G. (N.) (No. 4)

v.

UNIDO

128th Session **Judgment No. 4162**

THE ADMINISTRATIVE TRIBUNAL,

Considering the fourth complaint filed by Ms N. G. against the United Nations Industrial Development Organization (UNIDO) on 1 June 2016 and corrected on 7 July, UNIDO's reply of 8 November 2016, the complainant's rejoinder of 17 February 2017, UNIDO's surrejoinder of 30 May, the complainant's additional submissions of 6 December 2017 and UNIDO's final comments thereon of 30 April 2018;

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

Having examined the written submissions and decided not to hold oral proceedings, for which neither party has applied;

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

The complainant challenges the final decision on her claim for compensation for a service-incurred injury or illness.

The complainant is a former staff member of UNIDO who separated from service on 30 September 2011 upon the expiry of her contract. Shortly beforehand she submitted a claim to the Secretary of the Advisory Board on Compensation Claims (ABCC), dated 16 September 2011, for compensation for injury or illness attributable to the performance of official duties, under Appendix D to the Staff Rules (she submitted an additional statement related to her claim on

23 February 2012). Later in September 2011 she also submitted a claim for a disability benefit with the United Nations Joint Staff Pension Fund (UNJSPF).

By a letter of 6 September 2012 the complainant was informed that the ABCC had recommended that her illness be deemed as attributable to service and that the Director-General had approved that recommendation. On 11 September the complainant submitted several specific claims for compensation for consideration by the ABCC.

On 12 December 2012 the complainant was notified by the UNJSPF that, with effect from 1 October 2011, she was entitled to a disability benefit under Article 33 of the UNJSPF Regulations, in addition to a child benefit under Article 36 of the UNJSPF Regulations.

The ABCC considered again the complainant's case at its 79th meeting held on 25 February 2013. Regarding, in particular, the claim that she had made for lump sum compensation for disfigurement pursuant to Article 11.3 of Appendix D, the ABCC considered that Article 11.3 did not appear to be applicable in view of the fact that her injury was not included in the schedule of Article 11.3(c). The ABCC recommended that she be asked to submit all medical bills related to the recognized service-incurred injury that had yet to be reimbursed and that she provide the Medical Adviser with a report from her treating physician to serve as a basis to determine the degree of her disability. The Director-General approved the ABCC's recommendations. The complainant subsequently provided the requested medical reports to the Vienna International Centre (VIC) Medical Service which the Medical Director, Dr L., used to prepare his medical report for the ABCC.

The complainant's case was considered again by the ABCC at its 82nd meeting held on 10 April 2014. It recommended, among other things, that she be granted compensation payments for a service-related partial disability (of 46 per cent) under Article 11.2(d) of Appendix D, with retroactive effect from 1 October 2011 and for so long as the service-related partial disability continued, but only up until the date when she reached mandatory retirement age (62). It also recommended that the service-related partial disability be reviewed by the ABCC in December 2016 (the time of the next review of her UNJSPF disability

benefit) in order to determine whether she continued to suffer from a partial disability. It further recommended that her claim under Article 11.3 of Appendix D was not applicable because her injury or equivalent was not included in the schedule of Article 11.3(c) and Appendix D did not provide any basis for claims for other entitlements. By a letter of 22 April 2014 the complainant was notified that on 16 April the Director-General had approved the ABCC's recommendations.

On 21 May 2014 the complainant asked the Director-General to reconsider the decision of 22 April. She sought, in particular, a determination that she suffered from a service-related disability of 100 per cent and that she was entitled to compensation payments for life. In addition, she requested the Director-General to find that her injury was equivalent to those listed in the schedule in Article 11.3(c) of Appendix D.

The ABCC determined that a Medical Board should be established to examine the medical aspects of the complainant's case and it issued terms of reference (TOR) for that Board.

The Medical Board issued a report dated 6 March 2015 and provided supplementary answers in July. The ABCC considered the Medical Board's report at its 89th meeting held on 22 February 2016. It unanimously confirmed its earlier recommendations that the complainant's disability was partial and that she not be granted compensation payments under Article 11.3 of Appendix D. It recommended that the Director-General alter his original decision on compensation payments under Article 11.2(d) of Appendix D and to reduce the basis for the payments from a 46 per cent disability to a 7 per cent disability, with effect from the month following the Director-General's decision, and that those payments be made for so long as the service-related partial disability continued, but only up until the date when the complainant reached mandatory retirement age. It further recommended that the complainant's case be reviewed in February 2019. In addition, in the spirit of Article 17(d) of Appendix D, it considered that the complainant should bear the medical fees and incidental expenses of the medical practitioner that she had selected and half of the medical fees and expenses of the third medical practitioner on the Medical Board. Lastly,

it recommended that she be provided with a copy of the Medical Board's report and that all of her remaining allegations and claims should be dismissed.

