

CASE NO. **91354021**

913-145C

Part \_\_\_\_ of \_\_\_\_ Parts

In The Circuit Court for Baltimore City  
**CIVIL**

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L

141930

In the Matter of

LINDA J. THOMPSON  
 VS.  
 DEPARTMENT OF HUMAN RESOURCES

FILED

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LINDA J. THOMPSON

Appellant

v.

DEPARTMENT OF HUMAN RESOURCES  
BALTIMORE CITY DEPARTMENT OF  
SOCIAL SERVICES

Appellee

\* IN THE  
\* CIRCUIT COURT  
\* FOR  
\* BALTIMORE CITY  
\* Case No. 91354021/CL141930

\* \* \* \* \*

ORDER OF SATISFACTION

MADAM CLERK:

Please enter the judgment in the above-captioned case,  
"PAID, SETTLED AND SATISFIED," upon payment of open court costs  
by the Appellee.

Respectfully submitted,

*Linda J. Thompson*  
LINDA J. THOMPSON  
One Seaview Avenue  
Branford, Connecticut 07405

Appellant

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Attorney General of Maryland

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Attorneys for Appellee

*on computer*

*State Agency*

MAILED

AB

OFFICES OF

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CATHERINE M. SHULTZ  
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September 28, 1993

Saundra E. Banks, Clerk  
Civil Division  
Circuit Court for Baltimore City  
111 N. Calvert Street  
Baltimore, Maryland 21201

Re: Linda Thompson v. Department of Human Resources  
Baltimore City Department of Social Services  
Case No. 91354021/CL141930


Dear Ms. Banks:

Please file the enclosed Order of Satisfaction in the above-captioned case on behalf of the Department of Human Resources, the Appellee.

We previously requested a bill for any open court costs but as we have not received same, we assume there are none outstanding.

Thank you.

Sincerely,

  
Sherry L. Kendall  
Assistant Attorney General

SLK:sg  
Enclosure  
cc: Fred Cramer  
Linda Thompson

LINDA J. THOMPSON	*	IN THE
Appellant	*	CIRCUIT COURT (10)
v.	*	FOR
DEPARTMENT OF HUMAN RESOURCES*		BALTIMORE CITY
BALTIMORE CITY DEPARTMENT		
OF SOCIAL SERVICES	*	Case No. 91354021/CL141930
Appellee	*	
* * * * *		

MEMORANDUM OPINION AND ORDER

Hollander, J.

I. Introduction and Background

At issue here is the claim for extended sick leave made by Linda J. Thompson ("Thompson," "Grievant" or "Appellant"), an employee of the State's Department of Human Resources (the "Department") since 1982. Thompson asserts that she suffers from Chemical Sensitivity Syndrome ("CSS") and became ill due to long term exposure to fumes from a xerox machine, cigarette smoke and pesticides at work.

During the period October 24, 1988 through February 2, 1989, as a result of medical problems, Thompson exhausted all of her accrued sick leave and advanced sick leave. Shortly thereafter, Thompson applied for extended sick leave benefits. The pertinent regulations regarding extended sick leave are former COMAR 06.01.01.42D(6) and (8).<sup>1</sup>

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1. The applicable provisions of COMAR were recodified after the Administrative Law Judge rendered his decision in this matter. While some changes were stylistic, others were substantive. COMAR 06.01.01.42(D)(8)(a), which was in effect at the relevant time, is now codified at COMAR 06.01.11.07A,B,C. Its substance is unchanged. COMAR 06.01.01.42D(6)(c), which was in effect during the (continued)

After reviewing the relevant documentation in support of her claim, the State Medical Director, Peter Oroszlan, M.D. ("Oroszlan"), found "no medical justification to advance or extend leave to Ms. Thompson for the alleged health related problems." Department Exhibit 1 at page 7. Based on this recommendation, the Department of Personnel denied Appellant's leave request.

Thompson then commenced her labyrinth-like trip through administrative appeals. On April 3, 1989, pursuant to State Employee Grievance Procedures, Code, Art. 64A, Section 52, et seq., Thompson filed a Grievance Petition based on the denial of extended sick leave. On April 2, 1990, Administrative Law Judge (the "ALJ") Thomas Curtis held a hearing and ruled against Thompson in a decision dated July 16, 1990. Thompson then timely noted an appeal to the Circuit Court, which resulted in a remand by Order of Judge Joseph H. H. Kaplan, dated September 28, 1990.

On June 7, 1991, ALJ Charles W. Fowler convened the hearing ordered by Judge Kaplan. On July 11, 1991, ALJ Fowler

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1. (continued) administrative phase of this matter, was repealed and replaced by COMAR 06.01.11.05H on December 9, 1991. Maryland Register, Volume 18, No. 24, 2642.

The parties correctly agree that the earlier COMAR provision, 06.01.01.42D(6)(c), governs this appeal. The new regulation would have no applicability to this case, as it has no retroactive effect. See Arundel Corporation v. County Commissioners of Carroll County, 323 Md. 504 (1991); State Commission on Human Relations v. Amecon Division of Litton, 278 Md. 120 (1976); Changing Point, Inc. v. Md. Health Resources Planning Commission, 87 Md. App. 50 (1991); Gee v. Mass Transit Admin., 75 Md. App. 253, cert. denied, 313 Md. 8 (1988). But see, McComas v. Criminal Injuries Board, 88 Md. App. 143 (1991).

sustained the Department's decision denying Thompson extended sick leave. The ALJ determined, inter alia, that the Secretary of Personnel had the authority to rely on the opinion of the State Medical Director that there was no justification for the requested leave.

Pursuant to Code, State Government Article, Section 10-215,<sup>2</sup> Thompson again appeals to this court. She contends that the ALJ's decision of July 11, 1991 was arbitrary and capricious and erroneous as a matter of law.

## II. Standard of Review

Code, Section 10-215 establishes the standard of judicial review in connection with the administrative adjudication of State employee grievances. Sections 10-215(f) and (g) provide as follows:

- (f) Proceeding. - (1) The court shall conduct a proceeding under this section without a jury.
- (2) A party may offer testimony on alleged irregularities in procedure before the agency that do not appear on the record.
- (3) On request, the court shall:
- (i) hear oral argument; and
  - (ii) receive written briefs.
- (g) Decision. - In a proceeding under this section, the court may:
- (1) remand the case for further proceedings;
  - (2) affirm the decision of the agency; or
  - (3) reverse or modify the decision if any substantial right of the petitioner may have been prejudiced because a finding, conclusion, or decision of the agency:
    - (i) is unconstitutional;
    - (ii) exceeds the statutory authority or jurisdiction of the agency;
    - (iii) results from an unlawful procedure;
    - (iv) is affected by any other error of law;
    - (v) is unsupported by competent, material, and substantial evidence in light of the entire record as submitted; or
    - (vi) is arbitrary or capricious.

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2. Hereinafter, unless otherwise noted, all Code references refer to the State Government Article.

The agency's decision must be reviewed in the light most favorable to the agency, because administrative agency decisions are prima facie correct and carry with them the presumption of validity. Courtney v. Board of Trustees, 285 Md. 356, 362 (1979); Bulluck v. Pelham Wood Apts., 283 Md. 505, 513 (1978). A reviewing court is not to substitute its judgment for that of the agency where substantial evidence supports the agency's finding. Howard County v. Davidsonville Civic & Potomac River Ass'ns., 72 Md. App. 19 (1987). Rather, this court must determine whether a reasoning mind reasonably could have reached the factual conclusions reached by the agency. Warner v. Town of Ocean City, 81 Md. App. 176, 193 (1989).

The agency's factual findings must be supported by substantial evidence. Department of Health & Mental Hygiene v. Reeders Mem. Home, Inc., 86 Md. App. 447 (1991); Perini Services, Inc. v. Maryland Health Resources Planning Comm'n., 67 Md. App. 189 (1986). The "substantial evidence" test has been defined as "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." Maryland Shipbuilding & Drydock Co. v. Maryland Comm'n. on Human Relations, 70 Md. App. 538, 551 (1987).

An agency's interpretation of its own regulations is also entitled to great deference on judicial review. "Because an agency is best able to discern its intent in promulgating regulations, the agency's expertise is more pertinent to the interpretation of an agency's rule than to the interpretation

of its governing statute." Maryland Comm'n. on Human Relations v. Bethlehem Steel, 295 Md. 586, 593 (1983). See also, Changing Point, Inc. v. Maryland Health Resources Planning Comm'n., 87 Md. App. 150 (1991).

### III. Factual Summary

Thompson last worked for the State on October 24, 1988. T.55.<sup>3</sup> On October 21, 1988, Alan Gaby, M.D. ("Gaby") gave Appellant a medical slip excusing her attendance from work from October 24, 1988 to November 7, 1988.<sup>4</sup> She was tentatively diagnosed with an environmental illness. T.55. Gaby referred Thompson to Grace E. Ziem, M.D. ("Ziem"), a physician specializing in the practice of occupational and environmental medicine, including chemical exposures. T.8, 10, 55. By November 15, 1988, Thompson used all of her accrued sick leave, and requested advanced sick leave. T.56.<sup>5</sup> On January 23,

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3. "T" refers to the Transcript of proceedings on June 7, 1991 before ALJ Fowler.

4. Medical reports and correspondence were submitted by the Department as one Exhibit at the Administrative Hearing. At the argument in Circuit Court, Appellant submitted, without objection, a compilation of medical records and reports, including Gaby's letter.

5. COMAR 06.01.11.07E, previously codified at 06.01.01.42D(8)(c), provides, in pertinent part: "The appointing authority shall forward to the Secretary each written request for extended sick leave immediately after the request has been submitted by the employee.... The appointing authority shall place the employee on extended sick leave before receiving written notification of the Secretary's approval or disapproval. If the request is disapproved by the Secretary, the appointing authority shall correct the employee's leave record to reflect a conversion of the extended sick leave to leave of absence without pay...." (Emphasis added).



1989, her supervisor approved the request, through February 24, 1989. T.56-58.<sup>6</sup> Thereafter, Thompson sought extended sick leave benefits,<sup>7</sup> T.64, and supported her request with reports from Ziem and Beth Aronson, M.D., who confirmed the diagnosis of CSS.

On January 27, 1989, the Department referred Thompson to Oroszlan (the State Medical Director) for a medical evaluation, pursuant to COMAR 06.01.01.42D(6)(c).<sup>8</sup> See Department Exhibit 7. The referral was made to assist the Department in its determination of whether to award Thompson extended sick leave.

The Department advised Oroszlan that Thompson's personal physician, Ziem, had diagnosed her as having "multiple chemical

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6. According to the Department, Thompson's advanced sick leave actually expired on February 2, 1989, not February 24, 1989. T.60.

7. COMAR 06.01.01.42(D)(8)(a) provides:

Extended sick leave is leave with pay that is granted by the Secretary to the employee in an allocated position who sustains an illness or injury which causes the employee to be absent from work, provided that the employee has been in the State service for at least 5 years and, at the time of a request for extended sick leave, has used all available sick leave, advanced sick leave, annual leave, personal leave and, when appropriate, compensatory leave. Extended sick leave may be used by an employee throughout the employee's State service until the employee has reached a cumulative total of 12 work months. However, when added to the total amount of other available leave, a single request may not exceed 15 months.

8. COMAR 06.01.01.42D(6)(c) provides: "The Secretary may refer an employee who is on advanced sick leave or extended sick leave to the State Medical Director or another physician for periodical examinations to determine the nature and extent of the illness, the employee's progress toward recovery, the length of time necessary for recovery, and an estimated date of return to work. If there is a conflict, the Secretary may choose the recommendation of the State Medical Director in determining the date on which to terminate the advanced sick leave or extended sick leave." (Emphasis added).

sensitivity," or "chemical sensitivity syndrome."<sup>9</sup> Thompson's medical records, including reports and records from several doctors, confirming the diagnosis of CSS, were also submitted to Oroszlan for his review. T.67, 72.

Additionally, the medical report of Dr. F. G. Mainolfi ("Mainolfi"), the chief physician for the State Accident Fund, dated January 17, 1989, was also provided to Oroszlan. Thompson Exhibit 3.<sup>10</sup> Mainfoli said:

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9. Ziem testified as an expert witness. She stated that the disease is "generally recognized as an illness in which patients appear to...[get] worse when they're exposed to chemicals, particularly petroleum related chemicals including but not limited to pesticides in which patients' symptoms improve when they are removed from such exposure. However, it's a chronic illness which a patient can be ill for a number of years. We're unclear at this time what proportion of people permanently recover from the condition and what proportion of people will have some residual disability. What is in dispute is the exact mechanism. In other words what's going on biochemically in the body to cause these changes. We're unclear about the pathophysiology, if you will, or what [are] the internal body causes of the condition." T.13.

Ziem also testified that: "Symptoms commonly include central nervous symptoms. Commonly include severe fatigue." T.14. Significantly, Ziem explained the disease's diagnosis as one that is "primarily based upon the classic appearance of symptoms with exposure and symptoms clearing with removal from exposure and the absence of other explanatory medical conditions. In other words the absence of other medical conditions or causes that would explain the symptoms." T.15. Ziem added that Thompson was exposed to cigarette smoke at work and was stationed in a small room near the exhaust portal of a heavily used photocopy machine. T.16. As a result, Thompson suffered fatigue and "the inability to think and concentrate and recall or remember during the time that the reaction is occurring...." T.17.

10. Mainolfi thought that Thompson's subjective symptomatology should not be considered as a work related condition. He reasoned, inter alia, that the level of some of the substances found in Thompson's blood is found in a large percentage of the general population and that detectable levels of tetrachlorethylene can be found in a large majority of the population, due to wearing dry-cleaned clothing. Thompson Exhibit 3.

My overall conclusion regarding [Thompson] is that the diagnosis of multiple chemical sensitivity is not generally accepted as a legitimate diagnosis and that it should not be so accepted in this patient.

Thompson Exhibit 4.

Although Oroszlan reviewed the voluminous medical documentation submitted to him, he never made any physical examination of Thompson. Apparently, based on Mainfoli's report, he deemed an examination unnecessary. T.66. On February 2, 1989, after review of the various reports, Oroszlan opined that there was no justification to grant extended sick leave to Thompson. Department Exhibit 4.

Appellant was ordered back to work on February 14, 1989 and again on March 8, 1989, because Oroszlan found no medical reason which prevented her from performing the duties of her position. Department Exhibits 5,10. **The** Department, thereafter, placed her on leave of absence without pay, due to medical reasons, retroactive to February 3, 1989. See Department Exhibit 16.<sup>11</sup>

In February, 1990, Thompson renewed her request for extended sick leave, and provided additional medical reports. Thompson Exhibit 8. In a letter dated March 22, 1990, Oroszlan's opinion remained unchanged. Department Exhibit 14. Shortly thereafter, the first administrative hearing was held.

From the evidence, ALJ Fowler found the following facts:

1. Grievant timely applied for extended sick leave.

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11. Thompson's medical leave of absence without pay has been converted to a personal leave of absence without pay, retroactive to June 7, 1989.

2. Grievant was denied extended sick leave, based on the opinion of the State Medical Director [Oroszlan], as there was no contraindication to the Grievant returning to work.
3. Grievant refiled her application with additional medical evidence, but the State Medical Director [Oroszlan], after reviewing the new evidence, remained of the opinion that there was no contraindication [sic] to the Grievant returning to work.
4. Dr. Ziem's diagnosis is that the Grievant is suffering from Chemical Sensitivity Syndrome, and remains unable to return to her employment.
5. The state of the science pertaining to Chemical Sensitivity Syndrome was such in 1988 and 1989 that the profession was in substantial disagreement as to whether the syndrome even existed, and if it did, what physiological effects on the body were attributable to it.

ALJ's Decision of July 11, 1991 at 6-7.

Based on his factual findings, the ALJ concluded that Oroszlan complied with the relevant COMAR provisions in making his decision and recommendation to the Secretary to deny extended sick leave to Thompson. He also determined that the Secretary had authority to rely upon the recommendation and opinion of Oroszlan in denying Thompson her requested extended sick leave. The ALJ further found that there was no evidence to establish that the conduct of the Department in denying extended sick leave was arbitrary or capricious.

Appellant has been approved for disability retirement based on her condition, T.46-47, 51-52, 82, and has been approved for Social Security Disability benefits. T.47-48; Thompson Exhibit 4.

#### IV. Issues

Thompson contests the propriety of the referral by the Secretary to the State Medical Director, pursuant to COMAR 06.01.01.42D(6)(c). She further asserts that if COMAR does not

authorize the referral, the State Medical Director had no right to render an opinion, and any reliance by the Secretary on that opinion would be misplaced.

Thompson also argues that Oroszlan's review of the reports and medical records from other physicians, without a personal examination of her, was wholly insufficient to formulate his opinion that there was no medical justification to grant extended sick leave. Because Oroszlan failed to examine her, she argues that the Secretary was not entitled to give deference to the State Medical Director's opinion.

Appellant also argues that the decision of the State Medical Director and the ALJ to deny Thompson advanced or extended sick leave benefits was arbitrary and capricious, and unsupported by substantial evidence.

#### V. Discussion

After Thompson was already approved by her supervisor for advanced sick leave, T.56-58, she was referred to the State Medical Director for examination pursuant to the provisions of COMAR 06.01.01.42D(6)(c). See note 8, *supra*. At that time, she was properly deemed to be on advanced or extended sick leave pursuant to the applicable COMAR regulations.

COMAR 06.01.01.42D(8)(c) authorized Appellee to place Appellant on extended sick leave pending the decision regarding the request. See note 5, *supra*. Moreover, when Thompson's referral was made on January 27, 1989 (Department Exhibit 7), advanced sick leave had been approved at least through February 2, 1989. Department Exhibit 8. Therefore, the ALJ did not err in deciding that COMAR 06.01.01.42D(6)(c) applied here.

COMAR 06.01.01.42D(6)(c) specifically authorizes the Secretary to "choose the recommendation of the State Medical Director" over the conflicting recommendation of the employee's treating physician. See Note 8, supra. However, the statutory scheme also permits an employee who is aggrieved by the determination to pursue a grievance and obtain a decision by the ALJ. The resolution of that issue may well include consideration of conflicting medical opinions, notwithstanding the Secretary's right to choose the opinion of the State Medical Director.

It is undisputed, that here, the State Medical Director never personally conducted a physical examination of Thompson, even though one was specifically requested and contemplated by the Department.<sup>12</sup> See Department Exhibit 7. Rather, Oroszlan only reviewed Thompson's records and Mainfoli's report, and later personally spoke with Ziem. Solely on the basis of his review of records and reports, however, the State Medical Director determined that it was medically unjustified to advance or extend leave to Thompson for her health problems. Department Exhibit 1 (Oroszlan's letter dated February 2, 1989).

The Department contends that "it is reasonable to assume that, having the benefit of Dr. Mainfoli's analysis of the

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12. The State readily concedes in its brief, at page 5, that a medical evaluation by Oroszlan was requested.

controversial nature of the existence and possible psychiatric causes of chemical sensitivity syndrome...he...deemed it unnecessary to physically examine Ms. Thompson." Department's Brief at 16. But Oroszlan never expressed that he viewed a physical examination as unwarranted. Moreover, the applicable regulatory scheme leaves no room for such assumptions.

COMAR 06.01.01.42D(6)(c) provided that the employee -- not just her records -- may be referred to the State Medical Director for periodical examination. Indeed, the Department requested that Oroszlan schedule an appointment with Thompson to evaluate her. The Department's letter states: "[T]his is to request that an appointment for a medical evaluation be scheduled...." Department Exhibit 7. The COMAR regulation then in effect did not empower the State Medical Director to forego a requested examination even if he deemed it medically unnecessary.

It is a settled principle of statutory construction that where the language of a statute is plain and free from ambiguity, there is no need to look beyond its words to find its meaning. Lone v. Montgomery County, 85 Md. App. 477 (1991); Fireman's Fund Insurance Company, et al. v. Bragg, 76 Md. App. 709 (1988). Applying this rule of construction here, it flies in the face of logic to suggest that Oroszlan's review of documentation and other medical records constitutes an "examination" within the plain meaning of the pertinent regulation. If the regulation were intended to authorize a referral to the State Medical Director for an opinion

based solely on a review of records and opinions of other physicians, it could easily have so stated. Cf. Voishan v. Palma, 327 Md. 318 (1992) ("Had the legislature intended to make the highest award in the schedule the...basic support obligation...it would have so stated...."). (Slip Opinion at 7). Similarly, the provision could readily have vested discretion in the State Medical Director to forego an examination which he thought would be unproductive. In the absence of such discretion, the State Medical Director should have physically examined Thompson, as requested.

The ALJ heard the expert testimony of Ziem, Thompson's principal treating physician. The ALJ also considered that, at the time the State Medical Director formed his opinion, the medical community in general was not convinced that CSS actually exists. ALJ Decision of July 11, 1991 at 7. See also, notes 9,10, supra. He concluded that the State Medical Director complied with COMAR in making his diagnosis, decision and recommendation to the Secretary.

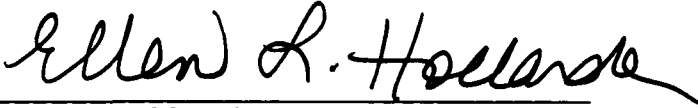
Although the ALJ carefully considered the evidence, this court finds, as a matter of law, that the ALJ erred. Whatever the State Medical Director may ultimately determine, his opinion should have been reached only after he personally examined the Grievant, as requested by the Department and then authorized by COMAR. Otherwise, the statutory provision which permitted the Secretary to refer the employee for an examination is rendered meaningless. Accordingly, the decision of the ALJ must consider the State Medical Director's opinion,



made after the personal examination is conducted. Moreover, while the Secretary may rely on the State Medical Director's opinion in reaching a decision regarding extended sick leave, the ALJ's decision in a grievance proceeding must be supported by substantial evidence. See discussion at pages 4-5, supra.

Based on the foregoing, it is this 23<sup>rd</sup> day of October, 1992, ORDERED that the decision of the ALJ is affirmed in part and reversed in part; it is further

ORDERED that the matter shall be REMANDED for a medical examination of Thompson by the State Medical Director, and an administrative hearing to consider, inter alia, the findings based on the State Medical Director's medical examination. Costs to be divided between the parties.

