

2021-UNAT-1087, Ories

UNAT Held or UNDT Pronouncements

Regarding Contested Decision #1, UNAT agreed with UNDT that the staff member did not seek timely management evaluation of the refusals of his request to transfer. Further, UNAT also agreed with UNDT that there is no provision in the Staff Regulations and Rules addressing changes or transfers of posts for medical reasons. Additionally, UNAT also noted that the medical information at those relevant times recommended early medical retirement, not a transfer. Regarding Contested Decision #2, UNAT observed that there was no evidence that the staff member ought to have been appointed to the post in Baghdad. UNAT also agreed with UNDT at the time of his second application, there was no pending decision, refusing to assign the staff member to a post at a duty station other than Erbil, which caused his application to be moot. Finally, regarding any claim of negligence on the part of the Administration in promptly transferring the staff member to a different duty station, UNAT noted that such claim should have been and was not subjected to management evaluation.

Decision Contested or Judgment/Order Appealed

A staff member was injured while on duty in Erbil, Iraq, in December 2013. Thereafter, he was diagnosed with PTSD in February 2014. From 2014 until mid-2019, the staff member's medical assessments and prognoses assessed him unfit for continued duties and recommended early retirement. The staff member, nevertheless, returned to work, after exhausting his sick leave and annual leave entitlements in September 2014. In October 2015, with the support of his psychologist, the staff member requested a transfer from Erbil to Kirkuk or Baghdad. The Administration first approved the transfer request but later rescinded it on account that there was no P2 post in Kirkuk. In September 2018, the staff member was advised of the latest refusal of his request to transfer, including that as of August 2018, the Administration did not have any medical documentation supporting his transfer request (Contested Decision#1). In April 2019, the staff

member informed the UNAMI Chief Security Officer that he had been cleared by MSD to return to work from 30 April 2019, but to a duty station other than Erbil. He expressed his interest in a vacant post in Baghdad. Four days later, the Chief Security Officer announced in a broadcast email that someone else had been selected for the vacant post in Baghdad. The staff member treated this as a rejection of his request to be assigned to that post (Contested Decision #2). The staff member filed two separate applications with UNDT challenging the contested decisions. UNDT consolidated the applications and found that regarding Contested Decision #1, the application was not receivable as it was time-barred. The tribunal held that the decision rescinding the transfer request was made in 2016, and the staff member did not challenge the decision until 2019. UNDT, nevertheless, considered the merits of the application and found that there was no staff rule or regulation mandating a right to reassignment on medical grounds and secondly, there was no basis supporting such transfer request as the medical information at the time stated the staff member was unable to perform his duties and that he should be granted early medical retirement. Regarding Contested Decision #2, UNDT held that the broadcast email was not an administrative decision reviewable under Article 2.1(a) of the UNDT Statute. UNDT also found at the time of the second application, there was no pending decision refusing to assign the staff member to a duty station other than Erbil.

Legal Principle(s)

There is no staff rule or regulation mandating a right to reassignment on medical grounds. The Administration has to take into account medical information it has been provided with, i.e. if the medical information recommends early medical retirement, that same information cannot be used in support of a transfer request.

Outcome

Appeal dismissed on merits

Outcome Extra Text

The appeal is dismissed, and the UNDT Judgment is affirmed.

Full judgment

[Full judgment](#)

Applicants/Appellants

Ories

Entity

UNAMI

Case Number(s)

2020-1404

Tribunal

UNAT

Registry

New York

Date of Judgement

19 Mar 2021

President Judge

Judge Colgan

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

TEST -Rename- Benefits and entitlements-45
Jurisdiction / receivability (UNDT or first instance)
Management Evaluation
Management Evaluation
Time limit
Reassignment or transfer

Applicable Law

GA Resolutions

- A/RES/70/170

Secretary-General's bulletins

- ST/SGB/2008/5
- ST/SGB/2014/3

Staff Rules

- Rule 11.2
- Rule 6.2

UNAT Statute

- Article 1.2(c)
- Article 8.3
- Article 2.1(a)

UNDT Statute

Related Judgments and Orders

2013-UNAT-300
2017-UNAT-797
UNDT/2016/094
2017-UNAT-720
2017-UNAT-716
UNDT/2017/009