

Decision No. 311

Mounira M. Hayati (No. 2),
Applicant

v.

International Bank for Reconstruction and Development,
Respondent

1. The World Bank Administrative Tribunal has been seized of an application, received on August 12, 2003, by Mounira M. Hayati 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, and composed of Bola A. Ajibola (a Vice President of the Tribunal) as President, Robert A. Gorman and Florentino P. Feliciano, Judges. The usual exchange of pleadings took place. Requests by the Applicant for certain documents and for the deposition of two witnesses were denied on January 30, 2004. The case was listed on February 3, 2004.

2. The Applicant contests the denial of her workers' compensation claim, raises a claim for "permanent partial disability" compensation, and claims in addition reimbursement of medical expenses, compensation for violations of due process, and costs. The Applicant's written claim for workers' compensation was dated August 28, 1997. She described as her injury or illness "carpal tunnel syndrome and severe chronic right and a moderate chronic left hand median nerve entrapment at the wrists," and as the cause she cited "excessive typing, filing." As the date of the illness or time of its occurrence, she wrote "early 1980's." Because of the latter reference and the related pertinent facts, the workers' compensation Claims Administrator and Review Panel concluded that the Applicant's claim was untimely, but on appeal the Tribunal reversed this conclusion in *Hayati*, Decision No. 228 [2000], and remanded the case for consideration of her claim on the merits.

3. Further proceedings were conducted before the new Claims Administrator, which reviewed medical information provided by the Applicant, as well as material that it unearthed through its own investigations. As will be developed below, the various materials revealed a number of medical diagnoses and treatments of other ailments that potentially bear upon the Applicant's workers' compensation claim, and in particular upon whether her carpal tunnel syndrome was caused by her work activities at the Bank and persisted beyond the date of its surgical treatment. The Claims Administrator also arranged for an independent medical examination in January 2002 by one Dr. Levitt; the Applicant's failure to disclose to Dr. Levitt arguably pertinent information about her medical condition will also be explored further below. The Claims Administrator ultimately concluded, in April 2002, that the Applicant's carpal tunnel syndrome had not been caused by her work, that she had in any event suffered no "wage loss" (as a result of her post-redundancy paid leave and then retirement on full pension), and that her failure to cooperate sufficiently with the Claims Administrator and Dr. Levitt independently justified dismissal of her claim.

4. In July 2002, the Applicant filed a request for administrative review with the Workers' Compensation Administrative Review Panel (hereinafter the Panel). Among other things, the Panel found insufficient evidence that the Applicant's carpal tunnel syndrome had been caused by her work at the Bank, concluded that there was no basis for finding a "permanent partial disability" (a finding sought by the Applicant) or any compensable incapacity from work (in light of her paid leave and retirement), and also that the Applicant had made "misrepresentations and omissions" in her examination by Dr. Levitt, had failed to produce requested medical records, and had unjustifiably declined to submit to a deposition concerning her medical condition, which in themselves were bases under the Staff Rules for a denial of the Applicant's claim. The Panel thus affirmed the findings of the Claims Administrator and denied the Applicant's claim for workers' compensation.

5. The Applicant now presents this appeal to the Tribunal. Her principal contention is that her “disability” is compensable “as a matter of law” even if: (i) her injury was caused “only in part” by her work for the Bank; (ii) it was linked to a pre-existing condition aggravated by such work; or (iii) it was aggravated by a subsequent non-work-related event. She asserts that “more than sufficient evidence” exists to establish the “requisite causal link” between her carpal tunnel syndrome (and other associated pain and symptoms) and her “years of excessive typing” at the Bank.

6. Among the pertinent staff rules are Staff Rule 6.11, paras. 1.01 and 12.04. The former provides: This 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

The latter provides:

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

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.

The Tribunal must thus consider whether the Panel’s decision in this matter was in all pertinent respects reasonably warranted by the evidence and was in conformity with the relevant staff rules.

