

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

OLIVER JOHNSTON, : CIVIL ACTION
Plaintiff, :
 :
v. :
 :
HARTFORD LIFE AND ACCIDENT :
INSURANCE COMPANY, :
Defendant. : No. 03-3336

MEMORANDUM AND ORDER

J. M. KELLY, J.

AUGUST , 2004

Presently before the Court are cross-motions for summary judgment filed by Plaintiff Oliver Johnston ("Johnston" or "Plaintiff") and Defendant Hartford Life and Accident Insurance Company ("Hartford" or "Defendant") relating to Plaintiff's claim under the Employee Retirement Income Security Act of 1974, 29 U.S.C. § 1001, et seq. ("ERISA"), that he was wrongfully denied long term disability ("LTD") benefits under an employee benefit plan (the "Plan") created by his former employer, Interspace Airport Advertising ("IAA").

Plaintiff moves for summary judgment arguing that Hartford's decision to deny LTD benefits, based on its determination that Plaintiff's disability arose from a pre-existing condition and its rejection of the opinion of a treating specialist, was arbitrary and capricious. Defendant moves for summary judgment arguing that its decision to deny Johnston's claim for LTD benefits, which was based on medical evidence presented to it, and that its interpretation of the Plan, were not arbitrary and

capricious.

For the following reasons, Defendant's Motion for Summary Judgment is **GRANTED** and Plaintiff's Motion for Summary Judgment is **DENIED**.

I. BACKGROUND

A. **Johnston's Employment at IAA**

Johnston was hired by IAA as a Properties Analyst on March 27, 2001. (HLI00276.)¹ IAA is a company that sells advertising space in airports. (HLI00070.) The Properties Analyst job is "primarily customer service and selling space to the advertiser." (HLI00070.) The position requires "[a] lot of client contact and phone work." (HLI00070.) These are the essential duties of Johnston's occupation. (HLI00070; HLI00088-89.) Seventy-five to ninety percent of a Property Analyst's job is in the office using the telephone. (HLI00070.) Twenty-five percent and lower of the job is "on the road." (HLI00070.) If a problem should arise at a particular job site, then the Property Analyst may hire a subcontractor or may personally travel to solve the problem. (HLI00070.) When the Property Analyst travels to airports to resolve an issue, he or she may take down a sign or "hammer in a

¹ All page references to the administrative record refer to the Bates numbering system ("HLI_____") contained in the Administrative Record for Oliver Johnston (Doc. No. 7) filed by Defendant.

nail or put screws in now & then." (HLI00075.) At the time Johnston discontinued working, he "was still in the training stage . . . & his job duties were desk/computer related."

(HLI00083.) Johnston had not yet reached the stage where he was required to engage in any travel, as it was only after he completed this training program that he would be eligible to travel for work. (HLI00083.)

B. The Plan

Johnston became a participant in the Plan on April 1, 2001. (HLI00147.) The Plan is insured by Group Insurance Policy GLT-043893 issued by Hartford, and provides Hartford with "full discretion and authority to determine eligibility for benefits and to construe and interpret all terms and provisions of the Group Insurance Policy." (HLI00005; HLI00016.)

Under the Plan, "Disability" or "Disabled"

means that during the Elimination Period and for the next 24 months you are prevented by:

1. accidental bodily injury;
2. sickness;
3. Mental Illness;
4. Substance Abuse; or
5. pregnancy,

from performing one or more of the Essential Duties of Your Occupation, and as a result your Current Monthly Earnings are no more than 80% of your Indexed Pre-disability Earnings.

After that, you must be so prevented from performing one or more of the Essential Duties of Any Occupation.

Your failure to pass a physical examination required to maintain a license to perform the duties of Your Occupation does not alone mean that you are Disabled.

(HLI00017.)

The "Elimination Period" is

the period of time you must be Disabled before benefits become payable. It is the last to be satisfied of the following:

1. the first 90 consecutive day(s) of any one period of Disability; or
2. with the exception of benefits required by state law, the expiration of any Employer sponsored short term disability benefits or salary continuation program.

(HLI00005.)

The IAA short term disability ("STD") plan provides benefits for a maximum thirteen weeks, and STD benefits may commence after the participant has been disabled for eight days. (HLI00026.) Accordingly, a person seeking to obtain LTD benefits must establish that for thirteen weeks he or she was prevented from performing the essential duties of his or her occupation. (See HLI00005; HLI00017; HLI00026.)

