



UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/GVA/2023/027

Judgment No.: UNDT/2025/112

Date: 12 December 2025

Original: English

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**Before:** Judge Sun Xiangzhuang

**Registry:** Geneva

**Registrar:** Liliana López Bello

APPLICANT

v.

SECRETARY-GENERAL  
OF THE UNITED NATIONS

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**JUDGMENT**

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**Counsel for Applicant:**

Self-represented

**Counsel for Respondent:**

Sandra Lando, UNHCR

Jan Schrankel, UNHCR

## **Introduction**

1. On 14 May 2023, the Applicant, a Project Control Officer with the Office of the United Nations High Commissioner for Refugees (“UNHCR”) in Addis Ababa, filed an application contesting the 15 March 2023 decision of the UNHCR Medical Section to revoke the validity of his Periodic Medical Examination (“PME”).
2. For the reasons set forth below, the Tribunal decides to reject the application.

## **Relevant facts**

3. On 1 March 2022, following a request to the Medical Section, the Applicant was granted Certified Sick Leave (“CSL”) for an initial period of four weeks, which was later periodically extended until March 2023.
4. Between May 2022 and August 2022, the Senior Medical Officer, Staff Health and Wellbeing Service (“SHWS”) in Nairobi, and the Senior Medical Officer, SHWS in Geneva, communicated with the Applicant regarding the need to undergo an Independent Medical Evaluation (“IME”) due to his prolonged period on CSL.
5. On 17 August 2022, the Applicant underwent the IME at a clinic in Budapest. The IME report dated 24 September 2022 indicated that the Applicant was not fit to work.
6. On 5 October 2022, the Geneva Senior Medical Officer sent the Applicant a copy of the IME report, which indicated that the Applicant “still require[d] treatment and extended sick leave”. It was decided that:
  - a. the Applicant’s Standard Assignment Length (“SAL”) was reduced with immediate effect;
  - b. a medical constraint was put in place to prevent the Applicant from working in C/D/E category duty stations;
  - c. the Applicant’s CSL was extended until the end of the year 2022; and,

d. an IME follow-up would be scheduled in mid-February 2023 to determine the Applicant's fitness to work.

7. On 11 October 2022, the Applicant received a memo, dated 3 October 2022, and approved by the Director of the Division of Human Resources, which contained the conclusion and recommendation of the UNHCR's Medical Section Board with respect to the reduction of the Applicant's SAL and medical constraint.

8. On 19 December 2022, the Medical Section received the Applicant's periodic medical evaluation ("PME") report. In the context of this PME, the Applicant completed and signed a medical questionnaire, providing false and incomplete information. He failed to disclose any health issues, responded "no" to the questions "have you ever been absent from work for more than a month due to health reasons" and "have you had a change in your health status in the last PME" and "N/A" [not applicable] to the question, "have you required to be on sick leave during the period stated above".

9. On 2 January 2023, the Applicant filed an application to contest the 5 October 2022 decision to reduce his SAL.

10. On 23 and 26 January 2023, the Budapest Clinic and the Geneva Senior Medical Officer contacted the Applicant regarding the required IME follow-up and offered him an appointment on 1 February 2023. The Applicant did not reply.

11. On 10 February 2023, the Geneva Senior Medical Officer wrote to the Applicant asking whether he attended the IME follow-up, which was required to "determine [his] progress and as a result evaluate [his] fitness for work". The Applicant did not reply.

12. On 21 February 2023, the Applicant was offered a six-month temporary assignment as Project Control Officer (P-3) in Yangon, Myanmar, that could be performed by teleworking from Hungary. On the same day, the Applicant accepted the offer.

13. On 2 March 2023, the Geneva Senior Medical Officer wrote to the Applicant that his PME was received but was not finalized due to the missing IME follow-up, which was necessary to determine his fitness to work. The Applicant did not reply.

14. On 3 March 2023, the Geneva Senior Medical Officer wrote to Budapest Clinic and the Applicant, asking that another appointment be scheduled for the IME follow-up, which was necessary to determine the Applicant's fitness to work. On the same day, Budapest Clinic indicated that the earliest appointment was on 29 March 2023. The Applicant was requested to confirm his availability. The Applicant did not reply.

15. On 7 March 2023, following a Teams call, the Geneva Senior Medical Officer wrote to the Applicant that he could not be cleared for the assignment in Myanmar without the IME follow-up that was necessary to determine his fitness to work and that, as a result, his PME remained pending.

16. On 9 March 2023, the Geneva Senior Medical Officer wrote to the Applicant, indicating that: i) the Applicant failed to respond to the multiple emails sent to him between January and March 2023; ii) the IME report dated 24 September 2022 indicated that the Applicant was unfit to work and the Applicant had been informed that an IME follow-up would be required in February 2023 to assess his progress, determine his fitness to work and extend his CSL if necessary; and, iii) the Applicant was required to confirm his availability for the 29 March 2023 appointment with the Budapest Clinic.

17. On 9 March 2023, the Applicant finally responded and confirmed his availability for the 29 March 2023 appointment and requested to be declared "fit to work with accommodations" for the assignment in Myanmar.

