

**Administrative Tribunal**

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## ADMINISTRATIVE TRIBUNAL

## Judgement No. 1133

Case No. 1193: WEST

Against: The Secretary-General of the  
United Nations

## THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

Composed of Mr. Kevin Haugh, Vice-President, presiding; Mr. Spyridon Flogaitis; Ms. Jacqueline R. Scott;

Whereas at the request of Patrick Michael West, a staff member of the United Nations, the President of the Tribunal, with the agreement of the Respondent, granted an extension of the time limit for filing an application with the Tribunal until 30 November 2000;

Whereas on 3 August 2000, and on 18 and 20 January 2001, the Applicant filed applications that did not fulfil all the formal requirements of article 7 of the Rules of the Tribunal;

Whereas, on 30 May 2001, the Applicant, after making the necessary corrections, again filed an Application containing pleas which read, in part, as follows:

## “SECTION II: PLEAS

...

- (a) That as a *preliminary measure*, the Administrative Tribunal order the United Nations Resident Physician in Panama City ... to state [his medical opinion regarding the Applicant's physical and mental condition]

- (b) The [A]pplicant contests the decision by the Advisory Board on Compensation and Claims (ABCC) ... to *deny* the [A]pplicant's request for sick leave credits ...
- (c) *The [Applicant] requests that* the entire period of sick leave between 11 January 1999 to 4 May 2000, be considered service-incurred ... the time not paid by the United Nations ... should be reimbursed to the [Applicant] in cash; also, the 62.5 days of annual leave used by the [A]pplicant to partially cover the ... shortage of pay, should be re-established to the [A]pplicant ...
- (d) ... *two years of salary* be granted as ... compensation for physical, emotional and economic hardship ...
- (e) ... *the [A]pplicant also requests that an additional one year of compensation be awarded for his wife and children*, to be distributed in equal shares amongst them, to ... compensate ... for ... inordinately high level of emotional suffering ...
- (f) ...

The decision of the new Medical Director ... [not to consider the four months' delay in convening a medical board] is also contested [as the period between 23 July and 18 November 2000] should have ... been considered ... a consequence of a service incurred [injury] or illness ... which the Applicant prays the [Administrative Tribunal] ... to have restored to the Applicant in cash ...

The Applicant also prays the Administrative Tribunal to award an additional one-year compensation ... for the mis-treatment and abuse he was subjected to ... Similarly, the Applicant requests *an additional one-year compensation* for the tricks played by OHRM ...when failing to ... advise the Applicant of the risk of abandonment of post if exiting the duty station ... as well as for not advising the Applicant of the status of his disability rejection ..."

Whereas at the request of the Respondent, the President of the Tribunal granted an extension of the time limit for filing a Respondent's answer until 31 October 2001 and twice thereafter until 31 March 2002;

Whereas the Respondent filed his Answer on 20 March 2002;

Whereas, on 26 July 2002, the Applicant filed Written Observations amending his pleas as follows:

"... I make one more PLEA to the [Administrative Tribunal]: To grant a permanent disability pension ..."

Whereas on 28 August 2002, the Applicant submitted an additional communication;

Whereas the Respondent commented on the Applicant's Written Observations on 15 November 2002;

Whereas the Applicant withdrew his additional plea and commented on the Respondent's comments on 6 December 2002 and the Respondent commented thereon on 15 January 2003;

Whereas, at the request of the Respondent, the Tribunal decided to postpone consideration of this case until its summer session;

Whereas, on 22 July 2003, the Tribunal decided not to hold oral proceedings in the case;

Whereas the facts in the case are as follows:

The Applicant joined the Organization as an Associate Auditor on a probationary appointment at the P-2 level in the Internal Audit Division, Department of Administration and Management, on 20 July 1990. Effective 1 July 1992, the Applicant was granted a permanent appointment. At the time of the events which gave rise to the present Application, the Applicant was serving as an Auditor in the Audit and Management Consulting Division, Office of Internal Oversight Services (AMCD/OIOS) at the P-3 level.

On 21 February 1991, while on mission in Belize, the Applicant was involved in a car accident, a result of which he sustained multiple injuries. The doctor who examined him after the accident reported that the Applicant had "sustained multiple contusions, specially to the right shoulder, upper back, rib cage and neck..." The Applicant took 24 days of sick leave immediately following the accident and additional 6.5 days of sick leave during the rest of 1991.