7. At the outset, some words are necessary about the work record and the medical record of the Applicant. The Applicant joined the Bank as a Regular staff member in 1972, and worked as an Administrative Secretary and Specialized Staff Assistant for the Division Chief, Asia Region Technical Department, from 1983 to 1996, with her duties including typing, filing and data entry. She was declared redundant on September 27, 1996, was placed on paid administrative leave on October 1, 1996, ceased her Regular pay status on July 18, 1997, and was then placed on special leave with full pay. Her employment was terminated effective June 4, 1999, when she received, in addition to her redundancy package, an unreduced pension under the so-called Rule of 85 (referring to a combination of age and length of Bank service).

8. It should be noted that the Applicant filed her claim for workers’ compensation approximately one month after she began her post-redundancy period of fully paid special leave in July 1997, and over 21 months before embarking upon her retirement from the Bank with a full pension. In other words, it does not appear that any incapacity suffered by the Applicant compelled her to forgo Bank work and work-related income at the time she filed her claim and afterward.

9. To mention some of the highlights of the Applicant’s medical history as shown in the record before the Tribunal, one Dr. Gardner in April 1997 – roughly seven months after the Applicant was declared redundant – noted that the Applicant had been diagnosed with carpal tunnel syndrome some ten years previously; Dr. Gardner also noted that the Applicant had sustained an injury to her left wrist one and a half months before, when a dog jerked the leash she was holding, and also mentioned the Applicant’s having bilateral tennis elbow. One Dr. Schubert, who features prominently in the record, also noted his diagnosis of carpal tunnel syndrome, in July 1997.

10. After the filing of the Applicant’s workers’ compensation claim on August 28, 1997, one Dr. Nirschl on October 1, 1997 also mentioned the carpal tunnel syndrome but identified that and other symptoms as evidence (beginning around 1989) of Mesenchymal Syndrome, which is related to tennis elbow and causes

multiple upper-extremity complaints. On April 2, 1998, Dr. Schubert wrote to the Applicant encouraging her to consult one Dr. Bogumill concerning surgery for carpal tunnel syndrome. In July 1998, such surgery was performed by Dr. Bogumill on the Applicant's right wrist, and by July 20, 1998, he wrote: "The patient's carpal tunnel release on the right has been very successful. The pain is gone and the feeling is back." He had also written earlier in July, "The numbness is gone. The pain is gone and actually her neck even feels better." Dr. Bogumill opined that the Applicant's carpal tunnel syndrome had been caused by her years of typing work. In November 1998, Dr. Bogumill successfully performed carpal tunnel surgery on the Applicant's left wrist.

11. Before these developments, and indeed only five days before the Applicant filed her workers' compensation claim, she had been injured in a car accident. This August 23, 1997 incident appears to have first come to light, so far as this evidentiary record is concerned, in a letter dated April 13, 1998 – which was drafted by counsel for the Applicant, and thereafter signed and sent by Dr. Schubert to an insurance company – in which the doctor stated that the Applicant's shoulder had been injured in the accident, apparently through the restraining impact of her seatbelt. (The Applicant appears to have later accepted a financial settlement of an undisclosed amount from the insurer.) Nine months after the date of the letter signed by Dr. Schubert, on January 4, 1999, a Dr. Shaffer examined the Applicant with respect to her injuries resulting from the auto accident. The Applicant saw Dr. Shaffer again in March and October of 1999. On the latter occasion, he stated that she had exhibited "pretty significant whiplash syndrome," and that her major problem was with her neck; he also noted evidence of depression. In April of that same year, the Applicant also consulted a Dr. Naujokaitis, who observed an underactive thyroid and hepatitis C, which can cause symptoms of arthritis. Also in April 1999, Dr. Schubert again stated in a note that the Applicant had been "disabled" from her car accident since August 1997.

