

G. (No. 2)

v.

OPCW

141st Session

Judgment No. 5121

THE ADMINISTRATIVE TRIBUNAL,

Considering the second complaint filed by Mrs C. G., as successor of the late Mr T. G., against the Organisation for the Prohibition of Chemical Weapons (OPCW) on 19 December 2022 and corrected on 29 January 2023, and the OPCW's reply of 1 June 2023, no rejoinder having been submitted by the complainant;

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 rejection of her claim for additional compensation in connection with the passing of her husband.

Facts relevant to this complaint may be found in Judgment 5120, also delivered this day, dealing with the complainant's first complaint. Suffice it to recall that the complainant is the surviving spouse of an OPCW staff member, who passed away on 8 February 2020, while deployed on a mission for the Organisation in Damascus, Syria. The report on the *post-mortem* examination ("the autopsy report"), which was prepared by medical experts independent from the OPCW and dated 14 February 2020, concluded that Mr G. died of natural causes.

On 19 February 2020, the complainant filed a claim for service-incurred death and disability insurance following the death of her husband. Despite the conclusions contained in the autopsy report, the Director-General accepted the death as service-incurred because Mr G. was on mission the day he passed away. The OPCW submitted the claim to the external insurer, which was processed and eventually approved on 5 June 2020. The complainant received the calculation of payments for her claim on 16 June 2020.

Simultaneously to the insurance claim process, the OPCW initiated an incident review in accordance with the standard safety procedures, the purpose of which was to establish the safety-related circumstances that prevailed, preceding and at the time of the incident. An incident review report was issued on 30 March 2020 and forwarded to the complainant on 1 April 2020. The incident review established that no safety hazards were identified during the on-site survey. It did not find any indications of foul play or of other non-natural circumstances which could have caused Mr G.'s death.

On 21 April 2020, the complainant's counsel requested the Director-General to disclose three additional documents, namely (1) a copy of the original full investigation report made by the OPCW on the passing of Mr G., (2) a report on the incident issued by the United Nations Department of Safety and Security (UNDSS), and (3) a copy of any agreement, memorandum of understanding or the like between the OPCW and the United Nations providing the legal basis and conditions for OPCW staff members' use of the United Nations Medical Service in Damascus. The request was rejected by a letter dated 7 May 2020, which the complainant challenged. The outcome of her appeal on this matter has led to Judgment 5120.

On 28 January 2021, the complainant addressed a letter to the Director-General to request further compensation based on the information she had in connection with the passing of her husband which, according to her, revealed the OPCW's liability. She sought material damages, moral damages and costs. As a response, by a letter of 18 February 2021, she was reminded that she had already submitted a claim for compensation on 19 February 2020, which had subsequently

been approved by the external insurer, and she already had been paid the requisite monetary sums.

By a letter of 17 March 2021, the complainant challenged the 18 February 2021 decision requesting that it be reversed and that she be granted compensation.

By a letter of 9 April 2021 – which was transmitted to the complainant on 11 April 2021 –, the Organisation informed her that the 17 March 2021 letter reiterated the claim for compensation of 28 January 2021, to which it had already responded through its letter dated 18 February 2021. The OPCW recalled that it had already processed the claim and processed expeditiously the payments of the complainant’s entitlements and benefits.

On 7 June 2021, the complainant lodged an internal appeal to the Appeals Council.

On 29 August 2022, the Appeals Council issued its report in which it considered that the complainant’s claim for further compensation “lack[ed] the standing of a decision” and that the act of having accepted and received the initial compensation constituted an agreement which made future compensation requests of the same nature void. The Appeals Council recommended rejecting the appeal as irreceivable. On 28 September 2022, the complainant was informed of the Director-General’s decision to endorse the Appeals Council’s recommendation. The Director-General further stated that, assuming that the letter of 9 April 2021, which was notified to the complainant on 11 April 2021, had the standing of a decision, the appeal would in any event be time-barred. This is the impugned decision.

In addition to the claims she had formulated in her first complaint, which are listed in Judgment 5120, the complainant asks the Tribunal to set aside the impugned decision, to award her material damages in compensation “for economic loss corresponding to [her husband]’s loss of reasonably expectable earnings as a result of [his] premature death”, as well as moral damages and costs in the amount of 20,000 euros. She also requests an “automatic and periodic reassessment of the annual compensation paid through the OPCW Insurance Scheme if and when

the cumulated impact of inflation over years makes that its actual value drops by more than 10% compared to its initial value of 2020”.

The OPCW notes that the 18 February 2021 and 9 April 2021 letters do not constitute express or implied administrative decisions within the meaning of Staff Regulation 11.1 of the OPCW Staff Regulations and Staff Rules and that, in any event, the claim for compensation of 28 January 2021 and the internal appeal lodged on 7 June 2021 were time-barred. It therefore asks the Tribunal to dismiss the complaint as irreceivable or, on a subsidiary basis, as unfounded.

