



World Bank Administrative Tribunal

2023

Decision No. 692

**GJ (No. 2),
Applicant**

v.

**International Bank for Reconstruction and Development,
Respondent**

**World Bank Administrative Tribunal
Office of the Executive Secretary**

**GJ (No. 2),
Applicant**

v.

**International Bank for Reconstruction and Development,
Respondent**

1. This judgment is rendered by the Tribunal in plenary session, with the participation of Judges Mahnoush H. Arsanjani (President), Marielle Cohen-Branche (Vice-President), Janice Bellace (Vice-President), Andrew Burgess, Seward Cooper, Lynne Charbonneau, and Ann Power-Forde.
2. The Application was received on 20 December 2022. The Applicant represented himself. The Bank was represented by David Sullivan, Deputy General Counsel (Institutional Affairs), Legal Vice Presidency. The Applicant's request for anonymity was granted on 2 May 2023.
3. The Applicant challenges the 22 August 2022 decision of the Administrative Review Panel (ARP) denying his claim for Long-Term Disability (LTD) benefits.

FACTUAL BACKGROUND

4. The Applicant joined the Bank in 2006 as a Short-Term Consultant and, in 2009, received a two-year term appointment as a Trade Specialist, Grade Level GF. The Applicant went on to hold term appointments with the Bank as a Senior Economist at Grade Level GG.
5. In September 2018, the Applicant suffered "a grand mal seizure" while on travel in Australia.
6. Broadspire Services, Inc., the third-party administrator for the World Bank Group (WBG) Disability Insurance Program (Claims Administrator), approved the Applicant for Short-Term Disability (STD) benefits commencing on 29 September 2018.

7. The Applicant returned to work on a part-time and then full-time basis in November 2018. The Applicant took sick leave beginning on 24 November 2018.

8. The Applicant was approved for STD benefits from 26 November 2018 to 28 February 2019. The Applicant's STD benefits were ultimately extended through the maximum 24-month STD benefit period.

9. On 31 December 2018, the Applicant's employment with the Bank ended due to the non-renewal of his term appointment.

10. On 25 January 2019, the Applicant received a "lump-sum benefit payment" of all amounts due to him under the Bank's Staff Retirement Plan, which he had requested on 9 August 2018.

11. On 14 May 2019, the Applicant was admitted to Georgetown University Hospital. He was discharged on 19 May 2019. The Applicant was seen by Dr. T, Director, Epilepsy Monitoring Unit, and, according to the "Patient Discharge Instructions," was diagnosed with "Convulsive disorder; Nocturnal confusion; Facial droop." The Applicant was again admitted to Georgetown University Hospital in October 2019. According to the Bank, electroencephalogram (EEG) testing during these hospitalizations produced "no abnormal results."

12. In a letter dated 2 April 2020, Dr. T stated:

To Whom It May Concern:

This is to certify that [the Applicant] is a patient under my care who is receiving treatment for a seizure disorder. [The Applicant] was admitted to the EMU [Epilepsy Monitoring Unit] on October 6, 2019 and saw me for clinical consultation and follow-up on January 6, January 17, 2020.

[...] I request that his short-term disability be maintained until July 31, 2020 for new medications to be assessed. His treatment has been delayed by recent events [l]inked to the coronavirus. In the meantime, [the Applicant's] travel and ability to drive are restricted by law and as per my medical advice.

13. On 23 July 2020, the Claims Administrator sent a letter to the Applicant informing the Applicant as follows:

The World Bank Group has a maximum Short Term Disability benefit period of 24 months (“Maximum Duration”). Your Short Term Disability benefit is approaching the Maximum Benefit Duration period which will occur on November 26, 2020. At this time, your Short Term Disability claim will be reviewed for Long Term Disability Benefits.

Please note you will receive an additional letter in the near future from Broadspire concerning our review of your eligibility for Long Term Disability Benefits, and any additional information required from you or your treating physician, and a new Claim Reference Number. Please submit all information requested right away to avoid any delay in your claim review process.

14. On 30 September 2020, the Claims Administrator sent a letter to the Applicant stating that the Applicant’s STD benefits “have been extended and approved” with a “Disability Duration” stated as “November 26, 2018 through November 26, 2020.”

15. At some point in 2020, the Applicant relocated to Rome, Italy. According to the Applicant, this relocation was due to the expiration of his G-4 visa in February 2020 which required him to leave the United States, as well as country closures related to the COVID-19 pandemic which prevented him from returning to Australia.

16. In a letter dated 15 October 2020, the Applicant’s neurologist in Italy, Dr. B, indicated that he supported the Applicant’s transition to LTD. Specifically, Dr. B stated:

To whom it may concern,

This is to certify that [the Applicant] is a patient under my care who is receiving treatment for a seizure disorder. [The Applicant] was admitted to the EMU at Georgetown Hospital in May and October 2019 and he has been regularly attending neurology consultations in Italy and in the United States. I support his transition to Long Term Disability until such time as there is a significant improvement in his condition. [The Applicant’s] ability to travel and ability to drive are currently restricted by law and as per my medical advice.

17. In an Attending Physician Statement, also dated 15 October 2020, Dr. B stated a primary diagnosis of “Epilepsy” for the Applicant. He further stated, as symptoms, “multiple over the last 6 months generalized seizures (1-2/month).” Dr. B responded to the question “How is your patient limited from performing his/her occupation and what prevents a return to work with full or partial duties?” by stating “Repeated, unexpected, drug resistant seizures.” Dr. B responded to the question “What are the patient’s restrictions (what the patient should not do) and why?” by stating “Driving vehicles, long travel, irregular sleep, [...], stressful events, [...].”

18. On 20 October 2020, the Applicant signed a “Social Security Administration – Consent for Release of Information” form, authorizing the Social Security Administration to release information or records about the Applicant to the Claims Administrator, including “Complete medical records from my claims folder(s).”

19. According to the Claims Administrator, the Applicant’s claim for LTD benefits was reviewed by Nurse S. Nurse S stated in her notes of 23 October 2020:

A diagnosis of epilepsy, with no abnormal EEGs on file, and non-compliance with medications, as well as living in Italy and treating with a neurology specialist who does not specialize in Epilepsy, does not qualify one for the WBG LTD benefit which means that a staff member is limited from performing the material duties of any occupation for which the staff member is reasonably suited by education, training, or experience.

Notably, we found that [the Applicant] was working for WTI [World Trade Institute] while on STD, as listed on a social media profile. He denies that he was working while on STD.

20. On 29 October 2020, the Claims Administrator sent a letter to the Applicant informing him that his claim for LTD benefits had been denied. The letter stated:

We have carefully reviewed the information and medical documentation received in connection with your claim for Long Term Disability (LTD) benefits.

As the medical information in the file does not support your inability to perform any occupation for which you are qualified based on your training, education and experience, you no longer meet the definition of disability, as defined by your

Employer's Plan. Therefore, you are not entitled to LTD benefits effective November 27, 2020.

Reason for denial: Medical documentation received does not support your inability to work. You are not considered to be disabled from any occupation.

21. On 5 November 2020, the Applicant emailed the Claims Administrator stating that it had incomplete information and further stating that its determination regarding his claim for LTD benefits was made before he submitted LTD documentation prepared by himself and his neurologist. The Applicant asked to submit this documentation for the Claims Administrator's review and asked that this documentation be considered as part of the Claims Administrator's initial review rather than as an appeal.

22. On 6 November 2020, the Claims Administrator confirmed via email that the Applicant could "submit medical documents for your initial review of LTD claim."

23. On 16 November 2020, Dr. B provided another letter which stated:

To whom it may concern,

This is to certify that [the Applicant] is a patient under my care who is receiving treatment for a seizure disorder. I support his transition to Long Term Disability until such time as there is a significant improvement in his condition.

In this letter, Dr. B further explained the Applicant's "symptoms as they relate to [his] ability to maintain work at his current profession," and specified the Applicant's issues with "Recall/Short Term Memory," "Poor focus, lack of concentration," "Sleeplessness," "Hypergraphia," and "Mood disorder." Dr. B also stated, "Furthermore, [the Applicant's] ability to travel and ability to drive are currently restricted by US and EU law and as per my medical advice."

24. In a "Medical Note" of 30 November 2020, Nurse S stated:

Medical Review – [Applicant] –
 Note from [Dr. B] (15 oct 2020) states that [the Applicant] has been "regularly attending neurology consultations" in Italy.
 Treating for a "seizure disorder"
 Supports his transition to LTD.

Nurse Reviewer:

Note is too vague. MD has not responded directly to our requests to elaborate with supportive documentation.

[...]

Review does note the EEG which does not appear abnormal.

Hx of suspected non-compliance with lamotgrine.

Denial of LTD – member is not found to be disabled from any occ.

[T]eam manager is tasked to review.

25. On 4 January 2021, the Claims Administrator informed the Applicant as follows:

This letter is in response to your request for a reconsideration of your benefits, which were denied as of October 29, 2020.

Having completed our review of your claim for disability benefits under the Program, we have determined you are not eligible for Long Term [D]isability benefits.

