IN THE UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF WISCONSIN

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RICHARD A. WOYACH,

Plaintiff,

v.

RELIANCE STANDARD LIFE INSURANCE COMPANY,

Defendant.

OPINION AND ORDER

01-C-439-C

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In this civil action for monetary relief, plaintiff Richard A. Woyach contends that defendant Reliance Standard Life Insurance Company denied him long-term disability insurance benefits in violation of the Employee Retirement Income Security Act of 1974, 29 U.S.C. §§ 1001-1461. Jurisdiction is present under 28 U.S.C. § 1331.

Presently before the court is defendant's motion for summary judgment. Because I find that plaintiff has failed to establish his entitlement to disability benefits on the basis of the administrative record, defendant's motion for summary judgment will be granted.

At the outset, a few words are in order about the deficiencies in the parties' submissions. Although counsel for both plaintiff and defendant are experienced litigants in

this court, they failed to comply with this court's Procedures to be Followed on Motions for Summary Judgment, a copy of which was sent to them with the magistrate judge's September 12, 2001 preliminary pretrial conference order. Defendant submitted a motion and a brief but no proposed findings of fact or conclusions of law. Plaintiff responded by submitting a response brief but no proposed findings of fact to support his claim. According to Procedure I.A, the moving party's submissions shall contain all of the following: a motion; a statement of proposed findings of fact; a statement of conclusions of law; and a supporting brief. "All facts necessary to sustain a party's position on a motion for summary judgment must be explicitly proposed as findings of fact. This includes facts establishing jurisdiction."

As a general rule, the court will not search the record for factual evidence, but in this case defendant relied upon only a limited number of documents in deciding plaintiff's eligibility for long-term disability benefits. I have reviewed those documents and the record to determine whether defendant's denial of long-term disability benefits was improper under ERISA.

From the administrative record, I find the following facts to be material and undisputed.

FACTS

A. Parties

Plaintiff Richard A. Woyach is a resident of Stevens Point, Wisconsin. Defendant Reliance Standard Life Insurance Company is engaged in the business of selling long-term disability insurance.

B. Plaintiff's Long-Term Disability Benefits

Plaintiff was employed as a truck driver with Worzalla Publishing Company until his lower back was injured following a series of work-related injuries. After several months of working intermittently on modified duty, plaintiff stopped working altogether. His last day at Worzalla was in December 1998. As an employee of Worzalla, plaintiff had participated in Worzalla's long-term disability plan, which was funded through a group insurance policy issued by defendant.

Under the policy, an insured must "submit[] satisfactory proof of Total Disability to us [the insurer]" in order to receive monthly disability benefits. The policy establishes a two-phase eligibility requirement under which an employee receives disability benefits for 24 months if the employee is unable to perform the duties of his "regular occupation." After 24 months, benefits continue only if the employee cannot perform the "material duties of any occupation. Any occupation is one that the Insured's education, training or experience

will reasonably allow."

1. Plaintiff's medical history

On February 5, 1997, plaintiff was shoveling a dock area when an overhead bumper fell from the building and landed on his shoulder. On February 6, 1997, plaintiff was treated by his family physician, Dr. Dean R. Hagness, who diagnosed him as having a left shoulder strain or sprain and lower back pain. Dr. Hagness gave plaintiff a "work excuse" and prescribed Flexeril. On February 13, 1997, Dr. Hagness gave plaintiff a release to work authorization that included two restrictions: a 25-pound limitation on lifting and no Flexeril before driving.

A February 24, 1997, x-ray revealed pre-existing, mild degenerative changes in plaintiff's lumbar spine. Plaintiff was prescribed a course of physical therapy that he did not complete. Plaintiff was released to work on February 24, 1997, with the restriction that he was not to lift over 15 pounds. On September 19, 1997, plaintiff was released to full duty status. On October 28, 1997, plaintiff reinjured his back by moving a pallet at work. On November 4, 1997, he returned to work on full duty status.

On February 18, 1998, plaintiff exacerbated his lower back injury while lifting heavy materials at work. The next day, plaintiff saw Dr. Hagness and complained of pain in the lower back radiating down the left leg. On February 24, 1998, plaintiff underwent an MRI

that revealed degenerative changes with no significant disc herniations. Plaintiff returned to work full-time on September 21, 1998, and stopped work altogether in December 1998 because of his back pain.

