

Decision No. 202

John M. Courtney (No. 4),
Applicant

v.

International Bank for Reconstruction and Development,
Respondent

1. The World Bank Administrative Tribunal has been seized of an application, received on November 7, 1997, by John M. Courtney against the International Bank for Reconstruction and Development. The case has been decided by a Panel of the Tribunal, established in accordance with Article V(2) of its Statute, composed of Robert A. Gorman (President of the Tribunal) as President, A. Kamal Abul-Magd, Bola A. Ajibola and Elizabeth Evatt, Judges. The usual exchange of pleadings took place. The case was listed on September 21, 1998.

2. The Applicant was denied reimbursement under the workers' compensation system established by Rule 6.11 of the Bank's Staff Rules. His claim was dismissed by the Workers' Compensation Claims Administrator (hereinafter, the Claims Administrator) and the Workers' Compensation Administrative Review Panel (hereinafter, the Review Panel), because of the failure to produce medical evidence pertinent to the Applicant's contention that the deterioration in his health arose from his employment. The Applicant has appealed this dismissal pursuant to Staff Rule 6.11, paragraph 12.04.

3. The Applicant was first employed by the Bank in June 1976. In September 1987, he began working in the Information, Technology and Facilities Department (ITF) as Senior Planner in charge of formulating and preparing plans for a major renovation and construction project relating to the Bank's buildings in Washington, D.C., known as the Main Complex Rehabilitation Project (MCRP). In the latter part of 1988, the Applicant was diagnosed with colon cancer and he underwent surgery for that condition in November 1988. Because his doctors (both his primary physician and his surgeon) believed that the Applicant's condition was aggravated by stress resulting from work at the Bank, the Applicant visited the Pritikin Longevity Center for one week of stress-reduction therapy treatment in May 1989 and then again for another week of treatment in May 1992. He incurred costs of \$2,541 and \$4,761 for these visits, respectively, and other related medical expenses in the amount of \$1,852.

4. On May 3, 1992, the Applicant filed a workers' compensation claim with Alexsis, the Bank's third-party Claims Administrator, and sought reimbursement for the 1989 Pritikin stay and the anticipated 1992 Pritikin stay. On October 20, 1992, the Applicant's primary physician wrote to the Senior Claims Specialist for the Claims Administrator and stated that stress reduction therapy had been critical to the Applicant's recovery from colon cancer and that "I believe Mr. Courtney has made a fair and reasonable claim under workers compensation." In response to an inquiry from the Senior Claims Specialist, the Applicant in January 1993 mentioned, in recounting the chronology of his treatment for stress, that he had been treated for stress and depression by a Dr. X, a psychotherapist, during the period November 1989 to June 1991.

5. On May 26, 1993, the Senior Claims Specialist wrote to Dr. X and requested that the doctor submit a complete set of the Applicant's medical records; the request was accompanied by a form, signed by the Applicant, by which the Applicant authorized "any physician or nurse who has attended me . . . or benefit provider to furnish to any authorized representative of Alexsis, Inc. any and all information which may be requested regarding my physical condition and treatment rendered thereof [sic]" When Dr. X failed to respond, the same request and authorization were sent to him by the Senior Claims Specialist on August 10, 1993 – and again on October 4, 1993.

6. In May 1994, in light of Dr. X's failure to respond and to provide any records that the Senior Claims Specialist stated to be "very important for [the] purposes" of addressing the Applicant's claim for workers' compensation for his two earlier stays at the Pritikin Center, the Claims Specialist enlisted the assistance of the Applicant's counsel. Counsel promptly responded that he had been informed by the Applicant that Dr. X was reluctant to make his records available out of concern that they contained personal and immaterial information and that they would not be kept confidential by the Bank. This view was later reiterated by, and personally endorsed by, counsel, who suggested that a more summary statement provided by Dr. X about the Applicant's treatment, problems and their relation to his Bank work, should suffice; but the Senior Claims Specialist responded that this would be inadequate, given the fact that Dr. X had treated the Applicant for precisely the illness that was the basis for his compensation claim. Again, counsel rejected this position, stating to the Senior Claims Specialist, among other things, that "It is up to [Dr. X] to decide what is reasonably necessary to support and evidence the claim to workers' compensation."