Subsequent to the accident, the Applicant submitted to the Advisory Board on Compensation Claims (ABCC) a claim for compensation under Appendix D, for the multiple injuries sustained in the accident. The ABCC considered the Applicant's case on 23 May 1991 and, on 3 June, submitted its recommendation that the Applicant's injuries "be considered as attributable to the performance of official duties on behalf of the United Nations...". The Secretary-General adopted the ABCC's recommendation the following day.

On 19 April 1991, the Applicant was examined by a neurologist, who, in his report, stated that the Applicant “indicate[d] that he fractured his T6 vertebra and also sustained injuries to his lumbar area and right shoulder.” The Applicant was diagnosed with “post-traumatic stress” syndrome, resulting from the accident.

Following referral by the Medical Services Division (MSD), on 1 July 1992, the Applicant was examined by an orthopedic surgeon, who noted that the Applicant had sustained “multiple injuries at the time [of the accident], including a T6 compression fracture of his vertebra”.

During the period 1991 through 1998, the Applicant underwent physical therapy and chiropractic treatment. In a report of 31 January 1992, the Applicant's chiropractor diagnosed him with “cervical sprain strain, thoracic sprain strain, lumbosacral sprain strain and lumbosacral anomaly pseudoarthrosis.” The Applicant took numerous days of sick leave and provided numerous certificates for his absence during this period, two of which, dated 29 July 1994 and 7 March 1995 noted the reason for his absence/ treatment as “lower back problems” and “lumbar sprain/strain”, respectively. From 11 January 1999, the Applicant went on extended sick leave.

On 30 June 1999, the Applicant wrote to the Secretary, ABCC, stating that he had been on extended sick leave since 11 January due to the continuous worsening of his back condition, resulting from the 1991 service-incurred accident, and requesting special sick leave credit in accordance with Article 18(a) of Appendix D.

On 2 July 1999, the Secretary, ABCC, requested MSD to review the Applicant's case and advise if the sick leave from 11 January 1999 could be considered as being directly related to the service-incurred injuries. MSD responded on 6 August, indicating that “it appears that the present sick leave period is secondary to illness related to the accident of February 1991”.

On 1 September 1999, the Applicant was informed that, effective 19 April 1999 he had exhausted his 195 days of fully paid sick leave. In order to keep him on full pay status, his annual leave would have to be combined with his sick leave at half pay. The Applicant was further informed that, once his annual leave was exhausted, he would be placed on sick leave with half pay and that it was projected that this would be exhausted as of 31 January 2000. The Applicant subsequently approved the use of his annual leave.

On 4 November 1999, the Secretary, ABCC, informed MSD that on 30 September, the ABCC had recommended that the Applicant's request for special sick leave credit be granted (half days only), for a number of days to be determined by MSD.

On 24 November 1999, the Applicant was informed that MSD had determined that he was incapacitated for further service and had recommended to the United Nations Joint Staff Pension Board (UNJSPB) that he be considered for disability benefit.

On 17 February 2000, MSD informed the Secretary, ABCC, that, upon review of the Applicant's medical file,

“no sick leave related to the injury considered under Appendix D is noticed from 1995 through January 1999. From 11 January 1999 on, we have medical certificates indicating that [the Applicant] suffers from lower back pain...”

MSD concluded that

“considering the fact that [the Applicant] has no sick leave record related to the 1991 accident for several years until January 1999, it is difficult to state that the present symptoms experienced by [the Applicant] since January 1999 are solely the result of his accident of 1991. More likely it is the result of a combination of factors including his underlying psychiatric condition. This psychiatric condition pre-existed the accident of February 1991 as indicated in April 1991 by ... [the] neurologist”.

MSD, therefore, recommended a special sick leave credit for half of the total sick leave period requested by the Applicant.

Also on 17 February 2000, MSD wrote to the Applicant, requesting that he provide them with updated medical reports before the end of March.

On 18 February 2000, the Applicant was informed that, since he had exhausted his sick leave with half-pay as of 31 January 2000, and in accordance with the provisions of ST/AI/1999/12 of 8 November 1999, entitled “Family leave, sick leave and maternity leave”, his salary would be withheld as of February 2000 and he would be on special leave without pay pending the outcome of his claim from ABCC. On 29 February the Applicant contested this decision, stating that there was a delay, due to no fault of his, in medical determination concerning his incapacity for further service and, therefore, consistent with section 8.2 of ST/AI/1999/12, he should be placed on special leave with half pay. In response, the Applicant was informed that “the decision to withhold [the

Applicant's] salary temporarily was meant to encourage [the Applicant] to respond to MSD's letter ...” The Applicant responded, stating, inter alia:

“Your letter to [the Applicant] of 18 February was actually received almost simultaneously with the request from the medical Service Division. This did not even give [the Applicant] time to contact [the] doctors before being faced with a complete removal from the United Nations Payroll, in contradiction to the above mentioned Administrative Instruction. Nowhere in your letter was there any indication that this serious hardship was meant to be a temporary measure.”

