a former staff member of the United Nations Joint Staff Pension Fund ("UNJSPF"). He contests the decision of the Advisory Board on Compensation Claims ("ABCC") "to deny [his] claim for benefits under Appendix D [to the Staff Regulations and Rules of the United Nations], which was originally taken on 30 December 2020, and reconfirmed following the [medical board] procedure".

2. The Respondent contends that the application is not receivable *ratione materiae* and that, in any event, it lacks merit.

3. For the reasons set out below, the Tribunal rejects the application.

Facts

4. As the underlying facts and background information regarding the litigation between the parties have already been set out in considerable detail in various judgments of the Dispute Tribunal (including, for instance, [*Applicant*] UNDT/2022/051, *Applicant* UNDT/2022/055 and *Applicant* UNDT/2023/070) and the Appeals Tribunal (*AAM* 2023-UNAT-1372), they will not be reproduced here. Only a summary of the facts that are directly relevant to the present case will be addressed here.

5. By letter dated 30 December 2020, the ABCC Secretary informed the Applicant that the United Nations Controller ("the Controller") had decided to deny his claim for compensation for an alleged service-incurred illness under Appendix D to the Staff Regulations and Staff Rules of the United Nations ("Appendix D"). The Controller's decision endorsed the recommendation of the ABCC, which was based on a medical determination by the Division of Healthcare Management and Occupational Safety and Health ("DHMOSH") dated 6 November 2020.

6. On 20 January 2021, the Applicant challenged the Controller's decision on medical grounds and requested the convening of a medical board pursuant to art. 5.1 (Reconsideration of medical determinations) of Appendix D. The stated purpose of the medical board was to review the medical determination by DHMOSH that had formed

the basis for the ABCC's recommendation and the Controller's 30 December 2020 decision to deny the Applicant's claim for compensation.

7. By letter of 6 April 2021, the acting Medical Director of DHMOSH rejected the Applicant's request, informing him that a medical board could not be convened because the DHMOSH "input" of 6 November 2020 "was not a *determination* given under Article 1.7 of Appendix D, but *advice* given under Article 2.2" (emphasis in the original).

8. The Applicant appealed that decision to the Dispute Tribunal.

9. In *Applicant* UNDT/2022/055 of 10 June 2022, the Dispute Tribunal rescinded the acting Medical Director's decision denying the Applicant's request to establish a medical board, noting that "the basic legal premise for the contested administrative decision was flawed". Accordingly, the Tribunal remanded the matter to DHMOSH for a "new consideration" in light of the Tribunal's findings.

10. Following the Tribunal's Order No. 010 (NY/2023) of 14 February 2023, the Respondent on 21 February 2023 provided updated information concerning the execution of *Applicant* UNDT/2022/055. Specifically, the Respondent informed the Tribunal of the commencement of the procedure for convening a medical board.

11. In *Applicant* UNDT/2023/070 of 11 July 2023, the Tribunal observed that it was "regrettable that the Respondent took more than six months to convene a medical board and that, seemingly, he only decided to do so pursuant to [the] Tribunal's Order No. 010 (NY/2023)".

12. In a series of email communications during the first half of 2023, DHMOSH informed the Applicant that the ABCC, at its 530th meeting held on 30 December 2022, had determined that the events alleged in his claim did not rise to the level of an "incident" under Appendix D and that his illness was "not directly attributable to the performance of official duties on behalf of the United Nations". Nonetheless, the draft terms of reference ("TORs") for a medical board were discussed among the relevant parties and the Applicant nominated his psychiatrist to be his representative while a medical practitioner designated by the Medical Director of DHMOSH represented the Administration.

13. By email of 2 November 2023, Counsel for the Applicant objected to the selection of the third member, an independent medical practitioner, as the Chair of the medical board, arguing that the selected candidate was unqualified. At a video conference meeting on 29 November 2023, two of the three members of the medical board expressed their opinion that the Applicant's illness was not caused by his service with the United Nations. The Applicant's representative disagreed and issued a "Minority Opinion" by email dated 18 December 2023. The other two members of the medical board issued the "Majority Opinion" on 25 January 2024.

14. By letter dated 5 February 2024, the Acting Secretary of the ABCC notified the Applicant of the medical board's conclusion confirming the initial medical determination and affirming the Controller's 30 December 2020 decision to reject the Applicant's claim for compensation. That communication of 5 February 2024 is the contested administrative decision in the present case.

