

Federal Court



Cour fédérale

**Date: 20161020**

**Docket: T-2107-15**

**Citation: 2016 FC 1173**

**Ottawa, Ontario, October 20, 2016**

**PRESENT: The Honourable Madam Justice Kane**

**BETWEEN:**

**LEAF TREMBACK**

**Applicant**

**and**

**THE ATTORNEY GENERAL OF CANADA**

**Respondent**

**JUDGMENT AND REASONS**

[1] The Applicant, Mr. Leaf Tremback, seeks judicial review pursuant to section 18.1 of the *Federal Courts Act*, RSC 1985, c F-7, of a decision dated November 27, 2015, by the Chief of Defence Staff, General J.H. Vance, in his capacity as the Final Authority (FA) in the Canadian Armed Forces (CAF) grievance process. The FA denied Mr. Tremback's grievance.

I. Overview

[2] Mr. Tremback is an Officer Cadet (retired) with the CAF. He was bitten by a tick during military training in 2008. The tick was removed by CAF doctors. He was initially treated with antibiotics for suspected Lyme disease. The antibiotics were discontinued based on blood tests that were negative for *Borrelia burgdorferi*, i.e. that did not show the presence of the bacteria associated with Lyme disease. After several years of follow-up with CAF physicians and specialists, Mr. Tremback was eventually diagnosed with undifferentiated somatoform disorder. On June 8, 2012, Mr. Tremback filed a grievance claiming the CAF failed to provide him with adequate medical treatment.

[3] Mr. Tremback was medically released from the CAF on September 27, 2012. Although he does not dispute that he was medically unfit to remain in the CAF, he contends that his various symptoms and his overall medical condition are due to Lyme disease and not to somatoform disorder. He submits that he was not provided adequate medical treatment by the CAF and that his medical release should indicate Lyme disease as the reason for his medical release.

[4] Mr. Tremback's grievance was denied at every stage of the grievance process. The FA determined that the diagnosis and treatment options pursued by the CAF were consistent with the available medical evidence.

[5] On judicial review, Mr. Tremback argues that the decision is not reasonable because it is not supported by the evidence and it is unintelligible. He submits that the FA, on the evidence before him, could not rule out Lyme disease. In addition, the FA could not reasonably find that the treatment provided by the CAF, which included antibiotics for Lyme disease, was adequate medical treatment and at the same time find that the evidence did not support a diagnosis of Lyme disease.

[6] The decision of the FA to deny Mr. Tremback's grievance is reasonable. The FA provided a thorough decision explaining the evidence that was relied on. The FA also explained why he could not rely on the opinions of two independent medical practitioners, who diagnosed Mr. Tremback with Lyme disease based on methods and test results not approved in Canada. At each stage of the grievance process, the decision-makers assessed the varying medical information and sought additional independent opinions on the reliability of the tests conducted in the United States (US). The role of the FA was not to diagnose Mr. Tremback, but to consider the evidence on the record in order to determine his grievance, i.e., whether the CAF had provided him with adequate medical care. The finding that he was provided with adequate medical care is amply supported by the extensive evidence on the record.

## II. The Background

[7] To provide the necessary context, key events and medical findings are set out below.