  
Ellen L. Hollander, Judge

cc: All Counsel

Circuit Court  
for  
Baltimore City

111 NORTH CALVERT STREET  
BALTIMORE, MARYLAND 21202

ELLEN LIPTON HOLLANDER  
JUDGE

396-5100  
City Deaf TTY 396-4930

September 15, 1992

Sherry L. Kendall, Esquire  
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Suite 1015  
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Baltimore, Maryland 21201-3521

Barry C. Steel, Esquire  
752 Camberley Circle  
Towson, Maryland 21204

Re: Linda S. Thompson v. Department of Human Resources

Dear Counsel:

As you know, COMAR 06.01.01.42D(b)(c) was replaced by Section 06.01.11.05H. The language in 06.01.11.05H concerning advanced sick leave and extended sick leave differs, in substance, from COMAR 06.01.01.42D(b)(c).

Please provide me with any authority on which you rely to support your respective positions as to which of the two COMAR provisions governs and controls this case.

Very truly yours,

  
Ellen L. Hollander

ELH/kfw

cc: Court File

PRESIDING JUDGE ..... *Hollander*

COURTROOM CLERK ..... *Kelly*

STENOGRAPHER ..... *Hay*

ASSIGNED TO FOR TRIAL ..... JUNE 12, 1992

CASE NUMBER - 91354021  
CASE TITLE - THOMPSON VS DEPT. OF HUMAN RESOURCES CL141930 CL  
CATEGORY - APPEAL FROM ADMINISTRATIVE AGENCY  
PROCEEDING - COURT TRIAL - FAST TRACK

KENDALL, SHERRY  
STEEL, BARRY

DEFENSE ATTORNEY 333-0019  
PLAINTIFF ATTORNEY 296-8573

*Judge has file*

TYPE OF TRIAL : ( ) JURY (  ) NON-JURY ( ) OTHER

DISPOSITION (CHECK ONE)

- ( ) SETTLED ( ) CANNOT SETTLE ( ) NEXT COURT DATE
- ( ) VERDICT ( ) REMAND ( ) NON PROS/ISSUE
- ( ) JUDGEMENT NISI ( ) ORDER/DECREE SIGNED ( ) OTHER
- ( ) JUDGEMENT ABSOLUTE ( ) ORDER/DECREE NOT SIGNED PLEASE EXPLAIN:
- (  ) POSTPONED ( )
- (  ) SUB CURIA ( ) MOTION DENIED

JUDGE SIGNATURE *S/S Hollander* DATE *6/12/92*

DE

IN THE CIRCUIT COURT FOR BALTIMORE CITY

CATEGORY APPAA

CASE NO. 91354021/GL141930 PAGE 1 of

PARTIES	ATTORNEY(S)
<p>LINDA J. THOMPSON</p> <p>VS.</p> <p>DEPARTMENT OF HUMAN RESOURCES (BALTIMORE CITY DEPARTMENT OF (SOCIAL SERVICES)</p>	<p>BARRY C. STEEL 420838</p> <p>Sherry L. Kendall -349203</p>

DATE	DOCKET ENTRIES	NO.
12-20-91	ORDER FOR APPEAL FROM THE DECISION OF THE ADMINISTRATIVE LAW JUDGE AND PETITION.	1
1/10/92	<i>Certificate of Compliance</i>	2
1-16-92	<i>Pltff's Application for Extension of Time</i>	3
1-20-92	<i>Order of Court that Pltff's Application for Extension of Time is "Denied" (Ross J.)</i>	4
1/20/92	<i>App. of Sherry L. Kendall as atty. for dept. answered.</i>	5
2/18/92	<i>Certifying Record for pet. CTF notice and procedure re rule B-12</i>	6
<i>Other Papers in Storage Area to large for file</i>		
3-11-92	<i>Transcript of Record PAPERS IN SEPARATE ENVELOPE</i>	7
5/11/92	<i>Depts memo fd.</i>	8
6/1/92	<i>Depts memo fd.</i>	9

IN RE APPEAL OF DECISION  
OF ADMINISTRATIVE LAW JUDGE

LINDA J. THOMPSON

Appellant

v.

DEPARTMENT OF HUMAN RESOURCES  
BALTIMORE CITY DEPARTMENT OF  
SOCIAL SERVICES

Appellee

IN THE

CIRCUIT COURT

FOR

BALTIMORE CITY

Case No. 91354021/CL141930

**FILED**  
JUN 1 1992  
CIRCUIT COURT FOR  
BALTIMORE CITY

\* \* \* \* \*

**APPELLEE'S MEMORANDUM OF LAW  
IN SUPPORT OF ADMINISTRATIVE DECISION  
PURSUANT TO MARYLAND RULE B12**

**I. INTRODUCTION AND STATEMENT OF THE CASE**

Through this appeal Linda Thompson, Appellee's former employee, challenges the final administrative decision of the Office of Administrative Hearings denying her grievance that she should have been granted extended sick leave.

This case really turns on the interpretation of Department of Personnel regulations both by that agency, and by an Administrative Law Judge of the Office of Administrative Hearings, designated by the Secretary of Personnel to hear and decide grievances under Article 64A, §36A(a)(2) and State Gov't. Art. §§19-1601, et seq.; and on the degree of discretion accorded the Secretary of Personnel under the aforementioned regulations.

On April 3, 1989, Appellant, who was at the time absent from work for medical reasons, filed a grievance petition based on her having been denied extended sick leave by the Department of Personnel after February 21, 1989, later amended to February 3,

1989 (Transcript, hereafter T., 4-5). The pertinent regulations regarding extended sick leave and Appellant's grievance are former COMAR 06.01.01.42D(6) and (8)<sup>1</sup> (replaced by COMAR 06.01.11.05H and .07).

As noted in the Decision upon which this appeal is based, a procedural hearing concerning Appellant's grievance was convened (before Administrative Law Judge Thomas Curtis) on April 2, 1990. However, in addition to ruling on the procedural issues, Judge Curtis went on to deny Appellant's grievance on the merits in a decision dated July 16, 1990. As a result, the employee on

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<sup>1</sup> Former COMAR 06.01.01.42D(6) provided:

- (a) An appointing authority may request the Secretary to have a physical investigation made of any employee who loses excessive time from employment because of illness or for the purpose of determining whether an employee has any disability which would prevent the employee from the proper performance of the employee's duties. The request shall contain a record of absences caused by the disability, ailment, or illness of the employee and the reason for the request.
- (b) If the medical investigation reveals that the employee is unable to continue active employment, actions may be taken in accordance with prescribed Merit System regulations pertaining to voluntary separation or the filing of written charges for removal.
- (c) The secretary may refer an employee who is on advanced sick leave or extended sick leave to the State Medical Director or another physician for periodical examinations to determine the nature and extent of the illness, the employee's progress toward recovery, the length of time necessary for recovery, and an estimated date of return to work. If there is a conflict, the Secretary may choose the recommendation of the State Medical Director in determining the date on which to terminate the advanced sick leave or extended sick leave.

August 16, 1990 appealed to the Circuit Court for Baltimore City. Judge Joseph H.H. Kaplan remanded her appeal for a hearing and decision on the merits on September 28, 1990.

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(continued)

COMAR 06.01.01.42D(8) provided:

- (a) Extended sick leave is leave with pay that is granted by the Secretary to an employee in an allocated position who sustains an illness or injury which causes the employee to be absent from work, provided that the employee has been in the State service for at least 5 years and, at the time of a request for extended sick leave, has used all available sick leave, advanced sick leave, annual leave, personal leave and, when appropriate, compensatory leave. Extended sick leave may be used by an employee throughout the employee's State service until the employee has reached a cumulative total of 12 work months. However, when added to the total amount of other available leave, a single request may not exceed 15 months.
- (b) The employee or someone on the employee's behalf may submit to the appointing authority a written request for extended sick leave and a certificate signed personally by an accredited Christian Science practitioner or by any of the licensed or certified medical providers listed in §D(4)(b) of this regulation documenting the nature and extent of the employee's illness or injury, the prognosis for recovery, and an estimated date of return to work.
- (c) The appointing authority shall forward to the Secretary each written request for extended sick leave immediately after the request has been submitted by the employee or someone on the employee's behalf. The request shall include the appointing authority's recommendation for the Secretary's approval or disapproval together with the supporting documentation described in §D(8)(b) of this regulation. The appointing authority shall place the employee on extended sick leave before receiving written notification of the Secretary's approval or disapproval. If the request is disapproved by the Secretary, the appointing authority shall correct the employee's leave record to reflect a

Administrative Law Judge Charles W. Fowler of the Office of Administrative Hearings conducted the hearing on June 7, 1991, and issued a final administrative decision sustaining the action of the Secretary of Personnel not to grant extended sick leave to Appellant, on July 11, 1991. In his decision Judge Fowler concluded that the Secretary of Personnel in denying the leave had acted within her authority in relying upon the advice and opinion of the State Medical Director. This appeal is from that decision, pursuant to State Government Article §10-215, a part of the Maryland Administrative Procedure Act.

The purpose of this memorandum is to explain why the decision of the Administrative Law Judge was not, in the words of State Government Article §10-215(g)(3), arbitrary or capricious or affected by an error of law.

## II. STATEMENT OF FACTS

Appellant was employed by Appellee as a Human Service Worker since September 5, 1982, originating at Grade II and advancing to Human Service Worker V by the time this grievance action occurred (Employer Exhibit, hereafter E.Ex., 7; Transcript, hereafter T.,

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(continued)

conversion of the extended sick leave to leave of absence without pay.

- (d) The Secretary may grant extended sick leave to an employee in accordance with §D(8)(a) of this regulation.



53-54).<sup>2</sup> Ms. Thompson ceased working for the State on October 24, 1988 due to illness (T.55; E.Ex.7). On that day she consulted a Dr. Gaby who tentatively diagnosed her as having an environmental illness, and gave her a medical slip excusing her attendance from work for two weeks (T.55; Attachment 1). Dr. Gaby followed up with a report on September 2, 1988 (Attachment 2), and referred Appellant to Dr. Grace Ziem, a specialist in occupational and environmental medicine, specifically with respect to chemical exposures (T.55, 8). Appellant then used up all her accrued leave, and requested advanced sick leave<sup>3</sup> on November 15, 1988, according to her testimony (T.56). Her supervisor approved advanced sick leave up to February 24, 1989, though the supervisor noted she did not receive the request until January 18, 1988 (Grievant's Exhibit, hereafter G.Ex., 5; T.57).

On January 27, 1989, Appellee requested the State Medical Director, Dr. Peter Oroszlan, for a medical evaluation of Appellant. The letter to Dr. Oroszlan stated that this evaluation was requested by Mr. Thomas Diggin [of DOP] prior to his making a determination whether to grant advanced and extended sick leave. The letter stated that Ms. Thompson's personal

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<sup>2</sup> Since the record is voluminous, and a number of medical reports together with related correspondence were submitted as one exhibit by Appellee, all documents specifically referred to are attached, in the order in which they are first referenced in this Memorandum.

<sup>3</sup> Leave which must be paid back by the employee. Former COMAR 06.01.01.42D(3), now 06.01.11.06.

physician had diagnosed her as having "multiple chemical sensitivity" (E.Ex.7). Enclosed with the request to Dr. Oroszlan were medical reports submitted by Appellant,<sup>4</sup> and the January 17, 1989 report of Dr. F.G. Mainolfi to whom Appellant had been referred by the State Accident Fund (G.Ex.3). On February 2, 1989 Dr. Oroszlan wrote Appellee that after reviewing the medical documentation, he saw no justification to advance or extend sick leave to Ms. Thompson (E.Ex.4). As a result, Appellee ordered Appellant back to work on February 14 and March 8, 1989 (E.Exs.5,10). Appellant then requested that Dr. Oroszlan discuss her medical history with her personal physician, which he did, though this did not alter his conclusion that Appellant was medically able to work. Accordingly, Appellee notified Appellant on March 30 that charges for her removal would be filed, and advised her of her appeal rights (E.Ex.11; Attachment 3). Meanwhile, Appellant filed another request for extended sick leave, which Appellee recommended to the Department of Personnel be denied (Attachment 4). Appellant also filed the subject grievance appeal on April 3, 1989 (T.4). On April 25, 1989 Appellee was placed on leave of absence without pay for medical reasons, in order to protect her retirement and health benefits (E.Ex.16).

In August 1989 Appellee and Appellant executed a written agreement under which Appellant requested her leave of absence

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<sup>4</sup> These reports are included in Agency Exhibit No. 1 (T.86-88).

without pay for medical reasons be converted to a leave of absence without pay for personal reasons, retroactively effective June 7, 1989, in exchange for which Appellee agreed to withdraw its charges for removal (E.Ex.3). The effect of this agreement was to cut off any claim Ms. Thompson may have had for paid sick leave after June 7, 1989, though her right to litigate her grievance appeal survived.

In October 1989 Appellee submitted to Appellant application forms for State employee disability retirement (Attachment 5). In February 1990 Appellant renewed her request for extended sick leave, and enclosed several additional reports from various physicians, to be forwarded to the State Medical Director (G.Ex.8). Dr. Oroszlan after reviewing the medical information advised in a letter dated March 22, 1990 that his opinion was unchanged (E.Ex.14).

On April 2, 1990, a procedural hearing on Appellant's grievance was held before Administrative Law Judge Thomas Curtis, which resulted in Appellant's first appeal to this Court, and a subsequent remand (Decision, 1-2). On May 17, 1990, the State Retirement Agency approved Appellant for ordinary disability retirement (Attachment 6). On December 12, 1990 the Appeals Council of the Social Security Administration found Ms. Thompson disabled from performing her past relevant work as a social worker, and awarded her Social Security disability benefits (G.Ex.4).

Appellant pursued this grievance appeal through a hearing on the merits before an Administrative Law Judge on June 7, 1991, at which Appellant was represented by counsel, and Appellant and her personal physician, Dr. Grace Ziem, testified. The Administrative Law Judge denied Appellant's claim for extended sick leave on July 11, 1991. This appeal followed on December 19, 1991, as Appellant or her counsel claimed not to have received the decision until November 23, 1991 (Order for Appeal).

### III. STANDARD OF REVIEW

When determining whether an agency's factual finding violates §10-215, the appropriate standard of review is, of course, the substantial evidence test. Perini Services, Inc. v. Maryland Health Resources Planning Comm'n. et al., 67 Md. App. 189, 201, 506 A.2d 1207 (1986). That is defined as "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion,..." Bulluck v. Pelham Wood Apartments, 283 Md. 505, 512, 390 A.2d 1119 (1978). In applying that test, appellate courts have emphasized that the court should not substitute its judgment for the expertise of those persons who constitute the administrative agency from which the appeal is taken. O'Donnell v. Bassler, 289 Md. 501, 425 A.2d 1003, 1008 (1981); Bulluck, supra, at 283 Md. 513.

Maryland courts have held further that "because an agency is best able to discern its intent in promulgating regulations, the agency's expertise is more pertinent to the interpretation of an agency rule than to the interpretation of its governing statute."

Maryland Comm'n. on Human Relations v. Bethlehem Steel, 295 Md. 586, 593, 457 A.2d 1146, 1150 (1983). Therefore, upon appellate review, courts have bestowed special favor on an agency's interpretation of its own regulations. See Changing Point, Inc. v. Maryland Health Resources Planning Comm'n., 87 Md. App. 150, 589 A.2d 502, 506-07 (1991).

In the case sub judice the Administrative Law Judge made factual findings that after twice reviewing various medical reports, all of which are a part of the Record, the State Medical Director was of the opinion that "there was no contraindication to the Grievant's returning to work"; and that owing to this opinion the Appellant was denied extended sick leave. Decision, Findings of Fact Nos. 2 and 3. Judge Fowler did not go beyond the findings to weigh the merits of the Medical Director's opinion, because he concluded that regulation 6(c) gave the Secretary of Personnel the discretion to accept the Medical Director's view. That view, having been based on the Medical Director's professional opinion, was not arbitrary. Decision, 8-9.

Hence, the question of whether there was substantial evidence in the record to support the Administrative Law Judge's decision is intertwined with that of the construction he gave to regulation 6(c). "In construing administrative regulations the ultimate criterion is the administrative interpretation, which becomes of controlling weight unless it is plainly erroneous or inconsistent with the regulation" (emphasis added). United

States v. Larionoff, 431 U.S. 864, 872, 97 S.Ct. 2150 (1977).

Appellant cannot maintain that the Administrative Law Judge's interpretation was erroneous or inconsistent under this standard, when §6(c) by its terms expressly permits the Secretary to choose the recommendation of the State Medical Director. Therefore, this Court, as a reviewing court, may not substitute its judgment for the expertise either of the State Medical Director in rendering his opinion whether or not the Appellant was disabled, or of the Administrative Law Judge in interpreting the applicable regulation.

IV. ARGUMENT

**THE DECISION OF THE ADMINISTRATIVE LAW JUDGE UPHOLDING THE DENIAL OF EXTENDED SICK LEAVE BY THE DEPARTMENT OF PERSONNEL WAS NOT ARBITRARY AND CAPRICIOUS, NOR AFFECTED BY ERROR OF LAW.**

Appellee accepts the description of the State Employee Grievance Procedures found in Art. 64A, §52, et seq., Maryland Annotated Code. Appellant's Memorandum, 8-9. Appellee adds that, in accord with COMAR 06.01.01.56C(3), an administrative law judge of the Office of Administrative Hearings is required to hold a hearing and render a written final decision, which is binding on all parties, within 45 calendar days; further, that at grievance hearings, the employee bears the burden of proof. COMAR 06.01.03.05C(1).

In this case the grievance and hearing decision concerned the application of the Department of Personnel regulations governing extended sick leave. Contrary to Appellant's argument,

the weight given by a reviewing court to an agency's construction of a statute, and that of the regulation, are not identical. See Appellant's Memorandum, 10.

[A]gency rules are designed to serve the specific needs of the agency, are promulgated by the agency, and are utilized on a day-to-day basis by the agency...because an agency is best able to discern its intent in promulgating regulations, the agency's expertise is more pertinent to the interpretation of an agency's rule than to the interpretation of its governing statute.

Maryland Comm'n. on Human Relations v. Bethlehem Steel, supra, 457 A.2d 1150. For this reason, courts will defer to the promulgating agency's interpretation of the meaning and intent of its regulations. Changing Point, Inc. v. Maryland Health Resources Planning Comm'n., 87 Md. App. 150, 589 A.2d 502, 506-07 (1991).

In this case, the governing statute<sup>5</sup> gives the Secretary of Personnel considerable discretion in determining whether or not to authorize an extension of sick leave with pay. The statute only dictates that the Secretary be "satisfied as to the merits of the case," and leaves it up to the Secretary as to what expert advice she may rely on in making that determination. COMAR 06.01.01.42(6)(c) represented the Secretary's exercise of that discretion. It permitted the Secretary to refer an employee on extended sick leave either to the State Medical Director or

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<sup>5</sup> Art. 64A, §37(e), Md. Ann. Code. See Appellant's Memorandum, 7.

another physician "to determine the nature and extent of the illness, the employee's progress toward recovery, the length of time necessary for recovery, and an estimated date of return to work." The rule also permitted the Secretary to choose the recommendation of the State Medical Director over another medical expert, which she did do. As the Administrative Law Judge correctly found, there was nothing arbitrary about the manner in which the regulation was interpreted in this case.

Appellee submits that this Court must bear in mind that, unlike advanced sick leave which an employee must ultimately pay back, extended sick leave is granted entirely out of the largesse of DOP and the employing agency, Appellee in this case. Had the leave been granted, Appellee would have received no services from Appellant in return, and no expectation of ever being repaid for up to one year of salary it had awarded. It was therefore fitting that the Secretary, in making this decision, be vested with some degree of discretion. As the Court of Appeals has stated:

**[T]he modern tendency of the courts is toward greater liberality in permitting grants of discretion to administrative officials in order to facilitate the administration of the laws as the complexity of governmental and economic conditions increases.**

Falik v. Prince George's Hospital and Medical Center, 322 Md. 409, 588 A.2d 324, 328 (1991).

Appellant has argued that Appellee improperly dealt directly with the State Medical Director, rather than through the Secretary of Personnel, in contravention of the aforementioned



statute and regulations. See Appellant's Memorandum, 12. Appellee's initial request to the State Medical Director (E.Ex.7) clearly states that Appellee was contacting him at the direction of Mr. Thomas Diggin who is shown in the correspondence to be a member of the staff of the Secretary of Personnel. The department at all times coordinated its contacts with the State Medical Director with DOP, and referred to DOP all decisions concerning sick leave (Attachments 4, 7; E.Ex.8). The department's contacts with the State Medical Director were obviously authorized by DOP for the sake of administrative convenience and efficiency. This procedure was in Appellant's interest where its purpose was to resolve the issue of whether or not she was entitled to be paid while on leave.

Appellant has also incorrectly noted that §6(c) did not apply to her, because it only authorized the Secretary of Personnel to refer to the State Medical Director an employee who is already on extended sick leave, and to choose his recommendation with regard to such an employee. Since she was only an applicant for extended sick leave, Appellant claims, the Administrative Law Judge should not have relied on §6(c) in his decision. See Appellant's Memorandum, 12-13. The Record patently contradicts this argument.

Regulation 8(c) allowed Appellee to place Appellant on extended sick leave pending the Secretary's approval or disapproval. f.n.1. Appellee's referral to the State Medical Director was made on January 27, 1989 (E.Ex.7). The Department

of Personnel ratified Appellee's advancement of sick leave through February 2, 1989 (E.Ex.8). Therefore Appellant was in extended sick leave status at the time the referral was made. Dr. Oroszlan's disapproval of further leave is dated February 2, 1989 (E.Ex.4). Hence Appellant was on extended sick leave when the referral to the State Medical Director was made, and §6(c), authorizing him to make the determination of whether Appellant's incapacity justified a further extension of paid sick leave, did apply to her.

