ADMINISTRATIVE TRIBUNAL OF THE INTERNATIONAL MONETARY FUND

JUDGMENT No. 2007-6

Ms. "CC", Applicant v. International Monetary Fund, Respondent

Introduction

1. On November 14 and 15, 2007, the Administrative Tribunal of the International Monetary Fund, composed of Judge Stephen M. Schwebel, President, and Judges Nisuke Ando and Michel Gentot, Associate Judges, met to adjudge the case brought against the International Monetary Fund by Ms. "CC", a former staff member of the Fund.

2. Ms. "CC" contests the decision of the Administration Committee of the Staff Retirement Plan ("SRP" or "Plan") denying her application for disability retirement. The Administration Committee concluded that Applicant had failed to establish, as required by the terms of the Plan, that she is totally and permanently incapacitated for any duty that the Fund might reasonably ask her to perform. Applicant additionally contends that the Administration Committee's decision was not taken in accordance with fair and reasonable procedures, and was arbitrary, capricious and improperly motivated.

3. Respondent, for its part, maintains that the decision of the SRP Administration Committee should be sustained on the grounds that the Committee properly applied the criteria for disability retirement and afforded Applicant due process in the consideration of her request.

The Procedure

4. On July 19, 2006, Ms. "CC" filed an Application with the Administrative Tribunal.[1] The Application was transmitted to Respondent on the next day. On July 21, 2006, pursuant to Rule IV, para. (f),[2] the Registrar circulated within the Fund a notice summarizing the issues raised in the Application. On September 5, 2006, Respondent filed its Answer.

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[1] The Tribunal, following consideration of the parties' views on the matter, had denied Applicant's earlier request for a waiver of the time limit for filing the Application, prescribed in Article VI, Section 1 of the Statute of the Administrative Tribunal, on the ground that Applicant had not established "exceptional circumstances" as required by Article VI, Section 3.

[2] Rule IV, para. (f) provides:

> "Under the authority of the President, the Registrar of the Tribunal shall:
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> …
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> (f) upon the transmittal of an application to the Fund, unless the President decides otherwise, circulate within the Fund a notice summarizing the issues raised in the application, without disclosing the name of the

(continued)

5. On October 16, 2006, Applicant submitted her Reply.[3] Pursuant to Rule IX, para. 4 of the Tribunal's Rules of Procedure, the Registrar advised Applicant that her Reply did not fulfill the requirements of paras. 2 and 5 of that Rule.[4] The Reply, having been brought into compliance within the indicated period, is considered filed on the original date. The Fund's Rejoinder was filed on December 1, 2006.

Request for Anonymity

6. In her Application, Ms. "CC" has requested anonymity pursuant to Rule VII, para. 2(j)[5] and Rule XXII,[6] and the Fund has presented its views in accordance with Rule VIII, para. 5[7] and

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> Applicant, in order to inform the Fund community of proceedings pending before the Tribunal; ..."

[3] The President, pursuant to Rule IX, para. 1, had granted Applicant's request for an extension of time to file the Reply.

[4] Rule IX provides in pertinent part:

> "*Reply*
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> 1. The Applicant may file with the Registrar a reply to the answer within thirty days from the date on which the answer is received by him, unless, upon request, the President sets another time limit.
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> 2. The complete text of any document referred to in the reply shall be attached in accordance with the rules established for the application in Rule VII, unless the document has been attached to an earlier pleading in which case reference should be made to the attachment number.
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> ...
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> 4. Upon ascertaining that the formal requirements of this Rule have been met, the Registrar shall transmit a copy of the Applicant's reply to the Fund. If these requirements have not been met, Rule VII, Paragraph 6 shall apply *mutatis mutandis* to the reply.
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> 5. If the Applicant seeks costs pursuant to Article XIV, Section 4 of the Statute, the amount and any supporting documentation shall be included.
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> ...."

[5] Rule VII, para. 2(j) provides:

> "An application instituting proceedings shall be submitted to the Tribunal through the Registrar. Each application shall contain:
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> …
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> (j) any request for anonymity as provided by Rule XXII below."

[6] Rule XXII provides:

(continued)

Rule XXII. Applicant seeks anonymity in view of the "sensitive nature" of her medical condition and the facts of the case. Respondent asserts that it has no objection to Applicant's request.

7. The Tribunal concludes that good cause has been shown for protecting the privacy of Ms. "CC", as her case involves matters both of health and of alleged misconduct. *See* Ms. "AA", Applicant v. International Monetary Fund, Respondent (Admissibility of the Application), Judgment No. 2006-5 (November 27, 2006), para. 14; Ms. "BB", Applicant v. International Monetary Fund, Respondent, Judgment No. 2007-4 (May 23, 2007), para. 20.

8. Additionally, Ms. "CC" has requested that the Tribunal treat as "strictly confidential," facts relating to an incident of September 2003, which, as detailed below, became the subject of misconduct proceedings pursuant to GAO No. 33 (Conduct of Staff Members) (May 1, 1989) and ultimately led to Applicant's separation from the Fund. Applicant asserts:

> "It must be emphasized that Applicant's request for disability is based solely on her medical condition and not on the incident [in September 2003]. The history of the incident was to be held in strictest confidence and that confidentiality needs to be respected. The incident does, however, shed light on Applicant's psychological frailty and the fact that the Respondent had a legitimate concern about Applicant's fitness for continued service."

As evidenced by the above statement, Applicant has made allegations relating to the circumstances of her separation from the Fund and the relationship between that separation and

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"Anonymity

> 1. In accordance with Rule VII, Paragraph 2(j), an Applicant may request in his application that his name not be made public by the Tribunal.
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> 2. In accordance with Rule VIII, Paragraph 6, the Fund may request in its answer that the name of any other individual not be made public by the Tribunal. An intervenor may request anonymity in his application for intervention.
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> 3. In accordance with Rule VIII, Paragraph 5, and Rule IX, Paragraph 6, the parties shall be given an opportunity to present their views to the Tribunal in response to a request for anonymity."
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> 4. The Tribunal shall grant a request for anonymity where good cause has been shown for protecting the privacy of an individual."

[7] Rule VIII, para 5 provides:

> "The Fund shall include in the answer its views on any requests for production of documents, oral proceedings, or anonymity that the Applicant has included in the application."

her health. Accordingly, while the factual elements of the alleged misconduct will not be described in this Judgment, the circumstances of Ms. "CC"'s separation from service will be included in the facts of the case insofar as they are relevant to the consideration of the issues.

9. The Tribunal decided that oral proceedings, which neither party had requested, would not be held, as they were not deemed useful to the disposition of the case.[8] The Tribunal had the benefit of the documentation of the proceedings in the SRP Administration Committee, including voluminous medical records, minutes of the Committee's meetings on Applicant's initial application for disability retirement and her application for review, as well as the Committee's report of April 17, 2006. Additional medical records have also been made part of the record before the Administrative Tribunal.

The Factual Background of the Case

10. The relevant factual background may be summarized as follows.

Applicant's employment and medical history prior to separation from the Fund

11. Ms. "CC" began her employment with the Fund in 1988 as an Economist and was promoted to Senior Economist in 2001.

12. In March 2002, Applicant underwent abdominal surgery. In 2003, Ms. "CC" reported to her primary care physician that prior to this surgery she had been in excellent health. Ms. "CC" experienced complications following surgery, which occasioned further medical testing and treatment, and she remained on sick leave through August 2002.

13. Approximately six weeks following her initial surgery, Ms. "CC" underwent an emergency laparoscopy. Following this surgery, Ms. "CC" continued to complain of abdominal distention and pain. Further tests, however, failed to explain Applicant's symptoms.

14. Ms. "CC" returned to work in September 2002, resuming her regular professional duties. Applicant continued in that position for approximately one year, until she was placed on administrative leave with pay in September 2003 for reasons detailed below and ultimately separated from Fund employment.

15. After returning to work in September 2002, Ms. "CC" continued to undergo medical evaluation and testing. The record before the Tribunal documents that during the period May-August 2003, Ms. "CC" consulted with an internist, two surgeons, three gastroenterologists, a physician on the staff of the Joint Bank/Fund Health Services Department ("HSD") and an acupuncturist. The medical records of two of the gastroenterologists and of the acupuncturist were not provided to the SRP Administration Committee, although they have been made part of the record before the Administrative Tribunal.

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[8] Article XII of the Tribunal's Statute provides that the Tribunal shall "… decide in each case whether oral proceedings are warranted." Rule XIII, para. 1 of the Rules of Procedure provides that such proceedings shall be held "… if … the Tribunal deems such proceedings useful."

16. The medical documentation indicates that Ms. "CC" consistently reported to her physicians recurrent left lower quadrant pain, abdominal distention, constipation and bloating, which she attributed to her 2002 surgeries. Thus, in May 2003, she reported "significant abdominal bloating, pain and gas without any remittance whatsoever."

17. Extensive evaluations pursued by Ms. "CC" in 2002-2003 did not yield a precise diagnosis of her medical condition. One gastroenterologist concluded that the tests "failed to show significant abnormality," and another observed that the tests revealed "nothing to suggest pseudo-obstruction."

18. The notes of the acupuncturist document Ms. "CC"'s reports of the effects of her condition on her work and daily life. The acupuncturist recorded: "The pain is off and on but she feels it 'in the background' most of the time. The pain [is] also worse during the day at random times and lasted … sometimes 4 [to] 6 hours." He noted that stress, overwork, constipation and certain foods aggravated Ms. "CC"'s pain. According to the acupuncturist, Ms. "CC" reported that "the pain affected her work and sometimes she has to take breaks from work due to pain" and that "[pain] sometimes lasted for [about] 6 hours and she had to lie down and rest due to pain."

19. Applicant's Attendance and Leave Balance Record from September 2002 to September 2003 indicates that she took fewer than the fifteen days allotted annually to staff members for sick leave.[9] According to Ms. "CC"'s personal calendar, during the period June-August 2006, she availed herself of the Fund's compressed work schedule ("CWS") policy, which allows staff, with supervisory approval, to work extended hours so as to have a day off from work every two weeks.

20. Despite her medical condition during this period, Ms. "CC"'s work performance, as reflected in her Annual Performance Review ("APR") for the calendar year 2002, was rated as "fully satisfactory" (rating "2"). In that same APR, Ms. "CC" wrote in Spring 2003 that the complications from her first surgery "have since been resolved." She further requested "the opportunity to lead … missions," and her supervisor also noted her interest in "assignments of a higher profile nature." In 2003, Ms. "CC"'s supervisor and her Senior Personnel Manager ("SPM") stated in her APR that they were pleased that she had recovered from her ordeal of the previous year.

21. In September 2003, Applicant traveled on a mission assignment for the first time since her 2002 surgeries. The mission chief commended Applicant's performance, which included assuming the additional functions of another economist who had to leave the mission before its conclusion:

> "I am writing to commend to you [Ms. "CC"'s] performance on this mission, during which she was called upon to cover [the area of expertise of another economist in addition to her own] ….

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[9] *See* GAO No. 13, Rev. 5 (June 15, 1989), Section 4.

> The technical quality of [Ms. "CC"'s] contribution was high. …. She displayed excellent focus and organizational skills in completing her broadened assignment …. Notwithstanding the pressure of her enlarged assignment, she remained collegial and was appreciated as part of the team by the other members throughout the mission. …. It would not be overstating the case to say that [Ms. "CC"] was instrumental in allowing the mission to continue its work on schedule …."

22. As a result of the events set out below, following her mission assignment in September 2003, Applicant never returned to active service with the Fund. Instead, she was placed on administrative leave with pay from September 29, 2003 to April 19, 2004 and then began a separation leave from the Fund.