By a letter of 14 March 2016 the Secretary of the ABCC notified the complainant that the Director-General had approved the ABCC's recommendations. That is the impugned decision.

The complainant asks the Tribunal to set aside the impugned decision. She seeks an order reinstating the original award set out in the letter of 22 April 2014 and she asks the Tribunal to remit the matter to UNIDO to establish an independent medical board to consider "that aspect of her Appendix D claim". She further asks the Tribunal to provide detailed instructions to UNIDO on the processing of that review. In the alternative, she requests the Tribunal to appoint its own medical expert to provide a report and to rule on the medical aspects of her case on the basis of that report. In any event, she claims moral damages in the amount of 10,000 euros for delay in the internal proceedings and additional compensation in the amount of 50,000 euros. She seeks an award of 144,605.60 United States dollars representing lump sum compensation pursuant to Article 11.3 of Appendix D and she asks the Tribunal to order UNIDO to reimburse any monies deducted from her award of compensation to pay for the costs of the Medical Board, with interest. She claims costs in the amount of 15,000 euros and any other relief the Tribunal deems just and proper. In her additional submissions she states that there is no need to order new medical examinations and that the matter should be remanded to the ABCC solely for the purpose to fix (retroactively) the amount of disability benefits and the lump sum payment for disfigurement under Appendix D based on the findings and conclusions of independent medical experts who were appointed by the UNJSPF to investigate her case.

UNIDO requests the Tribunal to dismiss the complaint. It seeks an order allowing it to offset any current or future liabilities against the outstanding balance owed to it by the complainant under Article 17(d) of Appendix D.

CONSIDERATIONS

1. On 21 May 2014, pursuant to Article 17 of Annex D, the complainant filed an appeal against the Director-General's 16 April 2014 decision notified to her on 22 April. At its 22 February 2016 meeting at which it considered the complainant's appeal, the ABCC unanimously:

a. confirmed its earlier recommendation to the Director-General that the complainant's disability was partial;

b. recommended that the Director-General reduce the basis for the compensation payments from 46 per cent to 7 per cent prospectively starting the month following the Director- General's decision for as long as the service-related partial disability continued, "maximum until mandatory retirement age (62)" and that the case be reviewed in three years;

c. confirmed its earlier recommendation to the Director-General not to grant compensation payments under Article 11.3 of Appendix D;

d. recommended that, "in the spirit of Art[icle] 17(d) of App[endix] D", the complainant should bear the medical fees and the incidental expenses of the medical practitioner she selected and half of the medical fees and expenses of the third medical practitioner on the Medical Board;

e. recommended that the complainant be provided with a copy of the Medical Board's report; and

f. recommended that all other allegations and claims be dismissed.

In the 14 March 2016 impugned decision, the complainant was informed that the Director-General approved the ABCC's recommendations.

2. The complainant submits that the decision is flawed by both substantive and procedural errors. First, she submits that the decision to deny her compensation for "permanent disfigurement or permanent loss of a member or function" as provided for in Article 11.3 of Appendix D was taken in error. The complainant recalls that in response to her initial claim for compensation the ABCC recommended and the Director-General accepted that she should be paid benefits for partial disability.

She notes that this decision was based on the 20 October 2013 report of Dr F.-B., a report supported by the Medical Director of the VIC Medical Service in his 19 February 2014 medical report in which he stated that he "[...] agree[d] with the rating done by the orthopaedic specialist [Dr F.-B.] of 46% [...]". In the cited report, Dr F.-B. concluded that the complainant had a whole person impairment rating of 46 per cent. The complainant states that Dr F.-B.'s report was submitted in support of the claim for a lump sum payment provided for in Article 11.3 of Appendix D and not for the purpose of proving disability. She takes the position that an assessment of this report by the Medical Board was unnecessary. Rather, the Director-General should have allowed the appeal based on the report which the ABCC had neither rejected nor dismissed.