Since §6(c) did apply to Appellant's request for extended sick leave, and was adhered to by Appellee and the Secretary of Personnel, the Secretary did not need to weigh the opinions and reports of several physicians submitted by Appellant, against the recommendation of the State Medical Director, because §6(c) states:

**If there is a conflict, the Secretary may choose the recommendation of the State Medical Director in determining the date on which to terminate the advanced sick leave or extended sick leave.**

Indeed, the regulations make no provision for an employee to submit voluminous medical reports along with her request for an extension of leave; only a single certificate "documenting the nature and extent of the employee's illness or injury, the prognosis for recovery, and an estimated date of return to work." COMAR 06.01.01.42D8(b), 4(b). The appointing authority then either recommends the Secretary's approval or disapproval, or requests the Secretary for a medical investigation. §8(c), 6(a).

Thus the same weight need not be given to the medical reports submitted by Appellant, which are optional, as to the recommendation of the State Medical Director. Therefore, contrary to Appellant's argument, in grieving the Secretary's termination of her extended sick leave, she is not entitled to have the Administrative Law Judge resolve the conflicting opinions of the State Medical Director and her treating physicians. See Appellant's Memorandum, 11, 13-14. The Administrative Law Judge is after all not a medical expert. Only if there had been no evidence before Judge Fowler to support Dr. Oroszlan's decision, could the Administrative Law Judge have concluded the decision was arbitrary.

When Appellee requested Dr. Oroszlan to evaluate Appellant's medical condition in January, 1989, copies of the report of Dr. F.G. Mainolfi, the State Accident Fund Physician (G.Ex.3). Not only did Dr. Mainolfi find that Appellant's condition was not work-related, he seriously questioned the existence of such a condition at all, and suggested that Appellant had altered her history to comport with "her new-found awareness of the diagnosis of 'multiple chemical sensitivity.'" (G.Ex.3, 2). Dr. Mainolfi noted that blood studies have shown that chlorinated hydrocarbons such as Dr. Ziem reported she found in Appellant's blood are present in 70% of the population, and can result from automobile exhaust and dry cleaning fluid (Id., 3). He reasonably concluded:

My overall conclusion regarding the above named patient is that the diagnosis of multiple chemical sensitivity is not generally accepted as a legitimate diagnosis and that it should not be so accepted in this patient.

Id., 4. Accordingly, Dr. Mainolfi suggested that "psychiatric consultation may be of value" in Appellant's case.

Appellant testified at the hearing that the State Medical Director had told her physician, Dr. Ziem, who also testified, that he was basing his decision, that no medical justification existed to extend leave, on Dr. Mainolfi's report (T.66). It is reasonable to assume that, having the benefit of Dr. Mainolfi's analysis of the controversial nature of the existence and possible psychiatric causes of chemical sensitivity syndrome, or CSS, he agreed with Dr. Mainolfi and deemed it unnecessary to physically examine Ms. Thompson. Dr. Oroszlan's diagnosis and recommendation to the Secretary were decisions that were made strictly within his professional expertise. In reviewing the agency's decision, this Court may not infringe upon such judgments as these as are within the presumed expertise of the decisionmakers at the administrative agency. Department of Economic and Employment Development v. Jones, 79 Md. App. 531, 535, 558 A.2d 739, 741 (1989).

Appellant cites Judge Norris Byrnes' Order and Opinion in the case of Flora Snowden v. Maryland State Department of Health & Mental Hygiene, Circuit Court for Baltimore County, Case No. 91CG15691/385 (Appellant's Memorandum, Exhibit C), as entitling

her to a decision on the merits of the conflicting opinion of her doctors and the State Medical Director. See Appellant's Memorandum, 14. That case is inapposite because it concerned accident leave and did not involve the State Medical Director at all. The "differing opinions" referred to in Judge Byrnes' Order in Snowden were those of the appellant's two doctors, Drs. Hopkins and Folgueras, on the discrete question of whether her injury was or was not job-related (Appellant's Memorandum, Ex.C, Transcript, 1-2). Judge Byrnes did however note at the hearing on the administrative appeal that a declaratory ruling in the record, that an appointing authority in granting accident leave may choose the opinion of the State Medical Director or another physician appointed by the appointing authority, was not at odds with Ms. Snowden's position. The Judge stated, "The problem is that we haven't gotten to that." Id., 2-3.

In this case the Secretary of Personnel, under the authority of her own regulation, COMAR 06.01.01.42D(6)(c), relied on the expert opinion of Dr. Oroszlan in denying Appellant an extension of sick leave beyond February 2, 1989. Dr. Oroszlan's opinion was supported by Dr. Mainolfi's report which is a part of the Record. The Administrative Law Judge in his decision took cognizance of Dr. Ziem's testimony both regarding Appellant's symptoms and the lack of medical knowledge regarding DSS in 1988 and 1989. Decision, 7-9. Dr. Ziem did testify at length regarding Dr. Mainolfi's letters (G.Exs. 2 and 3), the controversial views of medical experts regarding CSS, and its

lack of universal acceptance in the medical community (T.25-31). In Terranova v. Board of Trustees, 81 Md. App. 1, 566 A.2d 497 (1989), the appellate court held that an administrative panel could reject the opinions of three physicians and adopt the conflicting opinion of a fourth. There the court restated the rule in Commissioner v. Cason, 34 Md. 487, 368 A.2d 1067, 1079 (1977), upon which Appellant relies in seeking a reversal of Judge Fowler's decision, and declared that

A reviewing court may, and should, examine any conclusion reached by an agency, to see whether reasoning minds could reasonably reach that conclusion from facts in the record before the agency, by direct proof, or by permissible inference. If the conclusion could be so reached, then it is based upon substantial evidence, and the court has no power to reject that conclusion.

Terranova, supra, 566 A.2d 502. Appellee submits that there were facts in the record from which Judge Fowler could reasonably have concluded, as he did, that the State Medical Director, in recommending against an extension of leave, acted in compliance with COMAR. State regulations specifically authorized the Secretary of Personnel to seek the opinion of the State Medical Director, Dr. Oroszlan. Dr. Oroszlan could reject the opinions of Appellant's doctors whose opinion was not sought by the Secretary, and accept that of the State Accident Fund physician, Dr. Mainolfi, whose opinion had also been sought under COMAR.<sup>6</sup>

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<sup>6</sup> Former COMAR 06.01.01.42D-1(5)(b) (now 06.01.11.09), in connection with accident leave, not an issue in this appeal.

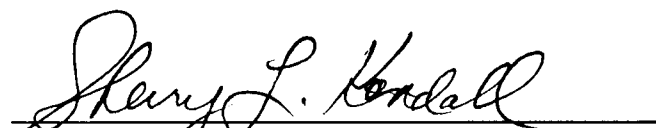
The testimony of Dr. Grace Ziem, Appellant's physician, in part supported Dr. Mainolfi's views as to the speculative nature of Appellant's symptoms. In giving preference to the professional opinion of the State Medical Director, the Secretary of Personnel also acted in compliance with COMAR, Regulation .42D6(c), which that regulation authorized her to do. Thus, no errors of law were committed either by agency officials or the Administrative Law Judge, and there was evidence in the Record that reasonably supported their conclusions.

V. CONCLUSION

For the above reasons, this Court should affirm the decision of the Office of Administrative Hearings.

Respectfully submitted,

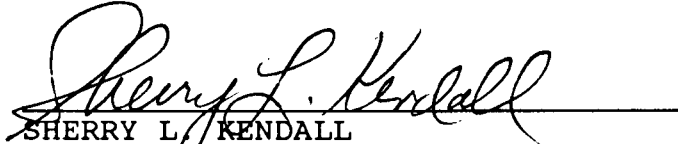
J. JOSEPH CURRAN, JR.  
Attorney General of Maryland

  
SHERRY L. KENDALL  
Assistant Attorney General  
Saratoga State Center  
311 West Saratoga St., Suite 1015  
Baltimore, Maryland 21201  
(410) 333-0019

ATTORNEYS FOR APPELLEE  
DEPARTMENT OF HUMAN RESOURCES  
BALTIMORE CITY DEPARTMENT OF SOCIAL  
SERVICES

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 27<sup>th</sup> day of May, 1992, a copy of the foregoing was mailed, postage prepaid, to: Barry C. Steel, Esq., 752 Camberley Circle, Towson, Maryland 21204, attorney for Appellant.

  
SHERRY L. KENDALL





WILLIAM DONALD SCHAEFER  
Governor  
RUTH MASSINGA  
Secretary of Human Resources  
ERNESTINE F. JONES  
Deputy Secretary

Ed #  
7

DEPARTMENT OF HUMAN RESOURCES • SARATOGA STATE CENTER • 311 WEST SARATOGA STREET • BALTIMORE, MARYLAND 21201

TELEPHONE:  
(TTY: 333-0017)  
333-6670

January 27, 1989

Dr. Peter Oroszlan  
State Medical Director  
Department of Personnel  
301 West Preston Street  
Baltimore, Maryland 21201

Re: Linda Thompson  
SS# 047-34-1856

Dear Dr. Oroszlan:

In accordance with Personnel Regulation 06.01.01.42D(6)(c), this is to request that an appointment for a medical evaluation be scheduled for Linda Thompson, SS# 047-34-1856, 2525 Eutaw Place, #191, Baltimore, Maryland 21217.

Ms. Thompson has been employed by the Baltimore City Department of Social Services - OWEP Division as a Human Service Worker V since September 5, 1982.

Mr. Thomas Diggin has requested that Ms. Thompson be evaluated by you prior to his determination regarding her latest request for advanced and extended sick leave.

Ms. Thompson has been continuously absent from work since October 24, 1988. She has been diagnosed by her personal physician as having "multiple chemical sensitivity."

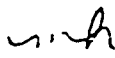
Ms. Thompson claims her illness is due to a long-term close proximity to the xerox machine and has requested accident leave. The State Accident Fund Physician, F. G. Mainolfi, states in his report that, "her symptomatology not be considered a work-related condition" and that "psychiatric consultation may be of value."

Please advise of your determination of Ms. Thompson's ability to perform her job-related duties.

Office of Administration

Attached please find medical documentation submitted  
by Ms. Thompson and Dr. Mainolfi's report.

Sincerely,



Marie Haavik  
Personnel Associate  
Employer-Employee Relations

MH/ab

ALAN R. GABY, M.D.

ATTACHMENT 1

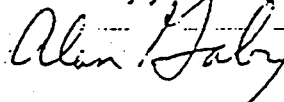
October 21, 1988

TO WHOM IT MAY CONCERN:

Re: Linda Thompson

Ms. Thompson is currently under my care. She is taking a two-week leave of absence for medical reasons. She is unable to work from 10/24/88 through 11/7/88.

Sincerely,



Alan R. Gaby, M.D.

ARG/jhs

ATTACHMENT 2

December 2, 1988

T. Wayne Carter  
Suite 100, St. Paul Square Bldg.  
326 St. Paul Place  
Baltimore, MD 21202

RE: Linda Thompson

Dear Mr. Carter:

As per your request, I am enclosing a report on Linda Thompson. She consulted me on September 26, 1988 with a history of various symptoms, including lethargy, severe fatigue, spaciness, lightheadedness, achiness, stiffness, food and caffeine cravings, loss of memory, irregular bowel movements, menstrual cramps, premenstrual tension, irritability, disorientation, sensation of being dehydrated and breaking of the fingernails. The onset of these symptoms is not clear. Initially, she reported that most of her symptoms began in the late 1970's, and became much worse after she began working around a photocopier machine at her most recent job. However, at her last visit on December 1, 1988, she reported that the original history was not accurate; that her only noteworthy symptom in the late 1970's was fatigue, and that the other ones developed after she began working at her new job. She stated that her thinking had been so clouded before she took a leave of absence from her job that she was unable to give an accurate history. She stated that her symptoms were much worse when she was in proximity to the photocopier machine at work.

Her history was also significant for alcohol consumption, amount unspecified, between 1970 and 1978. She also had been under some emotional stress related to her 24 year old retarded son. She had received numerous antibiotics for chronic cystitis. She had been seen by an internist for evaluation, and various blood tests reportedly turned up nothing abnormal.

Lab work ordered by me is enclosed. There was an elevation of antinuclear antibody (1:80), which is suggestive of an autoimmune process. A toxic chemical screen showed elevated levels of dichloromethane and chloroform, with possible elevation of 1,1,1 trichloroethane.

On the basis of her symptoms and history, a presumptive diagnosis of environmental illness secondary to chemical exposures was made. Attempts have been made to identify and eliminate food allergens. She was also prescribed various vitamins, minerals and other substances to promote detoxification mechanisms within the body. She was also treated with antifungal drugs, based on a presumptive diagnosis of antibiotic-induced "Candida-related-complex." Licorice tea was prescribed as a means of supporting her adrenal glands and possibly reduce her allergic reactivity.

On her followup visit of December 1, 1988, she reported the cloudiness in her head had cleared somewhat, but she still had severe fatigue and other symptoms.

This patient's illness is consistent with possible ecologic illness, caused or exacerbated by chemical exposures. Unfortunately, the diagnosis can only be presumptive, and there may be other causes of her problems. The treatments are empirical and will be adjusted according to her response.

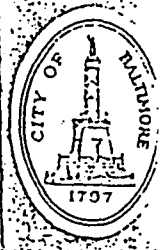
Sincerely,



Alan R. Gaby, M.D.

NAME & TITLE	Robert W. Hennrich, J.M.
AGENCY NAME & ADDRESS	Mt Clare B.C. 1055
SUBJECT	Advanced sick leave, Linda Thompson

CITY of  
BALTIMORE  
**MEMO**



DATE: 1/23/87

TO Vickie Pepper  
NHR Personnel

I have decided to approve Linda Thompson's request for advanced sick leave, dated 1/12/87. I received the request in an envelope postmarked 1/12/87.

In view of Ms. Thompson's sick leave usage over the past several years (see attached records), I am unwilling to approve any sick leave beyond February 24. It is my opinion that we have been extremely generous with this employee in terms of extending leave, and we do need to have her here at work at this time.

cc Linda Thompson

January 17, 1989,

Ms. Victoria Pepper  
Department of Human Resources  
Saratoga State Center  
311 West Saratoga Street  
Baltimore, Maryland 21201

Re: Linda Thompson  
Dept. of Human Resources  
D/I: 9/26/88  
SS: 047-34-1856

Dear Ms. Pepper,

The above named patient was examined on 12/28/88 in an attempt to determine her current medical status. As you know, Ms. Thompson last worked on 10/24/88, and has been diagnosed by a local physician Dr. Grace Ziem, as having "multiple chemical sensitivity". For ease of reference, this terminology will be used consistently in this letter to identify a syndrome which has been given numerous names in recent years, and which is characterized by a long list of subjective symptomatology. This report will consider this matter on two levels, first, a general discussion of this condition; and second, a more specific discussion regarding this particular patient.

I have recently reviewed a number of articles in the medical literature concerning this syndrome, and have forwarded along with this report two representative articles for your review. It is noted that each of these articles contains an extensive bibliography of further articles. I have recently personally discussed this matter with Dr. James Keogh, Head of the Occupational Medicine Department at University Hospital, and Dr. J.R. Nathercott, Head of Occupational Medicine at Johns Hopkins University. It is also noted that as a result of a resolution of the Maryland State Legislature last year that a panel has been formed to study this matter and provide the legislature with a report during this current legislative session. This report has been prepared by Dr. Rebecca Bascom at the University of Maryland, and is being presented at the present time to the legislature. The contents of this report have not been released publicly at the present time but I have been led to believe that recommendation is made for further study of the topic. The report is expected to be released publicly in mid February.

G-3

Re: Linda Thompson  
Dept. of Human Resources

In brief summary, the chemical sensitivity syndrome refers to patients who present with multiple symptoms which have been unable to be diagnosed as being due to a particular illness and which ultimately come to be considered as possibly being the result of the patient developing sensitivity to multiple or single specific exposures in the environment. Many patients ultimately identify by history some substance which may have been the initiating cause of the syndrome, and the condition enters the area of Workmen's Compensation when the patient suggests that such an exposure occurred at the work place.

A basic criterion of the diagnosis is extensive and thorough work-up of the patients by conventional medical means which fails to delineate any cause for the symptomatology. The discovery of a particular condition caused by a particular exposure, such as, asthma-like symptoms resulting from environmental exposure, or a skin rash resulting from such exposure, effectively removes such a patient from consideration of "multiple clinical sensitivity".

This condition has generated significant discussion in recent years, with a group of clinical ecologists actively supporting the concept of chemical sensitivity syndrome with conventional physicians seriously questioning the existence such a condition. The two forwarded reports provide some fundamental information regarding this matter.

My overall opinion following a limited review of the currently available medical literature is that while patients with multiple symptomatology as described should receive appropriate medical work-up, including psychiatric assessment, that the diagnosis of "multiple chemical sensitivity" remains suggestive at best, and should not be considered at the present time as a medically accepted disease entity.

Relative to the particular patient in question, Ms. Linda Thompson, two reports in particular are reviewed. The initial report is from the patient's primary treating physician, Dr. Alan R. Gaby, and a subsequent report from Dr. Grace Ziem. Dr. Gaby's report dated December 2, 1988, lists the patient's symptomatology. He points out that initially the patient reported that these symptoms began in the late 1970's but subsequently after being seen by Dr. Ziem, the patient changed her history to report that these symptoms only developed more recently after she began working at her new job. This point is of significance, since it suggests that the patient altered her history following her interview with Dr. Ziem, reflecting her new-found awareness of the diagnosis of "multiple chemical sensitivity".

Re: Linda Thompson  
Dept. of Human Resources

In discussing possible causes for the development of this syndrome, the patient, under Dr. Ziem's questioning, has identified odors from a copying machine at work, as well as odors from the periodic use of an insecticide in the office. Dr. Ziem reports that the patient has elevated blood chlorinated hydrocarbons, which she correlates with these exposures, thus rendering the opinion that the patient has "multiple chemical sensitivity" as a result of these work related exposures.

The laboratory results are contained in a report from Accu-Chem Laboratories of blood studies performed on 10/10/88. It is noted that the results are reported in very low numbers being in parts per billion. It is noted that some of the substances are found in a very high percentage of the general population, up to 70 percent. Two particular items, dichloromethane, and chloroform, were noted in Ms. Thompson's blood to be higher than average.

In order to gain some information regarding these studies I spoke personally per phone to Dr. John L. Laseter, director of Accu-Chem Laboratories. An important preliminary factor to understand is the variability factor, which is the last line of the above noted report. The report states that there is a 17.6 plus or minus variability factor at a control level of 4 parts per billion. Dr. Laseter informs me that when the numbers get lower, such as the 2.7 and the 1.7 measurements in this particular patient, the variability factor rises considerably, estimating that in this particular patient these results may have a variability of +/- 25.

In discussion of these results, Dr. Laseter tells me that these results are so low that they could have resulted from exposure to automobile exhaust on the way to the doctor's office, or even to substances in the doctor's office at the time the blood studies were drawn. He also points out that such exposures could develop at any place, including the patient's home, as distinct from the patient's work place. He concluded, and strongly advised me, that to make any kind of determination on the basis of a single lab study, particularly when the levels are so low, is completely unjustified. I described to him the context of the use of these lab results and he rendered the opinion that to consider these substances as causing symptomatology in any patient was "very shaky".

It is of some interest to note that during our discussion, Dr. Laseter pointed out that detectable levels of tetrachloroethylene can be found in 70 percent of the population, simply because they at some time wear clothing which has been dry cleaned.



Re: Linda Thompson  
Dept. of Human Resources

My overall conclusion regarding the above named patient is that the diagnosis of multiple chemical sensitivity is not generally accepted as a legitimate diagnosis and that it should not be so accepted in this patient. In addition, in this particular patient, suggestion has been made that the patient's symptomatology is due to a particular exposure at work when there is no scientific evidence to justify this association other than the patient's speculation, the laboratory studies being considered totally inconclusive and non-supportive in this patient. Although it is obvious from the forwarded reports that this patient has extensive medical history these histories are not available to me at the present time. There is no indication that this patient has received any psychiatric evaluation or care, but certainly full evaluation of this patient's symptomatology would demand such an evaluation.

My specific recommendation regarding Ms. Linda Thompson is that her symptomatology not be considered a work related condition. If possible, suggestion should be made to the personal treating physician that psychiatric consultation may be of value.

The question of justification for this patient's long time absence from work on the basis of subjective symptomatology remains. Although the patient remains off work basically letting time pass without specific treatment under the direction of Dr. Ziem, independent consultation by independent specialists, including internists, allergists, and psychiatrists, may be indicated.

Sincerely,

*F. G. Mainolfi*  
F.G. Mainolfi, M.D., P.A.

FGM/kf  
cc: enclosures  
cc: file

STATE OF MARYLAND  
DEPARTMENT OF PERSONNEL

William Donald Schaefer  
Governor



Hilda E. Ford  
Secretary

R. Malcolm-Bridgeman  
Deputy Secretary

301 West Preston Street Baltimore, Maryland 21201

Area Code 301 • 225 - 4626

February 2, 1989

Ms. Marie Haavik  
Employer-Employee Relations  
Department of Human Resources  
Saratoga State Center  
311 West Saratoga Street  
Baltimore, Maryland 21201

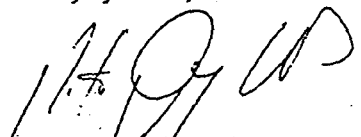
Re: Linda Thompson  
S.S. #047-34-1856

Dear Ms. Haavik:

This is in response to your January 27, 1989 letter and in reference to the above mentioned employee.

The attached medical documentation was reviewed. There is no medical justification to advance or extend leave to Ms. Thompson for the alleged health related problems.

Very truly yours,

  
Peter Oroszlan, M.D., M.P.H.  
Medical Director

PO/mc

CC: Thomas Diggin

AN EQUAL OPPORTUNITY EMPLOYER

TTY for Deaf: Balto. Area 383-75  
D.C. Metro 565-04



State of Maryland  
WILLIAM DONALD SCHAEFER  
Governor  
RUTH MASSINGA  
Secretary of Human Resources  
ERNESTINE F. JONES  
Deputy Secretary

DEPARTMENT OF HUMAN RESOURCES • SARATOGA STATE CENTER • 311 WEST SARATOGA STREET • BALTIMORE, MARYLAND 21201

TELEPHONE:  
(TTY: 333-0017)  
333-0346

Registered Mail

Return Receipt Requested

9  
5

February 14, 1989

Ms. Linda Thompson  
2525 Eutaw Place  
#191  
Baltimore, Maryland 21217

Dear Ms. Thompson:

This office is in receipt of the medical evaluation from the State Medical Director regarding your ability to perform the duties of your position.