Misconduct investigation and Applicant's separation from the Fund

23. Following the mission's conclusion in September 2003, Ms. "CC" undertook a brief period of personal travel, during which an incident occurred that became the subject of investigation for misconduct pursuant to GAO No. 33 (May 1, 1989) (Conduct of Staff Members). Pending the investigation, Ms. "CC" was placed on administrative leave with pay, pursuant to GAO No. 13, Rev. 5, Section 9.01 (Administrative Leave With Pay Pending Investigation of Misconduct).

24. Ms. "CC" remained overseas until around late November 2003. She sought medical attention, as evidenced by the medical records that are part of the record before the Administrative Tribunal but which were not provided to the SRP Administration Committee. In September 2003, Ms. "CC" was seen by a physician, who noted "[m]enstrual pain, wants ibuprofen, no GI complaints" as well as "never any psychic problems," and prescribed medication. Later in September, Ms. "CC" complained of being "almost paralyzed" with stomach pain and reported that "she suffers from chronic abdominal pain and that her stomach feels very distended and tight, so much so that she has difficulty sleeping."

25. On December 2, 2003, Applicant was informed of the Fund's ongoing investigation into her alleged misconduct. During a meeting with representatives of the Human Resources Department ("HRD") on December 4, 2003 and in a subsequent memorandum to the Deputy Director of HRD of December 8, 2003, Ms. "CC" asserted that the conduct under investigation was "attributable solely to my physical and mental exhaustion, fright, dizziness and inability to think rationally and unimpaired" and asked to be "permitted to return to my work at the Fund." In particular, Ms. "CC" cited the following circumstances: (i) physical and mental stress during the time preceding the mission, due to her medical condition, a recent car accident, and a heavy workload that required her to work late "every evening and on weekends;" (ii) mental and physical exhaustion by the end of the mission as a result of taking on the work of another economist, causing her to work "enormous hours, skipping most meals, and sleeping only 2-3 hours each night;" and (iii) a "horrifying" detention by the local immigration authorities the day before the incident.

26. Concerning her medical condition, Ms. "CC" elaborated that since her surgeries, she had suffered from "persistent acute abdominal pain and distension" and had numerous evaluations ("almost every Friday while on CWS, very early in the morning prior to my office arrival, and sometimes during lunchtime"), which kept her at high level of stress. She further asserted that during the mission stress and effort exacerbated her health problems.

27. Following another meeting with representatives of HRD on December 11, 2003, Ms. "CC" was provided with a copy of the investigation report and formally charged with misconduct on December 18, 2003, pursuant to GAO No. 33.

28. In a memorandum to the HRD Director of January 9, 2004, Ms. "CC" responded to the misconduct charge, asserting that her conduct "was related to a diagnosable condition." Applicant cited the opinion of her treating psychiatrist, and requested an evaluation by HSD. That same day, Ms. "CC"'s counsel wrote to the HRD Director, seeking psychological testing by the HSD. In an attached letter of January 6, 2004, Ms. "CC"'s treating psychiatrist offered his opinion that Ms. "CC"'s conduct during the incident in question was the result of "Adjustment Disorder with Disturbance of Conduct," which involved "dissociative symptoms" and occurred "under the stress, including the stress of the mission, her mental and physical fatigue at the end of the mission, her encounter with the Border guards … and the incident [under investigation]…." The treating psychiatrist further opined that this was an "acute episode" and that "[o]nce the disturbance has terminated the symptoms do not persist for any great length of time." Concerning Ms. "CC"'s mental health history, Applicant's treating psychiatrist stated:

> "I have known [Ms. "CC"] for approximately 14 years on a professional basis, mostly referring to difficulties encountered by a relative …. I have known [Ms. "CC"] very well and other than her occasionally being depressed as a result of her relative she never exhibited any psychiatric symptoms. I feel that her reactions were appropriate for the condition of her relative."

That Applicant had been under substantial stress, due in part to her medical condition, was also attested to in an affidavit provided by a personal acquaintance.

29. In connection with the misconduct investigation, a physician on the staff of the HSD stated that, in June 2003, Ms. "CC" reported being mildly depressed with the loss of her pre-surgical body physique, persistent bloating and abdominal pain. The records of the treating psychiatrist reflect three consultations with Ms. "CC" in December 2003-February 2004 concerning her surgeries, the incident abroad, and her "situation at work;" the records mention several medications including Lexapro, Clonazepam and Alprazolam.

30. On February 13, 2004, Ms. "CC" wrote to the HRD Director with a "special plea," stating that she hoped to return to work and asserting that her financial situation was tenuous, that "a very large share of my income goes to the support of my mother and brother," and that her career opportunities outside of the Fund were limited. That same day, Ms. "CC"'s counsel wrote to the HRD Director, stressing the treating psychiatrist's opinion that the psychological impairment Ms. "CC" experienced during the incident abroad was not of a lasting nature and further stating that Ms. "CC" was "eager to return to work in the very near future."

31. By memorandum of March 4, 2004, the HRD Director informed Ms. "CC" that, while her misconduct warranted termination, she would be allowed to resign from the Fund and receive a monetary settlement "for health and humanitarian reasons," provided that her claim concerning the role of health factors in her conduct was corroborated through an independent medical evaluation:

> "I have considered your response to the charge of misconduct …. After carefully reviewing the facts of this matter, my conclusion is that you have engaged in serious misconduct in violation of GAO No. 33 …. This behavior is sufficiently egregious as to warrant termination of your Fund employment as provided under GAO No. 33, Section 10.05. … It is untenable that a senior economist of the Fund, whose responsibilities normally require mission travel and a visible role in dealing with member country authorities, could remain on the staff and effectively carry out those responsibilities [in view of such conduct] ... Indeed, if such conduct had taken place before your employment with the Fund, it would have precluded your employment by the Fund.
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> ….
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> Accordingly, this is to inform you of my decision that you cannot remain in the employment of the Fund. However, I have also taken into consideration your claim that health factors may have played a role in influencing your behavior in this matter. Therefore, in lieu of outright termination for misconduct, I am willing to provide you with an alternative condition under which you may be separated. I am prepared to allow you to resign from the Fund in lieu of being terminated and to provide you with a monetary settlement for health and humanitarian reasons, provided that there is credible evidence, based on an independent medical evaluation, that health factors contributed to the behavior in question."

The HRD Director further stated that if Ms. "CC" chose to accept the monetary settlement in the form of salary continuation, she would be allowed to delay the start of those payments and to remain on administrative leave with pay in the interim, so as to enable Ms. "CC" to remain in staff status until reaching age 50, thus making her eligible for life-time coverage for health benefits under the Medical Benefits Plan.

32. On March 23, 2004, Ms. "CC" underwent an examination by a psychiatrist Independent Medical Examiner ("IME"). The psychiatrist IME opined that a "combination of … stressors" caused Ms. "CC" to experience Acute Stress Disorder with dissociative symptoms at the time of the incident overseas. As one of the stressors, he noted that following her surgeries Ms. "CC" "was experiencing daily abdominal pain after eating usually that lasted about 4 hours. … While on her mission …, she continued to suffer 'severe pain' and abdominal distension daily." The psychiatrist IME recorded that Ms. "CC" had received psychiatric care from her treating psychiatrist for "episodic depression related to family matters" and that "[h]er depression did not

require treatment by antidepressants and did not interfere with her ability to work." The psychiatrist IME opined that Ms. "CC" did not have any remaining condition or predisposition in March 2004, but rather her "acute stress disorder was caused by a combination of highly specific, event-related stressors, and resolved within a few weeks."

33. On April 16, 2004, the HRD Director denied Ms. "CC"'s request for reconsideration of the Fund's decision:

> "Although the Fund does not necessarily accept all of [the psychiatrist independent medical examiner ("IME"]'s conclusions, we note that he does opine that your behavior was influenced by health conditions. Therefore we are prepared to go forward with the settlement. However, the Fund is not prepared to reconsider its decision to terminate your employment."

34. On April 16, 2004, Ms. "CC" signed a letter setting forth the terms of her separation.

Applicant's medical history following her separation from the Fund

35. For approximately nine months following her return to the United States around late November 2003, there is no documentation in the record that Ms. "CC" sought medical attention for her abdominal condition, although she asserts that during this time she was evaluated by doctors in her home country. Between August 2004 and April 2005, however, Ms. "CC" was evaluated by an internist, surgeon, radiologist, gastroenterologists, and a gynecologist. Records of these consultations are summarized below.

36. In August 2004, Ms. "CC" sought an opinion from a surgeon, complaining of "now chronic bloating." The surgeon recorded that "[s]he does not complain of abdominal pain at this time; however, she did have a six month period following her surgery where pain was a predominant factor." Abdominal and pelvic CT scans did not indicate abnormality.

37. From August 2004 through February 2005, Ms. "CC" consulted with an internist on a nearly monthly basis. Ms. "CC" complained of "unpredictable" abdominal pain. Additionally, he recorded Ms. "CC"'s complaints of depression and some anxiety, and noted that she had been treated by her treating psychiatrist for "some depression." Ms. "CC" took an antidepressant medication, but did not pursue the internist's psychiatric referral.

38. In October 2004, Ms. "CC" reported bloating, constipation and "episodic [left lower quadrant] pain up to 2x/week." The internist prescribed a regime of medications to regulate bowel function. In November 2004, he recorded that Ms. "CC" has been following the bowel regime and reported having "a little bit less bloating and no severe episodes of pain;" he further noted "[i]mprovement in GI symptoms and mood" and recorded that Ms. "CC" had not filled his prescription for pain medication. In December 2004, Ms. "CC" reported that her gastrointestinal condition was "generally improved." She reported "sporadic compliance" with the bowel regime "because doing better." No report of abdominal pain was recorded. The internist noted that Ms. "CC" continued on the antidepressant medication and her mood was "alright," and that she was "[o]verall doing pretty well."

39. On February 23, 2005, the internist recorded that Ms. “CC” requested a letter in support of her application for disability retirement:

> “Needs letter to support application for disability – based on freq[uent] unpredictable bouts of abd[ominal] pain (severe) bloating sufficient to disable for work. Chronic condition S/P [status post] surgery 3 + 5/02. Pain lasts for hours. Avg 2x/week. Might be aware of her condition because of extended sick leave during + 6 months p[ost] 1st surgery.”

The internist’s records reflect no subsequent visits by Ms. “CC”. In August 2005, he noted a telephone conversation with Ms. “CC”, in which she complained of intermittent right lower quadrant pain and nausea.

40. From September 2004 through March 2005, Ms. “CC” consulted a third gastroenterologist,[10] who initially recorded Ms. “CC”’s complaints as follows:

> “Since the surgery [in 2002] she has pain related to defecation, which can be unrelenting, will often last about four hours culminating in an eventual bowel movement, which does then alleviate the pain. The pain is left lower quadrant in location. It is so severe at times that she can’t even call for help, much less get out of bed. She points to the left lower quadrant as ‘the site of all my problems.’ In the last two weeks accompanying all these symptoms have been additional nausea and vomiting on a couple of occasions. It has been during defecation but she denies any accompanying pain. …
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> …
>
> … Presently, she is on no medication. … The symptoms are disruptive. They are extreme and they have interfered with her employment and she has been working at home since January of this year.”

41. On October 22, 2004, this gastroenterologist referred Ms. “CC”’s records to the Mayo Clinic, under a cover letter referring to her “relentless digestive complaints and bowel dysfunction” and stating that “[c]urrently she is incapacitated and has not worked really since the first of the year.”

42. In February 2005, Ms. “CC” was evaluated by the gastroenterologist at the Mayo Clinic, who recorded as follows Ms. “CC”’s own observations:

[10] The Administration Committee correctly observed that the records of this physician provided by Ms. “CC” appeared incomplete; her submissions to the Tribunal do not remedy this apparent omission.

