



## **Intro u t on**

1. By application filed on 8 April 2015, the Applicant contests the “reconsideration by the Secretary-General of [her] disability benefit claim”.

## **F ts**

2. The Applicant entered the service of the United Nations Office on Drugs and Crime (“UNODC”) in Bangkok, Thailand, in April 2002. She was laterally re-assigned to the UNODC Office in Phnom Penh, Cambodia, in 2010, where she worked as an Associate Advisor (HIV/AIDS).

3. In 2008, the Applicant was four months on full time sick leave and four

9. On 30 May 2013, the Applicant reverted to JMS and, on 31 May 2013, JMS answered , amongst other things, as follows:

Dear Ms Bezziccheri, I am copying Ms. [L.] in [Human Resources] of UNODC on to this mail. Thank you for letting me know that you are in Rome, as this was not clear before. As soon as we receive your medical report we can then approve retroactively Sick Leave during Annual Leave after reviewing the documents provided.

10. On 17 June 2013, the Applicant replied to JMS. She attached a diagnosis certificate from Prof. P., a receipt for nine sessions of physiotherapy, and a recommendation to stay to undertake rheumatologic exams. In this email she also included the translation of a certificate from Prof. M., Neurosurgeon.

11. On 18 June 2013, JMS replied to the Applicant that they would inform her about how much sick leave could be converted retroactively upon receipt of her final report.

12. On 19 June 2013, the Applicant responded, noting that she would report once all scheduled tests and exams were completed and analysed by her physician. On the same date, JMS informed the Applicant that it would grant her sick leave for her medical condition for a period equal to the one she would have had if she were at her duty station.

13. On 25 June 2013, the Applicant was hospitalized at Santo Spirito Hospital, Rheumatology Department.

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16. On 16 July 2013, JMS replied to the Applicant, requesting that she send a final report from her treating doctor, with as much detail as possible, concerning investigations and therapies undertaken, to enable the Administration to certify her sick leave. JMS noted that the Administration would inform her about how

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28. By email of 19 December 2013 to the Applicant, a Medical Officer, JMS stated:

I would suggest that you ask your treating doctor in Italy to write us a very comprehensive report in English, including diagnosis, all the treatments you underwent during your stay in Italy with exact dates.

Regarding your suggestion of expediting your request for disability benefit, allow me to just summarize the next steps.

First we have to establish the retroactive conversion of Annual Leave into Sick Leave, based on the documentation provided.

So far I do not have enough information suggestive of disability and am unable to make a judgment on your state of health and prognosis.

Once we have a clearer picture, we might need to involve an independent specialist for an assessment.

Only then we can eventually decide whether we can present your case in UN New York, who will then make a decision.

29. The Applicant's post was abolished and her fixed-term appointment was allowed to expire on 31 December 2013, the date of her separation from serYi-cm,hb8bdIY5Y,-hoh8"c,Y"85



**38. By email of 29 December 2014, a Human Resources Officer, Staff Administration Unit, HRMS, UNOV/UNODC, informed the Applicant of the**

“normal”, he did not recommend the Applicant for consideration for a disability benefit by the UNSPC.

44. By email of 12 January 2015, a Legal Assistant, HRMS, UNOV/UNODC, also confirmed to the Applicant that she should file a request for management evaluation with the Management Evaluation Unit (“MEU”). She further noted that it was UNODC understanding that the Applicant had initiated a request before the UNJSPF for consideration for a disability benefit, as no such request had been filed by the Organization, and that the Applicant might seek clarification directly from the UNJSPF with respect to the Fund’s procedures.

45. On 25 January 2015, the Applicant filed a request for management evaluation of the decision by the Deputy Medical Director, MSD, NY, to reject her request for disability benefit and not to recommend her for review by the UNSPC.

46. On 13 February 2015, the Applicant was informed that prior to her



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member shall comply promptly with any direction or request under this rule.

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o s o n s r t n t o s

(j) Where further sick leave is refused or the unused portion of sick leave is withdrawn because the Secretary-General is satisfied that the staff member is able to return to duty and the staff member disputes the decision, the matter shall be referred, at the staff member's request, to an independent practitioner acceptable to both the United Nations Medical Director and the staff member or to a medical board (emphasis added).

(k) The medical board shall be composed of:

(i) A medical practitioner selected by the staff member;



On a disability benefit

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illness constituting an impairment to health which is likely to be permanent or of long duration.

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**DETERMINATION OF INCAPACITY AND INABILITY TO ENGAGE IN GAINFUL EMPLOYMENT**

**D s u t B n t r t**

H.3 A request for a determination by the staff pension committee under article 33(a) of the Regulations shall be made by the organization:

(a) Whenever during, or on the expiry of, the appointment of a participant there is reason to believe that he or she may be incapacitated within the meaning of article 33(a).

59. Indeed, the questions to be answered by the “independent medical assessment”, as conveyed to Dr. P. by JMS (cf. para. 30 above), read as follows:

1. Did the medical condition of [the Applicant] require treatment outside the duty station and, if so for which diagnosis (ICD10) and for what period of time is the retroactive conversion of Annual Leave into Sick Leave medically justified?
2. What is [the Applicant’s] functional ability to work?
3. What is the prognosis of her medical condition?

60. The Tribunal further takes note of the Respondent’s submission that the IME, in the present case, was called for under staff rule 6.2(j) quoted above.

61. Staff rule 6.2(j) clearly provides for a referral to an independent practitioner or to a medical board subject to two conditions, namely:

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67. The confusion was aggravated by Dr. P.'s terms of reference showing that the Administration, with no bad intention, conflated two procedures that are normally to be dealt with separately and consecutively, namely the procedure to determine a staff member's sick leave status and the eligibility to be submitted to the UNSPC for consideration for a disability benefit. Indeed, it is undisputed that the certification of a staff member's sick leave (and exhaustion of her sick leave entitlements) is a precondition to review that staff member's case for the purpose of submission for consideration for a disability benefit.

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72. Rather, he limited himself to examine whether her condition required treatment outside the duty station. In this respect, while finding that the Applicant's condition did not require treatment outside her duty station, he referred to the latter, in his report, as being Thailand instead of Cambodia (i.e., Phnom Phen). Dr. P. confirmed in his evidence before the Tribunal that he had no knowledge about the availability of the relevant treatment in Cambodia.

Institution of required procedure under art. 10.4 of the Statute

73. It follows from the foregoing, that all procedures leading to the decision with respect to the Applicant's sick leave status, and ultimately to the decision not to submit her case to the UNSPC, need to be repeated. Since Dr. P.'s terms of reference were procedurally unsound, it would be incautious, for the Administration, to rely on his report for the purpose of correcting the procedure. In other words, in making a determination of the Applicant's sic

