

UNDT/2020/091, Giles

UNAT Held or UNDT Pronouncements

The Tribunal found that the ABCC considered all relevant matters in arriving at the decision, and that the impugned decision was legal, rational, and procedurally correct. The submission that the application was not receivable *rationae materiae* and *rationae temporis* was without merit and was rejected. Contrary to the Respondent's assertion, the ABCC's letter of 29 December 2017 was an administrative decision given that it was arrived at after the Applicant, in response to the ABCC's email of 25 May 2017 inviting him to furnish new evidence. He furnished new evidence relating to each of the issues raised, provided documents to support his request for reinstatement of the award and the ABCC went ahead to assess the fresh evidence. The Applicant's challenge to it was within 90 days in accordance with staff rule 11.4(b). The application was found to be receivable *rationae materiae* and *rationae temporis*. Article 11.2(d) of Appendix D which requires proof of an adverse effect upon earning capacity has different applicable standards from art. 33(a) of the UNJSPF Regulations which require proof of incapacitation. The Tribunal found that the ABCC correctly interpreted and applied the law. The Tribunal held that the issue of proof of the Applicant's earning capacity was obviously considered by the ABCC before arriving at the impugned decision. It was clear from the Applicant's argument that his views as to the nature of evidence which would be relevant to such proof differed from those of the ABCC. The ABCC sought to review the Applicant's tax returns which the Applicant declined to avail. It was not for the Applicant to determine the nature of proof that was necessary in the circumstances, since the law (art. 15 of Appendix D) gave that mandate to the ABCC.

Decision Contested or Judgment/Order Appealed

The Applicant was contesting the Advisory Board on Compensation Claims' ("ABCC") letter of 29 December 2017 denying/discontinuing his ABCC disability benefit. He filed an amended application on the same day.
UNDT

Legal Principle(s)

The UNJSPF and the ABCC are independent bodies, with different benefits, are governed by different legal frameworks and also have different decision-makers. While art. 11.2(d) of Appendix D requires proof of an adverse effect upon earning capacity in an applicant's normal occupation or an equivalent occupation appropriate to his qualifications and experience art. 33(a) of the UNJSPF's Regulations does not require proof that an applicant suffered a loss of earning capacity.

Outcome

Dismissed on merits

Outcome Extra Text

The Tribunal found that the ABCC considered all relevant matters in arriving at the decision, and that the impugned decision was legal, rational, and procedurally correct.

Full judgment

[Full judgment](#)

Applicants/Appellants

Giles

Entity

MONUSCO

Case Number(s)
UNDT/NBI/2018/107
Tribunal
UNDT
Registry
Nairobi
Date of Judgement
19 Jun 2020
Duty Judge
Judge Tibulya
Language of Judgment
English
Issuance Type
Judgment
Categories/Subcategories
TEST -Rename- Benefits and entitlements-45
Compensation for injury, illness or death attributable to service (Appendix D to Staff Rules)
Jurisdiction / receivability (UNDT or first instance)
United Nations Joint Staff Pension Fund (UNJSPF)
Applicable Law
Staff Rules

- Rule 11.2

Related Judgments and Orders
2021-UNAT-1106