

S. (No. 17)

v.

IAEA

141st Session

Judgment No. 5110

THE ADMINISTRATIVE TRIBUNAL,

Considering the seventeenth complaint filed by Ms H. S. against the International Atomic Energy Agency (IAEA) on 21 October 2021 and corrected on 13 December 2021, the IAEA's reply of 11 April 2022, the complainant's rejoinder of 24 June 2022 and the IAEA's surrejoinder of 23 September 2022;

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, who suffers from service-incurred injuries, contests the decision to deny full reimbursement for her laboratory test expenses.

The complainant is a former staff member of the IAEA, who separated from service on 31 July 2013 for health reasons. During her service with the IAEA, the complainant suffered a number of illnesses and injuries that were recognized as service-incurred.

On 16 December 2014, the complainant's doctor issued a medical certificate explaining that blood tests needed to be performed regularly to monitor possible side effects of a specific medication ("Medicine A") used by the complainant in relation to her service-incurred illnesses. He listed seven parameters which needed to be checked regularly.

By letter dated 28 May 2015, the Director General informed the complainant that, based on the 16 December 2014 certificate from her doctor, specific laboratory tests associated with the use of Medicine A would be reimbursed, that were listed in his letter. The Director General further stated that “[i]n the event that a different medication is used [...] in connection with [these] tests, the reimbursement [would] be reassessed”.

On 25 March 2020, the complainant’s doctor issued another medical certificate, reiterating that, in connection with the complainant’s use of Medicine A and another medication (“Medicine B”), various parameters needed to be checked regularly by a laboratory.

Between 21 and 23 September 2020, the complainant was admitted to the hospital. On 16 January 2021, she submitted a claim for reimbursement of her hospital expenses, pursuant to Article 16 of Appendix D of the Staff Regulations and Staff Rules, governing compensation in the event of death, injury or illness attributable to the performance of official duties. Her claim included an amount of 649.34 euros for laboratory tests performed on 33 different parameters.

On 23 March 2021, the Secretary of the Joint Advisory Board on Compensation Claims (JABCC) advised the complainant, on behalf of the Director General, that “the laboratory tests included in the hospital admission shall be reimbursed in accordance with the itemized laboratory tests previously approved by the then Director General on 28 May 2015, i.e. to the limit of €165.7 out of €649.34 before tax”.

By email of 22 April 2021, the complainant’s counsel, noting that the complainant “[did] have the right to seek redress to the [Tribunal] within 90 days of receipt of [the 23 March 2021] letter, but [they] would prefer to avoid any litigation on this issue”, requested the JABCC to reconsider its 23 March 2021 decision.

By letter dated 7 July 2021, the Chairperson of the JABCC notified the complainant that “[c]onsistent with the itemized laboratory tests referenced in the letter of the then Director General dated 28 May 2015, [he] confirm[ed] that the expenses for laboratory tests claimed on 16 January 2021, which are not related to the [...] service-incurred injuries, [would] not be reimbursed”. He also stated that the decision of

28 May 2015 “was based on [the] medical certificate dated 16 December 2014 [from the complainant’s doctor] on the same subject. Absent any change in the list of laboratory tests performed, there is no reason to depart from the position of the letter of 28 May 2015.” He concluded his letter stating the following: “Should you wish to appeal, you may proceed directly to the [...] Tribunal [...] Accordingly, please be informed that this constitutes the final decision in this matter.” This is the impugned decision.

By emails of 29 September 2021 and 4 October 2021, the IAEA provided the complainant with a detailed list of the 11 laboratory parameters, out of the 33 parameters included in her 16 January 2021 claim, that had been recognized for reimbursement.

The complainant asks the Tribunal to set aside the impugned decision and to order the IAEA to pay the laboratory expenses claimed on 16 January 2021 in full, with interest. She further claims moral damages as well as costs.

The IAEA asks the Tribunal to dismiss the complaint in its entirety.

CONSIDERATIONS

1. The complainant highlights the box on the complaint form indicating that she applies for oral proceedings. Her request for oral proceedings is rejected, as the Tribunal considers that the parties have presented sufficient submissions and documents to allow it to be properly informed of their arguments and the relevant evidence to resolve the central issue which this complaint raises: whether in his decision of 7 July 2021, which the complainant impugns, the Chairperson of the JABCC wrongly rejected her underlying 16 January 2021 claim for the full reimbursement of the laboratory blood tests that were done during her hospitalization between 21 and 23 September 2020.