> "Over the last two years, approximately, she continues to experience a significant pain in the left lower quadrant which she describes as paralyzing and to be related to bowel function. She experiences such pain once or twice per week. The severity is ten out of a maximum score of ten and lasts often up to three hours. The [pain] may also awaken her at night. The pain typically occurs before a bowel movement, is worse in the immediate period before a bowel movement when it is described as being debilitating, and there is some relief of pain after having a bowel movement but not complete relief. She also has a sensation of fullness and distention and bloating affecting the upper abdomen. There is no relief of any of these symptoms with posture or exercise. Prior to November 2004, she was having bowel movements every three to four days; but, following the identification of hypothyroidism and treatment with L-thyroxine, 50 mcg per day, the patient now has bowel movements about once every one to two days. … She does experience nausea with or without vomiting, has distention of the abdomen almost daily, and this is irrespective of the severity of pain or the occurrence of bowel movements. …"

On examination, the Mayo Clinic gastroenterologist found "minimal tenderness on deep palpitation of the left lower quadrant." He recorded L-thyroxine as Ms. "CC"'s only current medication. Additionally, he ordered tests to explore other possibilities including adhesion obstruction, intrinsic small bowel disease, colonic inertia, colonic dysfunction, and pelvic floor dysfunction.

43. Following a series of tests, he diagnosed Ms. "CC" with "significant slow-transit constipation, as well as initial dumping of food from the stomach." He prescribed Milk of Magnesia and Zelnorm, as well as Buspar to "reduce the sensation of distention." Depending upon progress after a month, he suggested Sandostatin, an injected medication.

44. It appears that Ms. "CC" did not follow up on the recommendations of the Mayo Clinic gastroenterologist. She subsequently told her local gastroenterologist that she discontinued the Milk of Magnesia and Zelnorm because they made her symptoms worse. He recorded that the physicians at the Mayo Clinic had "raised the question of subtotal colectomy" and that, in his opinion, Ms. "CC" "is appropriately reluctant to consider surgery in so far as surgery seemed to get her into this trouble in the first place."

45. In March 2005, Ms. "CC"'s gastroenterologist indicated in a letter to her internist that they had discussed "her plan to apply for disability on the basis of the chronicity of her problem, and its refractoriness to treatment. I can't gainsay either of these considerations at this time." Thereafter, Ms. "CC" obtained a "To Whom It May Concern" letter from the gastroenterologist, dated September 12, 2005, stating that Ms. "CC" suffers from "recurrent and chronic abdominal pain, the cause of which is unknown. … Whether adhesions by themselves or working through recurrent intermittent low-grade bowel obstruction contribute to the pain is impossible to determine at this point."

46. On April 5, 2005, Ms. "CC" saw a gynecologist, complaining of "abdominal bloating," without any mention of pain. The record before the Tribunal does not reflect that subsequently Ms. "CC" pursued any medical attention for pain or other physical symptoms for approximately one year, until resuming treatment with the acupuncturist in April 2006.

47. From October 2004 to January 2006, however, Ms. "CC" did resume consultations with her treating psychiatrist, after an apparent hiatus of more than nine months. A note made on October 29, 2004 states: "Still looking for a job." His records reflect only two consultations with Ms. "CC" in 2005; in August 2005, he noted merely "Applying for disability." The records mention the medications Effexor, Cymbalta and Wellbutrin.

48. From April 8 until October, 2006, Ms. "CC" resumed visits with the acupuncturist who treated her close to every other day. Occasionally, Ms. "CC" reported using laxatives. Ms. "CC" also complained of being depressed, stressed and lethargic.

49. The acupuncturist, whose notes are the most recent in the record before the Tribunal, recorded descriptions of abdominal pain, as most recently reported by Ms. "CC" in 2006. His notes contain no references to "severe" or "paralyzing" pain. Ms. "CC" repeatedly reported improvement. Thus in May she reported having only "some pain" and that the pain was "better." Ms. "CC"'s symptoms appear to have worsened in June 2006, as she reported that her pain and bloating were "bad last week" and "worse lately." However, in July she again reported having only "some" pain and the pain being "better." The records suggest an even more marked improvement in August and September 2006. Throughout August, Ms. "CC" reported feeling "better overall," having "[b]loating and stomach pain occasionally," having only "some pain," as well as her pain and bloating "getting better." Later in August, she reported that pain and bloating were "still a problem" and that she could not sleep the night before due to stomach pain. However, a few days later she reported that these symptoms were "less severe lately" although they still "bother[ed]" her. In September, Ms. "CC" reported that pain and bloating were "off and on" and still "bother[ed]" her, but were improving with treatment. Most recently, in October 2006, Ms. "CC" reported only "some pain and bloating."

Applicant's Request for Disability Retirement

50. On May 5, 2005, while still in contributory service with the Staff Retirement Plan, Applicant wrote to the Secretary of the SRP Administration Committee, requesting disability retirement pursuant to Section 4.3 of the Plan. Applicant cited "continued severe abdominal pain, bloating and gastrointestinal disorders" following the two surgeries in 2002. Ms. "CC" asserted that "[t]he abdominal pain is acutely paralyzing and lasts for four to six hours about every other day. During the rest of the time, my medical condition keeps me in great abdominal and gastrointestinal discomfort." She further asserted that no treatment had been found and that surgery had been ruled out. Applicant attached as supporting documentation a letter of April 28, 2005 from her internist, which stated:

> "[Ms. "CC"] has a gastrointestinal condition which manifests as frequent, unpredictable bouts of severe abdominal pain and bloating sufficient to disable her for work. This is a chronic condition which has existed since surgeries in March and again in

> May of 2002. The pain lasts for hours. These severe episodes occur on average about three times a week. Between episodes the patient has significant abdominal discomfort which may last for the day. … [Ms. "CC"] has had extensive consultations from experts regarding her problem and there is no definitive treatment to resolve these problems. In my opinion, her request for disability merits approval."

Reports of the Independent Medical Examiners ("IMEs")

51. In connection with her Request for disability retirement, Applicant underwent evaluations by two Independent Medical Examiners ("IMEs"), a gastroenterologist and a psychiatrist,[11] engaged by the SRP Administration Committee.

52. In a report of June 28, 2005, the gastroenterologist IME opined:

> "….The pain comes on during the day and is gone by night. This strongly suggests functional rather than organic disease. Of great importance is the fact she is able to exercise rather regularly in her apartment exercise room using a treadmill and an elliptical trainer.
>
> …. In the extensive medical work up … and in what I find in seeing her, there is virtually no objective evidence of disease.
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> She relates significant secondary gain from a favorable disability ruling in the desire to financially support family members …."

On July 22, 2005, Ms. "CC" responded to the report, objecting to its findings and conclusions. On August 9, 2005, the gastroenterologist IME replied that he stood by his conclusions.

53. On September 20, 2005, the psychiatrist IME issued a lengthy report based upon a review of records, two in-person evaluations of Applicant (including a detailed account of the results of the Minnesota Multiphasic Personality Inventory-2 ("MMPI-2 profile"), and telephone interviews with two of Ms. "CC"'s personal contacts and the Mayo Clinic gastroenterologist.

54. According to the report of the psychiatrist IME, Ms. "CC" had described her pain as "piercing. It does not let me breathe or move without pain. It is very intense and very acute. My stomach feels like it will explode." Ms. "CC" asserted that she is in pain and unable to work at least half of the days per month. However, she subsequently stated that "when she is not in pain, she spends her time reading and writing papers at home, but is unable to do anything." Ms. "CC" reported exercising about three times every two weeks. She reported taking Zelnorm, Miralax and Buspar. Ms. "CC" indicated that she was using suppositories for pain and that Percocet,

[11] The psychiatrist IME engaged by the SRP Administration Committee was a different individual from the psychiatrist IME who evaluated Ms. "CC" in connection with her separation from the Fund. *See supra* The Factual Background of the Case; Misconduct investigation and Applicant's separation from the Fund.

acupuncture, and homeopathic remedies did not help her pain. Ms. “CC” told the psychiatrist IME that she had never experienced any psychotic phenomena and had had no mental health treatment.

55. The psychiatrist IME’s report relies primarily on Applicant’s MMPI-2 profile, which includes the following findings. Ms. “CC” was extremely guarded and self-favorable, which suggested concern about the results being damaging to her self-interests. Ms. “CC”’s pain, weakness and fatigue are apt to be beyond medical expectations for her current physical status. Her personality profile is often associated with gastrointestinal complaints, including intractable pain syndromes, especially postoperatively. The secondary depression was moderate. Her symptoms may give her extensive “secondary gains.” Diagnoses of hysterical neurosis, conversion type, hypochondriacal neurosis, and of psychophysiologic disorder are typical with this pattern. However, Ms. “CC”’s “extreme understatement of her problems, her strongly idealized self-presentation, and her excessively guarded and self-favorable responding make such a diagnostic impression highly tentative and very likely incomplete.” Medical interventions are likely to be short-lived in their effects. Psychotherapeutic intervention is difficult because Ms. “CC” is strongly oriented toward physical illness.

56. The psychiatrist IME reported that via a telephone interview the Mayo Clinic gastroenterologist had opined that there is a large psychological component to Ms. “CC”’s illness. One of Applicant’s acquaintances told the psychiatrist IME that Ms. “CC” had been in “perfect health” prior to her surgeries, but subsequently had been unable to carry on normally, was in pain “most of the time,” and sometimes had to pull over while driving due to pain.

57. The psychiatrist IME observed that Ms. “CC” appeared to be “in discomfort, and a bit depressed.” During her second meeting with the IME, Ms. “CC” stated that she was unable to sit up due to pain, and was interviewed while lying down. At one point she “got up and ran to the bathroom, and had dry heaves.”

58. The psychiatrist IME opined that Ms. “CC” “suffers from the following disorders:”

> “Axis I: Undifferentiated Somatoform Disorder …
>
> Axis II: No Diagnosis on Axis II …
>
> Axis III: Irritable Bowel Syndrome with Abdominal Pain and Bloating S/P Laparoscopic Left salpingo-oophorectomy
>
> Axis IV: Problems related to work
>
> Concern about her health
>
> Possible financial concerns
>
> Axis V: GAF 50 [i.e., Global Assessment of Functioning of 50, which ‘indicates … serious impairment in social and occupational functioning.’]”

59. Additionally, the psychiatrist IME, in answer to questions in respect of Ms. "CC"'s Request for disability retirement, reiterated the diagnosis of Undifferentiated Somatoform Disorder and described the resulting impairment as follows:

> ["Ms. "CC"] complains of severe pain and gastrointestinal complaints. …The symptoms cannot be fully explained by the objective tests performed, including the history, the physical examination, or lab test findings. The symptoms and physical complaints cannot be fully explained by the physical findings.
>
> The pain is so severe that [Ms. "CC"] states that she cannot function either occupationally or socially when she is having one of her attacks. She states that she has several attacks per month. [Ms. "CC"] has had these physical complaints since her ovarian surgery in 2002. Her symptoms cannot be better accounted for by either another somatoform disorder, a depressive disorder, an anxiety disorder, a psychotic disorder or a sexual dysfunction disorder. I have no evidence that the symptoms have been intentionally produced or feigned.
>
> [Ms. "CC"] has missed a substantial amount of work because of her pain and bloating, and has had to cancel many social engagements, as verified by her boyfriend … and her friend of many years …."

60. The psychiatrist IME observed that Undifferentiated Somatoform Disorder is defined by the following clinical features:

> "… (1) somatic complaints that suggest major medical maladies yet have no associated serious, demonstrable, peripheral organ disorder; (2) psychological factors and conflicts that seem important in initiating, exacerbating, and maintaining the disturbance; and (3) symptoms or magnified health concerns that are not under the patient's conscious control."