Accordingly, your claim for disability benefits has been denied due to the following reason: Medical documentation received does not support your inability to work. You are not considered to be disabled from any occupation.

26. On 18 February 2021, the Applicant underwent a neuropsychological evaluation in Rome with a neuropsychologist, Dr. G, during which “[h]e was submitted to a formal neuropsychological test battery for the detection of attention and memory dysfunctions.” The “Conclusions” section of Dr. G’s report stated:

[C]ognitive performances of [the Applicant] show a selective decrement in mental flexibility, which hampers the simultaneous processing of information. Well preserved the other cognitive functions.

27. With reference to the 18 February 2021 neuropsychological evaluation, on 11 March 2021, Dr. B provided a letter which stated:

To whom it may concern,

The patient [the Applicant] underwent cognitive testing [...].

[...]

The tests were designed to establish whether the patient had suffered any cognitive impairments linked to his epilepsy seizure disorder. [The Applicant's] life history would suggest a high level of cognitive functioning.

The results show that, in addition to [the Applicant's] self-described symptoms, he suffers from:

- Impaired abstract reasoning skills
- Difficulty understanding and following complex instructions
- An inability to deal with multiple abstract concepts at the same time

In these areas, [the Applicant's] performance fell below that of the population as a whole. The results contrast sharply with the standards expected of a PhD economist.

28. On or around 5 April 2021, the Applicant filed an appeal with the Claims Administrator of its denial of his claim for LTD benefits. In his appeal, the Applicant provided medical documentation in support of his claim and stated:

The information and documentation attached to this appeal, as well as the information that is already in Broadspire's possession and contained in its claim file, clearly has established and continues to establish that [the Applicant] is limited from performing the material duties of any occupation for which he is reasonably suited by education, training or experience.

The Applicant's appeal further stated:

[The Applicant] is disabled due to: Epilepsy, Insomnia, Hyperlipidemia, Tachycardia, Gastroesophageal Reflux Disease (GERD), Gastric Ulcer, Barrett Syndrome, Hemoptysis, Obesity, Keratosis Pilaris, Status Post Bilateral Turbinectomies, Right Finger Wound and Major Depressive Disorder. The restrictions and limitations associated with [the Applicant's] conditions have continually prevented him from performing his own or any other occupation since November 26, 2018 and they continue through the present. For the reasons herein, [the Applicant] is entitled to long term disability benefits under the Program and is, thus, hereby requesting that Broadspire immediately approve his claim for long-term disability benefits and pay all back benefits owed.

[...]

[I]t is clear that [the Applicant] is limited from performing the material duties of any occupation due to the cumulative effects of his conditions and their associated deficits.

29. On 29 July 2021, a Field Case Manager for JAG International, Inc., emailed Dr. D, a surgeon specializing in neurophysiopathology and clinical psychology, to schedule an Independent Medical Examination/Evaluation (IME) for the Applicant. The email stated:

As outlined already, [the Applicant] requires an EEG and Neurological examination in order to determine whether he is injured, to what extent and the possible causes of this injury. We also require an explanation from you about whether he is capable of working and, if not when he might be able to do so.

30. According to the Bank, it “does not have any relationship with the medical examiners,” and such “[m]edical examiners are independent contractors retained by the Claims Administrator or through a third-party agency on an ‘as needed’ basis based on the expertise of the medical examiner as well as the medical issues involved in the case.”

31. In an email dated 4 August 2021 to the Applicant and the Field Case Manager of JAG International, Dr. D stated:

[I]f [the Applicant] needs a simple visit and an EEG, or only the EEG, I can do that, and I will write only a brief report of the visit and the EEG in [I]talian.

But I will not write any statement regarding his capability of working and I cannot study this kind of medical report. [Emphasis in original.] This is not my usual job.

Otherwise, you have to ask other doctors (neurologist, specialist in Legal Medicine, specialist in Occupational Medicine – Medicina del Lavoro).

Please, especially for [the Field Case Manager], let me [know] ASAP [the Applicant’s] intention.

In any case, I have to repeat **I need [the Applicant] pays by his credit card, not by yours. I don’t want any professional rapport with others than him. What [the Applicant] will do with my report is about him.** [Emphasis in original.]

This is my usual way of working and I cannot change for [the Applicant] or others.

32. On 18 August 2021, the Applicant underwent an IME in Rome with Dr. D, whose report stated:

The EEG examination, performed today, and of which numerous images are attached, appears to be normal and can be superimposed on the previous one brought for viewing.

Conclusions

From the scarce documentation provided that is attached, to the clinical examination and today's FFG [*sic*] there are no elements that can confirm or deny the diagnosis of frontal epilepsy. This diagnosis, at the moment, appears to be based only on the patient's anamnestic account and on his good faith. In order to better define the diagnosis of epileptic disease and, in particular of frontal epilepsy, it appears necessary to perform EEG examination after sleep deprivation (EEG after sleep deprivation), 24-hour EEG examination also with simultaneous video recording (24 hours video EEG) and MRI of the brain (Brain MRI) with contrast medium (not shown). [Pharmacological] treatment, considering the reported frequency of about two crises per month.

[...]

For a better evaluation of mental performance, useful repetition of neuropsychological tests with an examiner of native English.

33. On 1 September 2021, the Applicant emailed the Human Resources Department Vice President (HRDVP) and stated:

I am writing to ask you personally to request Broadspire to issue a final determination on my case. My appeal has now drifted so far beyond the official timeline that my budget for dealing with this situation is now depleted. I have no money left.

[...]

Broadspire should have issued their final determination on my case on July 4. It's now September 1. My lawyer and I fully complied with the deadlines set by HR [Human Resources] for the appeal but Broadspire have repeatedly overshot their own timelines. The first IMEs were not even scheduled until after the deadline for Broadspire's final determination had passed.

[...]

I have not received disability payments for 10 months. The IMEs scheduled for today and tomorrow were just cancelled. This is the third such cancellation. No date has been given for when the IMEs will finally take place.

[...]

[T]his situation is overwhelming. I am only telling you the details so that you understand the impact of Broadspire's process violations on the people in the system. [...]

Broadspire must make a determination on my case. Please can I ask for your intervention to ensure that the determination is made fairly and quickly?

34. On 23 and 24 September 2021, the Applicant underwent an independent neuropsychological evaluation and testing with Dr. H at the Claims Administrator's request. According to the Bank, "[d]ue to Covid restrictions in place at the time, the exam was partially virtual."

35. Dr. H prepared a report titled "Neuropsychological Evaluation" and dated 30 September 2021. In the "Referral Question" section of his report, Dr. H stated that "[t]he present evaluation was requested by Jag International to document [the Applicant's] current neurocognitive status and provide insight into his ability to work."

36. Dr. H's report further stated:

On 9/23 [the Applicant] completed an approximately 2 ½ hour diagnostic interview and psychosocial history with this examiner. Due to the 7-hour time difference between locations, approximately 2 hours of neurocognitive testing were completed following the interview. Both the interview, as stated above, and testing were completed via videoconferencing software. A document camera was used by this examiner to present stimulus materials [...]. [The Applicant] returned for the second day of testing on 9/24/2021. He completed neurocognitive testing for approximately 4 hours using the same methodology described above.

[...]

[The Applicant] underwent a HIPAA [Health Insurance Portability and Accountability Act]-secure video interview and diagnostic evaluation with this examiner from Rome, Italy. Examiner was in New Orleans, Louisiana.

[...]

[The Applicant's] current neuropsychological status was determined through careful evaluation of multiple sources of information including an extended clinical interview, a careful review of all records which were provided [...], and neuropsychological and psychological test data. Test performance data is reported

in isolation with little interpretation offered. Impressions and summary were formed from the totality of all information provided to this examiner and are subject to reinterpretation and change should new evidence be provided.

In keeping with standard practice in the United States, a psychometrist was used for all testing. [Ms. Z] was the psychometrist for both days of [the Applicant's] evaluation. [...]

[...]

It should be noted, that due to miscommunication between this examiner and on-ground staff, testing protocols for this evaluation were inadvertently destroyed to protect [the Applicant's] confidentiality. However, this will prevent some interpretations from being offered. Where tests were impacted by this, it is noted within the body of the report. The impact of this missing data was carefully considered when making summary statements.

37. The "Referral Information" section of Dr. H's report stated:

According to [the Applicant], in 2018 he was diagnosed at the South Sidney [*sic*] Epilepsy Center with Complex Partial Seizures and was told they originated in the frontal portion of his brain. This diagnosis was later confirmed at a hospital in Georgetown [...].

38. The "Patient Information" section of Dr. H's report stated:

[The Applicant] reports having completed 20+ years of formal education, last attending St. Gallen University in Germany, where he completed his Ph.D. in Economics. At the time of this evaluation, [the Applicant] was not working.

[The Applicant] reports that in 2006 while completing his master's degree in Economics [...] he started working at the World Bank as an Economist. [...] In 2014, he was promoted and moved to Washington D.C. in the United States where he worked as a Senior Economist for Southeast Asia. He describes his position as a "floater" working in several different countries and on multiple projects. During his time in D.C., [the Applicant] first noticed a decline in his work performance, particularly writing.

