



World Bank Administrative Tribunal

2017

Decision No. 564

**BI (No. 5),
Applicant**

v.

**The World Bank Group,
Respondent**

(Preliminary Objection)

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

**BI (No. 5),
Applicant**

v.

**The World Bank Group,
Respondent**

1. This judgment is rendered by a panel of the Tribunal, established in accordance with Article V(2) of the Tribunal's Statute, and composed of Judges Stephen Schwebel (President), Abdul G. Koroma, and Marielle Cohen-Branche.
2. The Application was received on 26 July 2016. The Applicant represented herself. The Respondent was represented by David R. Rivero, Director (Institutional Administration), Legal Vice Presidency.
3. The Applicant challenges the denial of her claim under the World Bank Group's Workers' Compensation Program.
4. The Respondent has raised a preliminary objection to the admissibility of this Application. This judgment addresses that preliminary objection.

FACTUAL BACKGROUND

5. The Applicant commenced employment with the World Bank Group (the Respondent) in 1999 at its headquarters as a Program Assistant, Level GC. She worked for more than 16 years. In April 2016 she was separated from the Respondent due to unsatisfactory performance.
6. In February 2014 the Applicant filed a Workers' Compensation Claim seeking benefits under Staff Rule 6.11 (Workers' Compensation Program). This Staff Rule "sets forth a workers' compensation program which provides staff members with compensation and other benefits in the event of illness, injury or death arising out of and in the course of employment with the Bank Group."

7. Under the Workers' Compensation Program, a Claims Administrator is responsible to independently evaluate the claims and determine whether they are compensable. On 18 September 2014, the Claims Administrator denied the Applicant's claim finding that the Applicant's alleged illness did not arise as a direct result of her employment.

8. On 4 November 2014, the Applicant requested reconsideration of the denial of her claim by the Claims Administrator. The request for reconsideration was denied by the Claims Administrator on 12 December 2014.

9. On 27 January 2015, the Applicant filed a Request for Administrative Review with the Workers' Compensation Administrative Review Panel (ARP). On 1 October 2015, the ARP affirmed the determination of the Claims Administrator and denied the Applicant's claim, finding that "the evidence in this case fails to establish that the conditions of which the Claimant complains were either caused by or arose out of her employment."

10. On 2 October 2015 the Applicant received notice of the decision of the ARP by email and on 5 October by mail.

11. On 26 July 2016 the Applicant filed this Application.

12. On 16 September 2016 the Respondent raised a preliminary objection.

PRELIMINARY OBJECTION

SUMMARY OF THE MAIN CONTENTIONS OF THE PARTIES

The Respondent's contentions

13. The Respondent argues that the Applicant, by her own admission, received notice of the ARP's decision on 2 October 2015 via email. Therefore, she should have filed an application within 120 days of receiving the notice, i.e. no later than 31 January 2016. The Respondent states that the Applicant waited for almost six months until 26 July 2016 to file her Application.

Accordingly, the Respondent argues that the Application is inadmissible under Article II of the Tribunal's Statute.

14. The Respondent states that this delay can be excused if there are exceptional circumstances but there are no such circumstances to justify her delay in filing this Application. Accordingly, the Respondent claims that the Application is time-barred.

The Applicant's contentions

15. The Applicant acknowledges that the Application is late but argues that there are exceptional circumstances. She explains the circumstances as follows:

WB Legal Department might consider [this Application] as another time barred claim. I received the Workers' Compensation Administrative Review Panel's decision last October 5, 2015 and [the Application] should have been due on February 2, 2016. However, due to circumstances beyond my control, I missed the deadline. I had drafted the application same week I received it, resumed writing but was unable to complete until now. I went deep into depression in early December 2015 when I was placed on admin leave (with no Bank systems access) and was eventually terminated from service in mid-April 2016.

16. The Applicant describes the extent of her depression as follows:

I would like to account the grueling events from December 7, 2015 where I was mostly home and in a very depressive state. I could not believe the reality I was in and how bad things could happen to righteous people. My world was dark and I stayed in bed all day and night pondering how shameful the circumstances played and how my career devastatingly ended. I questioned my purpose in life. I was sad and felt worthless, lost interest on things and activities, gained weight, and continued grieving for lost job and my last parent. I can describe it as debilitating! Despite my family members' directives, I remained miserable during those winter months. I know somehow that there is hope in my Lord.

17. The Applicant also states that around the time the Application was due, she was in a difficult work environment, she was placed on administrative leave on 7 December 2015 and she did not have access to her email to file her Application. Given all these circumstances, the Applicant claims that her late filing should be excused.

THE TRIBUNAL'S ANALYSIS AND CONCLUSIONS

18. The time limit for filing an Application with the Tribunal is prescribed in Article II(2) of the Tribunal's Statute, which states that:

No such application shall be admissible, except under exceptional circumstances as decided by the Tribunal, unless:
[...]

(ii) the application is filed within one hundred and twenty days after the latest of the following:

(a) the occurrence of the event giving rise to the application;

(b) receipt of notice, after the applicant has exhausted all other remedies available within the Bank Group, that the relief asked for or recommended will not be granted; or

(c) receipt of notice that the relief asked for or recommended will be granted, if such relief shall not have been granted within thirty days after receipt of such notice.

