



World Bank Administrative Tribunal

2010

No. 445

**BI (No. 2),
Applicant**

v.

**International Bank for Reconstruction
and Development,
Respondent**

**World Bank Administrative Tribunal
Office of the Executive Secretary**

**BI (No. 2),
Applicant**

v.

**International Bank for Reconstruction
and Development,
Respondent**

1. This judgment is rendered by a Panel of the Tribunal, established in accordance with Article V(2) of the Tribunal's Statute, composed of Jan Paulsson (acting Vice President of the Tribunal) as President, and Judges Florentino P. Feliciano and Mónica Pinto.
2. The Application was received on 22 April 2010. The Applicant was not represented by counsel. The Bank was represented by David Rivero, Chief Counsel (Institutional Administration), Legal Vice Presidency. The Applicant's request for anonymity was granted on 27 September 2010.
3. The Applicant challenges a decision of the Workers' Compensation Review Panel denying her claim for compensation for an illness which she claims was caused by work-related stress.

FACTUAL BACKGROUND

4. The Applicant, a staff member employed by the Bank since 26 July 1999, was admitted to hospital on 3 March 2007, having been brought to the emergency room for complaints of severe chest pain. The Applicant was diagnosed by the attending physician to have "chest pain suggestive of unstable angina"; however, the fuller subsequent medical reports indicate a different principal diagnosis.

5. On 1 April 2007, the Applicant experienced a similar episode and went to the hospital to seek treatment. The medical notes made by the attending physician indicate an assessment of “probable postural hypotension.”

6. On 30 May 2007, the Applicant submitted a claim for compensation under the Bank’s Workers’ Compensation Program. The Applicant identified her illness as “unstable angina,” which she claims was caused, as confirmed by a psychiatrist, by work-related stress. The Applicant submitted, in support of her claim, a chronological list of events which had occurred in her workplace from November 2006 to May 2007 which she argues led to her stress.

7. Over one year later, on 1 July 2008, the Workers’ Compensation Claims Administrator advised the Applicant of his initial decision to deny the Applicant’s claims, stating

You have failed to establish that the unstable angina or any of your other symptoms are related in any way to an accident or incident that occurred at your employment. Nothing in the medical reports mentions any work incidents that are causally connected to the medical diagnoses. That is, there is nothing to establish that any injury that you suffered arose out of and in the course of your employment.

8. On 14 July 2008, the Applicant requested reconsideration of the Claims Administrator’s decision. She submitted further evidence to support her claims, including more detailed descriptions of her work environment where she claims she was bullied by two of her managers. The Applicant identified two colleagues who could serve as independent witnesses. She also submitted a report from a psychiatrist from whom she states she had sought treatment from 8 May to 12 December 2007. She claimed that this report established a causal relationship between the stress she suffered,

due to events that took place at the workplace, and her illness. The psychiatrist's note, dated 12 December 2007, stated:

This is to verify that [the Applicant] was seen by me on [8 May 2007] when she presented sym. of depression and anxiety [*illegible text*] by work related stress leading her to go to the emergency room on two occasions with panic /+ chest pain. She has responded well to [medication] and a change in her work situation. Prognosis is good. If you have any specific questions please write to me.

9. On 17 September 2008, the Claims Administrator sent the Applicant a letter advising her of the final denial of her claim. The Claims Administrator reiterated the reasons provided in his letter of 1 July 2008. Furthermore, in relation to the psychiatrist's note she had supplied, the Claims Administrator's letter advised the Applicant that it had been prepared on 12 December 2007 which was

more than eight months after your most recent visit to [the hospital] and more than seven months since [the psychiatrist] had actually seen you. Moreover, he does not causally link your symptoms to any work-related occurrence, nor does he provide any substantive basis for such linkage. Finally ... as a psychiatrist, [he] is not qualified to render opinions as to the cause of angina.