12. Dissatisfied with her visits to Dr. Shaffer, the Applicant returned on October 18, 1999 to Dr. Bogumill, who noted, among other things, that the Applicant's "carpal tunnel symptoms are gone" but that there were "triggering symptoms" in the fingers of her left hand. On May 9, 2000, Dr. Bogumill performed surgery for "trigger finger release," and the following month he reiterated his finding that the Applicant's recurrent problems with carpal tunnel syndrome had been work-related but would not recur. In June 2000, Dr. Schubert confirmed the diagnoses of hypothyroidism and hepatitis C. In August 2000, Dr. Gardner noted complaints by the Applicant of bilateral arm pain, which appeared to be "muscular or myofascial." In May 2001, Dr. Schubert opined that, despite the relief of some of the Applicant's discomfort, she had "been left with a residuum of weakness in the hands ... with hand and wrist aching and pain," the result being in his opinion that she was "30% disabled." Three months later, however, Dr. Schubert urged the Applicant, *inter alia*, to undertake a better exercise program and to "get yourself a job, even a part-time one" in order to address symptoms of depression.

13. In the meantime, after the remand of the Applicant's case by the Tribunal in *Hayati*, Decision No. 228 [2000], representatives of the Claims Administrator and the Applicant had an exchange of communications beginning in the summer of 2000. Thus, in November 2000, the representative of the Claims Administrator requested the Applicant's counsel to provide, *inter alia*, "all medical records for any medical treatment received" during the periods for which compensation was claimed, in response to which the Applicant's counsel on January 10, 2001 forwarded "as complete a set of [the Applicant's] medical documentation as we could assemble." However, certain pre-2001 documents now before the Tribunal were not furnished by the Applicant to the Claims Administrator.

14. Further communications occurred over the following year. In September 2001, the Applicant provided an affidavit stating, in response to earlier questions addressed to her, that she had not sought employment since her June 1999 retirement from the Bank due to the pain she suffered, and that her only income since that date had been her pension payments. At a meeting on November 7, 2001, the representative of the Claims Administrator presented a list of documents from over a half-dozen doctors that were assertedly needed for adjustment of the Applicant's claim, and the following day the Applicant furnished a release for her medical records. Later, the Applicant's counsel expressed "surprise and dismay" at the additional document request of November 7, and labeled an "imposition" the request made that day that the Applicant submit to a deposition. (He suggested written interrogatories instead.) At about the same time, the Applicant herself wrote to the Bank's Vice President of Human Resources expressing her anger with the Claims Administrator for the

extremely long delay in processing her case, which had been initiated more than four years earlier, and the asserted failure even to have an “investigation” under way.

15. On December 10, 2001, the legal representative of the Claims Administrator wrote that her firm would attempt to issue its findings within ninety days. In early January 2002, she gave notice that an independent medical examination had been scheduled for the Applicant with Dr. Levitt, who met with the Applicant on January 17. Dr. Levitt evaluated her for an “injury to her upper extremities, neck and shoulders which resulted from what she describes as repetitive use activities.” The Tribunal notes that the Applicant’s characterization of her work-related symptoms to Dr. Levitt went considerably beyond the carpal tunnel syndrome that was the precise focus of her initial workers’ compensation claim and that had been successfully treated surgically more than three years before. Dr. Levitt’s report continued: “In spite of surgery and extended postoperative rehab, the patient reports that she continues to be chronically disabled by her upper extremity and neck complaints. ... She denies any concurrent medical problems, including no metabolic abnormalities, thyroid disease, diabetes or any history of direct trauma to her upper extremities or neck.” He concluded that there was a “cause/effect relationship” between the carpal tunnel syndrome’s “presentation” and her work activities in 1989. He opined, however, that the Applicant had reached “maximum medical improvement” with respect to her carpal tunnel disease, and he found “no evidence of triggering.” He further concluded that her “neck pain and shoulder distress likely reflect compensatory overuse syndromes” in dealing previously with carpal tunnel syndrome, and he strongly urged exercise to correct the problem. He stated that the Applicant was “not totally disabled” and that with “appropriate accommodations” she was “employable immediately on a full time basis.” The Panel disavowed many of the conclusions of Dr. Levitt in light of the Applicant’s concealment from him of *inter alia* the trauma resulting from her August 1997 automobile accident.