19. It is undisputed that the Applicant received the notice of the ARP's decision on 2 October 2015 by email and on 5 October by mail. It is also undisputed that the Application should have been filed within 120 days of receiving notice of the ARP's decision. By the Respondent's account, the deadline for filing the Application was 31 January 2016 and by the Applicant's account the deadline was 2 February 2016. The parties agree that the Application which was filed on 26 July 2016 was late by more than five months. They, however, disagree on whether exceptional circumstances exist to cure the delay.

20. The Tribunal follows a strict approach in determining what constitutes exceptional circumstances in the context of Article II(2). In *Nyambal (No. 2)*, Decision No. 395 [2009], para. 30, the Tribunal stated that:

The jurisprudence of the Tribunal is well-established regarding the treatment of exceptional circumstances. In all such cases the Tribunal has followed a strict approach so as to prevent the undermining of statutory limitations. Exceptional

circumstances cannot be based on allegations of a general kind but require reliable and pertinent “contemporaneous proof” [...].

21. In *Mahmoudi (No. 3)*, Decision No. 236 [2000], para. 27, the Tribunal stated that it was

unwilling to make exceptions to orderly procedure based on applicants’ own descriptions of their emotional state without substantiation. Reliable contemporaneous proof is required. Moreover, as the Tribunal is well placed to know, during the relevant period the Applicant was vigorously pursuing other claims against the Bank. Indeed the Application to this Tribunal, and a request for provisional relief, were filed in *Mahmoudi (No. 2)* on July 28, 1999. In the absence of evidence, such as medical reports, the Tribunal is unwilling to accept self-serving declarations by an applicant to the effect that he was unable to deal with this issue, especially since no more was required than the simple articulation of grievances with which the Applicant was well familiar.

22. The Applicant argues here that depression constituted the exceptional circumstance that prevented her from filing a timely Application. The main issue is whether the Applicant submitted corroborating evidence to show that during the relevant period, i.e. from 2 October 2015 to 31 January 2016, she suffered from depression to such an extent that she was unable to file an Application or even to request for an extension of time to file an Application.

23. The Applicant has failed to provide any corroborating evidence of the said depression. The record does not contain any medical report or any other corroborating documents showing that she suffered depression during the relevant period that prevented her from timely filing an Application or even to simply request an extension of time to file an Application. As stated in *Mahmoudi (No. 3)*, para. 27, the Tribunal is “unwilling to make exceptions to orderly procedure based on applicants’ own descriptions of their emotional state without substantiation.”

24. The record indicates that the Applicant was in communication with Bank officials and the Staff Association during the relevant period. In *BI (No. 4)* (Preliminary Objection), Decision No. 540 [2016], which addressed the preliminary objection in her fourth Application, the Tribunal noted that “[o]n 3 December 2015, the Applicant reached out to a Staff Association representative about certain talking points for an upcoming meeting by email.” Paras. 22-23. The Tribunal also observed that in early December 2015 the Applicant met with a Lead Human

Resources Specialist of the Bank. *Id.* The Tribunal also noted that the Applicant emailed a Human Resources Specialist on 20 January 2016 regarding a laptop. *Id.*

25. These communications suggest that during the relevant period (from 2 October 2015 to 31 January 2016) for the purposes of timely filing of the current Application, the Applicant was in a position to approach the Tribunal at least to request an extension of time to file her Application. She, however, did not do so. In this regard, the Tribunal recalls its pronouncements in *Guya*, Decision No. 174 [1997], para. 11:

The Tribunal deems it necessary to emphasize once again the importance of the provisions of the Statute governing time limits for a smooth functioning of both the Bank and the Tribunal. As it has ruled in a previous case, the Tribunal cannot regard a delay due to the Applicant's "own casual treatment of the relevant legal requirements" (*Agerschou*, Decision No. 114 [1992], para. 45) as excused by exceptional circumstances under Article II of the Statute. The facts invoked suggest negligence and lax handling of the case.

26. As an excuse, the Applicant also invokes the fact that she was placed on administrative leave on 7 December 2015 and claims that she did not have access to her email to complete her Application. The Tribunal notes that the Applicant invoked the same argument to excuse her delay in filing her fourth Application. In *BI (No. 4)*, the Tribunal rejected her argument in that case and the Tribunal's reasoning also applies in this case as it involves the same administrative leave. The Tribunal held at para. 49 that:

The Applicant alleges that she was not provided full access to her emails during the time that she was on administrative leave and thus could not finalize her Application for the Tribunal. The record indicates that the IT Department provided the Applicant access to her emails on a laptop. A Human Resources Specialist with whom she communicated told her she could have access to the laptop on multiple occasions. On at least one occasion, the Applicant kept the laptop overnight. When the Applicant expressed concern that she could not locate a particular email, a Human Resources Specialist informed the Applicant that she could review the emails on the laptop again. Therefore, the record shows that the Applicant had access and ample opportunity to review her emails and could take her time in doing so.

27. In light of the foregoing, the Tribunal finds that there are no exceptional circumstances that excuse the Applicant's late filing.

DECISION

The Application is inadmissible.

/S/ Stephen M. Schwebel

Stephen M. Schwebel

President

/S/Zakir Hafez

Zakir Hafez

Acting Executive Secretary

At Washington, D.C., 21 April 2017