

Summary of EI v. IBRD, Decision No. 569 [2017]

The Applicant claimed that there were environmental hazards in the Bank's Main Clinic, due to periodic leaks and flooding, which had given rise to mold growth, whereas the Bank asserted that, since 2013, it had remediated the area promptly and the Main Clinic was fit for normal occupancy and use. Following an Independent Medical Evaluation (IME) in 2013, which concluded that the Applicant was not able to work in the Main Clinic without the risk of aggravating her medical condition and respiratory symptoms, the Applicant was reassigned to the work in the IFC Clinic and the Laboratory in the Bank's Main Complex. The Applicant challenged the subsequent denial of her request to be returned to duties in the Main Clinic, unless she first undergoes a physical and psychological evaluation and is deemed fit to work in that environment.

The parties agreed that the Bank has a duty to provide a safe and healthy work environment to its staff. The Tribunal found that the Bank's duty of care includes remediation and monitoring, in circumstances where leaks have affected the Main Clinic. The Tribunal held that the Bank's remediation and proactive monitoring of the Main Clinic in response to the leaks, as well as the scheduled relocation of the Main Clinic for business reasons, satisfied the Bank's duty of care. The Tribunal found that these measures, together with the Applicant's reassignment to the IFC Clinic and the Laboratory, reasonably accommodated the Applicant's medical needs. Her reassignment was neither discriminatory nor unfair. Rather, it was a reasonable and fair response to the medical conclusion of the IME and satisfied the Bank's duty of care towards the Applicant. The Applicant's reassignment to a different location was reasonable insofar as it responded to her medical needs, while maintaining her original duties and responsibilities to the extent possible in the new location.

Just as the Bank satisfied its duty of care by transferring the Applicant out of the Main Clinic to accommodate her medical condition based on the results of the IME, the Tribunal found that it was a reasonable exercise of discretion and a proper discharge of the Bank's duty of care for the Bank to require the Applicant to undergo an IME, prior to allowing her to return to the Main Clinic. The Bank's decision to accommodate the Applicant by reassigning her away from the Main Clinic depended on the results of an IME in 2013. In order for the Bank to effectively reverse that decision and return the Applicant to the Main Clinic, the Tribunal held that, on balance, it was reasonable for the Bank to explore, at a minimum, whether the possible causes of the Applicant's condition in 2013 still exist, or whether there are new ones, that would justify the denial of the Applicant's request to be returned to the Main Clinic. Since one of the possible causes identified in the 2013 IME was psychological, the Tribunal found the Bank's requirement that the Applicant undergo a physical and psychological IME to be reasonable.

Decision: The Tribunal found that the Bank may require the Applicant to undergo a physical and psychological IME, which shall assess her fitness to work in the Main Clinic, and ordered the Bank to ensure that the IME of the Applicant be performed by a third party outside HSD. The Tribunal ordered the Bank to contribute to the Applicant's legal fees and costs in the amount of \$10,000.00.