

M. (No. 2)

v.

EPO

123rd Session

Judgment No. 3791

THE ADMINISTRATIVE TRIBUNAL,

Considering the second complaint filed by Mrs V. M. against the European Patent Organisation (EPO) on 9 August 2011, the EPO's reply of 7 February 2012, the complainant's rejoinder of 3 May, the EPO's surrejoinder of 10 August, the complainant's further submissions of 18 October 2012 and the EPO's comments thereon of 4 February 2013;

Considering Articles II, paragraph 5, and VII of the Statute of the Tribunal;

Having examined the written submissions;

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

The complainant impugns the implied rejection of her internal appeal against the EPO's refusal to recognise her medical condition as an occupational disease and to reimburse her for the relevant medical expenses which she incurred.

The complainant joined the European Patent Office – the EPO's secretariat – in March 2003. On 1 December 2008 she wrote to the President of the Office to inform her that she was suffering from a medical condition which she considered to be occupational in nature, and to request reimbursement, under Article 28(2) of the Service Regulations for permanent employees of the Office, of all medical expenses related to her condition not covered by the EPO's Collective Insurance Contract

(CIC). In the event that her request was denied, she asked that her letter be treated as an internal appeal.

The head of the Department of Human Resources Administrative Services (HR Administrative Services) replied on 14 January 2009 that before a decision could be taken on her request for reimbursement, it had to be verified whether her injury was service-related and her condition caused by her work at the EPO. As this required the opinion of the EPO Medical Adviser, he invited her to contact the latter to arrange an appointment for a medical examination. He further informed her that, in the event that the Medical Adviser was of the opinion that her condition was not service-related, she could submit the matter to a Medical Committee in accordance with Article 90 of the Service Regulations. The complainant however did not contact the Medical Adviser. In a letter of 29 January 2009, the Director of the Employment Law Directorate reiterated to the complainant the information contained in the 14 January 2009 letter and informed her that, as the President considered that her request of 1 December 2008 had been correctly processed, he had decided to refer her internal appeal to the Internal Appeals Committee (IAC) for an opinion.

Following a further request by the Administration, the complainant underwent a medical examination in February 2009. On the basis of that examination and information received from the complainant's treating physician, the Medical Adviser delivered his opinion on 26 May 2009, concluding that he could not give a favourable recommendation for the application of Article 28(2) of the Service Regulations, as he was unable to establish a direct link between the complainant's conditions of work and her pathology. On the basis of the Medical Adviser's recommendation, the President decided to reject the complainant's request for reimbursement of her medical expenses under Article 28(2). On 25 June 2009 the head of the Department of HR Administrative Services forwarded the Medical Adviser's conclusions to the complainant and confirmed the Administration's decision to reject her request. He reiterated that the complainant could submit the matter to a Medical Committee pursuant to Article 90 of the Service Regulations.

On 26 July 2011 the complainant asked the Administration to submit its position on her internal appeal by 9 August 2011, failing which she

would file a complaint directly with the Tribunal. On 29 July 2011 she was informed that in the light of the Tribunal's Judgment 3030, the EPO proposed to reassess her case. To that end, a Medical Committee would be convened pursuant to Article 90(2) of the Service Regulations.

The Administration filed its position paper with the IAC on 3 August 2011, but this was not forwarded to the complainant until 10 August 2011, by which time she had already filed the present complaint impugning the implied decision to reject her claim of 1 December 2008. She subsequently requested and was granted a suspension of the proceedings before the IAC until the Tribunal delivered its judgment on her complaint.

Following a review of her case, the complainant was informed by letter of 19 June 2012 that the EPO had reimbursed her service-related medical expenses not covered by the CIC.

The complainant initially sought the quashing of the decision not to award her compensation under Article 28(2) of the Service Regulations, reimbursement of all medical expenses related to the treatment of her condition not covered by the CIC, moral damages for harassment, humiliation, discrimination, undue pressure and isolation, damages for the EPO's delay in dealing with her claim, costs and other appropriate relief. In her rejoinder and further submissions, the complainant withdraws the claims regarding the quashing of the decision not to award her compensation under Article 28(2) of the Service Regulations and the reimbursement of all medical expenses related to the treatment of her condition not covered by the CIC, but maintains all other claims made in her complaint. She also introduces a claim for interest on arrears and seeks a written apology.

The EPO asks the Tribunal to dismiss the complaint as irreceivable or, subsidiarily, as devoid of merit.

CONSIDERATIONS

1. The complainant, by a letter of 1 December 2008, requested reimbursement of all medical expenses related to an alleged service-related injury not covered by the CIC, in accordance with Article 28(2) of the Service Regulations. In the letter she stated that her "physician

[was] of the opinion that frequent computer work in combination with high work pressure [had] caused and aggravated the symptoms”. In the event that the EPO was unable to grant her request, she asked that her letter be treated as an internal appeal pursuant to Articles 106 to 109 of the Service Regulations.

2. In a letter dated 14 January 2009, the head of the Department of HR Administrative Services notified the complainant that before the EPO could decide on her request, her injury had to be verified as service-related by the Medical Adviser. He invited the complainant to make an appointment with the Medical Adviser and provided the relevant contact details. He also noted that should the Medical Adviser be of the opinion that her injury was not service-related, the complainant could submit the dispute to a Medical Committee in accordance with Article 90 of the Service Regulations.