2. The complainant made the underlying contested claim, pursuant to Article 16 of Appendix D of the Staff Regulations and Staff Rules. Appendix D is entitled “Rules Governing Compensation in the

Event of Death, Injury or Illness Attributable to the Performance of Official Duties”. Article 16 states as follows:

“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.”

3. The Tribunal has previously stated, in consideration 6 of Judgment 3650, involving the complainant, that the right to payment of medical expenses arising under Article 16 is conditioned by the consideration of any claim for payment by the organisation of whether the medical expenses incurred were reasonably incurred, which would include considering any evidence supporting that conclusion. Thus, the right to payment of medical expenses cannot be said to be a right to an immediate payment of the claimed amount. In line with this case law, the person who makes such a claim must also provide evidence to show that the amounts claimed were reasonably incurred for the treatment as a result of the service-incurred illness or injury.

4. It is not disputed that the complainant suffered service-incurred illnesses or injuries, which the IAEA recognized as such. The record shows that the IAEA had from time to time reimbursed her for medical expenses related to those illnesses or injuries. However, as the facts reveal, based upon a medical certificate, issued by the complainant’s doctor (Dr K.) on 16 December 2014, the Director General had informed the complainant, in the letter of 28 May 2015, that going forward, reimbursement for blood tests would be limited to certain tests associated with the use of a specific medication (Medicine A), but that this would be subject to reassessment in the event that she used a different medication.

5. The facts further reveal that Dr K. had issued a subsequent certificate on 25 March 2020 explaining why various parameters needed to be checked regularly by a laboratory. He relevantly stated as follows:

“The purpose of this certificate is that I would like to express the following: In case of treatment with [a certain type of medications], as is applicable to [the complainant’s] case, given the fact that she is treated with [Medicine A and another Medicine B], it is indicated that various parameters be checked

regularly by a lab. According to national and international guidelines, this is necessary for the differential diagnosis of [named illness] signs and symptoms in the patient with respect to the [certain type of medications] administered, or any side effects as may occur. Tests include blood count, liver function tests, thyroid levels, kidney levels etc., to name just a few of these parameters. The physician prescribing [this type of medications] must be certain that he is prescribing the medication to a person who is physically healthy in terms of metabolism and that he can monitor the effects such medication has on various organs, in order to be able to react to undesirable levels and adjust the [named] therapy appropriately.

[...]

I can therefore confirm that [the complainant's] blood tests carried out on 15 January 2019 and 20-25 October 2018 must be considered indicated from the point of view of [named illness] because of her treatment with [Medicine A and Medicine B].”

6. The complainant's underlying claim for reimbursement included an amount on an invoice from the hospital for treatment she received from 21 to 23 September 2020. The hospital's invoice was for 3,622.36 euros for four tests. These included an amount of 649.34 euros for laboratory blood tests, which the IAEA rejected. The complainant was informed of this in a letter, dated 23 March 2021, from the Secretary of the JABCC. It relevantly stated that “The Director General, on recommendation of the JABCC, has decided as follows: (i) the laboratory tests included in the hospital admission shall be reimbursed in accordance with the itemized laboratory tests previously approved by the then Director General on 28 May 2015, i.e. to the limit of €165.7 instead of €649.34 before tax”. There was no other explanation as to why the reimbursement for blood tests in the underlying claim was so limited.

7. By email of 22 April 2021 from the complainant's counsel to the Secretary of the JABCC, the complainant requested the JABCC be “re-seize[d]” of the claim. Her counsel pointed out that there appeared to be a misunderstanding regarding the requirements for laboratory blood tests as Dr K. had in December 2014 and again in 2020 advised the IAEA in his expert reports that he required the complainant to obtain this type of tests. He added that since this was required from a medical

standpoint, the total amount of expenses the complainant incurred for laboratory tests should be fully reimbursed. The complainant's counsel requested the JABCC to review Dr K.'s expert reports of 2014 and 2020 and recommend to the Director General to reimburse any laboratory tests in full by authorizing the reimbursement of 649.34 euros instead of 165.7 euros. He also requested that in the future the JABCC should recommend full reimbursement of all laboratory blood tests and stated that if another report from Dr K. was required that could be arranged but he would need assurances that the report would be fully reimbursed.