*Chronology of the key events and medical treatment*

- On July 16, 2008, Mr. Tremback was bitten by a tick during military training in Farnham, Quebec. The tick was removed the same day by CAF medical staff at the CAF medical facility in Farnham.
- One month later, in August 2008, Mr. Tremback sought treatment for joint pain. CAF doctors prescribed Amoxicillin, an antibiotic used to treat bacterial infections, including Lyme disease. His blood was tested for *Borrelia burgoferi*, a bacterial species causing Lyme disease. The results of that test revealed no evidence of infection.
- Mr. Tremback was later admitted to Kingston General Hospital (KGH), in September 2008, after suffering an allergic reaction to his prescribed antibiotics. Additional blood samples were tested and, based on negative test results, the antibiotics were discontinued.
- On February 12, 2009, Mr. Tremback was treated for ongoing joint pain by Dr. Isaac Dwosh at the KGH Rheumatology Clinic. Dr. Dwosh reported that Mr. Tremback's blood tests for Lyme disease were negative and he was unable to make a diagnosis that could explain his symptoms.
- In September 2009, Mr. Tremback was treated by Dr. Anne Ellis at the KGH Allergy and Immunology Clinic for seronegative arthritis and allergic reaction to penicillin.
- In December 2009, the CAF referred Mr. Tremback to Dr. Hovsep Baghdadian, an Infectious Disease Specialist in Toronto. Dr. Baghdadian assessed Mr. Tremback and prescribed a year-long course of antibiotics. In his March 22, 2010 report to the CAF, Dr. Baghdadian stated that he suspected Mr. Tremback had Lyme disease, noting the symptoms that were consistent with Lyme disease. Dr. Baghdadian also stated that he explained to Mr. Tremback that this was a working diagnosis and discussed the difficulty in making a definitive diagnosis without a tissue biopsy.
- In February 2011, Dr. Baghdadian reported again to the CAF, noting that Mr. Tremback's condition had largely improved. Dr. Baghdadian concluded that "it is difficult to say what infection this patient has, but given his immediate deterioration

following a tick bite and his response to antibiotics it is probable that this was an infection induced by a vector-borne bacterial agent.” He added that the tests for these pathogens are limited.

- On May 24, 2011, Dr. Crouzat, a CAF physician, performed a follow-up assessment of Mr. Tremback for “suspected Lyme disease.”
- In June 2011, Mr. Tremback sought independent medical treatment from Dr. Maureen McShane, a general practitioner based in Plattsburg, New York. Dr. McShane sent blood samples to several private, for-profit medical laboratories in the United States. In August 2011, one of these tests was positive for “growth of spirochetes in the blood,” a possible indicator of Lyme disease. Dr. McShane diagnosed Mr. Tremback with Lyme disease.
- In July 2011, Mr. Tremback asked the CAF to continue funding his treatment for Lyme disease.
- The CAF then referred Mr. Tremback to Dr. William Cameron, a Professor of Medicine at the Ottawa Hospital Infectious Disease Clinic. Dr. Cameron noted Mr. Tremback’s full history and reported on the physical examination and the medical tests conducted. Dr. Cameron also noted that he had consulted Dr. Andrew Smith, a clinical psychologist, to discuss a diagnosis of somatoform and other disorders.
- Dr. Cameron reported to the CAF on July 25, 2011, that there was no indication that Mr. Tremback suffered from Lyme disease. Dr. Cameron made a presumptive diagnosis of somatoform disorder.
- Mr. Tremback met with Dr. Smith in October and November 2011. In January 2012, Dr. Smith confirmed Dr. Cameron’s presumptive diagnosis of undifferentiated somatoform disorder. Dr. Smith recommended hypnotherapy to relieve pain. Mr. Tremback did not pursue this treatment.
- In February 2012, Mr. Tremback again sought treatment in the US from Dr. McShane.

- Mr. Tremback also consulted Dr. Jennifer Armstrong, a general practitioner at the Ottawa Environmental Health Clinic. Dr. Armstrong provided a medical opinion to Mr. Tremback's legal counsel on June 8, 2012, setting out a clinical diagnosis of Lyme disease and environmental sensitivities.
- On June 20, 2012, Dr. Matthew Landry, a CAF physician, reviewed Dr. Armstrong's clinical diagnosis and concluded that Dr. Armstrong had failed to demonstrate that the diagnostic criteria for Lyme disease had been met.
- On September 5, 2012, Mr. Tremback was assessed for his final medical release by CAF physician, Dr. Christopher Funk. Dr. Funk's report indicated that there was no concrete evidence that Mr. Tremback had ever had Lyme disease, even though he had previously received antibiotic treatment. Dr. Funk advised Mr. Tremback that his medical release would be based on a diagnosis of somatoform disorder.
- Mr. Tremback signed a Statement of Understanding on Release or Transfer, on September 12, 2012, acknowledging that he was being released under item 3B. This document does not set out any medical diagnosis. On September 27, 2012, Mr. Tremback was medically released from the CAF.
- In September 2013, Veterans Affairs Canada (VAC) granted Mr. Tremback a disability award on the basis of Lyme disease. VAC relied on a different record than that before the FA, including Dr. Armstrong's opinion and a self-assessment questionnaire completed by Mr. Tremback.

