

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

CHARLOTTE N. SELL	:	CIVIL ACTION
	:	
v.	:	
	:	
UNUM LIFE INSURANCE COMPANY	:	
OF AMERICA, et al.	:	No. 01-4851

MEMORANDUM AND ORDER

HUTTON, J.

November 19, 2002

The plaintiff, Charlotte N. Sell, is suing the defendants, UNUM Life Insurance Company of America ("UNUM") and Knoll, Inc., alleging a violation of the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. § 1001, et seq.¹ Sell believes that she is entitled to benefits under UNUM's Long-Term Disability Plan. Presently before the Court is Defendants' Motion for Summary Judgment (Docket No. 6). Because UNUM's decision to deny Sell's application for benefits was not arbitrary and capricious, Defendants' Motion is granted.

I. BACKGROUND

A. THE PLAN

Knoll's benefit plan contains several provisions that are important to this case. First, the plan pays benefits to beneficiaries based on a two-stage definition of disability.

¹ Sell brings her action under 29 U.S.C. § 1132(a)(1)(B), which provides, inter alia, that a beneficiary may sue to recover "benefits due to [the beneficiary] under the terms of the plan."

During the first 24 months of disability, an employee is considered disabled if the employee is "unable to perform any of the material and substantial duties of [the employee's] regular occupation." Defs.' App. at 522 (emphasis added). After this initial 24 month period, however, the plan's definition changes such that the employee must be "unable to perform the duties of any gainful occupation for which [the employee is] reasonably fitted by education, training or experience" in order to receive disability benefits. Id. (emphasis added).²

Second, Knoll itself does not administer the plan. Instead, the plan is administered by UNUM, an insurance company. Importantly, it appears from the record that UNUM also funds the plan. Any payments to disabled Knoll employees come from UNUM's own funds.

Third, UNUM, as plan administrator, has discretionary authority to interpret and construe the terms and rules of the plan. The plan expressly gives UNUM "discretionary authority to determine [an employee's] eligibility for benefits and to interpret the terms and provisions of the policy." Id. at 516. The plan also provides that UNUM has the discretion to request any documents that it needs in making these decisions. Id. at 522.

B. SELL'S HISTORY AT KNOLL

² The plan defines "gainful occupation" as "an occupation that is or can be expected to provide you with an income at least equal to 60% of your indexed monthly earnings within 12 months of your return to work." Pl.'s App at 523.

In January 1970, Sell, currently 59 years old, began working for Knoll, Inc. as a wood crafter. For 28 years, Sell made furniture pieces, such as desktops and sofa frames, for Knoll. Defs.' App. at 108. Her job required her to "lift, push, pull, [and] use various mechanical devices in the fabrication of wood products." Id. at 304. During the course of her employment with Knoll, Sell developed chronic back and leg pain, myalgias, and fatigue. Id. at 308. She also suffers from depression, degenerative disc disease, and arthritis. Id.

On January 22, 1998, Sell became disabled and was no longer able to perform her job as a wood crafter. On the following day, she began receiving short-term disability benefits under Knoll's employee benefits plan. Pl.'s Opp'n Mem. at 2. A few months later, Sell began receiving long-term disability benefits under the plan. Id.

In July 1998, after an initial denial, Sell was approved for Social Security disability benefits. Defs.' App at 125-33. The Administrative Law Judge found that Sell was disabled and could only perform "a limited range of sedentary work." Id. at 132. At this point, her combined company and Social Security benefits totaled approximately 60% of her former wages. Pl.'s Opp'n Mem. at 2. Knoll continued to receive long-term disability payments under the first prong of the plan's disability definition because she could not perform her old occupation. Id.

