

UNDT/2020/116/Corr.1, Applicant

UNAT Held or UNDT Pronouncements

Article 13 of the applicable Appendix D requires the ABCC to make its determination “on the basis of reports obtained from a qualified medical practitioner or practitioners”. The scope of the ABCC’s discretion in exercising its powers is also not unlimited under the jurisprudence of the Appeals Tribunal (see Sanwidi as quoted above). As convincingly explained by the Applicant’s psychologist, PTSD differs from many other types of diseases and illnesses because the symptoms of PTSD do not manifest themselves at the same time as the event(s) that caused it—PTSD is per definition a post traumatic mental illness—and those symptoms often oscillate over time. In this sense, PTSD is indeed not a typical injury for the ABCC to assess and requires the Committee to consider what event actually defines the notion of “injury or onset of illness” in terms of art. 12 of the applicable Appendix D. As regards to PTSD, the notion of injury or onset of the illness can certainly not be dated from the traumatic event, because it is precisely a post-traumatic syndrome. It is also not obvious to date it from the time of the first PTSD diagnosis, because there could be remission of the symptoms. It is more rational to date the “injury or onset of the illness” when the psychological symptoms are so severe that the patient acknowledges that his/her syndrome no longer allows him/her to fulfill his professional obligations. The PTSD may flare up again for a patient who has had remission of her/his symptoms, and this time to a more harmful level. Therefore, for this kind of illness with fluctuation of symptoms, considering that the compensation claim would be per definition time-barred if the compensation claim under art. 12 of the applicable Appendix D was not filed in the four-month time limit after the first PTSD diagnosis seems not to take into consideration the specificity of this illness. This is precisely why the notion of “exceptional circumstances” under the applicable Appendix D offers some flexibility. As follows from the various medical reports regarding the Applicant and otherwise from the facts, during the relevant time period from 2008 to 2017, his PTSD symptoms fluctuated considerably—from appearing to have (at least, almost) recovered at times, to eventually deteriorating to the point that UNJSPF declared him incapacitated for further service with the Organization. Accordingly, it is very difficult to objectively determine exactly when the Applicant’s PTSD symptoms were so manifest that a compensation claim to the ABCC would have been warranted in terms of establishing the four-month deadline under art. 12 of the applicable Appendix D, and even if late, if exceptional circumstances then applied. In accordance with art. 13 of the applicable Appendix D, this would entirely depend on a relevant and qualified medical assessment of the Applicant’s subjective state of mind. Regarding the importance and content of the MSD’s report, the relevant Medical Doctor explicitly admits that he had not assessed the Applicant’s condition or its cause, but rather concludes that there were significant periods of time during which the Applicant was fully fit to successfully undertake his job and that he then had the “capacity” to file a claim at that time. Also, the Medical Officer noted that the Applicant had access to appropriate care at the United Nations. The MSD thereby does not express itself regarding the Applicant’s suffering from PTSD or the timing of his compensation claim. Instead, the fact that the Applicant’s PTSD symptoms were at times in remission and that he was therefore “capable” of functioning normally at work would logically mean that his mental condition was at this moment so stable that he would no longer have a related compensation claim with the ABCC for PTSD. Filing a claim at that time would therefore have made little sense unless he did so with retroactive effect, in which case, he could only have done so for four months back in time. Concerning the Applicant’s psychologist, he was the only medical practitioner, who had actually monitored and cared for the Applicant in New York during the relevant time period from 2013 to 2016. In addition, his credentials indicate that he possessed adequate expertise in mental illnesses to appropriately assess the Applicant’s suffering from PTSD and therefore was also “qualified” to do so under art. 13 of the applicable Appendix D. In the psychologist’s various medical reports, his analyses and diagnoses were very detailed and based on objective and medical considerations, and nothing suggests that he had inappropriately taken on the role as a “patient’s advocate” on behalf of the Applicant. The ABCC should

have relied on the psychologist's medical opinion as it was the only relevant and qualified medical assessment of the Applicant and his PTSD when determining whether his compensation claim was filed in a timely manner under art. 12 of the applicable Appendix D.

Decision Contested or Judgment/Order Appealed

Rejections of the Applicant's claim for compensation for alleged psychological injuries suffered as a result of post-traumatic stress disorder ("PTSD") arising from his traumatic experiences during service with UNICEF in Chad and in Somalia.

Legal Principle(s)

Pursuant to art. 12 of the applicable Appendix D, the Secretary-General is conveyed a broad discretion on whether to grant a waiver to the four-month deadline to file a compensation claim to the ABCC on the basis of "exceptional circumstances" as it is stipulated that he "may" do so. This discretion, however, is not unfettered. As the Appeals Tribunal stated in Sanwidi 2010-UNAT-0 Sanwidi 2010-UNAT-08484, at para. 40, "when judging the validity of the exercise of discretionary authority, ... the Dispute Tribunal determines if the decision is legal, rational, procedurally correct, and proportionate". This means that the Tribunal "can consider whether relevant matters have been ignored and irrelevant matters considered, and also examine whether the decision is absurd or perverse". The Appeals Tribunal, however, underlined that "it is not the role of the Dispute Tribunal to consider the correctness of the choice made by the Secretary-General amongst the various courses of action open to him" or otherwise "substitute its own decision for that of the Secretary-General". In this regard, "There can be no exhaustive list of the applicable legal principles in administrative law, but unfairness, unreasonableness, illegality, irrationality, procedural irregularity, bias, capriciousness, arbitrariness and lack of proportionality are some of the grounds on which tribunals may for good reason interfere with the exercise of administrative discretion" (see Sanwidi, para. 38). The Appeals Tribunal further held that "the Dispute Tribunal is not conducting a "merit-based review, but a judicial review" explaining that a "[j]udicial review is more concerned with examining how the decision-maker reached the impugned decision and not the merits of the decision-maker's decision" (see Sanwidi, para. 42).

Outcome

Judgment entered for Applicant in full or in part

Outcome Extra Text

The ABCC's decision that the Applicant's compensation claim for PTSD was time-barred was rescinded and—as soon as possible—the ABCC was to consider the Applicant's claim on its merits under the applicable Appendix D from before 2017. The Applicant was awarded three months of net-base salary in compensation under art. 10.4 of the Dispute Tribunal's Statute, and an additional USD20,000 in compensation under art. 10.5(b) of the Dispute Tribunal's Statute.

Full judgment

[Full judgment](#)

Applicants/Appellants

Applicant

Entity

UNICEF

Case Number(s)

UNDT/NY/2018/011

UNDT/NY/2018/032

UNDT/NY/2020/008

Tribunal

UNDT

Registry

New York

Date of Judgement

10 Jul 2020

Duty Judge

Judge Adda

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)

Compensation

Non-pecuniary (moral) damages

Remedies

Rescission

Applicable Law

Staff Rules

- Appendix D

UNDT Statute

- Article 10.5

Related Judgments and Orders

2010-UNAT-084