3. The complainant submits that the ABCC erred in its interpretation that her injury or "its equivalent" did not appear in the Article 11.3(c) schedule. She argues that the provision does not require that the injury be equivalent to an injury listed in the schedule. The complainant claims that "the rule states that if the injury is not specifically referred to in the schedule, proportionate and corresponding amounts (to those in the schedule) are to be applied". Thus, in the complainant's view, it follows that the decision is tainted "to the extent it did not simply apply the report of the [VIC Medical Service] Director to the terms of Article 11.3 of Appendix D". The complainant maintains that as the 46 per cent loss of function was of the whole body, Article 11.3(c) applies and she is entitled to payment of a lump sum calculated according to that provision.

4. Article 11 of Appendix D deals with the payment of compensation to a staff member, or former staff member, for injury or illness attributable to the performance of official duties on behalf of the Organization. Articles 11.1 and 11.2, respectively, set out the compensation payable for injury or illness resulting in "disability which is determined [...] to be total" and "disability which is determined [...] to be partial". Article 11.3(a) states:

> "In the case of injury or illness resulting in permanent disfigurement or permanent loss of a member or function, there shall be paid to the staff member a lump sum, the amount of which shall be determined by the

> Director-General on the basis of the schedule set out in paragraph (c) below, and in accordance with the principles of assessment set out in paragraph (d) below, and applying, where necessary, proportionate and corresponding amounts in those cases of permanent disfigurement or loss of member [or] function not specifically referred to in the schedule."

Article 11.3(b) provides that the lump sum payable under Article 11.3(a) is payable "in addition to any other compensation payable under [A]rticle 11, whether or not the staff member remains in the employment of the Organization, and whether or not the permanent disfigurement or loss of member or function affects the staff member's earning capacity".

5. It must first be observed that the complainant's position that the report of Dr F.-B. cited above was submitted in support of her claim for a lump sum payment under Article 11.3 and, therefore, an assessment of the report by the Medical Board was unnecessary disregards the fact that the impugned decision arises from the appeal she filed against the Director-General's earlier decision of 16 April 2014. Article 17(a) of Appendix D provides for the reconsideration of the Director-General's determinations in relation to whether an injury or illness is attributable to the performance of official duties or the type and degree of disability. Article 17(b) specifically requires the convening of a medical board to consider and to report to the ABCC on the medical aspects of the appeal. It follows that the complainant's assertion in relation to the use of Dr F.-B.'s earlier report is rejected.

6. Turning to the complainant's argument that the ABCC erred in its interpretation of Article 11.3, it is observed that the Medical Board submitted supplementary answers to a request by the Administration for clarification of its responses in its report in relation to questions posed in the TOR. The clarification was requested due to concerns regarding the translation of the report from German to English. In part, question 8(c) in the TOR was whether "the [complainant's] work-related illness/injury in question resulted in permanent disfigurement or permanent loss of a member or a function". In its report, the Medical Board answered that "a permanent disfigurement, on the other hand, cannot be established." Question 8(d) was a follow-up question in the event that the answer to question 8(c) was "yes" to which the response

was "[q]uestion (d) has already been answered above". In the supplementary answers, the Medical Board clarified that the answer to question 8(c) was "[t]he mentioned accident causality did not result in permanent disfigurement and also not in a permanent loss of a member or a function". As recorded in the minutes of its 22 February 2016 meeting, the ABCC concluded that "based on the findings of the Medical Board [...] the [complainant] was neither permanently disfigured nor did she permanently lose a member or a function" thus "there [is] no basis for compensation under Art[icle] 11.3". In the absence of a finding that the complainant's injury resulted in a permanent disfigurement or loss of member or function, the complainant's claim for compensation under Article 11.3(a) was rightly rejected. In these circumstances, no issue of interpretation of the type advanced by the complainant arises for consideration.

7. The complainant also makes a number of submissions regarding breaches of due process. She submits that Human Resources Management Branch (HRM) officials interfered with the work of the Medical Board by issuing the TOR that included directing the Medical Board's method of review, posing specific questions for the Medical Board to answer and directing the evidence to be reviewed by the Medical Board. The TOR directed the Medical Board members to "cross-examine" her about, among other things, publicly available information on the internet concerning her possible professional activities and associated long-distance travel during their respective examinations of the complainant. The TOR also stipulated that the complainant's views should be taken into account by the Medical Board and reflected in its report. Additionally, the complainant argues that as Appendix D does not provide for the submission of TOR to a medical board, the submission of the TOR was a violation of Appendix D. Moreover, the complainant points out that she was not given an opportunity to review and object to the TOR or to correct and amend the individual medical reports. She submits that HRM also provided the ABCC with prejudicial, irrelevant non-medical evidence.

