



UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NY/2021/038
Order No.: 043 (NY/2022)
Date: 5 May 2022
Original: English

Before: Judge Joelle Adda
Registry: New York
Registrar: Morten Michelsen, Officer-in-Charge

ARVIZU TREVINO

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

ORDER

ON RECEIVABILITY

Counsel for Applicant:
Self-represented

Counsel for Respondent:
Clémentine Foizel, ALD/OHR, UN Secretariat

Introduction

1. On 8 September 2021, the Applicant filed the application in which he contests the acting United Nations Medical Doctor's decision to deny the Applicant's "request to establish a medical board" of 6 April 2021.

2. On 16 September 2021, the Respondent filed a motion to determine receivability as a preliminary matter in Case No. UNDT/NY/2021/038 by which he also requested the deadline for filing the reply to be suspended.

3. By Order No. 86 (NY/2021) dated 20 September 2021, the Duty Judge of the Dispute Tribunal in New York granted the Respondent's 16 September 2021 motion in Case No. UNDT/NY/2021/038. She therefore ordered that (a) the issue of receivability was to be determined as a preliminary matter once the case is assigned to a Judge of the Dispute Tribunal for adjudication, (b) the deadline for submitting the reply was suspended until further notice, and (c) the Applicant could file his observations in response to the Respondent's contentions of non-receivability by 4 October 2021.

4. The Applicant duly filed his observation on 4 October 2021.

5. By Order No. 004 dated 11 January 2022, the Tribunal ordered the parties to file some additional submissions on whether the case concerns an appealable administrative decision.

6. The Respondent filed his submission on 24 January 2022 and the Applicant his observations thereto on 4 February 2022.

Consideration

Is the contested decision lis pendens?

7. The Respondent contends that under the doctrine of *lis pendens*, the “subject-matter” and “cause of action” of the present case was already considered in other cases of the Applicant before the Tribunal, namely Cases Nos. UNDT/NY/2020/042 (the Tribunal rejected the application as non-receivable Judgment No. UNDT/2022/001 dated 5 January 2022) and No. UNDT/NY/2021/026. The Respondent further submits that the Applicant raised “the same legal and factual issues” in the present case, including the issue of the rejection of the Applicant’s request for a medical board.

8. The Tribunal observes that a decision to reject a request for a medical board is a separate and independent decision from a decision to reject a compensation claim under Appendix D. Consequently, the two decisions are (a) governed by different provisions under Appendix D (sec. V and secs. I-III, respectively), (b) taken at different stages of the process (the request for a medical board only becomes pertinent if a compensation claim has previously been denied, see art. 5.1 of Appendix D); and (c) made by different decision-makers (at least in in the present case, the two different decisions were taken by the Medical Director and the Controller, respectively).

9. As the Applicant has made no separate claims on the question of establishing a medical board in Cases No. UNDT/NY/2020/042 and UNDT/NY/2021/026 (see Order No. 90 (NY/2021) dated 8 October 2021) which therefore only concern the Controller’s rejection of his compensation claims, there is therefore no issue of *lis pendens* in the present case.

Is the contested decision one that it is appealable to the Dispute Tribunal?

Parties' submissions

10. The Respondent submits that the application is not receivable *ratione materiae*, because the letter dated 6 April 2021 from the Medical Director to the Applicant does not constitute an appealable administrative decision under the Statute of the Dispute Tribunal. The reason stated by the Respondent is that the decision made in this letter is solely “a preparatory step and may only be challenged in the context of an appeal against a final administrative decision”. The final administrative decision is instead “that of the Controller on 30 December 2020, made on behalf of the Secretary-General, to approve the recommendation of the ABCC to deny the Applicant’s claim for compensation for illness under Appendix D” of the Staff Regulations and Rules. In this regard, with reference to the Appeals Tribunal’s judgment in *Kollie* 2021-UNAT-1138 (para. 61), the “recommendation of [the Advisory Board on Compensation Claims (“ABCC”)] to the Controller, and the letter of the ... Medical Director to the ABCC may only be contested in that context, and not as individual administrative decisions”.

11. The Applicant submits that there “were no further steps for [the] Applicant to follow after receipt of the Medical Director’s letter”, meaning the contested decision.

The relevant legal framework

12. At the outset, regarding the applicable Appendix D in the present case, the Tribunal notes that in the current Appendix D (ST/SGB/2018/1/Rev.1), it is stated that “[f]or claims filed for incidents that occurred prior to the entry into force of the present revised rules, the previously applicable rules will be applied” (see art. 6.1(b)). According to the Applicant’s own factual submissions, whereas his compensation claim was submitted on 29 June 2018, it concerned incidents that occurred somewhere between 2015 and until his medical leave in August 2017. The applicable Appendix D is therefore one appended to ST/SGB/2017/1, which was effective from 1 January 2017

and until 1 January 2018. The relevant provisions in ST/SGB/2017/1 are, however, unchanged in ST/SGB/2018/1/Rev.1.

13. The Tribunal notes that art. 5.1 (Reconsideration of medical determinations) provides that, “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”.

14. Accordingly, it is evident that the Medical Director’s decision of 6 April 2021 not to establish a medical board under art. 5.1 of Appendix D was indeed a final decision in response to a request by the Applicant by which he sought to challenge the Controller’s previous decision of 30 December 2020 to deny his compensation claim under Appendix B. Also, from a perspective of sequence of time, the Medical Director’s decision simply cannot be regarded as a preparatory step for the Controller’s decision.

Case management

15. Since the Tribunal finds the application to be receivable, the Respondent is to file his reply as per Order No. 86 (NY/2021). As the Tribunal further finds that the case is fully informed and ready for adjudication on the paper before it, the Applicant is subsequently to file his final observations to the reply after which the Tribunal will render its judgment.

16. In light of the above,

IT IS ORDERED THAT:

17. The Respondent’s claim that the application is not receivable is rejected;

18. By **4:00 p.m. on Thursday, 19 May 2022**, the Respondent is to file his reply. Applicant's motions of 8 September 2021 for a three-judge panel and production of additional evidence are rejected;

19. By **4:00 p.m. on Thursday, 26 May 2022**, the Applicant is to file his final observations, if any, to the reply. This submission must be a maximum of five pages, using Times New Roman, font 12 and 1.5 line spacing. It must be solely based on previously filed pleadings and evidence, and no new pleadings or evidence are allowed at this stage.

20. Unless otherwise ordered, on receipt of the latest of the aforementioned statements or at the expiration of the provided time limits, the Tribunal will adjudicate on the matter and deliver Judgment based on the papers filed on record.

(Signed)

Judge Joelle Adda

Dated this 5th day of May 2022