The psychiatrist IME noted that patients with Undifferentiated Somatoform Disorder are "not malingerers." In response to a question as to whether Ms. "CC" has "undergone appropriate and comprehensive evaluation to diagnose her condition," the psychiatrist IME stated, "Yes. She has been evaluated by gastroenterologists …."

61. The psychiatrist IME concluded that Ms. "CC"'s condition affects her ability to perform the work of an economist, stating:

> "[Ms. "CC"] states that she is sick half the days of the month. Her pain attacks last for many hours and necessitate her staying in bed, and refraining from any movement. For the most part, she is unable to travel, and is constantly consulting with various specialists to see if they can help her deal with her symptoms and

> control her pain. When she is in pain, it is impossible for her to focus on the work that she has been hired by the World Bank (sic) to do."

The psychiatrist IME opined that Ms. "CC"'s condition totally and permanently incapacitates her from performing tasks that she may be asked to perform given her education, training and experience, on the ground that:

> "The course of undifferentiated somatoform disorder is generally chronic and relapsing …. There is substantial disability, work impairment, and excessive health care utilization in undifferentiated somatoform disorder. Neither curative nor ameliorative treatment has been found. …"

At the same time, the psychiatrist IME stated that "[i]n order to have partial restoration of her functional capacity, [Ms. "CC"] would have to undertake some form of counseling where she begins to make an association between emotional and physical functioning." Finally, the psychiatrist IME saw "no way to accommodate [Ms. "CC"'s] illness with technical or other equipment."

Report of the Medical Advisor

62. On October 25, 2005, the Medical Advisor to the SRP Administration Committee reported to the Committee's Secretary on Ms. "CC"'s condition. He summarized Ms. "CC"'s medical records and the reports of the IMEs. The Medical Advisor concluded his report with an Opinion, which reproduced almost verbatim the findings and conclusions of the psychiatrist IME, described above. The report stated, in particular, that "[Ms. "CC"] has an undifferentiated 'somatoform disorder' that is likely to be untreatable and permanent" and that she is "totally and permanently incapacitated from performing tasks that she may be asked to do by the IMF, given her education, training and experience." The Medical Advisor recommended that Ms. "CC" be granted disability retirement with a review of eligibility in eighteen months.

Decision of the Administration Committee

63. Approximately a month later, on December 1, 2005, the SRP Administration Committee met to render a decision on Ms. "CC"'s Request for disability retirement. The Committee's discussion of Applicant's case is summarized in its Final Minutes. During the meeting, the Medical Advisor expressed the following views concerning the extent of Ms. "CC"'s medical impairment. He opined that "whatever job [Ms. "CC"] had she might eventually have to leave although she might be able to work from home." He further opined, in contrast to his written report, that Ms. "CC"'s condition "is chronic but not permanent," as she could benefit from psychological counseling. He therefore recommended that Ms. "CC"'s Request for disability retirement be granted with a review of eligibility in 18 months, following counseling. He acknowledged, however, that "there was significant doubt about the degree of permanency and totality of the condition."

64. On December 9, 2005, the Committee issued its Decision, notifying Ms. "CC" that, notwithstanding the Medical Advisor's recommendation, the Committee had decided to deny her Request for disability retirement based on the following considerations:

> "• You worked from September 2002 through most of September 2003 before being placed on Administrative Leave with Pay. No medical reasons for this change in your status were adduced;
>
> • The Committee felt that it lacked reliable verification of your current professional and social incapacity, given that the psychiatrist as Independent Medical Examiner was able to speak only with your boyfriend and another friend;
>
> • According to your treating physician, you have suffered from these chronic symptoms since March 2002, yet you have been able to work at the Fund with these symptoms, and your condition has not worsened since you last returned to work in 2002;
>
> • You admitted being able to exercise three times per week and you have traveled overseas;
>
> • When you are incapacitated, it is for a few days a week according to your physician. Consequently, there is no basis for concluding that the symptoms render you permanently and totally disabled.
>
> • The gastroenterologist acting as Independent Medical Examiner concluded that there was no objective evidence of disease, thought there was a psychiatric component, and opined that the application may be motivated by secondary (monetary) gain;
>
> • The psychiatrist acting as Independent Medical Examiner indicated that your symptoms cannot be fully explained by objective tests performed or by physical findings, and considered that you have a psychiatric disorder;
>
> • Your treating physicians also thought there was a psychiatric component to your condition. Psychiatric counseling has not been tried as a means to address or alleviate your symptoms. As a result, it has not been established that your condition is total and permanent in this regard."

The Channels of Administrative Review

65. On January 18, 2006, pursuant to Rule VIII[12] of the Rules of Procedure of the SRP Administration Committee, Ms. "CC" submitted to the Committee an application for review of its Decision denying her Request for disability retirement. The application for review set forth the following principal contentions: (i) the Committee's decision was contrary to the weight of the medical evidence, including the opinion of its own Medical Advisor; (ii) while working at the Fund in 2002-2003, Ms. "CC" had been "unable to resume her regular schedule of activities" and "worked only short days and was often absent" due to her illness and related medical appointments, and her flexible schedule was accommodated by her Division Chief; (iii) Ms. "CC"'s physical and mental condition was "the precipitating factor" in the incident of

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[12] "**RULE VIII**

Review of Decisions

1. A Requestor, or any other person claiming any rights or benefits under the Plan, who wishes to dispute a Decision may submit an Application for Review of a Decision (hereinafter 'Application') to the Secretary within ninety (90) days after the Requestor receives a copy of the Decision. An Application shall satisfy all of the requirements as to form set forth in Rule III and otherwise applicable to a Request. Subject to Rule X, paragraph 2, if no Application has been submitted within this period and an extension of time described in Rule IX, paragraph 2 has not been granted, the right to submit an Application shall cease.

2. The Committee may review a Decision, either in response to a timely Application or at its own initiative. The Committee may also be required to review a decision at the request of the Pension Committee in accordance with the jurisdiction of that Committee as set out in Section 7.1(c) of the Plan. The Committee shall not, however, review a Decision so as to affect adversely any action taken or recommended therein, except in cases of:

(a) misrepresentation of a material fact;
(b) the availability of material evidence not previously before the Committee; or
(c) a disputed claim between two or more persons claiming any rights or benefits under the Plan.

3. If the Committee undertakes to review a Decision, or if it declines to review a Decision, all parties to the Decision shall be notified in writing.

4. Any review of a Decision shall be conducted in accordance with Rules IV, VI and VII. The Committee shall notify the Applicant of the results of its review within three months of the receipt of the Application by the Secretary."

September 2003, and, as a result, she was place on paid administrative leave "out of consideration for her medical condition;" (iv) from about July 2004, Ms. "CC"'s symptoms have included nausea and the frequency of her bouts of severe pain have increased to up to four times a week; (v) there is a psychiatric component to Ms. "CC"'s condition, as she has been diagnosed by the psychiatrist IME with undifferentiated somatoform disorder; (vi) Ms. "CC"'s disability is "permanent in the sense that the disabling physical effects occur intermittently and regularly, without warning;" and (vii) Ms. "CC" had been in intense counseling with her treating psychiatrist for the preceding two years. Ms. "CC" additionally objected to the Committee's findings concerning her ability to exercise and travel abroad.

66. Ms. "CC" attached to her application for review a letter of January 12, 2006 from her treating psychiatrist, supporting the psychiatrist IME's diagnosis and stating that Ms. "CC" "has been in intense counseling with me for the past two years and it has made no difference in her symptoms which have worsened significantly since middle 2004." The treating psychiatrist additionally objected to the gastroenterologist IME's comment concerning the role of secondary gains. Ms. "CC"' additionally attached a letter from her boyfriend, a physician, stating that following the surgeries in 2002, he observed Ms. "CC"'s symptoms such as bloating, vomiting, cramps, and pain, as well as "a steady decline in [her] health since her surgeries, especially since mid-2004." He further asserted that Ms. "CC" cannot carry on her pre-surgery activities since most of the time she cannot sit at a desk due to pain and since international travel would be a physical hardship and not advisable due to lack of adequate medical care.

67. In subsequent correspondence, Ms. "CC" and her counsel asserted that the circumstances leading up to Ms. "CC" separation from the Fund were confidential and "irrelevant" to the Committee's consideration of her case.

68. On April 12, 2006, the SRP Administration Committee met to decide on Ms. "CC"'s application for review. According to the Committee's Final Minutes, as a preliminary matter, the Committee observed that the medical records reviewed by the IMEs and the Medical Advisor were incomplete and that additional medical records had been obtained by the Committee and provided to Ms. "CC" and her counsel. The Committee concluded, citing the Administrative Tribunal's jurisprudence, that it was in a position to form its own views on the additional medical evidence.

69. The Administration Committee unanimously decided to sustain its original Decision and communicated to Applicant its Decision on Review in a detailed report of April 17, 2006. (*See also* Committee's Final Minutes.) The Committee reaffirmed its conclusion that Applicant is not totally incapacitated on the grounds that Applicant "was able to successfully work after the surgeries to which she attributes her condition, that she was not medically prevented from working as recently as April 2004 [i.e. at the time of her separation from the Fund], and that her symptoms have not significantly worsened subsequently…." (Administration Committee Report of April 17, 2006, para. 121.) In making these findings, the Administration Committee reviewed in considerable detail Ms. "CC"'s medical records and other evidence pertaining both to her physical symptoms and her mental health for the period 2002-2005. The Committee additionally credited "the observations of [the gastroenterologist IME] and the MMPI-2 report, that Applicant's distress about her financial situation and a desire to continue supporting her mother

may be an unconscious motive that could help explain her present complaints." (Para. 119.) The Committee additionally reaffirmed its determination that the evidence did not establish that Applicant's condition is likely to be permanent. (Paras. 120-136.)

70. Significantly, the Committee concluded that the opinion of the psychiatrist IME, upon which the Committee's Medical Advisor had placed great weight, was unreliable. In so concluding, the Committee considered: (i) the psychiatrist IME's diagnosis of Undifferentiated Somatoform Disorder was based largely on Ms. "CC"'s subjective description of her pain, which had not been reliably verified; (ii) the psychiatrist IME was unaware of the circumstances under which Ms. "CC" stopped working at the Fund and incorrectly assumed that Ms. "CC" has missed a lot of work "because of her pain and bloating;" (iii) the psychiatrist IME's opinion was materially uninformed about Ms. "CC"'s mental health history, as the psychiatrist IME did not review the records of her treating psychiatrist or internist or the opinion of the psychiatrist IME engaged to render an opinion in connection with the separation proceedings; (iv) the psychiatrist IME's report "contains inconsistencies and makes factual errors;" and (v) prior to the psychiatrist IME's report, Ms. "CC" had never been diagnosed with Undifferentiated Somatoform Disorder or any similar chronic psychiatric condition. (Paras. 122-128.) As reflected in the Committee's Final Minutes, the Committee also "considered the possibility that the participant had been less than candid with HSD, the [psychiatrist] IME and the Committee," in view of Ms. "CC"'s statement to the psychiatrist IME that she has not had psychiatric treatment, which was contradicted by her medical records.

71. Based on its own review of Ms. "CC"'s medical records, the Committee concluded that

> "[Ms. "CC"] was in good mental health as recently as March 2004, and she experienced some depression and anxiety for which [her treating psychiatrist] has treated her. It is not clear whether this is an acute or a chronic problem. To the extent that Applicant's physical symptoms are a manifestation of a somatoform disorder, the Committee has no records that Applicant has pursued any treatment for that. ***Accordingly, the Committee has little basis to find that Applicant's psychological problem is permanently incapacitating or otherwise of a severe or of long-standing character.***"

(Emphasis in original.) (Para. 128.) The Committee rejected as unsubstantiated Ms. "CC"'s contention that she has been in "intense counseling" with her treating psychiatrist for the past two years. (Paras. 130-31.) The Committee additionally observed that unevenness in Ms. "CC"'s reports of her mental health status and physical symptoms, spotty compliance with treatment, and large gaps in time between her medical consultations tended to corroborate the Committee's conclusion that Ms. "CC"'s medical condition did not deteriorate significantly following her separation from the Fund. (Paras. 131-36.)