7. Dr. X himself, on June 23, 1994, wrote separate letters to the Senior Claims Specialist and to the Applicant's counsel. In the former letter, Dr. X stated that the relevant medical information was available from the Applicant's primary physician; he enclosed copies of his own billing statements which set forth two medical coding numbers that purported to show his diagnosis categories. In his letter to the Applicant's counsel, Dr. X rejected the request for a medical statement relating to the compensation claim, declaring: "I must inform you that I stricly [sic] limit my practice to therapeutic activities. For these and other ethical reasons, I regret not being in a position to assist you in this matter."

8. Both prior and subsequent to the Applicant's retirement from Bank service in July 1995, there was an exchange of letters relating to his workers' compensation claim, among the Applicant, his counsel, counsel for the Claims Administrator, and the Assistant Claims Manager for the Claims Administrator. This ended with the latter's letter dated August 27, 1996, informing the Applicant's counsel that his client's workers' compensation claim was being denied because of the failure to provide Dr. X's records of treatment which had been requested since 1994. This letter invoked Staff Rule 6.11, paragraph 3.04, which provided: "Failure by the claimant to provide medical and other information when requested . . . will result in a denial of the claim by the Claims Administrator." The Applicant thereupon filed a timely request for administrative review with the Review Panel.

9. The Review Panel on May 14, 1997 concluded, among other things, that it was proper for the Claims Administrator to have required that Dr. X's treatment records be made available, in light of their importance to the determination of the Applicant's claim; that under applicable law in the District of Columbia, those records were subject to disclosure and available to the Applicant; and that the decision of the Claims Administrator to deny the claim was correct. Nonetheless, the Review Panel remanded the matter to the Claims Administrator and gave the Applicant an additional sixty days to produce the X records (in which case a full investigation of the claim was to be undertaken).

10. Further correspondence followed, including a letter from the Applicant in which he stated, among other things, that it was his primary physician who had recommended the two Pritikin visits and who "has all of the information necessary," and also that "It is my understanding that [Dr. X] no longer has any information except that which has already been provided." In a letter dated August 11, 1997, the Assistant Claims Manager, on behalf of the Claims Administrator, informed the Applicant that his claim was dismissed because he had not produced the requested medical records in a timely manner. The Applicant thereupon filed a timely application with the Tribunal.

11. The Applicant contends that there was sufficient proof before the Claims Administrator warranting the award of his requested workers' compensation benefits, that the failure of Dr. X to produce the disputed medical records was immaterial to the decision of the case and could in any event have been rectified by action by the Claims Administrator, and that the denial of the compensation award was "without just cause." He seeks compensation in the amount of \$10,000 and attorney's fees of approximately \$3,000. The Respondent, on the other hand, contends that the information sought from Dr. X was of central pertinence to the disposition of the

Applicant's compensation claim, that it was reasonable for the Claims Administrator to insist that it be produced, and that it was reasonable and proper under the governing rules of the Bank and of the District of Columbia to dismiss the Applicant's claim.

12. The provisions of the Staff Rules that are most pertinent to the decision of this case are to be found in Staff Rule 6.11. Paragraph 2.01 provides that "The Claims Administrator shall 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 D.C. Act specified in this Rule Provisions of the D.C. Act not specified in this Rule shall not apply." The Applicant and his physicians do not claim that his colon cancer was in any way caused by his employment with the Bank but rather that his condition was aggravated and his recuperation slowed by the severe stress suffered by the Applicant in the course of his work on the MCRP. The Respondent challenges the sufficiency of the Applicant's proof and, most particularly, his failure to present Dr. X's treatment records that would illuminate such questions as the severity of his stress and whether any such stress "arose out of and in the course of" his employment or was instead caused by extrinsic circumstances such as, for example, his family relationships.

13. Staff Rule 6.11, paragraphs 3.02 and 3.04, provide, respectively:

The Claims Administrator shall consider medical and other documentation, make such investigations as he deems necessary and decide whether a claim is compensable. He may require the claimant to provide further documentation and he may interview the claimant and others with knowledge of the event giving rise to the claim orally or by written question.

Failure by the claimant to provide medical and other information when requested ... will result in a denial of the claim by the Claims Administrator.

Staff Rule 6.11, paragraph 12.01, which relates to appeals from the Claims Administrator to the Review Panel, provides, among other things, that "When making his request to the Administrative Review Panel, the claimant shall provide all necessary documentation, including relevant medical information"; and paragraph 12.02 provides, among other things, that "The Panel may request from the Claims Administrator, the claimant or any other party additional information it deems necessary to reach a conclusion."