2. Claim for benefits

On July 27, 1998, defendant approved plaintiff's claim for long-term disability benefits, effective May 20, 1998. Defendant approved the claim under the "regular occupation standard," determining that plaintiff had a total disability because he could not perform the material duties of his "regular occupation." Plaintiff received benefits for 24 non-consecutive months under the "regular occupation" standard. In a letter to plaintiff dated February 22, 2001, defendant states that when the 24th monthly payment was approaching, defendant asked for updated medical information from plaintiff's primary physician to establish total disability under the "any occupation" standard. Defendant found that the updated information "lacked satisfactory proof that [plaintiff] remained unable to perform less physically challenging work" than his regular occupation.

According to the February 22, 2001 letter, defendant asked plaintiff to undergo a two-day Functional Capacity Evaluation to assist in determining his level of impairment and his capacity for work. The evaluation took place on October 30 and 31, 2000. The letter notes that the evaluation examiner determined that plaintiff had some functional limitations

because of his back complaints, but also found that he had the functional capacity to perform sedentary work. According to the United States Department of Labor's Dictionary of Occupational Titles, "sedentary work" is defined as "exerting up to ten (10) pounds of force occasionally and or a negligible amount of force frequently to lift, carry, push, pull, or otherwise move objects, including the human body. Sedentary work involves sitting most of the time, but may involve walking or standing for brief periods of time. Jobs are sedentary if walking and standing are required only occasionally and all other sedentary criteria are met."

On November 15, 2000, defendant's vocational consultant performed a Transferable Skills Analysis to determine whether plaintiff had the necessary training, education and experience to make him suitable for sedentary employment. The consultant found a number of occupations that demand only a sedentary level of physical exertion that plaintiff's education, training and experience qualified him to perform with little additional training, including "type-soldering-machine tender" and "pager."

In a letter dated November 16, 2000, defendant notified plaintiff that his benefits were being terminated. According to the letter, the medical documentation in plaintiff's file did not meet his group policy's definition of "Total Disability." According to the letter, defendant relied on three documents in reaching this determination: (1) medical records and documents from plaintiff's physician, Dr. Hagness, that did not support a finding of ongoing

total disability from "any occupation"; (2) the Functional Capacity Evaluation that indicated that plaintiff was capable of performing sedentary work; and (3) the vocational evaluation that identified several positions that plaintiff could perform given his education, vocational training and physical condition.

In a letter dated November 27, 2000, plaintiff appealed the termination. In support of the appeal, plaintiff submitted the deposition testimony of Dr. Hagness that had been taken in conjunction with his worker's compensation claim on November 8, 2000. In Dr. Hagness's opinion, plaintiff was completely and totally disabled from his pre-injury job of truck driving. To Dr. Hagness's knowledge, plaintiff is not trained "to use cognitive skills as opposed to mostly physical skills for a laborer type setting." According to the deposition testimony, plaintiff is capable of sitting "for short times, [but he] must be able to get up and walk around." Plaintiff "can stand for a short time. He must be able to change position. He must be able to move around. He would have the necessity of being able to lay [sic] down on occasion during the day." According to Dr. Hagness, plaintiff's capabilities with regard to lifting, bending and walking are "none" or "minimal to none." Dr. Hagness stated that plaintiff is "totally disabled due to his multi-level disc disease, and . . . depression secondary to that." Plaintiff did not submit any additional medical documentation.

On January 21, 2001, Dr. Hagness completed a physical capabilities assessment of plaintiff in which he noted that in an eight-hour day plaintiff can sit for seven hours "but not

at one time." Dr. Hagness also noted that plaintiff can stand for one hour during an eight-hour day. As a part of the same assessment, Dr. Hagness noted that plaintiff cannot lift or carry even 10 pounds occasionally, the smallest weight listed on the form.

In a letter dated February 22, 2001, defendant notified plaintiff that after review, it had concluded that its "original decision to terminate benefits was appropriate."