16. This recitation of the highlights of the record before the Panel and the Tribunal provides the background for this appeal and for consideration of the question of whether the Panel’s decision was reasonably warranted by the evidence before it and was made in conformity with pertinent staff rules.

17. A threshold issue that the Panel had to address was the precise injury for which compensation was being claimed by the Applicant. It is true, as the Panel noted, that the symptoms about which the Applicant complained altered and enlarged over time, and that her pleadings at various times refer somewhat abstractly to a “permanent partial disability.” In her identification of her work-related injuries to the independent medical examiner, Dr. Levitt, the Applicant referred to the injury to “her upper extremities, neck and shoulders.” These were altogether outside of the carpal tunnel pains previously felt in her wrists. Nonetheless, the Panel found “that the only claim made in this case is for bilateral carpal tunnel syndrome, as is set forth in the initial, August 28, 1997 Workers’ Compensation Claim Reporting Sheet, and in the Request for Administrative Review filed herein.” Indeed, there is some ambiguity in the formulation in the application to the Tribunal. The application states that the Applicant “filed her claim for workers compensation benefits for her bilateral arm pain as a result of carpal tunnel syndrome incurred from years of typing while employed at the Bank. Today, six years later, Ms. Hayati is still partially disabled”

18. The Tribunal concludes that the Panel was reasonable in interpreting the scope of its authority to be limited to review of the claim relating to carpal tunnel syndrome, for the reasons it gives and particularly in light of the clear and unambiguous language in the Applicant’s own claim form.

19. To the extent that the Applicant seeks workers’ compensation benefits for pain and injuries other than that of carpal tunnel syndrome – in particular, the apparent continuing pain to her neck, shoulders and upper extremities – there is no significant evidence to support any inference that these, in the language of Staff Rule 6.11, para. 1.01, “[arose] out of and in the course of employment with the Bank Group.” As the Panel reasonably and properly concluded, “there is no medical evidence that would warrant inclusion of these other conditions in this claim.”

20. Turning, then, to the Applicant’s claim regarding her carpal tunnel syndrome, the Tribunal notes that the Panel, when addressing that claim, concluded that there was insufficient evidence that the injury was causally connected to her secretarial work at the Bank; that even if it was work-related, she suffered no compensable

work incapacity, and there was no permanent partial disability; and that in any event it was appropriate to deny her claim in light of her failure to provide all medical documents in her possession to the Claims Administrator, her refusal to submit to a deposition, and her provision of inaccurate medical information to Dr. Levitt, the independent medical examiner.

21. The Tribunal concludes that at least two of the grounds given by the Panel for its decision reasonably warrant denying the Applicant's claim for workers' compensation.

22. First, the Applicant's asserted injury was her bilateral carpal tunnel syndrome, and the record strongly supports the Panel's conclusion that this condition had been successfully treated by the fall of 1998. Dr. Bogumill, a reputable surgeon specializing in the syndrome, performed surgery on the Applicant's right wrist in July 1998 and on her left wrist in November 1998. Shortly after the former surgery, Dr. Bogumill recorded that the Applicant's wrist pain and numbness were gone. Dr. Shaffer wrote on January 4, 1999, that "[s]he does not have any numbness or tingling," but that any manipulation of her shoulder caused discomfort; "[s]he does give a history of a cervical spine injury related to possible whiplash from a car accident a year ago"; and "[i]t seems as though her problem is related to the neck. This seems to be pretty significant whiplash syndrome." And Dr. Bogumill himself wrote, on October 18, 1999, that "[h]er carpal tunnel symptoms are gone."