The report further stated that the Applicant "was asked to provide details about his work and the skills he employed to perform his job duties as a Senior Economist."

39. The "Behavioral Observations" section of Dr. H's report noted:

Rapport with the examiner was quickly developed and easily maintained. [The Applicant] was cooperative and appeared motivated throughout testing. Scores on all performance validity tests (PVT) were within normal limits, suggesting consistently good cognitive effort and task persistence. Therefore, the present results are judged to be a valid reflection of his current level of neuropsychological functioning.

interpreted as evidence of cognitive deficits. His scores within the normal range should be interpreted with caution, as they may underestimate his true ability levels.

It is not clear from Dr. H's report what was "interpreted as evidence of cognitive deficits."

40. The "Review of Test Results" section of Dr. H's report stated:

[The Applicant] indicated he had taken his epilepsy medication before his evaluation on both days.

With respect to "Intellectual Functioning," the report stated:

[S]ome forms and protocols were inadvertently destroyed prematurely. This impacted this examiner's ability to assess Processing Speed [...]. Processing speed is a measure of a person's ability to complete simple mental processes quickly and effectively.

With respect to "Memory," the report stated:

In the copying of the complex design, there was evidence of organization and planning. Unfortunately, due to protocols being inadvertently destroyed [...] [the Applicant's] copy, immediate visual recall, and delayed recall for visual information could not be calculated.

41. Under the section titled "Specific Inquiries," Dr. H's report stated:

9. In your opinion, is there any evidence of cognitive deficits impacting the claimant's ability to participate in any employment he is qualified for? Please explain.

No. [...]

Given all available sources of information, it is this examiner's opinion that [the Applicant] is not currently disabled from working. It would be expected, especially if seizure onset was around 2018, that [the Applicant] would have a period of adjustment where work quality could suffer.

[...]

[The Applicant] may have had a period where his work was affected by his diagnosis of Epilepsy. However, current neurocognitive findings are intact which would argue against long-term neurocognitive deficits due to seizure activity. There is no evidence (EEG recordings) to suggest that he has long drawn out [...] post-ictal activity or that seizures are happening with such frequency that they would continually impact his work.

[...]

12. If a claimant is able to work in any qualified capacity, please list any limitations or accommodations his employer should consider (if any).

- Providing flexibility in work schedule, or more sick days [...].
- A consistent work schedule to help with regulation of sleep/wake cycle.
- Allowance for a heavy rubber pad or rug in a major workspace in case of falls.
- Ability to work from home if needed.

42. On 15 October 2021, the Claims Administrator informed the Applicant that it was upholding its decision to deny his claim for LTD benefits. The Claims Administrator stated:

On appeal, we requested a complete independent medical examination (IME) specializing in Neurology and another in Neuropsychology and considered all of the information contained within [the Applicant's] claim file.

Upon the completion of the independent medical examinations, performed on [August 18], 2021, September 23, 2021 and September 24, 2021 it was opined by two specialists there was no evidence of a medical condition that would prevent [the Applicant] from participating in gainful employment.

Based on the totality of the information in [the Applicant's] claim file, the outcome of the IME's, the clinical records received and review of the LTD Plan's terms and provisions, it was determined that the information in the file does not support [the Applicant's] inability to perform any occupation for which [the Applicant] is qualified based on [the Applicant's] training, education and experience. As such, [the Applicant] no longer meets the definition of disability, as defined by [the Applicant's] Employer's Plan.

43. On 12 November 2021, the HRDVP responded to the Applicant's email of 1 September 2021. The HRDVP stated:

Apologies it took me a few months to respond to your email. Rest assured that during this time my team was working on your case at the back-end to get you to the IMEs. I understand that you have already completed the IMEs at the end of September, and around mid-October 2021, you were sent a letter through your lawyers, regarding the outcome of the IMEs.

I am truly sorry about the delays and the corresponding hardship that you had experienced on getting a final determination on your issue/case. Should you need further information or clarifications on this matter, please do not hesitate to let me know and I will certainly connect you with the appropriate members of my team.

44. On 13 January 2022, the Applicant filed a Notice of Appeal of the Claims Administrator's decision with the ARP. He stated that the Claims Administrator "disregarded the evidence and testimony from attending neurologists in denying the claimant's transition from STD to LTD." The Applicant further stated, "[T]he appeal was initially denied before the claimant had submitted any of the supporting documentation from attending neurologists [...] showing that Broadspire never intended to review the documentation in good faith." Additionally, the Applicant stated:

[T]he independent evaluations used by Broadspire to make a determination were based on meagre evidence consisting of a cognitive review conducted virtually between a neuropsychologist in Missouri, USA and the claimant in Rome, Italy (using flashcards and fairly easy cognitive test) and a 30 minute EEG while the claimant was fully medicated.

45. On 19 January 2022, the Applicant was notified via email from the Claims Administrator of a moratorium on IMEs. The email stated:

Effective immediately, and until further notice all IME's will be suspended, with exception of those required to evaluate transitions from STD to LTD. Please keep in mind, that members participating in the Disability Program, are still responsible for providing complete Attending Physician Statements (APS) when requested by Broadspire to continue receiving their benefits.

46. According to the Bank:

Following concerns raised in a 2021 survey of program participants of the WBG's Disability and Workers' Compensation Programs, the [HRDVP] commissioned a Disability Steering Committee ("DSC") chaired by the Vice President for Strategic Corporate Initiatives, with participation from ten WBG directors and including the Chair of the Staff Association to review the programs with a view to recommending

reforms in order to ensure that the WBG continues to achieve its duty of care objectives. The process included numerous consultations with various stakeholders, including participants in the disability program, as well as other international organizations.

According to the Bank, the IME moratorium “was largely driven by the [Disability Steering Committee]” as an “interim proposal” related to “the elevated levels of anxiety associated with the IMEs.”

47. On 14 March 2022, the Applicant received the Claims Administrator’s response to the Applicant’s 13 January 2022 appeal to the ARP. As stated in the Claims Administrator’s response, “[c]ollectively, the medical information provided to [the Claims Administrator] does not substantiate a disability so extensive as to preclude [the Applicant] from performing any occupation. Accordingly, [the Claims Administrator] recommends that its denial of LTD benefits be upheld.”

48. On 6 April 2022, the Applicant submitted his “Response to Broadspire’s submission to the Administrative Review Panel.” The Applicant stated that he is “unable to work in any capacity,” that his benefits were terminated on “spurious grounds,” and that “the person carrying out the testing did not have the qualifications.” The Applicant further stated:

Most people diagnosed with epilepsy will have their seizures controlled with medication within a year. However, [the Applicant’s] seizures have continued for more than 2 years because the appropriate medication has not yet been found. [The Applicant] continues to have seizures on a bi-monthly basis [...]. The neurologists indicate [the Applicant] is likely to need another year to bring the seizures under control by testing medications. This is what all the specialists have indicated in this case.

[...]

Epilepsy impairs the ability to plan, the ability to hold multiple abstract concepts at the same time and affects inhibition. Combined with exacerbation of Major Depressive Disorder, epilepsy with uncontrolled seizures such as in the case of [the Applicant] significantly hinders the ability to perform the demanding and stressful work congruent with senior economist qualifications and experience.

The Applicant further stated that “[t]he wrong question was asked of the IME.” He stated:

The test under the Staff Rules 6.22 is not whether [the Applicant] can “work in any qualified capacity” but whether he can “perform the material duties of any occupation for which [he] is reasonably suited by education, training or experience.”

[...]

To determine whether [the Applicant] can perform – with severe epilepsy seizures every two weeks – “any occupation for which [he] is reasonably suited by education, training or experience”, it is necessary to consider the level of performance required by that level of occupation and decide whether his condition would allow him to perform. This is not an exercise which was asked of the IME provider, nor an exercise which Broadspire undertook.

49. On 18 May 2022, an HR Specialist emailed the Applicant on behalf of the ARP and stated:

Pursuant to its authority under WBG Procedure – Disability Insurance Program – Appeals Procedure, para. 4.06, the Administrative Review Panel (ARP) would like to request from the Disability Administrator, Broadspire Services, Inc. (BSI), copies of all original medical records Broadspire received for your case as the ARP has determined this information is necessary to reach a decision in your appeal.

Should you have any objections to this request, please advise the ARP by responding to this email by Wednesday, May 25, 2022, and the ARP will reach its decision based on the written record presently before it.

50. According to the Applicant, in June 2022, he was shortlisted and interviewed for his former job at the Bank for which he had applied. According to the Applicant, he “was unable to correctly answer technical questions that were in the normal remit of his former occupation, as can be attested by panel members.”

51. On 22 August 2022, the ARP affirmed the Claims Administrator’s denial of the Applicant’s claim for LTD benefits. The ARP was composed of a Senior HR Specialist, a Senior Occupational Health Specialist, and a Resource Management Analyst. The ARP stated that it “reviewed over 2,500 pages [of] records regarding [the Applicant’s] medical conditions,” and noted that the Applicant “has a long and complex medical history.” The ARP noted that the Applicant has been treated by “several physicians for a variety of conditions, including, epilepsy, depression, hyperlipidemia, gastric ulcer, insomnia and hemoptysis,” and stated that “[t]he primary reason

given for his STD applications and LTD application is named as seizure disorder or alternatively epilepsy.”