14. The principal question for decision by the Tribunal is whether the request by the Claims Administrator and the Review Panel for the medical records of Dr. X, and the dismissal of the Applicant's claim for failure to produce such records, are consistent with the governing Bank provisions and are otherwise reasonable and not an abuse of the Bank's discretion. The parties have treated as governing this question not only the Respondent's staff rules but also several provisions of the District of Columbia Code which deal with the disclosure of information by mental health professionals. These Code provisions, at sections 6-2001 to 6-2076, are not expressly mentioned in the Bank's staff rules relating to workers' compensation proceedings, and therefore would appear -- by virtue of Staff Rule 6.11, paragraph 2.01, quoted above -- not to apply here. Nonetheless, the parties have treated those Code provisions as applicable; and therefore, as well as because those provisions embody principles that are manifestly reasonable, the Tribunal will apply them here.

15. Staff Rule 6.11, paragraph 3.02, expressly empowers the Claims Administrator to "require the claimant to provide further documentation," which is precisely what was done in the proceedings below. Of course, the documentation requested must be reasonably pertinent to the disposition of the claim for workers' compensation, for conditioning an investigation and the grant of a compensation award upon the production of obviously irrelevant documents would constitute, in the view of the Tribunal, an abuse of discretion and a denial of due process of law.

16. The Tribunal concludes that the Claims Administrator's request for the medical records compiled by Dr. X in the treatment of the Applicant for stress, during the period November 1989 through June 1991, was reasonable. These records were directly related -- both in time and in content -- to the Applicant's claim for workers' compensation benefits. The Applicant has claimed that his unfortunate colon cancer condition was aggravated by the stress he suffered while working on a major and demanding project for the Bank, and he

sought reimbursement for his stress therapy in May 1989 and May 1992 at the Pritikin Center. The medical treatment provided by Dr. X (although not a subject of any compensation claim by the Applicant) was rendered during a 20-month period that largely bridged the three-year period between the Applicant's two visits to the Pritikin Center, two visits that were recommended by his personal physician and surgeon as warranted by the very elements of stress that were being treated by Dr. X. The Applicant's stress, which is not disputed by the Bank, could have derived substantially from his employment with the Bank, in which case compensation would have been in order, or from other circumstances in his life, in which case compensation could reasonably have been denied. On this central issue as to the source of the Applicant's stress, it was more than reasonable for the Claims Administrator to have believed that Dr. X's medical records could have shed important light.

17. That being the case, it was also not unreasonable for the Claims Administrator -- in the face of repeated failures of Dr. X, and of the Applicant, to produce the requested records -- to conclude that the Applicant's claim should be dismissed. The Senior Claims Specialist for the Claims Administrator first requested such records from Dr. X in May 1993; the request was accompanied by an unequivocal and personally signed authorization by the Applicant. One year later, the Applicant's counsel was enlisted to assist in the production of the X records, to no avail. The Review Panel, four years after the initial request, decided to allow yet an additional 60-day period for the production of the records, also to no avail; and the case was finally dismissed in August 1997.

18. This dismissal was clearly authorized by Staff Rule 6.11, paragraph 3.04, which provides that a denial of the claim "will" result if the claimant fails to provide medical information when requested to do so. Here too, there may be some circumstances in which such a denial, apparently meant by the Staff Rule to be automatic, will be deemed by the Tribunal to be too harsh or otherwise arbitrary and unreasonable. But that is not the case here. As already noted, the records sought were of central pertinence to the Applicant's claim. Moreover, the reasons that have been asserted in the record for the failure of Dr. X or of the Applicant to produce the requested medical records are untenable.

19. The Applicant points out that it was his personal physician and surgeon who prescribed his visits to the Pritikin Center, for which he seeks reimbursement, and not Dr. X; and that the expenses incurred by him while in the care of Dr. X are not being claimed. But those facts are not dispositive. The central question is whether the stress for which treatment was sought at the Pritikin Center, regardless of the identity of the prescribing physicians, arose out of and in the course of the Applicant's employment with the Bank, and on that issue the records made by Dr. X over a 20-month period are pertinent -- or, at least, they may have been pertinent, which is sufficient to justify the request of the Claims Administrator.

20. A related contention by the Applicant is that his personal physician had, and made available, all of the medical records that were sufficient to serve as a basis for the Applicant's compensation claim. There are two dispositive responses to that contention. First, even if the records of his personal physician did indeed make a strong case for compensation, it is of course altogether possible that Dr. X's records might have pointed, at least as strongly, toward an opposite conclusion. The request made by the Claims Administrator was justified so long as Dr. X's records were reasonably believed to be pertinent to the compensation claim, whether or not another physician's records were as well. Second, the Applicant's position is akin to that asserted by Dr. X and by the Applicant's counsel, i.e., that it was for Dr. X to decide whether his records were material or needed. But that is altogether inconsistent with the Respondent's staff rules, and with reason, which dictate that it is for the Claims Administrator to determine that issue, and not one or another examining physician, let alone the Applicant himself.

