Before: Judge Jean-François Cousin

Registry: Amman

Registrar: Laurie McNabb

ABU SALAH

v.

COMMISSIONER-GENERAL OF THE UNITED NATIONS RELIEF AND WORKS AGENCY FOR PALESTINE REFUGEES IN THE NEAR EAST

JUDGMENT

Counsel for Applicant:
Self-represented

Counsel for Respondent:
Rachel Evers (DLA)
Introduction

1. This is an application by Ayman Mohammad Abu Salah (the “Applicant”) against the decision of the United Nations Relief and Works Agency for Palestine Refugees in the Near East, also known as UNRWA (the “Respondent”), to terminate his appointment on medical grounds.

Facts

2. Effective 11 February 2009, the Applicant was employed by the Agency on a fixed-term appointment, as Emergency Social Worker, Grade 10, Step 1, at Emergency Programme in the Gaza Field Office (“GFO”). At the time material to the present application, the Applicant held this position.

3. On 20 October 2016, following the Applicant’s request to be transferred to a clerical post based on a medical report indicating his incapacity to continue performing his duties as Emergency Social Worker, the Head, Field Human Resources Office, GFO (“H/FHRO/G”) requested that a medical board be convened to evaluate the Applicant’s fitness for continued service with the Agency.

4. On 4 December 2016, the Medical Board concluded that the Applicant was, for the time being, unfit to perform his duties, that his situation should be re-evaluated in three months and that he should continue to take his medications regularly.

5. On 1 April and 18 July 2017, the Applicant was re-evaluated by a member of the Medical Board who concluded that the Applicant was still temporarily unfit for continued service with the Agency.

6. On 20 September 2017, the Applicant was re-evaluated by the Medical Board and was found unfit for continued service with the Agency.

7. On 2 October 2017, the Chief, Field Health Programme, GFO (“C/FHP/G”) concurred with the Medical Board’s conclusion.
8. By letter dated 5 October 2017, the Director of UNRWA Operations, Gaza (“DUO/G”) informed the Applicant that, following the findings of the Medical Board, his appointment would be terminated on medical grounds, effective close of business on 4 November 2017.

9. On 19 October 2017, the Applicant submitted a request for review of the decision to terminate his services on medical grounds.

10. On 6 November 2017, the Applicant met with the H/FHRO/G to discuss his termination and the payment of his separation benefits. At this occasion, the Applicant reiterated his request that the Agency should review the decision to terminate his appointment on medical grounds.

11. On 7 November 2017, the Applicant submitted a new request for review of the decision to terminate his appointment on medical grounds.

12. In view of the Applicant’s personal circumstances, by letter to the Director of Human Resources dated 15 November 2017, the H/FHRO/G formally requested the approval of retroactive special leave with pay for the Applicant for a period of 90 days starting on 21 June 2017.

13. By letter to the Applicant dated 3 January 2018, the DUO/G affirmed the decision to terminate the Applicant’s appointment on medical grounds.

14. On 14 February 2018, the H/FHRO/G was informed that his request for the approval of special leave with pay for the Applicant for a 90-day period was not approved. The Applicant was informed of this decision accordingly.

15. On 15 February 2018, the present application was filed with the UNRWA Dispute Tribunal (the “Tribunal”). The application was transmitted to the Respondent on 18 February 2018.

16. On 20 March 2018, the Respondent filed a “Motion for Extension of Time” to file his reply outside the 30-calendar day time limit set out in Article 6(1) of the Rules of Procedure of the Tribunal. The motion was transmitted to the Applicant on 21 March 2018.
17. By Order No. 061 (UNRWA/DT/2018) dated 2 April 2018, the Respondent’s motion for extension of time was granted.

18. On 16 May 2018, the Respondent filed his reply. The reply was transmitted to the Applicant on 17 May 2018.

19. On 30 May 2018, the Respondent filed a “Motion for Extension of Time to Translate his Reply”. The motion was transmitted to the Applicant on the same day.

20. By Order No. 105 (UNRWA/DT/2018) dated 10 June 2018, the Respondent’s motion for extension of time was granted.

21. On 18 July 2018, the Respondent filed the Arabic translation of his reply. This was transmitted to the Applicant on the same day.

