



Before: Judge Alexander W. Hunter, Jr.

Registry: New York

Registrar: Nerea Suero Fontecha

RODRIGUEZ

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT

Counsel for Applicant:
Self-represented

Counsel for Respondent:
Thomas Jacob, UNDP

Introduction

1. On 23 February 2018, the Applicant, a former staff member from the United Nations Development Programme (“UNDP”), filed an application contesting the decision made on 8 September 2017 by the Insurance and Disbursement Service/After Service Health Insurance (“IDS/ASHI”) to declare her ineligible to enroll in ASHI. The Applicant is seeking eligibility for ASHI, based on her contention that her participation in the contributory health insurance plan was continuous, from September 2005 to June 2017, and that the participation met the eligibility criteria of 10 years.

2. The Respondent contends that the contested decision is lawful as the Applicant did not meet the eligibility criteria for ASHI under sec. 2.1(a) of ST/AI/2007/3 (After-service health insurance), and requests the dismissal of the application.

3. On 3 April 2019, the case was reassigned to the undersigned Judge.

Factual background

4. The substantive facts of the case are not in contention. The following facts are from the written record.

5. On 15 September 2005, the Applicant joined the United Nations Office for Project Services (“UNOPS”) as a Portfolio Assistant on an appointment under the former 100-series of the Staff Regulations and Rules.

6. The Applicant contributed payments for four months of health insurance from 15 September 2005 to 31 December 2005. Effective 1 January 2006, the Applicant’s

health insurance coverage was under her spouse's (a staff member of the Organization) policy.

7. On 1 May 2007, the Applicant was on assignment with UNDP, from UNOPS, under a reimbursable loan agreement "up to April 30, 2009".

8. On 11 May 2009, the Applicant joined UNDP as a Resource Management Associate on an appointment of limited duration under the former 300-series of the Staff Regulations and Rules. On 17 June 2009, the Applicant's appointment of limited duration was extended through 31 December 2010.

9. On 21 November 2010, the Applicant's appointment of limited duration was terminated. The Applicant's health insurance coverage continued to be under her spouse while she was on the appointment of limited duration.

10. On 22 November 2010, the Applicant was recruited by the UNDP Bureau of External Relations and Advocacy as a Programme Finance Associate on a new fixed-term appointment.

11. The Applicant remained on a fixed-term appointment until her retirement from service on 30 September 2015, when the Applicant reached the mandatory retirement age of 62, after ten years and eight months of service.

12. Upon the Applicant's retirement, her spouse was still employed with the Organization and the Applicant continued to be covered under his health insurance.

13. On 8 June 2017, the Applicant's spouse, then a United Nations staff member, submitted an application for ASHI in anticipation of his upcoming retirement on 30 June 2017.

14. On 22 June 2017, IDS informed the Applicant's spouse that, if he was to retire on 30 June 2017, he would not be eligible for ASHI.

15. On 12 July 2017, the Applicant informed IDS that she wished to apply for ASHI in conjunction with her husband's application.

16. On 28 August 2017, IDS informed the Applicant that "staff members whose latest appointment was on or after 1 July 2007 would need a minimum of 10 years participation in the [United Nations] health plans under qualifying contracts in order to be eligible for ASHI". IDS further noted that "participation in the [United Nations] Health plans after [the Applicant has] retired from the organization does not count towards [the Applicant's] ASHI eligibility". IDS concluded that, considering that the Applicant had contributed less than the required ten years into a health insurance plan of the United Nations, she was not eligible to enroll in ASHI. The following day the Applicant requested that her request be reviewed once more.

17. On 23 February 2018, the Applicant filed the present application.

Applicable law

18. ST/AI/2007/3 on After-service health insurance includes the following relevant provisions regarding eligibility (emphasis in the original):

Section 1

After-service health insurance coverage

1.1 The purpose of the present administrative instruction is to set out provisions governing the after-service health insurance programme effective 1 July 2007.

1.2 After-service health insurance coverage is optional for eligible former staff members and their dependents. It is available only as a continuation, without interruption between active service and retirement status, of previous active-service coverage in a contributory

health insurance plan of the United Nations. In this context, a contributory health insurance plan of the United Nations is defined to include a contributory health insurance plan of other organizations in the common system under which staff members may be covered by special arrangement between the United Nations and those organizations.

Section 2

Eligibility for after-service health insurance coverage

2.1 Individuals in the following categories are eligible to enroll in the after-service health insurance programme:

(a) A ... staff member who was **recruited on or after 1 July 2007**, who while a contributing participant in a United Nations contributory health insurance plan ... was separated from service, other than by summary dismissal:

...

(ii) At 55 years of age or later, provided that he or she had been a participant in a contributory health insurance plan of the United Nations for a **minimum of ten years** and is eligible and elects to receive a retirement, early retirement or deferred retirement benefit under the Regulations of UNJSPF [United Nations Joint Staff Pension Fund]...

(b) A ... staff member who was **recruited before 1 July 2007**, who while a contributing participant in a United Nations contributory health insurance plan as defined in section 1.2 above, was separated from service, other than by summary dismissal:

...