During the first 24 months of disability payments, UNUM ordered several tests to confirm Sell's condition. In April 1999, UNUM ordered an independent medical examination by Dr. Robert Mauthe. In his report, Dr. Mauthe found that Sell could perform sedentary to light duty work, despite a diagnosis of disc disease, depression, myofascial pain, and other conditions. Defs.' App. at 308. Sell's treating physician, Dr. Kenneth Truscott, confirmed this opinion in a letter dated May 25, 1999. Id. at 270. Finally, a Functional Capacity Evaluation ("FCE"), performed in April 1999, found that while Sell was not capable of performing her current occupation, which was a "Medium" level job under the Department of Labor ("DOL") standards, she could perform jobs termed either "light" or "sedentary" under those standards. Id. at 282-83.

In the Spring of 2000, the 24 month initial disability period expired, and UNUM began the process of determining whether Sell was disabled from "any occupation." Defs.' Summ. J. Mem. at 4. UNUM again wrote to Sell's treating physician, Dr. Truscott, asking whether Sell was still capable of performing "full time sedentary to light [duty] work." Defs.' App. at 212. Dr. Truscott responded with a conclusory but emphatic "Yes!" Id.

As a result, UNUM sent a letter to Sell, dated March 21, 2000, notifying her that her benefits were terminated because she was not disabled from "any occupation." Id. at 210. UNUM's letter cited the opinions of Drs. Truscott and Mauthe, as well as the 1999 FCE,

as evidence that Sell could perform sedentary to light duty work. Id. Within a week of this letter, Dr. Truscott changed his opinion and stated that Sell was totally disabled. Id. at 141-42. In his letter to UNUM, Dr. Truscott stated that Sell's condition had deteriorated since his prior opinion and that, based on her Social Security disability claim, she was totally disabled from any occupation. Id.

On June 30, 2000, Sell appealed UNUM's decision. Sell submitted a Key Functional Capacity Assessment and yet another letter from Dr. Truscott, dated July 10, 2000. Id. at 105-6. Dr. Truscott's new opinion was purportedly based on a letter and report he received from a treating neurologist named Dr. Thomas Hurlbutt. In his letter, Dr. Truscott noted that, while Dr. Hurlbutt's "objective" diagnosis did not show that Sell was disabled, the "subjective" affects of Sell's mental condition, coupled with her physical problems, make Sell disabled. Id. While Dr. Hurlbutt's report states only that Sell should not operate heavy machinery or perform multi-step tasks, Dr. Truscott claims that a letter Dr. Hurlbutt sent to him supports his change in opinion. Id. at 175-76. In this letter, which was not submitted to this Court and does not appear in UNUM's records, Dr. Hurlbutt allegedly diagnosed Sell with "pseudo-dementia." Id. Dr. Truscott's letter concludes that this alleged diagnosis confirms Sell's disability.

For its part, UNUM directed one of its own physicians, Dr. F.

A. Bellino, to review Sell's records. Based on his review of Sell's records, Dr. Bellino concluded that Sell was capable of performing sedentary to light duty work. Id. at 172-73. In his review, Dr. Bellino could find no record of Dr. Hurlbutt's pseudo-dementia diagnosis. Id. As a result, Dr. Bellino found no change in Sell's condition. UNUM denied Sell's appeal on August 8, 2000 and upheld that denial again on September 9, 2001. Pl.'s Summ. J. Mem. at 3.

II. LEGAL STANDARD

Summary judgment is appropriate "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Fed. R. Civ. P. 56(c). The party moving for summary judgment has the initial burden of showing the basis for its motion. Celotex Corp. v. Catrett, 477 U.S. 317, 323, 106 S.Ct. 2548, 91 L.Ed.2d 265 (1986). Once the movant adequately supports its motion pursuant to Rule 56(c), the burden shifts to the nonmoving party to go beyond the mere pleadings and present evidence through affidavits, depositions, or admissions on file showing a genuine issue of material fact for trial. Id. at 324. The substantive law determines which facts are material. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248, 106 S.Ct. 2505, 91 L.Ed.2d 202 (1986). If the evidence is such that a reasonable

jury could return a verdict for the nonmoving party, then there is a genuine issue of fact. Id.