OPINION

A. Plaintiff's Claim for Long-Term Disability Benefits

1. Standard of review

The denial of benefits under an employee benefit plan governed by ERISA may be challenged pursuant to 29 U.S.C. § 1132(a)(1)(B). The standard of review a court applies when reviewing a plan administrator's decision to deny benefits is controlled by Firestone Rubber v. Bruch, 489 U.S. 101 (1989). In Firestone, the Supreme Court held that a plan administrator's denial of benefits must be reviewed de novo unless "the benefit plan gives the administrator or fiduciary discretionary authority to determine eligibility for benefits or to construe the terms of the plan." Id. at 115. If the plan gives the administrator or fiduciary such discretionary authority, the court reviews the denial of benefits under the arbitrary and capricious standard. See id. This standard was clarified recently by the Court of Appeals for the Seventh Circuit in Herzberger v. Standard Insurance Co., 205 F.3d 327 (7th Cir.

2000). The court upheld the presumption of plenary review, except where the language of the policy "indicates with the requisite if minimum clarity that a discretionary determination is envisaged" or where the "nature of the benefits or the conditions upon it will make reasonably clear that the plan administrator is to exercise discretion." Id. at 331.

Thus, in order to determine whether defendant's denial of plaintiff's long-term disability benefits was proper, it must first be determined whether the plan grants defendant sufficient discretionary authority to invoke the arbitrary and capricious standard, see Donato v. Metropolitan Life Ins. Co., 19 F.3d 375, 379 (7th Cir. 1994), under which a plan administrator's decision will not be overturned unless it is "downright unreasonable," Fuller v. CBT Corp., 905 F.2d 1055, 1058 (7th Cir. 1990). Although in Herzberger the court was reluctant to announce the "magic words" that would establish that an administrator had the requisite discretionary authority, the court concluded that "the mere fact that a plan requires a determination of eligibility or entitlement by the administrator, or requires proof or satisfactory proof of the applicant's claim, or requires both a determination and proof (or satisfactory proof), does not give the employee adequate notice that the plan administrator is to make a judgment largely insulated from judicial review by reason of being discretionary." Herzberger, 205 F.3d at 332. "[E]mployees are entitled to know what they're getting into, and so if the employer is going to reserve a broad, unchanneled discretion to deny claims, the employees should be told about this, and told clearly." Id. at

333.

In this case, both parties agree that the plan grants the administration sufficient discretionary authority to invoke the arbitrary and capricious standard. Defendant asserts that the relevant plan language is similar to the language the court found sufficient to trigger the arbitrary and capricious standard described in Donato, 19 F.3d at 379, and approved in Herzberger, 205 F.3d at 331 (in proof "satisfactory to us," "to us" signaled the subjective, discretionary character of determination). Here, the plan indicates that the disability benefits will not be paid unless the claimant "submits satisfactory proof of total disability to us." Despite the fact that the parties agree otherwise, I find that the plan language does not make it "reasonably clear that the plan administrator is to exercise discretion." Herzberger, 205 F.3d at 331. The plan requires only that the insured submit to the insurer satisfactory proof of his or her disability; the fact that the "to us" is separated from the "satisfactory" requires a reading different from the consecutive phrase in Donato, "satisfactory to us," which makes it plain that it is the proof that must be satisfactory to "us," not just that objectively satisfactory proof must be sent to "us." Because the plan does not reserve broad, unchanneled discretion to the plan administrator to deny claims in a clear manner, the denial of plaintiff's long-term disability benefits must be reviewed de novo.

2. Defendant's denial

In reviewing defendant's denial of disability benefits de novo, the relevant inquiry is whether plaintiff provided defendant "satisfactory proof of total disability" that he "can not perform the material duties of any occupation. Any occupation is one that the Insured's education, training or experience will reasonably allow." Construing the facts in the light most favorable to plaintiff, I find that he cannot meet this burden.

In reaching its decision to deny plaintiff long-term disability benefits under the "any occupation" standard, defendant relied on information that indicated that plaintiff was capable of performing sedentary work. Defendant reviewed various reports and evaluations by plaintiff's treating physician, Dr. Hagness. Defendant also relied on an independent Functional Capacity Evaluation that concluded that plaintiff had the ability to perform sedentary work and its own Transferable Skills Analysis that identified two employment positions that fell within plaintiff's physical abilities and for which he would need only minimal training.

