

**Administrative Tribunal**

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ADMINISTRATIVE TRIBUNAL

Judgement No. 1186

Case No. 1280: AOUALI

Against: The United Nations
Joint Staff Pension Board

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

Composed of: Mr. Julio Barboza, President; Ms. Brigitte Stern; Mr. Spyridon Flogaitis;

Whereas, on 27 February 2002, M'Hamed Aouali, a former staff member of the United Nations, filed an Application, requesting the Tribunal, inter alia, to hold that the Applicant was incapacitated for work as a result of an accident that occurred on 7 March 1999 in the course of and attributable to the performance of his official duties and that he was therefore entitled to the benefits provided for in article 11 of Appendix D to the Staff Rules.

Whereas, on 25 November 2002, the Tribunal rendered Judgement No. 1097. The Tribunal found that the Applicant had not proven with any degree of certainty that the accident of 17 March actually took place or that it was the cause of his current complaints; that, on the contrary, there was ample evidence that these complaints were due to symptoms that existed long before the alleged accident occurred; and that, thus, the Applicant's claim that he should not have been denied compensation under Appendix D of the Staff Regulations and Rules must fail.

Whereas, on 23 December 2002, the Applicant again filed an Application, requesting the Tribunal to:

“II. Pleas

...

(b) to rescind the decision [of 18 September 2002] of the Standing Committee of the [United Nations Joint Staff Pension Board (UNJSPB)];

(c) to order:

- either to refer the Applicant's case to the original Medical Board for review, taking into account all relevant documentation;
- or to refer the case to a new medical board established to review the case ...

(d) to order payment to the Applicant by the Respondent of four thousand Swiss francs (CHF 4,000) as costs.”

Whereas at the request of the Respondent, the President of the Tribunal granted an extension of the time limit for filing a Respondent's answer until 30 April 2003;

Whereas the Respondent filed his Answer on 21 April 2003;

Whereas the Applicant filed Written Observations on 7 May 2003 and the Respondent submitted comments thereon, on 11 June;

Whereas the facts additional to the facts set forth in Judgement No. 1097 are as follows:

On 1 February 2000, the Applicant wrote to the Secretary of the United Nations Joint Staff Pension Fund (hereinafter UNJSPF or the Fund) in Geneva, requesting a disability benefit under article H.4 of the Regulations of the Fund.

On 8 December 2000, the Chief, Office in Geneva, UNJSPF, informed the Applicant that, at its 290th meeting held on 1 December 2000, the United Nations Staff Pension Committee had decided not to award him a disability benefit, because, as was explained to him in a further letter of 22 December, at the time of his separation from service, he had the full capacity to return to work.

On 5 January 2001, the Applicant requested the UNJSPF to review the Staff Pension Committee's decision in his case in accordance with articles K.2 and K.5 of the Regulations of the Fund, and in doing so, obtain the advice of a medical board, pursuant to Rule K.7 of the Fund's Administrative Rules. Accordingly, a Medical Board was established. It convened on 17 May 2001 and concluded that the

Applicant, when he was separated from service, was not “incapacitated for further service” and that, therefore, it could not recommend that he be paid a disability benefit under article 33 of the UNJSPF Regulations.

In September 2001, the Applicant underwent a cat scan at the “Permanence de la Tour a Meyrin”, resulting in two reports from a radiologist, dated 4 (or 3) and 19 September. On 21 September, these reports were brought to the attention of the Joint Medical Service in Geneva (JMS), by Dr. Azarmsa, the physician nominated by the Applicant to the Medical Board, with a view to further review by the said Board. The JMS was of the opinion that such further review would not alter the outcome as the Organization did not believe the Applicant had suffered an (service incurred/“occupational”) accident.

On 17 October 2001, the Applicant wrote to the Secretary of the Fund to advise him of the above-mentioned developments, claiming that it was not relevant whether his health problems were the result of an accident or not. He requested the Secretary to take the necessary measures to reconvene the Medical Board to review its decision. This letter, as well as a follow-up letter of 17 November remained unanswered.

On 15 January 2002, the Applicant wrote to the Secretary-General and requested him to intervene. On 6 February, the Chief, Office in Geneva, UNJSPF, advised him that there was no basis to reconvene the original Medical Board or to establish a new board: the entire report of the Medical Board of 17 May 2001 would be presented to the Standing Committee at its next meeting in July 2002, including any additional medical or other supporting documentation he wished to submit.

On 16 April 2002, the Applicant submitted various documents to the Fund to be presented to the UNJSPB Standing Committee, including the reports. At its 185th meeting held on 18 July 2002, the Standing Committee reviewed the Applicant’s case and decided, on the basis of all medical and other evidence, including the report of the 17 May 2001 Medical Board, that the Applicant was not entitled to a disability benefit in accordance with article 33 (a) of the UNJSPF Regulations. The Standing Committee’s decision was communicated to the Applicant by a letter from the Fund dated 1 October 2002.

On 23 December 2002, the Applicant filed the above-referenced Application with the Tribunal.