Dr. Oroszlan concluded that "there is no medical justification to advance or extend leave to Ms. Thompson for the alleged health related problems." I contacted his office for clarification regarding your ability to perform your job-related duties.

Dr. Oroszlan confirmed that "there is no medical contraindication for you to perform the duties of your position."

Please be advised that based on Dr. Oroszlan's evaluation you are to report to work upon receipt of this letter. Failure to do so will result in charges being filed for your removal from State service for abandonment of your position.

Sincerely,

Gerri Tomsik  
Personnel Officer  
Employer-Employee Relations

GT/ab

cc: Mr. Charles C. Hooper, Jr.  
Ms. Roberta Hennick

Registered Mail

Return Receipt Requested

9  
16

March 8, 1989

Ms. Linda Thompson  
2525 Eutaw Place  
#191  
Baltimore, Maryland 21217

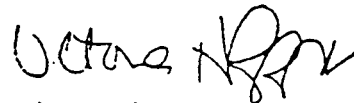
Dear Ms. Thompson:

This is to confirm that, after conversation with your personal physician, the State Medical Director has not altered his conclusion that there is no medical contraindication for you to perform the duties of your position.

You were advised that the State Medical Director had reached this conclusion based upon a review of your medical records in correspondence from this office dated February 14, 1989. At that time, you requested that your personal physician have the opportunity to speak to the State Medical Director. Dr. Oroszlan agreed to your request and spoke to your physician on Wednesday, March 1, 1989. On that same date, you were verbally notified that the State Medical Director maintains his conclusion that you are medically able to perform the duties of your position.

You are now notified that you are to report to work within three (3) working days of receipt of this letter. Failure to do so will result in charges being filed for your removal from State service for abandonment of your position.

Sincerely,



Victoria Pepper  
Personnel Administrator  
Employer-Employee Relations

cc: Mr. Charles C. Hooper, Jr.  
Mr. Sam Spicer  
Ms. Roberta Hennick

Office of Administration

3-0324

March 30, 1989

Ms. Linda Thompson  
2525 Eutaw Place  
Apartment #191  
Baltimore, Maryland 21217

Dear Ms. Thompson:

You have been notified on February 14, 1989, and March 8, 1989, that the State Medical Director determined that there is no medical contraindication for you to perform the duties of your position. On both occasions you were instructed to report to work.

Upon receipt of the February 14 letter, you requested that your personal physician have the opportunity to discuss your medical history with Dr. Oroszlan. On March 8, 1989, you were notified that Dr. Oroszlan's discussion with your physician did not cause him to alter his conclusion that you are medically able to report to work. Upon receipt of the March 8 letter, you contacted this office and requested the opportunity to submit medical documentati~~on~~ regarding a different medical condition. As we have discussed, the second medical condition is considered to be subordinate to your primary chemical sensitivity problem, the symptoms of which have been the subject of discussion between the State Medical Director and your personal physician regarding your medical ability to return to work.

With regard to your chemical sensitivity problem, you submitted to this office a medical slip from your physician that indicates that you are unable to return to work, "until at least April 30, very likely later".

In recent telephone conversations, you have stated that, on the advise of your personal physician, you will not be returning to work.

Given the conclusions of the State Medical Director with regard to your ability to perform the duties of your position and your continued refusal to return to work, we are constrained at this time to file charges for your removal.

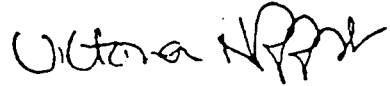
You will receive by mail from the Department of Personnel a copy

MARYLAND DEPARTMENT OF HUMAN RESOURCES

311 W. Saratoga St. • Baltimore, Maryland 21201 • (301) 333-0988 • TTY 333-0017

of the charges and specifications under which your removal is sought.  
You may submit to the Secretary of the Department of Personnel a  
written appeal of the charges within 10 calendar days after receipt  
of the charges.

Sincerely,



Victoria Pepper  
Personnel Administrator  
Employer-Employee Relations

VP/ab

- cc: Mr. Charles C. Hooper, Jr.
- Mr. Todd Rofuth
- Mr. Sam Spicer
- Ms. Roberta Hennick

333-0324

ATTACHMENT 3

April 26, 1989

Dr. Peter Oroszlan  
State Medical Director  
Department of Personnel  
301 West Preston Street  
Baltimore, Maryland 21201

Re: Linda Thompson  
SS# 047-34-1856

Dear Dr. Oroszlan:

The purpose of this letter is to confirm the content of various telephone conversation that Ms. Gerri Tomsik and I had with your office regarding Ms. Thompson.

In January 1989, we submitted to you a request to evaluate Ms. Thompson prior to the Department of Personnel's review of her request for advanced and extended sick leave benefits.

By letter of February 2, 1989, you notified this office that, "there is no medical justification to advance or extend leave to Ms. Thompson for the alleged health related problems."

Upon receipt of your letter, Ms. Tomsik inquired as to Ms. Thompson's ability to perform her duties.. You confirmed that there is no medical contraindication for Ms. Thompson to perform the duties of her position.

In early March 1989, at Ms. Thompson's request, you discussed with her attending physician, Dr. Grace Ziem, Ms. Thompson's complaint of "multiple chemical sensitivity." You confirmed with this office that your conversation with Dr. Ziem did not alter your conclusion that Ms. Thompson is medically able to perform the duties of her classification.

Please notify me whether your understanding of our conversations is consistent with the preceding.

Your assistance in this matter is appreciated.

Sincerely,

Victoria Pepper  
Personnel Administrator  
Employer-Employee Relations

VP/ab



333-6670

ATTACHMENT 4

April 20, 1989

Mr. Thomas Diggin  
Administrative Services  
Department of Personnel  
301 West Preston Street  
Baltimore, Maryland 21201

Re: Recommendation for Disapproval  
of Extended Sick Leave  
Linda Thompson

Dear Mr. Diggin:

The Department of Human Resources recommends the attached request for extended sick leave for Ms. Thompson be disapproved.

Ms. Thompson was evaluated by Dr. Oroszlan in February (copy attached). He determined that her absences were not medically justified. To date she has not returned to work.

Charges for Ms. Thompson's removal are currently being prepared.

Thank you for your determination in this matter.

Sincerely,



Marie Haavik  
Personnel Associate  
Employer-Employee Relations

ME/ab

STATE OF MARYLAND  
DEPARTMENT OF PERSONNEL



William Donald Schaefer  
Governor

Hilda E. Ford  
Secretary  
R. Malcolm-Bridgeman  
Deputy Secretary

301 West Preston Street Baltimore, Maryland 21201

Area Code 301 • 225 - 4626

February 2, 1989

Ms. Marie Haavik  
Employer-Employee Relations  
Department of Human Resources  
Saratoga State Center  
311 West Saratoga Street  
Baltimore, Maryland 21201

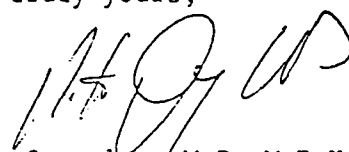
Re: Linda Thompson  
S.S. #047-34-1856

Dear Ms. Haavik:

This is in response to your January 27, 1989 letter and in reference to the above mentioned employee.

The attached medical documentation was reviewed. There is no medical justification to advance or extend leave to Ms. Thompson for the alleged health related problems.

Very truly yours,

  
Peter Oroszlan, M.D., M.P.H.  
Medical Director

PO/mc

CC: Thomas Diggin

Request to the Department of Personnel for an Extension of Sick Leave under the provisions of Article 64-A, Section 37-B of the Annotated Code of Maryland (1957 Edition).

NOTE: Any Extension of Sick Leave granted by the Department of Personnel cannot be used until all accumulated leave has been used by employee.

AGENCY DHR - BCDSS DATE 3/24/89  
EMPLOYEE LINDA J. THOMPSON SS# 047-34-1856  
CLASSIFICATION HUMAN SERV. WKR. IV SALARY \$29,000/yr.  
ENTRANCE ON DUTY DATE \_\_\_\_\_

Date on which absence from duty began because of illness or disability (LAST DAY WORKED). 10/24/88

Date on which ALL LEAVE will expire because of illness or disability. ?

Probable date of return to duty. unknown

Nature of illness or disability (attach doctor's certificate) will send verification

multiple chemical sensitivity -  
need for surgery - gynecological

Name and address of doctor certifying as to illness or disability DR. E. JACOB LILIAN  
DR. Beth Aronson

Is this a case where the employee should be retired from State service under the Maryland Retirement Law, because of physical disability \_\_\_\_\_.

Has employee previously been granted extended sick leave prior to this application yes. If so, when was such leave granted, and for what period of time 10/24/89 - 2/24/89

AGENCY APPROVAL:

\_\_\_\_\_  
SIGNATURE OF PERSONNEL SUPERVISOR

Linda J. Thompson  
SIGNATURE OF EMPLOYEE

\_\_\_\_\_  
SIGNATURE OF HEAD OF DEPARTMENT

GRACE ZIEM, M.D., Dr.P.H.  
Occupational and Environmental Health  
Research Office  
1722 Linden Avenue  
Baltimore, Maryland 21217  
(301) 462-4085

Feb 24, 1989

To whom it may concern:

I have again evaluated Linda Thompson today. She is gradually improving but cannot be reassigned to her work area because of pesticide/copier exposures, and because her illness symptoms, though better, are too severe at this time for working any regular job. Because this patient has multiple chemical sensitivity and reacts to residues in her previous work area, I would view mandatory medical reassignment as malpractice (reassignment to her previous contaminated workite). I will be re-evaluating her at the end of April.

Sincerely,

Grace Ziem MD

DEA # \_\_\_\_\_

BETH L. ARONSON, M.D., F.A.C.O.G.  
SUITE 104  
106 OLD COURT ROAD  
BALTIMORE, MD 21208  
301-488-6540  
OFFICE HOURS: BY APPOINTMENT

NAME Louisa Thompson

ADDRESS \_\_\_\_\_ DATE 3/27/88

R Patient was seen today for chronic pelvic pain. She will be scheduled for diagnostic surgery after consulting with her medical doctor for details of her other medical problems.

Label

Refill \_\_\_\_\_ times PRN NR

Beth L. Aronson M.D.  
To insure brand name dispensing, prescriber must write 'Dispense As Written' on the prescription.

10/18/88

01103781210

333-6670

21  
/6

April 25, 1989

Ms. Linda Thompson  
2525 Eutaw Place  
#191  
Baltimore, Maryland 21217

Dear Ms. Thompson:

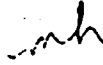
In accordance with COMAR 06.01.01.43D(3), this is to advise that you have been placed on a leave of absence without pay for medical reasons.

Please complete and return to my attention the attached MSRS 46 Application to be Placed on a Qualifying Leave of Absence, in order to protect your retirement benefits.

I am also attaching an application to continue your health insurance while in leave of absence without pay status.

Should you have any questions, please contact me at 333-6670.

Sincerely,

  
Marie Haavik  
Personnel Associate  
Employer-Employee Relations

MH/ab

27  
3

August 7, 1989

Mr. Fred Cramer  
Maryland State Employment Council  
11 East Mount Royal Avenue  
Baltimore, Maryland 21202

Re: Linda Thompson  
#H-6019

Dear Mr. Cramer:

Pursuant to our conversation regarding a resolution in the captioned case, please consider this as a letter of agreement. Please review this letter with Ms. Thompson and sign where indicated. Kindly return the completed agreement to me when signed.

The terms of the agreement are as follows:

Ms. Linda Thompson agrees to the following:

1. Ms. Linda Thompson will submit to the Department of Human Resources, Division of Personnel, a written request to convert her leave of absence without pay status from a leave of absence without pay for medical reasons to a leave of absence without pay for personal reasons for the period from June 7, 1989 to February 2, 1991. The above period constitutes the maximum period of leave of absence permitted by law.

\* 2. Should Ms. Thompson wish to be reinstated prior to the expiration of the above leave of absence without pay for personal reasons, she is required to submit to the Department of Human Resources, Division of Personnel, a written request to be reinstated and a medical release to return to work prepared by her treating physician. The release shall certify that Ms. Thompson is medically able to perform the duties of her classification. The release must be signed personally by the treating physician.

3. Ms. Thompson will be granted the same rights and opportunities with respect to transfers and part-time employment as other state employees who suffer from disabling conditions.

Agency #

4. Ms. Thompson shall not file any further charges, grievances, or appeals against the Department of Human Resources with any State, Federal, or Local governmental body, forum or agency with respect to this particular matter regarding the leave of absence.

5. This agreement specifically excepts any other grievances, charges, or appeal rights that any party may have, that were filed prior to the date hereof, and is without prejudice to any rights that may arise out of the non-performance of this agreement or other grievances.

In consideration of the above mentioned, the Department of Human Resources agrees:

1. The charges for Ms. Thompson's removal (Department of Personnel Case #H-6019) will be withdrawn upon receipt of Ms. Thompson's written request for a leave of absence without pay for personal reasons for the period from June 7, 1989 to February 2, 1991, and these charges will be expunged from her personal file. These particular charges (Department of Personnel Case #H-6019) will have no force or effect with regard to the future employment of Ms. Thompson.

2. The Department of Human Resources, upon receipt of the written request by Ms. Thompson for conversion of her leave of absence without pay status from a leave of absence without pay for medical reasons to a leave of absence without pay for personal reasons for the period from June 7, 1989 to February 2, 1991, shall automatically grant her request.

This agreement is entered into without prejudice and constitutes a good faith effort to resolve a personnel dispute.

The parties agree that this agreement comprises the entire agreement and understanding of the parties; that there are no additional promises or terms of the agreement among the parties that the agreement shall not be modified except in writing signed by each of the parties.

Ms. Thompson has fully reviewed the terms of this agreement. Based on this review and after conferring with her representative, Mr. Fred Cramer, Ms. Thompson hereby acknowledges that she completely understands and accepts the terms of the agreement.



In witness whereof the parties hereunto executed the agreement, this day of , 1989.

State of Maryland  
Department of Human Resources

8-28-89  
Date

BY: Victoria H. Pepper  
Victoria H. Pepper  
Manager  
Employer-Employee Relations

Employee

9-6-89  
Date

BY: Linda J. Thompson  
Linda J. Thompson



333-0324

ATTACHMENT 5

October 2, 1989

Ms. Linda Thompson  
1 Seaview Avenue  
Branford, Connecticut 06405

Dear Ms. Thompson:

Thank you for your recent letter regarding your concern that you have been unjustly denied sick leave benefits.

Please be advised that this office does not have the authority to supplant the opinion of the State Medical Director. We accept the opinion of the State Medical Director that there is no medical contraindication for you to work over that of your attending physician. As a result, we are constrained from authorizing sick leave benefits for you.

If your personal physician continues to consider you as disabled, you may wish to consider applying for a disability retirement.

I have enclosed two forms necessary to initiate the application process. The application for an Estimate of Retirement Allowance (the white form) will provide you with an estimate disability retirement is approved. The Retirement and Pension Systems may also return the form to you while your application is being considered. In this case, your estimate form will be marked "pending approval." You may check as many of the allowance options as you like.


The yellow form is the Statement of Disability. Page 1 must be completed. Page 3 of the form is to be sent to your physician. On page 6 you will see a listing of the type of medical records that are accepted by the Retirement and Pension Systems. Your physician may send page 3 and supporting medical documentation directly to the Retirement and Pension System. You will not be examined by the Medical Review Board so it is important that your doctor include as much information as possible to support your request.

Please return the completed estimate form and the Statement of Disability form to me. Feel free to call me if you have any questions regarding the completion of the forms.

Please be aware that if your application for a disability retirement is approved, you will be eligible to continue your health care benefits at the same cost billed to State employees.

If you have any questions with regard to the retirement process, you may contact me at the number shown above or the Maryland State Retirement Systems at 1-800-492-1700.

Sincerely,



Victoria Pepper  
Personnel Administrator  
Employer-Employee Relations

Vp/ab

Registered Mail  
Return Receipt Requested

1 Seaview Avenue  
Branford, Conn. 06405  
February 22, 1990

Employer-Employee Relations  
Maryland DHR  
311 West Saratoga Street  
Baltimore, Md. 21201

RECEIVED FEB 23 1990

Dear Ms. Pepper:

Enclosed are the medical documents that I have obtained for Dr. Orozlan. I am fairly sure that this covers most of the reports that you do not have. Dr. Orozlan made his initial intial evaluation and denial of sick leave benefits on two very initial reports of Dr. Gaby and Dr. Ziem. As you can see there have been extensive other write-ups on my health status by other doctors that he should have in order to re-evaluate his original decision.

You have an extended leave application for me that was submitted 3/24/89 which was accompanied by a doctor's slip for the period through April 30, 1989. This request covers my disability from April 30 through to February 1990 or the 15 month period that I am due advanced and extended sick leave. I am thereby fullfilling the policy requirements for extended sick leave.

You claimed on the phone that you would not send extended leave forms as I had agreed to a personal leave of absence without pay. However I am referring you to section five that states that any grievance or appeal rights that were filed prior to the agreement are excepted. I would also refer you to the cover letter that accompanied the agreement which refers to my right to extended sick leave.

I am sending these in good faith that Dr. Orozlan will seriously consider his original evaluation and do the right thing in granting me extended sick leave benefits based on the additional documentation of at least six additional doctors.

Sincerely,

*Linda Thompson*  
Linda Thompson

cc Fred Cramer  
AFSCME Council 92

G-8

EXTENDED SICK LEAVE WITH PAY

Request to the Department of Personnel for an Extension of Sick Leave under the provisions of Article 64-A, Section 37-B of the Annotated Code of Maryland (1957 Edition).

NOTE: Any Extension of Sick Leave granted by the Department of Personnel cannot be used until all accumulated leave has been used by employee.

AGENCY D-R DATE 2/22/90  
EMPLOYEE Linda J. Thompson SS# 0417 30-185  
CLASSIFICATION Human Service Worker V SALARY \$5.27  
ENTRANCE ON DUTY DATE \_\_\_\_\_

Date on which absence from duty began because of illness or disability (LAST DAY WORKED). 10/24/88

Date on which ALL LEAVE will expire because of illness or disability. ?

Probable date of return to duty. 1/2/1991 as per attached stmt.

Nature of illness or disability (attach doctor's certificate)  
Multiple Chemical Sensitivity -  
chronic fatigue - dysmenorrhea

Name and address of doctor certifying as to illness or disability  
DR. Robert McClellan  
DR. Raven/Cummings DR. Gaby DR. Grace Niemi  
DR. Rolland/Culler DR. Salzman, DR. Aronson  
DR. Hopedetara

Is this a case where the employee should be retired from State service under the Maryland Retirement Law, because of physical disability \_\_\_\_\_.

Has employee previously been granted extended sick leave prior to this application Yes. If so, when was such leave granted, and for what period of time 10/24/88 - 2/24/89

AGENCY APPROVAL:

SIGNATURE OF PERSONNEL SUPERVISOR

Linda J. Thompson  
SIGNATURE OF EMPLOYEE

SIGNATURE OF HEAD OF DEPARTMENT

CENTER FOR ENVIRONMENTAL MEDICINE

60 Washington Ave New Haven, CT 06518

203-248-4747

February 21, 1990

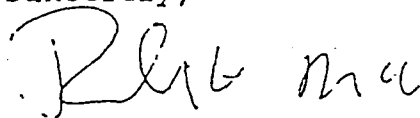
To Whom It May Concern:

Please be advised that Ms Thompson has been under my care since April 24, 1989. She has been totally disabled since 10/26/88. I do not anticipate that she will be able to work for at least another year - January 1991.

Her diagnoses are:

1. Chronic Fatigue Syndrome
2. Multiple Chemical Sensitivities
3. Severe Dysmenorrhea
4. Adjustment reaction with mixed emotional features

Sincerely,



Robert K. McLellan, MD

STATE OF MARYLAND  
DEPARTMENT OF PERSONNEL

97  
14

William Donald Schaefer  
Governor

Hilda E. Ford  
Secretary



301 West Preston Street Baltimore, Maryland 21201  
Area Code 301 • 225 - 4626

March 22, 1990

Ms. Victoria Pepper  
Personnel Administrator  
Employer-Employee Relations  
Department of Human Resources  
311 West Saratoga Street  
Baltimore, Maryland 21201

Re: Linda Thompson  
S.S. #074-34-1856

Dear Ms. Pepper:

Thank you for your March 16, 1990 letter and the attached exhaustive medical documentation on Ms. Thompson.

The more recent medical information from different sources were reviewed and it does not change my assessment of the situation as outlined in my previous letter of February 2, 1989.

Very truly yours,

A handwritten signature in dark ink, appearing to read "Peter Oroszlan".

Peter Oroszlan, M.D., M.P.H.  
Medical Director

PO/mc

MARYLAND STATE RETIREMENT AGENCY



MARGARET A. BURY  
RETIREMENT ADMINISTRATOR

301 WEST PRESTON STREET  
BALTIMORE, MARYLAND 21201-2363  
TELEPHONE (301) 225-4030  
TOLL FREE IN MARYLAND 1-800-492-5909

ATTACHMENT 6

May 17, 1990

Linda J. Thompson  
1 Seaview Avenue  
Branford, Connecticut 06405

SS# 047-34-1856

Dear Ms. Thompson:

The Board of Trustees at its May 17, 1990 meeting accepted the Medical Board's recommendation that you be approved for ordinary disability retirement.

An estimate of your monthly retirement allowances are enclosed. After reviewing your estimate, please complete an Application for Disability Retirement, Form MSRS-23 in order to actually retire and have retirement payments commence. The MSRS-23 application is available from your retirement coordinator who is located at your employing agency.

You are encouraged to complete the Application for Disability Retirement, Form MSRS-23 and return it to your retirement coordinator. Your retirement coordinator will mail the form to the Maryland State Retirement Agency. We must receive your application within 120 days from the date of this notice; otherwise, the approval of your disability retirement may be revoked unless you notify this office in writing of any extenuating circumstances.

If you need clarification of your retirement rights telephone a retirement counselor at (301) 225-4030 or our in-state toll free number 1-800-492-5909.

