

**S. (Nos. 18 and 19)**

**v.**

**IAEA**

**140th Session**

**Judgment No. 5049**

THE ADMINISTRATIVE TRIBUNAL,

Considering the eighteenth complaint filed by Ms H. S. against the International Atomic Energy Agency (IAEA) on 20 July 2022, the IAEA's reply of 6 February 2023, the complainant's rejoinder of 5 May 2023 and the IAEA's surrejoinder of 1 August 2023;

Considering the nineteenth complaint filed by Ms H. S. against the IAEA on 26 July 2022 and corrected on 5 October 2022, the IAEA's reply of 6 February 2023, the complainant's rejoinder of 5 May 2023 and the IAEA's surrejoinder of 1 August 2023;

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

Having examined the written submissions;

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

In her eighteenth and nineteenth complaints, the complainant contests the IAEA's decision to impose a 30 per cent cap on her claims for the reimbursement of medical expenses submitted under Appendix D to the Staff Regulations and Staff Rules.

The complainant is a former staff member of the IAEA. On 4 December 2003, 16 February 2005, 9 April 2008, and 23 March 2010, she sustained injuries that were recognized as service-incurred. Based on a medical board report of December 2011 and its endorsement by the Joint Advisory Board on Compensation Claims (JABCC), the

complainant's whole person impairment (WPI) was calculated at 19 per cent (of which 50 per cent was recognised as attributable to service-incurred injuries) and she was awarded compensation for loss of function of a bodily member under Article 25 of the "Rules Governing Compensation in the event of Death, Injury or Illness Attributable to the Performance of Official Duties", contained in Appendix D to the IAEA Staff Regulations and Staff Rules\*.

In May 2017, relying on a medical report by her treating physician assessing her WPI at 22 per cent, the complainant requested a reconsideration of the determination regarding her WPI rating. She requested, in particular, an upward increase of her WPI rating and the payment of an equivalent compensation. In a decision of 23 November 2018, the Director General rejected this request and informed the complainant of his decision not to convene a medical board for the purpose of revising her WPI rating. The complainant challenged this decision in her seventeenth complaint to the Tribunal, which led to Judgment 4468, delivered on 27 January 2022. In that judgment, the Tribunal set aside the Director General's 23 November 2018 decision, because it had failed to meet the requirement of Article 42 of Appendix D, under which the Director General's final decision must be grounded on a report of a properly constituted medical board. The Tribunal referred the case back to the IAEA for a new decision to be taken in compliance with the provisions of Article 42 and awarded the complainant 1,500 euros in costs.

Meanwhile, on 27 September 2021, the Director General decided that the reimbursement of any new claims submitted by the complainant in connection with her service-incurred injuries would be subject to a medical examination pursuant to Article 36 of Appendix D. In keeping with this decision, the complainant underwent a medical examination by Dr F.-B. who, in his medical report of 28 February 2022, assessed the complainant's pain symptoms as "being most likely no more than 20-30 [per cent] attributable to [her] work-related accidents". Having

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\* Whole person impairment (WPI) is the percentage that estimates the impact of the impairment on the individual's overall ability to perform activities of daily living, excluding work.

reviewed the complainant's case at its meeting of 18 March 2022, the JABCC recommended that the conclusions contained in Dr F.-B.'s medical report be implemented.

In a letter of 28 April 2022, the Director General, referring to the Tribunal's decision in Judgment 4468, informed the complainant of his decision to convene a medical board to consider her request for an upward revision of her WPI rating pursuant to Article 42 of Appendix D, and invited her to designate a medical practitioner as her representative on the medical board.

In the same letter (of 28 April 2022), the Director General also informed the complainant of his decision to accept the JABCC's recommendation to impose a proportionate reimbursement at the rate of 30 per cent of total on all of the complainant's pending and future claims in respect of service-incurred medical expenses submitted under Appendix D. The Director General specifically informed the complainant that her claims of 18 November 2021, 23 January 2022, and 17 February 2022, for a total amount of 38,092.37 euros, would be capped at 30 per cent, resulting in the reimbursement of 11,427.71 euros, of which 9,934.34 euros would be paid to her and 1,493.36 euros to the insurance provider. The Director General offered the complainant the option of convening a single medical board to review her WPI rating and the decision to impose a 30 per cent cap on the reimbursement of her medical expenses should she wish to appeal the latter decision.

