

Decision No. 228

Mounira M. Hayati,  
Applicant

v.

International Bank for Reconstruction and Development,  
Respondent

1. The World Bank Administrative Tribunal has been seized of an application, received on September 3, 1999, 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, composed of Robert A. Gorman (President of the Tribunal) as President, Thio Su Mien (a Vice President of the Tribunal) and A. Kamal Abul-Magd, Judges. The usual exchange of pleadings took place. The case was listed on March 8, 2000.

2. This is an application contesting the decision of the Workers' Compensation Administrative Review Panel ("the Review Panel") denying, on the ground of untimely submission, the Applicant's claim for compensation under the Workers' Compensation Program provided for under Staff Rule 6.11, paragraph 3.01.

3. Staff Rule 6.11, paragraph 3.01, provides:

If a staff member's injury, illness or death is believed by a claimant to arise out of and in the course of employment, a claim for applicable workers' compensation benefits may be filed with the Claims Administrator by the staff member or a surviving spouse or child or an appointed guardian. A claim shall be filed with the Claims Administrator not more than one year after the injury, illness or death giving rise to the claim, except that the period for filing a claim shall not begin to run until a claimant has become aware or should have become aware of a possible relationship between the injury, illness or death and the staff member's employment.

4. The issue in this case is whether the Applicant filed the claim with the Claims Administrator within a year of the injury giving rise to the claim or within a year from when the Applicant became aware or should have become aware of a possible relationship between the injury sustained by her and her employment.

5. The Applicant joined the Bank as a regular staff member in 1972. From 1983 to September 30, 1996, the Applicant worked for the then Deputy Director of the Economic Development Institute of the Bank. Throughout this period, the Applicant's job responsibilities included a large amount of typing. The Applicant's position was declared redundant in mid-1996 and, after ending her active service on October 1, she was on special leave from October 1996 until June 1999.

6. On September 4, 1997, the Applicant filed her claim with the Claims Administrator. The claim form indicated that she first had symptoms of distress in typing in the early 1980s. She filled in the "diagnosis of injury" box in the claim form "carpal tunnel syndrome and severe chronic right and a moderate chronic left hand median nerve entrapment at the wrists." She claimed that the injury was due to "excessive typing, filing."

7. The Applicant has had a long history of carpal tunnel syndrome extending back to the late 1980s and early 1990s. She also suffered from tennis elbow and underwent physical therapy with The Physical Therapy Services of Washington D.C. ("PTS"). The physical therapy notes made by PTS over her treatment during the period January to February 1996 contained statements like "I did lots of typing which aggravated it" and "no pain at night or in [the] morning, but I haven't been typing." Aside from being treated for tennis elbow, the

Applicant was given “carpal tunnel finger extension glides.” In a written report dated February 7, 1996, it was indicated: “Pt [patient] improving but still having symptoms with excessive typing.”

8. Based on the records, the Claims Administrator took the view that the Applicant’s claim was filed out of time as she had known as early as the 1980s that she had a work related injury. This is evidenced in her claim form where she herself attributed her injury to the early 1980s, and also in the letter dated July 11, 1997 by the Applicant’s doctor, Dr. S, in which he expressed his thoughts vis-à-vis the Applicant’s carpal tunnel syndrome and stated that the Applicant “had a long history of this extending back to the late 1980s and early 1990s.” The Claims Administrator found that at the latest, the Applicant was aware by January-February 1996 that there was a causal relationship between her injury and her employment as may be seen in her comments to the physical therapist at PTS where she was being treated for tennis elbow during the period January-February 1996. He therefore concluded that her claim was time-barred.

9. The Applicant appealed to the Review Panel against the decision of the Claims Administrator. The Review Panel, adopting the reasoning of the Claims Administrator, upheld his decision. The Applicant now appeals the decision of the Review Panel under Staff Rule 6.11, paragraph 12.04, which provides:

A claimant who wishes to pursue his complaint further may then file an appeal with the World Bank Administrative Tribunal in accordance with the provisions of Staff Rule 9.05.

10. The Tribunal has previously ruled that its task in hearing “appeals” from the Review Panel 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.” (See [Chhabra \(No. 2\)](#), Decision No. 193 [1998], para. 7.)

11. The issue before the Tribunal is when did the Applicant become aware, or when should she have become aware, of a possible relationship between her injury and her employment? The Claims Administrator has given the latest applicable date as January-February 1996.

12. The Applicant, however, contends that the relevant date from which the one-year limitation should run is either (a) the last date on which she performed the work that caused the injury, i.e., September 30, 1996, or (b) a date during the period March-May 1997 when she was diagnosed as suffering from carpal tunnel syndrome. In either case, the Applicant would have properly acted well within the one-year limitation period as she filed her claim on September 4, 1997.