Whereas the Applicant's principal contentions are:

1. The Applicant contests the decision of the Standing Committee because it is based on an incomplete examination of the facts.
2. The Standing Committee was not competent to review the two reports from the radiologist, which should have been referred to a medical board.

Whereas the Respondent's principal contentions are:

1. The Standing Committee's decision was substantially founded on the Medical Board's report and recommendation, and it took into account all additional medical and other information submitted by the Applicant, including the two medical reports from the radiologist. Thus, the Standing Committee had before it all of the pertinent information that was required to reach an informed decision in the case.

The Tribunal, having deliberated from 21 June to 23 July 2004, in Geneva, pronounces the following judgement:

- I. The Tribunal will begin by recalling some key dates and events in this matter. By a letter of 8 December 2000, the Chief, Office in Geneva, UNJSPF, informed the Applicant that the United Nations Staff Pension Committee had decided to deny his request for a disability benefit, because it considered that at the time of his separation from service, the Applicant was not incapacitated for further service. Indeed, under rule H.4 of the Administrative Rules of the Fund:

“A determination under article 33 (a) shall be made by the staff pension committee at the request of a participant:

(...) (b) Whenever a participant alleges that on the date of separation he or she was incapacitated within the meaning of article 33 (a).”

In a letter dated 5 January 2001, the Applicant requested a review of this decision by the Standing Committee, in accordance with rules K.2 and K.5 of the Administrative Rules of the Fund. Rule K.2 states that:

“The Standing Committee, acting on behalf of the Board, shall in like manner review any decision taken by it under rule H.1 above in which the medical conclusions are in dispute, any decision referred to it under rule K.6 below, and any decision by the Secretary of the Board which is not otherwise subject to review.”

Rule K.5 states that:

“A review shall be initiated by delivery to the secretary of the staff pension committee, or to the Secretary of the Board if the review is by the Standing Committee, within ninety days of receipt of notification of the disputed decision, of a notice in writing stating the points of fact or of law contained in the decision which are disputed, and the grounds upon which the request for the review is founded ...”

The Administration, on the basis of these rules, therefore decided to set up a Medical Board, in accordance with rule K.7, which states:

“(a) Where the outcome of the review turns in whole or in part on the medical conclusions on which the disputed decision was based, the staff pension committee, or the Standing Committee as the case may be, shall obtain the advice of a medical board on the correctness or otherwise of such conclusions before proceeding with the review.”

In accordance with the prescribed procedure (rule K.7(b)), on 30 May 2001, the Medical Board sent a written report to the Standing Committee carrying out the review.

In September 2001, the Applicant underwent further medical tests. He then requested the Secretary-General to order a review of his case by the Medical Board, in the light of the new elements. By a letter of 6 February 2002, the Chief, Office in Geneva, UNJSPF, informed the Applicant that the Medical Board would not be reconvened, and no new board would be established. However, he indicated that the file would be sent to the Standing Committee of the Pension Fund in July 2002 and that the Applicant could submit to it additional medical reports subsequent to the decision of the Medical Board, or any other documentation. UNJSPF then, on 8 October 2002, informed the Applicant that his request for the award of a disability benefit had been rejected by the Standing Committee at its meeting on 18 July 2002.

The Applicant, by means of this Application, is contesting this decision on the grounds that it was based on an incomplete examination of the facts justifying the award of a disability benefit.

II. The Tribunal believes, first, that an analogy in the decision-making process may be drawn between the Standing Committee and the Advisory Board on Compensation Claims (ABCC), which both base their recommendations on the opinion of a medical board. The Tribunal recently ruled, in the *Dillett* (2004) case:

“The Tribunal is well aware that the Medical Board issues a report, which may include recommendations, and the ABCC takes that report into account along with other advice and recommendations. Thereafter the ABCC makes its own recommendations to the Secretary-General, for final decision.

The Tribunal, having no medical competence, will not seek to substitute its subjective judgement for the judgement of the administrative bodies charged with making medical decisions. The Tribunal, however, can determine whether sufficient evidence exists to support the conclusions reached by those administrative bodies. If sufficient evidence does not exist, the Tribunal is obligated to set aside any decision made by such decision makers.”

III. The Tribunal notes that under the procedure for awarding a disability benefit, a medical board must meet at the time of a request for review, which was the case in accordance with rule K.7 of the Administrative Rules, but does not necessarily have to meet if the Applicant provides new information following rejection of an initial request for review.

Thus, the Medical Board, in its report of 30 May 2001, took the following view of the Applicant’s case:

“The Board accordingly considers that in the absence of neurological complications (which can be ruled out on the basis of a study of Mr. Aouali’s file), there is no reason to consider him at the date of separation from service in August 1999, as incapacitated for further service due to illness constituting an impairment to health which is likely to be permanent or of long duration.

The Medical Board therefore concludes that there is no justification for recommending the award of a disability benefit under article 33 of the Regulations of the United Nations Joint Staff Pension Fund” (emphasis added by the Tribunal).

