

Case No.: UNDT/NBI/2022/124
Judgment No.: UNDT/2024/006
Date: 15 February 2024

8. He was examined by a Medical Officer at the UNMISS Level One Clinic on 13 September 2016 and was diagnosed with almost 10 years of alcohol abuse. UNMISS Medical Service recommended further medical assessment related to liver malfunction and referred the Applicant to a Level III hospital, Case Medical Center, in Uganda. Case Medical Center diagnosed the Applicant with “jaundice” due to a stone inside his gallbladder that blocked bile flow into his intestines.

9. In October 2016, the Applicant had two surgeries at Case Medical Center.

10. On 22 November 2016, the Chief Medical Officer, UNMISS, lodged a complaint on behalf of the Applicant regarding the diagnosis and treatment he received at the Case Medical Center.

11. On 24 November 2016, the Applicant was flown back to Juba and thereafter was medically evacuated to Aga Khan Hospital, Nairobi, Kenya, for further medical care.

b. The issue of medical malpractice was outside the scope of administrative review;

c. Regarding the referral decision by the UNMISS Level I clinic to Case Medical Center, the MEU noted that this was a medical assessment, which was similarly not subject to management evaluation. The MEU observed that such a decision could not be said to be the proximate cause of the Applicant's injuries; and

d. Finally, the MEU noted that as the Applicant's underlying illness was not service incurred, this was not a matter that could be brought before the ABCC.

15. On 17 May 2022, the Applicant submitted his claim for compensation under Appendix D to the ABCC for injuries (bile duct, gall bladder removal, cutting of small intestine and hernia) which he attributed to his work in Mundri in April 2016 and wrong referral to the Case Hospital in Uganda by UNMISS. The Applicant requested, *inter alia*, United Nations support to prosecute Case Medical Center for their medical negligence.

16. On 7 October 2022, during its 528th meeting, the ABCC, based on advice received from the Division of Healthcare Management and Occupational Safety and Health ("DHMOSH"), considered the Applicant's claim. The ABCC determined that the Applicant's injuries and referral were not "directly causatively related to the performance of official duties and, therefore, the Board unanimously recommended to deny the claim on the merits" for the following reasons:

a. The Applicant's underlying illness (jaundice) was not service incurred because it was a form of hepatitis due to gall stones, a common condition that causes jaundice and abdominal pain, and which often comes and goes for a period with complete recovery between episodes. However, occasionally it leads to sudden obstruction of the stone in the common bile duct, which requires surgery to resolve;

b. On the wrong referral aspect of the claim, surgery carries some risk that cannot be eliminated and there will always be a small number of cases where a complication will arise due to complex anatomical features. The referral itself was made in good faith to a private hospital with appropriate facilities for care under the guidance of a qualified surgeon; and

c. Referral of the Applicant to a private hospital did not mean that the United Nations took on the risk from the hospital under Appendix D unless the referral was done knowing the care for his condition would be substandard.

Parties' submissions

17. The Applicant's principal contentions are:

a. The ABCC erred in its recommendation to deny his claim for compensation because on 21 April 2016 when he went on duty to Mundri West he was healthy and fit. He only became ill on 30 April 2016 whilst in the field performing official duties and he had never experienced jaundice before that time; and

b. The ABCC erred in determining that the care provided to him at the [redacted] Officer a cm -1 -1 mt4ppropriateent bn3i8.o0275(be i7aion)-396(wouldon n)] TJ2fdnt theaa.9erral(was(made(in(goodfal)1(ih. s)] TJ ET Q 1 0 0 1 0485.006700645 cm BT /FAAAAH 1

g. Under the presumption of regularity, the Applicant has the burden of proving that the contested decision is unlawful. The Applicant has not met this burden.

20. The Respondent submits that the Applicant is not entitled to any remedy and

surrounding the Applicant's illness fall into the category of being "incurred during performance of official duties" it is necessary to look at the detailed facts surrounding his case for compensation.

26. The Applicant describes the backdrop to the onset of his illness in the following terms.

On 21st April 2016 a team of peacekeepers from [UNMISS] based in [the] Capital Juba, visited Mundri West in the country's Western Equatoria State area, and established a Temporary Operation Base there.