Sincerely,

*Debra D. Lafon*

Debra D. Lafon  
Medical Board Secretary

DDL:

cc: Grace Watts, Retirement Coordinator

Enclosure

MB13 (Rev. 7/89)

BOARD OF TRUSTEES  
MARYLAND STATE RETIREMENT AND PENSION SYSTEMS

LOUIS L. GOLDSTEIN, CHAIRMAN

LUCILLE MAURER,  
VICE-CHAIRMAN  
MALCOLM S. BARLOW

RICHARD J. BENIK  
CHARLES L. BENTON  
ARTHUR N. CAPLE, JR.

FRANK P. CASULA  
DR. HOMER O. ELSEROD  
JOAN J. HUBER

HILDA E. FORD  
ALFRED D. JOHNSON, JR.  
LT. COL JAMES A. JONES

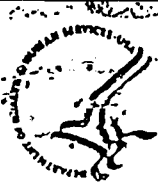
CARL D. LANCASTER  
DR. JOSEPH L. SHILLING  
COL ELMER H. TIPPETT

RECEIVED

JUN 4 1990

EMPLOYER-EMPLOYEE  
RELATIONS DIVISION





Referred to:  
SGC

December 12, 1990

Office of Hearings and Appeals  
PO Box 3200  
Arlington VA 22203

047-34-1856

Ms. Linda Thompson  
1 Seaview Ave.  
Branford, CT, 06405

Dear Ms. Thompson:

Enclosed is a copy of the decision of the Appeals Council on your claim under the Social Security Act.

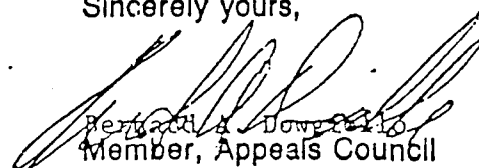
If you agree with the enclosed decision, it is not necessary that you take any further action. The decision will be put into effect shortly and you will be notified.

If you desire a court review of the enclosed decision, you may commence a civil action by filing a complaint in the United States District Court for the judicial district in which you reside within sixty (60) days from the date of receipt of this letter. It will be presumed that this letter is received within five (5) days after the date shown above unless a reasonable showing to the contrary is made. The complaint should name the Secretary of Health and Human Services as the defendant and should include the Social Security number(s) shown at the top of this notice. The right to court review is provided for in section 205(g) of the Social Security Act, as amended (42 U.S.C. 405(g)) for claims under Title II and in section 1631(c)(3) of the Act (42 U.S.C. 1383(c)(3)) for claims under Title XVI. Where the claim is for Medicare, see also section 1869(b) of the Act (42 U.S.C. 1395ff(b)).

If a civil action is commenced, the Secretary must be served by sending a copy of the summons and complaint by registered or certified mail to the General Counsel of the Department of Health and Human Services at 200 Independence Avenue, SW, Washington, DC 20201. (See Rules 4(c)(2) and (d)(4) and (5) of the Federal Rules of Civil Procedure and Part 45, Section 4.1 of the Code of Federal Regulations. In addition, you must serve the United States Attorney for the district in which you file your complaint and the Attorney General of the United States, as provided in the Federal Rules of Civil Procedure

If you have any questions, your Social Security office will be glad to help you.

Sincerely yours,

  
Bernard A. Dowd  
Member, Appeals Council

Enclosure

cc:  
Allan B. Rubenstein, Esq.

G-4

DEPARTMENT OF  
HEALTH AND HUMAN SERVICES  
SOCIAL SECURITY ADMINISTRATION  
OFFICE OF HEARINGS AND APPEALS

DECISION OF APPEALS COUNCIL

In the case of

Linda J. Thompson

(Claimant)

(Wage Earner) (Leave blank if same as above)

Claim for

Period of Disability and  
Disability Insurance Benefits

047-34-1856

(Social Security Number)

The claimant asked the Appeals Council to review the Administrative Law Judge's decision dated May 24, 1990. The Administrative Law Judge found that the claimant was not entitled to a period of disability or to disability insurance benefits under the applicable provisions of the Social Security Act.

The Appeals Council grants the claimant's request under the substantial evidence provision of Social Security Administration regulations 20 CFR 404.970. For the reasons given below, the Council finds that the claimant became disabled on October 24, 1988. This decision is fully favorable to the claimant; therefore, the Appeals Council did not issue a separate notice granting the request for review.

The Appeals Council adopts the Administrative Law Judge's statements as to the pertinent provisions of the Social Security Act, the issues in the case and the evidentiary facts.

The Appeals Council does not adopt the Administrative Law Judge's findings or conclusions on whether the claimant is disabled.

In connection with the request for review, the Appeals Council received a letter dated July 5, 1990 from R. McLellan, M.D. The Council has entered this evidence, into the record and listed it on the Supplemental List of Exhibits attached to this decision.

The regulations provide for a sequential evaluation process in determining whether a claimant is disabled (20 CFR 404.1520). The Appeals Council agrees with and adopts the Administrative Law Judge's findings under the sequential evaluation through step 3 of the process, but does not adopt the Administrative Law Judge's finding that the claimant's impairments permit return to her past relevant work or his ultimate conclusion that the claimant is not disabled.

FINDINGS

The Appeals Council has considered the entire record and makes the following findings:

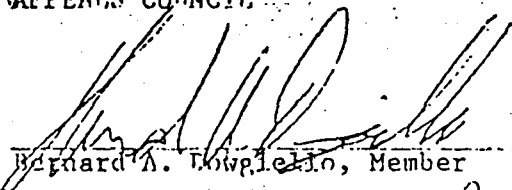
1. The claimant met the special earnings requirements of the Act on October 24, 1988, the date the claimant stated she became unable to work and continues to meet them through the date of the decision. The claimant has not engaged in substantial gainful activity since October 24, 1988, the date of the alleged onset of disability. X
2. The claimant has the following medically determinable severe impairment(s): multiple chemical sensitivity, chronic fatigue syndrome, major depression, but does not have an impairment or combination of impairments listed in, or medically equal to one listed in Appendix 1, Subpart P, Regulations No. 4. X
3. The claimant's combination of impairments results in the following exertional limitations and nonexertional limitations and/or restrictions on her ability to perform work-related activities: the claimant cannot perform sustained work at even the sedentary level and the emotional impairment further restricts occupational adjustment. In view of the above limitations and/or restrictions, the claimant has the residual functional capacity to perform less than the full range of sedentary work. X
4. The claimant's allegations of pain and other subjective symptomatology are credible. X
5. The claimant is unable to perform her past relevant work as a social worker. X
6. The claimant is 48 years old, defined as a younger individual, and has a college education. The claimant's past relevant work was skilled.
7. In view of the claimant's vocational profile, including her residual functional capacity, jobs do not exist in significant numbers in the national economy which the claimant can perform. Accordingly, the claimant is "disabled" using rule 201.21 as a framework for the decision.
- \* 8. The claimant has been disabled as defined in the Social Security Act since October 24, 1988. X

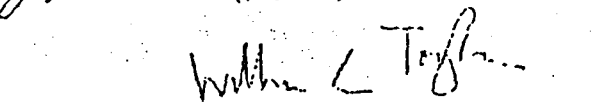
DECISION

Based on the application filed on January 11, 1989, the claimant is entitled to a period of disability beginning on October 24, 1988, and to disability X

Insurance benefits under sections 216(i) and 223, respectively, of the Social Security Act.

APPEALS COUNCIL

  
Bernard A. D'Agostino, Member

  
William C. Taylor, Member

Date: December 12, 1990

SUPPLEMENTAL LIST OF EXHIBITS

Exhibit AC-1: Letter dated July 5, 1990, from R. McHollan, M.P.



Governor  
RUTH MASSINGA  
Secretary of Human Resources  
ERNESTINE F. JONES  
Deputy Secretary

DEPARTMENT OF HUMAN RESOURCES • SARATOGA STATE CENTER • 311 WEST SARATOGA STREET • BALTIMORE, MARYLAND 21201

TELEPHONE:  
(TTY: 333-0017)  
333-0324

ATTACHMENT 7

February 17, 1989

Mr. Thomas Diggin  
Administrative Services  
Department of Personnel  
301 West Preston Street  
Baltimore, Maryland 21201

Re: Linda Thompson

Dear Mr. Diggin:

On January 27, 1989, this office forwarded a request for advanced/extended sick leave for the period December 2, 1988 to February 24, 1989 and asked that you hold your decision until Ms. Thompson had been evaluated by the State Medical Director.

Dr. Oroszlan's evaluation, dated February 2, 1989 states "there is no medical justification to advance or extend leave to Ms. Thompson"... Ms. Thompson has been advised of Dr. Oroszlan's evaluation and ordered back to work by letter dated February 14, 1989.

We request that you consider approval of Ms. Thompson's advanced/extended leave until the date of Dr. Oroszlan's evaluation, due to the 2-month time lapse involved.

\*Thank you for your consideration in this matter.

Sincerely,

*mh*

Marie Haavik  
Personnel Associate  
Employer-Employee Relations

MH/ab

Office of Administration

STATE OF MARYLAND  
DEPARTMENT OF PERSONNEL

William Donald Schaefer  
Governor



Hilda E. Ford  
Secretary

301 West Preston Street Baltimore, Maryland 21201  
Area Code 301 • 225 -

March 17, 1989

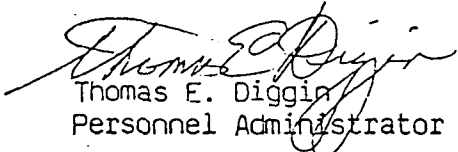
Ms. Marie Haavik  
Personnel Associate  
Employer/Employee Relations  
Human Resources  
311 W. Saratoga Street  
Baltimore, MD. 21201

Dear Ms. Haavik:

I am in receipt of the request for an extension of sick leave with pay for Linda J. Thompson, 047 34 1856.

Please consider this your authorization to grant leave from January 20, 1989 through February 2, 1989.

Sincerely,

  
Thomas E. Diggin  
Personnel Administrator

hem

xc: Central Payroll

FORT MEDICAL CENTER  
400 EAST FORT AVENUE  
BALTIMORE, MD. 21230

February 9, 1989

Grace Ziem, M.D.  
3511 Moultrie Place  
Baltimore, Maryland 21236

Re: Linda Thompson  
Dept. of Human Resources  
D/I: 9/26/88  
SS: 047-34-1856

Greetings Dr. Ziem,

I considered sending you a copy of this letter at the time I wrote it, but I assumed you would ultimately get it in the normal course of events.

The reports I referred to in the letter are probably in your possession, but if you desire I would be happy to send you copies. These were selected from a number of reprints I obtained, in order to give the reviewers at the State Accident Fund some basic information. The two articles are, Environmental Illness - A Clinical Review of 50 Cases, Abba I. Terr, MD.; Archives of Internal Medicine 1986;146: Jan 6, and Psychiatric assessment of patients with "20th-Century Disease" ("total allergy syndrome"), Donna Eileen Stewart, MD, D Psych, FRCPC and Joel Raskin, MD; Canadian Medical Association Journal, Vol. 133, November 15, 1985.

I had an extremely interesting conversation with Dr. John Laseter of the AccuChem Laboratories regarding this matter. The phone call was cheap, since it was an 800 number, and you might be interested in discussing this topic with him.

I am most interested in the report from Dr. Bascöm, which I have been told will be publicly available some time in the middle of February.

Since your involvement with Linda Thompson demonstrates an opinion in contrast to my current understanding of this matter, I would appreciate hearing from you regarding any specific inaccuracies which may be contained in my letter. It is my impression that this matter will be with us for awhile.

Sincerely,

*F. G. Mainolfi*  
F.G. Mainolfi, M.D., P.A.

FGM/kf  
cc: file

6-2

FILED

MAY 11 1992

CIRCUIT COURT FOR BALTIMORE CITY

*J.P.*

IN RE:  
APPEAL OF DECISION OF  
ADMINISTRATIVE LAW JUDGE

LINDA J. THOMPSON

Appellant

v.

DEPARTMENT OF HUMAN  
RESOURCES (Baltimore City Department  
of Social Services)

Appellee

IN THE  
CIRCUIT COURT  
FOR  
BALTIMORE CITY  
CASE NO.: 91354021/CL141930

\* \* \* \* \*

**APPELLANT'S MEMORANDUM**

Linda J. Thompson, Appellant, by Barry C. Steel, her undersigned counsel, pursuant to Maryland Rule B12, submits this Memorandum.

**STATEMENT OF FACTS**

Appellant, at all times relevant hereto, was employed by Appellee as a Human Service Worker V [T.46, 53]. Appellant had worked for the State since 1981 [T.53]. Appellant stopped working because of medical problems on October 24, 1988; shortly thereafter she was seen by Allen Gaby, M.D., who diagnosed an environmental illness and referred Appellant to Grace Ziem, M.D., a specialist [T.55; see also, Dr. Gaby's report dated December 2, 1980, included as a hearing exhibit without any designation in the record filed with the Court]. Appellant then exhausted all of her earned leave and advanced sick leave by February 2, 1989 [T.56-60]. On March 24, 1989, Appellant applied for extended sick leave and attached supporting documentation by Dr. Ziem and Beth Aronson, M.D., regarding her diagnosis of chemical sensitivity syndrome (CSS) [T.64;



Grievant's Ex. 7; see also, Dr. Aronson's report dated May 23, 1989 included in the record filed with the Court as a hearing exhibit without any designation]. At various times thereafter, Appellant submitted to Appellee various reports and records of Dr. Gaby, Dr. Ziem, Dr. Aronson, Robert K. McLellan, M.D., and other health care providers, all of which confirmed the diagnosis by Dr. Ziem of CSS; these were submitted at the request of Appellee for review by Peter Oroszlan, M.D., the State Medical Director [T.67, 72; Grievant's Ex. 8; see also, reports of Dr. McLellan dated December 8, 1988 and February 24, 1989 included in the record filed with the Court as hearing exhibits without any designation].

Ultimately, Appellant was approved for disability retirement on the basis of her CSS condition, which retirement was effective September 1, 1989 [T.46-47, 51-52, 82]. Additionally, she was eventually approved for Social Security Disability Benefits, principally on the basis that she suffered from CSS [T.47-48; Grievant's Ex. 4].

Dr. Oroszlan, the State Medical Director, apparently reviewed the numerous reports and records which had been submitted by Appellant in support of her request for extended sick leave. He never actually saw Appellant or examined her. He then stated that he had reviewed the medical documentation which Appellant had submitted and that there *"is no medical justification to advance or extend leave to Ms. Thompson for the alleged health related problems."* He wrote again to Appellee on March 22, 1990 and stated that he had reviewed the *"attached exhaustive medical documentation"* which Appellant had submitted for his review and that his review of this additional information did *"not change my assessment of the situation as outlined in my previous letter of February 2, 1989."* [Dr. Oroszlan's reports included in Agency Ex. 1].

Appellant had filed a grievance on April 3, 1989 in accordance with the State Employees' Grievance Procedures, Article 64A, §52, et seq., in which she complained

about the denial of extended sick leave benefits after February 3, 1989 and asked that she be granted those benefits [T.4; Decision, p.1].

Appellant's grievance was eventually heard on April 2, 1990 by an administrative law judge of the Maryland Office of Administrative Hearings in connection with Appellee's motion to dismiss the grievance. Although that hearing had been convened solely for the purpose of argument on the motion to dismiss, and although the motion to dismiss was denied, the administrative law judge proceeded, over objection, to decide the case on the merits and decided it against Appellant. An appeal was then taken to this Court, and on September 28, 1990, the Honorable Joseph H. H. Kaplan issued an order directing that the case be remanded for an evidentiary hearing on the merits of Appellant's grievance. On remand, the case came before Administrative Law Judge Charles W. Fowler for hearing on June 7, 1991 [Decision pp. 1-2].

The only witnesses testifying at that hearing were Appellant and Grace Ziem, M.D., who testified on Appellant's behalf. Dr. Ziem is a specialist in occupational and environmental medicine. She has practiced medicine for twenty-three years, exclusively in her speciality. She treats conditions that patients develop as a result of exposures to substances in the workplace or as a result of environmental exposures [T.8-9]. Dr. Ziem earned her M.D. degree at the University of Kansas, a Master's degree in Public Health at Johns Hopkins University, and a Doctor of Public Health degree from Harvard [T.10].

Dr. Ziem testified that she had treated Appellant since November 3, 1988 for CSS. She saw Appellant frequently in 1988 and 1989, and then only once in 1990 and once again in 1991 after Appellant moved out of the State of Maryland and was followed by Dr. McLellan and others. Dr. Ziem explained that CSS is a chronic illness

which worsens after the patient is exposed to chemicals, particularly petroleum related chemicals [T.11-14, 44]. The symptoms of CSS are central nervous system symptoms. Severe fatigue is common. The multiple symptoms of CSS can range from mild to severely disability [T.14-15].

CSS is diagnosed by a history of exposure and the onset of symptoms, the ruling out of other causes, the clearing of symptoms with the removal from the exposure and, according to preliminary research by others, the presence of abnormalities in the patient's brain function or immune system [T.15].

Appellant's illness was, according to Dr. Ziem, related to exposure to cigarette smoke, exhaust fumes from photocopy machines and perhaps exposure to cosmetics and cologne worn by others. Appellant experiences profound fatigue and the alteration in her central nervous system functioning, particularly memory loss, difficulty concentrating and inability to do her work [T.16-18, 45]. Appellant's treatment included removing her from the exposures. Her recovery is a very slow process, and she still is not able to return to work [T.18-20, 39-40].

Dr. Ziem further testified that questions raised by F. G. Mainolfi, M.D., in his correspondence dated February 9, 1989 and January 17, 1989 [Grievant's Ex. 2 & 3] did not change her diagnosis of Appellant's condition [T.26]. Appellant had seen Dr. Mainolfi at the request of the State Accident Fund for reasons unrelated to this proceeding [T.59]. Dr. Ziem explained that Dr. Mainolfi was not experienced seeing patients with CSS [T.27]. She explained further that few physicians seriously question the existence of the condition; the dispute among physicians is concerned with whether it is a disorder of the immune system, a neuro-endocrine disorder, or principally psychiatric in nature [T.27-28, 30, 41]. The laboratory data referred to by

Dr. Mainolfi is entirely consistent with the diagnosis of CSS in this case [T.29]. Most significantly, Dr. Ziem explained that Dr. Mainolfi did not dispute the fact that Appellant was ill and symptomatic; instead, he only questioned whether the illness was work related [T.32-33].

Appellee called no witnesses to testify at the hearing. The only documentary evidence authored by a purported medical expert which related to the question whether Appellant was entitled to extended sick leave consisted of only the two letters from Dr. Oroszlan referred to supra and copies of which are attached hereto as Exhibits A and B. No evidence was introduced with regard to Dr. Oroszlan's expertise, if any, regarding CSS particularly or occupational and environmental illnesses generally. Moreover, no evidence whatsoever was introduced as to the basis for Dr. Oroszlan's conclusion that extended sick leave was not medically justified in this case. As previously mentioned, Dr. Oroszlan never saw or examined Appellant.

In his Decision dated July 11, 1991, Administrative Law Judge Fowler concluded "*that the State Medical Director was in compliance with the COMAR when he made his diagnosis, decision, and recommendation to the Secretary (of Personnel). I conclude that the Secretary was within the authority contained in COMAR when he (sic) made his decision to rely upon the advice and opinion of the State Medical Director and decided to deny extended sick leave.*" Accordingly, Appellant's grievance was denied. This appeal followed.

## ARGUMENT

### STANDARD OF REVIEW

State Government Article, §10-215(g), provides, among other things, that a reviewing court should determine whether any substantial right of a party may have

been prejudiced because a finding or conclusion or a decision of the agency is unconstitutional, is affected by error of law, is unsupported by competent, material, and substantial evidence in light of the entire record as submitted, or is arbitrary or capricious. If the Court should find that substantial rights of a petitioner for review have been prejudiced by one or more of the causes specified in §10-215(g) with regard to an administrative finding, conclusion, or decision, then it is the function of the Court to reverse or modify the agency finding, conclusion or decision. Bernstein v. Real Estate Commission, 221 Md 221 (1959). Pursuant to the statute, the Court's role upon review of a decision of an administrative agency is substantially the same as its role pursuant to its inherent power of review to prevent illegal, unreasonable, arbitrary or capricious administrative action. Harford Memorial Hospital v. Health Services Cost Review Commission, 44 Md App 489 (1980). The reviewing Court should examine any conclusion reached by an agency to see whether reasoning minds could reach that conclusion from the facts in the record before the agency, by direct proof, or by permissible inference. Commissioner, Baltimore City Police Department v. Cason, 34 Md App 487 (1977). See, e.g., Motor Vehicle Administrative v. Lindsay, 309 Md 557 (1987), and Toland v. State Board of Education, 35 Md App 389 (1977). A "*decision unsupported by sufficient facts or proper factual inferences is arbitrary, capricious and unreasonable.*" Levitz Furniture Corp. v. P.G. County, 72 Md App (1987) at 111, citing Insurance Commissioner v. National Bureau of Casualty Underwriters, 248 Md 292 (1967) at 309-10.