(ii) At 55 years of age or later, provided that he or she had been a participant in a contributory health insurance plan of the United Nations for a **minimum of five years** and is eligible and elects to receive a retirement, early retirement or deferred retirement benefit under the Regulations of UNJSPF;

Considerations

19. There are two primary issues at contention in this case. The first issue is determining the Applicant's date of recruitment as that date establishes the legal framework for the Applicant's eligibility for ASHI. The second issue is whether the Applicant met the relevant eligibility criteria for ASHI under sec. 2.1 of ST/AI/2007/3, in particular if, as the Respondent contends, she was recruited after 1 July 2007, was the Applicant a participant in a contributory United Nations health insurance plan for a minimum of ten years?

20. At this juncture, the Tribunal recalls that the role of the Tribunal is to determine if the administrative decision being challenged is legally and procedurally correct, reasonable and fair, and proportionate. In *Sanwidi* 2010-UNAT-084, the Appeals Tribunal stated that “[d]uring this process the Dispute Tribunal is not conducting a merit-based review, but a judicial review. Judicial review is more concerned with examining how the decision-maker reached the impugned decision and not the merits of the decision-maker's decision”.

The Applicant's date of recruitment for determining eligibility to ASHI

21. In regard to the first issue, the Tribunal notes that it is uncontested that the Applicant joined UNOPS on 15 September 2005 as a Portfolio Assistant on an appointment of limited duration under the former 100-series of the Staff Regulations and Rules. On 1 May 2007, the Applicant was loaned to UNDP on a reimbursable loan agreement. On 11 May 2009, the Applicant joined UNDP as a Resource Management Associate on an appointment of limited duration under the former 300-series of the United Nations Staff Regulations and Rules. On 17 June 2009, the Applicant's appointment of limited duration was extended through 31 December 2010. It is further uncontested that the Applicant was re-employed by UNDP on a

fixed-term appointment on 22 November 2010 with the UNDP Bureau of External Relations and Advocacy as Programme Finance Associate. The Organization's letter of appointment for this position states that "[t]his will be a re-appointment from [the Applicant's] 300 series appointment in the same duty station, and should be effective 18/11/2010". The letter further states "[i]n order ... to proceed with [the Applicant's] new appointment, please indicate [the Applicant's] acceptance of this Offer by signing...".

22. Staff rule 4.17 on re-employment states as follows:

Re-employment

(a) A former staff member who is re-employed under conditions established by the Secretary-General shall be given a new appointment unless he or she is reinstated under staff rule 4.18.

(b) The terms of the new appointment shall be fully applicable without regard to any period of former service. When a staff member is re-employed under the present rule, the service shall not be considered as continuous between the prior and new appointments.

(c) When a staff member receives a new appointment in the United Nations common system of salaries and allowances less than 12 months after separation, the amount of any payment on account of termination indemnity, repatriation grant or commutation of accrued annual leave shall be adjusted so that the number of months, weeks or days of salary to be paid at the time of the separation after the new appointment, when added to the number of months, weeks or days paid for prior periods of service, does not exceed the total of months, weeks or days that would have been paid had the service been continuous.

...

23. It follows from the Applicant's letter of appointment for the fixed-term appointment with UNDP that she was re-employed rather than reinstated under staff rule 4.17, and the terms of the new appointment shall be fully applicable without regard to any period of former service.

24. In *Couquet* 2015-UNAT-574, the Appeals Tribunal found that the receipt of a new appointment by a staff member establishes his/her date of recruitment for purposes of ASHI eligibility. Further, it was affirmed by the Appeals Tribunal in *Couquet* that periods of former service were relevant only in cases enumerated in staff rule 4.17(c), and since ASHI was not one of the enumerated cases, the Administration could not take into account the staff member's period of former service in determining eligibility for ASHI. Similarly, in the present case, the Applicant, who was re-employed by UNDP on a fixed-term appointment on 22 November 2010, is to be treated as having a new appointment without regard to any period of former service. It follows that the Applicant's date of recruitment for the purpose of determining eligibility to ASHI was 22 November 2010.

25. The Tribunal concludes that the Applicant was recruited after 1 July 2007.

26. As such, the Tribunal will next consider the second issue before it, namely, the requirement of at least ten years of qualifying contributions into a health insurance plan of the United Nations in order to be eligible to receive ASHI.

Whether the Applicant has at least ten years of qualifying contributions

27. The Applicant contends that she contributed a cumulative total of eleven years and eight months of contributions into a health insurance plan of the United Nations during periods of service from the period 6 January 2006 to 30 June 2017, which qualifies her to enroll in ASHI.

28. The Respondent contends that the Applicant does not have ten years of qualifying contributions as the Applicant's cumulative eligible participation into a health insurance plan of the United Nations during all her periods of contributory service amounts to a total of eight years and seven months. In support of his contention, the Respondent states that Applicant's service for the 18 months period

on an appointment of limited duration (appointment under the former 300-series of the Staff Regulations and Rules) does not count towards the ten-year participation. The Respondent further submits that it is uncontested that the Applicant retired from service on 30 September 2015 and that in the absence of evidence that the Applicant's appointment was extended beyond the Applicant's normal age of retirement, the period during which the Applicant was under her spouse's health insurance plan after her retirement cannot be counted against the ten-year participation requirement.

