



Before: Judge Alexander W. Hunter, Jr.

Registry: New York

Registrar: Hafida Lahiouel

GOUIN

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

ORDER

ON CASE MANAGEMENT

Counsel for Applicant:
Self-represented

Counsel for Respondent:
Steven Dietrich, ALS/OHRM, UN Secretariat
Alister Cumming, ALS/OHRM, UN Secretariat

Introduction

1. On 29 September 2016, the parties filed a joint submission in response to Orders No. 189 (NY/2016) and 219 (NY/2016). They provided responses to a number of questions posed by the Tribunal in para. 8 of Order No. 189 (NY/2016). Paragraph 2 of the joint submission stated:

The Respondent submits that the Applicant has had two periods of certified sick leave in 2015: from 11 March 2015 to 10 April 2015 i.e. 22 working days, and from 1 November 2015 to 12 December 2015 i.e. 28 working days. The first period of sick leave was certified by the [United Nations Office at Geneva] Medical Services on 23 June 2015. The second period of sick leave was certified by the Medical Services Division [(“MSD”)] on 9 December 2015.

2. By Order No. 229 (NY/2016) dated 30 September 2016, the Tribunal ordered the parties to participate in a Case Management Discussion (“CMD”) on Tuesday, 4 October 2016.

3. On 3 October 2016, the Respondent confirmed his availability to attend the CMD. On the same day, the Applicant informed the Tribunal that he might not be able to participate in the CMD on 4 October 2016 due to the effects of Hurricane Matthew in Haiti, where the Applicant is stationed. He requested the postponement of the CMD until after the hurricane had left the country.

4. By Order No. 231 (NY/2016) dated 3 October 2016, the Tribunal vacated the order for the parties to participate in a CMD and ordered the parties to file concise closing submissions by 5:00 p.m. on Monday, 10 October 2016.

5. On 5 October 2016, the Applicant filed a motion for leave to amend his application. He submits that in the process of preparing the joint submission, he learned for the first time of the 9 December 2015 decision taken by MSD to certify sick leave for the period 1 November 2015 to 12 December 2015. He submits that the decision was never communicated to him and therefore he was never provided an opportunity to challenge it. The Applicant therefore requests leave to amend his

application to include reference to the 9 December 2015 decision—in terms of both the facts relied upon and the grounds for contesting any administrative decision(s) identified in the application—and ensure that it is taken into account when the Tribunal disposes of this case. In a second request, the Applicant stated that:

In light of the last minute discovery of an important and directly relevant decision taken ten months ago by the administration and which was never communicated to the Applicant, the Applicant submits that the efficient disposal of this case requires the Tribunal to order the administration to fully disclose to the Applicant all decisions taken since 10 March 2015 and which concern the Applicant or, alternatively, to order the administration to certify that no such decisions exist.

Consideration

6. The Tribunal has reviewed the proposed amendments to the application as set out in para. 6 of the Applicant’s motion filed on 5 October 2016. The Respondent’s submission regarding the 9 December 2015 decision is already part of the case record. The Applicant essentially seeks to respond to this submission, as he states that he was not aware of the decision at the time that he filed the application.

7. Although the Tribunal has already granted the parties leave to file closing submissions in this case, it is conscious of the need to ensure clarity as to the matters to be addressed in those submissions. The Tribunal will therefore grant the Applicant’s request, and his submissions, as included in para. 6 of the motion dated 5 October 2016, are entered as part of the record. The relevance and weight to be accorded to the information furnished by the Applicant will be considered along with the closing submissions of both parties when reaching a final determination in this case.

8. The Tribunal finds that the Applicant’s second request—to order the Respondent to “fully disclose to the Applicant all decisions taken since 10 March 2015 and which concern the Applicant or, alternatively, to order the administration to certify that no such decisions exist”—is too broad. The Tribunal has already ordered

the Respondent to provide further information, including, *inter alia*, the periods of sick leave certified and any period of absence for which the Respondent considers that the Applicant is required to provide further documentation. The contested decision(s) in this case are identified in the application. The Applicant's request lacks specificity and it is unclear how the information requested pertains to the contested decision(s) and the issues arising in this case. The request is therefore rejected.

Conclusion

9. The Applicant's motion is granted in part.

10. The Applicant's request to amend the application is granted and the submissions set out in para. 6 of the motion dated 5 October 2016 are entered as part of the record.

11. The Applicant's request that the Tribunal order disclosure of "all decisions taken since 10 March 2015 and which concern the Applicant" is rejected.

(Signed)

Judge Alexander W. Hunter, Jr.

Dated this 6th day of October 2016