10. On 17 December 2008, the Applicant requested administrative review of the Claims Administrator's decision before the Workers' Compensation Administrative Review Panel ("Review Panel"). The Review Panel had before it: (i) the medical reports pertaining to the two hospital visits of 3 March and 1 April 2007; (ii) the psychiatrist's note dated 12 December 2007; (iii) a report prepared by "eye consultants" which indicate that the Applicant was seen on 22 February 2007 when she complained of "continual headache, nausea and neck pain"; (iv) a note prepared by the Applicant's family physician dated 23 February 2007 indicating that he had treated the Applicant for complaints of headaches and neck pain, and mentioning increased stress at work; and (v)

a chronological list of events occurring in the Applicant's workplace from November 2006 to May 2007 which she argues led to her stress.

11. The Review Panel also had before it the summaries of interviews of certain witnesses conducted by the Claims Administrator in March 2009. The witnesses interviewed were the two managers who the Applicant claimed had caused her to suffer stress at work, and two independent witnesses she identified.

12. On 17 December 2009, the Review Panel affirmed the Claims Administrator's determination, finding it in accordance with the Staff Rules and supported by substantial evidence. The Review Panel concluded that the evidence did not establish that the Applicant had worked in a hostile work environment or that the actual conditions of her employment were unusually stressful.

13. The Review Panel found that the Applicant had failed to meet her burden of proving the existence of a causal relationship between the conditions of her work place and her alleged injury, describing the evidence submitted by the Applicant as "scanty at best." The Review Panel considered the evidence before it and observed that (a) the medical reports pertaining to her hospital visits of 3 March and 1 April 2007 had made no mention of work-related stress; (b) the record was not clear that "unstable angina" was the Applicant's ultimate diagnosis; (c) the note from the psychiatrist dated 12 December 2007 was insufficient to establish the necessary causal nexus because it was partially illegible, written more than seven months after the events in question, and historically inaccurate; and (d) the psychiatrist was not the attending physician at the time of the two hospitalizations and does not appear to have had personal knowledge of either the circumstances or the diagnosis, nor was there evidence that the psychiatrist had any

knowledge of other potential causes of the Applicant's difficulties listed in the medical reports relating to her hospitalizations which had nothing to do with either work conditions or job stress.

14. The Applicant submitted her Application on 22 April 2010, in which she challenges the Review Panel's decision to deny her claim for compensation. As relief, the Applicant seeks "reimbursement of any co-pay, out-of-pocket, prescriptive medications and procedures and other related expenses from the March and April 2007 angina episodes." In addition, the Applicant included in her claims for relief:

I would request that all managers undertake the Living Our Values courses offered by the Ethics Office. Also I request all senior leadership ... to reprimand reported bad managers or even dismiss them permanently. Moreover, I would request an open door policy and clear 2-way communications between managers and staff so that a genuine transparent, open and ethical environment is established.

15. On 30 September 2010, the Applicant filed a Request for Admission of Additional Information. The additional information consisted of the following: (a) a copy of a "corrected note" from the psychiatrist dated 23 September 2010 regarding a term used by him in the 12 December 2007 note; and (b) a copy of the medical records relating to the Applicant's admissions to hospital on 3 March and 1 April 2007, which were released by the hospital's records department on 29 September 2010 upon the Applicant's request.

16. In respect of (a), the "corrected note" prepared by the psychiatrist clarifies that the illegible term in his earlier note (quoted in paragraph 8 above) was "exaggerated." Accordingly, the note was intended to read: "symptoms of depression and anxiety exaggerated by work related stress leading her to go to the emergency room on two occasions with panic episodes and chest pain." The psychiatrist's "corrected note"

implies if not a causal relationship then at least a contributory relationship between the illness of the Applicant and her “work related stress.” But the psychiatrist’s note comes almost three full years after he had examined the Applicant, and appears designed to meet the Applicant’s central problem in making a successful claim for compensation. The Tribunal notes this additional information but is not persuaded that it should take it into account in this case.

