



Before: Judge Teresa Bravo

Registry: Geneva

Registrar: René M. Vargas M.

CHERNEVA

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

**ORDER ON AN APPLICATION FOR
SUSPENSION OF ACTION PENDING
MANAGEMENT EVALUATION**

Counsel for Applicant:

Self-represented

Counsel for Respondent:

Zarqaa Chohan, UNICEF

Introduction

1. By application filed on 18 April 2018, the Applicant requests suspension of action, pending management evaluation, of the decisions to:
 - a. place her on special leave without pay (“SLWOP”) “until the end of the determination of [her] medical case, [and] for the duration of [her] appeal of the Medical Director[’s] decision of 5 April 2018”;
 - b. request her “to sign a memorandum of understanding obliging [her] to accept, under any circumstances, the outcome of the appeal of [her appeal of] the Medical Director[’s] decision”; and
 - c. place her on special leave with half pay (“SLWHP”) “only if she cooperate[s] with the [medical decision review] process” and to recover the half pay salary paid to her if the UN Medical Director’s decision concerning her case is affirmed.
2. The application was served to the Respondent who filed his reply on 20 April 2018.

Facts

3. By email of 6 April 2018, the Chief, Policy, Administrative Law and Liaison Section (“PALLS”), United Nations Children’s Fund (“UNICEF”), informed the Applicant, *inter alia*, that:

[S]hould [she] request a review of the UN Medical Director’s decision [to submit her case to the United Nations Staff Pension Committee (“UNSPC”) for consideration of a disability benefit], UNICEF [would] proceed to place [her] on Special Leave Without Pay [(“SLWOP”)], as [she had] exhausted her sick leave entitlements.

4. By email of 16 April 2018, the Chief, PALLS, UNICEF, *inter alia*:
 - a. requested the Applicant to advise him whether she preferred to have the UN Medical Director's decision reviewed by a medical board or by an independent medical expert; and
 - b. advised her that pursuant to Section 63 of UNICEF's Separation from Service policy, she would "remain on [SLWHP] ... subject to [her] full co-operation with the medical review process and recovery of [her] salary should the UN Medical Director's decision be affirmed" (emphasis in the original).
5. By email of 17 April 2018 to the Chief, PALLS, UNICEF, the Applicant confirmed her choice of an independent medical expert and agreed to the terms related to her placement on SLWHP.
6. In view of the Applicant's request for an independent medical evaluation, her case was not presented to the UNSPC on 18 April 2018.
7. On 18 April 2018, the Applicant requested management evaluation of the decisions set forth in para. 1 above.

Consideration

The Applicant's administrative status and recovery of payments made

8. In his reply, the Respondent confirmed to the Tribunal that the Applicant, who was placed on SLWHP following the Tribunal's Order No. 250 (GVA/2017), will remain on SLWHP. This is in line with sec. 63 (Delay in determination) of UNICEF's Procedure on Separation from Service (DHR/PROCEDURE/2018/001), which reads:

In the event of a delay in the determination of medical incapacity or the award of a disability benefit, and if the staff member has exhausted his or her sick leave and annual leave entitlement, he or she will be placed on special leave with partial (i.e., half) pay pending the determination and/or award.

9. Furthermore, the Respondent withdrew his notice of recovery of any half pay salary paid to the Applicant. In this connection, the Tribunal notes that although such withdrawal was “without prejudice to the Respondent’s right to later decide to recover the Applicant’s salary (half pay) upon the completion of the medical evaluation”, the Respondent committed to implement any recovery, if at all, “with sufficient notice to the Applicant ... to allow her to appeal it, including requesting suspension of its implementation”.

10. It follows from the above that the decisions with respect to the Applicant’s placement on SLWOP and recovery of any half pay salary paid to her have become moot.

Request to sign a memorandum about the outcome of the review of the UN Medical Director’s decision

11. The Applicant further challenges UNICEF’s request that she sign a memorandum whereby the “independent medical expert’s assessment shall be binding”, and its decision to condition her placement on SLWHP to, *inter alia*, her “full co-operation with the medical review process”.

12. As noted above, the Respondent confirmed to the Tribunal that the Applicant will be kept on SLWHP.

13. With respect to the memorandum that the Applicant is asked to sign, the Tribunal notes that it constitutes a step within the review process of the UN Medical Director’s decision that she requested. It does not amount to a challengeable administrative decision.

14. Also, the Tribunal notes that the binding nature of the independent medical expert’s assessment applies to both parties, namely to the Applicant and her employing Organization. This is confirmed in an email of 17 April 2018 from the UN Medical Director to the Applicant and to the Chief, PALLS, UNICEF, where he advises the latter that the Applicant should “sign a document that both sides will accept the [independent medical expert] outcome”.

15. Finally, the Respondent confirmed in his reply that “the Applicant’s agreement to the outcome of the evaluation is always without prejudice to her inalienable rights under the UN Staff Regulations and Rules, or UNICEF policies, including the right to appeal the outcome, on the merits and on procedure”.

Conclusion

16. In view of the foregoing, the application for suspension of action is rejected.

(Signed)

Judge Teresa Bravo

Dated this 24th day of April 2018

Entered in the Register on this 24th day of April 2018

(Signed)

René M. Vargas M., Registrar, Geneva