72. Rule X, para 1[13] of the Rules of Procedure of the SRP Administration Committee provides that the channel of review for a Request submitted to the SRP Administration Committee has been exhausted for the purpose of filing an application with the Administrative Tribunal when the Committee has notified the Requestor of the results of its review of that Decision.

73. On July 19, 2006, Ms. "CC" filed her Application with the Administrative Tribunal.

Summary of Parties' Principal Contentions

Applicant's principal contentions

74. The principal arguments presented by Applicant in her Application and Reply may be summarized as follows.

1. Applicant should be granted a disability pension under the SRP, as she is totally incapacitated and her disability is likely to be permanent.

2. The weight of the medical evidence, including the opinions of the Medical Advisor and psychiatrist IME, supports Applicant's claim that she is totally incapacitated for any duty with the Fund.

3. While Applicant was on work status during September 2002-September 2003, she was unable to resume her regular schedule of activities. Her flexible schedule was accommodated by her Division Chief.

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[13] "**RULE X**

Exhaustion of Administrative Review

1. The channel of administrative review for a Request submitted to the Committee shall be deemed to have been exhausted for the purpose of filing an application with the Administrative Tribunal of the Fund when, in compliance with Article V of the Statute of the Administrative Tribunal (Statute):

(a) three months have elapsed since an Application for review of a Decision was submitted to the Committee in accordance with Rule VIII, paragraph 1 and the results of the review have not been notified to the Applicant; or

(b) the Committee has notified the Applicant of the results of any review of a Decision, or its decision to decline to review a Decision; or

(c) the conditions set out in Article V, Section 3(c) of the Statute have been met."

4. Ample evidence was provided that the precipitating factor in the incident abroad in September 2003, which led to Applicant's separation, was her physical and mental condition. Applicant was placed on paid administrative leave out of consideration for her health problems and for "humanitarian" reasons. In so doing, the Fund has shown that it could not trust Ms. "CC"'s performance, particularly under stressful conditions.

5. After Ms. "CC" was placed on administrative leave in September 2003, her physical/mental condition worsened to the point that she could not meet the normal and usual requirements of any position in the Fund, as severe abdominal pain or discomfort require her to remain for extended periods in a reclining position. Applicant's condition, a combination of mental and physical factors, incapacitates her at unpredictable intervals that recur on a regular basis, particularly when aggravated by stress, as was often the case at the Fund.

6. While Ms. "CC" looked for a job in October 2004, she was unable to attend the single interview she obtained due to pain.

7. The psychiatrist IME diagnosed Applicant with Undifferentiated Somatoform Disorder and opined that she is totally and permanently incapacitated. The psychiatrist IME's diagnosis and opinion were fully supported by the Medical Advisor, as well as by Ms. "CC"'s treating psychiatrist. The psychiatric component of Ms. "CC"'s condition does not contradict the physical observations of disease.

8. Applicant did not inform the psychiatrist IME of the September 2003 incident because Ms. "CC" and the Fund had agreed to treat it with the utmost confidentiality.

9. The Committee cannot and should not overrule the opinion of its Medical Advisor and psychiatrist IME without well justified reasons and expert opinion. Here, the Committee relied on a single medical opinion against the granting of disability, that of the gastroenterologist IME, which lacked reliability and contained unprofessional comment about financial motive.

10. In denying Ms. "CC"'s claim, the Committee imposed its own layman's view of Applicant's physical problems. The Committee failed to consult with its Medical Advisor concerning what it deemed to be new or inconsistent information, and thereby improperly assumed the role of a medical expert.

11. Contrary to the Committee's conclusion, Ms. "CC" has been in intense counseling with her treating psychiatrist during the past two years, and her gastrointestinal disorders and pain have increased.

12. The weight of the medical evidence supports Ms. "CC"'s claim that her disability is likely to be permanent.

13. Applicant was denied due process by the Administration Committee.

14. The Committee's decision was improperly motivated, failed to consider and apply established case law on disability retirement, was inconsistent with the weight of the evidence, was arbitrary and capricious, and "indicative of a prejudiced attitude towards [Applicant] due to failure to understand the … [September 2003] incident and instead to improperly see it as misconduct."

15. Applicant seeks as relief:

    a. rescission of the decision of the Administration Committee and an order granting Applicant disability retirement retroactive to January 1, 2006, the date on which she was placed on unpaid administrative leave; and

    b. legal costs.

Respondent's principal contentions

75. The principal arguments presented by Respondent in its Answer and Rejoinder may be summarized as follows.

1. The SRP Administration Committee properly denied Applicant's request for a disability pension.

2. The Administration Committee correctly determined that the medical evidence did not support a finding of total incapacity. Applicant's employment and medical records establish that she was able to work successfully after her surgeries, from September 2002 until September 2003; that she stopped working only because of her misconduct and not her medical condition; and that she did not subsequently experience a serious downturn in her medical condition so as to totally incapacitate her from Fund work.

3. While Applicant's plea of mitigating circumstances in respect of the misconduct charges resulted in a voluntary separation arrangement, the Fund never took the view, and there was no evidence that Ms. "CC" was medically unable to continue working due to stress. But for her misconduct, Applicant would still be working successfully at the Fund today.

4. Ms. "CC" is qualified to work in a number of positions in the Fund. The Fund uses its economists in a wide range of capacities and has progressive policies on working from home.

5. Applicant's conflicting accounts of her symptoms, her treatments and her employment situation lacked credibility and rendered some of the reports of her treating physicians unreliable.

6. The Administration Committee properly concluded that the opinions of the psychiatrist IME and the Medical Advisor were unreliable, as they reflected material errors and inconsistencies, due in particular to Ms. "CC"'s lack of candor. Ms. "CC" originally premised her application on her abdominal condition only, but fundamentally changed her claim after reviewing the report of the psychiatrist IME, which lacks reliability.

7. Only three of Ms. "CC"'s many treating physicians opined that she was incapacitated from working, and the Committee correctly discounted these opinions as they were not rendered for the purpose of diagnosis and treatment, lacked specific facts susceptible to corroboration, and were inconsistent with Ms. "CC"'s medical records and her own contentions.

8. The Administration Committee's conclusions are supported by the opinion of the gastroenterologist IME and by Applicant's own medical records, which contradict her claim of crippling abdominal pain and reflect that she has not been diagnosed with, and is not under medical treatment for, an incapacitating medical condition.

9. The Administration Committee reasonably determined that the evidence did not support Applicant's contention that her condition was likely to be permanent.

10. Applicant was not denied due process by the Administration Committee, which acted in accordance with its Rules of Procedure.

11. Consistent with the Tribunal's jurisprudence, the Administration Committee properly reviewed the medical reports, including additional reports that had not been reviewed by the Medical Advisor, and evaluated the conclusions of the Medical Advisor. The Committee properly exercised its authority to make the ultimate determination on the question of disability.

Consideration of the Issues of the Case

76. The case of Ms. "CC" is the third to come before the Tribunal challenging a decision of the Administration Committee of the Staff Retirement Plan denying a request for disability retirement pursuant to SRP Section 4.3. In Ms. "J", Applicant v. International Monetary Fund, Respondent, Judgment No. 2003-1 (September 30, 2003) and Ms. "K", Applicant v. International Monetary Fund, Respondent, Judgment No. 2003-2 (September 30, 2003), the Tribunal rescinded the contested decisions and ordered that disability pensions be granted. Those Judgments also established the standard of review to be applied by the Tribunal in such cases,[14] concluding that disability retirement decisions are subject to scrutiny on the following bases:

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[14] The Tribunal observed that two factors differentiate a disability retirement decision of the Administration Committee from an act taken in the exercise of the Fund's managerial discretion. First, disability retirement decisions involve quasi-judicial decision making, i.e. construing the applicable terms of the Staff Retirement Plan (continued)

> 1. Did the SRP Administration Committee correctly interpret the requirements of SRP Section 4.3 and soundly apply them to the facts of the case, or was the Committee's decision based on an error of law or fact?
>
> 2. Was the Committee's decision taken in accordance with fair and reasonable procedures?
>
> 3. Was the Committee's decision in any respect arbitrary, capricious, discriminatory or improperly motivated?

Ms. "J", para. 128; Ms. "K", para. 54.

Did the Administration Committee correctly interpret the requirements of SRP Section 4.3 and soundly apply them to the facts of Applicant's case?

77. SRP Section 4.3(a) provides in its entirety:

> "**4.3 Disability Retirement**
>
> (a) A participant in contributory service shall be retired on a disability pension before his normal retirement date on the first day of a calendar month not less than 30 nor more than 120 days immediately following receipt by the Administration Committee of written application therefor by the participant or the Employer; on the condition that the Pension Committee must find, on the recommendation of the Administration Committee and the certification of a physician or physicians designated by the Administration Committee, that:
>
> (i) such participant, while in contributory service, became totally incapacitated, mentally or physically, for the performance of any duty with the Employer that he might reasonably be called upon to perform;
>
> (ii) such incapacity is likely to be permanent; and
>
> (iii) such participant should be retired."

Hence, the two essential qualifications for disability retirement are that (1) the applicant is "...totally incapacitated, mentally or physically, for the performance of any duty with the Employer that he might reasonably be called upon to perform," and (2) the incapacity is "likely to be permanent."

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and applying them to the facts of a particular case, and, second, the channel of review applicable to such decisions does not involve the Managing Director. Ms. "J", paras. 112-13; Ms. "K", para. 49.

78. In Ms. "K", para. 67, the Tribunal observed that in reviewing the soundness of the Administration Committee's decision denying disability retirement, the Tribunal must consider whether the decision is supported by the weight of the evidence. "In this assessment, it is appropriate to consider such factors as a) the internal consistency of the physicians' reports, separating observations as to Applicant's condition from ultimate conclusions with respect to incapacity, and b) whether the Administration Committee drew reasonable conclusions from the evidence." *Id.*

79. The case of Ms. "CC" requires the Tribunal to interpret and apply SRP Section 4.3(a) in the circumstances of a staff member who suffers from gastrointestinal symptoms which, the record shows, did not prevent her from performing her duties for the year prior to her separation from service, and which were attributed by the psychiatrist IME and the Medical Advisor to the SRP Administration Committee to a disabling psychiatric condition not previously diagnosed. In contrast to the cases of Ms. "J" and Ms. "K", in the instant case of Ms. "CC", the Administration Committee rejected the Medical Advisor's recommendation to grant a request for disability retirement. (Administration Committee Report of April 17, 2006, paras. 121-128.)

80. This Tribunal's Judgments in Ms. "J", para. 126, and Ms. "K", para. 66, establish that the Administration Committee is not bound by the opinion of the Medical Advisor. In both cases, the Tribunal reversed the Administration Committee's denials of applications for disability retirement in the circumstance in which the Committee had concurred with the Medical Advisor's recommendation. The Tribunal made clear that the ultimate decision as to incapacity lies with the Committee and not the Medical Advisor. *See also* Shenouda v. International Bank for Reconstruction and Development, WBAT Decision No. 177 (1997), paras. 22-24; A v. International Bank for Reconstruction and Development, WBAT Decision No. 182 (1997), paras. 15-16 (concluding that the PBAC's decisions to deny applications for disability retirement, while consistent with the respective opinions of the Medical Advisor, could not be sustained in light of the medical evidence).

Under the terms of the Plan, is Applicant "…totally incapacitated, mentally or physically, for the performance of any duty with the Employer that [s]he might reasonably be called upon to perform"?