The Plan also provides that no benefit will be payable for any Disability that is due to, contributed to by, or results from a Pre-existing Condition, unless such Disability begins:

1. after the last day of 90 consecutive day(s) while insured during which you receive no medical care for the Pre-existing Condition; or
2. after the last day of 365 consecutive day(s) during which you have been continuously insured under this plan.

(HLI00011.) A "Pre-existing Condition" is defined as:

1. any accidental bodily injury, sickness, Mental Illness, pregnancy, or episode of Substance Abuse; or
2. any manifestations, symptoms, findings or aggravations related to or resulting from such accidental bodily injury, sickness, Mental Illness, pregnancy, or a Substance Abuse;

for which you receive Medical Care during the 90 day period that ends the day before:

1. your effective date of coverage; or
2. the effective date of a Change in Coverage.

(HLI00011.) Under the Plan, "Medical Care" is received when:

1. a physician is consulted or medical advice is given; or
2. treatment is recommended, prescribed by, or received from a Physician.

(HLI00011.) Treatment includes but is not limited to: (1) medical examinations, tests, attendance or observation; and (2) use of drugs, medicines, medical services, supplies or equipment.

(HLI00011.)

C. Johnston's Participation in the Plan

Johnston became a participant in the Plan on April 1, 2001.

(HLI00147; HLI00276-77.) Johnston became allegedly disabled on May 9, 2001, having called out sick for pneumonia. (HLI00276.)

Johnston was awarded STD benefits until August 19, 2001.

(HLI00083.)

Because Johnston was paid STD benefits until August 19,

2001, in order for Johnston to satisfy the requirement that he remain disabled throughout the Elimination Period as required by the Plan, he would have had to have remained disabled through August 19, 2001. (HLI00106; HLI00147.) However, even if Johnston was deemed "disabled" as that term is used in the Plan, he would not be eligible to receive LTD benefits if he received Medical Care for the allegedly disabling condition between December 31, 2000 and March 31, 2001, the "90 day period that end[ed] the day before [Johnston's] effective date of coverage" (See HLI00011.)

D. Johnston's Medical Condition

Prior to becoming employed by IAA, Johnston had a history of back problems and had been collecting Social Security payments related to that condition. (HLI00285.) Johnston informed Hartford that those payments were related to the condition of his lumbar (lower) spine. (HLI00082.) The medical records in the administrative record reflect treatments for conditions related to his lumbar spine, cervical (neck) spine and for carpal tunnel syndrome ("CTS"). (HLI00107-109.) In his Complaint, Johnston claims to be entitled to LTD benefits solely as the result of the condition of his cervical spine. (Compl., ¶17.)

On May 9, 2001, Johnston ceased working as a result of bronchitis and pneumonia. (HLI00226; HLI00276-77.) On May 14,

2001, he was admitted to St. Luke's Miners' Memorial Hospital but "became restless and agitated. At 4:45 a.m. [Johnston] walked out of the hospital without signing himself out 'AMA.'"

(HLI00158-59.)²

On May 21, 2001, Johnston visited Dr. Mahmood Nasir, who diagnosed Johnston with "Failed Back Syndrome." (HLI00133.) Dr. Nasir noted Johnston had "sustained spinal trauma" and had "neck and back pain" and that the "back pain is the worst."

(HLI00133.) As a result, Dr. Nasir treated Johnston with paravertebral nerve blocks to his lumbar spine. (HLI00133.) He also sent Johnston for MRIs of his cervical and lumbar spines to determine the level of radiculopathy in both.³ (HLI00133-34.) An MRI taken two days later provided evidence of degenerative disc disease. (HLI00135.) On May 31, 2001, Johnston saw Dr. Nasir who described his finding as "consistent with C5-C6

² On May 18, 2001, Johnston contacted IAA claiming that he "was very sick and needed medical leave." (HLI00285.) IAA sent Johnston an application for STD leave that same day, with a letter advising that it needed to be completed and returned as soon as possible. (HLI00285.) On May 31, 2001, IAA left a message with Johnston stating that it did not receive any paperwork from him, and that it was imperative that he provide documentation of his condition. (HLI00285.) On June 1, 2001, IAA wrote Johnston a letter stating that his disability claim and his employment may be in jeopardy if IAA did not hear from him. (HLI00285.) On June 22, 2001, IAA terminated Johnston's employment. (HLI00285.) Eight days later, on June 30, 2001, IAA received an application for benefits from Johnston which it forwarded to Hartford. (HLI00285.)