CONSIDERATIONS

1. The complainant applies for the joinder of this complaint with her first complaint on the ground that they are closely related. In the Tribunal’s case law, the touchstone for formal joinder has historically been that the complaints involve the same or, more recently, similar questions of fact and law, and it is not sufficient that they stem from the same continuum of events (see, for example, Judgments 4963, consideration 2, and 4753, consideration 6).

The complainant’s application for joinder is rejected. The first complaint is centrally concerned with the issue whether the OPCW erred by refusing to disclose documents and information, which the complainant alleges are related to the death of her spouse. This complaint is however centrally concerned with the complainant’s claim for compensation additional to the amount that has already been paid to her by the OPCW on 16 June 2020 in relation to her spouse’s death. While the two complaints arise from the same contextual background, this is not sufficient for them to be joined. The Tribunal therefore considers it appropriate to deal with the two complaints separately and to render a separate judgment for each of them.

2. The facts in this case disclose that, after the death of her spouse on 8 February 2020, while he was an OPCW staff member deployed on a mission for the Organisation in Syria, the complainant filed a claim for service-incurred death and disability insurance on

19 February 2020. The Director-General accepted the death as such and submitted the claim to the external insurer. The OPCW kept the complainant informed of the insurer's responses and further informed her, on 5 June 2020, that the claim had been approved. The complainant received the calculation of payments for her claim on 16 June 2020. The OPCW also undertook an incident review of the circumstances of the death of the complainant's spouse. That review resulted in the issuance of a report on 30 March 2020, which was transmitted to the complainant on 1 April 2020. It concluded, as did the previous autopsy report, that Mr G. had died of natural causes.

3. It was not until 28 January 2021, that the complainant addressed a letter to the Director-General claiming further compensation. This is the letter which initiated the claim that underlies this complaint. In a response of 18 February 2021, the complainant was reminded that she had already submitted a claim for compensation on 19 February 2020, which had subsequently been approved by the external insurer, and she already had been paid the requisite monetary sums. On 17 March 2021, the complainant challenged the 18 February 2021 decision. In response, by a letter of 9 April 2021, the Organisation informed her that the 17 March 2021 letter reiterated the claim for compensation of 28 January 2021, to which it had already responded through its letter dated 18 February 2021. The OPCW recalled that it had already processed the claim and processed the payments of the complainant's entitlements and benefits.

4. In its report, dated 29 August 2022, the Appeals Council recommended the Director-General to reject the internal appeal lodged by the complainant on 7 June 2021 as irreceivable. It concluded, in effect, that the appeal was not receivable as the complainant's request for additional compensation "lack[ed] the standing of a decision". It further stated that the compensation the complainant had already accepted and received on 16 June 2020 constituted an agreement, which made future claims for compensation of the same nature void. Having accepted this reasoning and endorsed the Appeals Council's recommendation in the impugned decision of 28 September 2022, the

Director of Administration, acting on behalf of the Director-General, stated, among other things, that, even if the letter of 9 April 2021, which was notified to the complainant on 11 April 2021, had the standing of an appealable decision, her internal appeal was time-barred because she lodged it on 7 June 2021, nearly two months after she had received the 9 April 2021 letter. This exceeded the one-month time limit prescribed under Staff Rules 11.2.02(a)(i) and 11.2.03(f).

5. The OPCW raises irreceivability as a threshold issue. It correctly submits, in effect, among other things, that the underlying claim the complainant made on 28 January 2021, by which she sought additional compensation in connection with her husband's death, was irreceivable as she submitted it over six months after she was notified, on 5 June 2020, of the approval of her 19 February 2020 claim for compensation for the same matter. The OPCW further correctly submits that the complainant's internal appeal was also irreceivable as she lodged it more than one month after the complainant was notified of the 9 April 2021 letter. This was contrary to Staff Rule 11.2.02(a)(i), which states that a staff member may lodge an appeal against an administrative decision pursuant to Staff Regulation 11.1 within one month of the receipt of the Director-General's reply to her or his request for review. Having not complied with the applicable internal time limits, the complainant has not exhausted the internal means of redress as were open to her under the applicable Staff Rules, as Article VII, paragraph 1, of the Tribunal's Statute requires. In this regard, the Tribunal has repeatedly emphasised the importance of the strict observance of applicable time limits when challenging an administrative decision (see, for example, Judgments 4823, consideration 7, 4673, consideration 12, 4184, consideration 4, and 4103, consideration 1).

6. It follows from the foregoing that the complaint is irreceivable and will be dismissed in its entirety.

DECISION

For the above reasons,
The complaint is dismissed.

In witness of this judgment, adopted on 28 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.