81. The Administration Committee's conclusion that Applicant is not totally incapacitated was based on the following principal findings, reaffirmed by the Committee on Review: (i) Applicant was able to work successfully from September 2002 to September 2003, after the surgeries that caused the abdominal symptoms to which she attributes her claimed disability (paras. 43-57); (ii) no subsequent medical event of significance explained the change in her work status when she was placed on administrative leave, followed by Separation Benefits Plan ("SBF") (paras. 43, 58-70); and (iii) Applicant did not establish that her medical condition substantially worsened after she stopped working at the Fund in September 2003. (paras. 71-111.) In her pleadings before the Tribunal, Applicant challenges the Committee's findings and its ultimate conclusion. The question accordingly arises whether the Committee's findings and conclusions are supported by the weight of the evidence before the Tribunal, including additional evidence submitted by Applicant with her pleadings before the Tribunal.

Applicant's ability to work September 2002 – September 2003

82. In her Request of May 5, 2005, Applicant sought disability retirement on the ground that since her surgeries in 2002 she has been experiencing "continued severe abdominal pain, bloating and gastrointestinal disorders." Applicant disputes the Administration Committee's finding that she was not medically prevented from working, and did work successfully at the Fund, for one year after the surgeries to which she attributes her disability. Applicant contends that although she did work at the Fund from September 2002 to September 2003, she was "unable to resume her regular schedule of activities" and "worked only short days and was often absent because of her illness, for medical appointments and alternative treatments." Ms. "CC" asserts that her "flexible schedule" was accommodated by her Division Chief. Respondent, for its part, maintains that the Administration Committee properly concluded, based on its review of Applicant's employment and medical records, that she was able to work successfully from September 2002 until September 2003.

83. In the view of the Tribunal, the evidence sustains the Administration Committee's determination that Ms. "CC"'s medical condition did not preclude the successful performance of her duties from September 2002 until September 2003, after which time she was placed on administrative leave and separated from the Fund as a result of the misconduct proceedings. The fact that Applicant continued to perform successfully despite intermittent symptoms is highly probative of her ability to carry out duties with the Fund. *See* Courtney (No. 2) v. International Bank for Reconstruction and Development, WBAT Decision No. 153 (1996), paras. 31 - 32 (upholding denial of disability retirement, noting that after applicant's illness was treated, he continued to have working engagements with the Bank until he retired and subsequently engaged in academic assignments).

84. The record shows that contrary to Ms. "CC"'s assertion that her condition required accommodation by her supervisors, in her 2002 APR, completed in Spring 2003, Ms. "CC" herself assured that her "medical complications have since been resolved," and her supervisor stated that he was "pleased that she has recovered from her ordeal."

85. The Administration Committee observed that "even if Applicant was informally accommodated by supervisors and colleagues who very much liked working with her, such circumstances would not undercut the significance of the fact that Applicant has been able to work with the medical condition to which she has attributed her disability." (Administration Committee Report of April 17, 2006, para. 57.) As this Tribunal noted in Ms. "J", para. 140, reasonable accommodations may be considered in determining whether there are duties that the Fund could reasonably ask an applicant for disability retirement to perform.

86. Moreover, Applicant's performance was appraised as "fully satisfactory," as reflected in a performance rating of "2." The APR also reveals that Ms. "CC" sought increased responsibilities in 2003, namely "the opportunity to lead … missions." In addition, Ms. "CC" was recognized for performing exceptionally well during the September 2003 mission assignment, despite an extraordinarily heavy workload, including taking on the duties of another economist who had to leave the mission. Ms. "CC" indicated to the Director of HRD that beginning in August 2003 she was "working regularly 12 to 15 hours per day, including weekends."

87. In addition, the medical evidence, reviewed in considerable detail above, further substantiates the Committee's conclusion that Ms. "CC" was not totally disabled during the period in question. While the medical records indicate that Ms. "CC" did experience abdominal distention and episodes of pain following her surgeries in 2002, they do not paint a picture of a totally disabling medical condition. There is no record of Ms. "CC"'s seeking medical attention for about eight months following her return to work in September 2002. Thereafter, in May-August 2003, Ms. "CC" underwent multiple medical evaluations of her abdominal condition. Notably, the Tribunal has no record that Ms. "CC" described her pain during that time as "severe," "paralyzing" or incapacitating, except in reaction to certain laxatives.

88. The records of the acupuncturist indicate that Ms. "CC"'s symptoms did at times affect her work. Thus, in June-August 2003, Ms. "CC" reported that "sometimes she had to take breaks from work due to pain" and that "sometimes she had to lie on [the] floor at work to help the pain," and also complained that stress due to pain affected her work. At the same time, Ms. "CC" repeatedly reported that treatments with herbs and acupuncture alleviated her pain and constipation. Significantly, the Tribunal has no record of Ms. "CC"'s taking pain medications while working at the Fund during the one-year period after her surgeries. None of several treating physicians who evaluated Ms. "CC" during the time in question imposed restrictions on her ability to work or opined that her condition was disabling.

<u>The significance of Applicant's administrative leave and separation from the Fund</u>

89. In its initial Decision, the Administration Committee made the following finding:

> "You worked from September 2002 through most of September 2003 before being placed on Administrative Leave with Pay. No medical reasons for this change in your status were adduced[.]"

90. In order to protect Applicant's privacy and the integrity of the Committee's review, the circumstances of her administrative leave and separation were not disclosed to the Committee at that time.[15] (Para. 24.)

91. As Ms. "CC" objected to the Committee's finding, in considering her application for Review, the Committee was informed that Ms. "CC" had been placed on administrative leave pending the HRD investigation into her conduct during the September 2003 incident, that she was found to have engaged in misconduct under the terms of GAO No. 33 (May 1, 1989) (Conduct of Staff Members), and that she was offered the opportunity to resign and receive separation benefits in lieu of termination for misconduct. The Committee, however, was not

[15] The Committee was advised by HRD that Applicant had been placed on administrative leave at full pay in September 2003 followed by "SBF for non medical reasons." (Administration Committee's Decision on Review, para. 58; Final Minutes of the Administration Committee's meeting of April 12, 2006, p. 3.)

apprised of the details of Ms. "CC"'s conduct.[16] On Review, the Committee reaffirmed its conclusion that there was no medical reason for the change in her work status.

92. While acknowledging in her pleadings before the Tribunal that "the event preventing her from returning to work" was the September 2003 incident, Applicant contends that her "physical and mental condition" was "the precipitating factor" in the incident that ultimately led to her separation:

> "Since [Ms. "CC"'s] surgeries in early 2002, she has been under severe stress due to her continued medical problems as well as numerous medical consultations and tests. Despite not having recovered from her illness and the traumatic effect it had on her life, she undertook a mission … in September 2003, a mission during which she was under great stress, and she endured pain, fatigue, lack of sleep, and poor nutrition. The accumulation of all these stresses led to the psychotic episode … and a decision to place [Ms. "CC"] on paid Administrative Leave **out of consideration for her health problems and for 'humanitarian' reasons.**
>
> …. Ample evidence was provided that the precipitating factor in the episode was [Ms. "CC"'s] physical and mental condition, and that evidence was persuasive in the decision to keep her on paid Administrative Leave until … after she reached age 50, thus making her eligible for life-time coverage for health benefits under the Medical Benefits Plan."

(Emphasis in original.) Applicant maintains that the incident evidences her inability to perform any duty that the Fund could reasonably ask of her, as it sheds light on her "psychological frailty" and on the Fund's "legitimate concern about Applicant's fitness for continued service." Applicant elaborates:

> "Due to the episode that occurred while she was on her last mission, it is clear that the IMF was concerned about [Ms. "CC"'s] ability to withstand stress and continue to be able to perform mission work. ….
>
> …. Clearly, [Ms. "CC"'s] health does not allow her to undertake any task the Fund might entrust to her because she could not ensure an acceptable level of performance as an economist on a continuing basis. In fact, the IMF has already shown in its decision to place [Ms. "CC"] on extended leave with pay due to her health problems that it could not trust her performance, particularly under stressful conditions."

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[16] The HRD records of disciplinary proceedings reviewed by the Committee were redacted accordingly.

93. Respondent counters that Applicant stopped working only because of her misconduct and not her medical condition. Respondent maintains that while Ms. "CC"'s plea of mitigating circumstances resulted in a voluntary separation arrangement, the Fund never took the view, and there was no evidence that she was medically unable to continue working, due to stress.

94. Accordingly, the question arises whether the record substantiates Applicant's contentions that (i) the September 2003 incident demonstrates her unfitness for any duty with the Fund on the basis that her physical and mental condition was "the precipitating factor" in the incident; and (ii) the Fund considered her unfit for duty.

95. As to the first contention, Applicant as well as her treating psychiatrist and the psychiatrist who examined her in connection with the September 2003 incident indicated to HRD that her conduct was related to a transitory psychiatric condition that resolved completely shortly after the incident. The psychiatrists did not indicate that Ms. "CC" was suffering from a totally and permanently disabling condition. Moreover, Applicant did not assert any disability at that time. Indeed, she repeatedly represented to HRD that she was able and willing to return to her work at the Fund. Additionally, Ms. "CC" and the two psychiatrists related her abdominal condition to the incident only indirectly, as one of several factors that contributed to her condition. (Paras. 63-64.)

96. In response to the charge of misconduct, Ms. "CC" asserted that her conduct during the incident was due to a transitory stress-induced psychiatric condition diagnosed by her treating psychiatrist. Ms. "CC" cited her abdominal symptoms (i.e. "persistent acute abdominal pain and distention following two surgeries in 2002") and related medical evaluations as only one of several factors to which she attributed her conduct. Other stressors cited by Ms. "CC" included a recent car accident; extraordinary workload and stress during the mission as a result of her voluntarily assuming additional duties of a colleague who had to leave the mission; and, most prominently, a "horrifying" detention by the local immigration authorities the day before the incident, as a result of which she "temporarily lost [her] senses" for fear of another confrontation with the local authorities in connection with the incident.

97. In a letter that Ms. "CC" provided to HRD in January 2004, her treating psychiatrist opined that her conduct was the result of an "Adjustment Disorder with Disturbance of Conduct," which occurred "under the stress, including the stress of the mission, her mental and physical fatigue at the end of the mission, [and] her encounter with the Border guards …" He made no express reference to Ms. "CC"'s abdominal pain and distention. He further opined that Ms. "CC"'s psychiatric impairment was temporary, stating that it was an "acute episode" and that "[o]nce the disturbance has terminated the symptoms do not persist for any great length of time." Her treating psychiatrist also indicated to HRD that Ms. "CC" had no history of chronic psychiatric illness, stating that in the fourteen years that he had known her, "she never exhibited any psychiatric symptoms" other than "occasionally being depressed as a result of her relative."

98. In March 2004, the psychiatrist IME who evaluated Ms. "CC" in connection with the separation proceedings broadly confirmed her treating psychiatrist's assessment, concluding that during the incident Ms. "CC" experienced an Acute Stress Disorder with dissociative symptoms, which was "caused by a combination of highly specific, event-related stressors, and resolved within a few weeks." He regarded Ms. "CC"'s gastrointestinal symptoms, as relayed by

Ms. “CC”, as among several “stressors” that contributed to the temporary psychiatric impairment. The psychiatrist IME also noted Ms. “CC”’s history of episodic depression related to family matters, but noted that her depression “did not require treatment by antidepressants and did not interfere with her ability to work.”

99. Accordingly, the evidence does not sustain the view that the incident abroad constitutes evidence of a totally and permanently disabling psychiatric condition. As reviewed above, throughout the misconduct proceedings, Applicant and her counsel emphasized the temporary nature of her impairment during the incident in question and her eagerness to return to work at the Fund. Accordingly, while there may have been a health-related component to the conduct, it was not one that can be said to totally and permanently incapacitate Applicant from employment with the Fund.

