

J.

v.

WIPO

(Application for review)

127th Session

Judgment No. 4124

THE ADMINISTRATIVE TRIBUNAL,

Considering the application for review of Judgment 3998 filed by Ms D. J. on 5 September 2018;

Considering Articles II, paragraph 5, and VI, paragraph 1, of the Statute of the Tribunal and Article 7 of its Rules;

Having examined the written submissions;

CONSIDERATIONS

1. In Judgment 3998, delivered in public on 26 June 2018, the Tribunal dismissed the complaint filed by the complainant on 14 June 2016 against the World Intellectual Property Organization (WIPO), challenging the decision not to grant her compensation pending a determination by a medical expert as to whether her illness was service-incurred.

2. In her application for review of Judgment 3998, the complainant submits that material facts involving no value judgement were “completely ignored” by the Tribunal, which led to its “mistaken finding that the second medical report found that [her] illness [...] was not service-incurred”. In particular, she asserts that the Tribunal failed to consider the facts related to her first medical examination and the

determination by WIPO's insurer on the service-incurred nature of her illness. She also contends that the Tribunal failed to provide reasons for its findings in breach of Article VI, paragraph 2, of its Statute. In this regard, she requests the Tribunal to explain why it disregarded or did not give weight to the medical certificates issued by her treating physician and why it also disregarded the determination by the insurer.

3. As the Tribunal has consistently held, "pursuant to Article VI of its Statute, its judgments are 'final and without appeal' and carry *res judicata* authority. They may therefore be reviewed only in exceptional circumstances and on strictly limited grounds. As stated, for example, in Judgments 1178, 1507, 2059, 2158 and 2736, the only admissible grounds for review are failure to take account of material facts, a material error involving no exercise of judgement, an omission to rule on a claim, or the discovery of new facts on which the author of the application was unable to rely in the original proceedings. Moreover, these pleas must be likely to have a bearing on the outcome of the case. On the other hand, pleas of a mistake of law, failure to admit evidence, misinterpretation of the facts or omission to rule on a plea afford no grounds for review [...]" (see Judgment 3984, consideration 4, and the case law cited therein).

4. In Judgment 3998 the Tribunal found, in consideration 12, that the complaint was irreceivable as regards the issue of whether the complainant's illness was service-incurred because, at the time the complainant filed her complaint before the Tribunal, there was no final decision on that issue as the procedure to determine whether her illness was service-incurred was still ongoing.

5. The certificates of the complainant's treating physician and the determination of the insurer could not be considered by the Tribunal as the Organization had not yet taken a final decision on the said issue. These documents had to be considered in the administrative proceeding. They could not have any bearing on the outcome of the case.

6. Accordingly, the application must be summarily dismissed in accordance with the procedure provided for in Article 7 of the Tribunal's Rules.

DECISION

For the above reasons,

The application for review is dismissed.

In witness of this judgment, adopted on 9 November 2018, Mr Giuseppe Barbagallo, President of the Tribunal, Ms Dolores M. Hansen, Judge, and Mr Yves Kreins, Judge, sign below, as do I, Dražen Petrović, Registrar.

Delivered in public in Geneva on 6 February 2019.

GIUSEPPE BARBAGALLO

DOLORES M. HANSEN

YVES KREINS

DRAŽEN PETROVIĆ