8. In the impugned decision, the Chairperson of the JABCC informed the complainant that the initial decision of 23 March 2021 should be maintained. The Chairperson relevantly stated that "Consistent with the itemized laboratory tests referenced in the letter of the then Director General dated 28 May 2015, I confirm that the expenses for laboratory tests claimed on 16 January 2021, which are not related to the above-mentioned service-incurred injuries, will not be reimbursed. As regard Dr [K.'s] medical certificate dated 25 March 2020, allow me to recall that the abovementioned decision of 28 May 2015 was based on Dr [K.'s] medical certificate dated 16 December 2014 on the same subject. Absent any change in the list of laboratory tests performed, there is no reason to depart from the position of the letter of 28 May 2015. [...]"

9. In a case such as this, the Tribunal will not substitute its own views for the medical opinions on which the Administration's decision is based. The Tribunal is, however, fully competent to assess whether the required procedure was correctly followed and to determine whether the challenged decision was unlawful, among other things, because it contained any substantive error or inconsistency, overlooked essential facts or drew erroneous conclusions from the evidence (see, for example, Judgments 4831, consideration 4, 3994, consideration 5, and 3689, consideration 3) having particular regard to Article 16 of Appendix D of the Staff Regulations and Staff Rules.

10. The complainant argues that the impugned decision is unlawful because it was based on the Director General's decision contained in a letter of 28 May 2015, which was not provided with the decision. However, as the IAEA points out, a copy of the letter was sent to the complainant by way of email, dated 29 May 2015 and shared with her again by email dated 27 September 2021. The complainant further argues that the IAEA appears to be arguing "some type of *res judicata* principle or precedent, i.e., that since [she] did not challenge the Director General's decision denying a similar claim years ago it is too late to challenge the decision now". She insists that in the absence of any final judgment involving the same factual and legal issues, the IAEA cannot rely on *res judicata*. This argument however misconstrues the IAEA's explanation contained in the impugned decision as relevantly reproduced in consideration 8 of this judgment, from which reliance upon the *res judicata* principle cannot be implied.

11. It is however clear that the decision not to reimburse the complainant for the laboratory tests which she claims in this complaint was made by reference to those tests which were itemized in the Director General's 28 May 2015 letter. They were specifically based on the complainant's use of Medicine A. As consideration 4 of this judgment recalls, the Director General had also stated in the said letter that the items for which reimbursement would be made were subject to reassessment in the event that the complainant used a different medication. Notably, as revealed in consideration 5 of this judgment, Dr K.'s medical certificate of 25 March 2020 stated that the complainant was also being treated with a second medication (Medicine B) by that time. There was therefore a need for the reassessment promised in the Director General's 28 May 2015 letter, which was not done. It precluded reliance solely upon the parameters contained in the 28 May 2015 letter as was done in the impugned decision. The Tribunal agrees with the complainant's contention that the Director General's earlier decision does not represent any binding precedent on what claims will be reimbursed and what claims will not be reimbursed as each claim should be decided on the merits, based on all the facts and circumstances.

Accordingly, it was wrong that in the impugned decision, the Chairperson of the JABCC ignored Dr K.'s 25 March 2020 medical certificate, passing off the complainant's reference to it, by recalling that the decision of 28 May 2015 was based on Dr K.'s medical certificate dated 16 December 2014 on the same subject, as mentioned in consideration 8 of this judgment. The impugned decision was therefore unlawful as the Chairperson therein overlooked essential facts and drew erroneous conclusions from the evidence. Consequently, the impugned decision of 7 July 2021, as well as the initial decision of 23 March 2021, will be set aside.

12. However, the Tribunal rejects the complainant's argument which seems to suggest that the principles of due process and good faith were violated on the basis that the decision not to grant her claim was not properly explained and motivated. It was.

13. The case will be remitted to the IAEA for the subject medical claim to be properly reconsidered and to pay any amount due, with interest. As the complainant does not articulate the moral injury she suffered as a result of the unlawful decision, she will not be awarded moral damages. However, as she prevails on this complaint, she will be awarded costs in the amount of 5,000 euros, which she claims.

DECISION

For the above reasons,

1. The impugned decision of 7 July 2021 and the initial 23 March 2021 decision are set aside.
2. The matter is remitted to the IAEA for a decision to be taken in light of consideration 13 of this judgment.
3. The IAEA shall pay the complainant 5,000 euros in costs.
4. All other claims are dismissed.

In witness of this judgment, adopted on 14 October 2025, Mr Michael F. Moore, President of the Tribunal, Sir Hugh A. Rawlins, Judge, and Ms Hongyu Shen, Judge, sign below, as do I, René M. Vargas M., Registrar.

Delivered on 10 February 2026 by video recording posted on the Tribunal's Internet page.

MICHAEL F. MOORE

HUGH A. RAWLINS

HONGYU SHEN

RENÉ M. VARGAS M.