In response, plaintiff does not deny that he is able to perform sedentary work or otherwise establish that under the policy, he is unable to perform "the material duties of any occupation . . . [that his] education, training or experience will reasonably allow." Instead, plaintiff relies Dr. Hagness's statements that plaintiff has pain that does not allow him to do any physical labor. According to Dr. Hagness, plaintiff can sit and stand for a short time only and plaintiff's capacity to lift, bend and walk is "minimal to none." These statements

do not render defendant's denial improper. First, an independent Functional Capacity Evaluation indicated that plaintiff is capable of sedentary duty, a conclusion that does not conflict with Dr. Hagness's assessment and that plaintiff does not deny. Second, after Dr. Hagness made the statements of limitation cited by plaintiff, Dr. Hagness completed a physical capabilities assessment in which he noted that during an eight-hour day, plaintiff could sit for seven hours, as long as those hours were not consecutive, and could stand for a total of one hour. Because this assessment supports defendant's conclusion that plaintiff had not submitted satisfactory proof that he was unable to perform "any occupation," the decision to deny plaintiff's benefits was not improper.

The fact that Dr. Hagness is of the opinion that plaintiff is not trained to perform any type of work other than physical labor does not change this conclusion. Dr. Hagness is not a vocational specialist and is not qualified to assess plaintiff's vocational outlook. The plan administrator may reasonably base a decision to deny or extend disability benefits on the "any occupation" standard, as evidenced by the Functional Capacity Evaluation and the Transferable Skills Assessment, and not on the speculation of plaintiff's primary physician. Because defendant had sufficient evidence establishing that plaintiff was capable of sedentary light duty work and because plaintiff failed to provide defendant with "satisfactory proof" that he is unable to perform "any occupation" for which he would reasonably qualify, defendant's denial of plaintiff's long-term disability benefits was not improper.

The fact that defendant engaged its own vocational counselor to perform the Transferable Skills Assessment does not create a conflict of interest that renders defendant's denial arbitrary and capricious. Plaintiff admits that the Functional Capacity Evaluation was performed by an independent evaluator and he does not dispute the evaluation's conclusion that plaintiff is capable of performing sedentary work. Plaintiff also does not dispute that the Transferable Skills Assessment is generated from information relating to his physical condition as determined by the Functional Capacity Evaluation. Instead, plaintiff asserts that the Transferable Skills Assessment was biased because the vocational counselor who performed it was not independent. Plaintiff overlooks the nature of the Transferable Skills Assessment, a software program that matches an individual's education, training and physical condition with employment positions listed in the Department of Labor's Dictionary of Occupational Titles. Dft.'s Reply Br., dkt. # 11, at 5. It is difficult to envision how a software program could be biased when its function is to match an individual's characteristics to a listing of occupations.

Plaintiff asserts that he is entitled to long-term disability benefits because he was awarded worker's compensation benefits and social security disability benefits. However, determinations and decisions made by the Social Security Administration and other plan administrators are not binding in ERISA actions. See, e.g., Anderson v. Operative Plasterers' & Cement Masons' Int'l. Assoc., 991 F.2d 356 (7th Cir. 1993) (Social Security

determination of disability not dispositive of disability under pension plan). Although a determination of disability under the Social Security Act can be given some weight when applicable, see Ladd v. ITT Corp., 148 F.3d 753, 755-56 (7th Cir. 1998) (considering grant of social security benefits when determining whether insured's denial was arbitrary and capricious under ERISA), the social security and worker's compensation determinations of disability are not binding on this court. Moreover, plaintiff has not presented any reasons why the determinations should be given any weight. Despite the fact that plaintiff was found to be disabled for other purposes, I find that he has failed to submit to defendant satisfactory proof that he is totally disabled under the "any occupation" standard.

I conclude that the administrative record supports the conclusion that it was not improper for defendant to deny the extension of plaintiff's disability benefits under the "any occupation" standard provided by the plan. Defendant's motion for summary judgment against plaintiff will be granted.

ORDER

IT IS ORDERED that defendant Reliance Standard Life Insurance Company's motion for summary judgment is GRANTED. The clerk of court is directed to enter

judgment for defendant and close this case.

Entered this 28th day of January, 2002.

BY THE COURT:

BARBARA B. CRABB
District Judge