8. It is observed that contrary to the complainant's assertion, the TOR were prepared by the ABCC and not HRM. Moreover, as UNIDO notes, Article 16(c) of Appendix D provides that the ABCC "may decide on such procedures as it may consider necessary for the purpose of discharging its responsibilities under the provisions of this article". Thus, the Tribunal finds that it cannot be said that providing TOR to the Medical Board in relation to the fulfilment of its mandate violated Appendix D. As well, given the position taken by the complainant that she was 100 per cent disabled, there is nothing inappropriate in asking the members of the Medical Board to include in their respective interviews with the complainant questions about her professional activities and travel. These questions are certainly material to a determination in relation to the question of the type and degree of a disability. Lastly, given the purpose of the TOR, there is no legal foundation for the complainant's assertion that she was entitled to review and object to any of the TOR. As to the lack of opportunity to correct and amend the individual reports of the Medical Board members regarding their respective meetings with the complainant, it is observed that there is no evidence that such reports were ever written. Indeed, UNIDO asserts in its pleas that no such reports exist. This is not contested by the complainant. Accordingly, a consideration of the complainant's assertion of a breach of due process in this respect is unnecessary.

9. In her rejoinder, the complainant submits that at the very least the Medical Board members should have disclosed the notes taken during their meetings with her. The Director-General based his decision on the report of the ABCC that, in turn, with respect to the medical aspects of the case was grounded on the Medical Board's report. However, there is nothing to suggest that any individual notes, which may have been taken, were foundational to the Director-General's decision and to the two reports, or were considered by the Medical Board, the ABCC or the Director-General.

10. The complainant alleges that HRM officials, facilitated by the ABCC Secretary, blatantly breached confidentiality and the rule of anonymity. She alleges that HRM disclosed her name when it provided

information concerning her professional activities to the ABCC Secretary and that the ABCC Secretary informed HRM that she had filed an Appendix D claim. In support, the complainant points to two emails, in August and September 2014 between HRM and the ABCC Secretary. UNIDO disputes these allegations and in support of its position quotes the ABCC Secretary's response to the allegations. The ABCC Secretary stated that:

> "[W]hile the TOR were developed by the ABCC, the anonymity of the [complainant] was always secured. The ABCC did not see the internet links, only HRM's summary thereof which did not show the name of the [complainant], together with the ABCC's Secretary's confirmation that the internet information was from a trustworthy source. Likewise, when contacting HRM on any professional working activities, the ABCC Secretary did not inform HR[M] on the purpose of the inquiry (i.e. no information was given that there was an ABCC appeal)."

11. While this response might be viewed as self-serving, the copies of the two emails provided by the complainant do not disclose any information that could be viewed as breaching confidentiality or the rule of anonymity. Nor has she adduced any other evidence in support of the allegations. Accordingly the allegations are unfounded.

12. In addition, the complainant states that the ABCC Secretary nominated Dr A. of the VIC Medical Service as a Medical Adviser for the entire Medical Board procedure. The complainant submits that there is no basis for the participation of any other parties in the Medical Board's procedure and the involvement of Dr A. represents a further abuse of the process and a breach of confidentiality and the rule of anonymity. The Tribunal notes that, pursuant to Article 16(c) of Appendix D, the ABCC is authorized to "decide on such procedures as it may consider necessary for the purpose of discharging its responsibilities under the provisions of [Article 16]". In this regard, the Minutes of the ABCC's 22 February 2016 meeting set out the reason for Dr A.'s designation as the Medical Adviser for the Appendix D appeal and her role in the Medical Board process. Under paragraph 8(b) of the Minutes the following is stated:

> "*Composition of Medical Board*: The Secretary referred to Art[icle] 17(b) of App[endix] D which states: *'The medical board shall consist of: (i) a qualified medical practitioner selected by the [complainant]; (ii) the Medical Officer of the Organization or a medical practitioner selected by him or her; (iii) a third qualified medical practitioner who shall be selected by the first two, and who shall not be a medical officer of the Organization.*' To ensure full objectivity of the review, the ABCC decided at the time that the Medical Board's member under Art[icle] 17(b)(ii) should not be a member of the VIC Medical Service but, instead, that the Senior Medical Officer, in her function as Medical Adviser of the Organization, select an independent specialist to act as a member of the Medical Board in line with the following criteria: (i) a specialist in the appropriate medical field; (ii) who did not work with the UN/VIC Medical Service before; (iii) who is court-sworn and (iv) who has experience in representing employers." (Original emphasis.)