### *The Grievance*

[8] On June 8, 2012, Mr. Tremback filed a grievance with the CAF pursuant to section 29(1) of the *National Defence Act*, RSC, 1985, c N-5, and article 7.04 of the *Queen's Regulations and Orders*, Vol 1, Chap 7. He stated that his grievance pertained to the failure of the CAF to provide him with adequate health care. More specifically, he grieved that he had not been afforded

proper and effective medical treatment by the CAF. As redress, he sought “proper medical care from the Canadian Forces such that I can once again function as a reasonably healthy human being or, should it become evident that I am a chronic sufferer of Lyme disease, to be able to receive continuity of health care following my release from the Canadian Forces.”

[9] On August 13, 2012, Mr. Tremback augmented his grievance to request, as redress, that the CAF agree that Dr. Baghdadlian’s diagnosis was correct and that proper treatment be recommenced and continued for Lyme disease. He augmented his grievance again in March 2015.

[10] The grievance was first reviewed by Lieutenant-Colonel Coleman McLean on October 9, 2013. Mr. Tremback was invited to submit additional medical documentation from his non-CAF health providers.

[11] On August 21, 2014, the Initial Authority (IA), Brigadier General JJ-RS Bernier, concluded that the CAF had provided Mr. Tremback with an appropriate level of health care and denied his grievance. The grievance was mandatorily referred to the Military Grievance External Review Committee (the Committee) for review.

[12] On March 31, 2015, Mr. Tremback again augmented his grievance to request two additional remedies: an *ex gratia* payment of \$250,000 and a change in his medical release from 3B-somatoform disorder, to 3B-Lyme disease.

[13] On August 19, 2015, the Committee sent its findings, and its recommendation that Mr. Tremback's grievance be denied, to the FA and to Mr. Tremback.

[14] Mr. Tremback made submissions in response to the Committee's findings on September 11, 2015.

[15] The FA issued his decision on November 27, 2015.

### III. The Decision under Review

[16] The FA considered the grievance *de novo*. The FA accepted the findings and recommendations of the Committee, noting that the Committee had provided a thorough analysis of the issues. The FA attached the Committee's report to his decision. Given that the FA adopted the Committee's findings, a summary of its findings is set out below.

#### *The Committee's findings*

[17] The Committee addressed the wording of Mr. Tremback's grievance—that he did not receive proper and effective health care from the CAF, noting that “effective” health care suggests a cure, which is not always an achievable goal. The Committee then focussed on whether Mr. Tremback was afforded “proper” health care by the CAF after he claimed to suffer from Lyme disease.



[18] The Committee reviewed the Canadian protocol for the diagnosis and treatment of Lyme disease, noting that the clinical practice guidelines were developed by the Infectious Diseases Society of America (IDSA). The IDSA guidelines are used by Public Health Ontario Laboratories and the Canadian Public Health Laboratory Network. The protocol requires that blood testing be conducted by an approved laboratory and be based on scientifically validated tests. The Committee noted that the Public Health Agency of Canada (PHAC) and the United States Center for Disease Control and Prevention (CDC) caution against the use of private, for-profit laboratories in the US that offer testing for Lyme disease, as they do not follow the same protocols.

[19] The Committee found that the tests relied on by Mr. Tremback's two civilian doctors had not been scientifically proven to be reliable and are not accepted by the CDC or the PHAC. The Committee concluded that the CAF's refusal to accept the Lyme disease diagnosis was appropriate.

