

The Administrative Tribunal,

Considering the fifth complaint filed by Mr W.M.E. H. against the European Patent Organisation (EPO) on 24 September 2002, the EPO's reply of 16 December 2002, and the complainant's letter of 2 January 2003 informing the Registrar of the Tribunal that he did not wish to file a rejoinder;

Considering Article II, paragraph 5, of the Statute of the Tribunal;

Having examined the written submissions and decided not to order hearings, for which neither party has applied;

Considering that the facts of the case and the pleadings may be summed up as follows:

A. The complainant, who suffers from a serious medical condition, and his wife underwent a spa cure in Greece from 19 September to 13 October 2000. Prior to the cure the complainant had requested approval for reimbursement of medical costs associated with the cure from Van Breda, the insurance brokers responsible for the day-to-day administration of the Collective Insurance Contract concluded by the EPO. In a letter of 6 June 2000 Van Breda informed the complainant that reimbursement of costs for his cure had been approved; however, regarding the costs of his wife's cure, Van Breda's medical adviser had determined that there were "no medical reasons" for her to take the cure and therefore her costs could not be reimbursed. The complainant appealed against this decision to the President of the Office on 3 July 2000, stating that Van Breda's decision was not in line with the wording of Article 20(b), subparagraph 4.8(b) of the Collective Insurance Contract.

The complainant's appeal was heard by the Appeals Committee on 26 April 2002. In its opinion dated 22 May, the Committee unanimously recommended rejecting the appeal. The Principal Director of Personnel informed the complainant on 17 June 2002 that the President had endorsed that recommendation. That is the impugned decision.

B. The complainant argues that Circular No. 236 of 22 November 1995, while reaffirming the general rule that medical expenses are reimbursable when they result from sickness, accident, pregnancy or confinement, clearly states that "[s]ome cure expenses can also be claimed, even if the cure is not considered medically essential". He also supports his argument by referring to Article 20(b), subparagraph 4.8(b) of the Collective Insurance Contract, which, he says, provides for the reimbursement of non-medically necessary spa cures once every five years.

He asks the Tribunal to order the payment of his wife's spa cure, plus interest from 13 October 2000. He also claims costs in the amount of 750 euros.

C. The EPO replies that it is clear from the applicable provisions that only costs of medical treatment prescribed by medically qualified persons are reimbursable. It submits that the only difference between subparagraphs 4.8(a) and 4.8(b) concerning spa cures is the "urgency of the medical necessity" for the cure and both subparagraphs require a prescription from a doctor as a prerequisite for reimbursement. However, the document that the complainant has submitted concerning his wife's cure only proves that she lives with someone suffering from a health problem, not that there was any "medical necessity" for her to take the cure. The complainant's interpretation of Circular No. 236 is flawed. Even if a cure is not considered medically essential it still must be considered medically indicated to be reimbursed.

CONSIDERATIONS

1. The complainant, who was born in 1944, was employed as an examiner by the EPO in The Hague until August 2002, when he retired on an invalidity pension.

2. Between 19 September and 13 October 2000, the complainant, who was suffering from a serious medical condition, underwent a spa cure in Greece. He was accompanied by his wife who also underwent the cure. In June 2000, prior to his undertaking the trip to Greece, the complainant had been informed by Van Breda that the costs of his treatment would be reimbursed as its medical adviser had agreed that his was a case of absolute medical necessity, but those of his wife would not.

3. By a letter dated 3 July 2000 the complainant requested the EPO to overrule Van Breda's decision refusing reimbursement of his wife's costs. He also asked that, if his request were refused, his letter be treated as an internal appeal. A few days later, his request was refused and the matter was referred to the Appeals Committee.

4. On 22 May 2002 the Appeals Committee unanimously recommended that the complainant's appeal be rejected. Its recommendation was accepted by the President of the Office and his decision, dated 17 June, was received by the complainant on 8 July 2002. It is that decision which is the subject of the complaint to the Tribunal. In his complaint, the complainant seeks reimbursement of the costs of his wife's cure, plus interest from 13 October 2000, and 750 euros for procedural costs.

5. The EPO does not dispute that the complaint is receivable, but maintains that it is without foundation.

6. Article 83(1) of the Service Regulations provides in part:

"In accordance with the Implementing Rules, a permanent employee, his spouse, his children and other dependants [...] shall be insured against expenditure incurred in case of sickness, accident, pregnancy and confinement."

7. Article 16 of the Collective Insurance Contract provides that:

"This insurance shall cover reimbursement, within the limits set out below, of expenditure incurred by insured persons in respect of medical treatment, prescribed by medically [*sic*] persons, as the result of illness, accident, pregnancy and confinement."

The term "insured persons" is defined in Article 17(c) to include family members of EPO permanent employees.

8. Article 20(b) provides that "[m]edical expenses shall be reimbursed subject to the [...] limits" then set out. So far as concerns spa cures, subparagraph 4.8 of that article provides in part:

"a) In case of absolute medical necessity and after advance agreement has been given by the Office's medical adviser, medical costs as well as costs for full board and lodging will be reimbursed [...].

b) In all other cases, medical costs may be reimbursed only once every five years [...] under the following conditions:

- medical costs: 100%;

- costs for board and lodging: a flat rate of 50% of the daily subsistence allowance (Group II) in the relevant country [...]. The rate increases to 80% for two or more persons of the same family going on cure together;

[...]"

9. The complainant argues before the Tribunal, as he did before the Appeals Committee, that his wife's expenses are to be reimbursed pursuant to subparagraph 4.8(b) of Article 20(b). That subparagraph, according to his argument, provides for the reimbursement of expenses incurred in respect of spa cures in all cases other than cases of absolute medical necessity, albeit only once every five years. He is entitled to be reimbursed for his wife's expenses, so he claims, on the basis that Dr G. certified that, as she lived permanently with a person suffering from a serious medical condition and prepared his meals, it would be "very useful" for her to have contact with other patients and their partners. Alternatively, it is advanced that the complainant is entitled to reimbursement on the basis that his wife also has a similar medical condition which was diagnosed in December 1983.

10. The complainant submitted Dr G.'s statement to Van Breda before he and his wife left for Greece to undertake the cure in question. The written diagnosis from December 1983 was submitted subsequently.

11. The complainant's argument is based on a reading of subparagraph 4.8 isolated from its context and from the structure of the Collective Insurance Contract. By its terms, Article 20(b) imposes limits on the medical expenses that are to be reimbursed. The expenses which are to be reimbursed are relevantly defined in Article 16 as "expenditure incurred [...] in respect of medical treatment, prescribed by medically [qualified] persons, as the result of illness".

12. When regard is had to the structure of the Collective Insurance Contract and the context of subparagraph 4.8(b) of Article 20(b), it follows, as the Appeals Committee held, that the costs of a spa cure can only be reimbursed under that subparagraph if the cure is prescribed by a medically qualified person in respect of an illness or other insured condition on the part of the person undertaking the cure.

13. As the spa cure in question was not prescribed by a medically qualified person in respect of an illness or other insured condition on the part of the complainant's wife, the complainant is not entitled to be reimbursed for the costs of the cure undertaken by her. Accordingly, the complaint must be dismissed.

DECISION

For the above reasons,

The complaint is dismissed.

In witness of this judgment, adopted on 9 May 2003, Mr Michel Gentot, President of the Tribunal, Mr James K. Hugessen, Vice-President, and Mrs Mary G. Gaudron, Judge, sign below, as do I, Catherine Comtet, Registrar.

Delivered in public in Geneva on 16 July 2003.

Michel Gentot

James K. Hugessen

Mary G. Gaudron

Catherine Comtet