

UNDT/2024/101, Aslam

UNAT Held or UNDT Pronouncements

interpreting medical reports to determine the cause and extent of medical disabilities is the essence of forensic medicine and the result is clearly a medical determination.

this argument seeks to have the Tribunal second-guess the Administration's finding that the X-ray camera did not fall on the Applicant's knee in 2017. That is beyond the purview of this Tribunal. In conducting a judicial review of an administrative decision, the Tribunal must defer to the Administration's factual findings and may not substitute its own decision for that of the Administration. Moreover, it is clear from the record that there was sufficient evidence upon which the Administration reasonably could have found that the X-ray camera did not impact the Applicant's knee. As such, that finding was neither arbitrary nor capricious. Weighing the evidence that it did impact his knee against the evidence that it did not is the purview of the Administration and not the Tribunal. Therefore, the decision was not unlawful on this point.

Decision Contested or Judgment/Order Appealed

the Applicant challenges a 15 August 2022 decision by the Controller, relying on the ABCC, to deny his claim for compensation, particularly:

- a. The conclusion that the X-ray camera did not impact his knee on 15 March 2017;
- b. The decision of the ABCC to deny his claim that the living conditions in UNAMID adversely affected his knee because he failed to provide medical reports of his condition before starting at UNAMID and to not consider the independent witness statement of MR (anonymous for privacy reasons);

- c. The presumption that he failed to provide comprehensive medical report(s) of his prior knee condition;
- d. The presumption that the 1996 injuries, (irrespective of the extent of disability) means he is excluded from compensation;
- e. Appendix D does not exclude service as expert on mission as a staff officer from its coverage;
- f. Denying the post-traumatic stress disorder (PTSD) claim because, if physical injury was not compensable, then PTSD cannot be assessed;
- g. ABCC relying on comment by ex-officio member that 1996 injury was very significant; and
- h. The MEU denial of his medical negligence claim.

Legal Principle(s)

the Applicant has requested the establishment of a Medical Board to review the medical determination, pursuant to ST/AI/2019/1; but maintains his argument that review by a medical board is not mandatory per the AI. The parties recently submitted documentation indicating that the medical review board is being constituted. The Tribunal finds that having availed himself of the reconsideration option (whether it is mandatory or optional), the Applicant must exhaust that remedy before he comes to the Tribunal. It would be illogical and a waste of judicial resources to permit the Applicant to pursue both administrative reconsideration with a medical board and judicial review with the Tribunal simultaneously.

In conducting a judicial review of an administrative decision, the Tribunal must defer to the Administration's factual findings and may not substitute its own decision for that of the Administration. Moreover, it is clear from the record that there was sufficient evidence upon which the Administration reasonably could have found that the X-ray camera did not impact the Applicant's knee. As such, that finding was neither arbitrary nor capricious.

Outcome

Dismissed as not receivable; Dismissed on merits

Outcome Extra Text

The Applicant's arguments regarding whether Appendix D covers military officers on duty with UN missions are moot.

The Applicant's claim that UN medical officers were negligent in 2017 is also not receivable, and as the Applicant states that he “does not seek in this application to claim on account of the alleged negligence on the part of UNAMID medical officers, this issue is also moot.

the Applicant’s claim to have the 2024 decision (on his re-opened claim) reviewed as part of this case is not receivable.² However, the balance of this case is receivable.

Having rejected the Applicant’s arguments, the Tribunal concludes that the 2022 decision on the Applicant’s Appendix D claim was legal, rational and procedurally correct.

- a. The Applicant’s request to review the 2024 decision on his reopened Appendix D claim is not receivable; and
- b. The Applicant’s challenge to the 2022 decision on his Appendix D claim is denied.

Full judgment

[Full judgment](#)

Applicants/Appellants

Aslam

Entity

UNAMID

Case Number(s)

UNDT/NBI/2023/017

Tribunal

UNDT

Registry

Nairobi

Date of Judgement

27 Nov 2024

Duty Judge

Judge Wallace

Language of Judgment

English

Appeal Status

Appealed

Issuance Type

Judgment

Categories/Subcategories

Benefits and entitlements

Applicable Law

Staff Rules

- Appendix D

Former Staff Rules

UNJSPF Regulations

- Article 33(a)

Related Judgments and Orders

2017-UNAT-737

2015-UNAT-601

UNDT/2013/133

UNDT/2011/174

2024-UNAT-1422