Also on 28 April 2022, the complainant submitted a new claim for the reimbursement of medical expenses arising in connection with her service-incurred injuries, this time in the amount of 10,017.53 euros. By a letter of 31 May 2022, she was informed that, on the recommendation of the JABCC, which had considered her 28 April 2022 claim at its 109th meeting on 24 May 2022, the Director General had decided that the total reimbursable amount calculated at 8,627.75 euros would be further capped at 30 per cent, resulting in a final reimbursement of 2,588.33 euros, of which 1,100.61 euros would be paid to the complainant and 1,487.72 euros to the insurance provider. The complainant impugned this decision in her eighteenth complaint filed on 20 July 2022.

Prior to this, on 18 May 2022, the complainant's counsel had written to the Director General requesting that he withdraw the decision (conveyed in the 28 April 2022 letter) to impose a 30 per cent cap on the reimbursement of the complainant's medical claims of 18 November 2021, 23 January 2022, and 17 February 2022 and that he provide him with the minutes of the JABCC's 104th, 105th and 108th meetings.

In his response of 15 June 2022, the Director General rejected the complainant's counsel's request, maintaining the 28 April 2022 decision and noting that the complainant had already been provided with the conclusions of Dr F.-B.'s medical report and therefore had sufficient information on the JABCC's recommendation that referred to those conclusions.

On 22 July 2022, the complainant's counsel wrote to the Director General asking him to suspend the decisions of 28 April 2022 and 31 May 2022 and to continue to reimburse the complainant's approved medical expenses at the 100 per cent rate pending the Tribunal's decision on the matter. The complainant was then in the process of filing complaints with the Tribunal contesting the imposition of a 30 per cent cap on her reimbursement claims. The complainant accepted the Director General's offer to convene one medical board to consider both her WPI rating and the imposition of a 30 per cent cap on her reimbursement claims and designated Dr W. as her representative on the medical board.

On 26 July 2022, the complainant filed her nineteenth complaint with the Tribunal impugning the Director General's 28 April 2022 decision to impose a 30 per cent cap on the reimbursement of her medical claims submitted under Appendix D on 18 November 2021, 23 January 2022, and 17 February 2022.

In her eighteenth complaint, the complainant asks the Tribunal to set aside the impugned decision, dated 31 May 2022, and to order the IAEA to pay her 2,684.08 euros in full reimbursement of the medical expenses she claimed under Appendix D, on 28 April 2022 – the amount of 2,684.08 euros representing the difference between the amount reimbursed by the IAEA and that which should have been reimbursed for the claim submitted on 28 April 2022. She claims

interest on the aforementioned amount at the rate of 5 per cent per annum from 28 April 2022. She also claims moral and exemplary damages, and 15,000 euros in costs.

In her nineteenth complaint, the complainant asks the Tribunal to set aside the impugned decision, dated 28 April 2022, and to order the IAEA to pay her 23,180.15 euros in full reimbursement of the medical expenses she claimed under Appendix D, on 18 November 2021, 23 January 2022, and 17 February 2022 – the amount of 23,180.15 euros representing the difference between the amount reimbursed by the IAEA and that which should have been reimbursed for the claims submitted by the complainant on the aforementioned dates. She claims interest on the aforementioned amount at the rate of 5 per cent per annum from due dates. She also claims moral, exemplary damages, and costs.

The IAEA asks the Tribunal to dismiss both complaints in their entirety as irreceivable and devoid of merit.

### CONSIDERATIONS

1. The complainant requests oral proceedings. Pursuant to Article V of the Statute of the Tribunal, “[t]he Tribunal, at its discretion, may decide or decline to hold oral proceedings, including upon request of a party”. The Tribunal finds the written submissions to be sufficient to reach a reasoned decision, thus there is no need for oral proceedings.

2. The IAEA requests the joinder of the complainant’s eighteenth and nineteenth complaints. The two complaints are based on the same material facts and raise the same issues of fact and law. Accordingly, they will be joined to form the subject of a single judgment.

3. In her eighteenth complaint, the complainant impugns the 31 May 2022 decision by which the Director General, based on the recommendation of the JABCC and his 28 April 2022 decision on similar requests, imposed a 30 per cent cap on the reimbursement of medical expenses claimed by the complainant on 28 April 2022,

pursuant to Appendix D to the Staff Regulations and Staff Rules. She nevertheless also raises arguments against the Director General's 28 April 2022 decision on which the 31 May 2022 decision relies.