3. In a letter dated 29 January 2009, the Director of the Employment Law Directorate repeated the information given in the 14 January letter with regard to the proper procedures for verifying the complainant’s injury and for submitting any potential dispute to a Medical Committee. He noted that the EPO had not yet received an opinion from the Medical Adviser and that the complainant’s request had been properly processed. He informed her that under Article 107(2) of the Service Regulations, for decisions taken after consultation of the Medical Committee, the internal means of redress were deemed exhausted within the meaning of Article 109(3). However, since the complainant had expressed the wish to have her letter considered as an internal appeal pursuant to Articles 106 to 109 of the Service Regulations, her appeal had been registered under the reference IA/185/08 and referred to the IAC for an opinion.

4. After having examined the complainant, the Medical Adviser notified the EPO, in a letter dated 26 May 2009, that on the basis of his examination and the information he had received from the complainant’s treating physician, he was unable to establish a direct link between the complainant’s injury and her work. He noted that he had not received the information he had requested from the Director of the Occupational Health Service.

5. On the basis of the Medical Adviser's recommendation, the President decided to reject the complainant's request for reimbursement of her medical expenses in accordance with Article 28(2) of the Service Regulations. The complainant was notified of this decision in a letter from the head of the Department of HR Administrative Services dated 25 June 2009. In that letter he reiterated that "[a]s expressed in [his] letter of 14 January 2009, please note that in case of a negative opinion you may submit the dispute to a Medical Committee in accordance with Article 90 [of the Service Regulations]". He also asked her to notify him by 13 July 2009 if she would like to withdraw her internal appeal in light of the decision to reject her request for reimbursement. The complainant maintained her appeal. In an e-mail dated 29 March 2012, she asked the IAC to suspend the internal appeal procedure. That same day the Chairman of the IAC confirmed that her request was granted and that the case would be suspended pending the decision of the Tribunal.

6. The complainant filed the present complaint with the Tribunal on 9 August 2011 against the implied rejection of her 1 December 2008 request. She asks the Tribunal to quash the decision not to award her compensation under Article 28(2) of the Service Regulations; order the reimbursement of her medical costs not already covered by the CIC, in accordance with Article 28(2) of the Service Regulations; award moral damages for harassment, humiliation, discrimination, undue pressure and isolation; award damages for procedural delays; award costs; and award "further and other appropriate relief". In her rejoinder she withdraws her claim to quash the decision not to award her reimbursement under Article 28(2) of the Service Regulations, as the EPO notified her in a letter dated 10 January 2012 of the President's decision to recognize her injury as service-related, in accordance with the Medical Adviser's new recommendation dated 7 December 2011. In her rejoinder she adds a claim for "interest on arrears" and requests the Tribunal to order the EPO to issue a written apology. In her further submissions she withdraws the claim for reimbursement of her medical costs in accordance with Article 28(2) of the Service Regulations, as she was notified in a letter dated 19 June 2012 that the EPO had paid the amounts due.

7. The Tribunal acknowledges the complainant's withdrawal of the two claims as noted above and thus shall not deal with those issues. With regard to the claim for damages for harassment, humiliation, discrimination, undue pressure and isolation, the Tribunal finds this claim irreceivable for failure to exhaust all internal means of redress in accordance with Article VII, paragraph 1, of the Statute of the Tribunal. The complainant asserts that the e-mail to her superior from a staff representative dated 27 September 2007, in which the latter stated "I find this behaviour tantamount to harassment and it is causing [the complainant] increased stress and exacerbating her ill health", should have triggered a harassment investigation by the EPO and furthermore that her letter of 1 December 2008, in which she stated that her "physician is of the opinion that frequent computer work in combination with high work pressure caused and aggravated the symptoms", should also have triggered a harassment investigation. Without examining whether either the e-mail or the letter could in fact be considered to fulfil the requirements of a harassment claim, the Tribunal notes that the proper procedure would have been for the complainant to file an internal appeal against the implied rejection of her request for a harassment investigation. The complainant did not raise this issue until she brought her complaint before the Tribunal. This claim is irreceivable as there is no final decision regarding the lack of investigation into the alleged harassment. Similarly, the claims for damages and interest stemming from the procedural delays between the time when she first requested payment of her medical expenses for her service-related injury and the date of final payment are also irreceivable, in accordance with Article VII, paragraph 1, of the Tribunal's Statute, as there are no final decisions or implied rejections regarding those claims. The claim requesting the order of an apology is outside the Tribunal's remit and shall not be considered. The complaint is irreceivable in relation to the issues pursued by the complainant. The complainant is not entitled to any award of costs or "further and appropriate relief". In these circumstances, both the complainant's request for an oral hearing and the request to be allowed to provide additional evidence of remarks and insults she had to endure are rejected.

DECISION

For the above reasons,
The complaint is dismissed.

In witness of this judgment, adopted on 18 October 2016, Mr Giuseppe Barbagallo, Vice-President of the Tribunal, Mr Michael F. Moore, Judge, and Sir Hugh A. Rawlins, Judge, sign below, as do I, Dražen Petrović, Registrar.

Delivered in public in Geneva on 8 February 2017.

GIUSEPPE BARBAGALLO

MICHAEL F. MOORE

HUGH A. RAWLINS

DRAŽEN PETROVIĆ