21. Nor was it adequate that Dr. X submitted billing information, that was coded so as to show what his diagnoses were. For one thing, one of the indicated diagnoses was apparently an error, for there appears to be no corresponding numerical category in the Diagnostic and Statistical Manual of Mental Disorders, to which it was meant to refer. More important, the stated diagnoses are terse, and provide inadequate or no information at all concerning the source of the Applicant's stress or the prognosis, which may well have been indicated had Dr. X's medical records been turned over to the Claims Administrator.

22. Perhaps the two principal reasons asserted by the Applicant to justify the failure to produce Dr. X's medical records are essentially contradictory: because those records contain confidential information irrelevant to the compensation claim and because those records do not exist. The latter contention arose rather late in the workers' compensation proceeding, and is inconsistent with repeated assertions by the Applicant's counsel that he had been informed that there were such records but that Dr. X was disinclined to give them to the Bank. Under these circumstances, that claim of nonexistence cannot be seriously credited.

23. As to the claim of confidentiality, it too is flawed. In the physician-client relationship, privileges relating to confidentiality are for the benefit of, and meant to be asserted by, the patient. Here, the Applicant had signed an unequivocal authorization for Dr. X to turn over his medical records to the Claims Administrator, and this authorization was furnished to Dr. X on at least three occasions in 1993, after the Applicant's workers' compensation claim had been filed. Disclosure by a mental health professional under such circumstances is expressly contemplated in D.C. Code section 6-2011, which provides that such a professional "*shall* disclose mental health information ... upon the voluntary written authorization of the person or persons who have the power to authorize disclosure," i.e., by the client or patient. (Emphasis added.) The contention of the Applicant's counsel, in the course of his correspondence, that Dr. X's fears of disclosure by the Respondent were sufficiently weighty as to justify, if not indeed compel, the refusal to make the records available is altogether unsubstantiated, both in law and in fact.

24. This conclusion is buttressed by several provisions of the D.C. Code. Section 6-2033 provides that "Mental health information may be disclosed in a civil or administrative proceeding in which the client ... initiates [sic] his mental or emotional condition or any aspect thereof as an element of the claim or defense." Section 6-2041 provides, in pertinent part, that a mental health professional "shall permit any client . . . upon written request, to inspect and duplicate the client's record of mental health information maintained by the mental health professional ... within 30 days from the date of receipt of the request." Section 6-2044 provides, in pertinent part, that "A client or client representative who has taken action in accordance with this subchapter may institute an action in the Superior Court of the District of Columbia to compel access to all or any part of the client's record of mental health information which was denied by the mental health professional." The Applicant's contention that the last-quoted provision imposes in effect an obligation upon the Bank -- as the "client representative" -- to initiate litigation against the recalcitrant Dr. X is unpersuasive; the section clearly refers, on these facts, to the Applicant or his attorney. All three D.C. Code provisions reinforce the conclusion that in this case it was within the power of the Applicant to secure the needed medical records from Dr. X , particularly when the Applicant himself, by his workers' compensation claim, treated his "mental or emotional condition or any aspect thereof as an element of [his] claim."

25. Other arguments based by the Applicant upon the staff rules or the D.C. Code are, for similar reasons, unconvincing. It is regrettable that the Applicant's workers' compensation claim was hindered by Dr. X's failure of cooperation, but the blame for this circumstance cannot be attributed to the Respondent, as the Applicant contends, as a result of the Bank's having placed Dr. X upon a list of physicians qualified to render medical treatment to staff members. Such listing should not be understood as imposing an obligation upon the Bank to secure cooperation through litigation or otherwise in medical claim procedures. The Bank's Claims Administrator and Review Panel were indulgent in their dealings with Dr. X, and made efforts to secure his cooperation over a period of some four years. The record does not show that any real efforts were made by the Applicant or his counsel to secure such cooperation, either through informal means or through the option of litigation as expressly afforded by D.C. law.

26. Accordingly, the appeal from the Administrative Review Panel is denied.

DECISION

The appeal is denied.

Robert A. Gorman

/S/ Robert A. Gorman
President

Nassib G. Ziadé

/S/ Nassib G. Ziadé
Executive Secretary

At Washington, D.C., October 19, 1998