Considerations

Anonymity

15. The Tribunal notes that the Respondent opposes the Applicant's request for anonymity. However, since the present Judgment sets out some of the Applicant's medical details, and in line with *AAM* and the other Judgments cited at para. 4, *supra*, the Tribunal has redacted his name from its title and excluded information that may identify him.

Receivability

16. The Respondent submits in his reply that the letter dated 5 February 2024 is "not a reviewable administrative decision within the meaning of Section 7 of ST/AI/2019/1 (Resolution of disputes relating to medical determinations)". He also submits that "[t]he Controller's 30 December 2020 decision denying the Applicant's compensation claim has attained finality since the Appeals Tribunal upheld that decision" and that the ABCC letter of 5 February 2024 is merely "an outcome letter informing the Applicant that, following the Medical Board procedure reconfirming the 30 December 2020 decision, 'no further action is required of the ABCC'".

17. The Respondent further asserts that insofar as the Applicant seeks to contest the Controller's 30 December 2020 decision, the application is not receivable given that the decision attained finality after being upheld by the Appeals Tribunal in *AAM*. According to the Respondent, "the doctrine of *res judicata* therefore bars the Applicant's challenge to that decision and cannot be relitigated".

18. In the application, the Applicant states that the administrative decision at issue is the decision "to deny [his] claim for benefits under Appendix D, which was originally taken on 30 December 2020, and reconfirmed following the [medical board] procedure in the letter of 5 February 2024".

19. In his rejoinder dated 21 August 2024, the Applicant submits that the ABCC letter of 5 February 2024 "communicated an administrative decision … to uphold the decision of the Controller dated 30 December 2020 denying the claim for compensation".

20. The Applicant further submits in the rejoinder that his application is receivable because, under staff rule 11.2(b), he was not required to submit the contested decision for management evaluation since his challenge concerns "a decision taken pursuant to advice obtained from technical bodies, as determined by the Secretary-General". Similarly, under sec. 7 of ST/AI/2019/1, he was not required to request management evaluation since the contested decision was based on advice obtained from an independent medical practitioner or a medical board.

21. The Tribunal notes that under the jurisprudence of the Appeals Tribunal, the Dispute Tribunal is required to satisfy itself that an application is receivable within the meaning of art. 8 of its Statute and a determination on receivability must be made without regard to the merits of the case (see, for instance, the Appeals Tribunal in *Gehr* 2013-UNAT-313 and *Christensen* 2013-UNAT-335). As the Appeals Tribunal has also stated, receivability is a threshold issue because the Dispute Tribunal is obliged to determine whether it has jurisdiction to hear a case. Receivability "constitutes a matter of law and the Statute prevents the [Dispute Tribunal] from receiving a case which is actually non-receivable" (*Christensen*, para. 21).

22. The Tribunal considers that the threshold issue for resolution in the present case is not whether the Applicant was required to submit the contested administrative decision

for management evaluation prior to filing his application before the Tribunal. Rather, the issue is whether the Applicant has presented a new administrative decision capable of being subjected to judicial review. As the Appeals Tribunal observed, with respect to this same Applicant in *AAM*, at para. 38, "a reconsideration of the medical determination may, or may not, lead to a new administrative decision".

23. In the Tribunal's view, the ABCC's letter of 5 February 2024 did in fact convey a new administrative decision and was not merely a reiteration of the 30 December 2020 decision by the Controller. Even though the outcome was the same, and the 5 February 2024 letter informed the Applicant that "the medical determination has been confirmed by the Medical Board", this was a separate procedure undertaken by a different entity than DHMOSH, namely the medical board. In this instance, the medical board was not acting as a review body upholding DHMOSH's recommendation or the Controller's decision. It was acting as a separate entity conducting an independent review of the medical record and making its own determination.

24. The Tribunal is also not persuaded by the Respondent's arguments regarding the application of the doctrine of *res judicata* to the present case. The judgment of the Dispute Tribunal that was appealed was [*Applicant*] UNDT/2022/051 of 25 May 2022, which held that the ABCC and the Controller lawfully exercised their discretion when rejecting the Applicant's claim on the basis of DHMOSH's medical determination. That is the judgment that was upheld by the Appeals Tribunal in *AAM*.

