

2023-UNAT-1372, AAM

UNAT Held or UNDT Pronouncements

As a preliminary matter, the UNAT granted AAM's request for anonymity. Considering that the Judgment set out medical details regarding AAM, the UNAT found it necessary to protect his confidential information.

The UNAT found that there were four issues for adjudication on appeal: 1) whether AAM's appeal was moot/premature in light of a pending medical determination; 2) whether the UNDT erred in finding that the Controller had the delegated authority to deny AAM's claim for compensation under Appendix D; 3) whether the UNDT erred in finding that the decision of the Controller was reasonable and lawful; and 4) whether the UNAT should grant any of the remedies AAM requested.

As to the first issue, the UNAT found that the appeal was not moot, but "potentially moot". If a new administrative decision was made that AAM was satisfied with, then the appeal would become moot. Since at the time of the UNAT Judgment, the administrative decision was being contested by AAM and it was subject to judicial review, it could not be said that the appeal was premature.

Turning to the second and third issues, the UNAT was satisfied that the process prescribed by Appendix D had been duly followed, and that the Controller's decision which accepted the ABCC's recommendation to deny the claimed benefit was lawfully made by the Controller who had the delegated authority to make such decision.

Finally, the UNAT found no reason to increase the award of compensation for moral damages.

The UNAT dismissed the appeal and affirmed the UNDT Judgment.

Decision Contested or Judgment/Order Appealed

AAM filed two cases before the UNDT in relation to the Controller's decision to deny his claim for compensation for service-incurred mental injury and disability following the recommendation of the ABCC, which had determined, based on advice received from the Division of Healthcare Management and Occupational Safety (DHMOSH), that AAM had not proven that his illness was attributable to the performance of his duties.

In one case, AAM challenged the decision on medical grounds and requested that a medical board be convened to review the medical determination, in accordance with Article 5.1 of Appendix D to the Staff Regulations and Rules (Appendix D). This request was denied by the Acting Director of DHMOSH, and AAM challenged the decision before the UNDT. The UNDT partially granted the application, rescinded the decision not to convene a medical board in accordance with Article 5.1 of Appendix D, and remanded the matter "to DHMOSH for a new consideration in light of the Tribunal's findings in the present judgment". This Judgment has not been appealed and is thus *res judicata*.

In the other case, which is subject to the present appeal, AAM challenged the decision to the extent that the decision was based on considerations other than a medical determination, via management evaluation, pursuant to Article 5.2 of Appendix D, and subsequently before the UNDT. The UNDT held that it had no authority to review the medical opinion of DHMOSH or its relevancy related to AAM's claim before the ABCC. The UNDT found that in any event, the ABCC and the Controller lawfully exercised their discretion when rejecting AAM's claim on the basis of DHMOSH's medical opinion and was satisfied that the contested decision was "legal, rational, procedurally correct, and proportionate". The UNDT however found that procedural delays warranted compensation and awarded USD2,500 as compensation for moral damages.

AAM appealed the latter Judgment.

Legal Principle(s)

The requirement of authority is a fundamental precept of the principle of legality of the Administration. The first principle of administrative law (and of the rule of law) is that the exercise of power must be authorized by law.

When judging the validity of the Administration's exercise of discretion in administrative matters, as in the present case, the first instance tribunal determines if the decision is legal, rational, procedurally correct, and proportionate. It may consider whether relevant matters were ignored and irrelevant matters considered, and examine whether the decision is absurd or perverse. It is not the role of the first instance tribunal to consider the correctness of the choice made by the Administration amongst the various courses of action open to it. Nor is it the role of the first instance tribunal to substitute its own decision for that of the Administration.

The authority and role of the MSD in the process before the ABCC is to advise and assist the latter in evaluating medical information when applying the policy set forth in Appendix D. In this regard, as per the applicable legal framework, the MSD is "qualified", in the meaning of Article 13 of Appendix D, to provide the ABCC with the proper medical opinion as a basis for determining the injury or illness and the type and degree of disability.

The burden of proving any allegations of ill-motivation rests with the applicant.

Moral damages may not be awarded without specific evidence supporting the award, and testimonial evidence without corroboration by independent evidence is not satisfactory proof to support an award of moral damages, which means both the fact of damage and its quantum need evidential support.

The UNDT and UNAT are granted the discretion to order compensation normally not exceeding the equivalent of two years' net base salary of the applicant. In addition, the quantum of compensation claimed by the applicant shall be comparable to the damage suffered. It is the applicant's burden to establish a fact by which the Tribunals could decide the amount of the compensation by reference.

Transparency is an overarching principle of this Organization. The UNAT exercises its competence in line with this notion. It is set out in Article 10(9) of the UNAT Statute that the judgments of the UNAT shall be published unless protection of personal information is considered necessary. A request for redaction can only be permissible and/or permitted where it is necessary to protect information of a confidential and sensitive nature.

Outcome

Appeal dismissed on merits

Full judgment

[Full judgment](#)

Applicants/Appellants

AAM

Entity

UNJSPF

Case Number(s)

2022-1712

Tribunal

UNAT

Registry

New York

Date of Judgement

3 Aug 2023

President Judge

Judge Knierim

Judge Murphy

Judge Gao

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

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

Non-pecuniary (moral) damages

Benefits and entitlements

Compensation

Applicable Law

Secretary-General's bulletins

- ST/SGB/2019/2

Staff Rules

- Appendix D

UNAT Statute

- Article 10.9

Related Judgments and Orders

UNDT/2022/055

2021-UNAT-1157

2021-UNAT-1133

2020-UNAT-1049

2011-UNAT-109

2017-UNAT-787

2015-UNAT-524