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DGE AE E GA E D/G

1. On 25 October

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4. The Appellant's appeal to this Tribunal in 2019 challenged the UNDT's rejection of her claim that the Administration's refusal of her claim to a disability pension failed because she had not exhausted her sick leave entitlements. The Appeals Tribunal rejected that assertion of error on the part of the UNDT but highlighted the still disputed and unresolved question of the composition of the Medical Board that was required to decide her disability pension claim. The Appeals Tribunal invited the Secretary-General to apply what was the then recently adopted administrative instruction that purported to resolve the lacuna created by that disagreement about the Medical Board's composition. This instruction was in the form of a document issued in early 2019 known as Administrative Instruction ST/AI/2019/1 (Resolution of disputes relating to medical determinations), the content (and in particular Section 4.3) of which is central to the case presently before us.

5. By application filed on 17 January 2020 Ms. Bezziccheri now seeks revision of this Judgment. The Respondent filed his comments on the application on 12 March 2020.

!" Ms. Bezziccheri addresses first a document she says was unknown to her and to this Tribunal at the time the Appeals Tribunal 2019 Judgment was issued (25 October 2019). This was ST/AI/2019/1 issued by the United Nations

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documents' record by the Respondent but was not referred to in the Respondent's written answer to her appeal which she received.

9. Ms. Bezziccheri submits that in the 12 months of its apparent existence, ST/AI/2019/1 was not ever brought to her notice as someone potentially affected by it in relation to her disability case. She says that had it not been kept secret in this way, it could have assisted settlement discussions between the parties. Nor, she says, was the document ever the subject of consultation with relevant United Nations Staff Unions although this was mandated under Staff Regulation 8.1.

10. The Applicant says that this issue is decisive of her case because by implementing Staff Rule 6.2(k), the General Assembly intended to require "parity" between staff and the Administration

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resolution mechanism for the appointment of Medical Board chairpersons"; the deletion of any references (we assume in the judgments) to Section 4.3 of ST/AI/2019/1;

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Article 24

Either party may apply to the Appeals Tribunal, on a prescribed form, for a revision of a judgement on the basis of *the discovery of a decisive fact that was, at the time the judgement was rendered, unknown to the Appeals Tribunal and to the party applying for revision, always provided that such ignorance was not due to negligence*. The application for revision will be sent to the other party, who has 30 days to submit comments to the Registrar on a prescribed form. The application for revision must be made within 30 calendar days of the discovery of the fact and within one year of the date of the judgement.

18. Although it is natural for a dissatisfied litigant to wish to challenge, appeal or to have reviewed, an adverse decision, that is not possible unless the narrow and particular grounds set out above are made out for revision of a judgment. In this regard, we acknowledge and follow the jurisprudence of such former Judgments of this Tribunal as *Sanwidi* and *Awe* .

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paragraph 53. That simply recorded that the appeal was dismissed and the UNDT's Judgment was affirmed. The *obiter dicta*

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who will constitute the other two members of the Board. Such external medical authorities may include national or international organizations of medical practitioners specialising in the area(s) of medical assessment appropriate to this case.⁵ We respectfully suggest that it should not be beyond the capability of the parties, objectively advised and in a spirit of mutual trust and, if necessary compromise, to select a bespoke arrangement to now resolve matters of process for determining paid leave and disability to close the final chapter on Ms. Bezziccheri's service with the United Nations.

24. Because Ms. Bezziccheri's submissions seem to be presented on an incorrect assumption about the effect of ST/AI/2019/1, we will comment briefly on this misapprehension. Section 4.3 of ST/AI/2019/1 does not aggregate the power to select the Chair of a medical board to the United Nations' Administration. Rather it requires, in circumstances of inability of the other two Board members to agree on who shall be Chair, that the Medical Director must refer this decision to an appropriate external medical authority. It will be the decision of that body alone as to who is to chair the Medical Board. This process is a common tie-breaker in such analogous circumstances as international (and other) commercial arbitrations in which there is disagreement about who should be the arbitrator or chair the panel of arbitrators. Law Societies or Bar Councils are often the appropriate external authorities consulted in arbitration cases and we interpret Section 4.3 similarly in relation to Medical Boards. It is rarely resorted to but there must be some procedural finality and this methodology works in practice. We invite the parties to place their trust and confidence in it if they cannot otherwise resolve this issue themselves. But this cannot be by revision of this Tribunal's 2019 Judgment.

⁵ In many jurisdictions these are known as "Colleges" of particular specialist doctors or physicians or surgeons who are independent entities whose tasks include the training, qualification, and discipline of members as well as providing expert advice and the advancement of medical research and other concerns.

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25. For the foregoing reasons, we dismiss the application for revision of Judgment !
No. 2019-UNAT-948.

Original and Authoritative Version: English

Dated this 30 day of October 2020.

(Signed)