17. In respect of (b) above, no explanation or interpretation translating the medical statements made in those “medical records” into terms comprehensible to laymen was provided to the Tribunal. The Tribunal requested the Bank to comment on the “additional information” offered by the Applicant. The Bank stated that the medical records proffered by the Applicant did not establish that her illness arose out of and in the course of her employment, but provided no explanation. The Tribunal notes this information and the Bank’s statement and decides that none of it need be taken into account in this case.

THE PRINCIPAL CONTENTIONS OF THE PARTIES

18. The Applicant claims that the Review Panel failed to take into account all relevant factors when it considered her claim for compensation, including her being bullied and subjected to a hostile work environment by managers in her department, causing her to suffer from stress. She contends that the medical evidence establishes that the illness she suffered was caused by work-related stress.

19. In response, the Bank argues that the Applicant has not substantiated her claims that her illness arose out of and in the course of employment, a prerequisite for her claims to be compensable under the Workers’ Compensation program. The Bank contends that the record does not demonstrate that the Applicant’s illness was caused or aggravated by

her workplace conditions or events, and that the Workers' Compensation program is not the proper forum for addressing alleged bullying and abuse at work by her managers.

THE TRIBUNAL'S ANALYSIS AND CONCLUSIONS

20. Staff Rule 6.11, paragraph 12.04, authorizes the Tribunal to serve as a forum of appeals from decisions of the Workers' Compensation Review Panel:

A claimant who wishes to pursue his/her complaint further [than the Review Panel] may then file an appeal with the World Bank Administrative Tribunal in accordance with the provisions of Rule 9.05
....

21. In *Hayati (No. 2)*, Decision No. 311 [2004], para. 6, the Tribunal described the scope of its review powers in appeals such as this:

In such an appeal, the Tribunal's authority, as stated in *Chhabra (No. 2)*, Decision No. 193 [1998], para. 7, is not to undertake a *de novo* examination of a case:

The task of this Tribunal is limited to reviewing the decision of the Review Panel, by reference to the evidence before that body, with a view to determining whether the conclusion reached by the Review Panel could be reasonably sustained on the basis of that evidence and also whether the Review Panel has acted in accordance with the relevant legal rules and procedural requirements.

22. The Tribunal must thus consider whether the Review Panel's decision could in all pertinent respects be reasonably sustained by the evidence, and whether the Review Panel had acted in accordance with the relevant legal rules and procedural requirements.

23. Staff Rule 6.11, paragraph 2.01, provides in relevant part:

The Claims Administrator will determine whether an injury, illness or death arises out of and in the course of employment and otherwise administer the workers' compensation program in accordance with the provisions of the [District of Columbia Workers' Compensation Act of 1998 ("D.C. Act")] specified in this Rule, except that where the provisions of this Rule differ from the provisions of the D.C. Act specified, the provisions of this Rule will govern. Provisions of the D.C. Act not specified in this Rule will not apply.

24. Accordingly, certain specified provisions of the D.C. Act are incorporated into the Staff Rules for the purposes of administration of the Bank's Workers' Compensation program.

25. The Staff Rules are, however, silent on issues such as the burden of proof to be borne by the parties in advancing claims under the program. While the D.C. Act has recently been amended to codify a "presumption of compensability" in workers' compensation claims brought under its terms, this standard has not been specifically incorporated in the Staff Rules. In *Hasselback*, Decision No. 364 [2007], para. 50, the Tribunal held

the Review Panel did not err in finding that when filing the claim with the Claims Administrator, the Applicant bore the burden of proving, "by a preponderance of the evidence," that the current sciata condition was causally related to the 1995 injury. (Indeed, it appears to be the case that in connection with workers' compensation claims in D.C. itself, in the absence of the statutory presumption of compensability, "the Claimant bears the burden of proving, by the preponderance of the evidence, that the injury alleged was caused by the accident," *Waugh v. D.C. Dept. of Emp. Svcs.*, 786 A.2d. 595 (D.C. 2001)). The Tribunal has no warrant – even if it were so disposed – for disregarding the final sentence quoted from Staff Rule 6.11, para. 2.01.