52. The ARP further stated:

The Panel relied, in part, upon the neuropsychological opinion of [Dr. H]. [Dr. H] opined [the Applicant] is not currently disabled as his neurocognitive profile yielded no impaired findings and his general cognitive abilities fell within the average range.

[The Applicant’s] treating physicians ([Dr. T] initially and then [Dr. B]) have submitted several evaluations motivating that [the Applicant] remain on STD whilst generally identifying only one functional limitation – that he could not then drive or travel long distances. This restriction would not necessarily preclude [the Applicant] from performing the material duties of any suitable occupation. While his treating physicians recommended that he remain on STD, the reasons are presented as medication adjustment rather than an inability to work. Although [Dr. B] expressed in his final assessment that [the Applicant’s] test performance contrasted “sharply with the standards expected of a PhD economist,” this was not supported during later testing and evaluation performed by [Dr. H] and was not articulated by [Dr. G] or [Dr. D].

The Panel found that a presumptive diagnosis of epilepsy alone is not enough to establish a disability for the purposes of LTD. Rather, an individual must demonstrate that their illness(es) limits them from performing the material duties of any occupation for which he is reasonably suited by education, training, or experience.

After careful review, the ARP determined that this threshold has not been met. The Panel observed a lack of evidence in support of functional impairments/limitations that would limit [the Applicant] from performing the material duties of any suitable occupation. Therefore, the Panel concluded that the medical record does not support a finding that [the Applicant] is eligible for LTD.

53. On 20 December 2022, the Applicant filed this Application with the Tribunal.

54. This is the Applicant’s second application with the Tribunal. In his first application, the Applicant challenged the non-renewal of his term appointment, his 2017 and 2018 performance reviews, and the decision not to convert his term appointment to an open-ended appointment. In *GJ (Preliminary Objection)*, Decision No. 663 [2021], the Tribunal dismissed the Applicant’s claims as untimely and for failure to exhaust internal remedies.

55. In this Application, the Applicant is contesting the “[d]ecision to terminate the Applicant’s disability benefits based on a single IME that was carried out by a nurse in a virtual setting.” He further stated that he is contesting the following:

Decision to deny [the] Applicant’s disability benefits before receiving and reviewing [the] Applicant’s medical file and before deadline for submission. [...]

[...] The Third-Party Provider (TPA) did not conduct an [IME] to support their assessment at that time. [...]

Breach of staff rule by prolonging the staff member’s decision review process more than 3-months beyond the deadline.

[...]

Decision to subject [the] Applicant to [IMEs] that were chosen and designed in a fashion that would find the patient to be fit to work. [...]

[...]

Unfair application of rules between participants in the disability program. The Applicant refers to the decision to place a moratorium on IMEs for everyone on disability except those who are transitioning from STD to LTD (i.e. the Applicant), thus unfairly discriminating against the Applicant.

56. In his Application, the Applicant seeks the following:

- 25 months of retroactive disability payments to compensate for the period during which the Applicant was forced to wait for a determination from the TPA and ARP as part of the appeal process.
- 3 months retroactive disability payments to cover the period during which the [A]pplicant had to compile a submission to appeal to the [ARP]. This seemed to be an unnecessary step, causing unnecessary delay to the Applicant, because the [ARP] was no longer meeting pending an investigation of its functions by a Steering Committee set up by the World Bank Group.
- 1 month of retroactive disability compensation to cover the period during which the Applicant was obliged to prepare this appeal to the Tribunal.
- Continuation of the Applicant’s participation in the World Bank staff medical insurance program.

- Re-entry to the World Bank staff pension program backdated to November 27, 2020.
- Entry into the WBG Long Term Disability program.

57. The Applicant further stated that he requests that the Tribunal

recommend that the decision to terminate the Applicant's disability benefits be overturned based on additional neurocognitive testing that supports the Applicant's inability to work at a level suited to his qualifications and experience.

SUMMARY OF THE CONTENTIONS OF THE PARTIES

The Applicant's Contention No. 1

The Applicant is eligible for LTD benefits and the Bank wrongly denied his transition from STD to LTD

58. The Applicant submits that he has "cognitive deficits" which "stem from the temporary asphyxia that take[s] place during seizures," and that these cognitive symptoms reduce his ability to perform at a profession in line with his qualifications at the PhD level, his previous work experience of more than a decade as a Senior Economist at the Bank, and his numerous authored reports and academic publications. The Applicant further contends that neurologists and neurocognitive testing in Thailand, where he currently resides, support his claim that "his neurocognitive abilities have declined to the point that he is no longer suited to work that would match his qualifications and experience."

59. The Applicant asserts that the Claims Administrator "arbitrarily and without any independent examination of the Applicant's medical condition, decided that the Applicant was fit to work at 'any occupation' as of midnight on November 26, 2020 – the day that the Applicant would have transitioned from STD to LTD." In the Applicant's view, "[t]his decision was made without any reference to the Applicant's medical file, without any reference to the Applicant's co-morbid conditions, without reference to any [IME]." (Emphasis in original.)

60. The Applicant contends that the Claims Administrator and Human Resources “do not have the right to disregard the plain meaning of the staff rules, nor do they have the right to rewrite them.” The Applicant submits that the Claims Administrator explained that he was “fit to work at any occupation,” which, in the Applicant’s view, contradicts the wording of Staff Rule 6.22 because it deletes the requirement of “for which the staff member is *reasonably suited by education, training or experience.*” (Emphasis added by the Applicant.) The Applicant avers that, pursuant to Staff Rule 6.22, “the Applicant’s disability should be assessed against the criteria of whether the Applicant can perform in employment suited to the Applicant’s ‘qualifications and experience.’”

61. The Applicant submits that the medical evidence is clear that the cognitive and neurological issues associated with his condition prevent him “from operating at the high cognitive level demanded of a Senior Economist at an institution such as the World Bank or similar organization.” The Applicant submits that “[t]here is no evidence that the decision to deny the Applicant’s transition from STD to LTD was assessed on the basis of any medical evaluation,” nor was it “assessed on the basis of whether [the] Applicant could perform the duties of similar employment that would match the Applicant’s ‘qualifications and experience’, nor even assessed according to the legal restrictions on the Applicant’s ability to undertake basic tasks such as driving.”

62. The Applicant questions how the Bank feels entitled to make a determination on his medical condition contrary to the opinion of the attending physicians who have worked on his treatment for years. Specifically, the Applicant asserts that

the insurance company’s assessment of the Applicant’s fitness to work has relied heavily on the opinion of a trained nurse with no particular qualifications in neurology and two IMEs of questionable validity, rather than on voluminous evidence from longstanding attending physicians attesting to the Applicant’s condition.

63. Further, the Applicant submits that the IMEs were not based on the correct assessment under Staff Rule 6.22. He avers that the Bank misunderstands Staff Rule 6.22 and “applies the wrong standard,” and he contends that the instructions to the IME physicians reflect the Bank’s misunderstanding of this Staff Rule. The Applicant submits that Dr. D “was never instructed to

assess the type of work for which the Applicant would be capable.” The Applicant submits that, rather, Dr. D “was specifically instructed to assess the capacity of the [A]pplicant ‘to work,’ rather [than] to work at a level for which the [Applicant’s] qualifications and experience would suit him, which he refused to do.”

64. Additionally, in the Applicant’s view, “[t]he EEG was conducted in a manner that was sure to produce confusing results,” and he contends that the 30-minute time period for the EEG is “an extremely brief period in which to assess the Applicant’s brain function.” To the Applicant, “EEGs cannot reveal epilepsy in many cases and may provide different results on different days.” Additionally, the Applicant submits that Dr. D “says clearly in his report that the scan should be undertaken for a longer period, under different conditions and by a different practitioner for the results to be meaningful.”

65. Finally, the Applicant refers to “recommendations released by the President’s office for the reform of the Disability Program announced on March 27, 2023,” and avers that “[t]he behaviour of the insurance company and the [ARP] was also wildly in breach of the recommendations.” He points to a recommendation for “clarification on purpose and criteria for the use of information to determine Disability Program eligibility such as physician statements and independent medical evaluations,” and contends that it is problematic that,

[d]espite the substantial medical evidence submitted in support of his long-term disability (LTD) application by long-time attending physicians that highlight his cognitive and neurological deficits, the [Bank] prioritize[s] the results of the independent medical examinations [...] in making their determination of fitness to work.

66. The Applicant submits that the Bank’s actions with respect to his claim of LTD benefits constitute a breach of its duty of care and its obligation to implement the Staff Rules in good faith, and the Applicant asserts that the Bank has acted contrary to its obligation to act fairly and impartially, and to follow a proper process.

The Bank's Response

The ARP's decision was reasonable

67. The Bank asserts that the ARP engaged in a rigorous and careful assessment of the Applicant's claim for LTD on the basis of the medical evidence presented, and the Bank submits that this is demonstrated by the thoroughness of the ARP's decision which cited multiple physicians, evaluations, and examinations. The Bank underscores that the ARP found that

the medical evidence provided in support of this claim falls well below the eligibility threshold for LTD benefits, as it does not demonstrate that [the Applicant's] illness prevents him from performing the material duties of any occupation for which he is reasonably suited by education, training or experience.

