The Administrative Tribunal,

Considering the complaint filed by Mr H.T. O. against the European Patent Organisation (EPO) on 22 July 2006 and corrected on 10 January 2007, the EPO's reply of 23 April, the complainant's rejoinder of 30 July and the Organisation's surrejoinder of 19 October 2007;

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, a German national born in 1951, joined the European Patent Office, the secretariat of the EPO, in 1989 as an examiner at grade A3. He was promoted to grade A4 in 1996.

Following the expiry of the maximum period of sick leave to which the complainant was entitled under Article 62, paragraphs 6 and 7, of the Service Regulations for Permanent Employees of the European Patent Office, a Medical Committee was convened to examine his case in accordance with Article 89, paragraph 1, thereof. He was then suffering from carpal tunnel syndrome. The Committee, which consisted of two medical practitioners, the first appointed by the President of the Office and the second by the complainant, concluded in its opinion of November 2005 that the complainant was suffering from invalidity, that his invalidity was not the result of an industrial accident or occupational disease within the meaning of Article 14, paragraph 2, of the Pension Scheme Regulations of the European Patent Office, and that there was no likelihood of an improvement in his condition which would at least allow him to perform his duties on a 50 per cent basis. By letter of 15 November the complainant was informed that he would cease to perform his duties as from 1 December 2005 and that he would receive an invalidity pension in accordance with Article 54, paragraph 2, of the Service Regulations.

In an e-mail of 1 February 2006 to the Director of Personnel Management and Systems, the complainant asserted that the medical practitioner he had appointed to the Committee had not been aware of the fact that the Office's criteria for recognising an occupational disease were not identical to those applied under German law. In support of his assertion he submitted a statement dated 5 December 2005, in which his medical practitioner acknowledged that he had not been aware that the Office's provisions on the matter differed from those applicable under German law and that if, indeed, the Office recognised a repetitive strain injury/carpal tunnel syndrome as an occupational disease, the complainant's condition should also be recognised as such. The complainant requested that his appointee be fully informed about the differences between the Office's regulations and German law and that the Medical Committee be reconvened to discuss the specific issue of whether his condition should be recognised as an occupational disease. The Committee, to which a third medical practitioner was then appointed in accordance with Article 89, paragraphs 3 and 4, of the Service Regulations, met on 19 April 2006 and unanimously concluded that the complainant's case did not involve an occupational disease within the meaning of Article 14, paragraph 2, of the Pension Scheme Regulations. That is the impugned decision.

B. The complainant contends that the question of whether his invalidity resulted from an occupational disease was decided according to German law, notwithstanding the fact that German law is not applicable to the EPO. He argues that the medical practitioner he appointed to the Committee was not informed by the Office's appointee that German law did not apply. Emphasising that his condition is considered as an occupational disease in some legal systems, he observes that the form in which the Medical Committee presented its opinion contained no reference to the applicable law. He contends that the Medical Committee's second opinion was based on the report of the third Committee member, who was clearly not well informed regarding his medical condition. He draws attention to the fact that, according to his practitioner, his condition constitutes an occupational disease.

The complainant requests that the EPO be ordered to provide a clear definition of what constitutes an occupational disease and that his case be reconsidered after such definition has been given. He also requests that he be provided with an English version of the form used by the Medical Committee for its decision and with translations of the

“relevant content of the medical file”. He claims moral damages in an amount to be determined by the Tribunal.

C. In its reply the EPO dismisses the complainant’s arguments as unfounded. It recalls that the Medical Committee unanimously concluded that the complainant’s invalidity was not service incurred after having examined whether there was a causal link between his medical condition and his incapacity to perform his duties. It rejects the view that the reference in the report of the third Committee member to the assessment of the causal link between the complainant’s medical condition and his invalidity permits the conclusion that the Committee applied German law.

Relying on the case law, according to which the Tribunal “may not replace qualified medical opinion with its own” but “does have full competence to say whether the medical findings show any material mistake or inconsistency or overlook some essential fact, or plainly misread the evidence”, the defendant argues that the complainant has not provided any evidence on the basis of which the Tribunal could review the Committee’s findings. Similarly, for lack of evidence, the EPO dismisses the allegation that the complainant’s medical practitioner considers his invalidity as service incurred. In that regard, it draws attention to the fact that the latter unreservedly signed the Committee’s opinion. Furthermore, the defendant rejects the complainant’s criticism of the form containing the Committee’s opinion. It observes that the opinion of 19 April 2006 complemented that of November 2005, which not only provided a clear account of the Committee’s findings but also specified the statutory provisions on which it was based.