When deciding a motion for summary judgment, all reasonable inferences are drawn in the light most favorable to the non-moving party. Big Apple BMW, Inc. v. BMW of N. Am., Inc., 974 F.2d 1358, 1363 (3d Cir. 1992), cert. denied, 507 U.S. 912, 113 S.Ct. 1262, 122 L.Ed.2d 659 (1993). Moreover, a court may not consider the credibility or weight of the evidence in deciding a motion for summary judgment, even if the quantity of the moving party's evidence far outweighs that of its opponent. Id. Nonetheless, a party opposing summary judgment must do more than just rest upon mere allegations, general denials, or vague statements. Trap Rock Indus., Inc. v. Local 825, 982 F.2d 884, 890 (3d Cir. 1992).

III. DISCUSSION

A. ERISA STANDARD OF REVIEW

The first step in evaluating an ERISA claim is to determine the appropriate standard of review. A denial of ERISA plan benefits is reviewed under a de novo standard unless the plan administrator has discretion to determine beneficiary eligibility and to construe plan terms. Firestone Tire & Rubber Co. v. Bruch, 489 U.S. 101, 115, 109 S.Ct. 948, 103 L. Ed. 2d 80 (1989). In Firestone, the Court, relying on trust law principles, held that discretionary denials are reviewed under an arbitrary and capricious standard. Id. This is a deferential standard, and the

court may not substitute its judgment for that of the plan administrator. Mitchell v. Eastman Kodak Co., 113 F.3d 422, 439 (3d Cir. 1997). Such discretion may be either explicit in the terms of the plan or implied from plan language. Luby v. Teamsters Health, Welfare & Pension Trust Funds, 944 F.2d 1176, 1180 (3d Cir. 1991).

In this Circuit, however, a "heightened arbitrary and capricious" standard applies when the plan administrator's decision was potentially affected by a conflict of interest. Pinto v. Reliance Standard Life Ins. Co., 214 F.3d 377, 378-79 (3d Cir. 2000). In Pinto, the Court examined the conflict that arises when an insurer, acting as plan administrator, both decides employee claims and pays those claims out of its own funds. Id. at 378-79. The Court held that district courts must consider such conflicts as a factor in evaluating the administrator's decision to deny a claim. Id. at 393-94.

In this case, UNUM and Sell agree that an arbitrary and capricious standard is appropriate because the plan gives UNUM discretion to determine eligibility. Pl.'s Opp'n Mem. at 5; Defs.' Summ. J. Mem. at 8-11. The parties differ, however, regarding whether Pinto's heightened standard should apply. UNUM argues that Pinto should not apply because "there is no evidence that a conflict of interest impacted the claim decision." Defs.' Summ. J. Mem. at 13.

UNUM's argument is misplaced. In Pinto, the Third Circuit held that "when an insurance company both funds and administers benefits, it is generally acting under a conflict of interest that warrants a heightened form of the arbitrary and capricious standard of review." Pinto, 214 F.3d at 378. In the instant case, UNUM does not dispute that it funds and administers Knoll's plan. Accordingly, Pinto's "heightened arbitrary and capricious standard" applies.

To say that Pinto's standard applies, however, does not end the inquiry. In Pinto, the Court adopted a "sliding scale" approach that increases the scrutiny of the review in proportion to the strength of the conflict at issue. Id. at 391-93. Under this approach, district courts are directed to "consider the nature and degree of apparent conflicts with a view to shaping their arbitrary and capricious review" of the plan administrator's decisions. Id. at 393. The greater the conflict, the less deferential the standard applied. Id. To determine the extent of the conflict, the Court must "not only look at the result - whether it is supported by reason - but at the process by which the result was achieved." Id.