Subsequently, the Applicant was placed on special leave with half pay, in accordance with section 8.2 of ST/AI/1999/12, effective 4 February 2000.

On 22 March 2000, the Applicant, referring to MSD's memorandum of 17 February, submitted copies of medical certificates, concerning visits to Chiropractic doctors during 1995, 1997 and 1998.

On 23 March 2000, the ABCC considered the Applicant's claim for special sick leave credit. Its recommendation reads, in part, as follows:

“

...

*Noting* ... that [the Applicant] had taken 24 days of sick leave immediately following the accident and another 6.5 days during the rest of 1991 and having considered the following advice of the Medical Officer: (a) that the 24 days would have been directly related to the accident; (b) that the other 6.5 days could also have been related to the accident; and (c) that in regard to sick leave taken in subsequent years, there was no medical evidence that [the Applicant] suffered chronic pain between 1992 and 1999; rather that sick leave could have been related to a non-service incurred condition;

...

*“Recommends* to the Secretary-General that [the Applicant] be granted special sick leave credit for the 30.5 days which were taken in 1991, as being directly related to the service-incurred injuries which were sustained on 21 February 1991, under article 18 (a) of Appendix D to the Staff Rules.”

On 25 April 2000, the Secretary-General adopted the ABCC's recommendation.

On 9 June 2000, the Applicant was informed that, on 4 May, the Staff Pension Committee had denied the request to award him disability benefit.

On 13 June 2000, the Secretary, ABCC, informed the Applicant that, having reviewed an additional medical report, submitted by the Applicant's neurologist, MSD determined that the problems mentioned in that report were not related to the injury suffered in 1991. Consequently, no further action could be taken on his claim for compensation.

On 30 June 2000, MSD informed OHRM that the Applicant was examined and was found fit to return to work. On the same day, the Applicant wrote to the Secretary-General, disputing this determination and requesting that a medical board to be convened in accordance with staff rule 106.2 (j) and (k).

On 13 July 2000, OHRM requested the Applicant to return to work, no later than 24 July 2000. The Applicant was advised that his special leave at half pay would continue, "on compassionate grounds" through 21 July. The Applicant responded on 18 July, informing that he was unable to return to work due to his back condition and stating that this condition had not improved since November 1999, when MSD determined his incapacity for service. The Applicant reiterated his requested for a determination by a medical board.

On 19 July 2000, the Applicant was informed that, since he had exhausted all paid leave entitlements, should he not return to work on 24 July, he would be placed on special leave without pay as of that date. He was further informed that, if the Medical Board would determine that he was incapacitated for active duty, he would be retroactively reinstated on half-pay status while his case was re-considered by the Staff Pension Committee.

Also on 19 July 2000, OHRM requested MSD to expedite the constitution of the Medical Board, in order to avoid undue financial hardship for the Applicant.

The Applicant did not report to duty on 24 July 2000 and, consequently, he was placed on special leave without pay.

On 28 November 2000, MSD informed OHRM that the Medical Board, convened on 14 November 2000, had unanimously decided that the Applicant was not totally disabled and that they had found no medical cause for his symptoms. The Board suggested that the Applicant be encouraged to return to work as soon as possible. The Applicant was informed of the Board's decision on 1 December and he was requested to return to work no later than 18 December 2000.

On 11 December 2000, MSD informed OHRM that the period from 22 July to 18 December 2000 could not be considered certified sick leave.

On 18 December 2000, the Applicant reported back to work.

On 30 May 2001, the Applicant filed the above-referenced Application with the Tribunal.

On 29 November 2002, the Applicant was informed that the Staff Pension Committee had determined that he was incapacitated for further service and therefore entitled to a disability benefit. The Applicant separated from service on 6 December 2002.