68. The Bank stresses that "[t]he ARP reviewed the entirety of [the] Applicant's medical file, having diligently and specifically requested all medical information submitted to the Claims Administrator to ensure a comprehensive review of [the] Applicant's claim." In the Bank's view, "the Tribunal does not undertake a full review of the medical records but rather reviews the record as provided to the ARP in order to ascertain if the ARP's decision was reasonable." To the Bank, the ARP's decision was reasonable.

69. The Bank submits that "[t]he medical records in this case are extensive" and include "testing for possible seizure activity, including overnight monitoring, neurology evaluations, EEG examinations, radiography, IME's and other medical options [*sic*] on [the Applicant's] ability to work." More specifically, the Bank highlights EEG testing of 14 May 2019, 13 October 2019, and 30 January 2020 with "no abnormal results," as well as an 11 February 2021 finding by Dr. B of "Neurological exam within normal limits."

70. Additionally, according to the Bank, "results were stated as normal" for the 18 February 2021 neuropsychological evaluation by Dr. G, and, further, the IME of 18 August 2021 by Dr. D "neither affirmed nor rejected a diagnosis of frontal lobe epilepsy." Finally, the Bank submits that the IME neuropsychological evaluation and testing by Dr. H of 30 September 2021 found that the "Applicant's neurocognitive profile yielded no impaired findings and [the] Applicant's general

cognitive abilities fell within the average range,” and the Bank stresses that, in Dr. H’s opinion, the “Applicant is not currently disabled from working.”

71. In the Bank’s view, the Applicant’s main contention is that the ARP decision to deny his claim for LTD benefits is wrong because the evidence he presented contradicted the IME findings. The Bank submits, however, that

the Tribunal has stated that although the opinion of personal physicians may be valuable, in case of doubt or uncertainty, the opinions of independent medical examiners may reasonably be assigned more weight in view of the fact that under [the] Staff Rules, it is the Claims Administrator’s function, in deciding whether a claim is compensable or continues to be compensable, to select a medical examiner to help make its assessment.

Moreover, the Bank asserts that “[t]he only limitations noted by [the] Applicant’s physicians are [the] Applicant’s continued inability to drive and/or travel, both of which combined do not qualify [the] Applicant as disabled for LTD purposes.” Additionally, the Bank submits that the Applicant’s relocation to Thailand demonstrates that “he is in fact able to travel,” and the Bank also stresses that “many employers offer employees a wide range of flexibility when it comes to working hours, home based work, virtual meetings, etc., making the requirements to drive and/or travel even more inconsequential.”

72. The Bank submits that there is a different eligibility threshold for STD and LTD benefits pursuant to the Bank’s Disability Insurance Program. The Bank contends that, pursuant to Staff Rule 6.22, paragraph 6.02, a staff member becomes eligible for LTD benefits if, “due to illness or injury, the staff member is limited from performing the material duties of *any occupation* for which the staff member is reasonably suited by education, training or experience.” (Emphasis added by the Bank.) To the Bank, “the medical evidence provided in support of [the Applicant’s] claim falls well below the eligibility threshold for LTD benefits, as it does not demonstrate that his illness prevents him from performing the material duties of any suitable occupation.” The Bank states that the “Applicant is a highly educated professional qualified to work in any number of positions or fields where driving and travelling are not required.” The Bank contends that, while the Applicant’s medical reports from Thailand are beyond the scope of review because they were carried out after the ARP decision, they support the ARP’s conclusion and, further, “clearly state

that [the] Applicant has been engaged in work at a university specializing in research, which is contrary to the representation made in his Application that he was unemployed.”

The Applicant’s Contention No. 2

The Bank breached proper procedure in reviewing the Applicant’s claim for LTD benefits

73. The Applicant asserts that the decision to deny his transition from STD to LTD was made in bad faith, in contravention of the Staff Rules, and in violation of due process. He submits that there were “egregious violations of process,” which “indicate a lack of seriousness on the part of the claims administrator in impartially assessing the Applicant’s eligibility for transition to LTD.”

74. Specifically, the Applicant submits that the October 2020 decision to terminate his disability benefits was made before the 30-day deadline to submit paperwork had expired and without administering an IME. In the Applicant’s view, this demonstrates that the Claims Administrator “had always intended to deny the Applicant’s transition to LTD regardless of the contents of the medical file” and “suggests that any review of [his] medical documentation, if it was reviewed, was not made in good faith.” The Applicant asserts that the October 2020 decision was made before receiving the required documentation from his attending physician, which he submits had been carefully prepared by his neurologist, and he further submits that both the neurologists in Rome and in Washington supported his remaining on disability.

75. Further, the Applicant questions the grounds on which his transition to LTD was denied, emphasizing that “[t]he insurance company did not order IMEs for the Applicant at any time while he was on STD.” The Applicant submits that the first IME “was a full nine months after” the denial of LTD benefits in October 2020, and that “the IMEs were conducted only after the Applicant directly appealed to the Vice President of Human Resources.”

76. With respect to the IMEs, the Applicant submits that the second IME was carried out online rather than in person, as is required, in his view, pursuant to Staff Rule 6.22, Claims Procedure, Article 5.04. The Applicant also highlights that this “testing was carried out by a nurse and later analysed by a psychologist, rather than a doctor,” and he stresses that the results of this IME

“contrast strongly” with the testing and findings by Dr. G and Dr. B, as well as with the testing and findings of doctors in Thailand.

77. Additionally, the Applicant submits that the Claims Administrator failed to meet stipulated deadlines in reviewing his claim. The Applicant asserts that he filed an appeal of the Claims Administrator’s decision on 4 April 2021 and submits that the Claims Administrator “ignored the deadline to respond to this appeal (which should have been July 4, 2021), providing no response at all until September 2021.” The Applicant submits that he received a formal response from the Claims Administrator on 15 October 2021, “four months after the deadline.” The Applicant “speculates” whether the Claims Administrator “acted deliberately to delay their response so as to bankrupt the Applicant, obliging a re-entry to the workforce in some sort of occupation, that would allow the [Claims Administrator] [...] to dismiss the Applicant’s claim.”

78. With respect to the ARP, the Applicant submits:

The role of the ARP is being reconsidered by a Steering Committee that has been set up to investigate irregularities in the disability program, following an Internal Audit that found significant flaws in the management of the disability program and conflicts of interest in the ARP.

The Applicant contends that the Bank “cannot argue that the ARP carried out an unbiased assessment” of his claim, given that disability reforms have been announced which, to the Applicant, “acknowledge the conflict of interest inherent in [the ARP’s] current form and that it will be restructured to avoid these conflicts of interest in the future.” Specifically, the Applicant submits that the ARP is composed of the same persons, representing the WBG and the Claims Administrator, who made the original decision to deny his transition from STD to LTD. He contends that “[t]he ARP used the same information to re-assess its own decision,” and he submits that “[t]he obvious conflict of interest harmed the Applicant’s chances of his appeal being assessed fairly.”

79. Finally, the Applicant refers to the Bank’s reference to “over 2500 pages” of his medical records, and submits that he “can find no written authorization in which the ARP and Counsel

were given permission to access his entire medical history.” The Applicant questions whether the findings are “valid if the Applicant did not give his explicit permission to access these records.”

The Bank’s Response

The ARP followed the applicable rules and procedural requirements

80. The Bank asserts that the “Applicant was provided ample opportunities to share any medical information relevant to the assessment of his claim for LTD.” The Bank submits that “the only decision that is rightfully before the Tribunal is the ARP decision of August 22, 2022,” and contends that “the ARP diligently reviewed the record, requested additional medical evidence, met twice to consider [the] Applicant’s appeal and only then did it reach a conclusion, transmitting its decision to [the] Applicant in a timely manner.” In the Bank’s view, “[t]he record clearly demonstrates that not only did the ARP follow all applicable rules and provide [the] Applicant with every opportunity to submit information and documents, but [the] Applicant was also treated fairly by the Claims Administrator in its earlier review of his claim.”

81. The Bank submits that the ARP decision was issued on 22 August 2022 and that, by this date, the “Applicant had undergone at least three separate specialized evaluations.” Accordingly, the Bank submits that the record contradicts the Applicant’s claim that the decision to deny the Applicant LTD benefits was made before an IME was undertaken.

82. Additionally, the Bank disputes the Applicant’s contention that the Claims Administrator made its decision prior to receiving the Attending Physician Statement. The Bank notes that Dr. B completed an Attending Physician Statement on 15 October 2020 and that the Claims Administrator’s original decision was on 29 October 2020 and the ARP decision was on 22 August 2022, and that both had access to the Attending Physician Statement.

83. With respect to the Applicant’s contention that the Claims Administrator did not respond to the Applicant’s request for reconsideration within the stipulated time limit, the Bank notes that the Applicant requested reconsideration on 5 November 2020 and that on 6 November 2020 the

Claims Administrator “confirmed that [the] Applicant could submit the medical documents as part of the initial review.”

