

UNDT/2019/019, Kisia

UNAT Held or UNDT Pronouncements

There are two elements that must be established for a claim under Appendix D, one is the medical assessment of whether the claimant suffered from the injury or illness as alleged. The other is the non-medical factual determination whether the illness or injury was attributable to the performance of official duties on behalf of the Organization. The obtaining, handling, review, analysis and dissemination of any form of material to be used in a matter as evidence must be done in compliance with some basic rules to ensure that basic principles of fairness and due process are upheld, particularly where it is alleged that the material was tampered with as in the Applicant's case. The Respondent's failure to provide critical CCTV video footage evidence to the Applicant prejudiced his right to a fair and reasonable consideration of his claim and was unlawful. The Tribunal found that the ABCC failed to consider relevant matters by not further exploring the connection or lack thereof between an incident and the Applicant's injuries. The Tribunal found that the ABCC improperly considered the United Nations Claims Board's recommendation and related documentation in reviewing the Applicant's Appendix D claim. There is no express provision in the law requiring the Controller to make a distinct pronouncement based on an ABCC recommendation. Simply referring to and approving a reasoned recommendation by the ABCC was sufficient.

Decision Contested or Judgment/Order Appealed

The decision dated 6 May 2015, communicated to the Applicant by email from the Secretary of the Advisory Board on Compensation Claims ("ABCC") dated 8 May 2015, denying the Applicant compensation for claims made under Appendix D to the Staff Rules ("Appendix D") following a work place accident and resultant injuries and illnesses and other related alleged failures and shortcomings. Failure to convene a medical board in a timely manner to reconsider the initial ABCC decision of 6 May 2015 under art. 17 of Appendix D, as requested by the Applicant.

Legal Principle(s)

The obtaining, handling, review, analysis and dissemination of any form of material to be used in a matter as evidence must be done in compliance with basic rules to ensure that basic principles of fairness and due process are upheld. The ABCC is required to consider all matters relevant to a claim. The ABCC is not entitled to consider matters irrelevant to a claim. The Controller is not required to make a distinct pronouncement based on an ABCC recommendation.

Outcome

Judgment entered for Applicant in full or in part

Full judgment

[Full judgment](#)

Applicants/Appellants

Kisia

Entity

DSS

Case Number(s)

UNDT/NY/2016/048

Tribunal

UNDT

Registry

New York

Date of Judgement

7 Feb 2019

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Benefits and entitlements

Compensation for injury, illness or death attributable to service (Appendix D to Staff Rules)

Applicable Law

Staff Rules

- Appendix D

Related Judgments and Orders

UNDT/2016/059

2015-UNAT-601

2010-UNAT-084

2018-UNAT-817

2018-UNAT-861