23. The only explicit suggestion from among the doctors that the effects of the Applicant's carpal tunnel syndrome lingered well after 1998 came from the independent medical examiner, Dr. Levitt, nominated by the Claims Administrator itself. In his report, Dr. Levitt stated:

[T]he surgery that was subsequently performed in the late 1990's, i.e. carpal tunnel decompressions to both wrists and a release of a trigger finger appear to be a direct consequence of the patient's work related clinical complaints. The associated complaints of neck pain and shoulder distress likely reflect compensatory overuse syndromes as she compromised the use of her hands due to her carpal tunnel disease and transferred stress to her neck and shoulders when handling activities of daily living. Therefore, the need to treat complaints of neck pain and shoulder pain also appear to be causally connected to the original clinical complaints beginning in 1989.

24. It must be recalled, however, that this diagnosis was based – as found by the Panel – on incomplete and inaccurate medical evidence resulting from the Applicant's non-disclosure. As stated by Dr. Levitt: "She denies any concurrent medical problems, including no metabolic abnormalities, thyroid disease, diabetes or any history of direct trauma to her upper extremities or neck." Had Dr. Levitt been informed of the Applicant's other ailments – including Mesenchymal Syndrome, tennis elbow, hypothyroidism, and hepatitis C – and particularly of the automobile accident suffered by her in August 1997 and the clear diagnosis by other doctors of whiplash syndrome, he almost certainly would not have felt obliged to link the pain in her shoulders and neck to the carpal tunnel syndrome successfully treated three years before.

25. Thus, there is clear support in the record for the conclusion that, even if the carpal tunnel syndrome was caused by the Applicant's workload at the Bank, it was surgically cured by the end of 1998, while she was on fully paid special leave and roughly half a year before her employment was effectively terminated on account of redundancy, on June 4, 1999. It was therefore reasonable for the Panel to conclude both that the Applicant had suffered no compensable work incapacity by virtue of her carpal tunnel syndrome (which appears to be a prerequisite for the payment of benefits) and that she had suffered no work-related "permanent partial disability" for which she now claims an entitlement to two-thirds of her average weekly salary for some 488 to 624 weeks, pursuant to the statutory law of the District of Columbia (incorporated by reference in the Respondent's Staff Rules).

26. The Applicant has presented at length legal arguments concerning the right to benefits for work-related carpal tunnel syndrome – even when it is only partially caused by Bank work, or is a pre-existing condition merely aggravated by Bank work, or is caused by Bank work and aggravated thereafter outside of the Bank. There is no need for the Tribunal to address these issues, given the conclusion already reached that the Panel

reasonably found that the only injuries that persisted after Dr. Bogumill's 1998 surgeries were upper-body ailments that arose out of causes other than the Applicant's employment with the Bank.

27. The second principal basis for upholding the Panel's decision as reasonable relates to its application of the relevant 1995 version of Staff Rule 6.11, paras. 3.02, 3.03 and 3.04. This version of Staff Rule 6.11, para. 3.02, provides:

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.

28. Paragraph 3.03 of the Staff Rule provided at that time that the "Claims Administrator may require the claimant to undergo a medical examination at Bank expense by an independent medical examiner selected by the Claims Administrator." And Staff Rule 6.11, para. 3.04, provided at that time:

Failure by the claimant to provide medical and other information when requested to or to present himself for a medical examination as described in paragraph 3.03 will result in a denial of the claim by the Claims Administrator.

29. The Applicant's failure to disclose material medical information to the independent medical examiner, as described above, effectively frustrated and circumvented the purpose of the examination. It was reasonable for the Panel to conclude that "[t]here is, qualitatively, no difference between a claimant who refuses to undergo an Independent Medical Examination, and one who, while attending such examination, provides inaccurate information in terms of history or symptoms. In either case, the purpose of the Staff Rule is thwarted."

