
UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NBI/2020/035

Order No.: 101 (NBI/2020)

Date: 27 May 2020

Original: English

Before: Judge Margaret Tibulya

Registry: Nairobi

Registrar: Abena Kwakye Berko

AL-TAMIMI

v.

SECRETARY GENERAL
OF THE UNITED NATIONS

ORDER ON AN APPLICATION FOR
SUSPENSION OF ACTION PENDING
MANAGEMENT EVALUATION

Counsel for the Applicant:

19 May 2020¹⁰

Considerations

12. Articles 2.2 of the UNDT Statute and 13 of its Rules of Procedure which confer on the Tribunal with jurisdiction over applications for suspension of actions require that the Tribunal shall exercise this jurisdiction

exceptional circumstances that warrant this decision are that the misconduct is of such gravity that it would, if established, warrant separation or dismissal under staff rule 10.2(vii) or (ix) and that I have information about the misconduct that makes it more likely than not (preponderance of the evidence) that you engaged in the misconduct. I would also like to inform you that the administrative leave is extended to 31 May 2020.

18. While the Applicant argues that those general statements do not allow him to understand how the Administration came to its determination and what factual circumstances justified the decision, the Respondent maintains that the information adequately satisfies the requirements of staff rule 10.1 and paragraph 10.1 of UNHCR/AI/2018/18. Also, the Respondent argues that none of those provisions require that a staff member be informed of the exact nature of the allegations of misconduct or the available evidence. Further, that the Applicant's right to respond to the

UNHCR/AI/2018/18 and that the decision is not unlawful in this regard

Whether exceptional circumstances warranting the placement of the applicant on ALWOP exist in this case

20. The Applicant argues that in order to convert his ALWFP into ALWOP, the Administration needed to establish that the misconduct is of such gravity that it would, if established warrant separation or dismissal under staff rule (a)(vii) or (ix), and that there is information before the Director/DHR about the misconduct that makes it more likely than not that the staff member engaged in the misconduct. He asserts that the information available does not make it more likely than not that he engaged in the misconduct.

21. On the other hand, the Respondent argues that exceptional circumstances indeed exist to justify placing the Applicant on ALWOP. These include evidence of entitlement fraud and forgery with a view to thwarting an ongoing investigation, that the UNHCR has a policy of zero tolerance to fraud as stated in its Strategic Framework for the prevention of fraud and corruption. Considering that the Applicant could have committed entitlement fraud, ALWOP is appropriate because it allows UNHCR to use his unpaid salary to recover money

regard, it has to be determined whether there is an adequate objective basis probable cause that the Applicant engaged in the alleged misconduct. The allegations against the Applicant included one of an attempt to thwart an investigation on two separate occasions by means of a forged medical report and that he submitted fraudulent claims for the reimbursement of medical expenses.

23. The evidence supporting that inference consists of:

- a. the Applicant's email dated 10 March 2020 to the IGO stating that he was hospitalized and requesting that the investigation be put on hold;
- b. the Applicant's email dated 31 March 2020 to the IGO stating that he could not review the record of interview and requesting that it be postponed;
- c. the medical report dated 5 March 2020 from the Hayath Hospital in Baghdad stating that the Applicant needed two months for his situation to stabilize, which the Applicant submitted with his two emails;
- d. evidence including a statement by a reliable source that the Hayath Hospital does not exist;
- e. the Applicant's two claims for reimbursement of medical expenses allegedly incurred at the non-existing Hayath Hospital in Baghdad; and
- f. the various irregularities in the documents submitted by the Applicant with multiple claims for the reimbursement of medical expenses.

24. It has to be determined whether the above evidence constitutes probable cause that the Applicant engaged in the alleged misconduct. In this regard, the Tribunal notes that the evidence relating to the allegations of fraud is document based and the documents in issue which originate from the Applicant, were attached to the response.¹⁵ The contents of those documents appear to support the allegation of fraud.

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The Tribunal finds that the information before it about the alleged misconduct makes

