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*Disability Benefits for Service-incurred Injuries or Illnesses are Payable For So Long as the Disability Continues*

I am pleased to report on a successful appeal of a client who challenged the IAEA's decision to pay service-incurred disability benefits for loss of earning capacity until she reached the Agency's retirement age, i.e., age 60, instead of for life.

In Judgment 3734, the ILOAT relied on the well settled principle of statutory interpretation to decide that the payment of compensation for the loss of earning capacity due to a service-incurred illness or injury can continue beyond the normal retirement age. The Complainant is a former staff member of the IAEA, who has been receiving a disability pension benefit from the United Nations Joint Staff Pension Fund since her separation from the Agency in August 2013 or four years before she would have reached the normal retirement age. In May 2013, the Director General decided upon recommendation by the Joint Advisory Board on Compensation Claims (JABCC) that the staff member would receive monthly compensation for the loss of earning capacity under Article 20 of Appendix D to the Staff Regulations and Staff Rules – which supplement the benefits paid by the pension fund where the illness is service-incurred – from the date of her separation from the organization until she would reach her normal retirement age, i.e. 60. The Director General confirmed the decision and waived the JAB jurisdiction so the Complainant could file a complaint directly with the ILOAT. We considered that the rules were plain that the benefits are payable for life.

Therefore, at the core of the complaint was the interpretation of Article 20(a) of Appendix D to the Staff Regulations and Staff Rules, which reads: “In a case where the loss of earning capacity is determined to be total: (a) An official shall be entitled, as from the date on which payment ceases under Article 17(a), whether or not he/she is thereafter separated from service, and for so long as the disability continues, to annual compensation equal to two-thirds of his/her final average remuneration. This annual compensation shall not amount to less than the midpoint of the regular General Service net salary scale then applicable at the duty station of the official. It shall, however, not exceed the maximum established in Article 8(b).”

The IAEA's decision to discontinue the staff member's payment of the compensation was based on the interpretation of the words “loss of earning capacity” in Article 20(a). The IAEA claimed that, taking into account the objectives of Appendix D, the phrase “loss of earning capacity” implies that the provision is no longer relevant after a staff member reaches his or her retirement age. The Agency further claimed that its decision was consistent with its established practice.

The Tribunal rejected the Agency's interpretation of Article 20(a) and reaffirmed the principles of statutory interpretation. According to well settled case law, words are to be given their obvious and ordinary meaning and any ambiguity should be construed in favor of

the staff member, not the organization. The Tribunal also rejected the isolated interpretation of one phrase of the provision.

Article 20(a) stipulates that the entitlement to the compensation for loss of earning capacity remains “for so long as the disability continues”. As the obvious and ordinary meaning of this provision is unambiguous, an interpretation of the provision can only lead to the conclusion that the duration of a staff member’s entitlement to compensation is solely dependent on the presence of the disability. Therefore the compensation of the staff member can continue after she reaches her retirement age, for so long as the disability continues.

The Tribunal further pointed out that the provision would have explicitly ordered termination of the payment of the compensation if that would have been the intention of the drafters of the provision.

In regard to the claim of the Agency that the decision was in accordance with its established practice, the Tribunal referred to Judgment 2702, which reiterates that the party seeking to rely on an established practice bears the onus of proving the substance of the established practice. Not only had the Agency not provided any proof to its claim, the Tribunal also pointed out that the practice would have contradicted a statutory provision and therefore could not be legally binding.

As the Director General’s decision was based on an erroneous interpretation of Article 20(a), the Tribunal set aside the decision and ordered the payment of 7,000 euros for moral damages and 4,000 euros for costs.

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*Laurence Fauth represents international civil servants in internal appeals and before international tribunals, including the ILOAT, UNDT, and UNAT. You can send him an email ([lcf@unattorney.com](mailto:lcf@unattorney.com)) if you have comments about the newsletter or visit his website for more information: [www.unattorney.com](http://www.unattorney.com). The information and content contained in this newsletter is for general information only and does not constitute legal or other professional advice. You must not rely on any information or content contained in, or omitted from, this newsletter without obtaining independent legal advice. If you do not wish to receive this email, please reply with a request to remove your email.*