25. In *Applicant* UNDT/2022/055 dated 10 June 2022, which was not appealed by either party, the Tribunal remanded this matter "to DHMOSH for a new consideration in light of the Tribunal's findings". As a result of that judgment, a medical board was convened following the Tribunal's instructions. The ABCC's letter of 5 February 2024 presents the outcome of that "new consideration", which is now being subjected to judicial review for the first time. Accordingly, the matter is not *res judicata*.

26. Therefore, the Tribunal finds that the contested decision in the present case is a new administrative decision, and that the application is receivable.

Medical board procedure

27. Article 5.1 (Reconsideration of medical determinations) of Appendix D provides:

> Claimants wishing to contest a decision taken on a claim under the present rules, when that decision is based upon a medical determination by the Medical Services Division or the United Nations Medical Director, shall submit a request for reconsideration of the medical determination under conditions, and by a technical body, established by the Secretary-General.

28. Sections 4 and 5 of ST/AI/2019/1 read, in relevant parts, as follows (emphasis in the original):

> **Section 4**
> **Review by a medical board**
>
> *Composition*
>
> 4.1 A medical board shall be composed of the following three members:
>
> (a) A qualified medical practitioner selected by the staff member;
>
> (b) The Medical Director or a medical practitioner designated by the Medical Director;
>
> (c) An independent medical practitioner selected by agreement between the other two members.
>
> 4.2 Staff members must provide information on the fees of the medical practitioner they have selected to the Medical Director within 30 calendar days of the finalization of the terms of reference. The fees of the medical practitioner selected by the staff member shall not exceed those established in the terms of reference in accordance with section 2.5 (b) above.
>
> 4.3 The third independent medical practitioner selected by the other two members of the medical board shall be the Chair of the board. If the other two members do not reach an agreement, the Medical Director must refer the decision to an appropriate external medical authority, who shall select the Chair. The fees of the Chair shall not exceed those established in the terms of reference in accordance with section 2.5 (b) above.
>
> *Procedure*
>
> 4.4 The members of the medical board shall meet in a location and manner determined by the Chair, including in person, by teleconference or by videoconference […].

4.5 The Chair shall provide a report in line with the terms of reference, written in an official language of the United Nations and containing the following:

(a) The majority view advising, in a reasoned opinion, as to whether to confirm, modify or reject the contested medical determination;

(b) A dissenting opinion, if any.

The report shall be signed by the Chair and submitted to the Medical Director and the staff member.

Section 5
Implementation of advice issued by an independent medical practitioner or medical board

5.1 The Medical Director shall review the report of the independent medical practitioner or medical board and assess whether it is in line with the terms of reference provided, and shall take one of the following actions:

(a) When the report is in line with the terms of reference and it is advised to reject or modify the contested medical determination, the Medical Director shall rescind the contested medical determination and issue a new medical determination, taking into account the advice provided by the independent medical practitioner or medical board;

(b) When the report is not in line with the terms of reference, the Medical Director may either request the independent medical practitioner or medical board to revise the report in order to align it with the terms of reference or confirm the contested medical determination.

5.2 Staff members who have contested a medical determination and officials who have taken administrative decisions on the basis of the original medical determination shall be promptly informed of the outcome of the review of the report by the Medical Director and of any new medical determination taken as a result thereof. Staff members shall also be informed of any subsequent modified or new administrative decisions taken on the basis of a new medical determination.

The parties' submissions

29. The Applicant's primary contentions are that there were several "procedural flaws" in the medical board procedure, which may be summarized as follows:

a. Firstly, although the ABCC held its 530th meeting on 30 December 2022 and discussed his case, he was unaware of the meeting until 2 May 2023 when he

received the minutes of the meeting by email from the Medical Director of DHMOSH. Therefore, he did not have the opportunity to make any representations to the ABCC.

b. Secondly, regarding the TORs of the medical board, under ST/AI/2019/1, the scope of review should have been limited to the medical aspects of the contested medical determination, which was contained in the DMHOSH letter of 6 November 2020. However, the final version of the TORs issued on 18 September 2023 referred instead to "DHMOSH's determination provided to the ABCC at its meeting of 30 December 2022" and he "did not have any opportunity to contest such a determination". As a result, the "Respondent identified the incorrect contested medical determination at issue in the TOR in violation of the Administrative Instruction".

