

UNDT/2022/004, Raschdorf

UNAT Held or UNDT Pronouncements

In relation to the Applicant's first two claims, the Tribunal recalled that staff rule 11.2(a) requires any staff member who wishes to formally contest an administrative decision to first submit a request for management evaluation of the administrative decision alleged to be in non-compliance with his or her terms of appointment or contract of employment. In this case, the Tribunal held that the Applicant was required to request management evaluation of those two decisions, but she did not do so. Accordingly, her claims relating to decisions one and two were not receivable *ratione materiae*. On the Applicant's third claim, the Tribunal observed that DHMOSH did not recommend the Applicant for a disability pension benefit because the Applicant was not incapacitated for further service in a member organization reasonably compatible with her abilities as required by article 33(a) of the UNJSPF Regulations. Her physician had found that she was unfit to work in field operations, but fit to work in duty stations with a moderate climate, such as Geneva, Vienna or New York.[1] The Tribunal thus held that the DHMOSH's decision was consistent with the treating physician's findings. The Applicant had not demonstrated that DHMOSH committed any procedural errors in arriving at its decision. Accordingly, the Application was without merit and it was denied. [1] Application, annexes 6A and 6C.

Decision Contested or Judgment/Order Appealed

The Applicant contested three decisions: (i) The administrative decision to not renew her fixed-term appointment ("FTA") beyond 31 May 2019; (ii) The 1 September 2020 decision of the Division of Healthcare Management and Occupational Safety and Health ("DHMOSH") to not recommend her for a disability pension to the United Nations Staff Pension Committee ("UNSPC") and to the Advisory Board on Compensation Claims ("ABCC"); and (iii) The 5 November 2020 decision of the ABCC to reject her claim for compensation on the ground that her claim was time-barred.

Legal Principle(s)

1. Staff rule 11.2(a) requires a staff member who wishes to formally contest an administrative decision to first submit a request for management evaluation of the administrative decision alleged to be in non-compliance with his or her the terms of appointment or contract of employment. of the staff member. Article 8(1)(c) of the UNDT Statute similarly provides that an application shall be receivable if the applicant has previously submitted the contested administrative decision for management evaluation. Requesting management evaluation is a mandatory first step in the appeal process and without a request for management evaluation, an application before the UNDT is not receivable *ratione materiae*. 2. Further, Article 33(a) of the UNJSPF provides that a disability benefit shall, subject to article 41, be payable to a participant who is found by the Board to be incapacitated for further service in a member organization reasonably compatible with his or her abilities, due to injury or illness constituting an impairment to health which is likely to be permanent or of long duration". 3. According to the settled jurisprudence of the Tribunal, incapacitation is a purely medical issue that can only be proven by medical evidence. The Appeals Tribunal held that the Dispute Tribunal is not competent to make medical findings, and that, if there is any procedural flaw relating to a medical issue, the Dispute Tribunal must remand the case to a competent medical body.

Outcome

Dismissed as not receivable; Dismissed on merits

Outcome Extra Text

Full judgment

[Full judgment](#)

Applicants/Appellants

Raschdorf

Entity

UNAMI

Case Number(s)

UNDT/NBI/2020/96

Tribunal

UNDT

Registry

Nairobi

Date of Judgement

17 Jan 2022

Duty Judge

Judge Hunter Jr.

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Administrative decision

Non-renewal

Reason(s)

Applicable Law

Staff Rules

- Rule 11.2(a)

UNJSPF Regulations

- Article 33(a)