**THE DECISION IN THIS CASE UPHOLDING THE DENIAL OF EXTENDED SICK LEAVE WAS ARBITRARY AND CAPRICIOUS AND WAS AFFECTED BY ERROR OF LAW.**

The pertinent portions of the statutes and regulations which are relevant to this appeal are as follows:

**ART. 64A, §37**

*(e) Extension of leaves because of incapacities. —*

*(1) If any employee who has been in the State service for not fewer than 5 years suffers an illness or injury which would result in his absence from duty for a period of time exceeding that provided in subsection (a) with pay, that employee may appeal to the Secretary of Personnel for an extension of sick leave with sick pay.*

*(2) Subject to paragraph (3) of this subsection, after receiving a recommendation from the head of the department or agency and being satisfied as to the merits of the case, the Secretary may authorize an extension of sick leave with sick pay up to one year.*

*(3) (i) An eligible employee may not be granted an extension of sick leave under this subsection unless the employee has exhausted all available advanced sick leave granted under subsection (a)(3)(iii) of this section.*

*(ii) When added to the total number of leave days otherwise authorized for the employee under subsection (a) of this section, the number of extended sick leave days granted the employee under this subsection may not provide for total number of leave days that exceed 15 months.*

**COMAR 06.01.01.42D**

*(6) (c) The Secretary may refer an employee who is on advanced sick leave or extended sick leave to the State Medical Director or another physician for periodical examinations to determine the nature and extent of the illness, the employee's progress toward recovery, the length of time necessary for recovery, and an estimated date of return to work. If there is a conflict, the Secretary may choose the recommendation of the State Medical Director in determining the date on which to terminate the advanced sick leave or extended sick leave.*

**COMAR 06.01.01.42D**

*(8) Extended Sick Leave; Request; Physician's Certification.*

*(a) Extended sick leave is leave with pay that is granted by the Secretary to an employee in an allocated position who sustains an*

*illness or injury which causes the employee to be absent from work, provided that the employee has been in the State service for at least five years and, at the time of a request for extended sick leave, has used all available sick leave, advanced sick leave, annual leave, personal leave and, when appropriate, compensatory leave. Extended sick leave may be used by an employee throughout the employee's State service until the employee has reached a cumulative total of 12 work months. However, when added to the total amount of other available leave, a single request may not exceed 15 months.*

*(b) The employee or someone on the employee's behalf may submit to the appointing authority a written request for extended sick leave and a certificate signed personally by an accredited Christian Science Practitioner or by any of the licensed or certified medical providers listed in §D(4)(b) of this regulation documenting the nature and extent of the employee's illness or injury, the prognosis for recovery, and an estimated date of return to work.*

*(c) The appointing authority shall forward to the Secretary each written request for extended sick leave immediately after the request has been submitted by the employee or someone on the employee's behalf. The request shall include the appointing authority's recommendation for the Secretary's approval or disapproval together with the supporting documentation described in §D(8)(b) of this regulation. The appointing authority shall correct the employee's leave record to reflect a conversion of the extended sick leave to leave of absence without pay.*

*(d) The Secretary may grant extended sick leave to an employee in accordance with §D(8)(a) of this regulation.*

Employees, such as Appellant, who are authorized to present grievances may do so in accordance with Article 64A, §52, et seq., of the Annotated Code of Maryland and are entitled to a hearing before an Administrative Law Judge of the Maryland Office of Administrative Hearings. The State Employee Grievance Procedures, in Article 64A, §52(b) provides that:

*(b) "Grievance" means any cause of complaint unless otherwise provided for under this article arising between an employee and his employer over the interpretation and application of State employee personnel rules, regulations, policies or any other rules, regulations or policies over which management has control.*

Article 64A, §54(a)(3), then provides that a grievance will ultimately be heard on the merits by either an outside arbitrator or by a hearing officer from the department of personnel (now an administrative law judge from the Maryland Office of Administrative Hearings) and that a written decision shall be made within a certain time after the hearing has been held.

The cardinal rule in the construction of Maryland statutes and regulations is to ascertain the intention of the Legislature. Casey Development Corp. v. Montgomery County, 212 Md 138 (1957). The rules applicable to the construction of statutory language should be used for interpretation of regulations of administrative agencies. Messitte v. Colonial Mortgage Service Co., Assoc., Inc., 287 Md 289 (1980). The construction of a statute is necessary only where the statute is ambiguous and of doubtful meaning. Falcone v. Palmer Ford, Inc., 242 Md 487 (1966). If the language of the statute is free from obscurity or ambiguity, there is no occasion for construction to ascertain the meaning of the statute. Pressman v. Barnes, 209 Md 544 (1956). And where the statute is plain and free from ambiguity, its application may not be extended by construction. Town of Somerset v. Montgomery County Board of Appeals, 245 Md 52 (1966). Of course, a court must confine itself to the construction of the law as written, and not attempt under the guise of construction to supply omissions, remedy defects or insert exceptions not made by the Legislature. Amalgamated Casualty Insurance Co. v. Helms, 239 Md 529 (1965). Where the language of the statute is free from doubt, the court has no power to evade it by forced and unreasonable construction in order to assert its own idea of policy or morals, and, where the language is plain and certain, it must be given effect by the courts. Schweitzer v. Brewer, 280 Md 430 (1977), and Smith v. Higinbothom, 187 Md 115 (1946). Generally, the words in a statute are pre-



sumed to be used in their ordinary and popularly understood meaning unless there is reason to believe from the face of the statute that the words were intended to have some other meaning. Pressman v. Barnes, supra. Where statutory language is plain and free from ambiguity and so expresses a definite and sensible meaning, that meaning is conclusively presumed to be the meaning which the Legislature intended to convey. Taylor v. Ogle, 202 Md 273 (1953).

The construction given by an agency to a statute or regulation is only to be given weight by a court when the statute or regulation is ambiguous so as to require construction. Hofmeister v. Frank Realty Co., 35 Md App 691 (1977), and Smith v. Higinbothom, supra. In any event, the final construction of a statute or regulation rests with courts and not with the executive, and the administrative construction of a statute is not controlling on the courts. Smith v. Higinbothom, supra.

In this case, overwhelming evidence by way of documents and testimony was presented by Appellant that, as of the effective date of her application for extended sick leave (February 3, 1989) continuing through her disability retirement from State service on September 1, 1989 and, indeed, continuing to the present time, she has been absent from work because she suffers from an illness (CSS) and its related symptoms, particularly chronic fatigue. Dr. Ziem, a noted specialist regarding CSS and environmental illnesses, testified at length as to that diagnosis and Appellant's inability to work because of her illness. The reports and records of Dr. Gaby, Dr. McLellan (another specialist in environmental illnesses), Dr. Aronson and other medical experts all confirmed the CSS diagnosis and Appellant's inability to work because of her illness. Moreover, Appellant was ultimately approved for both Social Security Disability benefits and disability retirement from State service because of

her inability to work due to her CSS condition. The record is clear that Appellant had sufficient State service and that she had exhausted all other available leave as required by Article 64A, §37(e), and COMAR 06.01.01.42D(8) before extended sick leave can be granted.

Appellee's entire case in opposition to a grant of extended sick leave consisted merely of two letters dated February 2, 1989 and March 22, 1990 [Exhibits A & B] from Dr. Oroszlan, the State Medical Director, to Appellee. Dr. Oroszlan never examined Appellant; he never even saw her. There was no evidence regarding Dr. Oroszlan's expertise, if any, in the areas of environmental illness and CSS. Dr. Oroszlan apparently reviewed the "*exhaustive*" medical documentation which Appellee had provided and which was later submitted into evidence at the hearing in this case. He then, without any explanation and without any statement as to his reasons or basis, simply pronounced that there was, in his view, "*no medical justification to advance or extend leave to Ms. Thompson for the alleged health related problems.*"

The administrative law judge in effect decided in this case that, when there is a dispute between the State Medical Director and an employee's treating physician regarding the question whether an employee who is otherwise qualified for extended sick leave is unable to work because of an illness or injury, the opinion of the State Medical Director, if accepted by the Secretary of Personnel, is dispositive of the issue, and that Appellant was not entitled to a decision by the administrative law judge on the merits of the conflicting opinions of the State Medical Director and Appellant's physicians. The administrative law judge concluded in this case that the "*State Medical Director was in compliance with the COMAR when he made his diagnosis, decision and recommendation to the Secretary.*" He further concluded that the Secretary of

Personnel was entitled to rely upon the opinion of the State Medical Director when deciding to deny extended sick leave.

Appellant initially notes that the State Medical Director made no diagnosis in this case. Furthermore he made no recommendation to the Secretary of Personnel. Despite the requirement of §37(e) and COMAR 06.01.01.42D(8) that the appointing authority (Appellee) "*immediately*" forward a request for extended sick leave to the Secretary of Personnel, that was not done in this case. Instead, Appellee requested that the State Medical Director review the documentation in support of Appellant's request for extended sick leave and that he provide it with his opinion regarding that request. Neither §37(e) or COMAR 06.01.01.42D(8) authorized Appellee to deal directly with the State Medical Director or to avoid transmitting the various requests for extended sick leave made by Appellant to the Secretary of Personnel for further processing by the Secretary.

Appellee and the Administrative Law Judge erroneously concluded that COMAR 06.01.01.42D(6)(c) applied in this case and that that section authorized Appellee to deal directly with the State Medical Director. That regulation, however, authorizes **only** the Secretary of Personnel to refer an employee who is already "*on advanced sick leave or extended sick leave*" to the State Medical Director or another physician for examination to determine when an employee is able to return to work. Appellant was an applicant for extended sick leave and not one who was already "*on extended sick leave*." She was not referred, in any event, to the State Medical Director for an examination. Instead, her records were sent by Appellee to the State Medical Director for his review. Finally, Appellee, rather than the Secretary of Personnel as contemplated by the regulation, involved the State Medical Director in this matter.

There is simply no way to construe, even if any construction were appropriate, COMAR 06.01.01.42D(6)(c) so as to have any application whatsoever to this case. Appellee and the Administrative Law Judge not only focused upon that wholly irrelevant regulation. They then compounded the error in this case by concluding that, assuming that this were a case in which Appellant was already on extended sick leave and in which the Secretary had referred Appellant to the State Medical Director who expressed an opinion in conflict with Appellant's treating physicians regarding her ability to return to work, the opinion of the State Medical Director, if accepted by the Secretary, is dispositive of the matter. That is, an employee grieving a determination by the Secretary terminating extended sick leave would not be entitled to a decision on the merits by an administrative law judge resolving the conflicting opinions between the State Medical Director and the employee's treating physician.

The construction of COMAR 06.01.01.42D(6)(c) urged by Appellee, assuming that that regulation applied in this case and that any construction of it would be appropriate, would improperly create an exception to Appellant's broad right to prosecute a grievance and obtain a decision on the merits with regard to the issue whether extended sick leave was properly denied in this case. Amalgamated Casualty Insurance Co. v. Helms, supra. There is simply no indication that the regulation was intended to create any exception to Appellant's grievance rights pursuant to Article 64A, §52, et seq. At the same time, such a construction, if adopted, would improperly extend the application of the regulation so as to, in turn, create an entirely unintended exception to Appellant's broad grievance rights pursuant to Article 64A, §52(b). Town of Somerset v. Montgomery County Board of Appeals, supra. The regulation, even when applicable, does nothing more than authorize the Secretary to terminate

extended sick leave. An employee who is aggrieved by the termination of extended sick leave is then entitled to pursue a grievance and obtain a decision on the merits with regard to the conflict of opinions between the State Medical Director and the employee's treating physicians.

In an analogous context, Judge J. Norris Byrnes of the Circuit Court for Baltimore County, in the case of Flora Snowden v. Maryland State Department of Health and Mental Hygiene, case no.: 91CG156 91/385 [Order and transcript of Opinion attached hereto as Exhibit C], determined that, with regard to the termination of accident leave, a statute and regulation which authorized the appointing authority to rely upon the opinion of its physician, including the State Medical Director, to terminate accident leave in the event of conflicting opinions from the employee's treating physicians do not affect the employee's right to grieve that termination and obtain a decision from an administrative law judge resolving the conflicting opinions on the merits. An agency decision that the employer's physician's opinion that accident leave should be terminated was conclusive was reversed and the case was remanded for a hearing and decision on the merits of the conflicting opinions between the employer's physician and the employee's physician.

Article 64A, §37(e) and COMAR 06.01.01.42D<sup>(g)</sup>~~(b)(e)~~, which do apply in this case and which do govern the process for granting or denying extended sick leave, contain no provisions for the involvement of the State Medical Director in that process at all. And should, as in this case, the State Medical Director express an opinion regarding an employee's entitlement to a grant of extended sick leave, there is nothing in the statute or regulation that would permit that opinion to be regarded as

dispositive of the matter or even to be given any special or enhanced consideration solely because it is an opinion of the State Medical Director.

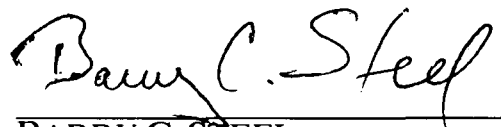
The administrative law judge nevertheless concluded that the opinion of the State Medical Director, if accepted by the Secretary of Personnel, was indeed dispositive of Appellant's grievance. The administrative law judge concluded that "*the Secretary may choose to be guided by the opinion of the State Medical Director and reject the opinions of other doctors.*" [Decision, p.8]. That, we are told, properly concludes the inquiry.

In view of the overwhelming evidence -- Dr. Ziem's testimony, the records and reports from the other physicians, Appellant's testimony, the determinations that Appellant was unable to work because of her CSS condition for purposes of Social Security Disability and disability retirement, etc. -- supporting Appellant's grievance, and in view of the virtual absence of probative evidence to the contrary -- Exhibits A & B --, the decision in this case, in addition to being affected by error of law, was utterly arbitrary and capricious and unsupported by the evidence. Dr. Oroszlan's two letters, rather than having been regarded as dispositive, should have been accorded no weight whatsoever. He never examined Appellant. There was no evidence regarding his expertise, if any, with respect to CSS and environmental illnesses. His opinion was nothing more than a statement that he disagreed with the opinions of Appellant's treating physicians (and also impliedly with the conclusions of the Social Security Administration and the State Pension Board). Yet, he provided no explanation nor any basis for that opinion. In effect, the State Medical Director was permitted in this case to displace the administrative law judge as a factfinder and decision maker regarding Appellant's grievance. Appellant, after all, submitted her medical

documentation to the State Medical Director, whose edict was that her request for extended sick leave must be denied. That documentation was then submitted, together with additional materials and testimony to the administrative law judge, who concluded that the State Medical Director's previous decision denying the requested leave was dispositive.

The evidence in this case that Appellant is entitled to a grant of extended sick leave from February 3, 1989 to September 1, 1989, when she retired from State service is so overwhelming and the evidence to the contrary is so lacking in probative value that reversal, rather than remand, is the appropriate and necessary remedy. A remand would be entirely futile. Given the evidence in this case, reasoning minds could simply not reach the conclusion from that evidence in the record before the agency that Appellant was not entitled to the requested extended sick leave. Commissioner, Baltimore City Police Department v. Cason, supra.

**WHEREFORE**, for the foregoing reasons, Appellant respectfully prays that this court reverse the decision of the administrative law judge in this case and order that Appellant be granted extended sick leave dating from February 3, 1989 to the effective date of her disability retirement from State service, that she be awarded her costs and that she be awarded whatever other relief may be appropriate.



**BARRY C. STEEL**  
752 Camberley Circle  
Towson, Maryland 21204  
(410) 296-8575

Attorney for Appellant

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 6th day of May, 1992, a copy of the foregoing Memorandum was hand-delivered to Sherry L. Kendall, Esquire, Assistant Attorney General, Suite 1015, 311 West Saratoga Street, Baltimore, Maryland 21201-3521.

  
\_\_\_\_\_  
BARRY C. STEEL

memo-01.wp



STATE OF MARYLAND  
DEPARTMENT OF PERSONNEL

EXHIBIT A

William Donald Schaefer  
Governor



Hilda E. Ford  
Secretary  
R. Malcolm-Bridgeman  
Deputy Secretary

301 West Preston Street Baltimore, Maryland 21201  
Area Code 301 • 225 - 4626  
February 2, 1989

Ms. Marie Haavik  
Employer-Employee Relations  
Department of Human Resources  
Saratoga State Center  
311 West Saratoga Street  
Baltimore, Maryland 21201

Re: Linda Thompson  
S.S. #047-34-1856

Dear Ms. Haavik:

This is in response to your January 27, 1989 letter and in reference to the above mentioned employee.

The attached medical documentation was reviewed. There is no medical justification to advance or extend leave to Ms. Thompson for the alleged health related problems.

Very truly yours,

  
Peter Oroszlan, M.D., M.P.H.  
Medical Director

PO/mc

CC: Thomas Diggin

STATE OF MARYLAND  
DEPARTMENT OF PERSONNEL

EXHIBIT B  
37  
19

William Donald Schaefer  
Governor



Hilda E. Ford  
Secretary

301 West Preston Street Baltimore, Maryland 21201  
Area Code 301 • 225 - 4626

March 22, 1990

Ms. Victoria Pepper  
Personnel Administrator  
Employer-Employee Relations  
Department of Human Resources  
311 West Saratoga Street  
Baltimore, Maryland 21201

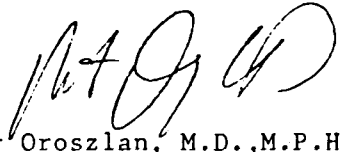
Re: Linda Thompson  
S.S. #074-34-1856

Dear Ms. Pepper:

Thank you for your March 16, 1990 letter and the attached exhaustive medical documentation on Ms. Thompson.

The more recent medical information from different sources were reviewed and it does not change my assessment of the situation as outlined in my previous letter of February 2, 1989.

Very truly yours,

  
Peter Oroszlan, M.D., M.P.H.  
Medical Director

PO/mc

IN RE:  
APPEAL OF DECISION OF  
ADMINISTRATIVE LAW JUDGE

FLORA SNOWDEN

Appellant

v.

MARYLAND STATE DEPARTMENT OF  
HEALTH AND MENTAL HYGIENE  
(Rosewood Center)

Appellee

IN THE  
CIRCUIT COURT  
FOR  
BALTIMORE COUNTY  
CASE NO.: 91CG156 91/385

.....

ORDER

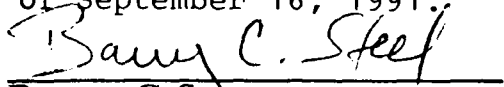
This matter having come before this Court on September 16, 1991, oral argument having been heard, the Memorandum of the parties having been considered, and the Court having concluded, for the reasons stated on the record, that the Decision of the Administrative Law Judge in this case dated January 30, 1991, was erroneous, it is therefore, this *2nd* day of *October*, 1991, by the Circuit Court for Baltimore County,

**ORDERED** that the Decision of the Administrative Law Judge in this case dated January 30, 1991, be, and it hereby is, REVERSED and that the case be, and it hereby is, REMANDED to the Office of Administrative Hearings for a new evidentiary hearing and resolution on the merits of the differing opinions of the parties' respective medical experts regarding Appellant's entitlement to accident leave from June 5, 1989 through October 6, 1989, and

**IT IS FURTHER ORDERED** that the assessment of costs in this case abide the outcome of the proceedings before the Office of Administrative Hearings on remand.

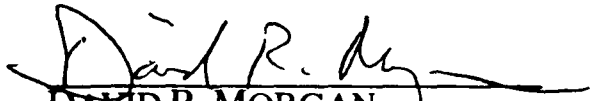
  
J. NORRIS BYRNES, JUDGE

**APPROVED** for form and compliance with the Court's ruling of September 16, 1991.



**BARRY C. STEEL**  
752 Camberley Circle  
Towson, Maryland 21204  
(301) 296-8575

Attorney for Appellant

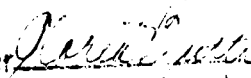


**DAVID R. MORGAN**  
Assistant Attorney General  
Department of Health and Mental Hygiene  
300 West Preston Street, Suite 302  
Baltimore, Maryland 21201  
(301) 225-1846

Attorney for Appellee

**True Copy Test**

SUZANNE MENSCH, Clerk

Per   
Deputy Clerk

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IN THE CIRCUIT COURT FOR BALTIMORE COUNTY, MARYLAND

FLORA SNOWDEN

vs.

Case No. 91-CG-1156

DEPARTMENT OF HEALTH AND  
MENTAL HYGIENE

---

REPORTER'S OFFICIAL TRANSCRIPT OF PROCEEDINGS  
(The Court's Opinion)  
Vol. 1 of 1

Towson, Maryland

September 16, 1991

BEFORE:

HONORABLE J. NORRIS BYRNES, Judge

APPEARANCES:

For Flora Snowden:  
Barry C. Steel, Esquire

For The Department of Health  
and Mental Hygiene:  
David Morgan, Esquire

Reported by:  
Susan Felkoski  
Official Court Reporter  
Towson, Maryland

1           (The following constitutes the Court's opinion in the  
2 matter of Flora Snowden versus Department of Health and Mental  
3 Hygiene, Case No. 91-CG-1156, rendered on September 16, 1991 by  
4 the Honorable J. Norris Byrnes, Judge:)

5           THE COURT: Flora Snowden was a State employee and  
6 was injured when apparently she was assisting a patient. The  
7 record indicates that she is a nurse.

8           On January the 5th, 1989 she went to BIMC, a  
9 clinic apparently associated with the State. She was sent  
10 there by her employer. She came under the care of a Doctor  
11 Maniago until January 18, 1989, when he found that while she  
12 was still complaining of pain over the right shoulder his  
13 findings were essentially normal. Because of what he found he  
14 discharged her.

15           Unhappy with that, and unhappy apparently from  
16 prior exposure to Doctor Maniago, Ms. Snowden went to a lawyer,  
17 who referred her to Doctor Lippman, who referred her to Doctor  
18 Hopkins, who apparently had some specialty in thoracic outlet  
19 syndrome. He told her another story. He suggested that  
20 surgery was the answer. She did not opt for surgery at that  
21 time, but in the summer of '89 decided to go ahead with the  
22 surgery. She was operated upon and she was out of work until  
23 October of '89.

24           It is clear from the exhibits that were intro-  
25 duced before the Administrative Law Judge that at least in

1 Doctor Hopkins' opinion all of her problems were work-related.  
2 It is noted parenthetically that the operation did not seem to  
3 do her much good.

4 She was also seen subsequently by Doctor Fol-  
5 gueras, who opined that -- he saw her after the operation --  
6 her problems were not work-related. So there is a clear  
7 dispute as to whether her problems were work-related or were  
8 not work-related. But the State said that doesn't matter and  
9 she is not entitled to have that debate litigated because as it  
10 reads, 64A, Maryland Code Article 64A, Section 37(g)(2), it  
11 says that accident leave shall be granted from the date of the  
12 job-related injury until a physician certifies the employee  
13 is healed and physically able to return to work. That is read  
14 as saying that once Doctor Maniago, on January 18, '89 dis-  
15 charged her, that was the end of it.

