

# **UNDT/2021/069, Saleh**

## **UNAT Held or UNDT Pronouncements**

The Applicant was separated from service for submitting false information in three claims for dental treatment to the Medical Insurance Plan provider, Cigna, for reimbursement. The Applicant's due process rights were respected because during the investigation he was properly informed of the subject and purpose of the interview and afforded sufficient notice. He also had no objections as to the conduct of the interview when asked at the end of his interview. With respect to the claim that the Applicant insisted was, in fact, genuine, the Tribunal concluded that the allegation had not been proven by clear and convincing evidence because: a) the Applicant had no interest in falsifying a claim to the benefit of his wife, who was insured as a family member under the same plan; b) the explanation by the dentist is not entirely unreasonable; and c) the undated OPG, apparently belonging to a female, indeed displayed a prosthetic crown on the tooth indicated in the dentist's report. The facts in relation to the other two claims were established by clear and convincing evidence in light of the Applicant's admissions to the investigator and to the Tribunal. The Applicant's conduct violated staff regulations 1.2(b) and 1.2(q) and therefore amounted to misconduct. There was no reason to interfere with the disciplinary measure because the measure applied was in line with past cases involving submitting false information in relation to a medical claim or abusing the medical insurance provided by the Organization.

## **Decision Contested or Judgment/Order Appealed**

The Applicant contested the decision by the Under-Secretary-General for Management Strategy, Policy and Compliance ("USG/DMSPC") to impose on him the disciplinary measure of separation from service with compensation in lieu of notice and without termination indemnity, in accordance with staff rule 10.2(a)(viii).

## **Legal Principle(s)**

The Tribunal's role when reviewing a disciplinary matter is to determine: whether the facts on which the disciplinary measures were based have been established; whether the established facts legally amount to misconduct under the United Nations Regulations and Rules; whether the disciplinary measures imposed are proportionate to the offence; and whether there were any substantive or procedural irregularities that would vitiate the disciplinary process. In disciplinary cases, when termination is a possible outcome, the evidentiary standard is that the Administration must establish the alleged misconduct by "clear and convincing evidence", which "means that the truth of the facts asserted is highly probable.

## Outcome

Dismissed on merits

## Full judgment

[Full judgment](#)

## Applicants/Appellants

Saleh

## Entity

UNIFIL

## Case Number(s)

UNDT/NBI/2020/032

## Tribunal

UNDT

## Registry

Nairobi

## Date of Judgement

18 Jun 2021

## Language of Judgment

English

## Issuance Type

Judgment

## Categories/Subcategories

Disciplinary matters / misconduct

Fraud, misrepresentation and false certification

Separation from service

Termination (of appointment)

## Applicable Law

Other UN issuances (guidelines, policies etc.)

- A/71/186
- A/72/209

Staff Regulations

- Regulation 1.2(b)
- Regulation 1.2(q)