Based on the above statement in the Minutes of the ABCC's meeting that has not been challenged, the complainant's claim that the involvement of Dr A. in the Medical Board's process represents an abuse of the process is unfounded. As the complainant did not provide any elaboration of her assertion that Dr A.'s involvement in the process was a breach of confidentiality and the rule of anonymity, it is also unfounded.

13. The complainant disputes the lawfulness of the determination that the payment of the compensation for her partial disability would only continue until, at the latest, her mandatory retirement age of 62. She argues that the mandatory retirement limitation on the duration of the payment of compensation is not provided for in Article 11.2 which applies to the present case. The complainant points out that Article 11.1(c) of Appendix D states that disability benefits under that provision will be payable "for the duration of the staff member's total disability". The complainant submits that Article 11.2(d), which deals with compensation for partial disability, expressly refers back to Article 11.1(c) in order to calculate the benefit and its duration.

14. For reasons that will become evident, a useful starting point for the analysis is Article 11.1 concerning total disability. Article 11.1(b) deals with the payment of salary and allowances and provides that a staff member will continue to receive her or his salary and allowances

until: (i) the staff member returns to work; or (ii) if the staff member does not return to work, then until the date of termination of her or his appointment or the expiry of one calendar year from the first day of absence from work due to the injury or illness. Under Article 11.1(c), when the salary and allowances cease to be payable under the applicable Staff Regulations and Rules including paragraph (b) above, the staff member shall receive annual compensation payments for the duration of the staff member's total disability. Article 11.1(c) provides that the compensation payments are equivalent to two thirds of her or his final pensionable remuneration and then goes on to elaborate on the compensation payable in respect of unmarried children and then states that the payment of the compensation is subject to certain limitations that are irrelevant in relation to the present discussion.

15. Article 11.2 concerns partial disability. Article 11.2(b) states that the provisions of Article 11.1(b) apply in the following two instances: (i) while the staff member is incapacitated by the injury or illness from performing official duties; and (ii) if the disability results in the termination of the staff member's appointment on the ground that the staff member is for health reasons incapacitated for further service.

16. Article 11.2(d) provides that "[w]here, upon the separation of a staff member from UNIDO, it is determined that he or she is partially disabled as a result of the injury or illness in a manner which adversely affects the staff member's earning capacity, he or she shall be entitled to receive such proportion of the annual compensation provided for under article 11.1(c) as corresponds with the degree of the staff member's disability, assessed on the basis of medical evidence and in relation to loss of earning capacity in his or her normal occupation or an equivalent occupation appropriate to his or her qualifications and experience".

17. However, the Tribunal observes that although Article 11.2(d) refers to Article 11.1(c), it is only in relation to the calculation of the amount of the compensation but not its duration. In fact, Article 11.2 does not address whether the compensation will continue beyond the mandatory retirement age. The complainant's reliance on Judgment 3734 is misplaced. Judgment 3734 dealt with the Article 20(a) of Appendix D

to the Staff Regulations and Rules of the International Atomic Energy Agency which is similar to Article 11.1 of Appendix D to UNIDO's Staff Rules. The Tribunal held that:

> "Article 20(a) establishes the duration of the entitlement to compensation in cases where the loss of earning capacity is determined to be total. It provides that an official is entitled to this compensation from the date on which payment ceases under Article 17(a) and 'for so long as the disability continues'. The provision is clear and unambiguous."

However, it is observed that Judgment 3734 did not touch on the issue of the duration of the payment of the compensation for an injury or illness resulting in a partial disability. In Appendix D to UNIDO's Staff Rules there is no provision dealing with the duration of the payment of compensation for a partial disability. The Tribunal finds that UNIDO has, in fact, an established practice related to the duration of the payment of the compensation for partial disability. The Tribunal accepts UNIDO's submission that this practice is consistent with the United Nations' (UN) practice prior to the amendment of Appendix D to the UN Staff Rules, that compensation for partial disability did not extend beyond a staff member's mandatory retirement date.