84. Further, the Bank asserts that the Applicant’s contention that his eligibility for LTD benefits was determined on the assessment of a nurse rather than a qualified physician is not supported by the record. The Bank submits that the ARP decision “cites to several sources” including the evaluations of Dr. G, Dr. D, and Dr. H. Moreover, the Bank submits that the Staff Rules do not preclude virtual IMEs and, further, notes that the ARP was “satisfied that virtual independent medical examinations have gained sufficient acceptance as a means of conducting valid and reliable neuropsychological evaluation and testing, particularly during the emergency conditions and restrictions resulting from the COVID-19 pandemic.”

85. The Bank also asserts that “[t]here is no requirement for the [Claims] Administrator to conduct an IME at the 20-month mark of a staff member’s STD.” The Bank posits that, pursuant to Staff Rule 6.22, paragraph 5.10, “an *assessment* will be carried out. [Emphasis added by the Bank.] It does not provide details as to how the assessment must or should be conducted.” According to the Bank, “[t]he record shows that the Claims Administrator conducted the required assessment and determined that [the] Applicant did not meet the threshold for LTD benefits,” and “demonstrates the Claims Administrator’s sustained engagement with [the] Applicant during the entirety of the process.”

86. Specifically, the Bank notes that the Claims Administrator contacted the Applicant on 23 July 2020 indicating that his STD claim would be reviewed for LTD benefits and asking the Applicant to submit any additional information for review. Further, the Bank submits that the Claims Administrator sought an updated Attending Physician Statement from the Applicant’s treating physician in July 2020. Moreover, the Bank submits that on 9 September 2020 the Claims Administrator wrote to the Applicant stating that it would be “conducting a peer-to-peer review and the request is set to go to [Dr. B] shortly. This is in lieu of an independent medical examination, because of the COVID-19 pandemic. This review will determine if you are eligible to have STD continued to the end of benefit date.”

87. With respect to the ARP, the Bank submits that the Applicant’s case was processed “free of any real, or perceived, conflict of interest,” and the Bank asserts that the ARP’s composition “represents a balanced approach and is not unlike other internal justice processes within the World Bank Group.” The Bank cites *Chhabra (No. 2)*, Decision No. 193 [1998], para. 15, and asserts that the ARP “is an administrative body composed of persons whose work and experience are relevant to its function. That they may have been officials in the personnel or health services departments, or that they may have been involved in earlier stages of the case, does not disqualify them from participating in the administrative review.”

88. In the Bank’s view, “the appropriate composition of the ARP is a question for Bank management.” The Bank submits that, while one of the Disability Steering Committee recommendations includes the creation of a new Appeals Panel to be composed of members not involved in the day-to-day administration of the program, the implementation of such recommendation is not scheduled until the end of Fiscal Year 2024. The Bank avers that the Applicant’s case “must be settled based on the policies and procedures in place at the time of the decision.”

89. Finally, in terms of confidentiality, the Bank submits that, with respect to a claim for disability benefits, “the decision maker must have access to the necessary records to be able to assess the basis of the staff member’s claim. In a claim based on [the] Applicant’s medical diagnosis, this would naturally necessitate the review of medical records.” In this regard, the Bank submits that on 18 May 2022 the ARP contacted the Applicant via email and indicated that it wanted to obtain copies of all original medical records from the Claims Administrator and gave the Applicant an opportunity to object to this request. The Bank submits that the Applicant did not object, and the Bank maintains that the ARP’s request for the Applicant’s medical records from the Claims Administrator “is expressly permissible under the Disability Appeals Procedure.”

THE TRIBUNAL’S ANALYSIS AND CONCLUSIONS

90. Pursuant to Staff Rule 6.22, paragraph 1.01, in place at the relevant time, the Bank’s “Disability Insurance Program’ [...] provides staff members with compensation in the event they

are prevented from working for more than 20 consecutive working days due to an illness or injury, whether work-related or not.”

91. Pursuant to Staff Rule 6.22, paragraph 5.03, in place at the relevant time:

[T]he Disability Administrator determines that a staff member is eligible for STD Benefits if, due to illness or injury, the staff member is unable to perform the material duties of his/her regular job. The staff member is entitled to STD Benefits under paragraphs 7.01–7.15, “Disability Pay,” of this Rule once s/he has completed the elimination period. The maximum total period for a staff member to remain on STD is 24 months, including the elimination period.

92. Further, pursuant to Staff Rule 6.22, paragraph 6.02, in place at the relevant time:

The Disability Administrator determines that a staff member is disabled and eligible for LTD Benefits if, due to illness or injury, the staff member is limited from performing the material duties of any occupation for which the staff member is reasonably suited by education, training or experience. The fact that a staff member is unable to perform duties for which s/he would otherwise be qualified due to the loss of a professional or occupational license or certification does not, in itself, constitute a basis for eligibility for LTD Benefits.

Accordingly, there are different eligibility thresholds for STD benefits and LTD benefits under the Bank’s rules.

93. It is undisputed that the Applicant was approved for STD benefits which were extended through the maximum benefit period of 24 months and that the Applicant sought to transition to LTD benefits. The record indicates that the Applicant’s claim for LTD benefits was reviewed by the Claims Administrator and that it was denied on three occasions by the Claims Administrator—specifically, the Applicant’s claim was denied on 29 October 2020 on initial review, denied again on 4 January 2021, and denied a third time on 15 October 2021 on appeal to the Claims Administrator.

94. Pursuant to Staff Rule 6.22, paragraph 10.01, in place at the relevant time:

A claimant who decides to appeal the denial of a claim for Disability Benefits or a decision taken in connection with the administration of a claim, within 90 days of

receiving notice of the final decision from the Disability Administrator, requests administrative review of the decision from an Administrative Review Panel in accordance with the Procedure, “Disability Insurance Program – Appeals Procedure.”

95. In accordance with the above Staff Rule, the Applicant appealed to the ARP on 13 January 2022. On 22 August 2022, the ARP affirmed the Claims Administrator’s denial of LTD benefits, finding “insufficient evidence to conclude that [the Applicant] is limited from performing the material duties of any occupation for which he is reasonably suited by education, training, or experience due to his illness.”

96. Pursuant to Staff Rule 6.22, paragraph 10.02, in place at the relevant time:

If a claimant, after receiving the final decision of the Administrative Review Panel, decides to pursue his/her complaint further, the claimant then files an appeal with the World Bank Administrative Tribunal.

Accordingly, the Applicant has appealed the ARP’s decision to the Tribunal.

97. As the Tribunal stated in *Chhabra (No. 2)* [1998], para. 7, a case dealing with the ARP’s dismissal of a workers’ compensation claim:

The task of this Tribunal is limited to reviewing the decision of the [Administrative] Review Panel, by reference to the evidence before that body, with a view to determining whether the conclusion reached by the [Administrative] Review Panel could be reasonably sustained on the basis of that evidence and also whether the [Administrative] Review Panel has acted in accordance with the relevant legal rules and procedural requirements.

The Tribunal will determine, therefore, whether the ARP’s denial of the Applicant’s claim for LTD benefits could be reasonably sustained in light of the evidence in this case and, further, whether the ARP acted in accordance with the relevant legal rules and procedural requirements. The Tribunal notes that the Applicant and the Bank make contentions related to the Applicant’s relocation to Thailand, and to activities and medical evaluations in respect of the Applicant which occurred in Thailand. The Tribunal observes that these events took place after the ARP decision of 22 August 2022. In view of the standard articulated in *Chhabra (No. 2)* [1998] and stated above,

the Tribunal will not consider documentation related to these events, or the parties' contentions in respect of these events, in its analysis of the Applicant's challenge of the ARP decision.

WHETHER THE ARP'S DECISION TO DENY THE APPLICANT'S CLAIM FOR LTD BENEFITS IS
REASONABLY SUSTAINABLE

98. In its decision, the ARP found that, although the Applicant contends that he has limitations on his ability to work, the medical evidence provided in support of his claim fell "well below the eligibility threshold for LTD benefits." The Tribunal notes that the ARP explained that, with respect to LTD benefits, "an individual must demonstrate that their illness(es) limits them from performing the material duties of any occupation for which he is reasonably suited by education, training, or experience." In reviewing the Applicant's claim, the ARP "observed a lack of evidence in support of functional impairments/limitations that would limit [the Applicant] from performing the material duties of any suitable occupation."

99. The Tribunal observes that the standard applied by the ARP in its decision is consistent with that articulated in Staff Rule 6.22, paragraph 6.02, with respect to LTD benefit eligibility. The Tribunal observes that this is in contrast to the Claims Administrator's denial letters to the Applicant in which the Claims Administrator did not clearly reference the correct standard of LTD benefit eligibility pursuant to Staff Rule 6.22, paragraph 6.02. For instance, the Claims Administrator's denial letters of 29 October 2020 and 4 January 2021 stated the reason for denial as "[m]edical documentation received does not support your inability to work. You are not considered to be *disabled from any occupation*," and the Claims Administrator's denial letter of 15 October 2021 stated that "the information in the file does not support [the Applicant's] *inability to perform* any occupation for which [the Applicant] is *qualified* based on [the Applicant's] training, education and experience." (Emphasis added.) The Tribunal notes, however, that the record shows that, with respect to the Claims Administrator, the Applicant's claim was reviewed by Nurse S. The Tribunal observes that the 23 October 2020 notes of her report stated that "the WBG LTD benefit [...] means that a staff member is limited from performing the material duties of any occupation for which the staff member is reasonably suited by education, training, or experience," which is the standard articulated in Staff Rule 6.22, paragraph 6.02.