c. Thirdly, whereas he was entitled to suggest amendments to the TORs, and he attempted to raise objections by email to the Medical Director, these were not taken into account in the final version of the TORs.

d. The fourth procedural flaw concerns agreement on designating a Chair of the medical board. He nominated his psychiatrist as his representative and DHMOSH nominated a medical doctor as the second member. Pursuant to sec. 4.3 of ST/AI/2019/1, the third independent medical practitioner selected by the other two members of the medical board should normally be the Chair of the board and if the other two members are unable to reach an agreement, the Medical Director must refer the decision to an appropriate external medical authority, who will then select the Chair. During a telephone conversation with the DHMOSH doctor, the Applicant's representative indicated the need for a psychiatrist to be selected as the Chair but did not receive a reply. Instead, in a letter dated 25 October 2023, the DHMOSH doctor "falsely" asserted that there was no agreement on a Chair and referred the matter back to the Medical Director.

e. The fifth procedural flaw concerns the Medical Director's "unilateral selection" of the Chair. By email of 2 November 2023, the Applicant's Counsel objected to the selection on the grounds that the selected doctor was "unqualified" and requested the Medical Director to reconsider his decision and "allow the

medical representatives to continue for a short period to agree on a Chair". The decision should have been referred to an "appropriate external medical authority" such as the American Board of Psychiatry and Neurology ("ABPN") or the American Psychiatric Association ("APA"), "in order to proceed legally, and to ensure a rational, procedurally correct establishment of a medical board and a legal, fair, and professionally suited medical board". The Respondent has not provided any evidence that the procedure set forth in ST/AI/2019/1 was followed or that an appropriate external medical authority was consulted.

f. The sixth procedural flaw is that the Respondent has "never communicated to [the] Applicant the reasons why an individual who is not an accredited psychiatrist was appointed as Chair on a medical board dealing with psychiatric illness despite numerous objections" raised by the Applicant. The selected doctor "is not qualified to render an opinion relating to the medical determination as he is not an accredited psychiatrist" and his résumé on the internet "indicates that he is a specialist in applying the American Medical Association Guide to Permanent Impairment, which is not used by psychiatrists for diagnosing disorders or determining causation". The selected doctor "does not meet the extensive educational requirement, including a specialized residency in psychiatry, nor does he possess the significant hands-on clinical experience and training under supervision that are essential for developing the expertise required to accurately evaluate and diagnose psychiatric disorders".

g. The seventh procedural flaw concerns the completion and transmission of the medical board's report. Under para. 18 of the TORs, the report should have been submitted to the Medical Director and the Applicant within 30 days of appointment of the Chair, in line with sec. 4.5 of ST/AI/2019/1. However, although the DHMOSH doctor gave notice on 25 October 2023 that the Chair had been appointed, it was only on 14 March 2024—that is, after the issuance of the contested decision of 5 February 2024—that the report was transmitted to the Applicant. The "Respondent submitted the report 141 days after the unilateral appointment of the Chair and 106 days after the meeting" of the medical board. Thus, not only was the deadline set in the TORs not met, but it "was exceeded by

a very significant period [without] providing any justification", which "amounts to a material breach" of the TORs and the administrative instruction.

h. The failure to share the majority report with the Applicant's nominee in a timely manner is the eighth procedural flaw, as this deprived the psychiatrist of the opportunity to comment on the findings and conclusions in her minority report. Conversely, because the Applicant's nominee submitted her minority report to the majority first, the Respondent had "the opportunity to comment on her findings and opinions" and this "represents a fundamental breach of due process and a breach of the adversarial principle".

i. Finally, there were multiple flaws in the majority report itself, beginning with the failure to consider the DHMOSH medical determination of 6 November 2020 as the starting point for the assessment. Instead, the majority report "embarked on making novel and incredulous new assessment on causation applying an irrelevant methodology". The majority report was "seriously flawed" as it "introduced an irrelevant methodology to determine causation, i.e., the National Institutes of Occupational Safety and Health (NIOSH) approach which starts with the generally accepted Bradford-Hill approach to causation but then somehow modifies them to apply to individual cases". The Applicant also retained the services of an additional expert psychiatrist who opined that "[s]ince the disorder is a psychiatric one the chair and members [of the medical board] should be accredited specialist[s] for psychiatry, well knowledgeable and experienced in depression".

j. In conclusion, "given the repeated material breaches of [ST/AI/2019/1] and other serious flaws in the procedure, the decision was not legal, rational, procedurally correct, ignored relevant matters, considered irrelevant matters, was arbitrary and capricious, absurd and perverse" (emphasis omitted). Since the contested ABCC decision of 5 February 2024 relied on the medical board's conclusions, it should be rescinded, and the Applicant should be awarded "all compensation for a service incurred illness […] available under the terms of Appendix D".