[20] The Committee noted that Mr. Tremback's civilian doctor prescribed long-term antibiotics and supplements, contrary to IDSA protocol. The Committee acknowledged that Dr. Baghdadlian had prescribed Mr. Tremback antibiotics for a full year on the basis of his symptoms at the time. The Committee found that the CAF reasonably refused to continue to fund such treatment, as it did not conform to the IDSA protocol, which Canadian health agencies have adopted. The Committee noted that the PHAC has warned against long-term use of antibiotics for the treatment of persistent symptoms and that those antibiotics should be used for no more than four weeks.

[21] The Committee acknowledged that the treatment for Lyme disease is controversial and that the IDSA protocol has been criticised, but added that published studies indicate that prolonged antibiotic use has not been proven safe or effective and is not accepted in the scientific and medical community.

[22] The Committee found that the treatment Mr. Tremback received exceeded the approved IDSA protocol and exceeded that which would have been available to other Canadians under provincial health care plans.

[23] The Committee concluded that the CAF medical team based its opinion that Mr. Tremback did not have Lyme disease on approved tests and evidence-based medicine in accordance with Standard of Care principles and Canadian medical standards. The Committee determined that the CAF had provided Mr. Tremback with proper medical care.

*The FA decision*

[24] The FA also concluded that the CAF had provided Mr. Tremback with proper health care, including diagnosis and treatment, in accordance with Canadian medical standards and the requisite Standard of Care. Consequently, Mr. Tremback's grievance was denied.

[25] The FA noted that Mr. Tremback was examined by several CAF doctors and six specialists and that the CAF provided Mr. Tremback with extensive primary care, assessments by non-CAF specialists, support and home care services. In addition to clinical examinations, diagnostic tests were carried out, and none of the tests approved and recognized by the PHAC

indicated a positive result for Lyme disease. The FA acknowledged that civilian doctors provided a diagnosis of Lyme disease. However, this diagnosis was based on Mr. Tremback's non-specific, largely subjective symptoms and on tests that have not been approved by the PHAC, the CDC, or the United States Food and Drug Administration (FDA).

[26] With respect to treatment, the FA noted that Mr. Tremback was initially treated for possible Lyme disease based on his clinical presentation and recent history. Antibiotics were prescribed almost immediately after he was first treated for a tick bite. Dr. Baghdadlian, an infectious disease specialist, prescribed a course of antibiotics for one year based on Mr. Tremback's clinical symptoms. The FA noted the "remarkable improvement" and the resolution of his symptoms reported by Dr. Baghdadlian.

[27] The FA was satisfied that Mr. Tremback received timely and appropriate medical care from the CAF in accordance with medically accepted Health Canada protocol for Lyme disease treatments, adding that there was no evidence that treatment was delayed or that he was denied an early diagnosis.

[28] The FA also noted that after multiple negative blood tests "ruled out" the possibility of Lyme disease, Mr. Tremback was referred to another infectious disease specialist and then a psychologist, which led to a presumptive diagnosis of undifferentiated somatoform disorder. On the basis of the presumptive diagnosis, the FA found that the treatment (hypnotherapy) offered by the CAF's psychologist was appropriate. The FA noted that Mr. Tremback did not avail himself of this treatment.

IV. The Issues

[29] Mr. Tremback submits, as a preliminary issue, that the Certified Tribunal Record (CTR) did not include his entire CAF medical file and full medical history. He argues that the failure of the FA to consider all his medical information prejudiced him.

[30] Mr. Tremback's primary argument is that the decision is not reasonable because it is not supported by the evidence as a whole and is unintelligible.

V. The Standard of Review

[31] There is no disagreement that a decision of the FA on the merits of a military grievance is reviewed on a standard of reasonableness (*Snieder v Canada (Attorney General)*, 2013 FC 218 at para 20).

[32] To determine whether a decision is reasonable, the Court focuses on "the existence of justification, transparency and intelligibility within the decision-making process" and considers "whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law" (*Dunsmuir v New Brunswick*, 2008 SCC 9 at para 47, [2008] 1 SCR 190 [*Dunsmuir*]).