By then the pressure was high there. Civilians were displaced. Many of them were seeking sanctuaries in the bushes and displaced camps. Basic Services were unavailable. Violence between the Sudan People's Liberation Army and that holdout group the Sudan's People's Liberation Army in opposition continued in and around the vicinity of Mundri West.²

27. The Applicant described his duties as that of an interpreter for military

and weakness as well as developed skin rashes plus had dip [deep] brown colored urine and yellowish eyes.³

30. It is from this point that medical personnel began to intervene.

31. It is important to note that the circumstances of the pressure being high and civilians seeking sanctuary in the bushes and displaced camps could be described as “traumatic” and “stressful”. However, while such language may be appropriate to describe the surrounding circumstances it would be up to the medical experts or medically trained persons to diagnose and treat any illness which occurred.

32. If the illness were to be associated with the surrounding circumstances it

37. The Applicant then concludes that the onset of his illness was service incurred and followed by a wrongful referral, which caused him to sustain injuries through the incorrect referral to a hospital in Uganda, instead of the referral to the Level 1 Health Center in Juba, where he incurred the injuries. The Applicant submits that he is entitled to compensation for the harm he suffered as a result of

management evaluation. Indeed, the Tribunal determined that since the ABCC was advised by a technical body its decision did not require management evaluation.⁴ However, what stands to be determined is whether the decision was subject to review, which was requested by the Applicant, and was therefore not a final administrative decision.

42. In support of his assertion that the Applicant did not appeal against an administrative decision, the Respondent argues that the Dispute Tribunal lacks jurisdiction to accept the application because the Applicant does not contest a final administrative decision.

43. The Respondent notes that on 12 December 2022, the Applicant sought reconsideration of the contested decision pursuant to art. 5.1 of Appendix D and on 15 December 2022, the Acting Secretary, ABCC, transmitted the Applicant's request to DHMOSH for further consideration for the claim made. The Respondent argues that since the reconsideration is pending, no final administrative decision has been made.

44. By extension, the Respondent must be asserting that the decision which was referred to DHMOSH on 15 December 2022 is still pending even in January 2024 as this matter stands to be determined. This raises the question whether any genuine review was embarked upon in this case.

45. While the Tribunal finds no basis for questioning or finding that the initial decision of ABCC was unlawful, the Tribunal cannot accept that it has taken more than a year to review the ABCC's decision on the Applicant's request. In the circumstances, the Tribunal treats the 2022 decision as a final decision and considers the Applicant's right to challenge it by way of this application to be valid. The alternative position renders the Tribunal impotent to consider the matter even after the alleged review has taken an inordinate period to be resolved. That situation flies in the face of fairness and is unacceptable.

⁴ UNDT and UNAT jurisprudence has held that the ABCC is a technical body when its decision is based on a medical determination. See *Raschdorf* 2023-UNAT-1343; *Massi* 2020-UNAT-1002; *Dahan* 2018-UNAT-861, para. 21; *Kisia* UNDT-2019-128 (not appealed).

46. The Tribunal therefore determines that the application is properly made but it is denied because the Tribunal can find no fault with the ABCC decision to deny his claim for an entitlement to compensation for injury and illness incurred during and resulting from employment on the behalf of the United Nations. The Applicant is therefore entitled to take whatever next step is appropriate in the circumstances.

47. There is therefore no award of compensation made to the Applicant for harm done as a result of service incurred illness during performance of official duties on behalf of UNMISS and the referral resulting in the injuries the Applicant suffered.

Applicant's motion

48. The Applicant filed a motion on 18 December 2023 seeking additional information and supporting documents against the Administration's decision to block his salary. However, when the Tribunal scheduled a CMD on 9 January 2024, the Applicant withdrew the motion and stated that he would not be pursuing the matter because it had been resolved. Consequently, no further action was taken on this motion.

Conclusion

49. In view of the foregoing, the application is therefore denied in its entirety.

(Signed)

Judge Francis Belle

Dated this 15th day of February 2024

Entered in the Register on this 15th day of February 2024

(Signed)

Eric Muli, Officer-in-Charge, Nairobi