The Organisation denies any responsibility for the fact that the complainant has not been provided with translations of the “relevant content of the medical file”. It argues that the complainant has at his disposal all the documents that are kept in the file at the secretariat of the Medical Committee. If he had wished to obtain translations of these documents, he should have submitted his request to the Employment Law Directorate in accordance with the Service Regulations. It invites the Tribunal to dismiss the complainant’s claim for moral damages as unfounded.

D. In his rejoinder the complainant presses his pleas. He contests the Medical Committee’s opinion as inadequately reasoned. Noting that there is no uniform approach in the legislation of the EPO member States as to whether his condition constitutes an occupational disease, he asserts that the Medical Committee ought to have indicated the legal framework and the reasons underlying its opinion. In his view, the report of the third medical practitioner is flawed, not only because it ignores leading medical opinion regarding his condition, but also because the practitioner himself is not an expert in neuropathy and is thus not familiar with the particular condition.

E. In its surrejoinder the Organisation maintains its position in full. Referring to Implementing Rule 14.2/2 to the Pension Scheme Regulations introduced in 2007, which provides a definition of occupational disease with reference to the European schedule of occupational diseases as laid down in the European Commission recommendation of 19 September 2003, it asserts that the Medical Committee’s assessment of the existence of a causal link between the complainant’s professional duties and his permanent incapacity for work is consistent with that definition. It adds that the third medical practitioner was appointed to the Committee by mutual agreement of the other two members because he was considered competent.

CONSIDERATIONS

1. The complainant impugns the decision of 19 April 2006 by which the Medical Committee concluded that his case did not involve an occupational disease within the meaning of Article 14, paragraph 2, of the Pension Scheme Regulations.

2. He contends that the Committee erroneously based its decision on German law, which does not recognise a repetitive strain injury/carpal tunnel syndrome as an occupational disease. He asserts that the Medical Committee’s findings are irrelevant because they ignore leading medical opinion concerning the effects of office work.

3. He asks the Tribunal to order the EPO to provide a clear definition of what constitutes an occupational disease and to reconvene a Medical Committee to review his case in the light of the new definition of occupational disease; to provide him with an English version of the form used by the Committee and with translations of the “relevant content of the medical file”; and to pay him moral damages in an amount it considers appropriate.

4. The EPO contends that, when examining whether the complainant’s incapacity arose from an occupational

disease, the Medical Committee considered whether there was a direct causal link between the pathology and the occupational environment in order to establish, as set out in Judgment 641, whether there was a "causal link in the legal sense, that is to say, some fairly definite connection between the cause and the effect". The Organisation argues that it cannot be concluded from the Committee's opinion that the latter based its decision on German law.

5. Even though there is no direct reference to German law in the Committee's opinion of 19 April 2006, which was signed by all three medical practitioners, it is to be assumed that that opinion was based on the reasoning of the third practitioner, who stated in his report that "[i]n order to make an appropriate assessment, and in the absence of any other criteria, reference will be made to the appropriate provisions of German social welfare legislation", and also that "[i]n the light of German social welfare legislation, there is no evidence that the carpal tunnel syndrome which occurred in the insured person has any direct relevant causal connection with his professional work". In accordance with Implementing Rule 14/2 to the Pension Scheme Regulations, the Medical Committee ought to have examined whether there was a direct causal link between the pathology and the complainant's work with reference to the rules applicable in the Office for the definition of the risks of occupational accident and disease. However, it failed to do so. The possibility that the Committee was influenced by either the absence of carpal tunnel syndrome from the list of occupational diseases recognised under German law or by the test applied under German law to establish a causal link cannot be excluded. Therefore, the case must be sent back to the Organisation to be reviewed again by a Medical Committee in accordance with the law applicable in the Office. In addition, the Tribunal orders the EPO to pay the complainant 1,000 euros in moral damages and costs in the amount of 500 euros.

DECISION

For the above reasons,

1. The impugned decision is set aside.

2. The case is sent back to the EPO for reconsideration as indicated under 5, above.

3. The EPO shall pay the complainant 1,000 euros in moral damages.

4. It shall also pay him 500 euros in costs.

5. All other claims are dismissed.

In witness of this judgment, adopted on 16 May 2008, Ms Mary G. Gaudron, Vice-President of the Tribunal, Mr Giuseppe Barbagallo, Judge, and Ms Dolores M. Hansen, Judge, sign below, as do I, Catherine Comtet, Registrar.

Delivered in public in Geneva on 9 July 2008.

Mary G. Gaudron

Giuseppe Barbagallo

Dolores M. Hansen

Catherine Comtet

Updated by SD. Approved by CC. Last update: 14 July 2008.