30. The Respondent's main contentions may be summarized as follows:

a. The application "lacks merit" because the contested decision is a "lawful and reasonable exercise of the ABCC's authority". The role of the ABCC is to assess claims "to determine whether an injury is directly attributable to the performance of official duties on behalf of the Organization". In that connection, the ABCC may seek advice from DHMOSH or an *ex officio* member of the ABCC before it makes a recommendation to the Controller, who has the delegated authority to accept or deny claims.

b. The role of the Dispute Tribunal is not to substitute its own judgment for that of the Secretary-General but "to determine if the Secretary-General's decision was legal, rational, procedurally correct, and proportionate". "The Dispute Tribunal does not review medical conclusions and opinions" and "is not competent to determine whether an illness is service-related".

c. The three-member medical board was properly composed under secs. 4.1 and 4.3 of ST/AI/2019/1. The Applicant selected his nominee and the Medical Director of DHMOSH designated a doctor. "In the absence of agreement between the two members regarding the selection of the Chair, in accordance with Section 4.3", the Medical Director referred the decision "to an appropriate external medical authority, namely the American Board of Independent Medical Examiners ["ABIME"]", which selected "an independent medical practitioner" as the Chair of the medical board. The Applicant's claim that DHMOSH violated the obligation to reach agreement on the Chair is "misplaced and unfounded". "Section 4 of ST/AI/2019/1 does not cast a mandatory obligation to reach an agreement. To the contrary, Section 4.3 recognizes the possibility that there may not be an agreement and consequently empowers the Medical Director, DHMOSH, to refer the appointment of the Chair to 'an appropriate external medical authority'".

d. The medical board "correctly followed the procedures under ST/AI/2019/1". In line with the TORs, the medical board was required to make an assessment "based on the medical evidence provided to the ABCC" and to give its own opinion as to whether the initial medical determination that the Applicant's "illness was not directly related to his service should be confirmed,

modified, or rejected". On 29 November 2023, the medical board met via video conference and reviewed the case. Thereafter, as required under sec. 4.5 of ST/AI/2019/1, "the Chair provided the Medical Board's Report, in line with the TORs, containing the reasoned majority opinion that confirmed the 6 November 2020 medical determination". In reaching that conclusion, the majority opinion considered that "this was a workplace compensation claim" and that causation was the primary issue. Accordingly, the majority opinion adopted the National Institutes of Occupational Safety and Health ("NIOSH") approach to causality as the most appropriate. "In addressing this issue of causality, the majority opinion found that there appeared to be no direct, objective evidence of an exposure to cause the Applicant's illness". Therefore, "the majority concluded that the causal link was insufficient to establish that the Applicant's illness was directly related to his work".

e. The Applicant's further claim that the Chair was "not qualified" as he was not a psychiatrist is "unfounded and has no basis in law". Section 4.1(c) of ST/AI/2019/1 provides that the Chair shall be "an independent medical practitioner". It does not prescribe additional qualifying criteria and leaves it to "an appropriate external medical authority" to select the Chair under sec. 4.3. In this case, the ABIME selected a suitable Chair and the Applicant is "neither competent nor qualified to question the ABIME's selection of the Chair".

f. The Applicant's claim of a delay in completing the medical board's report lacks merit. Similarly, his assertion that his nominee was not provided with the majority opinion or given the opportunity to comment on the findings and conclusions of the majority is misplaced. As required under sec. 4.4 of ST/AI/2019/1, the members of the medical board met and discussed the case. During the discussion, "the Applicant's nominee presented her views, responded to questions, and had the opportunity to hear and comment on the majority's views". Since she disagreed with the majority view, she issued a dissenting opinion. "Contrary to the Applicant's argument, Section 4.5 does not require the dissenting member to be provided with the majority opinion and the opportunity to dispute it".