³ A radiculopathy is a disease of the nerve roots. See Dorland's Illustrated Medical Dictionary, 28th Ed. (1994).

Cervical Radiculopathy and Carpal Tunnel Syndrome." (HLI00136-37; HLI00242-43.) Dr. Nasir's records do not indicate that he placed Johnston under any restrictions or that he considered him to be totally disabled at that time. (See HLI00133-37.)

On June 11, 2001, Johnston saw Dr. Pat Romano for the first time.⁴ (HLI00203.) Johnston informed Dr. Romano that he had been "put in the hospital with complaints of excessive fatigue, just does not feel right. Feels like something is wrong with him. [Johnston] was also complaining of some neck pain at the time." (HLI00203.) Dr. Romano described Johnston as a "talkative male in no apparent distress" and, upon examination, found that Johnston's neck was "supple." (HLI00203.) Dr. Romano noted that Johnston has a "history of chronic low back pain" as well as a "history of apparently chronic fatigue syndrome" and Lyme Disease. (HLI00203.) Dr. Romano's records do not indicate that he placed Johnston under any restrictions or that he found Johnston to be disabled at that time. (See HLI00203.)

On June 12, 2001, Johnston saw Dr. Nasir who noted that Johnston had headaches, neck pain and back pain, and a disc herniation in his neck. (HLI00138.) After he administered nerve

⁴ Johnston was transferred to Dr. Romano from Dr. Mussoline, who stated that he would no longer see Johnston after Johnston signed out AMA from the hospital in May 2001.

blocks to Johnston's greater and lesser occipital nerve,⁵ he released Johnston with a note that Johnston "felt better after the treatment. He will continue doing his physical activities as tolerated." (HLI00138-39.) Dr. Nasir's records at that time did not restrict Johnston from working. (See HLI00138-39.)

On June 26, 2001, Dr. Nasir completed an attending physician statement in which he diagnosed Johnston with cervical radiculopathy, neck pain, headaches and indicated that the date of onset of this condition was "4-13-01." (HLI00283.) Dr. Nasir indicated for the first time that, as of that time, Johnston was disabled and was "incapable of minimal (sedentary) activity." (HLI00283.)

On July 18, 2001, Johnston saw Dr. Nasir again. This time, Dr. Nasir noted that Johnston was suffering from "mid-line lumbar pain" and administered paravertebral nerve blocks to the lumbar area. (HLI00140.) He noted Johnston "felt better after the treatment." (HLI00140.) Dr. Nasir did not indicate that Johnston was suffering from any neck pain at that time nor did he treat Johnston's cervical spine. (HLI00140.)

On August 8, 2001, Dr. Romano treated Johnston again. Dr. Romano examined Johnston's cervical spine and that examination revealed Johnston had a full range of motion in his cervical

⁵ Occipital refers to the area at the posterior of the head. See Dorland's Illustrated Medical Dictionary, 28th Ed. (1994).

spine. (HLI00203.) Although Johnston was continuing to complain "of low back pain," he did not make any complaint of neck pain. (HLI00203.) Based on his examination, Dr. Romano concluded that the "recently noted degenerative disc disease of the [cervical] spine [was] stable." (HLI00203.)

On August 15, 2001, Dr. Nasir completed an attending physician statement in which he gave the primary diagnoses as Failed Back Syndrome and Cervical Radiculopathy with secondary diagnosis of CTS. (HLI00279-80.) On August 28, 2001, Johnston visited Dr. Nasir again. This time, Dr. Nasir diagnosed him with "Cervical Radiculopathy and Bilateral Carpal Tunnel Syndrome." (HLI00141.) He noted that Johnson's "headaches and dizziness are cervicogenic in nature because they are related to his neck movements." (HLI00141.) He administered cervical paravertebral nerve blocks to Johnston and noted that Johnston would receive decompression of his CTS eight weeks after that visit. (HLI00141.)

On September 13, 2001, Dr. Nasir filled out another attending physician statement, this time providing primary diagnosis of cervical and lumbar radiculopathy and a secondary diagnosis that included CTS. (HLI00255-56.) He placed restrictions on Johnston's ability to work although did not indicate which of the three conditions (lumbar, cervical or CTS) triggered the need for these limitations. (HLI00256.)