VI. The Preliminary Issue: the CTR

[33] In his written argument, Mr. Tremback argues that the CTR did not include his entire CAF medical file and full medical history and that the failure of the FA to consider all the medical information prejudiced him. Mr. Tremback suggests that the CAF “cherry-picked” evidence by including documents favourable to the CAF in the record and not including those favourable to him.

[34] The Respondent submits that Mr. Tremback had all the relevant information in his possession. The Respondent adds that Mr. Tremback did not raise any objection to the record that was before the FA, despite having a reasonable opportunity to do so. In addition, he did not seek leave to file a supplementary affidavit to place that information before the Court. The information that Mr. Tremback points to as missing from the CTR was not before the FA. The Court can only determine the reasonableness of the decision based on the record before the FA.

[35] Although Mr. Tremback did not fully pursue this argument at the hearing, he did not abandon it. Therefore, I have considered the issue with careful regard to the extensive record. In my view, the record before the FA included all the relevant information. The decision of the FA, which adopts the findings and recommendations of the Committee, demonstrates that a wide range of evidence was considered, including evidence that supported Mr. Tremback’s position. The information Mr. Tremback points to that was not before the FA is reflected in other information that was clearly considered by the FA. The FA acknowledged the controversy surrounding a diagnosis of Lyme disease but clearly explained why he relied on IDSA protocols

which are used, accepted, and relied on by the PHAC and are consistent with the CAF Standard of Care. Additional documents, which Mr. Tremback submits favour his position, would not have changed the evidence-based approach and the guidelines that the CAF followed.

VII. Is the Decision Reasonable?

[36] Mr. Tremback argues that the decision to refuse his grievance is not reasonable because it is not justified on the facts and because it is unintelligible.

[37] Mr. Tremback submits that the CAF failed to apply an evidence-based approach, as it claims to have done, and that the evidence, in fact, supports a diagnosis of Lyme disease.

[38] Mr. Tremback recounts that he was bitten by a tick, which was not properly removed by CAF physicians, and which was never sent for testing. He experienced symptoms of Lyme disease shortly after being bitten. He notes that he was prescribed medication for Lyme disease, and his condition improved; nonetheless, his treatment was discontinued.

[39] Mr. Tremback submits that CAF doctors “assessed” him as having either Lyme disease or suspected Lyme disease. Dr. Baghdadlian *diagnosed* him with Lyme disease and treated him for over a year, with good results. Subsequently, Dr. Crouzat, a CAF doctor, suspected Lyme disease and assessed him as such. He argues that Dr. Crouzat’s assessment, along with the treatment he received for Lyme disease, was tantamount to a diagnosis of Lyme disease by the CAF.

[40] Mr. Tremback argues that, faced with this evidence, it was erroneous and unreasonable for the FA to find that Lyme disease was “ruled out.”

[41] Mr. Tremback also submits that the decision is unintelligible. The FA erred in finding that he was provided with adequate medical care given that the CAF diagnosed him with undifferentiated somatoform disorder but also prescribed antibiotics consistent with a diagnosis of Lyme disease. Mr. Tremback argues that the medical treatment he received was improper one way or another. If the diagnosis of somatoform disorder is accepted, then he was improperly prescribed antibiotics for Lyme disease. Alternatively, if he was misdiagnosed with somatoform disorder, then his Lyme disease was not treated. Either way, the CAF did not provide him with adequate medical treatment.

[42] Mr. Tremback adds that the FA’s reliance on the Committee’s finding that he received treatment that exceeded that which would be provided to provincially insured patients in Canada is erroneous. He notes the contradiction in the finding that he received adequate or excessive treatment for a condition the CAF ultimately found he did not have.

[43] Mr. Tremback also points to the antibiotics prescribed by Dr. Funk at the time of his medical release, which he submits are used to treat Lyme disease. Mr. Tremback asks why such drugs would be prescribed for somatoform disorder. He submits that this demonstrates that he did not receive proper medical treatment from CAF.

[44] Mr. Tremback submits that his grievance should be re-determined on the basis of all the evidence on the record and should address why he was prescribed drugs for a condition the CAF disputes he has.