100. The Tribunal recalls that “Staff [R]ules are not written for the sake of formality but precisely to secure an orderly process that will be fair and ensure that the staff member affected can feel that his or her case has been properly considered.” *DG*, Decision No. 528 [2016], para. 165, quoting *K. Singh*, Decision No. 188 [1998], para. 21. The Tribunal considers that it is unclear from the language of the Claims Administrator’s denial letters whether the Claims Administrator was applying the standard which the Staff Rule dictates. The Tribunal notes that, while the ARP did not expressly comment on the lack of clarity as to the standard applied by the Claims Administrator, as previously observed the ARP itself applied the correct standard pursuant to Staff Rule 6.22, paragraph 6.02, in reviewing the Applicant’s claim.

101. The Tribunal next observes that the ARP reviewed a range of medical evidence in evaluating the Applicant’s claim. Specifically, the ARP considered the medical records pertaining to the Applicant’s 2019 hospitalizations at Georgetown University Hospital, as well as correspondence from Dr. T. Further, the ARP considered Dr. B’s correspondence regarding the Applicant’s treatment as well as Dr. B’s Attending Physician Statement, and the ARP specifically noted that both Dr. B and Dr. T recommended driving and/or travel restrictions for the Applicant. The ARP also noted the neuropsychological evaluation by Dr. G and Dr. B’s letter in regard to this evaluation in which he stated that “the results contrast sharply with the standards expected of a PhD economist.”

102. Additionally, the ARP noted the IMEs requested by the Claims Administrator. With respect to Dr. D’s evaluation, the ARP acknowledged that “[Dr. D] concluded that he could neither affirm nor reject a diagnosis of frontal lobe epilepsy” and that he recommended further testing of the Applicant. With respect to the independent neuropsychological evaluation by Dr. H, the ARP stated that Dr. H “concluded that [the Applicant’s] neurocognitive profile yielded no impaired findings and his general cognitive abilities fell within the average range,” and the ARP decision relied upon Dr. H’s opinion that the Applicant “is not currently disabled from working.”

103. The Tribunal observes that it is on the basis of the medical evidence before it that the ARP found that the requirements of Staff Rule 6.22, paragraph 6.02, had not been met and upheld the Claims Administrator’s denial of the Applicant’s claim for LTD benefits. It is the Bank’s

contention that the ARP's decision in this regard was reasonable. It is the Applicant's contention that the IMEs are of "questionable validity" and should not be relied upon over the "voluminous evidence from longstanding attending physicians attesting to the Applicant's condition."

104. The Tribunal observes that the record indeed includes different medical opinions pertaining to the Applicant's eligibility for LTD benefits. The Attending Physician Statement and 15 October 2020 letter from Dr. B stated that the Applicant has "[r]epeated, unexpected, drug resistant seizures," and that Dr. B "support[s] his transition to Long Term Disability until such time as there is a significant improvement in his condition." Dr. H's report of 30 September 2021 noted that "current neurocognitive findings are intact which would argue against long-term neurocognitive deficits due to seizure activity," and Dr. H opined that the Applicant "is not currently disabled from working." Dr. D noted that "[t]he EEG examination [...] appears to be normal," but Dr. D concluded that "there are no elements that can confirm or deny the diagnosis of frontal epilepsy" and called for further testing "[i]n order to better define the diagnosis of epileptic disease."

105. In *FS (Preliminary Objection)*, Decision No. 640 [2020], para. 62, quoting *J*, Decision No. 349 [2006], para. 35, the Tribunal recalled with respect to IMEs:

The opinion of personal physicians may be valuable, but in case of doubt or uncertainty those of independent medical examiners may reasonably be assigned more weight in view of the fact that under Staff Rule 6.11, paras. 3.02 and 3.03, it is the Claims Administrator's function, in deciding whether a claim is compensable or continues to be compensable, to select a medical examiner to help make its assessment.

106. Further, the Tribunal articulated in *BI (No.2)*, Decision No. 445 [2010], para. 30, that

the Claims Administrator's role is not merely to undertake a passive review of the evidence adduced by a claimant. The Claims Administrator bears the responsibility of making the necessary "investigations," through such affirmative means as engagement of independent medical examiners, to assist it in arriving at a determination of the compensability of a claim.

107. The Tribunal considers that the Claims Administrator acted appropriately in seeking additional medical evaluations of the Applicant to assist it in determining his eligibility for LTD

benefits. The ARP report suggests, and the Applicant contends, that the ARP assigned more weight to the IMEs, particularly Dr. H's conclusion, than it did to Dr. B's opinion. The question arises therefore as to whether the ARP did so "reasonably." See *FS (Preliminary Objection)* [2020], para. 62.

108. The Tribunal notes that it is not clear from the record that the instructions given by the Claims Administrator to the medical examiners were fully congruent with the eligibility standard of Staff Rule 6.22, paragraph 6.02. The Tribunal notes the 29 July 2021 email from the Field Case Manager of JAG International to Dr. D, which stated, "We also require an explanation from you about whether [the Applicant] is capable of working and, if not when he might be able to do so." Additionally, the Tribunal notes the "Referral Question" in Dr. H's report which stated that "[t]he present evaluation was requested by Jag International to document [the Applicant's] current neurocognitive status and provide insight into his ability to work." Further, Dr. H's report included the question, "In your opinion, is there any evidence of cognitive deficits impacting the claimant's ability to participate in any employment he is qualified for? Please explain."

109. The Tribunal observes that these instructions and referral questions, coupled with the unclear eligibility standard for LTD benefits articulated in the Claims Administrator's denial letters to the Applicant, could lead the Applicant to believe that his claim for LTD benefits was wrongly denied. The Tribunal observes, however, that, in the instant case, Dr. D stated clearly that he was unwilling to "write any statement regarding [the Applicant's] capability of working." Further, with respect to Dr. H, the Tribunal observes that his report makes clear that he was aware of the Applicant's educational background, prior work experience, and occupation, and that the nature of the Applicant's work was discussed in the course of the evaluation. Accordingly, the Tribunal is satisfied that Dr. H's assessment and opinion were tailored to providing insight into the Applicant's ability to work within the context of reasonable suitability on the basis of education, training, and experience as required by the Staff Rule.

110. The Tribunal notes with respect to the IMEs that some "testing protocols" were destroyed during the IME conducted by Dr. H, which he explained prevented certain interpretations from being offered, in particular concerning the Applicant's intellectual functioning and memory. The

Tribunal also notes that Dr. H's report included an incomplete reference to "interpreted as evidence of cognitive deficits. His scores within the normal range should be interpreted with caution, as they may underestimate his true ability levels."

111. The Tribunal considers that these omissions in Dr. H's report do not undermine its overall credibility. In this regard, the Tribunal observes that Dr. H's report explained that it accounted for any gaps in interpretation and stated that "[t]he impact of this missing data was carefully considered when making summary statements." Further, the Tribunal finds it notable that Dr. H's opinion that the Applicant "is not currently disabled from working" is definitive. This can be contrasted with Dr. D who offered an inconclusive assessment and called for further testing. Additionally, the Tribunal observes that Dr. H's report appears to offer a more detailed assessment of the Applicant's condition than does the report of Dr. B, whose letters in support of the Applicant's transition to LTD are of a more general nature. In these respects, the Tribunal notes that the ARP considered the entirety of the medical evidence and the Tribunal finds that the ARP reasonably assigned more weight to the IME by Dr. H in arriving at its decision to affirm the Claims Administrator's denial of the Applicant's LTD claim.

112. The Tribunal considers that the thrust of the ARP's decision is that the medical evidence established that the Applicant had one major functional limitation—the inability to drive and/or travel—but that this limitation alone was insufficient to constitute eligibility for LTD benefits because, as the ARP stated, it "would not necessarily preclude [the Applicant] from performing the material duties of any suitable occupation."

113. The Applicant contends that, in addition to the limitation on driving and traveling, he has "cognitive deficits" which affect his ability to work at a position suited to his qualifications and experience. In his letter of 11 March 2021, Dr. B referred to results which "contrast sharply with the standards expected of a PhD economist."

114. In this respect, the Tribunal takes note of the Bank's position that the "Applicant is a highly educated professional qualified to work in any number of positions or fields," and is of the view that there are occupations for which the Applicant might be *reasonably* suited, particularly

at an institution such as the Bank, and for which, based on the medical record, he would not be “limited from performing the material duties.” The Tribunal observes that, unlike the standard for eligibility for STD benefits, which refers to the inability of a staff member to perform the material duties of their “regular job,” the standard for eligibility for LTD benefits does not depend on whether a staff member is limited from performing the material duties of their own job. Thus, the LTD standard is not met if a staff member is able to perform another job—whether that be a somewhat different type or level of job or a job with some accommodations—for which they are nevertheless reasonably suited by education, training, or experience, despite their illness or injury. By this standard, the Tribunal is persuaded that the record does not demonstrate that the Applicant is limited from performing the material duties of any occupation for which he is reasonably suited by education, training, or experience.