In Pinto itself, the Court found several procedural flaws that caused it to give little deference to the administrator's decision. First, the administrator reversed an earlier decision allowing Pinto's benefits without any new medical evidence to support the

reversal. Id. at 393-94. Second, the administrator selectively relied upon self-serving evidence supporting a denial of benefits but rejected contrary evidence supporting a continuation of Pinto's benefits. Id. Finally, the administrator ignored its own staff's recommendation that benefits be continued. Id. These procedural anomalies placed the Pinto case at the least deferential end of the arbitrary and capricious sliding scale. Id.

Defendant argues that such procedural anomalies are absent from the instant case. For example, in Pinto, the administrator gave significant weight to a negative SSA disability decision, yet ignored that agency's later decision to award disability benefits to Pinto. In contrast, in this case, UNUM paid disability benefits when Sell was initially denied disability by the SSA. Def.'s Summ. J. Mem. at 12. Then, it discontinued these benefits when the plan's disability definition changed to require an employee to be disabled from any gainful occupation.

Sell states that this case belongs at the least deferential end of the sliding scale because UNUM, like the defendant in Pinto, selectively considered self-serving parts of the record while ignoring other evidence that supported her disability claim. Pl.'s Opp'n Mem. at 6. In Pinto, the Court was critical of the plan administrator's selective reliance on self-serving evidence favoring a denial of the employee's benefits. In this case, Sell states that UNUM selectively ignored evidence regarding her mental

condition. For support, Sell points to Dr. Truscott's July 2000 letter, discussed above.

UNUM's decision to credit Dr. Truscott's earlier opinion and not credit his July 2000 letter is not a procedural anomaly of the type described in Pinto. In the instant case, UNUM acknowledges Dr. Truscott's later opinion, but chooses to give it little weight because it came only after Sell, one of Dr. Truscott's patients, was denied benefits. Def.'s Summ. J. Mem. at 12. In contrast, the Pinto Court was troubled by the plan administrator's selective use of the treating physician's opinion. In that case, the administrator gave credit to some of the physician's findings, but ignored his ultimate conclusion. Pinto, 214 F.3d at 393-94. In this case, the physician's ultimate conclusion appears to have shifted markedly based on whether his patient was receiving benefits.

Plaintiff points to no other procedural anomalies or conflicts that would warrant this case being placed on the heightened end of the sliding scale. As noted above, however, UNUM both funds and administers Knoll's benefits plan. As such, the Court will review UNUM's decision being "deferential, but not absolutely deferential." Id. at 393.

B. APPLICATION OF THE HEIGHTENED ARBITRARY AND CAPRICIOUS STANDARD

Plaintiff primarily argues that Defendant abused its

discretion because it did not adequately "test for, evaluate, or consider" the psychological aspects of Plaintiff's condition. Pl.'s Opp'n Mem. at 6. In support of this contention, Sell points to Dr. Truscott's July 2000 letter, which states that UNUM must consider the psychological aspects of Sell's disability, and the SSA disability decision, which includes a form detailing Sell's mental condition. Id. at 7-12. Sell states that UNUM failed to adequately consider this evidence in its decision to deny her claim.

1. Dr. Truscott's Letter

Regarding Dr. Truscott's letter, Sell argues that UNUM did not give enough weight to Dr. Truscott's opinion concerning her mental condition. As noted above, in his letter, Dr. Truscott states that, while the objective data does not show Sell to be disabled, the subjective evidence shows a deteriorated mental state that supports her disability claim. Defs.' App. at 105-6. Dr. Truscott states that Sell's mental condition "take[s] [her] minimum sedentary level and drops is below functional status and, therefore, below substantial gainful activity." Id. at 105. In support of his opinion, Dr. Truscott points to Sell's SSA disability determination and to a report by Dr. Thomas Hurlbutt, a neurologist who examined Sell in March 2000.