[45] The Respondent submits that the FA's decision bears all the hallmarks of reasonableness in accordance with the *Dunsmuir* principles. The FA's findings regarding Mr. Tremback's diagnosis and treatment were based upon reliable medical evidence, which did not support a diagnosis of Lyme disease. The objective evidence on the record demonstrates that Mr. Tremback received proper medical care in accordance with CAF rules and policies. The FA's reasons are detailed and explain what evidence was relied upon and what evidence could not be accepted.

[46] The Respondent argues that several of Mr. Tremback's factual assertions are not supported by the record. Primarily, the Respondent argues that no CAF doctors ever diagnosed Mr. Tremback with Lyme disease, although Lyme disease was initially suspected.

[47] The Respondent submits that Dr. Baghdadlian did not confirm Lyme disease in March 2010. Rather, Dr. Baghdadlian suspected Lyme disease based on Mr. Tremback's symptoms, but no confirmatory tests were ordered.

[48] Likewise, Dr. Crouzat, a CAF doctor, did not diagnose Mr. Tremback with Lyme disease. Rather, Dr. Crouzat assessed him in May 2011, following his treatment by Dr. Baghdadlian, and referred to "suspected" Lyme disease.



[49] Dr. Cameron, a non-CAF doctor, conducted a full physical assessment of Mr. Tremback and reviewed his medical records. Dr. Cameron unequivocally ruled out Lyme disease and recommended that other causes for his symptoms be explored.

[50] Although Dr. Armstrong and Dr. McShane submitted blood for testing at US for-profit labs, these tests are not approved in Canada by the PHAC or by the US FDA and only one of these tests returned positive.

[51] The Respondent also notes that all the evidence was considered at all levels of the grievance process. For example, Dr. Marcie Lorenzen, who coordinates CAF complaints, sought the advice of another specialist regarding Mr. Tremback's medical condition and the conflicting medical opinions. Dr. Lorenzen provided several of the articles relied on by Mr. Tremback to the specialist for consideration and comment, as well as the decision of VAC.

[52] The Respondent submits that the decision is intelligible. The FA clearly identified the issues, provided reasons with reference to the evidence on the record, and explained why he could not accept test results based on unapproved methods.

[53] The Respondent acknowledges that there is some evidence on the record to support a diagnosis of Lyme disease. However, it was reasonable for the FA to discount the diagnosis of Dr. McShane and Dr. Armstrong, as this diagnosis was based on unapproved tests.

[54] The Respondent adds that the decision by VAC to grant a disability award to the Applicant was based on a different record and points out that the VAC finding that Mr. Tremback had Lyme disease was inconsistent with VAC's own medical assessment.

*The decision of the FA is reasonable*

*i. The grievance v the remedy*

[55] The FA did not err in failing to address the redress sought by Mr. Tremback. The subject matter of Mr. Tremback's grievance is the adequacy of the medical care and treatment provided by the CAF.

[56] In March 2015, Mr. Tremback was asked whether there was any change to the remedy he sought. He responded only with respect to the remedy and did not seek to change the grievance, which remained about proper medical care by the CAF. The FA and the Committee both acknowledged that Mr. Tremback had amended the redress he requested to seek an *ex gratia* payment and a revision in his medical release that would indicate a diagnosis of Lyme disease.

[57] Given that the FA decision denied the grievance and found that adequate medical care had been provided, it was not necessary for the FA to address Mr. Tremback's request that his release indicate Lyme disease. In addition, as noted by the Respondent, the medical release document refers only to item 3B and does not name any particular medical condition, although it was based on a diagnosis of somatoform disorder. Therefore, even if the FA had found that the grievance was meritorious, the redress requested by the grievor would not have been necessary.