The Review Panel applied this "preponderance of the evidence" test.

26. For the purposes of examining whether the Applicant's alleged physical illness, i.e. unstable angina, was caused by work-related stress, the Review Panel applied the "objective standard" under which "compensation could only be awarded where it was shown that the actual working conditions, judged objectively and not from the viewpoint of the claimant's subjective perception, were the cause of the injury alleged, and that the actual working conditions could have caused similar injury in a person who was not significantly predisposed to such injury." In this regard, the Tribunal recalls its decision in *Chhabra (No. 2)*, Decision No. 193 [1998], para. 8, in which it adopted the "objective

standard,” as elaborated in certain specified decisions of the D.C. Court of Appeals, for causal attribution of physical illness to work-related stress.

It is necessary to have in mind the governing principle as established by the Court of Appeals for the District of Columbia in cases arising under the District’s workers’ compensation statute. The Court of Appeals, in several decisions, has consistently articulated and applied what has come to be known as an “objective” test for situations in which a medical claimant is unusually susceptible to certain illness resulting from work-related stress: “[T]he relevant inquiry ‘focuses on whether the stresses of the job were so great that they could have caused harm to the average worker.’ Thus, to be successful, a claimant must establish that a particular incident or situation at work was a significant stressor that could reasonably be expected to affect a person of ordinary sensibilities in the same way that it affected the claimant.” *Sturgis v. Dist. of Columbia Dept. of Employment Services*, 629 A.2d 547, 551-552 (1993). “[T]he claimant must show that actual conditions of employment, as determined by an objective standard and not merely the claimant’s subjective perception of his working conditions, were the cause of his emotional injury. The objective standard is satisfied where the claimant shows that the actual working conditions could have caused similar emotional injury in a person who was not significantly predisposed to such injury.” *Spartin v. Dist. of Columbia Dept. of Employment Services*, 584 A.2d 564, 568 (1990). *Although the Applicant contends that this standard is meant to apply only to situations in which an employee suffers emotional injury, but does not apply to cases such as hers in which physical illness results, the pertinent decisions in the District of Columbia lend no support to this distinction.* (Emphasis added.)

27. The Tribunal is aware that the D.C. judiciary has developed new standards for cases relating to psychological illnesses arising out of work-related stress but need not consider those here. The Applicant’s claim relates to the causal link between her physical illness, i.e. unstable angina, and work-related stress. The Tribunal considers that the Review Panel applied the pertinent legal test for examining the Applicant’s claims.

28. In determining the compensability of a claim, Staff Rule 6.11, paragraphs 3.02 and 3.03, provide in relevant part that

The Claims Administrator will consider medical and other documentation, *make such investigations as deemed necessary*, and decide whether a claim is compensable or continues to be compensable. The Claims

Administrator may require the claimant to provide further documentation, and may interview any others with knowledge of the event giving rise to the claim orally or by written question.

In the course of determining whether a claim is compensable or continues to be compensable, the Claims Administrator may require the claimant to undergo a medical examination at Bank Group expense by an independent examiner selected by the Claims Administrator. (Emphasis added.)

29. In *J*, Decision No. 349 [2006], para. 35, the Tribunal assessed the weight to be given to the evidence of medical experts:

The opinion of personal physicians may be valuable, but in case of doubt or uncertainty those of independent medical examiners may reasonably be assigned more weight in view of the fact that under Staff Rule 6.11, paras. 3.02 and 3.03, it is the Claims Administrator's function, in deciding whether a claim is compensable or continues to be compensable, to select a medical examiner to help make its assessment. (*Shenouda (No. 2)*, Decision No. 218 [2002], para. 23 and *Courtney (No. 4)*, Decision No. 202 [1998], para. 20.)