100. It is also notable that Applicant concedes that prior to her separation in April 2004 she did not consider her medical condition to be disabling. While stating that she was “not fully accepting of her disability at that time,” Ms. “CC” maintains that her desire to work does not demonstrate a lack of any disabling condition. In Courtney (No. 2), paras. 31-32, the World Bank Administrative Tribunal (“WBAT”), in upholding the PBAC’s decision to deny an application for disability retirement, took note of the fact that “the Applicant himself did not consider his condition disabling,” as evidenced by his statements in connection with an earlier claim for workers’ compensation. The evidence pertaining to Ms. “CC”’s own assessment of her ability to work is particularly probative, since her employment record contradicts her claim of disability, and the asserted severity of her symptoms could not be fully substantiated by physical findings. In the course of the disciplinary proceedings, Ms. “CC” and her counsel repeatedly indicated to HRD that she was eager and able to resume her work at the Fund. In February 2004, Ms. “CC” wrote to the HRD Director with a “special plea,” imploring to be permitted to return to work. Ms. “CC”’s counsel also wrote to the HRD Director, stressing her treating psychiatrist’s opinion that the psychological disorder Ms. “CC” had experienced during the incident was not of a lasting nature and further stating that Ms. “CC” was “eager to return to work in the very near future;” he made no mention of Ms. “CC”’s abdominal condition.

101. Applicant contends that the September 2003 incident shows that her medical condition renders her “unreliable” in stressful situations and therefore incapacitates her from mission work. In explaining her conduct to the psychiatrist IME, Ms. “CC” indicated that prior to the mission she “was experiencing daily abdominal pain after eating that usually lasted about 4 hours” and that during the mission “she continued to suffer ‘severe pain’ and abdominal distention daily.” As the Committee observed, despite this “severe pain,” extraordinary workload and stress, Ms. “CC” completed her mission work with distinction (para. 57); the Tribunal has no record of Ms. “CC”’s requiring medical attention or treatment while on mission. The IME and the treating physician who evaluated Ms. “CC” in connection with the incident imposed no work-related restrictions. Indeed, Ms. “CC”’s own account of the incident does not support a generalization as to her ability to work, but rather points to the peculiar circumstances of her last mission and the incident itself (e.g., “my act [was] caused by abnormal circumstances that strained me beyond the normal limits”).

102. Even if the evidence substantiated Applicant’s contention that she is medically unable to perform her “usual duties,” this, in and of itself, would not establish total incapacity for the

performance of any duty with the Fund that she "might reasonably be called upon to perform." In Ms. "J", para. 137, this Tribunal referred to the jurisprudence of the World Bank Administrative Tribunal, concluding that an applicant for disability retirement need not be able to perform exactly the same functions that formerly he could, citing Courtney (No. 2), para. 33 and A, para. 13; *see also* Shenouda, para. 21. In Courtney (No. 2), para. 33, the WBAT concluded:

> "The standard of reasonableness does not require that the participant should continue to be able to do exactly what he had been doing. If a staff member, for example, is unfit to travel but is capable of performing duties at headquarters which are compatible both with his experience and the Bank's needs, then it cannot be concluded that he is totally and permanently incapacitated for any duty that he is reasonably called upon to perform and the requirement of the Retirement Plan is not met."

The WBAT noted the opinion of the applicant's treating physician that he "should not undertake extensive travel and should not be in stressful situations" and, therefore, should not undertake "the kind of work and work related travel which has been part of his routine activity at the Bank since 1976." The WBAT concluded that the applicant was not totally incapacitated since his work-related restrictions did not preclude his undertaking other reasonable assignments. *Id.*, para. 34.

103. In order to be "reasonable" the duties must be compatible with the staff member's experience and the organization's needs. *See* Ms. "J", paras. 137-38, 148, citing Courtney (No. 2), para. 33 and A, para. 12. Respondent maintains that Ms. "CC" is qualified to work in a number of positions in the Fund and that the Fund uses its economists in a wide range of capacities, not only in positions requiring mission travel and long hours in the office. In this respect, Ms. "CC"'s circumstances may be distinguished from those of Ms. "J", a verbatim reporter with "highly specialized but limited training and experience." Ms. "J", para. 140.

104. As to Applicant's contention that the Fund considered her medically unfit for duty, the case of Ms. "CC" must be contrasted with the earlier cases of Ms. "K" and Ms. "J". In the case of Ms. "CC", there was no determination by the Fund that Ms. "CC" was medically prevented from continuing her Fund employment under GAO No. 13, Rev. 5, Annex I and GAO No. 16. In Ms. "J", para. 147 and Ms. "K", para. 64, the Tribunal concluded that "… the factual circumstances surrounding the separation [for medical reasons] may be given weight in reviewing the soundness of the SRP Administration Committee's decision on an application for disability retirement." In Ms. "J", para. 147, the Tribunal observed that in the course of those separation proceedings, Ms. "J" was deemed not to have skills that were transferable to other work within the Fund.

105. The Administration Committee concluded that Ms. "CC"'s medical condition "was not a consideration in the decision to place her on administrative leave" in September 2003. (Para. 61.) The record shows that Ms. "CC" was placed on administrative leave with pay pending investigation to determine if she had engaged in misconduct, pursuant to GAO No. 13, Rev. 5, Section 9.01 (Administrative Leave With Pay Pending Investigation of Misconduct.) Subsequently, based on the HRD investigation, Ms. "CC" was found to have engaged in serious

misconduct warranting termination of her Fund employment as provided in GAO No. 33, Section 10.05. Ms. "CC" objected to the charge of misconduct by asserting *inter alia* that her "physical and mental condition fully explain[ed] and otherwise excuse[d]" her conduct. This contention was rejected by the HRD officials; however, in view of Ms. "CC"'s assertion that her medical condition played a role in her conduct during the September 2003 incident, the HRD Director offered Ms. "CC" the opportunity to resign from the Fund in lieu of being terminated and to receive a monetary settlement "for health and humanitarian reasons," provided that "there is credible evidence, based on an independent medical evaluation, that health factors contributed to the behavior in question."

106. Accordingly, it was the psychiatrist IME's diagnosis of a transient psychiatric disorder that was a condition of the Fund's settlement offer, whose terms included extension of administrative leave with pay to enable Ms. "CC" to qualify for lifetime coverage under the Fund's Medical Benefits Plan. It may be that Ms. "CC"'s assertion that for the preceding two years she had been troubled by gastrointestinal symptoms and the psychiatrist IME's opinion that these symptoms were among the stressors that combined to cause Ms. "CC"'s temporary psychiatric impairment further influenced the Fund's decision to offer Applicant a settlement on such favorable terms. At that time, however, Ms. "CC" made no claim and presented no evidence that she was totally and permanently incapacitated, and there appears to be no indication that the Fund deemed her unfit for continued employment on this ground.

107. In view of the foregoing considerations, the weight of the evidence supports the Administration Committee's conclusion that at the time of Applicant's acceptance of the settlement agreement in April 2004, she was "in no way prevented from returning to work at the Fund by reason of her medical condition. Rather, it was her conduct that prevented her from returning to work." (Para. 69.) These circumstances contrast with those at issue in Ms. "J" and Ms. "K", in which separation for medical reasons supported the decision of the Administration Committee that the applicants could not reasonably be called upon to perform any duty with the Fund.

Did Applicant's medical condition decline following her separation from the Fund so as to render her totally incapacitated under the terms of SRP Section 4.3?

108. Applicant contends that after she was placed on administrative leave in September 2003, "her physical/mental condition has worsened to the point that she could not meet the normal and usual requirements of any position in the IMF since severe abdominal pain or discomfort require her to remain for extended periods in a reclining position." Applicant elaborates that "since around July 2004, her symptoms have included nausea (often with vomiting) and … the frequency of her severe bouts of abdominal pain have increased to about four times a week, while most of the rest of the time she is in major abdominal discomfort." Applicant characterizes her condition as "a combination of mental and physical factors," and asserts that it is "sufficiently severe in nature to disable her with severe pain at unpredictable times on a regular basis." Applicant maintains that the weight of the medical evidence, including the opinions of the Medical Advisor and the psychiatrist IME, supports her claim of total and permanent incapacity.

109. Respondent, for its part, maintains that the Administration Committee correctly concluded that, following Applicant's separation from the Fund, she did not experience a serious downturn in her medical condition so as to totally incapacitate her from work with the Fund. Respondent further maintains that the Committee properly deemed unreliable the opinions of the Medical Advisor and psychiatrist IME, as they reflected material errors and inconsistencies due in particular to Ms. "CC"'s lack of candor. Respondent asserts that the Committee correctly attached little weight to the opinions of three of Ms. "CC"'s treating physicians, her internist, gastroenterologist and psychiatrist. The Committee's decision, maintains the Fund, is supported by the opinion of the gastroenterologist IME and by Ms. "CC"'s own medical records, which contradict her claim of crippling abdominal pain and reflect no diagnosis of a disabling medical condition.

110. Notably, Applicant's initial Request for disability retirement made no reference to a worsening and was based instead on "acutely paralyzing" abdominal pain, a manifestation of "severe gastrointestinal problems since 2002, when I underwent two surgeries." Similarly, her internist's letter in support of Ms. "CC"'s Request referred to "a chronic condition which has existed since surgeries in [2002]." Thus, it was only in response to the Administration Committee's finding that Ms. "CC"'s condition had not worsened since she last worked at the Fund, that she contended for the first time that her condition had worsened significantly.

111. Applicant maintains that she is "unreliable because her condition, a combination of mental and physical factors, incapacitates her at unpredictable intervals that recur on a regular basis, particularly when aggravated by stress, as was often the case at the Fund." Applicant invokes this Tribunal's reasoning in the case of Ms. "K", which involved a claim of "intermittent" incapacity attributed to a psychiatric illness. In the circumstances presented by Ms. "K", paras. 57-62, the Tribunal concluded that inability to perform duties "on a sustained basis" constitutes total disability, citing Courtney (No. 2), Shenouda, para. 18; A, para. 15 ("…although Ms. "K"'s disabling symptoms may be of an 'intermittent' character, they may well have had a pervasive effect on her ability to maintain the position of Staff Assistant.") The Tribunal observed that the relevant inquiry is whether the applicant's "inability to perform her tasks occurred with such frequency, severity, or unpredictability as to render her totally incapacitated for the performance of any duty which the Fund might reasonably call upon her to perform." Ms. "K", para. 60.

112. Accordingly, the question arises whether the Administration Committee reasonably concluded that "based on the weight of the evidence, … Applicant's condition has not significantly worsened since she last worked at the Fund in 2003 so as to leave her totally and permanently incapacitated from any work the Fund might reasonable ask of her." (Para. 111.) In reaching this conclusion, the Committee considered (i) Ms. "CC"'s medical records; (ii) the opinions rendered by her treating physicians on the question of disability; (iii) statements made by Ms. "CC"'s boyfriend and another friend in support of her application for disability retirement; and (iv) the opinions of the IMEs and the report of the Medical Advisor. (Paras. 71-111; 122-128.) These sources, including additional medical records submitted by Ms. "CC" with her pleadings in the Tribunal, are considered below.

113. Upon reviewing Ms. "CC"'s medical records, the Medical Advisor concluded that "there has been neither improvement nor worsening of her condition."[17] The medical records appear to confirm only two episodes of vomiting in September 2004, as recorded by Applicant's internist, as well as periodic reports of nausea in 2004-2005. It is not clear whether Ms. "CC" took the medication prescribed by her internist for these symptoms, and the more recent records of two gastroenterologists indicate that she was not taking any such medication. Significantly, in April-October 2006, Ms. "CC" did not report a single episode of nausea or vomiting to her acupuncturist, who recorded her symptoms in detail nearly every other day.