13. The Applicant’s contention is that she had believed that when she stopped routine office work and typing upon ceasing active service in October 1996, the pain would cease. When she found that the pain continued and interfered with her routine household activities, she consulted Dr. S in the period of March-May 1997 and underwent a full diagnostic review of her problem.

14. Dr. S in a letter dated March 21, 1997 to the Applicant, giving an evaluation of her health generally, recommended in connection with her wrist disorder as follows:

I am hopeful that the combination of the wrist brace, plus the DayPro will help with the tendinitis of the wrist (DeQuervain’s Disease). If things haven’t gotten better, then you should plan to give me a call or come in to see me in the next couple of weeks and we can talk about an injection of cortisone into the area....

15. Dr. S had also referred the Applicant to Dr. G, an orthopaedic surgeon. Dr. G, in a report dated April 25, 1997, stated as follows:

She [the Applicant] has worked at the World Bank and for the last ten years has been typing 9-10 hours a day. She was diagnosed 10 years ago as having carpal tunnel syndrome, but it has been managed conservatively. 3 years ago, she had tennis elbow and was referred for physical therapy which to a certain extent resolved her problem. 1½ months ago, she was holding a friend’s dog and it jerked away pulling the leash and injuring her left wrist. She comes in for assessment of all these problems. She is concerned

because now that she is semi-retired and is doing no typing she still has pain in her arms.

Dr. G referred the Applicant to a neurologist who diagnosed her as suffering from carpal tunnel syndrome in a report dated May 13, 1997.

16. After this diagnostic review, it became clear to the Applicant that she had sustained an injury which continued even though she had ceased work. The Applicant's point is that if the injury had subsided through cessation of work, then no injury would have been sustained and there would have been no need for her to seek compensation. Her contention is that her awareness of the work related injury only crystallized for the purpose of Staff Rule 6.11, paragraph 3.01, when she was definitively diagnosed as suffering from carpal tunnel syndrome after the medical assessments made by the various doctors in March-May 1997. It follows from this that her claim filed on September 2, 1997 was well within the one-year limitation period.

17. From the arguments presented by the parties, the Respondent has adopted two possible dates when awareness of the causal relationship between the Applicant's disorder arose; the Applicant has proposed two later applicable dates.

18. It should be noted that carpal tunnel syndrome is a cumulative traumatic injury. It does not occur at a specific point in time but is progressive. On a purposive interpretation, Staff Rule 6.11, paragraph 3.01, must have envisaged some permanence in the injury in respect of which a causal relationship between the injury and the employment may be determined. It could not have been the intention of the Workers' Compensation Program to cover *de minimis* injuries particularly where the injury is cumulative in nature and intermingled with other injuries like tennis elbow. The purpose of the one-year limitation is to ensure that complaints of a work-related injury should be brought expeditiously so that the Bank can, as stated in its pleadings, "address, manage and possibly mitigate liability" and so that an injury arising out of the workplace will not "continue unattended." This objective should be balanced with the need to discourage premature complaints. This is in the interest of both the Bank and its employees. Otherwise, employees will have to file a claim for every routine and minor work-related ailment to preserve their rights.

19. The Tribunal concludes that there must be some certainty required in the determination of whether any injury is sustained before a claim should be made, particularly when the injury is of a cumulative nature and it cannot be ascertained exactly when it occurred. Furthermore, whether the ailment is subject to cure by modest treatment measures or is permanent in nature is material. There is a need for certainty in order to settle the legal position between the Bank and its employees and to ensure stability in such situations. All these factors are relevant in determining the appropriate date for lodging a complaint.

20. In the light of the above facts, the Tribunal is of the view that in the circumstances of the case, for the purpose of Staff Rule 6.11, paragraph 3.01, the relevant date for imputing to the Applicant awareness of the causal relationship between her injury and her employment is the date when it became clear that a lasting injury necessitating surgery had been sustained and that it was work related. In this instance, that date was during the March-May 1997 period, and the Claims Administrator should thus have adopted this as the date from which the one-year limitation period began to run. On this basis, the Claims Administrator should not have denied the Applicant's claim as being time-barred.

### **Decision:**

For the above reasons, the Tribunal unanimously decides:

(i) that the Applicant's claim be reinstated and that a full determination be made under the provisions of the Workers' Compensation Program in respect of the Applicant's claim; and

(ii) that costs in the amount of \$3,000 be awarded to the Applicant.

Robert A. Gorman

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President

Nassib G. Ziadé

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Executive Secretary

At Paris, France, May 18, 2000