18. On 10 March 2023, the Geneva Senior Medical Officer replied to the Applicant that: i) since 5 October 2022, he had been aware that an IME follow-up was necessary to determine his fitness to work; ii) the Applicant's delay in responding to the emails and phone calls resulted in a delay in his fitness to work assessment; iii) the Applicant's status would remain as "unfit to work" until the IME follow-up was received; and, iv) the Geneva Senior Medical Officer had tried

to obtain an earlier appointment with the Budapest Clinic, but there was no earlier appointment available at the moment

19. On 15 March 2023, the Applicant received an automatically generated email from UNHCR's Human Resources system software indicating that his PME was not valid and that he was not considered fit to work.

20. On 17 March 2023, the Applicant confirmed his attendance at an earlier appointment with the Budapest Clinic on 22 March 2023.

21. On 22 March 2023, the IME follow-up was conducted. The IME follow-up report dated 24 March 2023 indicated that the Applicant was fit to work with accommodations and that medical follow-ups were needed every 6 months for the next two years.

22. On 24 March 2023, the Applicant wrote to the Medical Section that he had completed the requested IME follow-up and that the report indicated that he was currently fit to work. He requested that his medical clearance status be updated accordingly.

23. On 27 March 2023, the Geneva Senior Medical Officer declared that, based on the IME follow-up, the Applicant was fit to work with accommodations, which meant that bi-annual reviews were necessary for the next two years and that his constraint regarding C/D/E duty stations remained in force.

### **Procedural background**

24. On 14 May 2023, the Applicant filed the instant application.

25. On 16 June 2023, the Respondent filed his reply contesting, *inter alia*, the receivability of the application.

26. By Order No. 99 (GVA/2023) of 15 August 2023, the Tribunal instructed the Applicant to file a rejoinder addressing, *inter alia*, the issues of receivability and clearly identifying the contested decision.

27. On 30 August 2023, the Applicant filed his rejoinder.

28. By Order No. 36 (GVA/2024) of 19 April 2024, the Tribunal rejected the Applicant's motion for anonymity and instructed the parties to file closing submissions by 3 May 2024.

29. On 2 May 2024, the Applicant informed via email that he would appeal Order No. 36 (GVA/2024).

30. On 3 May 2024, the Respondent filed his closing submission.

31. On 29 May 2024, the Tribunal received confirmation by the Appeals Tribunal that the Applicant had filed an interlocutory appeal against Order No. 36 (GVA/2024).

32. By Order No. 65 (GVA/2024) of 31 May 2024, proceedings were suspended pending resolution of the interlocutory appeal.

33. On 28 April 2025, judgment *BK 2025-UNAT-1526* was issued. The Appeals Tribunal decided to grant the interlocutory appeal to anonymize the Applicant's name.

34. By Order No. 49 (GVA/2025) of 9 May 2025, the Tribunal granted the Applicant's motion for anonymity and instructed him to file closing submissions by 23 May 2025.

35. Having not received the Applicant's closing submission by the prescribed deadline, the Registry informed the Applicant, on 26 May 2025, that it would exceptionally allow him to file his closing submission by no later than 30 May 2025, further advising him that failure to comply might result in the Tribunal moving forward with adjudication without his closing submission.

36. Still with no answer, the Registry called the Applicant on 30 May 2025 to inquire about the lack of responses and was informed that he had not received any of the previous instructions because he had lost access to the email used in these proceedings. On the same day, the Applicant sent an email requesting that the email address of his CCMS account be updated and further requesting an extension of time to file closing submissions due to the foregoing exceptional circumstances.

37. The Tribunal granted the Applicant's request for an extension of time to file his closing submission and instructed him to file it by 17 June 2025.

38. On 17 June 2025, the Applicant filed a motion requesting the suspension of the current proceedings pending the issuance of a judgment in Case No. UNDT/GVA/2023/023 (Applicant).

39. By Order No. 70 (GVA/2025) of 20 June 2025, the Tribunal rejected the Applicant's motion to suspend the proceedings pending the issuance of a judgment in Case No. UNDT/GVA/2023/023.

40. On 26 June 2025, the Applicant sent an email to the Tribunal informing that he would file an interlocutory appeal of Order No. 70 (GVA/2025).

41. On 21 July 2025, the Tribunal received confirmation from the Appeals Tribunal of the Applicant's interlocutory appeal of Order No. 70 (GVA/2025).

42. The Applicant has not sought the suspension of these proceedings pending the outcome of his interlocutory appeal, and neither has he filed closing submissions, despite being given multiple chances. The Tribunal, therefore, decides to proceed with the adjudication of the present matter. In any case, Case No. UNDT/GVA/2023/023 has been closed by the issuance of Judgment UNDT/2025/077, which effectively renders moot the Applicant's objection to the continuation of the instant case.

