

113th Session

Judgment No. 3111

THE ADMINISTRATIVE TRIBUNAL,

Considering the third complaint filed by Ms L.S. L. against the World Health Organization (WHO) on 28 April 2010, the Organization's reply of 23 July, the complainant's rejoinder of 1 September and WHO's surrejoinder of 22 September 2010;

Considering Article II, paragraph 5, of the Statute of the Tribunal;

Having examined the written submissions and decided not to order hearings, for which neither party has applied;

Considering that the facts of the case and the pleadings may be summed up as follows:

A. Facts relevant to this case are to be found in Judgment 2446, delivered on 6 July 2005, on the complainant's second complaint. Suffice it to recall that the complainant, a national of Botswana born in 1957, joined WHO in July 1991 on a short-term appointment as a secretary at grade G.4 in what was then the Division of Emergency Relief Operations. With effect from October 1991, her appointment was converted into a two-year fixed-term appointment, which was extended several times. On 1 March 2003 she was promoted to grade G.5 following the reclassification of her post. She has held a continuing appointment since 1 July 2007.

In October 1996 the complainant was diagnosed as suffering from tuberculosis. In July of the following year she asked for her illness to be considered as service-incurred, due to a stressful period of work and the fact that she had been in close contact with the participants of a course she had helped to organise in 1995 and 1996. Her case was reviewed three times by the Advisory Committee on Compensation Claims (ACCC), twice by a three-member medical board and once by the Headquarters Board of Appeal. In response to a recommendation by the ACCC, the Director-General ordered an independent investigation into the complainant's working conditions during the period from mid-1995 to October 1996 and the external consultants appointed to conduct that investigation issued their report in October 2002. The medical board was given the opportunity to consider that report and give its opinion, but it declined to do so. The ACCC met for a fourth time in December 2003, considered *inter alia* the views of the medical board and the consultants' report and unanimously recommended rejecting the complainant's claim. The Director-General accepted that recommendation and the complainant impugned that decision in her second complaint before the Tribunal.

In Judgment 2446 the Tribunal set aside the Director-General's decision. It ordered WHO to refer the matter back to the medical board to consider the consultants' report and provide a medical opinion as to whether the complainant's illness was service-incurred as a result of stressful working conditions. If the original board was unable or unwilling to provide that opinion, WHO was to take steps to have a new board appointed.

On 15 March 2006 another medical board was convened, composed of two members from the original board and one new member selected by the Director-General. It was asked to examine the consultants' report and give its opinion on the complainant's claim that the stress she had experienced at work had caused her debilitation to such an extent that she had contracted tuberculosis. In its report the medical board held that there were insufficient elements to conclude that her illness had been connected to her working conditions. In

November 2006 the ACCC reviewed the medical board's report, unanimously concluded that the complainant's illness was not service-incurred and recommended that the Director-General reject her claim. By a memorandum of 9 October 2007 the complainant was informed that the Director-General had endorsed that recommendation.

The complainant challenged the Director-General's decision before the Headquarters Board of Appeal on 18 December 2007. In its report of 7 December 2009 the Board concluded that the procedures followed by the Organization had complied with Judgment 2446 and Staff Rule 1230.1.2, which provides that a staff member may appeal against an administrative action or decision on the grounds of incomplete consideration of the facts. It recommended dismissing the complainant's appeal. By a letter of 2 February 2010 the complainant was informed that the Director-General had accepted the Board's recommendation. That is the impugned decision.

B. Referring to the Tribunal's case law, the complainant submits that the opinion of a medical board may be challenged if there is a failure to ascertain an essential fact or take it into account. She points to the minutes of the meeting of the newly convened medical board and challenges its conclusion that she displayed no symptoms of stress before falling ill. She contends that the board did not consider the facts outlined in the consultants' report regarding her working conditions. These conditions caused her to suffer extreme stress, which, in turn, lowered her immunity and led to her illness. Consequently, the board's report was flawed, as was the recommendation of the Headquarters Board of Appeal and the subsequent decision of the Director-General.

