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Staff Matters

Legal News from Union Syndicale

Art. 73 SR - occupational disease - Common rules on the insurance against the risk of accident and of occupational disease (Art. 22) - Medical Committee – ToR of the Committee

Recognition of occupational diseases: the relevance of supporting files for the Medical Committee is to be assessed by the insured person alone

Case T-213/19, AW / Parliament, of 28 May 2020

This newsletter treats a case decided by the General Court relating to the recognition of the occupational nature of a disease. The medical opinion issued by the Medical Committee was judged irregular, because the Committee was not able to examine all the available documents. The Appointing Authority had forwarded only a pre-selection of files to the Committee and instructed to disregard certain documents. The Court ruled that only the insured person alone or those entitled under him or her are called to assess the relevance of the said medical reports. A medical assessment of the reports by the Appointing Authority exceeds its powers.

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Facts of the Case

The applicant (an official of the European Parliament) had submitted several requests for recognition of the occupational nature of the diseases from which he suffered, in line with Articles 3 and 16 of the Common Insurance Rules[1]. Following notification by the Appointing Authority of two draft decisions refusing to recognise the occupational nature of the diseases in question, accompanied by the conclusions of a first doctor (designated by the Authority), the applicant requested the matter to be referred to the Medical Committee to give its opinion on those draft decisions. The applicant designated a second doctor to represent him and submitted that doctor's reports setting out the contested medical questions to the Appointing Authority. The Medical Committee was composed of the two above-mentioned doctors and a third one. The doctor chosen by the applicant sent a number of documents (in total 34) to the third doctor; these documents had been initially submitted by the applicant in support of his requests for recognition of the occupational nature of the diseases in question, but they had not been disclosed to the Medical Committee. The third doctor received instructions by the Parliament not to take account of these documents. Following the medical reports drawn up by the Committee, the Appointing Authority rejected the requests for recognition of the occupational nature of the diseases in question.

The Arguments of the Parties and the Decision of the Courts

In front of the General Court, the applicant argued in support of his action for annulment, that the Medical Committee did not have before it a complete file containing all the documents that he had submitted since the opening of the procedures for recognition of the occupational nature of the diseases. Therefore, according to the applicant, the Committee did not have access to all the available documents liable to be of use in its assessments, in breach of Article 22(3) of the Insurance rules.

The Court first pointed out that it follows from Article 22(3) of the Insurance rules that, for a Medical Committee validly to issue a medical opinion, it must be in a position to have notice of all the available documents liable to be of use in its assessments. However, in the present case, it was common ground that the Parliament did not disclose to the Medical Committee certain documents initially submitted by the applicant, including medical reports which concluded that the diseases in question were occupational in nature. According to the explanations provided in that regard by the Parliament, it had disregarded those documents after finding that some of them were identical to those already in its possession, others were unrelated to the medical questions submitted, and, finally, others contained similar information, that is to say, without being identical, they repeated the same information and conclusions it already had in its possession.

More specifically, in respect of the non-transmission of that last category of documents, the Court then found that the Parliament had made a medical assessment of the documents, which exceeded the scope of its powers. In fact, when the insured person asks the Medical Committee to give its opinion, the Parliament's sole task is to define the terms of reference provided to the Committee. Those terms of reference must refer to the Committee the medical questions raised in the medical reports that the insured person considered necessary to disclose to the doctor or doctors designated by the institution for the purposes of applying the provisions of the Insurance rules. It was therefore up to the insured person alone or those entitled under him or her to assess the relevance of the medical reports removed from the file.

By deciding on medical matters with a view to drawing up the file submitted to the Medical Committee, the Parliament had consequently exceeded the scope of its powers and undermined the validity of the work of the Medical Committee. In those circumstances, the Medical Committee could not be regarded as having been able to examine all the available documents liable to be of use in its assessments. Since the Medical Committee carried out its task under improper circumstances, the reports which it had sent to the Appointing Authority at the end of its work were flawed.

Since the documents on which the Parliament had made a medical assessment were clearly linked to the applicant's illnesses, the Court found that it was not ruled out that, if the Medical Committee had been able to examine those documents, its conclusions might have been different. Since the contested decisions had been adopted on the basis of irregular reports of the Medical Committee, they were vitiated by a procedural defect such as to justify their annulment.

[1] Common rules on the insurance of officials of the European Communities against the risk of accident and of occupational disease, drawn up by agreement between the institutions of the European Union pursuant to Article 73 Staff Regulations of Officials of the European Union.

Comments :

1. The Common Insurance Rules stipulate that the institution shall define the terms of reference of the Medical Committee (Art. 22(2)) and they prescribe (Art 22 (3)): "The Medical Committee shall examine collectively all the available documents liable to be of use to it in its assessment". The judgment at hands clarifies that the Appointing Authority must not narrow the scope of documents available to the Medical Committee, but must leave it to the assessment of the insured person (or his/her representative) to decide whether a document shall form part of the file that is to be made available to the Committee. The medical usefulness of a document is not to be decided upon by the Appointing Authority.

2. Settled case law prepares this conclusion by stating that it is the task of medical experts to make definitive appraisals of all medical questions. The Committee's task of making an objective and independent assessment of medical matters requires that it has complete freedom of assessment (cf. Cases C-185/90 P, Commission/ Gill, para. 24; T-84/98, C/Council, para. 43; T-187/95, R/Commission).

3. Case law thus takes a narrow approach when determining the authority of the institution to define the terms of reference of the Medical Committee.

4. In view of this, it is in practical terms recommended to an insured person who seeks recognition of the occupational nature of his/her disease to check carefully whether the Medical Committee is in possession of the complete medical file required to take an informed decision. One should specifically make sure that all medical reports in favour of the occupational nature of the disease have actually been handed over and are available to the Medical Committee to form its opinion.