g. "Under the presumption of regularity, the Applicant has the burden of proving that the contested [decision] was unlawful" but he has failed to do so. The Applicant's assertion that there were procedural violations of ST/AI/2019/1 in the preparation and issuance of the TORs is "baseless". Under sec. 2.4 of the administrative instruction, it is the role of the Medical Director to draft the TORs for the medical board. During the process, the Medical Director gave the Applicant "numerous opportunities to comment and suggest amendments to the TORs" and exercised the discretion afforded under sec. 2.6 to incorporate some of the Applicant's suggestions and reject others.

h. The Applicant is not entitled to any relief because compensation cannot be awarded when no illegality has been established. Further, as the Applicant has produced no evidence of any procedural or substantive breach of his rights or resulting moral harm, he is not entitled to any damages. Furthermore, the Applicant's request that the Respondent bear the cost of the medical board should be rejected. As set forth in sec. 6.1 of ST/AI/2019/1, where the disputed medical determination is confirmed by the medical board, the staff member shall bear the medical fees and expenses of the Chair and his nominee.

31. The Tribunal recalls that in *Applicant* UNDT/2022/055, the administrative decision under review was the decision of the acting Medical Director of DHMOSH to deny the Applicant's request to establish a medical board. As the basic legal premise for the contested decision was flawed, the Tribunal found that the most appropriate remedy under the circumstances was to rescind the decision and remand the case "to DHMOSH for a new consideration in light of the Tribunal's findings". The Tribunal also noted in that regard that "it has no jurisdiction as to directing the work of a potential medical board or the ABCC".

32. In the present case, the contested administrative decision under review is the outcome of the medical board procedure that was undertaken following the remand of the matter to DHMOSH. This decision was communicated to the Applicant by letter dated 5 February 2024 from the Acting Secretary of the ABCC. The Tribunal notes that the Applicant's main contention in his application as well as in his closing statement is that the medical board procedure was seriously flawed, "leading to an outcome that was

irrational, arbitrary, and disproportionate in light of the actual psychiatric medical evidence".

33. Having carefully examined the record concerning the establishment and conduct of the medical board, the Tribunal does not share the Applicant's view that the procedure was so seriously flawed as to vitiate the medical board's findings.

34. Despite DHMOSH's initial delay in initiating the process, the record shows that it subsequently followed the steps set out in secs. 4 and 5 of ST/AI/2019/1 as detailed above. For instance, the draft TORs were shared with the Applicant and he was given the opportunity to comment, even if the Medical Director used his discretion to accept or reject some of the Applicant's suggestions.

35. Moreover, due to the inability of the Applicant's nominee and the DHMOSH doctor to agree on a Chair, the matter was properly referred to "an appropriate external medical authority", namely the ABIME. Additionally, while the designated Chair may not have been to the Applicant's liking, the Tribunal finds that the designation was done in accordance with the applicable rules. The Tribunal also does not consider itself competent to determine the qualifications of a medical board member or the appropriate methodology to adopt in determining causation of the Applicant's illness.

36. Further, the record before the Tribunal shows that the three members of the medical board had the opportunity to meet virtually to discuss the case at hand and to express their respective views. The Applicant has not pointed to any provision that required the majority of the members to submit their report in advance to his nominee so that she could then formulate her minority opinion. Similarly, while the Applicant complains that relevant matters were ignored and irrelevant matters considered, he has not shown that the procedure was in any way arbitrary, capricious, absurd or perverse.

37. In summary, the Tribunal finds that the medical board procedure was conducted in accordance with the relevant provisions and that the Applicant's rights were respected throughout the process. In any event, even if insignificant procedural irregularities had occurred, the Tribunal recalls the "no difference principle" whereby such irregularities do not vitiate an administrative decision if "the ultimate outcome is an irrefutable

foregone conclusion" (*Wan* 2024-UNAT-1436, para. 40). In the present case, the ABCC's 5 February 2024 decision properly conveyed the medical board's clear findings.

Conclusion

38. In light of the above, the application is rejected in its entirety.

(Signed)

Judge Solomon Areda Waktolla

Dated this 2nd day of September 2025

Entered in the Register on this 2nd day of September 2025

(Signed)

Isaac Endeley, Registrar, New York