Citing Judgment 1373, the complainant states that conclusive evidence that an illness is service-incurred is not required if, on the evidence taken as a whole it is more likely than not that some or all of her symptoms were caused by the exercise of her duties. Only a causal link needs to be shown. Furthermore, even if her illness cannot be conclusively attributed to the performance of her duties, damages may still be awarded.

She contends that, at the very least, WHO was negligent and breached its duty of care by failing to take steps to address her working conditions. In her view, she was subjected to excessive stress as early as 1993 and in 1996 that stress was aggravated by additional administrative problems regarding her contract.

The complainant asks the Tribunal to quash the impugned decision and to find that her illness was service-incurred. She seeks material and moral damages, and costs.

C. WHO submits that it has fully discharged its obligation in execution of Judgment 2446. It points out that, according to the case law, the Tribunal may not replace qualified medical opinion with its own, though it may review the procedure followed by a medical board and determine whether the findings show any factual mistake or inconsistency, or overlook some essential fact, or draw a plainly wrong conclusion from the evidence. In this case, a new medical board was convened to consider whether the facts revealed by the consultants' report were indicative of sufficiently stressful working conditions to lead to the medical opinion that the complainant's illness was service-incurred. The board reviewed all the essential facts, including the consultants' entire report and the complainant's full medical history with WHO. In addition, it was given the time it needed to consider the matter and the opportunity to seek clarifications, if necessary. The Organization argues that there was therefore no procedural flaw.

The defendant maintains that the complainant has failed to prove a direct causal link between her illness and the performance of her official duties, as required by the relevant rules governing compensation claims contained in Annex E of the WHO Manual. It denies that it breached its duty of care towards her and states that it acted in good faith in considering her claim for service-incurred compensation.

D. In her rejoinder the complainant maintains her pleas. She asserts that, although on 5 July 2000 the Director-General agreed to award

her 2,500 United States dollars in costs for her first internal appeal related to this matter, WHO has not yet paid that amount.

E. In its surrejoinder the Organization reiterates its arguments. It acknowledges that it has not paid the aforementioned award of costs, but points out that the complainant has not provided it with proof of the costs she actually incurred.

CONSIDERATIONS

1. As the medical board had not considered a report by external consultants relating to the complainant's working conditions, the Tribunal, by Judgment 2446, set aside a decision of the Director-General dismissing her claim that her illness was service-incurred. So far as is presently relevant, in consideration 15 of the judgment the Tribunal made an order to the effect that the matter "be referred back to the board to consider the consultants' report and, based thereon, give the requisite medical opinion".

2. The substance of the claim that led to Judgment 2446 was that the complainant had been debilitated by her stressful working conditions and, as a result, she had contracted tuberculosis. In Judgment 2446 the Tribunal noted that the consultants' report relating to her working conditions was "inconclusive and contradictory" but that it was the task of the medical board to consider whether "the facts revealed by [it] were indicative of sufficiently stressful working conditions to lead to the medical opinion that the complainant's illness was service-incurred". (See consideration 14.)

3. Following delivery of Judgment 2446, the newly convened medical board met on 15 March 2006. The minutes of its meeting record that, as well as documents relating to earlier proceedings concerning the complainant's claim, it had before it the complete report of the consultants and the complainant's complete WHO medical record. The board expressed the view that, although the consultants' report disclosed a conflictual work situation, it did not

reveal “extreme conditions which could have played a determinative role in the onset of the illness” (translated from French original). The board also stated that it had taken account of the degree of individual resilience to stress and noted that, during the two years preceding the onset of the illness and despite her working conditions, the complainant had been in good health and had not presented with any incapacity for work, depression or other relevant medical symptom. It also noted that she had not complained of extreme or intolerable working conditions either to her treating doctor or to the WHO medical service. In this context, the board stated unanimously that it had not found “sufficient elements to consider the complainant’s illness connected in one way or another to her working conditions” (translated from French).

4. Based on the report of the medical board of 15 March 2006, the ACCC recommended, on 24 November 2006, that the complainant’s claim that her illness was service-incurred be rejected. The Director-General’s decision to that effect of 9 October 2007 was the subject of an unsuccessful appeal to the Headquarters Board of Appeal. The Director-General’s decision of 2 February 2010 dismissing her appeal is the subject of the present complaint.