E. Johnston's Application for Benefits

Hartford awarded STD benefits to Johnston. Hartford sent Johnston an application packet for LTD benefits and, on September 25, 2001, Hartford received Johnston's application for LTD benefits. (HLI00085.) Due to Johnston's history of back problems, Hartford conducted a review to determine whether his claim was subject to a pre-existing condition limitation. Unlike the LTD Plan, the STD Plan for IAA does not contain a pre-existing condition exclusion. (HLI00022-34.)

On October 12, 2001, Hartford contacted Johnston and informed him of that investigation. (HLI00082.) Johnston was adamant that his current condition involved his neck, shoulders and headaches, and not his lower back, although his lower back problems kept him from sitting and standing "as long as normal." (HLI00082.) That same day Hartford requested medical records from the various medical providers Johnston had identified. (HLI00098-00102.)

On the same day, Laura Adams of IAA wrote to Hartford noting, inter alia, that she could not provide information regarding Johnston's job duties because he had not been employed with IAA since June 22, 2001. She reiterated that Johnston was already collecting SSI for a "back condition" at the time he filed the STD claim and that IAA did not feel that Johnston's

condition is work-related. (HLI00232.)

On November 13, 2001, Hartford received various medical records for Johnston and, based on its review of those records, concluded that Johnston's claim may be subject to the pre-existing condition exclusion. (HLI00078.) The following day, a Hartford reviewer concluded that Johnston's claim should be denied. (HLI00078.) This conclusion was based on the medical records of Dr. Mussoline which indicated that Johnston had received treatment for his allegedly disabling condition during the 90-day period described in the pre-existing condition provisions of the Plan. (HLI00011; HLI00076-77.) Due to some ambiguity in his medical records, however, Hartford determined it was necessary to obtain additional information from Dr. Mussoline to determine if Johnston's claim was subject to the pre-existing condition exclusion. (HL00077-78.)

Afer obtaining that additional information from Dr. Mussoline, Hartford determined that, although Johnston's lumbar condition was pre-existing, his cervical condition (if it caused the disability) was not subject to the pre-existing condition exclusion. (HLI00076.) The question remained, however, as to whether Johnston had remained disabled "throughout & beyond" the Elimination Period as required by the Plan and, if so, which of his "multiple med[ical] conditions (neck/back pain, carpal tunnel)" if any "prevent him from working and if so during what

time frame." (HLI00076.)

With respect to the these three conditions, Hartford concluded that Johnston's lumbar condition was subject to the pre-existing condition exclusion. (HLI00075.) With respect to the cervical condition, Dr. Romano's examination confirmed that condition had stabilized as of August 8, 2001, and that Johnston had regained a full range of motion in his neck. (HLI00075.) As a result, Johnston had not remained continuously disabled throughout the Elimination Period as required by the Plan in order to become eligible for LTD benefits. (HLI00017; HLI00075.) No medical records were provided indicting that Johnston's CTS was disabling. (HLI00075.) As a result, Hartford concluded his claim for LTD should be denied. (HLI00075.)

F. Hartford's Denial of LTD Benefits

On December 3, 2001, Hartford notified Johnston in writing that his claim for LTD benefits had been denied. (HLI00145-49.) Hartford noted that Johnston's medical information included diagnoses of "chronic lower back syndrome with lumbar degenerative disc disease, degenerative disc disease of the cervical spine with cervical radiculopathy, and carpal tunnel syndrome." (HLI00147.) Hartford concluded that Johnston had received medical care related to his lumbar spine during the look back period and, therefore, was not eligible to receive benefits

for that condition. (HLI00147.) With respect to Johnston's claim regarding his cervical spine, Dr. Romano had reported that his examination of Johnston's cervical spine "revealed full range of motion" and that his assessment was that Johnston's degenerative disc disease of the cervical spine was stable as of August 8, 2001. (HLI00148.) As a result, Johnston had not remained continuously disabled throughout and beyond the Elimination Period and was not eligible for LTD benefits. (HLI00148.) With respect to the CTS, the medical information available to Hartford revealed that Johnston had not received any treatment for CTS and that this diagnosis had not "caused Disability during the Elimination Period." (HLI00148.) As a result, Johnston was not eligible for LTD benefits. Hartford provided him with a description of his appeal rights under ERISA. (HLI00148-49.)