## **Consideration**

### *Receivability*

43. It is well-settled jurisprudence that "what constitutes an administrative decision will depend on the nature of the decision, the legal framework under which the decision was made, and the consequences of the decision." The key characteristics of an administrative decision subject to judicial review is that the decision must "produce direct legal consequences" affecting a staff-member's terms or conditions of appointment (*Ngokeng* 2014-UNAT-460, para. 27)

44. Furthermore, as per *Kennes* 2020-UNAT-1073,

41. Deciding what is and what is not a decision of an administrative nature may be difficult and must be done on a case-by-case basis and will depend on the circumstances, taking into account the variety and different contexts of decision-making in the Organization. The nature of the decision, the legal framework under which the decision was made, and the consequences of the decision are key determinants of whether the decision in question is an administrative decision.

45. In this case, the Applicant identified the contested decision as the 15 March 2023 automatically generated email indicating that his PME was no longer valid, and that his medical clearance status was “unfit due to non-compliance with PME”. However, the Respondent contends that the Applicant failed to disclose that the Medical Section had already determined his status as “unfit to work” based on the IME of 5 October 2022.

46. When asked to address the Respondent’s allegations of non-receivability, the Applicant provided that he had a valid PME since 19 December 2022. In this scenario, the 15 March 2023 was the subsequent administrative decision which produced direct legal consequences affecting his terms or conditions of appointment.

47. The evidence on record supports the Respondent’s contention.

48. It is noteworthy that, on 5 October 2022, the Geneva Senior Medical Officer sent the Applicant a copy of his IME report, in which he stated: (emphasis added)

Actions emanating from the report on the administrative aspect have been made to ensure your health and well-being are upheld and as a result the following apply.

a. A medical Constraint C, D and E for [one] year subject to evaluation upon expiry period.

b. A SAL reduction with immediate effect.

**Your sick leave has been extended accordingly to the end of the year 2022 and further review by Dr planned in Mid-February 2023 as part of follow-up assessment after which the progress report will help assess your fitness to work (return to work, Extended Sick leave with SLWOP or Disability).**



49. The 19 December 2022 PME, which the Applicant alleges he “passed” and was valid, was actually a periodic medical questionnaire completed and signed by the Applicant himself. By no means did this PME supersede the medical determination of 5 October 2022 nor invalidate the instruction given to the Applicant that a follow-up assessment was needed in mid-February to reassess his fitness to work.

50. The fact of the matter is that the Applicant ignored the multiple contacts attempted by the Geneva Medical Officer to conduct the IME follow-up, and that he was aware since 5 October 2022 of the determination of his unfitness to work.

51. Based on the foregoing, the Tribunal finds that the contested decision in this case is, in fact, the 5 October 2022 IME that deemed the Applicant unfit to work and that was still valid when he received the 15 March 2023 automatically generated email indicating that his PME was no longer valid.

52. The 15 March 2023 automatically generated email did not change the Applicant’s medical clearance status and did not produce direct legal consequences affecting his terms and conditions of appointment. It simply reiterated a condition that had already been established.

53. As such, it is not a reviewable decision as per art. 2.1(a) of the Statute.

54. Furthermore, it is a well-known principle that the reiteration of an administrative decision does not reset the clock with respect to statutory timelines and that ignorance cannot be invoked by staff members as an excuse for missing deadlines (*Mbok* 2018-UNAT-824, para. 42).

55. Pursuant to staff rule 11.4(b) and art. 8.1(d)(ii) of the Tribunal’s Statute, in cases where a management evaluation of the contested decision is not required, an application is receivable if it is filed within 90 calendar days of the applicant’s receipt of the administrative decision.

56. As indicated, the final and appealable administrative decision was sent to the Applicant on 5 October 2022. This means that the Applicant should have filed his

application by 3 January 2023. Instead, he only filed it on 14 May 2023, thus beyond the statutory time limit.

57. The Tribunal recalls that when defining the meaning of an exceptional case under art. 8.3 of the Tribunal's Statute, the Appeals Tribunal has explained that "only circumstances beyond a party's control preventing that party from exercising a right of appeal in a timely manner could constitute exceptional circumstances for the purpose of extending time limits to appeal" (*Stockholder* UNDT/2025/018, para. 14).

58. In *Temu* 2021-UNAT-1174, para. 40, the Appeals Tribunal gave two examples of acceptable justifications for filing a waiver request after the expiry of the 90-day deadline, namely "a technical failing of the Court Case Management System rendering it impossible to file before the deadline or a medical incapacity on the part of the staff member to file an application".

59. The Tribunal finds that none of the technical or medical circumstances to which the Applicant refers in his rejoinder compares to the examples provided by the Appeals Tribunal in *Temu*. Instead, as the Applicant states, he was focusing on a job search due to the SAL cut.

60. In view of the foregoing, the application is also not receivable *ratione temporis*.

### **Conclusion**

61. In view of the foregoing, the Tribunal DECIDES to reject the application.

(Signed)

Judge Sun Xiangzhuang

Dated this 12<sup>th</sup> day of December 2025

Entered in the Register on this 12<sup>th</sup> day of December 2025

(Signed)

Liliana López Bello, Registrar, Geneva