

**A. (No. 59)**

*v.*

**EPO**

(Application for review)

**120th Session**

**Judgment No. 3477**

THE ADMINISTRATIVE TRIBUNAL,

Considering the application for review of Judgment 3300 filed by Mr P. A. on 24 February 2014 and corrected on 4 April 2014;

Considering Article II, paragraph 5, of the Statute of the Tribunal and Article 7 of its Rules;

Having examined the written submissions;

**CONSIDERATIONS**

1. The complainant requests a review of Judgment 3300, delivered on 5 February 2014, in which the Tribunal dismissed his seventh complaint. In that complaint he challenged as flawed the procedure and the report of the Medical Committee constituted further to the Tribunal's order in Judgment 3056 as well as the EPO President's ensuing decision of 29 May 2013 to consider that his invalidity was not due to an occupational disease.

2. Specifically, after the delivery of Judgment 3056, in which the Tribunal ordered the EPO to refer to a differently constituted Medical Committee the question of whether the complainant's

invalidity was due to an occupational disease, the complainant was informed on 19 October 2012 that a new Medical Committee had reviewed his case and had “confirmed unanimously that it [did] not suspect that [his] invalidity was caused by an occupational disease”. Further to an Order by the Tribunal directing the President of the EPO to take a decision on the origin of the complainant’s invalidity in light of the opinion given by the newly constituted Medical Committee, the complainant was notified by a letter dated 29 May 2013 of the President’s decision not to consider his invalidity due to an occupational disease.

3. In the proceedings leading to Judgment 3300, the complainant argued that the opinion of the newly constituted Medical Committee was flawed, *inter alia*, because it was not based on his state of health at the pertinent time, i.e. the time leading up to his invalidity, but rather on his state of health at the time of the proceedings leading to that judgment. The Tribunal dismissed this argument in consideration 7 of Judgment 3300, stating: “The Tribunal notes that the Medical Committee report specifies that the Committee was considering ‘the period starting with 01-12-2005 and ending with 30-09-2011’. There is no evidence to support the claim that it considered the complainant’s present state of health instead of his health during the pertinent period.”

4. Based on this statement by the Tribunal, especially that the Medical Committee was considering “the period starting with 01-12-2005 and ending with 30-09-2011”, the complainant again argues in the present application for review that the newly constituted Medical Committee did not consider his state of health during the pertinent period of time. He contends that the occupational character of his health condition relates to earlier periods, prior to the determination that he was suffering from invalidity. However, rather than considering these earlier periods, and hence the cause of his invalidity, the new Medical Committee considered the actual period of his invalidity. He submits that, as a result, the President drew wrong conclusions regarding the cause of his invalidity.

5. The complainant has misread the Tribunal's statement in consideration 7 of Judgment 3300. When regard is had to that statement, as reproduced in consideration 3 above, it is clear that in that consideration the Tribunal quoted a passage from the Medical Committee's report. The original passage read as follows: "The Medical Committee does not suspect that **the invalidity covering the period starting with 01-12-2005 and ending with 30-09-2011** was caused by an occupational disease." (Emphasis added.) Moreover, as noted above, the question was specifically addressed by the Tribunal in Judgment 3300, under 7, where it stated that "[t]here [was] no evidence to support the claim that [the Medical Committee] considered the complainant's present state of health instead of **his health during the pertinent period**" (emphasis added).

6. It is well settled that the Tribunal's judgments are final and that they may only be reviewed in exceptional circumstances and solely on the grounds of failure to take account of a particular fact, a mistaken finding of fact that involves no exercise of judgement, omission to rule on a claim or the discovery of some new fact which the complainant could not invoke in time in the earlier proceedings (see, for example, Judgment 3379, under 1). As well, the ground on which review is sought must be one that would have led to a different result in the earlier proceedings (see Judgments 1952, under 3, 3000, under 2, and 3385, under 1). The complainant's arguments, as summarised under 4 above, demonstrate that the present application for review does not raise any of the above grounds for review and that it is merely an attempt to re-litigate matters that were conclusively decided in Judgment 3300. As it is devoid of merit, it will be summarily dismissed in accordance with the procedure provided for in Article 7 of the Rules of the Tribunal.

#### DECISION

For the above reasons,  
The application for review is dismissed.

In witness of this judgment, adopted on 22 May 2015, Mr Giuseppe Barbagallo, President of the Tribunal, Ms Dolores M. Hansen, Judge, and Sir Hugh A. Rawlins, Judge, sign below, as do I, Dražen Petrović, Registrar.

Delivered in public in Geneva on 30 June 2015.

GIUSEPPE BARBAGALLO

DOLORES M. HANSEN

HUGH A. RAWLINS

DRAŽEN PETROVIĆ