18. The complainant also takes issue with what she characterises as the Medical Board's *de novo* review of her medical condition at the direction of HRM. She submits that in her appeal she was challenging the findings of partial disability and no disfigurement and, therefore, the Medical Board should have limited the scope of its review to the findings challenged in the appeal and the medical records she had already provided to the ABCC. In her view it is not for HRM, with the collusion of the ABCC Secretary, to define the scope of the appeal and the evidence to be considered. The Tribunal notes that HRM did not give any directions to the Medical Board, as set out above.

19. Article 17(a) of Appendix D (the appeal provision) relevantly states that a request may be brought for a reconsideration of a determination by the Director-General of the type and degree of disability. Under Article 17(b), the role of the medical board is broadly framed, namely, to report to the ABCC "on the medical aspects of the

appeal", that is, the type and degree of the disability. This provision does not contemplate any limitation on the scope of the medical board's consideration of the medical aspects of the appeal nor does it limit the medical board's consideration to only those medical records already submitted to the ABCC.

20. The complainant also asserts that the Medical Board members were unqualified. This assertion is without merit. The members were specifically selected because of their qualifications in their areas of expertise and, indeed, the complainant selected one of the Medical Board members herself. The complainant's assertion is, in effect, grounded on her disagreement with the content of the Medical Board's report and is rejected.

21. The complainant challenges the determination made pursuant to Article 17(d) requiring her to pay the medical fees and incidental expenses of the medical practitioner she selected and half of the medical fees and expenses of the third practitioner on the Medical Board and asks the Tribunal to set it aside. The complainant argues that the Director-General did not, in fact, sustain his original decision, he altered it to her disadvantage. Article 17(d) relevantly states that "if the original decision is sustained, the claimant shall bear" the costs identified in the provision. In summary, UNIDO submits that the ABCC's recommendation is fair and consistent with the terms of the provision. UNIDO also submits that the Director-General's decision is a reasonable and objectively based application of the provision given the circumstances of the case. UNIDO adds that the decision is also firmly grounded on the plain meaning of the text.

22. In Judgment 3734, under consideration 4, the Tribunal stated:

> "The principles of statutory interpretation are well settled in the case law. The primary rule is that words are to be given their obvious and ordinary meaning and any ambiguity in a provision should be construed in favour of the staff member and not the organization (see, for example, Judgments 2276, under 4, and 3310, under 7). It is the obvious and ordinary meaning of the words in the provision that must be discerned and not just a phrase taken in isolation."

23. At the outset, it must be observed that Article 17(d) does not provide for a consideration of the circumstances of a case in determining a party's liability for costs. It is also observed that the obvious and ordinary meaning of "sustained" in the context of a decision is to uphold or affirm the earlier decision. The ordinary meaning of "sustained" does not include a decision that alters the prior decision. However, the same provision provides that if "the Director-General alters his original decision in favour of the claimant" the Organization bears the identified costs. The language of the provision is clear and unambiguous. If the drafter of the provision had intended that the claimant would bear the identified costs in the event that the original decision was altered to her or his detriment it would have been explicitly stated. As it was not stated, the impugned decision will be set aside to the extent that it requires the complainant to bear the identified costs. It follows that UNIDO's claim for an order allowing it to offset any current or future liabilities against the outstanding balance owed to it by the complainant under Article 17(d) of Appendix D is rejected.

24. Before turning to the claimed relief, it is observed that the complainant made a number of submissions regarding facts that post-dated the impugned decision. As the Tribunal observed in Judgment 3037, consideration 11, "the lawfulness of a measure must be appraised as at the date of its adoption. In consequence thereof all subsequent facts are irrelevant (see Judgment 2365, under 4(c))."

25. In addition to other relief, the complainant requests that, in light of the finding by the UNJSPF to retroactively reinstate her UNJSPF disability benefit, the matter should be remanded to the ABCC solely for the purpose to fix (retroactively) the amount of disability benefits and the lump sum payment for disfigurement of 30 per cent under Appendix D based on the independent medical examination findings and conclusions of the independent medical experts appointed by the UNJSPF to investigate her case. She adds that there is no need to order new medical examinations. This claim is clearly beyond the scope of the present complaint and will not be considered.