30. Accordingly, the Claims Administrator's role is not merely to undertake a passive review of the evidence adduced by a claimant. The Claims Administrator bears the responsibility of making the necessary "investigations," through such affirmative means as engagement of independent medical examiners, to assist it in arriving at a determination of the compensability of a claim.

31. There is nothing in the record to suggest that the Claims Administrator submitted the Applicant to an independent medical examination during the 13 months it took to reach its initial decision or in the two months it took to reconsider its decision. The Tribunal notes that many of the Review Panel's findings turned on the "scanty" medical evidence provided by the Applicant, and her failure to establish the causal link between her physical illness and work-related stress.

32. In this connection, the Review Panel noted that the medical reports pertaining to the treatment the Applicant received on 3 March and 1 April 2007 made no mention of

work-related stress, and that the record was not clear as to whether “unstable angina” was the Applicant’s ultimate diagnosis. In response to the psychiatrist’s note submitted by the Applicant, the Review Panel found that it was “insufficient to establish the necessary causal nexus given the circumstances of this case.” In particular, the Review Panel observed that the note was “partially illegible,” “authored more than seven months after the events in question,” and “historically inaccurate.” The Review Panel also questioned the psychiatrist’s competence to opine on the causes of the Applicant’s physical illness.

33. In view of the uncertainties identified by the Review Panel, the Tribunal considers that additional information should have been sought to address these doubts, through such avenues as those identified in the Staff Rules, e.g. independent medical examinations. Under the Workers’ Compensation program, it is unacceptable to deny a staff member’s claims on grounds that the Review Panel was not sure of the actual nature of the Applicant’s illness, without further reasonable efforts to seek clarification.

34. Furthermore, the Tribunal is troubled by the readiness of both the Review Panel and the Claims Administrator to discount the psychiatrist’s note, upon which the Applicant appears to have relied heavily to establish the causal link between her physical illness and work-related stress, *inter alia*, on grounds that it was illegible. The Claims Administrator had the responsibility under the Staff Rules to make necessary inquiries or investigations. The Claims Administrator or the Review Panel could easily have sought to clarify the poor handwriting, instead of simply rejecting the evidence submitted in support of the Applicant’s claim.

35. Furthermore, the Tribunal notes that on 14 July 2008, in requesting reconsideration of the Claims Administrator’s initial decision to deny her claim, the

Applicant identified two independent witnesses for interview. The Applicant also identified two other individuals who were alleged to have contributed to the work-related stress she claims she endured. The Claims Administrator appears to have undertaken these interviews in March 2009, *after* it had rendered its “*final denial* following its comprehensive review of [the Applicant’s] entitlement to workers’ compensation benefits,” and only when the Review Panel had already been seised of the matter. The Tribunal here would stress the importance of the Claims Administrator’s responsibility to seek out the necessary additional information and clarifications at an early stage to aid its own determination on the compensability of a claim.

36. The Tribunal notes that the Claims Administrator took 15 months to review the Applicant’s claim for compensation. The Review Panel then took another 12 months to undertake the administrative review of the determination of this claim. The Tribunal considers that, under the circumstances of this case, 27 months constituted an unusually protracted period of time to review a claim for compensation.

37. Nevertheless, the Tribunal cannot conclude on the basis of the record before it that the Applicant’s claim for compensation under the Workers’ Compensation program was well-founded. However, the Tribunal finds that the shortcomings in the treatment of the Applicant’s claims justify a modest contribution toward her expenses.

DECISION

The Tribunal decides that:

- (i) the Bank shall pay the Applicant \$5,000, net of taxes; and
- (ii) the Application is dismissed.

/S/ Jan Paulsson

Jan Paulsson
President

/S/ Olufemi Elias

Olufemi Elias
Executive Secretary

At Paris, France, 29 October 2010