In her nineteenth complaint, the complainant impugns the 28 April 2022 decision by which the Director General, based on the 28 February 2022 medical report stating that her pain symptoms and impairment were no more than 30 per cent attributable to her service-incurred injuries and on the JABCC's recommendation, imposed a 30 per cent cap on the reimbursement of medical expenses claimed by the complainant on 18 November 2021, 23 January 2022, and 17 February 2022, pursuant to Appendix D.

4. At the outset, the Tribunal will address the receivability issues raised by the IAEA. It contends that the present complaints are irreceivable for failure to exhaust the internal means of redress, because the complainant pursued her cases directly before the Tribunal, rather than waiting for the outcome of her request for reconsideration filed under Article 41 of Appendix D of the Staff Regulations and Staff Rules.

The complainant objects that the impugned decisions do not concern medical issues but solely the legal issue of whether the IAEA has the power, under Article 16 of Appendix D, to impose a cap on medical reimbursement claims based on the percentage of WPI attributable to service.

The IAEA contends that the impugned decisions are based on a medical determination, that they have been issued pursuant to Article 16 of Appendix D, and that they directly concern the extent to which the complainant's impairment is attributable to service. Thus, the IAEA contends that the only avenue open to the complainant to challenge the impugned decisions is the request for reconsideration procedure under Article 41 of Appendix D, which she has initiated but has failed to await the completion of the medical board procedure which was still ongoing.

The Tribunal notes that the two impugned decisions cap the reimbursement of medical expenses at 30 per cent, based on the 28 February 2022 medical report, which has reduced the percentage of the complainant's WPI attributable to service. The complainant contends, *inter alia*, that she is entitled to a full reimbursement of her medical expenses, irrespective of the percentage of her WPI attributable to service.

Article 16 of Appendix D, in the version applicable at the material time, provided that:

"An official shall be entitled to payment of medical expenses resulting from illness or injury within the scope of these rules which are determined by the Agency to be reasonable on the basis of evidence submitted."

Article 36 of Appendix D provided that:

"The Director General may require the medical examination of any person claiming or in receipt of a compensation for injury or illness under these rules. In case of refusal or failure of a claimant or beneficiary to undergo such examination at such time or times as in the opinion of the Director General may be reasonably necessary, the Director General may bar the claimant or beneficiary from receiving compensation in full or in part."

Article 38 of Appendix D stipulated that:

"A Joint Advisory Board on Compensation Claims shall be established to make recommendations to the Director General concerning claims for compensation under these rules. It may also be consulted by the Director General on any matter connected with the implementation and administration of these rules."

After a determination has been made by the Director General on the existence of a service-incurred injury or illness, or of the type and degree of disability, Article 41 of Appendix D provides for the possibility of a reconsideration of such determination and sets out the procedure to be followed; it reads as follows:

"Reconsideration of the determination by the Director General of the existence of an injury or illness attributable to the performance of official duties, or of the type and degree of disability, may be requested within thirty days of notice of the decision; provided, however, that in exceptional circumstances the Director General may accept for consideration a request made at a later date. The request for reconsideration shall be accompanied by the name of the medical practitioner chosen by the staff member to represent him on the medical board provided for under Article 41."

The 28 April 2022 decision, cited in the 31 May 2022 decision, expressly reminded the complainant that if she wished to appeal the decision, she should do so pursuant to Article 41 of Appendix D, which the complainant actually did.

Contrary to the complainant's allegation, the two impugned decisions concern not only legal but also medical issues. Indeed, the legal issue of whether the IAEA has the power to cap the reimbursement of the complainant's medical expenses at 30 per cent is strictly linked to the medical issues of (i) the attributability of her medical expenses to her service-incurred injuries, and (ii) the percentage of her WPI attributable to service. Consequently, the complaints are premature and irreceivable for failure to exhaust the internal means of redress.

#### DECISION

For the above reasons,

The complaints are dismissed.

In witness of this judgment, adopted on 16 May 2025, Mr Michael F. Moore, Vice-President of the Tribunal, Sir Hugh A. Rawlins, Judge, and Ms Rosanna De Nictolis, Judge, sign below, as do I, René M. Vargas M., Registrar.

Delivered on 3 July 2025 by video recording posted on the Tribunal's Internet page.

MICHAEL F. MOORE

HUGH A. RAWLINS

ROSANNA DE NICTOLIS

RENÉ M. VARGAS M.