On December 5, 2001, Johnston called Hartford and discussed the denial of benefits. (HLI00074.) He was further informed that he should submit to Hartford any additional medical information he wanted it to review. (HLI00074.) On December 19, 2001, Johnston called informing Hartford that he had received additional medical information and asked what he should do with it. (HLI00074.) He was advised again to "submit the information he has for his appeal along with a request for review in writing." (HLI00074.)

G. Denial Appealed and Upheld

As of February 4, 2002, Johnston had not filed an appeal and, therefore, his claim file was closed. (HLI00074.) On February 8, 2002, Hartford received an appeal of the denial. (HLI00073; HLI00132.) Johnston's appeal indicated that his alleged disability "is the cervical degenerative disease." (HLI00132.) He insisted that his disability was related exclusively to his cervical spine and submitted additional notes from Dr. Nasir in support of the appeal. (HLI00132.) In a note dated November 15, 2001, Dr. Nasir wrote that Johnston was being treated conservatively for a "long-standing back problem" and that he was "also suffering from neck pain which is of recent onset. His neck pain is not a pre-existing condition." (HLI00142.) There is no indication in that note that Dr. Nasir reviewed the Plan or was purporting to make a determination as to what qualified as a "pre-existing condition" under the Plan. (HLI00142.)

Additionally, the appeal included a memorandum dated December 6, 2001, from Dr. Nasir in which he noted that Johnston "suffers from chronic neck pain and back pain" and that he "is totally disabled at present and will be disabled in the future." (HLI00143.) Dr. Nasir did not identify whether the alleged disability arose from the neck or back pain or both. The appeal

also included a note that Johnston had received a pair of vertebral nerve blocks at the cervical level on December 6, 2001. (HLI00144.)

As a part of the appeal process, Hartford spoke with Johnston and his employer to obtain additional information regarding the scope of Johnston's job and the essential duties related thereto. (HLI00069-71.) Hartford also received additional information from Dr. Romano. (HLI00067-68.) Dr. Romano informed Hartford he was aware of the treatment Johnston was receiving from Dr. Nasir and was aware "that Dr. Nasir is injecting [Johnston's] neck with steroids." (HLI00067.) Nonetheless, Dr. Romano made clear "that whether Mr. Johnston is receiving these injections he is not [totally] disabled from work." (HLI00068.)

Dr. Romano confirmed that, as of August 8, 2001, he had examined Johnston's cervical spine and that examination had revealed a full range of motion. (HLI00069; HLI00089.) Dr. Romano went "on to say that [Johnston] does not have much restriction and he does have some chronic pain, but he can function. Dr. Romano adds there are slight limitations but nothing restricting [Johnston] from seeking employment and working." (HLI00069; HLI00089.) Dr. Romano further reported that he had seen Johnston on January 16, 2002, and that his diagnosis "did not change from the 08/08/01 visit. There could

have been [exacerbation] of the neck but it was very minimal.

Dr. Romano adds, "claimant functions fine." (HLI00069; HLI00089.)

To ensure that there had been no miscommunication, Hartford wrote to Dr. Romano to confirm the contents of the April 24, 2002 conversation. (HLI00113.) Hartford noted that Dr. Romano

indicated that limitations do not rise to a level of occupational impairment. You also added that during the visit of 08/08/01, Mr. Johnston had slight limitations but nothing that is preventing him from working or seeking employment. He had full range of motion and he feels well. You added he may have chronic pain in the neck, but he can function. Mr. Johnston saw you again on 01/16/02 and he was prescribed Darvocet and muscle relaxers. You informed that his functionality is fine and if there were changes, they were minimal.

(HLI00113.) After receiving this correspondence, Dr. Romano reviewed it and wrote "OK, Reviewed & Agree," signed the report and returned it to Hartford. (HLI00112-13.)

On April 29, 2002, Dr. Romano called Hartford regarding an office visit Johnston had that day. (HLI00068.) On May 1, 2002, Dr. Romano faxed his notes to Hartford (HLI00068.) Those records established that "Johnston's C-spine has full range of motion and there are no physical limitations. There is some neck pain and muscle relaxers were prescribed. Dr. Romano recommends pain management." (HLI00089.)