Whereas the Applicant's principal contentions are:

1. The ABCC's decision was based on erroneous determinations by the MSD. The entire period, from 11 January 1999 to 4 May 2000, should be considered as special sick leave, the result of the service-incurred injuries.
2. The Applicant did not have any pre-existing mental problems prior to joining the Organization.
3. The Applicant's rights were violated; he suffered ethnical bias and discrimination.
4. The Applicant suffered injuries to both the lower and upper spine as a result of the 1991 accident.
5. The Applicant suffered financial hardship as a consequence of the Administration's actions.

Whereas the Respondent's principal contentions are:

1. The Applicant's request to the Tribunal to order the United Nations Resident Physician in Panama City to provide opinions on the Applicant's medical conditions should be denied.
2. The Secretary-General's decision granting to the Applicant 30.5 days of special sick leave credit for the sick leave taken in 1991 but denying special sick leave credit for the sick leave taken in subsequent years was properly made, based on the medical reports submitted and other relevant documentation and facts. The Applicant's challenge to the denial of special sick leave credit for



the sick leave taken after 1991 should have been referred to a medical board under Article 17 of Appendix D.

3. The Secretary-General's decision of 25 April 2000 was not tainted by improper motive, abuse of discretion or other extraneous factors. In respect of the extended sick leave and special leave taken by the Applicant commencing on 11 January 1999, the Applicant was granted more than his entitlement under the Staff Regulations and Rules.

4. There were no significant delays in the Applicant's case.

5. The Applicant's plea requesting that he be granted a permanent disability benefit is not receivable.

The Tribunal, having deliberated from 7 to 25 July 2003, now pronounces the following Judgement:

I. The Applicant appeals decisions by the Respondent denying him sick leave credits for the period from 11 January 1999 to 4 May 2000 and from 22 July to 18 December 2000. Related to those claims, he also seeks repayment for the days of annual leave he used to keep him in full-pay status when he was in half-pay status. The Applicant also contests the decision by the Respondent to put him on special leave without pay ("SLWOP") from 22 July 2000.

The Applicant alleges, in support of his claim, that the sick leave he took was occasioned by back problems caused by a service-related accident that took place on 21 February 1991. The Applicant further alleges that the back problems created a permanent injury and were the cause of his permanent disability and inability to work.

II. The Tribunal first addresses the Applicant's claim that the Respondent should have granted him special sick leave credit for sick leave taken by him from 11 January 1999 through 4 May 2000. The Tribunal, having no medical competence, will not seek to substitute its subjective judgment for the judgment of the administrative bodies charged with making medical decisions. The Tribunal, however, can determine whether sufficient evidence exists to support the conclusions reached by those administrative bodies. If sufficient evidence does not exist, the Tribunal is obligated to set aside any decision made by such

decisionmakers. (See Judgements No. 587, *Davidson* (1993), and No. 1078, *Bakr* (2002).) Thus, the Tribunal must first consider whether the Respondent's denial of special sick leave credits for the period of 11 January 1999 to 4 May 2000 is reasonably supported by the evidence.

III. On 23 May 1991, the ABCC initially determined that the Applicant's injuries, suffered as a result of the 21 February 1991 car accident, were "attributable to the performance of official duties on behalf of the United Nations", and the Respondent reimbursed the Applicant for medical expenses incurred as a result of that accident. Thereafter, when the Applicant took sick leave because of pain in his back, which he alleged was caused by the 1991 accident, the ABCC determined that such sick leave was not attributable to the 1991 accident. The ABCC concluded that "there was no medical evidence that the [Applicant] suffered chronic pain between 1992 and 1999; rather that sick leave could have been related to a non-service incurred condition".

The Tribunal finds that the ABCC's conclusion is not supported by the evidence. The Respondent contends that the lower back pain for which the Applicant sought sick leave, sick leave credits and disability was not attributable to his 1991 accident. The Respondent relied on the MSD, which concluded that the Applicant's pain in his lower back was not related to the service-incurred injury, which was to the upper back. The Respondent, however, ignores the evidence. In every medical report, other than the initial one prepared by the doctor who examined the Applicant immediately after the accident, injury of some sort is indicated to the lumbar or lumbarsacral area, *i.e.*, the lower back. This is the same area of the back for which the Applicant claims he sought treatment from 1991 through 2000 and which is the subject of the Applicant's Application. In reaching its decision, the ABCC also relied on an inaccurate factual premise -- that the Applicant "ha[d] no sick leave record related to the 1991 accident for several years until January 1999". In fact, the Applicant had many days of sick leave from 1992 through 1999, during which he was treated by a chiropractor or other medical practitioner. The Applicant obtained certificates of sick leave for many of those days, and at least three of those, for years prior to 1999, stated that the Applicant was being treated specifically for the "low back" pain or "lumbar" pain upon which the Applicant's case is now based.