16 While Mr. Morgan recognizes that that could  
17 appear to be unfair at times, he argues that the statute says  
18 what it says. Mr. Steel argues that it doesn't say that quite  
19 that strongly. There is some support for the State's position  
20 found in the declaratory ruling, which is not dated, but  
21 somewhere in the record there is a date, '84 or '86 --

22 MR. MORGAN: July 26, 1984.

23 THE COURT: '84. Which concludes that an appointing  
24 authority in the case of a conflict between the prognosis of a  
25 physician appointed by him, such as the State Medical Director,

1 and the prognosis of an employee's personal physician may  
2 choose the prognosis of the physician appointed by him in  
3 deciding what date to determine employee's accident leave. I  
4 frankly don't find that at odds with the position taken by Ms.  
5 Snowden in this case. That may well be the case. The problem  
6 is that we haven't gotten to that. The problem here is whether  
7 this statute says that once Doctor Maniago says go back to work  
8 that ends it. I don't read 64A, Section 37(g)(1) and (2) as  
9 being that restrictive. While (2) does say accident leave  
10 shall be granted, shall be granted from the date of the job-  
11 related injury until a physician certifies the employee was  
12 healed, physically able to work, it seems to me inherent in  
13 that is that the employee has to be healed.

14           The second sentence of that same Section says  
15 that the employer's physician may examine the injured employee  
16 periodically to determine the progress and length of time  
17 necessary for his recovery. It seems to me that that language  
18 anticipates from time to time there is going to be a difference  
19 of opinion.

20           The Administrative Law Judge was also of the  
21 opinion that once Ms. Snowden went back to work there was no  
22 support in the law for a subsequent leave, even if it was  
23 within the one-year statutory period. They took the position  
24 that what management did was proper in the legal sense. But I  
25 don't believe that. I don't quarrel with that, but it seems to



1 me that the wrong question was answered. It seems to me that  
2 under the grievance procedure that Mrs. Snowden is entitled to  
3 have her situation reviewed as a matter of fact. It may well  
4 be that this may be an exercise in futility because certainly  
5 the law is clear that the Administrative Law Judge can come to  
6 the same conclusion as Mr. Teal did, but I believe that she is  
7 entitled to have him come to that conclusion because he finds  
8 that on January 18, 1989 she was indeed in a position to go  
9 back to work and any subsequent difficulties she had were not  
10 related to the accident of December of 1988.

11 So I am going to reverse the Administrative Law  
12 Judge and send it back to him to be heard, I guess, on the  
13 merits.

14 MR. STEEL: Your Honor, we had requested that the  
15 Order specify, the Order remanding it specify that it be heard  
16 before a different Administrative Law Judge. We reiterate that  
17 request.

18 THE COURT: I don't know that I can tell Judge  
19 Hargrove whom to set it before. I am not going to do that.

20 MR. STEEL: Thank you.

21 MR. MORGAN: It is my understanding that this would  
22 be remanded for a determination as to whether the request for  
23 accident leave beginning in June should be granted, or are you  
24 remanding it rather to require there to be a determination as  
25 to whether Doctor Maniago's certification back in January is

1 the ruling?

2 THE COURT: No. See, I don't read this the way Mr.  
3 Teel, Judge Teel, read it. I don't believe because Maniago  
4 said it under those circumstances that -- I think he has the  
5 authority to do that. There is nothing wrong with him doing  
6 that. So that she has no complaint that he did that as a  
7 matter of law. She, as a matter of law, has no complaint, do  
8 you follow me, about what he did. But she can complain --

9 MR. MORGAN: Couldn't she have filed an appeal of his  
10 denial for certification and resulting denial of accident  
11 leave?

12 THE COURT: You have me there. Nobody has raised  
13 that. I don't know this Administrative Law like you two do.

14 MR. STEEL: He in fact did not certify anything on  
15 January 18.

16 THE COURT: Well, he certified she could go back to  
17 work.

18 MR. STEEL: He did not do that until this later  
19 question arose.

20 THE COURT: You mean the letter he wrote in the  
21 summer?

22 MR. STEEL: He didn't write anything until August.

23 MR. MORGAN: There was testimony, though, from the  
24 Personnel officer in the record that he understood at the time  
25 that accident leave was terminated from Doctor Maniago.

1 THE COURT: That is another --

2 MR. MORGAN: Their record --

3 THE COURT: That is quite another issue. Did you all  
4 argue that? I missed that if you did. I mean, is there a  
5 procedure -- once Maniago says you go back to work, what is she  
6 supposed to do next?

7 MR. STEEL: There was no reason for her not to go  
8 back to work. The reason that she asked for the accident,  
9 grant of accident leave was for the surgery, and until such  
10 time as she underwent the surgery she really had no complaint  
11 about, she wasn't asking for any further accident leave.

12 MR. MORGAN: Now she is asking for it from June until  
13 October.

14 MR. STEEL: For the surgery, your Honor.

15 MR. MORGAN: But if her complaint --

16 THE COURT: See, I am not shocked by the fact, as you  
17 seem to be, Mr. Morgan, by the fact that there is a delay  
18 between the accident and the surgery. I mean, to me that is  
19 the norm, not the exception.

20 MR. MORGAN: But if she is maintaining that her  
21 accident leave was wrongly denied in January --

22 THE COURT: No. It was wrongly denied --

23 MR. MORGAN: Or wrongly terminated --

24 THE COURT: No, I gather she is saying that it was  
25 wrongly denied from June until October.

1 MR. MORGAN: She is saying that, but I also under-  
2 stand her to be contending in the record at least that she was  
3 wrongly terminated in January and --

4 MR. STEEL: Your Honor, that simply is not our  
5 contention.

6 THE COURT: That is not what I -- I am talking about  
7 -- you know, Maniago had the authority to do all of that. That  
8 was part of the, that was his job, not to terminate it, but to  
9 make the evaluation. So he did what he did. She said he was  
10 wrong in doing that. But the wrong didn't --

11 MR. MORGAN: She maintains she should have been out  
12 on accident leave presumably until she is healed and able to go  
13 back to work. She maintains Maniago was wrong in making that  
14 call. Why didn't she appeal at that point?

15 THE COURT: She is not saying that.

16 MR. MORGAN: She was at the administrative level, and  
17 that was her testimony.

18 MR. STEEL: Her specific reason was that she was  
19 denied accident leave from June 5, through October something or  
20 another, when she was out for the surgery. The surgery took  
21 place on June 6. She is not contending that prior to June 5,  
22 the day before the surgery, that she was entitled to anything  
23 or that anybody did anything wrong.

24 MR. MORGAN: Well, I take it that she is saying then,  
25 if that is the position on appeal, that she wasn't wrongly

1 terminated from accident leave on January 18. And if that is  
2 correct then I don't know what this appeal is all about because  
3 the statute allows for one accident leave. Not that you can  
4 take a second bite or third bite or however you want. If you  
5 are not able to return to work because you are not healed,  
6 there is not a hiatus where you are allowed to return to work  
7 and then you are not and so on and so forth.

8 THE COURT: Where does it say that?

9 MR. MORGAN: Say what?

10 THE COURT: You keep saying that, but where is the  
11 law -- that is where you and I have parted ways. That is why I  
12 am reversing it.

13 MR. MORGAN: I think 37(g)(2) says that accident  
14 leave shall be granted, and it gives a very specific time from  
15 which it is to run , from the date of the job-related injury  
16 until the physician certifies. It doesn't say that it may be  
17 regranted later on.

18 THE COURT: It does not say that.

19 MR. MORGAN: After it is terminated, it may be  
20 granted a second time. There is no provision there for that.  
21 It is to run from the date of the injury until termination.  
22 Not that it is properly terminated and then it can be rein-  
23 stated at a later date for a later period. The statute doesn't  
24 provide for that.

25 MR. STEEL: It also does not prohibit the granting of

1 a second period of accident leave, as long as there has been  
2 the cap of the one year from the date of the injury. I thought  
3 the Court ruled on that point.

4 THE COURT: I see what Mr. Morgan is saying. Your  
5 position is that there is no, I think you said this earlier,  
6 what happened to this woman, no matter how innocent she is and  
7 how correct she is, she can't have accident leave because  
8 Maniago, on January 18, said go back to work.

9 MR. MORGAN: And she --

10 THE COURT: And once he did that and she did not  
11 appeal --

12 MR. MORGAN: She didn't appeal that.

13 MR. STEEL: Well, then we are back to square one.  
14 Maniago never said in the sense of certifying, particularly as  
15 --

16 THE COURT: I don't buy that one.

17 MR. MORGAN: That is in the record.

18 THE COURT: No, he did do that.

19 MR. STEEL: He did do that?

20 THE COURT: Sure. You know what the proof is? On  
21 January 19 she went to work.

22 MR. STEEL: No. We are not contesting that -- she  
23 was no longer in treatment. He discharged her. She had no --  
24 what triggered the --

25 THE COURT: I had not thought of it from that

1 perspective because I was thinking that the only remedy she had  
2 was this.

3 MR. STEEL: Well, she had --

4 THE COURT: Well, within a short period of time she  
5 went to two other doctors and they said that she had this  
6 problem.

7 MR. MORGAN: And she did nothing with that until  
8 June.

9 MR. STEEL: There is no other -- your Honor, there is  
10 no remedy. I mean, this is created out of whole cloth for the  
11 purpose of this argument.

12 THE COURT: No, it is not. It really is a mess, is  
13 what it is. The statute is making it that way. It is not out  
14 of whole cloth at all, Mr. Steel. It is a --

15 MR. STEEL: The notion that she had something to  
16 grieve at that point is without basis in fact. I mean, she had  
17 nothing to grieve until the surgery was scheduled.

18 THE COURT: Yes, I understand your point.

19 MR. STEEL: And she requested accident leave from  
20 June 5 through sometime in October in connection with the  
21 surgery. That was denied. We then have a grievable matter.  
22 She had no causal complaint, and the grievance statute refers  
23 to any causal complaint on the part of the employee with regard  
24 to --

25 THE COURT: When you look at (2) it says from the

1 date of the job-related injury until there is a certification  
2 she can go back to work. It says more than that. It says the  
3 employee is healed and physically able to return to work.

4 MR. STEEL: The other thing, my other response, your  
5 Honor, is this was not raised at the hearing in any way or at  
6 any part in the administrative proceeding.

7 THE COURT: I am pretty comfortable with what I am  
8 doing, but what I wanted to do was make it clear procedurally  
9 down below what is to be decided. What I intend is that she  
10 gets a hearing on the merits of her argument that she was off  
11 of work from June until October because of this injury on the  
12 job, and that she is entitled to her accident leave. That is  
13 what he is supposed to decide. He can decide -- if it is all  
14 weighed and decided on the merits and not as a matter of law,  
15 she has had her day.

16 MR. MORGAN: Does the Court contemplate that the --

17 THE COURT: I would be amazed if she won.

18 MR. MORGAN: -- that the agency representatives may  
19 bring into issue the failure to meet the limitations period for  
20 grieving the termination of the accident leave?

21 MR. STEEL: I don't think that is properly before the  
22 Court.

23 THE COURT: I have not decided that.

24 MR. STEEL: Having gone through this once without  
25 having raised that issue --



1           MR. MORGAN: Because if that is an issue of law,  
2 which I think is implicit in the record here, then it may come  
3 back up on another ruling of law.

4           THE COURT: Well, then we will decide it then.

5           MR. MORGAN: Okay.

6           THE COURT: What do you want me to decide?

7           MR. MORGAN: It is clear from appellant's testimony  
8 that at the time Maniago discharged her she disagreed with him  
9 and felt that his determination was wrong. It is also clear  
10 that within a month of that she had an opinion from Doctor  
11 Hopkins that she maintains would support her disagreement. Yet  
12 she did not appeal the determination at that point. If that is  
13 what she is supposed to do, because the statute provides --

14           THE COURT: I don't know if she is supposed to do  
15 that or not. I don't know. The absence of logic in some of  
16 this is striking to me. What happened to her happens every  
17 day.

18           MR. MORGAN: But she didn't appeal it. That was when  
19 she had the grievance. That is lost. The record is clear on  
20 that.

21           THE COURT: Well, you can keep saying that. You  
22 know, it really comes down to how, you and I differ on how this  
23 statute, how much finality is in (g)(2). You could be correct.  
24 I guess I usually don't -- this isn't a ruling that was hard at  
25 all. I mean, it is just that -- other than the sense of it is

1 I hope it doesn't mean what you say, but it may well. I don't  
2 read it that way. I read some flexibility into it. You can  
3 always appeal it. It won't break my heart. It won't even  
4 wound it a little bit.

5 MR. MORGAN: Thank you, your Honor.

6 THE COURT: Are you going to prepare an Order? Be  
7 sure that Mr. Morgan sees it before I do so if there is a  
8 dispute about it --

9 MR. STEEL: I intended to have your Honor's oral  
10 opinion transcribed.

11 THE COURT: Well, I have enough contradiction in that  
12 for anybody.

13 MR. STEEL: The only other thing that I would ask  
14 that the Court rule is that the costs --

15 THE COURT: The costs will abide the final decision.

16 MR. STEEL: Of the agency?

17 THE COURT: The next time around.

18 MR. MORGAN: The agency on the remand.

19 MR. STEEL: Thank you, your Honor. In view of the  
20 fact that I will be obtaining a transcript, I take it that the  
21 Court will not require an Order?

22 THE COURT: No. I want an Order. I want something  
23 in that file. You can put in there for the reasons stated in  
24 open Court by the Court. But I want an Order in there.

25 MR. STEEL: Thank you, your Honor.

(Conclusion of proceeding)

FILED

7

MAR 11 1992

CIRCUIT COURT FOR BALTIMORE CITY

LINDA J. THOMPSON

\* IN THE

Appellant

\* CIRCUIT COURT

v.

\* FOR

DEPARTMENT OF HUMAN RESOURCES

\* BALTIMORE CITY

Appellee

\* Case No.: 91354021/CL141930

\* OAH Case No.: G-7170

\* \* \* \* \*

SUPPLEMENT TO THE CERTIFICATE OF RECORD

I HEREBY CERTIFY that the attached supplement consisting of the Decision dated July 11, 1991 and Exhibits are the full, complete official record of these proceedings.

*Linda Berge*

LINDA BERGE  
Chief Clerk  
Office of Administrative Hearings

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 10th day of March, 1992, a copy of the foregoing Supplement to the Certificate of Record was mailed, postage prepaid, to Sherri Kendall, Assistant Attorney General, Maryland Department of Human Resources, 311 West Saratoga Street, Baltimore, Maryland 21201, and to Barry C. Steel, Esquire, 752 Camberley Circle, Towson, Maryland 21204.

*Linda Berge*

LINDA BERGE  
Chief Clerk

**NOTICE SENT IN ACCORDANCE WITH MARYLAND RULE B-12**

Linda J. Thompson

vs.

Department Of Human Resources, Etal

Docket: .....

Folio: .....

File: 91354021/CL141930

Date of Notice: 2/27/92

STATE OF MARYLAND, ss:

I HEREBY CERTIFY, That on the 18th day of Feb.,  
Nineteen Hundred and ninety-two, I received from the Administrative  
Agency, the record, in the above captioned case.

**SAUNDRA E. BANKS, Clerk**  
Circuit Court for Baltimore City

CC-39

**NOTICE SENT IN ACCORDANCE WITH MARYLAND RULE B-12**

Linda J. Thompson

vs.

Department Of Human Resources, ,Etal

Docket: .....

Folio: .....

File: 91354021/CL141930

Date of Notice: 2/27/92

STATE OF MARYLAND, ss:

I HEREBY CERTIFY, That on the 18th day of Feb.,  
Nineteen Hundred and ninety-two, I received from the Administrative  
Agency, the record, in the above captioned case.

**SAUNDRA E. BANKS, Clerk**  
Circuit Court for Baltimore City

CC-39

---

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---

Sherry L. Kendall  
Saratoga State Center  
311 West Saratoga Street  
Suite 1015  
Baltimore, MD. 21201

---

---

Barry C. Steel  
752 Camberley Circle  
Towson, MD. 21204

---

---

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FILED

FEB 18 1992

CIRCUIT COURT FOR  
BALTIMORE CITY

LINDA J. THOMPSON

Appellant

v.

DEPARTMENT OF HUMAN RESOURCES

Appellee

\* IN THE  
\* CIRCUIT COURT  
\* FOR  
\* BALTIMORE CITY

\* Case No.: 91354021/CL141930

\* OAH Case No.: G-7170

\* \* \* \* \*

CERTIFICATE OF RECORD

I HEREBY CERTIFY that the attached documents, consisting of (a) Transcript dated June 7, 1991; (b) Decision dated July 11, 1991; (c) Exhibits are the full, complete official record of these proceedings.

*Linda Berge, c*

LINDA BERGE  
Chief Clerk  
Office of Administrative Hearings

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 14th day of February, 1992, a copy of the foregoing Certificate of Record was mailed, postage prepaid, to Steven D. Keller, Assistant Attorney, Maryland Department of Human Resources, 311 West Saratoga Street, Baltimore, Maryland 21201, and Barry C. Steel, Esquire, 752 Camberley Circle, Towson, Maryland 21204.

*Linda Berge, c*

LINDA BERGE  
Chief Clerk

IN RE:  
APPEAL OF DECISION OF  
ADMINISTRATIVE LAW JUDGE

LINDA J. THOMPSON  
1 Seaview Avenue  
Branford, Connecticut 06405

Appellant

v.

DEPARTMENT OF HUMAN  
RESOURCES (Baltimore City Department  
of Social Services)  
311 West Saratoga Street  
Baltimore, Maryland 21201

Appellee

IN THE

CIRCUIT COURT

FOR

BALTIMORE CITY

CASE NO.: 92354021  
/CL141930

\* \* \* \* \*

ORDER

The foregoing Application for Extension of Time for Transmission of Record having been read and considered and sufficient cause having been demonstrated, it is this      day of      , 1992, thereupon

**ORDERED** that the time for transmission of the record of the administrative proceedings in this case be, and it hereby is, extended for sixty [60] days until March 19, 1992.

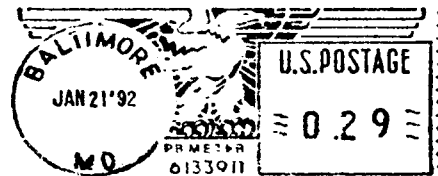
*11/21/92  
Wanted. Dismissed  
facts to determine need for  
summary judgment*

DAVID ROSS  
JUDGE  
The Judge's signature appears  
on the original document

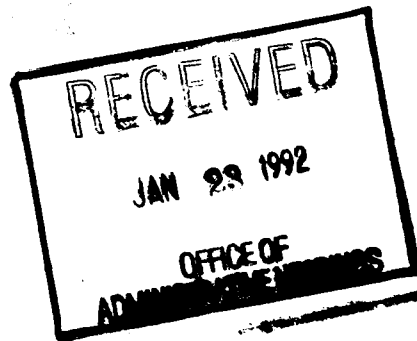
TRUE COPY  
RECEIVED  
*Sandra E. Banks*  
SANDRA E. BANKS, CLERK

CIRCUIT COURT FOR BALTIMORE CITY  
CIVIL DIVISION  
Room 462 Court House East  
111 N. Calvert Street  
Baltimore, Md. 21202

PRESORTED  
FIRST CLASS



Mary Bender  
Office of Administrative Hearings  
Administrative Law Building  
Greenspring Station  
10753 Falls Road  
Lutherville, MD 21093





IN RE:  
APPEAL OF DECISION OF  
ADMINISTRATIVE LAW JUDGE

LINDA J. THOMPSON  
1 Seaview Avenue  
Branford, Connecticut 06405

Appellant

v.

DEPARTMENT OF HUMAN  
RESOURCES (Baltimore City Department  
of Social Services)  
311 West Saratoga Street  
Baltimore, Maryland 21201

Appellee

\*  
\* IN THE  
\*  
\* CIRCUIT COURT  
\*  
\* FOR  
\*  
\* BALTIMORE CITY  
\*  
\*  
\* CASE NO.:

\* \* \* \* \*

PETITION OF APPEAL

The Petition of Linda J. Thompson, Appellant, by her undersigned counsel, respectfully alleges:

1. That Appellant, at all times relevant hereto, had been employed as a Human Service Worker V assigned to the Baltimore City Department of Social Services.
2. On or about March 24, 1989, Appellant, who suffered from chemical sensitivity syndrome, who had exhausted all of her annual and sick leave, and who was otherwise qualified for a grant of extended sick leave, applied for extended sick leave effective on or about February 3, 1989.
3. Appellant's said application, together with substantial medical documen-

tation, was submitted to the State Medical Director, who subsequently recommended that Appellant's said application be denied.

4. Appellant subsequently re-submitted her said application with additional medical documentation. After review by the State Medical Director of the additional documentation, Appellant's said application for extended sick leave was again denied.

5. Appellant then filed a timely grievance, pursuant to Article 64A, §52, et seq., of the Annotated Code of Maryland, the State Employee Grievance Procedures.

6. Ultimately, Appellant's grievance was heard by Administrative Law Judge Charles W. Fowler of the Maryland Office of Administrative Hearings who, on July 11, 1991, decided that the denial of Appellant's application for extended sick leave should be sustained.

7. Appellant's copy of the said decision was initially sent by the Maryland Office of Administrative Hearings to an invalid address. Appellant contacted the Office of Administrative Hearings in November, 1991, to inquire about the status of her case and discovered that her copy of the said decision had been sent to an invalid address and that she therefore had not received it. Consequently, the Office of Administrative Hearings sent another copy of the decision to Appellant by certified mail on or about November 22, 1991, which copy was received by Appellant on or about November 23, 1991. This appeal followed.

8. The said Decision of the Administrative Law Judge was clearly erroneous in that:

a. It was unsupported by competent, material and substantial evidence in view of the entire record as submitted.

- b. It was arbitrary and capricious.
- c. It was affected by error of law.

**WHEREFORE**, Appellant prays that the said Decision be reversed, that the Court order that she be granted extended sick leave as she has requested, that she be awarded her costs, that she be granted whatever other relief may be appropriate.

(S/

---

**BARRY C. STEEL**  
752 Camberley Circle  
Towson, Maryland 21204  
(301) 296-8575

Attorney for Appellant

**CERTIFICATE OF COMPLIANCE**

**I HEREBY CERTIFY** that on this 19th day of December, 1991, a copy of the foregoing Petition of Appeal was mailed to Mary Bender, Office of Administrative Hearings, Administrative Law Building, Green Spring Station, 10753 Falls Road, Lutherville, Maryland 21093.