On May 6, 2002, Hartford upheld the denial. (HLI00067; HLI00086-90.) Hartford concluded that based "on the evidence and

medical information contained in the claim file, it is our determination that this claim does not establish that Mr. Johnston satisfied the Pre-Existing Condition provision or the definition of Total Disability under this policy. Accordingly, "no Long Term Disability (LTD) benefits are payable to Mr. Johnston." (HLI00086.)

Hartford concluded that LTD benefits would have become effective August 20, 2001 due to STD benefits having been paid to August 19, 2001, the Elimination Period. (HLI00087.) Hartford noted that Johnston's appeal had rejected Hartford's conclusion that "lumbar degenerative disc disease which he suffered in 1995 is the cause of his disability, which precluded him from his occupation as Property Analyst." (HLI00088.) Hartford noted that its denial was "also due in part to the lumbar degenerative disc disease being a pre-existing condition" and that "Johnston's appeal letter did not dispute this issue. Our position remains that Mr. Johnston's lumbar degenerative disc disease is not covered by this policy because Pre-Existing Conditions are excluded." (HLI00088.)

With respect to Johnston's cervical condition, Dr. Romano's August 8, 2001 examination established Johnston had a full range of motion in his cervical spine as of that time and that his cervical condition was stable. (HLI00089.) His subsequent examinations had produced the same results and Dr. Romano had

confirmed that "Mr. Johnston is not Totally Disabled from work." (HLI00089.) As a result of its review of the file, Hartford concluded that Mr. Johnston is not totally disabled. (HLI00089-90.)

H. Plaintiff's Argument in Support of Summary Judgment

Plaintiff then brought this enforcement action, pursuant to 29 U.S.C. § 1132, to enforce his rights under ERISA. Johnston and Hartford each filed a Motion for Summary Judgment and responses to each other's Motions.

Plaintiff argues that Hartford had no reasonable basis to conclude that Johnston's disability is related to his lumbar spine as opposed to cervical degeneration and cervical radiculopathy. In support of this argument, Plaintiff states that the following uncontradicted facts may be found in the record: (1) Johnston based his claim for disability on his inability to focus, concentrate and continuously type, due to severe pain, dizziness and headaches, specifically disavowing that his claim was related in any way to his preexisting back condition (HLI00275); (2) Dr. Nasir exclusively identifies cervical herniation and radiculopathy as the cause of disability (HLI00283); (3) the nature of the disability relates to headaches and dizziness, resulting in a corresponding inability to perform even sedentary work (HLI00081); (4) Johnston's cervical

abnormalities, including disk herniation and resulting loss of nerve conduction through the right extremity, have been confirmed by MRI and EMG studies; (5) Johnston's headaches and dizziness are cervicogenic in nature because they relate to his neck movements (HLI00141); and (6) Hartford acknowledges that there is no preexisting cervical treatment (HLI00067; HLI00077).

II. SUMMARY JUDGMENT STANDARD

Under Federal Rule of Civil Procedure 56(c), 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). A dispute is genuine when the evidence is such that a reasonable jury could return a verdict for the nonmovant, and a fact is material if it might affect the outcome of the suit. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986). On any motion for summary judgment, the court must view the evidence in the light most favorable to the nonmovant, and draw all reasonable inferences in his favor. Id. at 255.

III. DISCUSSION

A. "Heightened Arbitrary and Capricious" Standard of Review

The United States Supreme Court held that "a denial of benefits challenged under § 1132(a)(1)(B) is to be reviewed under a de novo standard unless the benefit plan gives the administrator or fiduciary discretionary authority to determine eligibility for benefits or to construe the terms of the plan." Firestone Tire & Rubber Co. v. Bruch, 489 U.S. 101, 115 (1989). The Supreme Court explained that "if a benefit plan gives discretion to an administrator or fiduciary who is operating under a conflict of interest, that conflict must be weighed as a factor in determining whether there is an abuse of discretion." Id. (internal quotations and citations omitted).