*ii. The decision is supported by the objective evidence on the record*

[58] Although Mr. Tremback and the Respondent dispute some of the facts, including whether CAF doctors or Dr. Baghdadlian officially diagnosed Mr. Tremback with Lyme disease, the record demonstrates that the only doctors that provided an unequivocal diagnosis of Lyme disease were Dr. Armstrong and Dr. Mc Shane. This diagnosis was based on Mr. Tremback's symptoms and one positive blood test result from a private laboratory in the US. The CAF doctors did not provide a diagnosis of Lyme disease; they initially suspected Lyme disease and assessed Mr. Tremback for Lyme disease at various points in time. Dr. Baghdadlian's opinion was not unequivocal. He suspected Lyme disease, made a working diagnosis based on Mr. Tremback's clinical symptoms, and explained the controversy surrounding the diagnosis. He did not order any confirmatory blood test or other diagnostic test.

[59] Both the FA and the Committee emphasized that the CAF medical authorities could not rely on unapproved test results, noting that this would contravene the directives which require them to adhere to the scientific principle of evidence-based medicine. Even the laboratory reports relied on by Dr. McShane included a disclaimer that the Laboratory was not approved by the US FDA.

[60] The FA did not err in stating that Lyme disease was eventually "ruled out." Although that is a strong statement, given the controversy regarding the diagnosis of this disease and the need for a confirmatory blood test, the CAF reasonably ruled it out based on accepted Canadian protocols. The FA acknowledged criticism of IDSA protocols but explained that those protocols

currently guide the CAF and health care providers in Canada. In addition, Dr. Cameron's opinion supports the FA's finding that Lyme disease was "ruled out." Dr. Cameron, a non-CAF doctor and infectious disease specialist, provided a definitive opinion, based on a full assessment of Mr. Tremback and a review of his medical history.

[61] Dr. Cameron stated, "[Mr. Tremback] is seronegative for Lyme disease in our Public Health Laboratory, which I am afraid truly is incompatible with chronic Lyme disease of the New England area variety, despite what is said about serodiagnosis in the lay, alternative and pseudo-medical communities." Dr. Cameron concluded, "I am afraid that this man's symptom-based syndrome is not diagnostic or even suggestive of Lyme disease or any other conventional infectious disease within diagnostic reach. The accompanying signs are clearly factitious" [emphasis added].

[62] Dr. Funk, who assessed Mr. Tremback for his medical release, also reported that there was no concrete evidence that Mr. Tremback had ever had Lyme disease.

[63] The FA did not err in accepting the Committee's finding that the treatment provided to Mr. Tremback exceeded that which would have been provided by non-CAF doctors to civilians. The record supports this view. The IDSA protocols and PHAC protocols for the treatment of Lyme disease indicate that antibiotics should not be prescribed for more than one month. The FA acknowledged that Dr. Baghdadlian prescribed a year-long course of treatment, with good results. However, the FA reasonably concluded that this exceeded the treatment that is generally

available. The CAF's refusal to fund ongoing treatment was reasonable based on the same protocols.

[64] The FA did not ignore any evidence on the record. He clearly addressed the contradictory evidence and explained why certain evidence could not be accepted or was given less weight.

[65] The FA reasonably found that the CAF had provided adequate medical care—from diagnosis to treatment—based on the most credible medical evidence available. The FA was entitled to place more weight on medical opinions based on approved Canadian protocols for the diagnosis and treatment of Lyme disease than on opinions based on unapproved tests, which would be contrary to the Standard of Care principles the CAF adheres to. The CAF reasonably concluded that Mr. Tremback's symptoms were due to somatoform disorder and recommended treatment accordingly.

*iii. The decision is not unintelligible*

[66] I do not agree that the decision is unintelligible. The record demonstrates that the CAF provided Mr. Tremback with the treatment that was indicated at various points in time based on his symptoms and the most reliable medical information available to the CAF. It would have been contrary to the Standard of Care principles to not provide antibiotics for the treatment of Lyme disease following a tick bite and Mr. Tremback's presentation of symptoms. However, Mr. Tremback's subsequent negative blood test reasonably led the CAF doctors to discontinue antibiotic treatment.