IV. The Tribunal further finds that the ABCC's conclusion, that the cause of the Applicant's back symptoms were the "result of a combination of factors including his underlying psychiatric condition", is, again, not supported by the evidence. In reaching this conclusion, the Respondent relies on a report prepared by a neurologist in April 1991. Apparently, the Applicant consulted with the neurologist, because after his 21 February 1991 accident, he was experiencing mood swings, agitation, irritability, restlessness and nervousness, and he wanted to rule out any neurological problem. In that report, the neurologist noted the Applicant's medical history, which included "psych counselling in the past". The report further concluded:

"[The Applicant's] neurological examination appears to be within normal limits. It appears that many of the personality and mood problems which [the Applicant] is experiencing reflect a possible aggravation of his pre-existing personality. In addition, there is a good possibility that he is experiencing a 'survivor's syndrome'. ... he should obtain psychiatric follow-up."

The neurologist's report, on its face, should have caused the ABCC to examine more closely the facts upon which it based its decision, given that a neurologist is generally not competent to provide psychiatric advice, as it is outside the scope of his expertise. Contrary to the interpretation given to that report by the ABCC, the neurologist did not conclude that the Applicant's symptoms were caused by a psychological condition pre-dating the 21 February 1991 accident. Instead, the neurologist observed that the Applicant was neurologically normal and that personality changes about which the Applicant complained might be merely an aggravation of the Applicant's pre-existing personality. In other words, because of the accident, innate qualities in the Applicant's normal personality were exaggerated. The neurologist concluded his report by suggesting that the Applicant consult with a psychiatrist, because he felt that the Applicant suffered from a "survivor's syndrome", a post-accident condition. Thus, the ABCC's conclusion, and the Respondent's reliance thereon, that the Applicant's symptoms were most likely caused by the Applicant's "underlying psychiatric condition" that "pre-existed the accident of 21 February 1991" is an erroneous conclusion not reasonably supported by the facts, including the neurologist's report, which appears to have been relied upon by the ABCC in reaching its conclusions. The Tribunal also notes the conclusions reached by the

Senior Medical Officer, Medical Services Division, OHRM, in her letter dated 6 August 1999, regarding whether the Applicant's back injury was attributable to the 1991 accident, who stated that "it appears that the present sick leave period is secondary to illness related to the accident of February 1991". The ABCC's decision to the contrary was improper.

V. Finally, the United Nations Staff Pension Committee has determined that the Applicant is "incapacitated for further service". The United States Social Security Administration has also determined that the Applicant is disabled and has awarded him benefits accordingly. The Tribunal notes that in order to be disabled for purposes of Social Security, the Applicant must have an "inability to engage in any substantial gainful activity."

The Tribunal finds that the Respondent's decision to deny special sick leave credits to the Applicant for the requested period was not supported by the evidence, and that the Applicant should have received special sick leave credits for the period from 11 January 1999 to 4 May 2000. The Tribunal's finding is in keeping with Article 18 (a) of Appendix D, which states that

"in any case where hardship is subsequently occasioned by the prior use of sick leave as the result of injury or illness attributable to service, a special sick leave credit may be granted, if and as required in the individual case, equal in whole or in part to the authorized sick leave previously so utilized".

The Tribunal is persuaded by the Applicant's evidence that he indeed suffered hardship "subsequently occasioned by the prior use of [his] sick leave as the result of injury or illness attributable to service." The Tribunal finds that granting special sick leave credits equal to the authorized sick leave he previously utilized should have been, based on the evidence, "required" in the Applicant's individual case, given the erroneous factual premises upon which the Respondent denied the credits. The Respondent's failure to grant such credits under the circumstances and in light of the evidence was an abuse of discretion.

VI. The Tribunal also finds that the Respondent did not follow his own procedures and, therefore, denied the Applicant's rights to due process when he

improperly placed the Applicant on SLWOP, in violation of paragraph 8.2 of ST/AI/1999/12. Paragraph 8.2 provides that:

“When a staff member has used all of his or her entitlement to sick leave with full pay, the executive or local personnel office shall bring the situation to the attention of the Medical Director or designated medical officer in order to determine whether that staff member should be considered for a disability benefit under article 33 (a) of the Regulations of the United Nations Joint Staff Pension Fund while the staff member is on sick leave with half pay. When the staff member is being considered for such a benefit and paid leave entitlements have been exhausted because of delay in the medical determination of the staff member’s incapacity for further service or in the decision by the United Nations Staff Pension Committee whether to award a disability benefit, the staff member shall be placed on special leave with half pay until the date of such decision.