The Tribunal notes that the Standing Committee took its decision mainly on the basis of the report provided by the Medical Board. It is worth stressing here the independence of this Board, which consists of three members, including one chosen by the Applicant. At the same time, however, the Standing Committee did not ignore the reports drawn up by the Applicant’s doctor, and took into consideration “all additional medical and other information” in the Applicant’s case. This documentation thus includes, in addition to the Medical Board’s report of 17 May 2001, additional documents and medical information which were the basis for the initial decision of the United Nations Staff Pension Committee, which had already rejected his request for the award of a disability benefit. The Tribunal therefore believes that the Standing Committee, in ruling on this case, took into account all necessary information. It refers, once again, to the *Dillett* case (ibid.):

“The ABCC also had the right to review independently evidence regarding this matter and to either accept or reject recommendations, and it exercised its discretion in that regard. Thus, the Tribunal finds that the Respondent acted properly in this regard and did not violate the Applicant’s rights to due process.”

IV. The Applicant complains that the UNJSPF did not reconvene the Medical Board or convene another board to analyse the additional reports he provided, which would call in question the accuracy of the conclusions of the Medical Board which met at the time of the request for review of the initial decision to deny the award of a disability benefit. In the Tribunal’s opinion, however, the Administration demonstrated due diligence in agreeing to consider any additional documentation in support of the request. Moreover, the Applicant cannot demand the establishment of a second medical board as a precondition for the submission of his case to the Standing Committee. It is for the Committee alone to decide, at its discretion, on the establishment of another medical board in cases going beyond the sphere of application of rule K.7(a) of the Rules of the Fund concerning review of decisions. In the event, the additional documentation was not relevant to the issue of review of the Standing Committee’s decision. When it is a question of assessing what happened at one point in time, T1, and a decision was taken at another point in time, T2, on the basis of documents drawn up when the events occurred or immediately afterwards, it does not seem logical to try to review this decision at an even later point in time, T3, on the basis of documents contemporaneous with T3. It is true that the poet T.S. Eliot wrote:

“And indeed there will be time ...
And time yet for a hundred indecisions,
And for a hundred visions and revisions,
Before the taking of a toast and tea ...
In a minute there is time
For decisions and revisions which a minute will reverse.”
(*The Love Song of J. Alfred Prufrock*)

However, the Tribunal, for its part, cannot allow itself to be carried away by poetic considerations, and must apply the law. And it is obliged to note that, in this case, there has already been a decision and a review of that decision: the decision of the United Nations Staff Pension Committee of 8 December 2000 and the review by the Standing Committee of 18 July 2002, based on the Medical Board’s conclusions of 30 May 2001.

V. The Tribunal adds that there is yet another relevant decision. It also took into account the fact that the Applicant had already had a request for compensation denied for this occupational accident under Appendix D to the United Nations Staff Rules, in Judgement No. 1173. Although the main issue which arose in this judgement - the sole issue covered in the operative part - was whether or not there had been an occupational accident, the Tribunal, in its arguments, noted that an independent doctor consulted by the United Nations Medical Service had already concluded, on 15 July 1999 - a date much closer to the date of the Applicant's separation from service - that "(t)he Applicant's capacity to work at his job was 100 per cent". Above all, however, the Tribunal noted that this opinion of the Applicant's doctor was confirmed by the Medical Services Division, Office of Human Resources Management, which stated that: "In August 1999, the Applicant was 100 per cent fit to carry out his duties." (Judgement No. 1097 *Aouali*).

VI. The question as to whether the Applicant was incapable of working at the time when he separated from service has therefore already been fully considered and the Applicant's rights were not infringed by the Administration's refusal to reconvene a Medical Board.

VII. The question even arises as to whether the Administration was obliged to take into account these additional documents supplied by the Applicant.

The Tribunal considered the question of how medical documents subsequent to those considered by the Medical Board in May 2001 could reveal an inability to work that had not been discovered by the Board, consisting as it did of competent persons, which had met several months previously. Indeed, if the additional medical tests had given any grounds for the award of a disability benefit, it could not then be shown that those grounds existed at the time of separation from service, only subsequent to that date. Even if the information in Applicant's doctor's reports demonstrates a chronic disability, it does not show that this disability existed on the date of the Applicant's separation from service. Accordingly, the relevance of these documents is not proved. Thus, in the Tribunal's opinion, the refusal to reconvene the Medical Board was not arbitrary.

VIII. In conclusion, the Applicant has not succeeded in proving wrongdoing by the Administration. Indeed, the report submitted by the Medical Board was sufficiently substantial to enable the Standing Committee to carry out a fair review of the

Applicant's situation without detriment to him. It has therefore been demonstrated that the Applicant did not fulfil the necessary criteria for the award of a disability benefit in accordance with article 33 of the Regulations of the Pension Fund.

IX. For these reasons, the Tribunal rejects the Applicant's requests.

(Signatures)

Julio Barboza
President

Brigitte Stern
Vice-President

Spyridon Flogaitis
Member

Geneva, 23 July 2004

Maritza Struyvenberg
Secretary