In his attending physician's report, Dr. Hurlbutt determined that Sell should not operate heavy machinery or perform multi-step

tasks. Id. at 176. Otherwise, Dr. Hurlbutt's brief report does not indicate that Sell is disabled. Dr. Truscott acknowledges that Dr. Hurlbutt's attending physician report does not "objectively" support a diagnosis that Sell is disabled. Id. at 105 ("[T]here is objective data to support no true medical, actual neurologic impairments or conditions from an 'objective standpoint[.]'"). Instead, Dr. Truscott appears to base his opinion on a letter Dr. Hurlbutt allegedly wrote to him.

In this letter, which appears nowhere in the record and was not submitted to UNUM, Dr. Hurlbutt purportedly wrote that he "picked up on" a diagnosis of pseudo-dementia, which carries a "certain degree of disability." Id. Based on what Dr. Truscott calls Dr. Hurlbutt's "true medical opinion," Dr. Truscott concludes that Sell is disabled. Id. at 106.

In response, UNUM points to Gooden v. Provident Life & Accident Ins. Co., 250 F.3d 329, 333-34 (5th Cir. 2001),³ for the proposition that a plan administrator need not give overriding significance to a physician's letter, written after the patient's benefits were terminated, that contains no new medical evidence and is contrary to the physician's earlier opinion. Defs.' Reply Mem. at 4-5. In Gooden, the beneficiary's treating physician initially

³ The Fifth Circuit, like the Third Circuit, applies a heightened arbitrary and capricious standard under a sliding scale approach when an outside entity, such as an insurance company, both funds and administers an employee benefits plan. Vega v. Nat'l Life Ins. Servs., Inc., 188 F.3d 287, 295-97 (5th Cir. 1999) (en banc).

wrote an Attending Physician's Statement of Disability (APS) stating that Gooden could return to work. Id. at 331. After Gooden's benefits were terminated, the physician wrote another letter to the administrator stating that Gooden was permanently disabled and could not return to work. Id. The Court held that this second letter, which was unaccompanied by any evidence of a change in medical condition, need not be given overriding significance. Id. at 333-34. The Court noted that there was substantial countervailing evidence, including the same physician's earlier report. Id.

Similarly, UNUM did not abuse its discretion when it failed to give Dr. Truscott's July 2000 letter controlling significance. First, like the letter in Gooden, Dr. Truscott's letter came after Sell learned that her benefits were terminated. Additionally, the letter was in direct contrast to Dr. Truscott's earlier opinion on Sell's condition. As noted above, Dr. Truscott, in response to a March 2000 inquiry from UNUM, agreed that Sell could perform full-time sedentary to light duty work. Defs.' App. at 212. Dr. Truscott changed his opinion only after his initial view was used to discontinue Sell's benefits. As the Gooden court concluded, UNUM cannot be faulted for failing to give this later opinion overriding significance in the face of significant contrary evidence, including Dr. Truscott's earlier view.

Second, like the letter in Gooden, Dr. Truscott's letter

contains little, if any, medical evidence to support his change in opinion. As noted above, Dr. Truscott did not base his revised opinion on a new examination of Sell, but rather on two pieces of information, Sell's SSA award and a letter purportedly sent to him by Dr. Hurlbutt. Regarding the SSA award, while it is true that the ALJ opinion in Sell's case discusses Sell's mental condition, Dr. Truscott told UNUM in March 2000, seven months after the SSA award, that Sell could still perform sedentary to light duty work. As such, the SSA decision cannot form the basis for Dr. Truscott's new diagnosis. Regarding Dr. Hurlbutt's pseudo-dementia diagnosis, there is no medical evidence, other than Dr. Truscott's bald assertions, that Dr. Hurlbutt ever made such a diagnosis. While Dr. Truscott's interpretation of Dr. Hurlbutt's purported findings is some medical evidence of Sell's disability, UNUM did not abuse its discretion by failing to give controlling weight to one doctor's interpretation of another doctor's letter, which itself was not submitted to UNUM.⁴

⁴ Sell also argues that UNUM "should have obtained the neurologist's medical records" before it made the decision to deny her application. Pl.'s Opp'n Mem. at 10. Sell appears to be claiming that UNUM was under a duty to investigate Dr. Truscott's claim that Dr. Hurlbutt diagnosed Sell with "pseudo-dementia."