5. It is well settled, as stated in Judgment 1752, under consideration 9, that the Tribunal “may not replace qualified medical opinion with its own, though it may review the procedure and say whether the doctors’ findings show any factual mistake or inconsistency, or overlook an essential fact, or draw a plainly wrong conclusion from the evidence” (see also Judgments 2361, consideration 4, 2551, consideration 9, and 2580, consideration 6).

6. The complainant contends that the medical board “could not have taken into account the facts enumerated in the consultants’ report”, pointing out that the “facts [were] not even mentioned”. She further submits that “[a]ll [her] abusive treatment and inhumane working hours [could] only have resulted in extreme stress, which one of the medical experts explained can lower a person’s immunity and

therefore cause illness, in particular tuberculosis”. The question is not whether stress “can” cause debilitation leading to tuberculosis, but whether, on the balance of probabilities, it did so in this case (see Judgment 528, consideration 4). In this respect, the question as posed in Judgment 641, consideration 8, is whether there was “a causal link in the legal sense, that is to say, some fairly definite connection between the cause and the effect”. Thus in the present case, one must consider whether the complainant was subjected to stress and whether this led to a debilitated state in which she contracted tuberculosis. Only if these two questions are answered in the affirmative, can the complainant succeed in her claim. Although the medical board did not repeat the facts disclosed by the consultants’ report, it did note that there was a conflictual situation at work with relational difficulties, but that the conditions were not extreme and did not include psychological harassment. That being so and given the nature of the consultants’ report, it must be accepted that the board had regard to the working conditions revealed in the report.

7. Although the medical board concluded that the complainant’s working conditions were not extreme, it did not expressly find whether or not they were stressful. Rather, it proceeded, in effect, to find that, “despite the working conditions described as stressful”, it was not established that they caused a debilitated state in which she contracted tuberculosis. As already noted, the board observed that the complainant had been in good health in the two years preceding the onset of tuberculosis and had not presented with any incapacity for work, depression or other relevant symptom and had not complained either to her treating doctor or to the WHO medical service of extreme or intolerable conditions. The complainant challenges this last statement, stating that she did consult a doctor within the WHO medical service but was told there was nothing the doctor could do and that she, the complainant, had to make the best of a bad situation. She also states that she consulted the Ombudsman, as well as the Staff Association. However, these matters stop short of establishing “a fairly definite connection” between her working conditions and a debilitated state in which she contracted tuberculosis.

8. Contrary to the complainant's arguments, it must be concluded that the medical board did not overlook her working conditions. Further, its report does not involve reviewable error. However, she makes a further argument, namely WHO breached its duty of care in failing "to take reasonable steps to prevent the suffering caused in the [c]omplainant's unit through 1996". Moreover, she contends, by reference to Judgment 620, under considerations 2 and 4, that, even if her illness cannot be attributed to her working conditions, the Tribunal may award limited damages. In Judgment 620, the defendant organisation had failed to conduct regular medical examinations as required by its rules. The Tribunal held that that failure had deprived the complainant of "an opportunity to take precautions against [his] illness" even though it was not established that regular medical examinations would have prevented it. There is nothing in the present case to suggest that the actions or inactions of WHO deprived the complainant of an opportunity to take precautions against contracting tuberculosis. Further, the present case arises out of a claim that the complainant's illness should be recognised as service-incurred. Although the complainant raised the stressful nature of her working conditions in support of that claim, no claim was made at that stage that WHO had breached its duty of care to prevent suffering in the complainant's unit. That claim cannot now be made in these proceedings.

DECISION

For the above reasons,
The complaint is dismissed.

In witness of this judgment, adopted on 9 May 2012, Ms Mary G. Gaudron, Vice-President of the Tribunal, Mr Giuseppe Barbagallo, Judge, and Ms Dolores M. Hansen, Judge, sign below, as do I, Catherine Comtet, Registrar.

Delivered in public in Geneva on 4 July 2012.

Mary G. Gaudron
Giuseppe Barbagallo
Dolores M. Hansen
Catherine Comtet