26. The complainant seeks an award of moral damages in the amount of 10,000 euros for the delay in the processing of her claim for compensation for injury or illness attributable to the performance of her official duties. She notes that her initial claim was filed in September 2011 and that she was not notified of a decision until April 2014. In addition, her appeal against the decision giving rise to the present complaint took almost two years. The complainant contends that UNIDO's reasons for the delay, including the need to draft the TOR and to develop criteria for the selection of its medical representative on the Medical Board are not convincing or relevant. As well, the complainant maintains that she did not delay in submitting her medical records and she maintained continuous contact with the Director of the VIC Medical Service throughout the process to expedite her case. The complainant submits that UNIDO has an obligation to ensure that it provides the necessary resources for the smooth and efficient functioning of its internal appeals mechanisms.

27. The complainant points out that the Director of the VIC Medical Service generally represents UNIDO on the Medical Board. In the present case, the complainant states that "UNIDO decided that Dr L[.]'s opinion was not acceptable and decided to find another representative". It is convenient to observe that this last assertion is not supported by the record.

28. UNIDO submits that, in addition to the need to develop the TOR and to specify the criteria for its nominee on the Medical Board, the delay was also attributable to the time involved in organizing the complainant's examination by members of the Medical Board which necessitated her presence in Vienna.

29. In Judgment 4098, under consideration 10, in relation to delay in the internal appeal process, the Tribunal stated:

> "It is well settled in the case law that internal appeals must be conducted with due diligence and in a manner consistent with the duty of care an international organization owes to its staff members (see Judgment 3160, under 16; see also Judgments 3582, under 3, and 3688, under 11)."

In Judgment 3160, in consideration 17, the Tribunal also stated:

> "The amount of compensation for unreasonable delay will ordinarily be influenced by at least two considerations. One is the length of the delay and the other is the effect of the delay. These considerations are interrelated as lengthy delay may have a greater effect. That latter consideration, the effect of the delay, will usually depend on, amongst other things, the subject matter of the appeal. Delay in an internal appeal concerning a matter of limited seriousness in its impact on the appellant would be likely to be less injurious to the appellant than delay in an appeal concerning an issue of fundamental importance and seriousness in its impact on the appellant."

See also Judgment 4031, under 8.

30. It must first be observed that the present complaint impugns the 14 March 2016 decision. Accordingly, the allegations of delay in the earlier part of the claim for compensation process are beyond the scope of this complaint. In terms of the delay in the appeal process, a brief summary of the relevant dates is useful. The complainant lodged her appeal on 21 May 2014, the Medical Board issued its report on 6 March 2015, the ABCC met on 22 February 2016 and the impugned decision was notified to the complainant by a letter dated 14 March 2016. The Tribunal finds that the delay between the filing of the appeal and the completion of the Medical Board's report is attributable to both parties and was exacerbated by the parties' less than amicable relationship. It is also observed that the impugned decision was notified to the complainant in a timely manner. The only delay was the period of almost one year before the ABCC issued its recommendations. The Tribunal appreciates that this was a complex case, however, there was some unreasonable delay by the ABCC. Although there was unreasonable delay in the appeal process, in her pleadings, the complainant did not indicate any adverse consequences due to the delay. Accordingly the request for moral damages is rejected. As the complainant succeeded in part she will be awarded costs in the amount of 2,000 euros.

DECISION

For the above reasons,

1. The impugned decision of 14 March 2016 is set aside to the extent that it requires the complainant to pay medical fees and incidental expenses pursuant to Article 17(d) of Appendix D.
2. UNIDO shall pay the complainant costs in the amount of 2,000 euros.
3. UNIDO's claim for an order allowing it to offset any current or future liabilities against the outstanding balance owed to it by the complainant under Article 17(d) of Appendix D is dismissed.
4. All other claims are dismissed.

In witness of this judgment, adopted on 21 May 2019, Mr Giuseppe Barbagallo, President of the Tribunal, Ms Dolores M. Hansen, Judge, and Mr Michael F. Moore, Judge, sign below, as do I, Dražen Petrović, Registrar.

Delivered in public in Geneva on 3 July 2019.

GIUSEPPE BARBAGALLO

DOLORES M. HANSEN

MICHAEL F. MOORE

DRAŽEN PETROVIĆ