Sell misinterprets an ERISA plan administrator's role in the decision-making process. In Pinto, the Third Circuit made it clear that a plan administrator, even one subject to a possible conflict of interest, is not under a "duty to make a good faith, reasonable investigation" of the beneficiary's claim. Pinto, 214 F.3d at 394, n.8. As such, the proper inquiry is whether the administrator's decision is supported by the record before it at the time the decision was made. The administrator is under no duty to gather further information.

In this case, it appears that Sell gave UNUM neither Dr. Hurlbutt's records nor the letter Dr. Hurlbutt allegedly sent to Dr. Truscott. UNUM was under no duty to hunt down this information on its own. Accordingly, UNUM's

2. Sell's SSA Disability Decision

Regarding Sell's SSA disability decision, Sell argues that UNUM "failed to read the decision and the accompanying exhibits carefully." Pl.'s Opp'n Mem. at 12. Specifically, Sell points to the Psychiatric Review Technique form accompanying her SSA disability decision. This form states that Sell suffers from moderate depression resulting in sleep disturbance, loss of interest in activities, decreased energy, and difficulty concentrating. Defs.' App. at 134-36. Sell acknowledges that an award of Social Security disability benefits does not determine whether a beneficiary should receive similar benefits under an ERISA plan. Pl.'s Opp'n Mem. at 12. She argues, however, that UNUM failed to adequately consider this information when it denied her application for benefits. Id.

In response, UNUM states that it is not bound by the SSA's findings. In its final denial letter to Sell, dated January 1, 2001, UNUM asserted "any determinations made by the Social Security Administration have no bearing on whether or not Ms. Sell is eligible for UNUM disability benefits." Defs.' App. at 88. UNUM correctly notes that it is bound by the terms of the plan it administers, not by the SSA's regulations.

UNUM was not arbitrary and capricious in its consideration of Sell's SSA disability award. An SSA disability award is not

failure to conduct an investigation into Dr. Truscott's claims was not an abuse of discretion.

dispositive in determining whether a plan administrator's denial of benefits was arbitrary and capricious, but it is a factor to consider in that evaluation. Dorsey v. Provident Life and Accident Ins. Co., 167 F. Supp. 2d 846, n. 11. In the instant case, UNUM considered the SSA award, but found that it did not support a finding that Sell was disabled from any gainful occupation. This was not an abuse of discretion, particularly in light of the significant countervailing evidence including Dr. Mauthe's independent evaluation, Dr. Truscott's first opinion, UNUM's in-house medical review, and the Functional Capacity Assessments.

IV. CONCLUSION

Once the movant adequately supports its summary judgment motion pursuant to Rule 56(c), the burden shifts to the nonmoving party to go beyond the mere pleadings and present evidence through affidavits, depositions, or admissions on file to show that there is a genuine issue for trial. In this case, Sell fails to raise a genuine issue of fact indicating that UNUM's decision to discontinue her disability benefits was arbitrary and capricious. According, UNUM's summary judgment motion is granted.

This Court's Final Judgment follows.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

CHARLOTTE N. SELL : CIVIL ACTION
 :
v. :
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UNUM LIFE INSURANCE COMPANY :
OF AMERICA, et al. : No. 01-4851

FINAL JUDGMENT

AND NOW, this 19th day of November, 2002, upon consideration of Defendants UNUM Life Insurance Company of America and Knoll, Inc.'s Motion for Summary Judgment (Docket No. 6), IT IS HEREBY ORDERED that Defendants' Motion is **GRANTED**.

IT IS HEREBY FURTHER ORDERED that Judgment is to be entered in favor of Defendants UNUM Life Insurance Company of America and Knoll, Inc.

BY THE COURT:

HERBERT J. HUTTON, J.