

# UNDT/2022/097, Applicant

## UNAT Held or UNDT Pronouncements

The alleged lack of decision

The Tribunal noted that if a claim is submitted timely, the Administration opens the case under the framework of Appendix D, which remains open as compensation may be awarded any time after the original incident.

The Tribunal referred to art. 2 entitled “Principles of award” of the pre-2017 Appendix D, applicable at the time the claim was submitted, and found that for a compensation to be paid or a benefit to be granted under Appendix D, a staff member must make a specific request such as the reimbursement of medical expenses or the payment of compensation for PLF, which should then be reviewed by the Administration on its own merits, including whether the claim is directly related to the service-incurred incident.

While it was not contested that the Applicant, activated the framework of the pre-2017 Appendix D with the filing of his claim, a plain reading of it showed that he did not include any concrete request to be decided upon by the ABCC under Appendix D.

Under such circumstances, the Tribunal found that there was no implied administrative decision in relation to the Applicant’s claim as he argued.

The 9 June 2021 memorandum

The Tribunal found that the only decision that could be subject to review at this stage is the 9 June 2021 memorandum, whereby the Applicant was informed that DHMOSH reviewed his claim for compensation due to facial scarring and determined that the Applicant sustained no permanent loss of function (“PLF”) due to facial scarring resulting from the incident.

The Tribunal referred to *Kisia* 2020-UNAT-1049, para. 33, which provides that two elements must be established for a claim under Appendix D:

i) the medical assessment of whether the claimant suffered from the injury or illness as alleged, and ii) the non-medical factual determination [of] whether the illness or injury was attributable to the performance of official duties on behalf of the Organization (causation).

In line with the UNAT jurisprudence and considering that the 9 June 2021 memorandum was only based on a medical determination by the Division of Healthcare Management and Occupational Safety and Health (“DHMOSH”), the Tribunal found that it was not competent to review the merits of the 9 June 2021 memorandum.

Since the Applicant also referred in his application to his claim for PLF compensation based on the alleged PTSD, the Tribunal clarified that the review of that claim is still pending.

## Decision Contested or Judgment/Order Appealed

The “lack of decision” from the Advisory Board on Compensation Claims (“ABCC”) on the Applicant’s claim for compensation under Appendix D to the Staff Rules (“Appendix D”). Alternatively, he contested the Administration’s review of his claim as per a memorandum of 9 June 2021.

## Legal Principle(s)

“The key characteristic of an administrative decision subject to judicial review is that the decision must ‘produce ... direct legal consequences’ affecting a staff member’s terms and conditions of appointment” (see *Najjar* 2021-UNAT-1084, para. 29; *Lee* 2014 UNAT-481, para. 49).

“What constitutes an administrative decision will depend on the nature of the decision, the legal framework under which the decision was made, and the consequences of the decision” (see *Najjar*, para. 29; *Andati Amwayi* 2010 UNAT 058, para. 19).

“Not taking a decision is also a decision” (see Tabari 2010-UNAT-030, para. 23). However, for an implied administrative decision to be considered as such, the Administration must have “altogether failed to respond” (see Biryra 2015-UNAT-562, para. 47)

“The UNDT, by making medical findings which it was not competent to make and thereby awarding ... material and moral damages, exceeded its competence and committed errors of law and procedure” (Karseboom 2015-UNAT-601, para. 47)

## Outcome

Dismissed as not receivable

## Full judgment

[Full judgment](#)

## Applicants/Appellants

Applicant

## Entity

UN Secretariat

## Case Number(s)

UNDT/NY/2021/037

## Tribunal

UNDT

## Registry

New York

## Date of Judgement

30 Sep 2022

## Duty Judge

Judge Belle

## Language of Judgment

English

## Issuance Type

Judgment

## Categories/Subcategories

Compensation for injury, illness or death attributable to service (Appendix D to Staff Rules)

TEST -Rename- Benefits and entitlements-45

## Applicable Law

Staff Rules

- Appendix D

UNAT Statute

- Article 2.1(a)

## Related Judgments and Orders

2021-UNAT-1084

2014-UNAT-481

2010-UNAT-058

2010-UNAT-030

2015-UNAT-562

UNDT/2020/116/Corr.1

2021-UNAT-1133

2020-UNAT-1049

2010-UNAT-084

2015-UNAT-601

2019-UNAT-974