[67] Mr. Tremback was later referred by the CAF to Dr. Baghdadlian, who prescribed a year-long course of antibiotics based on Mr. Tremback's symptoms and a working diagnosis of Lyme disease. However, Dr. Baghdadlian's report notes that, although he suspected Lyme disease, he did not have a confirmatory test result and he explained to Mr. Tremback the controversy regarding the diagnosis of Lyme disease.

[68] The CAF continued to assess Mr. Tremback following Dr. Baghdadlian's treatment and, in the absence of any reliable test that could confirm the presence of Lyme disease, the CAF continued to refer him to specialists for further assessment.

[69] Dr. Funk did prescribe antibiotics at the time of Mr. Tremback's medical release, despite a diagnosis of somatoform disorder. Mr. Tremback points to this as another contradiction. However, there is no evidence on the record about what these antibiotics were or why they were prescribed at that time. I also note that Dr. Funk's report indicates that he advised Mr. Tremback that he would not recommend the current regime of medication Mr. Tremback was taking. Dr. Funk added that he "agreed to" prescribe three antibiotics for 30 days.

[70] Mr. Tremback acknowledges that the antibiotics he received, initially and over the year-long treatment by Dr. Baghdadlian, did not cause him any harm and, in fact, his condition improved. Nonetheless, he submits that on principle, treatment for a disease the CAF claims he does not have is inadequate medical treatment. Alternatively, the CAF's refusal to continue treatment, if he does in fact have Lyme disease, demonstrates that the CAF did not provide adequate medical care.

[71] In Mr. Tremback's argument, the CAF always falls short. Although Mr. Tremback believes that the CAF failed him, and goes so far as to suggest that the CAF had a vested interest in not supporting a diagnosis of Lyme disease to shield the CAF's failure to provide him with adequate health care, the record demonstrates that the CAF did not abandon Mr. Tremback and, in fact, persisted in its efforts over many years to get to the root of his health condition and to treat him.

[72] The FA reasonably found that the CAF provided adequate health care and treatment and that Mr. Tremback's grievance was not established. This finding is based on the record, which includes a wide range of medical assessments that reflect an evidence-based approach consistent with the CAF's Standard of Care principles and Canadian medical standards. The care and treatment provided evolved with the most current and reliable medical information available.

[73] The VAC decision to grant a disability award based on a diagnosis of Lyme disease was determined on a different record than the extensive record before the FA.

[74] There is also no evidence to support Mr. Tremback's contention that the CAF disapproved of his pursuit of independent medical opinions and treatment and "retaliated" with a diagnosis of somatoform disorder. The somatoform disorder diagnosis, although unsatisfactory to Mr. Tremback, was made by medical professionals on the basis of a thorough assessment.

[75] I agree with the Respondent that the FA decision meets the *Dunsmuir* standard of a reasonable decision. The FA decision is transparent, justified by the facts on the record, and is

intelligible. The FA addressed all the evidence, including the contradictory evidence, and clearly explained why it could not rely on evidence that did not conform to Canadian medical standards and the CAF's own Standard of Care.

VIII. Conclusion

The application for judicial review is dismissed. The parties agreed that costs in the amount of \$2500 would follow the event. As a result, costs of \$2500 are awarded to the Respondent.



**JUDGMENT**

**THIS COURT'S JUDGMENT is that** the application for judicial review is dismissed.

Costs of \$2500 are awarded to the Respondent.

"Catherine M. Kane"

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Judge

**FEDERAL COURT**

**SOLICITORS OF RECORD**

**DOCKET:** T-2107-15

**STYLE OF CAUSE:** LEAF TREMBACK v THE ATTORNEY GENERAL OF CANADA

**PLACE OF HEARING:** OTTAWA, ONTARIO

**DATE OF HEARING:** AUGUST 30, 2016

**JUDGMENT AND REASONS:** KANE J.

**DATED:** OCTOBER 20, 2016

**APPEARANCES:**

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Mr. Michel Drapeau

FOR THE APPLICANT  
LEAF TREMBACK

Mr. Daniel Caron

FOR THE RESPONDENT  
THE ATTORNEY GENERAL OF CANADA

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