**Applicant’s contentions**

22. The Applicant contends:

   i) He provided the Agency with medical reports attesting that he is fit for continued service with the Agency; and

   ii) The Medical Board did not examine him at all.

23. The Applicant requests:

   i) The rescission of the impugned decision to terminate his appointment;

   ii) To be reinstated;

   iii) The Agency to establish a new and transparent medical board to properly examine his fitness for continued service with the Agency; and

   iv) To be compensated for the material and moral damages he sustained.
Respondent’s contentions

24. The Respondent contends:

   i) The decision to terminate the Applicant was justified under the Agency’s regulatory framework;

   ii) The Medical Board was properly constituted in accordance with the Agency’s regulatory framework;

   iii) The Medical Board complied with the requirements of Area Staff Personnel Directive No. A/6/Part VI/Amend.72, effective 1 September 1998 and examined the Applicant properly;

   iv) Prior to his referral to the Medical Board, it was the Applicant who had indicated his incapacity to continue performing his duties as Emergency Social Worker;

   v) Additional evidence submitted by the Applicant was not known by the Medical Board at the time it concluded its deliberations;

   vi) There is no evidence that the Medical Board’s conclusions are tainted by improper motives; and

   vii) The relief sought by the Applicant has no legal basis.

25. The Respondent requests the Tribunal to dismiss the application in its entirety.

Considerations

26. The Applicant contests the decision to terminate his appointment on medical grounds.
27. Area Staff Regulation 9.1 provides:

   The Commissioner-General may at any time terminate the appointment of any staff member if, in his opinion, such action would be in the interest of the Agency.

28. Area Staff Rule 104.4 provides as follows:

   Staff members may be required to undergo medical examinations at such time or times as the Commissioner-General may consider necessary.

29. Accordingly, the Tribunal considers that the discretionary authority of the CG to require staff members to undergo medical examinations and terminate their appointments based on the Medical Board’s conclusion is broad; however, this authority is not unfettered. The Tribunal is entitled to review whether the decision was unreasonable, arbitrary or tainted by bias and improper motives.

30. In the present case, on 20 October 2016, following the Applicant’s request to be transferred to a clerical post based on a medical report indicating his incapacity to continue performing his duties as Emergency Social Worker, the H/FHRO/G requested that a medical board be convened to evaluate the Applicant’s fitness for continued service with the Agency.

31. On 4 December 2016, the Medical Board concluded that the Applicant was unfit to perform his duties, that his situation should be re-evaluated in three months and that he should continue to take his medications regularly. On 1 April and 18 July 2017, the Applicant was re-evaluated by a member of the Medical Board who concluded that the Applicant was still temporarily unfit for continued service with the Agency. Finally, on 20 September 2017, the Applicant was re-evaluated by the Medical Board and was found unfit for continued service with the Agency.

32. The Applicant contends that the Medical Board did not examine him at all before reaching its conclusion that he was unfit for continued service with the Agency. Nevertheless, the Respondent submitted the Applicant’s examination report prepared and duly signed by the three members of the Medical Board. Therefore, this contention of the Applicant is without merit.
33. The Applicant further claims that he recovered and is entirely fit to resume his duties. The Applicant supports his claim with medical reports obtained after the Medical Board had concluded that he was unfit for continued service with the Agency. In this respect, first of all, prior to being examined by a medical board, it was the Applicant who had indicated his incapacity in performing his duties. Second of all, after having regularly re-evaluated the Applicant’s fitness during a 10-month period, the Medical Board reached its conclusion and determined that the Applicant was unfit for continued service with the Agency. Accordingly, in this context, there are no reasons put forward to the Tribunal, which would indicate that the decision to terminate the Applicant’s appointment on medical grounds was exercised arbitrarily or capriciously, was motivated by prejudice or other extraneous factors or was flawed by procedural irregularity or error of law.

Conclusion

34. In view of all the foregoing, the Tribunal DECIDES:

The application is dismissed.

SIGNED

Judge Jean-François Cousin

Dated this 23rd day of April 2019

Entered in the Register on this 23rd day of April 2019

SIGNED

Laurie McNabb, Registrar, UNRWA DT, Amman