29. The Tribunal notes that sec. 2.2 of ST/AI/2007/3 states as follows in respect to determining eligibility (emphasis added):

2.2 For the purpose of determining eligibility in accordance with paragraph 2.1 above and cost sharing in accordance with paragraph 3.2(b) below, participation in a contributory health insurance plan of the United Nations is defined to include: (a) Participation in a contributory health insurance plan of other organizations in the common system under which staff members may be covered by special arrangement between the United Nations and those organizations; **(b) The cumulative contributory participation during all periods of service under 100 or 200 series appointments, continuous or otherwise.** Except in cases of extension of appointment beyond the normal age of retirement, only participation in a United Nations health insurance plan prior to the attainment of the normal age of retirement shall count towards meeting the five- or ten-year participation requirement for enrolment.

30. It follows from the above that only participation in a United Nations health insurance plan by a staff member while they are on a former 100-series or 200-series appointment, or current fixed-term appointment, continuing appointment or permanent appointment, shall count towards meeting the ten-year participation threshold required to enroll into ASHI. The current legal framework does not count contributions made to a United Nations health insurance plan while a staff member is on any other type of appointment, including appointments of a temporary nature.

31. The Tribunal notes that sec. 6 of ST/AI/2007/3 states as follows in respect to a staff member married to another staff member (emphasis added):

Section 6

Staff member married to another staff member

6.1 In the case of a staff member married to another staff member, the insurance coverage, whether at the two-person or family level, must be carried by the higher salaried staff member while both are in service. **In the event of divorce or the death of the spouse who pays the insurance contributions, a staff member who was enrolled as a spouse under the coverage of the other spouse maintains individual participation status,** together with his or her eligible dependants, for the purpose of any subsequent after-service health insurance coverage provided he or she meets the service eligibility requirements set out under section 2 above.

32. It follows that ST/AI/2007/3 requires that when a staff member is married to another staff member, the higher salaried staff member must carry the insurance coverage. Further, ST/AI/2007/3 states that in the event of divorce or the death of the spouse who pays the insurance contributions, a staff member who was enrolled as a spouse under the coverage of the other spouse maintains individual participation status. By necessary implication, it must follow that a spouse of a staff member carrying the insurance coverage also has the right to maintain individual participation status for the relevant period she was covered by her spouse's insurance coverage.

33. The Tribunal notes that the Applicant's health insurance coverage was under her spouse while she was on the appointment of limited duration from 11 May 2009 to 21 November 2010. It is therefore necessary to determine eligibility of the Applicant's spouse's contribution during that period.

34. The record states that the Applicant's spouse separated from a 300 Series Appointment of limited duration on 30 June 2009 and was reappointed on 1 July 2009 under a fixed-term contract. Therefore, the contributions made by the Applicant's spouse

from 1 July 2009 to 21 November 2010 were eligible contributions and are to be counted towards the Applicant's total eligible contributions.

35. Finally, sec. 2.2 of ST/AI/2007/3 clarifies that any contributions made after the attainment of the normal age of retirement shall only count as contributory participation into a United Nations health insurance plan if those contributions are made as a result of the contributing staff member's appointment being extended beyond the normal age of retirement.

36. The Tribunal notes that the Applicant's appointment was not extended beyond the normal age of retirement and that she retired from service on 30 September 2015 at the mandatory age of 62. In accordance with sec. 2.2, the one year and nine months (1 October 2015 through 30 June 2017) period during which the Applicant was under her spouse's health insurance plan cannot be counted towards the ten-year participation requirement in a contributory health insurance plan of the United Nations.

37. Based on the above, the Tribunal finds that the Applicant's participation in a United Nations health insurance plan under a qualifying contract were: three years and eight months on a 100-series appointment (15 September 2005-30 April 2009), one year and three months when she was covered by her spouse's insurance coverage while he was on a fixed-term contract (1 July 2009 to 21 November 2010) and four years and eleven months on a fixed-term appointment (22 November 2010-30 September 2015). The cumulative eligible participation into a health insurance plan of the United Nations during all her periods of contributory service amounts to a total of nine years and ten months which is less than the required ten years, pursuant to ST/AI/2007/3, for the Applicant to be eligible to enroll into ASHI.

38. The Tribunal finds it unfortunate that the current legal framework does not allow a staff member who has served with the Organization for almost a decade on

different appointments, and made eleven years and eight months of contributions into a United Nations health insurance plan, to be deemed ineligible for ASHI. This case highlights the inequitable disparity of treatment of staff members who serve a lengthy career through a series of temporary appointments with the Organization, often under challenging uncertain conditions affecting their health, for the greater benefit of the Organization. It would be advisable for the Administration to review the current legal framework in relation to entitlements and benefits for staff members serving on temporary contracts.

Conclusion

39. The application is dismissed.

(Signed)

Judge Alexander W. Hunter, Jr

Dated this 7th day of June 2019

Entered in the Register on this 7th day of June 2019

(Signed)

Nerea Suero Fontecha, Registrar, New York