30. The Tribunal also finds that it was reasonable for the Panel to rest its denial of the Applicant's claim on the failure of her and her counsel to turn over pertinent requested medical records. Many of those documents – some of which attributed the Applicant's symptoms to circumstances other than her workplace, such as her August 1997 automobile accident, her hypothyroidism and her hepatitis C – were uncovered only at the initiative of the Claims Administrator. Given the uncertainty regarding the scope of the Applicant's compensation claim and the sources of her symptoms, their work-relatedness, and the period of her alleged incapacity, the requested medical records were, in the words of *Courtney (No. 4)*, Decision No. 202 [1998], paras. 14, 20, "reasonably believed to be pertinent to the compensation claim," and the request and the resulting dismissal were "consistent with the governing Bank provisions and are otherwise reasonable and not an abuse of the Bank's discretion."

31. In light of the same circumstances, it was reasonable for the Claims Administrator to believe that a direct oral interview of the Applicant in the form of a deposition would be useful in resolving this matter. The refusal by the Applicant and her counsel to undergo such an oral interview, and insistence instead upon written interrogatories, constituted non-compliance with Staff Rule 6.11, para. 3.02. The Tribunal has already concluded, in *Courtney (No. 4)* at para. 20, that the determination of need for further documents, examination, and the like is to be made, within the range of proper discretion, by the Claims Administrator and not by the Applicant or accompanying counsel. In this case, the request of the Claims Administrator, as noted, was reasonable, and the objections of the Applicant's counsel were unsubstantiated.

32. The Tribunal has held that, although Staff Rule 6.11, para. 3.04, appears to provide for mandatory denial of a workers' compensation claim if the rule's conditions are not met, there may be circumstances in which such a denial will be deemed by the Tribunal to be too harsh or otherwise arbitrary and unreasonable. *Courtney (No. 4)* at para. 18; *Shenouda (No. 2)*, Decision No. 218 [2000], at para. 28. As in those cases, the Tribunal nonetheless concludes now that the ultimate decision of the Panel interpreting and applying Staff Rule 6.11, para. 3.04, was neither unduly harsh nor arbitrary or unreasonable.

33. The Tribunal considers, finally, the Applicant's contention that the Claims Administrator and Panel are responsible for flagrant and repeated delays in processing her claim. As an example, she notes that while Staff Rule 6.11, para. 12.03, requires the Panel to issue its decision within 60 days of receiving "all requested documentation," the Panel instead took nine months to issue its report in her case. She also complains of having to wait more than six years for a final resolution of her claims, despite her cooperation and compliance with Bank procedures.

34. The Tribunal is indeed concerned about the inordinate length of time consumed in resolving this case. There were many factors that contributed to that delay, including the two rounds of decision-making by the Claims Administrator and the Review Panel, the Bank's reasonably-based (but unsuccessful) challenge to the timeliness of the workers' compensation claim and the proceeding before the Tribunal relating to jurisdiction, the settlement discussions between the parties, the information-gathering on the part of the Claims Administrator, the appointment of an independent medical examiner, as well as the length of the Applicant's medical history, the substantial number of doctors involved and the complexity of the case with its multiple injuries and diagnoses.

35. The Staff Rules appear to fix no time limit for the filing of the decision of the Claims Administrator, although this must surely be accomplished within a reasonable time; and Staff Rule 6.11, para. 12.03, requires that the Review Panel transmit its decision "[w]ithin 60 days after receiving all requested documentation." The record does not allow for a confident determination as to whether these time limits were exceeded, although the Claims Administrator in the first phase of the case and the Review Panel at both stages appear to have taken longer than they should. The work of the Claims Administrator and the Review Panel must of course not be hasty or perfunctory, but surely this must be accomplished with conscientious despatch. Ultimately, there was substantial contributory delay on the part of the Applicant in this case, from its beginning in 1997, considering the Applicant's own failure to produce her medical records fully and promptly. Moreover, given the Tribunal's conclusion that her claim must be dismissed on the merits, it is difficult to find that any undue delay on the part of the Respondent has caused the Applicant any compensable injury.

Decision

For the foregoing reasons, the Tribunal decides to dismiss the application.

/S/ Bola A. Ajibola
Bola A. Ajibola
President

/S/ Nassib G. Ziadé
Nassib G. Ziadé
Executive Secretary

At London, England, June 18, 2004