(S/

---

**BARRY C. STEEL**

IN RE:  
APPEAL OF DECISION OF  
ADMINISTRATIVE LAW JUDGE

LINDA J. THOMPSON  
1 Seaview Avenue  
Branford, Connecticut 06405

Appellant

v.

DEPARTMENT OF HUMAN  
RESOURCES (Baltimore City Department  
of Social Services)  
311 West Saratoga Street  
Baltimore, Maryland 21201

Appellee

\*  
\* IN THE \*  
\*  
\* CIRCUIT COURT \*  
\*  
\* FOR \*  
\*  
\* BALTIMORE CITY \*  
\*  
\* CASE NO.: 91354021/CL141930 \*  
\*  
\* \* \* \* \*

RECEIVED  
DEC 23 1991  
OFFICE OF  
ADMINISTRATIVE HEARINGS

ORDER FOR APPEAL

MADAM CLERK:

Please enter an appeal from the Decision of the Administrative Law Judge dated July 11, 1991, (a copy of which was not received by Appellant until November 23, 1991), in the above-referenced case (Agency case #G-7170).

(S/  
\_\_\_\_\_  
BARRY C. STEEL  
752 Camberley Circle  
Towson, Maryland 21204  
(301) 296-8575  
Attorney for Appellant

CERTIFICATE OF COMPLIANCE

I HEREBY CERTIFY that on this 19th day of December, 1991, a copy of the foregoing Order for Appeal was mailed to Mary Bender, Office of

Administrative Hearings, Administrative Law Building, Green Spring Station, 10753  
Falls Road, Lutherville, Maryland 21093.

(S/

---

BARRY C. STEEL

William Donald Schaefer  
Governor



John W. Hardwicke  
Chief Administrative Law Judge

James G. Klair  
Deputy Chief Administrative  
Law Judge

OFFICE OF ADMINISTRATIVE HEARINGS

ADMINISTRATIVE LAW BUILDING  
GREEN SPRING STATION  
10753 FALLS ROAD  
LUTHERVILLE, MARYLAND 21093  
(301) 321-3993  
FAX 301-321-2040

WRITER'S DIRECT DIAL NO.

January 9, 1992

Ms. Sandra Banks  
Clerk of the Circuit Court  
for Baltimore City  
Clarence M. Mitchell, Jr. Courthouse  
100 N. Calvert Street  
Baltimore, Maryland 21202

Re: Linda J. Thompson v. Dept. of Human Resources  
In the Circuit Court for Baltimore City  
Case No. 91354021/CL141930  
OAH Case No. G-7170

Dear Ms. Banks:

Please file the enclosed Certificate of Compliance in reference  
to the above-entitled case.

Thank you for your attention to this matter.

Very truly yours,

Linda Berge  
Chief Clerk

mb

Enclosure

cc: Barry C. Steel  
Victoria Pepper

LINDA J. THOMPSON  
Appellant

v.

DEPARTMENT OF HUMAN RESOURCES  
Appellee

\* IN THE  
\* CIRCUIT COURT  
\* FOR BALTIMORE CITY  
\* CASE NO.: 91354021/CL141930  
\* OAH CASE: G-7170

\* \* \* \* \*

CERTIFICATE OF COMPLIANCE

I HEREBY CERTIFY that notice of the filing of the appeal has been given to every party to the proceeding in conformity with Maryland Rule B.2(d).

Linda Berge / mb  
Linda Berge  
Chief Clerk  
Office of Administrative Hearings  
10753 Falls Road  
Lutherville, Maryland 21093

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 9th day of January, 1992, a copy of the foregoing Certificate of Compliance was mailed, postage prepaid to Barry C. Steel, Esquire, 752 Camberley Circle, Towson, Maryland 21204 (Attorney for Appellant) and Ms. Victoria Pepper, Department of Natural Resources, 311 Saratoga State Center, Baltimore, Maryland 21202.

Linda Berge / mb  
Linda Berge



**OFFICE OF ADMINISTRATIVE HEARINGS**

ADMINISTRATIVE LAW BUILDING  
GREEN SPRING STATION  
10753 FALLS ROAD  
LUTHERVILLE, MARYLAND 21093  
(301) 321-3993  
FAX 301-321-2040

WRITER'S DIRECT DIAL NO.

Direct Dial Number  
321-2171

January 9, 1992

Barry C. Steel, Esquire  
752 Camberley Circle  
Towson, Maryland 21204

Re: Linda J. Thompson v. Dept. of Human Resources  
In the Circuit Court for Baltimore City  
Case No. 91354021/CL141930  
OAH Case No. G-7170

Dear Mr. Steel:

This office has received the Order for Appeal and Petition in reference to the above-captioned matter. Maryland Rule B.7 requires prompt transmittal of the record to the Clerk of the Court. Pursuant to Rule B.7a. and COMAR 06.01.03.06, this agency requires an appellant to pay the cost of transcribing the record which is then taxed as costs. The transcript cost is \$3.20 per page.

In order to insure that the record is timely transcribed and transmitted and to preserve any right of appeal, you should remit \$800.00, estimated cost of the transcript, as soon as possible, to William Bodenstein, Conference Reporting Services, P.O. Box 37, Glen Burnie, Maryland 21061.

We also call your attention to the provisions of Rule B.7a. and d., which permit omissions from the record by stipulation or a statement in lieu of the record.

Very truly yours,

Linda Berge  
Chief Clerk

mb

cc: William Bodenstein



William Donald Schaefer  
Governor



John W. Hardwicke  
Chief Administrative Law Judge

James G. Klair  
Deputy Chief Administrative  
Law Judge

## OFFICE OF ADMINISTRATIVE HEARINGS

ADMINISTRATIVE LAW BUILDING  
GREEN SPRING STATION  
10753 FALLS ROAD  
LUTHERVILLE, MARYLAND 21093  
(301) 321-3993  
FAX 301-321-2040

WRITER'S DIRECT DIAL NO.

Direct Dial Number  
321-2171

January 9, 1992

Ms. Victoria Pepper  
Department of Human Resources  
311 Saratoga State Center  
Baltimore, Maryland 21202

Re: Linda J. Thompson v. Dept. of Human Resources  
In the Circuit Court for Baltimore City  
Case No. 91354021/CL141930  
OAH Case No. G-7170

Dear Ms. Pepper:

Enclosed find a copy of the Order for Appeal and Petition in the above-referenced case. Also enclosed find the Decision that was appealed. We have advised the Appellant that Maryland Rule B.7 requires prompt transmittal of the record to the Clerk of the Court. We have also advised the Appellant of the cost to transcribe the record pursuant to COMAR 06.01.03.06. We have further advised the Appellant that Maryland Rule B.7.a. and d. permit omissions from the record by stipulation or a statement in lieu of the record. Appellant may be getting in touch with you regarding this provision.

You should file an answer to the petition within 30 days after the filing of the petition in court. Maryland Rule B.12 provides that within 30 days after being notified by the Clerk of the Court of the filing of the record the Appellant is required to file a memorandum setting forth a concise statement of all issues raised on appeal and arguments on each issue, including citations of legal authorities and references to the pages of the transcript and exhibits relied on. Within 30 days thereafter, you are required to file an answer memorandum in the same form. The Appellant may then file a reply memorandum within 15 days after the filing of any answer memorandum.

Ms. Victoria Pepper  
Page two  
January 9, 1992

If you have any questions regarding this matter, please do not  
hesitate to call me.

Very truly yours,

*Linda Berge / mb*

Linda Berge  
Chief Clerk

mb

Enclosures

FILED <sup>5</sup> <sub>20</sub> <sup>EB</sup> 

IN RE: \* IN THE  
APPEAL OF DECISION OF JAN 20 1992 \*  
ADMINISTRATIVE LAW JUDGE \* CIRCUIT COURT  
CIRCUIT COURT FOR  
LINDA J. THOMPSON \* BALTIMORE CITY \* FOR

Appellant \* BALTIMORE CITY

v. \* Case No.: 91354021/CL141930

DEPARTMENT OF HUMAN RESOURCES \*  
BALTIMORE CITY DEPARTMENT OF \*  
SOCIAL SERVICES \*

Appellee \*

\* \* \* \* \*

**ANSWER TO PETITION OF APPEAL**

The Appellee employer, the Maryland Department of Human Resources, Baltimore City Department of Social Services, through counsel, in response to Appellant's Petition for Appeal filed in accord with Maryland Rule B2e, states as follows:

**ONE.** Appellee admits the allegations in ¶1 but adds that Appellant is presently retired from State employment due to a disability caused by chronic fatigue. See Decision, 5, ¶2.

**TWO.** Appellee admits the allegations in ¶2 concerning Appellant's exhaustion of other leave and application for extended sick leave, but denies that Appellant suffers from chemical sensitivity syndrome or qualifies for a grant of extended sick leave.

**THREE.** Appellee admits the allegations in ¶3, and adds that, according to the Decision (6, ¶1), Appellant was

examined by the State Medical Director in accord with COMAR 06.01.01.42D(6)(a); also, that the recommendation for denial of leave was adopted by the Secretary of Personnel.

**FOUR.** Appellee admits the allegations in ¶4.

**FIVE.** Appellee admits the allegations in ¶5.

**SIX.** Appellee admits the allegations in ¶6.

**SEVEN.** Appellee neither admits nor denies the allegations in ¶7, and states that it has no knowledge concerning the facts contained in those allegations, but will defer to the administrative record for strict proof thereof.

**EIGHT.** Appellee denies the allegations in ¶8, and submits that the findings of the Administrative Law Judge of the Office of Administrative Hearings are:

(1) Supported by competent, material and substantial evidence in view of the entire record as submitted;

(2) Not in violation of constitutional provisions or made in excess of the statutory authority or jurisdiction of the Secretary of Personnel or the Office of Administrative Hearings;

(3) Not made upon unlawful procedure or affected by other error of law; and


(4) Not arbitrary, capricious or unreasonable.

That pursuant to Maryland Code Ann., State Government Art. §10-215(f), the jurisdiction of this Court is confined to a review of the decision of the Office of Administrative Hearings and this is not a trial de novo.

WHEREFORE, having fully answered the allegations set forth in the Petition of Appeal exhibited against it, the Appellee prays that this Court affirm the Order of the Office of Administrative Hearings.

Respectfully submitted,

J. JOSEPH CURRAN, JR.  
Attorney General of Maryland

  
\_\_\_\_\_  
SHERRY L. KENDALL  
Assistant Attorney General  
Saratoga State Center  
311 West Saratoga Street  
Suite 1015  
Baltimore, Maryland 21201  
(301) 333-0019

ATTORNEYS FOR APPELLEE  
DEPARTMENT OF HUMAN RESOURCES

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 17th day of January, 1992, a copy of the foregoing Answer to Petition of Appeal was mailed, postage prepaid, to Barry C. Steel, Esq., 752 Camberley Circle, Towson, Maryland 21204, attorney for Appellant, and Linda Berge, Chief Clerk, Office of Administrative Hearings, Green Spring Station, 10753 Falls Road, Lutherville, Maryland 21093.

  
\_\_\_\_\_  
SHERRY L. KENDALL

(4)

IN RE:  
APPEAL OF DECISION OF  
ADMINISTRATIVE LAW JUDGE

LINDA J. THOMPSON  
1 Seaview Avenue  
Branford, Connecticut 06405

Appellant

v.

DEPARTMENT OF HUMAN  
RESOURCES (Baltimore City Department  
of Social Services)  
311 West Saratoga Street  
Baltimore, Maryland 21201

Appellee

IN THE

CIRCUIT COURT

FOR

BALTIMORE CITY

CASE NO.: 92354021  
/CL141930

\* \* \* \* \*

ORDER

The foregoing Application for Extension of Time for Transmission of Record having been read and considered and sufficient cause having been demonstrated, it is this      day of      , 1992, thereupon

**ORDERED** that the time for transmission of the record of the administrative proceedings in this case be, and it hereby is, extended for sixty [60] days until March 19, 1992.

*1/23/92  
Wanted. Dismissed  
facts to determine need for  
summary judgment  
BS*

\_\_\_\_\_  
JUDGE

3 cm  
1-21-92

**JAN 16 1992**  
CIRCUIT COURT FOR  
BALTIMORE CITY

3

**IN RE:  
APPEAL OF DECISION OF  
ADMINISTRATIVE LAW JUDGE**

**LINDA J. THOMPSON  
1 Seaview Avenue  
Branford, Connecticut 06405**

**Appellant**

**v.**

**DEPARTMENT OF HUMAN  
RESOURCES (Baltimore City Department  
of Social Services)  
311 West Saratoga Street  
Baltimore, Maryland 21201**

**Appellee**

**IN THE**

**CIRCUIT COURT**

**FOR**

**BALTIMORE CITY**

**CASE NO.: 91354021  
/CL141930**

\* \* \* \* \*

**APPLICATION FOR EXTENSION OF TIME  
FOR TRANSMISSION OF RECORD**

Linda J. Thompson, Appellant, by her undersigned counsel, hereby applies, pursuant to Maryland Rule B7, for an extension of time of sixty [60] days in the above-captioned case for the transmission of record by the Maryland State Department of Personnel and, as grounds therefor, says:

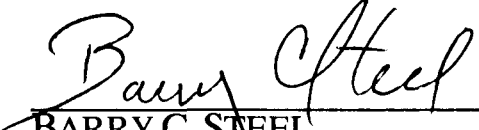
1. Appellant's counsel has been advised by Conference Reporting Services, the reporting service engaged by the Maryland State Department of Personnel to procure the transcription of the record of the administrative proceedings in this case, that it will require additional time beyond the present deadline for transmission of the record of January 19, 1992, to complete the transcription of the said record of the administrative proceedings in this case.

2. Until the said reporting service has completed the transcription of the said



record and submitted the said transcript to the Maryland State Department of Personnel, the said Department will not be able to transmit the record to this Court.

**WHEREFORE**, Appellant respectfully prays that this Court order an extension of Sixty [60] days until March 19, 1992 for the transmission of the record in this case.

  
\_\_\_\_\_  
BARRY C. STEEL  
752 Camberley Circle  
Towson, Maryland 21204  
(301) 296-8575

Attorney for Appellant

**CERTIFICATE OF MAILING**

**I HEREBY CERTIFY** that on this 15th day of January, 1992, copies of the foregoing Application for Extension of Time for Transmission of Record and proposed Order were mailed to Mary Bender, Office of Administrative Hearings, Administrative Law Building, Greenspring Station, Green Spring Station, 10753 Falls Road, Lutherville, Maryland 21093 and Ms. Victoria Pepper, Department of Human Resources, Saratoga State Center, 311 West Saratoga Street, Baltimore, Maryland 21201.

  
\_\_\_\_\_  
BARRY C. STEEL

FILED

JAN 10 1992

CIRCUIT COURT FOR  
BALTIMORE CITY

LINDA J. THOMPSON  
Appellant

\* IN THE  
\* CIRCUIT COURT  
\* FOR BALTIMORE CITY  
\* CASE NO.: 91354021/CL141930  
\* OAH CASE: G-7170

v.

DEPARTMENT OF HUMAN RESOURCES  
Appellee

*Handwritten initials*

\* \* \* \* \*

CERTIFICATE OF COMPLIANCE

I HEREBY CERTIFY that notice of the filing of the appeal has been given to every party to the proceeding in conformity with Maryland Rule B.2(d).

Linda Berge / mb  
Linda Berge  
Chief Clerk  
Office of Administrative Hearings  
10753 Falls Road  
Lutherville, Maryland 21093

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 9th day of January, 1992, a copy of the foregoing Certificate of Compliance was mailed, postage prepaid to Barry C. Steel, Esquire, 752 Camberley Circle, Towson, Maryland 21204 (Attorney for Appellant) and Ms. Victoria Pepper, Department of Natural Resources, 311 Saratoga State Center, Baltimore, Maryland 21202.

Linda Berge / mb  
Linda Berge

**FILED**

**DEC 20 1991**

IN RE:  
APPEAL OF DECISION OF  
ADMINISTRATIVE LAW JUDGE

IN THE **CIRCUIT COURT FOR  
BALTIMORE CITY**

LINDA J. THOMPSON  
1 Seaview Avenue  
Branford, Connecticut 06405

CIRCUIT COURT

Appellant

**91354021**  
FOR

*CL 141930*

v.

DEPARTMENT OF HUMAN  
RESOURCES (Baltimore City Department  
of Social Services)  
311 West Saratoga Street  
Baltimore, Maryland 21201

BALTIMORE CITY

11:59AM 12/20/91 002H7027 A \*\*\*

#0913540

#0000021

Appellee

CASE NO.: CIVIL \$80.00

LIBRA \$5.00

PRINTL \$05.00

CHECK \$85.00

CHRG \$0.00

\* \* \* \* \*

ORDER FOR APPEAL

MADAM CLERK:

Please enter an appeal from the Decision of the Administrative Law Judge dated July 11, 1991, (a copy of which was not received by Appellant until November 23, 1991), in the above-referenced case (Agency case #G-7170).

*Barry C Steel*

**BARRY C. STEEL**  
752 Camberley Circle  
Towson, Maryland 21204  
(301) 296-8575

Attorney for Appellant

CERTIFICATE OF COMPLIANCE

I HEREBY CERTIFY that on this 19th day of December, 1991, a copy of the foregoing Order for Appeal was mailed to Mary Bender, Office of

Administrative Hearings, Administrative Law Building, Green Spring Station, 10753  
Falls Road, Lutherville, Maryland 21093.

*Barry C. Steel*  
BARRY C. STEEL

IN RE:  
APPEAL OF DECISION OF  
ADMINISTRATIVE LAW JUDGE

LINDA J. THOMPSON  
1 Seaview Avenue  
Branford, Connecticut 06405

Appellant

v.

DEPARTMENT OF HUMAN  
RESOURCES (Baltimore City Department  
of Social Services)  
311 West Saratoga Street  
Baltimore, Maryland 21201

Appellee

\*  
\* IN THE  
\*  
\* CIRCUIT COURT  
\*  
\* FOR  
\*  
\* BALTIMORE CITY  
\*  
\* CASE NO.:

\* \* \* \* \*

PETITION OF APPEAL

The Petition of Linda J. Thompson, Appellant, by her undersigned counsel, respectfully alleges:

1. That Appellant, at all times relevant hereto, had been employed as a Human Service Worker V assigned to the Baltimore City Department of Social Services.

2. On or about March 24, 1989, Appellant, who suffered from chemical sensitivity syndrome, who had exhausted all of her annual and sick leave, and who was otherwise qualified for a grant of extended sick leave, applied for extended sick leave effective on or about February 3, 1989.

3. Appellant's said application, together with substantial medical documen-

tation, was submitted to the State Medical Director, who subsequently recommended that Appellant's said application be denied.

4. Appellant subsequently re-submitted her said application with additional medical documentation. After review by the State Medical Director of the additional documentation, Appellant's said application for extended sick leave was again denied.

5. Appellant then filed a timely grievance, pursuant to Article 64A, §52, et seq., of the Annotated Code of Maryland, the State Employee Grievance Procedures.

6. Ultimately, Appellant's grievance was heard by Administrative Law Judge Charles W. Fowler of the Maryland Office of Administrative Hearings who, on July 11, 1991, decided that the denial of Appellant's application for extended sick leave should be sustained.

7. Appellant's copy of the said decision was initially sent by the Maryland Office of Administrative Hearings to an invalid address. Appellant contacted the Office of Administrative Hearings in November, 1991, to inquire about the status of her case and discovered that her copy of the said decision had been sent to an invalid address and that she therefore had not received it. Consequently, the Office of Administrative Hearings sent another copy of the decision to Appellant by certified mail on or about November 22, 1991, which copy was received by Appellant on or about November 23, 1991. This appeal followed.

8. The said Decision of the Administrative Law Judge was clearly erroneous in that:

a. It was unsupported by competent, material and substantial evidence in view of the entire record as submitted.

b. It was arbitrary and capricious.

c. It was affected by error of law.

**WHEREFORE**, Appellant prays that the said Decision be reversed, that the Court order that she be granted extended sick leave as she has requested, that she be awarded her costs, that she be granted whatever other relief may be appropriate.

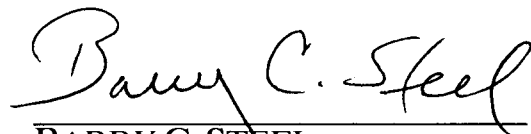


**BARRY C. STEEL**  
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Towson, Maryland 21204  
(301) 296-8575

Attorney for Appellant

**CERTIFICATE OF COMPLIANCE**

**I HEREBY CERTIFY** that on this 19th day of December, 1991, a copy of the foregoing Petition of Appeal was mailed to Mary Bender, Office of Administrative Hearings, Administrative Law Building, Green Spring Station, 10753 Falls Road, Lutherville, Maryland 21093.



**BARRY C. STEEL**

1991

*F.L.*  
*2-2-10*  
*143 Imagr*

HALL VS PRIEST Box 1803 Case No. 91303043

[MSA T2691-4440, OR/12/11/74]

File should be named msa\_sc5458\_82\_150\_[full case number]-####

THOMPSON VS DEPART.OF PUBLIC SAFETY Box 1869 Case No. 91340071

[MSA T2691-4507, OR/12/13/14]

File should be named msa\_sc5458\_82\_150\_[full case number]-####

SAMET VS INSURANCE COMM., ET. AL. Box 1892 Case No. 91354017

[MSA T2691-4530, OR/12/13/37]

File should be named msa\_sc5458\_82\_150\_[full case number]-####

THOMPSON VS DEPT. OF HUMAN RESOURES Box 1892 Case No. 91354021 *F.L.*

[MSA T2691-4530, OR/12/13/37]

File should be named msa\_sc5458\_82\_150\_[full case number]-#### *2-2-10*  
*143 Imagr*

KLINERS VS BD. OF APPEALS DEPART.OF ECON. Box 1896 Case No.

91358008

[MSA T2691-4534, OR/12/13/41]

File should be named msa\_sc5458\_82\_150\_[full case number]-####