115. In view of the foregoing discussion, the Tribunal concludes that the ARP’s decision to deny the Applicant’s claim for LTD benefits is reasonably sustained on the basis of the evidence.

WHETHER THERE WERE PROCEDURAL VIOLATIONS IN THE ADMINISTRATION OF THE APPLICANT’S
CLAIM FOR LTD BENEFITS

116. The Tribunal recalls that Principle 2.1 of the Principles of Staff Employment provides:

The Organizations shall at all times act with fairness and impartiality and shall follow a proper process in their relations with staff members.

117. The Tribunal notes that the Applicant asserts that there were “egregious violations of process” in reviewing his claim for LTD benefits. The Bank submits that the ARP followed all applicable rules and, further, that the Applicant was treated fairly by the Claims Administrator in its earlier review of his claim. The Tribunal will consider all of the Applicant’s claims of process violations in turn.

118. The Applicant contends that the Claims Administrator made its initial decision of 29 October 2020 without considering his medical documentation and without administering an IME. The Tribunal observes that both the letter from Dr. B and his Attending Physician Statement are

dated 15 October 2020 and thus before the Claims Administrator's decision. While the Applicant disputes that this medical information was considered on initial review by the Claims Administrator, and while the record indeed shows that the Applicant contacted the Claims Administrator in this regard by email of 5 November 2020, it is also evident from the record that this documentation was considered by the Claims Administrator in subsequent reviews and was specifically referenced by the ARP in its decision.

119. Further, the Tribunal notes that, as the Bank points out, the Staff Rules do not explicitly require an IME for purposes of transitioning to LTD but rather reference an assessment. Specifically, Staff Rule 6.22, paragraph 5.10, in place at the relevant time, states:

If a staff member remains on Short-Term Disability for 20 months from the start of Disability, the Disability Administrator assesses the staff member's eligibility for Long-Term Disability (LTD) Benefits.

The Tribunal is satisfied that, in the instant case, the record establishes that the Claims Administrator assessed the Applicant's eligibility for LTD benefits as required by the Staff Rule.

120. Additionally, the Applicant contends that the virtual nature of the IME conducted by Dr. H is a violation of the Staff Rules and expresses concern that this "testing was carried out by a nurse and later analysed by a psychologist, rather than a doctor." The Tribunal is unpersuaded by the Applicant's assertions. The Tribunal observes that, pursuant to the "World Bank Group Procedure, Disability Insurance Program – Claims Procedure," paragraph 5.04:

The Disability Administrator may require the claimant to undergo an independent medical examination at any time deemed necessary during the treatment period, with reasonable notice to the claimant. If the claimant unreasonably refuses such an examination, the benefits may be suspended by the Disability Administrator. In determining convenience of place of examination, the Claims Administrator shall consider the following with reasonable notice to the claimant:

- a. the distance to be traveled;
- b. the physical condition of the Staff Member;
- c. the various modes of transportation available to the Staff Member; and
- d. the location of the qualified physicians who are available to conduct the examination.

Accordingly, the Staff Rule does not preclude the possibility of virtual IMEs and the Tribunal considers that such possibility could well have become more prevalent during the context of the COVID-19 pandemic.

121. Further, the Tribunal is satisfied with the explanation provided in Dr. H's report of how the relevant testing was administered with the use of a psychometrist, which Dr. H stated was "[i]n keeping with standard practice in the United States." The Tribunal considers that such a practice of a technician conducting medical tests which are later evaluated and interpreted by a specialist would seem reasonable. Additionally, the Tribunal observes that the Claims Administrator in fact commissioned more than one IME for the Applicant—the first with Dr. D, a surgeon specializing in clinical psychology, and the second with Dr. H, a clinical neuropsychologist. The Tribunal is satisfied with the Claims Administrator's approach to determining the nature of the Applicant's medical condition through the use of different specialists and considers the Applicant's concerns with respect to the engagement of a nurse and a psychologist to be without merit.

122. With respect to the Applicant's contention that the Claims Administrator failed to meet stipulated deadlines, the Tribunal notes that the Applicant filed an appeal with the Claims Administrator on 5 April 2021. Pursuant to "World Bank Group Procedure, Disability Insurance Program – Claims Procedure," paragraph 5.09:

The Disability Administrator will render its decision within 60 days of receipt of the request for reconsideration. If the Disability Administrator requires more time to make a decision, the claimant will be provided notice in writing which will include an explanation of why more time is required. The additional time will not exceed 30 days, assuming the Disability Administrator has complete information to render its decision.

The Tribunal notes that the Applicant underwent IMEs at the Claims Administrator's request on 18 August 2021, 23 September 2021, and 24 September 2021; and the Tribunal observes that the record does not contain a clear explanation for the extent of the delay in arranging these IMEs which occurred during the COVID-19 pandemic. The Tribunal observes that the Claims Administrator denied the Applicant's claim on reconsideration on 15 October 2021 and therefore its processing time exceeded that which is stipulated in the "World Bank Group Procedure, Disability Insurance Program – Claims Procedure."

123. The Tribunal recalls that, in *Hayati (No. 2)*, Decision No. 311 [2004], para. 35, the Tribunal explained that “[t]he work of the Claims Administrator and the [Administrative] Review Panel must of course not be hasty or perfunctory, but surely this must be accomplished with conscientious despatch.” In the instant case, the Applicant felt compelled to contact the HRDVP on 1 September 2021 to seek a resolution of his case with the Claims Administrator and, even then, the HRDVP did not respond to the Applicant’s email for over two months. As the Tribunal expressed in *J* [2006], where it considered the observance of appropriate procedure by the Claims Administrator, “[t]he fact that the Bank Group outsources the administration of certain of its programs does not relieve it from responsibility and liability if a program is improperly administered.” *Id.*, para. 57. The Tribunal considers that the Claims Administrator’s delay is inconsistent with the “World Bank Group Procedure, Disability Insurance Program – Claims Procedure,” paragraph 5.09; and, in the Tribunal’s view, such delay may have caused anxiety, uncertainty, and distress for the Applicant.

124. The Tribunal next notes the Applicant’s contention that the ARP entailed an “obvious conflict of interest” with respect to his case. The Tribunal takes note of the Disability Steering Committee recommendations endorsed by the WBG President and communicated to Bank staff on 27 March 2023 and which include the establishment of a new Appeals Panel. The Tribunal notes that the Bank states that the changes recommended by the Disability Steering Committee will not be implemented until Fiscal Year 2024. The Bank submits that the present case “must be settled based on the policies and procedures in place at the time of the decision.” The Tribunal accepts the Bank’s position. The Tribunal does not find that the record in this case demonstrates any specific irregularities with respect to the composition of the ARP which would have affected the validity of its decision.

125. Finally, the Tribunal is satisfied that the Applicant consented to the release of his medical information to the Claims Administrator by virtue of the “Social Security Administration – Consent for Release of Information” form which the Applicant signed on 20 October 2020. Moreover, the Tribunal observes that the ARP is permitted, pursuant to “World Bank Group Procedure, Disability Insurance Program – Appeals Procedure,” paragraph 4.06, to “request from the Claims Administrator, the claimant or any other party additional information it deems

necessary to reach a conclusion.” The ARP notified the Applicant on 18 May 2022 that it was seeking his medical records from the Claims Administrator pursuant to the above provision, and advised him that he could object to such request. The Tribunal observes that the record does not indicate that the Applicant lodged any objection. In view of these facts, the Tribunal finds that the Applicant’s claim that he did not authorize the release of his medical records is not supported by the record.

126. In conclusion, the Tribunal considers that, while the Applicant’s claim for LTD benefits was properly denied by the ARP, there were processing delays by the Claims Administrator for which the Applicant should be compensated.

CONCLUDING REMARKS

127. The Tribunal observes that the record indicates that the Bank has embarked on a process of review of its disability programs intended to enhance its duty of care to staff. The Tribunal notes that the facts of this case highlight some of the concerns which were identified in the internal audit report of the Bank’s disability programs and which have led to recommendations for changes. The Tribunal takes note that, at multiple instances in his submissions to the Tribunal, the Applicant expressed that the delays involved in his application for LTD benefits caused him financial and personal hardship. The Tribunal considers that the difficulties associated with claim processing delays are likely exacerbated for a staff member with health concerns, irrespective of whether such health concerns ultimately render a staff member eligible for disability benefits under the Bank’s rules. In this regard, the Tribunal acknowledges the Bank’s efforts and encourages the Bank to implement the recommendations to its disability programs as expeditiously as practicable.

DECISION

- (1) The Bank shall pay the Applicant compensation in the amount of \$10,000.00; and
- (2) All other claims are dismissed.

/S/Mahnoush H. Arsanjani

Mahnoush H. Arsanjani
President

/S/ Zakir Hafez

Zakir Hafez
Executive Secretary

At Washington, D.C., 12 May 2023