114. As to abdominal pain, the medical records do not expressly mention a downturn in Ms. "CC"'s condition. In August 2004, one of her gastroenterologists recorded that Ms. "CC" "does not complain of abdominal pain at this time" and contrasted this with "a six month period following her surgery where pain was a predominant factor." Her internist's records clearly indicate improvement in pain and other abdominal symptoms in November-December 2004. Thus, in November Ms. "CC" reported "no severe episodes of pain," and in December the internist noted "sporadic compliance" with the regimen he prescribed "because [she was] doing better;" his assessment was that she was "overall doing pretty well."

115. As the Administration Committee observed, Ms. "CC"'s medical records also reveal large gaps in time between medical consultations and spotty compliance with treatment, which further undermine her claim of frequent "paralyzing" pain. The Tribunal has no record of Ms. "CC"'s seeking medical attention for her abdominal symptoms during extended periods of time in November 2003-August 2004 and April 2005-April 2006. In December 2004, Ms. "CC" reported "sporadic compliance" with the regimen prescribed by her internist despite its apparent benefits; in February 2005, she did not follow up on the recommendations of the Mayo Clinic gastroenterologist.

116. As Respondent maintains, Ms. "CC"'s inconsistent accounts of her symptoms undermine her credibility and the reliability of the treating physicians' reports. In her Request of May 5, 2005, Ms. "CC" asserted that "acutely paralyzing" abdominal pain "lasts for four to six hours about every other day." In a letter of April 28, 2005 supporting Ms. "CC"'s Request, her internist indicated that the bouts of "severe" pain occurred "about three times a week." This statement, however, contradicts the internist's own records. In the course of multiple consultations with Ms. "CC" in August 2004-February 2005, he never referred to her pain as "severe" and prescribed pain medication only once, noting that she did not fill the prescription. In contrast to his letter in support of Ms. "CC"'s disability retirement application, the internist's records reflect "episodic [left lower quadrant] pain up to 2x/week" in October 2004, "no severe episodes of pain" in November 2004, and "doing pretty well" in December 2004.

117. The Administration Committee concluded that instead of relying on his medical records, the internist evidently transcribed the April 28, 2005 letter "almost verbatim from what Applicant asked him on February 23, 2005 to write." One notable deviation is that on February 23, 2005 Ms. "CC" described such bouts as occurring "[on average] 2x/week;" consistently, in February 2005, she told the Mayo Clinic gastroenterologist that the bouts of "paralyzing" pain

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[17] Final Minutes of the Administration Committee, December 1, 2005, p. 3.

occurred "once or twice per week" and lasted "up to three hours." As recorded by that physician, Ms. "CC" described the worst pain as occurring "in the immediate period" before a bowel movement. This observation, noted the Committee, suggests that the severe pain is not long-standing and is consistent with the absence of treatment with pain medications and improvement in response to her internist's treatments for constipation. (Para. 103.) Particularly significant are the acupuncturist's detailed records from 2006, which make no mention of "severe" pain. Indeed, except for occasional reports of increased pain in June and August 2006, between May and early October 2006, Ms. "CC" consistently reported having only "some" pain and that her pain was "better."

118. Ms. "CC" cites no medical reason for the alleged worsening of her condition following separation from the Fund, stating instead that: "Since 2003, Applicant has endured a stressful and embarrassing situation [i.e. the September 2003 incident], been separated from her long-time career at the Fund, failed in attempts to seek employment, battled a disabling medical condition, struggled against the decision to deny her disability pension request, and been unemployed." The facts of this case may be contrasted with the facts in Shenouda. In that case, in reversing the PBAC's denial of an application for disability retirement, the WBAT noted that the applicant's medical records indicated that the downgrading of her responsibilities at the Bank was deemed by her treating physicians to have aggravated a previously diagnosed condition. *Id.*, paras. 6, 14-16, 30.

119. While the parties dispute the soundness of the Administration Committee's finding that Ms. "CC"'s application for disability retirement may have been unconsciously motivated by financial considerations, including her desire to continue to support her mother (paras. 112-119), the fact remains that, whatever her motivation, Ms. "CC" repeatedly provided inconsistent accounts of material facts.

120. Applicant maintains that "there is a psychiatric component" to her disabling condition, citing the opinion of the psychiatrist IME that Ms. "CC" is totally and permanently incapacitated as a result of Undifferentiated Somatoform Disorder, which was echoed by the Medical Advisor. Consistent with the reports of the psychiatrist IME and the Medical Advisor, Ms. "CC" indicates that this condition incapacitates her by way of her gastrointestinal symptoms and "excessive health care utilization," stating that her "[gastrointestinal] complaints and the resulting social or occupational impairment are in excess of what would be expected from the history, physical examination, or laboratory findings."

121. In the view of the Tribunal, the Administration Committee properly concluded that Ms. "CC"'s medical records, particularly those of her treating psychiatrist and her internist do not support the conclusion that Applicant has suffered a disabling psychiatric condition or a significant downturn in her mental health from mid-2004. (Paras. 106-09.) There is no record of Ms. "CC"'s being diagnosed by her treating physicians with any chronic psychiatric illness. Accordingly, her condition may be contrasted with that of the applicants for disability retirement in Ms. "K" and the WBAT's Decision in A, para. 16, in which medical records revealed a history of long-standing psychiatric illness. The medical records reflect that subsequent to her separation from the Fund Ms. "CC" was prescribed medications to address her complaints of depression and anxiety, which appear to have been beneficial. Applicant, however, does not assert, and the

records do not suggest, that her depression and anxiety are totally and permanently incapacitating.

122. Moreover, Applicant's treating psychiatrist's only recorded diagnosis for Ms. "CC" is for an acute Adjustment Disorder in January 2004. His records reflect only sporadic consultations with Ms. "CC" and provide no indication that he saw the need for systematic counseling, either before or after mid-2004. After Ms. "CC" was charged with misconduct, in a letter of January 6, 2004, he supported Ms. "CC"'s plea to resume her work at the Fund. He opined that during the September 2003 incident she had experienced a transient psychiatric impairment, i.e. Adjustment Disorder, from which she had fully recovered, and further stated that in the past "other than her occasionally being depressed as a result of her relative she never exhibited any psychiatric symptoms." At that time, her treating psychiatrist clearly did not consider Ms. "CC" to be suffering from a chronic and disabling condition. Between December 2003 and February 2004, Ms. "CC" consulted with him on three occasions, apparently in reference to the September 2003 incident. It appears that Ms. "CC" did not consult again with the treating psychiatrist until late October 2004, when he noted that she was "[s]till looking for a job." Following two more consultations in November 2004, Ms. "CC" did not contact him again until August 2005, after she had applied for the disability pension and was due for an evaluation with the psychiatrist IME. The records reflect only one other consultation in 2005, and one more in 2006.

123. In addressing Applicant's claim of intermittent incapacity, the Administration Committee observed in its initial Decision that "when you are incapacitated, it is for a few days." In the same vein, Respondent maintains:

> "As a skilled economist with experience working successfully in three Fund departments, including two area departments and a functional department, the Applicant is qualified to work in a number of positions in the Fund. …. [T]he Fund uses its economists in a wide range of capacities, not only in positions requiring mission travel and long hours in the office. The Fund has many economists working on economic research, for example, and the Fund has progressive policies on working from home, supported by extensive information technology systems that provide economists with remote access to nearly all of the same resources they have at the office. Accordingly, there is every reason to believe that, but for her misconduct, Applicant would still be working successfully at the Fund today, even if she did intermittently experience bouts of painful constipation or depression that would require her to recuperate at home."

Notably, Ms. "CC"'s 2002 APR stated that "broad experience in the department and the Fund … allows [Ms. CC] to be assigned a diversity of tasks." Applicant counters that the Fund is "speculating without sound foundation that Applicant could have worked on some relaxed schedule or from home."

124. As this Tribunal noted in Ms. "J", para. 148, in deciding whether an applicant for disability retirement is capable of performing any duty that the Fund may reasonably call upon

him to perform, “whether a current vacancy in a particular type of position exists is not determinative.” Similarly, in Courtney (No. 2), para. 35, the WBAT indicated that the answer to this question does not depend on whether a staff member affected by a disability was actually offered an alternative position “if no such position is available or if the circumstances of the case do not allow for such an offer to be made.” The WBAT noted that the applicant in that case had separated from the Bank and that issues related to his separation were finally settled in the WBAT’s earlier decision.

125. In support of her claim, Applicant invokes statements made by three of her treating physicians, i.e. her internist, psychiatrist and gastroenterologist, on the question of incapacity. In rejecting Applicant’s contention that her medical condition has deteriorated so as to render her totally incapacitated, the Administration Committee concluded that these physicians’ statements do not constitute reliable and probative evidence of Ms. “CC”’s asserted disability.

126. In Ms. “K”, para. 67, the Tribunal commented on the weight to be accorded to the physicians’ ultimate conclusions regarding incapacity, as contrasted with their specific findings and observations. The Tribunal observed that “[t]he WBAT spoke to this question in part in Courtney (No. 2), para. 32, commenting on a physician’s statement (which the record revealed had been drafted by counsel with the objective of supporting the application for disability retirement), cautioning: ‘The views expressed on disability are opinions and not facts.’ ….” As noted above, internal inconsistency of physicians’ reports, including lack of correlation between the physician’s recorded observations and conclusion on incapacity, is another factor to be considered in weighing their reliability and probative value. This is particularly true when the statement is made for the advancement of the application for disability rather than for the purpose of diagnosis and treatment.

127. In the view of the Tribunal, the Administration Committee did not err in interpreting the applicable provision of the SRP and soundly applying it to the facts of Ms “CC”’s case. The weight of the evidence showed that despite her medical complaints she was able to perform successfully her functions with the Fund until her separation from service for reasons of misconduct. Events surrounding her separation from service do not support a finding of incapacity. Nor has Applicant demonstrated that her condition has deteriorated since the time of her separation. As the Tribunal has concluded that Applicant is not “totally incapacitated” under the terms of the Plan, it need not consider whether her condition is “likely to be permanent.”

Was the Committee’s decision taken in accordance with fair and reasonable procedures?

128. Applicant maintains that the Administration Committee’s decision was not taken in accordance with fair and reasonable procedures. Ms. “CC” challenges denial of her application for disability retirement because that decision contravened the Medical Advisor’s recommendation. She also maintains that the Committee violated due process by not obtaining another expert opinion. She further challenges the Committee’s drawing of conclusions from additional medical evidence not reviewed by the Medical Advisor.

129. In the view of the Tribunal, none of these contentions is persuasive. As indicated above, the Committee is entitled to reach conclusions not in accord with those of the Medical Advisor. *See* Ms. “J”, para. 175. It was not required to obtain another expert opinion in so doing. Nor was

due process violated by the Committee's reviewing and drawing conclusions from additional medical evidence that was not reviewed by the Medical Advisor. *See* Shenouda, para. 37 ("the PBAC's decision-making and approval of benefits is excessively tied to the opinion of the Medical Advisor"), quoted in Ms. "J", para. 163.

Was the Administration Committee's decision in any respect arbitrary, capricious, discriminatory or improperly motivated?

130. Applicant also contends that the Committee's decision flows from a misunderstanding of the September 2003 incident. In fact, however, the Committee's decision did not turn on the incident, the facts of which were not disclosed to it. Applicant's contentions regarding the significance of the events surrounding her separation from the Fund have been considered by this Tribunal.

Decision

FOR THESE REASONS

The Administrative Tribunal of the International Monetary Fund unanimously decides that:

The Application of Ms. "CC" is denied.

Stephen M. Schwebel, President

Nisuke Ando, Associate Judge

Michel Gentot, Associate Judge

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Stephen M. Schwebel, President

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Celia Goldman, Registrar

Washington, D.C.
November 16, 2007