The Tribunal finds inappropriate the Respondent’s use of the medical review process to browbeat the Applicant and to deny him benefits to which he was entitled. On 17 February 2000, the Respondent sent a letter to the Applicant asking that he be medically evaluated and that he provide the reports of such medical evaluation “before the end of March”. The very next day, on 18 February 2000, without giving the Applicant any time to respond to the request in the 17 February letter, the Respondent placed the Applicant on SLWOP, pending the outcome of the ABCC’s determination regarding the Applicant’s claim for compensation under Appendix D. When the Applicant challenged the propriety of the Respondent’s action, alleging a violation of ST/AI/1999/3 (now, ST/AT/1999/12), the Respondent conceded that the Applicant was placed on SLWOP erroneously, and the Respondent reinstated retroactively the Applicant on the payroll. In explanation, the Respondent admitted that he had stopped paying the Applicant his salary “temporarily” in an effort to “encourage the [Applicant] to respond to the MSD”. The Respondent’s statement that he had “temporarily” withheld the Applicant’s salary, however, was not only inaccurate but disingenuous. The language of the 18 February letter makes clear that the withholding was not temporary, but was to continue indefinitely, until the ABCC reached a decision. If the ABCC determined that the Applicant was so entitled, he would be reimbursed for half-pay. Notwithstanding that the Respondent, by the very terms of his 17 February request, allowed the Applicant until the end of March to respond, the Respondent did not even allow enough time for the

Applicant to have received this request before removing the Applicant from the payroll at half-pay and putting him in a position where he received no pay at all. The Tribunal finds that the Respondent's improper withholding of half-pay was an abuse of discretion, as well as a procedural violation, that violated the Applicant's rights to due process.

VII. With respect to the Applicant's claim for the period 22 July 2000 to 18 December 2000, the Tribunal finds, in accordance with paragraph 8.2 of ST/AT/1999/12, that the Applicant was entitled, at a minimum, to be placed on special leave with half pay until 28 November 2000, the date on which a determination was made by the Medical Board that the Applicant was not totally disabled. In addition, the Tribunal finds that MSD's conclusion, that the period from 22 July to 18 December 2000 "cannot be considered as certified sick leave" was erroneous for the reasons set forth above. Had the Applicant been granted special sick leave credits, as he requested, for the period from 11 January 1999 to 4 May 2000, he would undoubtedly have had ample sick days available for the period 22 July to 18 December 2000, the date on which he returned to work.

VIII. Having found that the Respondent should have granted to the Applicant sick leave credits for the period 11 January 1999 to 4 May 2000, the Tribunal finds that the use of the Applicant's annual leave to make up the shortfall arising from his being placed on sick leave with half pay, was improper. Therefore, the Tribunal finds that the Applicant should be credited with 62.5 days of annual leave.

IX. Finally, with respect to the Applicant's additional "Plea G", requesting the Tribunal to award to him a disability pension, the Tribunal notes that the Applicant has withdrawn this plea, as he has been awarded a disability pension from the United Nations Staff Pension Committee (UNSPC). The Tribunal further notes that the award by the UNSPC was consistent with the initial conclusion of the MSD, by its Senior Medical Officer, who stated on 12 November 1999 that MSD was "recommending [the Applicant] for a disability benefit".

X. For the foregoing reasons, the Tribunal:

1. Orders the Respondent to credit the Applicant with sick leave credits for the period 11 January 1999 to 4 May 2000;
2. Orders the Respondent to pay the Applicant his full pay and entitlements for the period 22 July to 18 December 2000;
3. Orders that the Applicant be credited with 62.5 days of annual leave;
4. Orders the Respondent to pay to the Applicant the sum of \$15,000 as compensation for the violations of his due process rights and for the abuse of discretion of the Respondent; and
5. Rejects all other pleas.

(Signatures)

**Kevin Haugh**  
Vice-President, presiding

**Spyridon Flogaitis**  
Member

**Jacqueline R. Scott**  
Member

Geneva, 25 July 2003

**Maritza Struyvenberg**  
Executive Secretary

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