In this case, we find, and the parties do not dispute, that the Plan gives Hartford "full discretion and authority to determine eligibility for benefits and to construe and interpret all terms and provisions of the Group Insurance Policy." (HLI00016.) This language clearly gives Hartford the discretion to make eligibility determinations under the Plan. Accordingly, Hartford's decision to deny Johnston LTD benefits must be affirmed unless it is arbitrary and capricious.⁶

Under the arbitrary and capricious standard of review, the

⁶ The "arbitrary and capricious" standard is essentially the same as the "abuse of discretion" standard. See Nazay v. Miller, 949 F.2d 1323, 1336 (3d Cir. 1991).

district court may overturn a decision of the Plan administrator only if it is "without reason, unsupported by substantial evidence or erroneous as a matter of law." Abnathya v. Hoffman-La Roche, Inc., 2 F.3d 40, 45 (3d Cir. 1993) (internal quotations and citation omitted). This scope of review is narrow, and "the court is not free to substitute its own judgment for that of the defendants in determining eligibility for plan benefits." Id. (internal quotations and citation omitted). Rather, it must uphold that determination where "there was a reasonable basis for [the administrator's] decision, based upon the facts as known to the administrator at the time the decision was made." Smathers v. Multi-Tool, Inc., 298 F.3d 191, 199-200 (3d Cir. 2002).

Where the evidence raises a question of the plan administrator's impartiality or there is an inherent conflict of interest, a heightened standard of review is demanded. Goldstein v. Johnson & Johnson, 251 F.3d 433, 442 (3d Cir. 2001). Because the Plan here is an insured plan and grants Hartford discretion to determine eligibility for benefits, Hartford's decision is subject to "heightened arbitrary and capricious" review as described in Pinto v. Reliance Standard Life Ins. Co., 214 F.3d 377 (3d Cir. 2000). Under Pinto's heightened arbitrary and capricious review, the Court uses a sliding scale approach, giving less deference to the administrator's decision as the level of conflict rises. Id. at 392.

The parties agree that Hartford's decision is subject to the heightened standard of review set forth in Pinto. Being "deferential, but not absolutely deferential," we now consider whether Hartford's decision was "without reason, unsupported by substantial evidence or erroneous as a matter of law." See id. at 393.

B. Hartford's Decision to Deny LTD Benefits

Johnston claims that he is disabled as a result of the problem with his cervical spine and not his lumbar spine. (See Compl., ¶ 17.) One of Johnston's treating physicians, Dr. Nasir, concluded that Johnston "suffers from chronic neck pain and back pain" and is disabled. (HLI00143.) His other treating physician, Dr. Romano, while noting that Johnston had lumbar and cervical conditions, concluded that, based on his examinations, Johnston's cervical condition had stabilized as of August 8, 2001, during the Elimination Period, and that neither condition disabled Johnston from working. (HLI00203; HLI00113.)

When evaluating Hartford's decision under the "heightened" arbitrary and capricious standard, the proper question is not whether a different decision could have been reached, but, whether, based on the record before the administrator, a different decision had to be reached. Cimino v. Reliance Standard Life Ins. Co., Civ. A. No. 00-2088, 2001 U.S. Dist.

LEXIS 2643, at *20 (E.D. Pa. Mar. 12, 2001) (applying Pinto), aff'd, 2002 U.S. App. LEXIS 6794 (3d Cir. 2002). An ERISA plan administrator does not abuse its discretion when it resolves conflicts in medical records and concludes that a claimant is not disabled. See Nichols v. Verizon Communications, 78 Fed. Appx. 209, 211 (3d Cir. 2003).

That Hartford had to resolve competing medical records and opinions, and did so in a manner unfavorable to Johnston, does not constitute an abuse of discretion. To the contrary, it is well-established that, in this instance, it is Hartford's duty to resolve those conflicts in the medical records. See Mitchell v. Eastman Kodak Co., 113 F.3d 433, 439 (3d Cir. 1997)

("'application' of the Plan, like judicial 'application' of the law, must encompass the resolution of factual disputes as well as the interpretation of the governing provisions of the Plan").

Johnston's treating physician, Dr. Romano, made clear that Johnston was not disabled from his occupation. Dr. Romano specifically rejected the claim Johnston seeks to advance here, that he was disabled solely as a the result of his cervical condition, which is not subject to the pre-existing condition exclusion. Indeed, the physical examinations Dr. Romano conducted established the opposite, that Johnston is not disabled from working as the result of any condition.

Johnston also places undue weight on the fact that he

initially received STD benefits to support his assertion that he is entitled to LTD benefits. As agreed by the parties, to become eligible for LTD benefits, Johnston had to remain disabled through August 19, 2001, the end of the Elimination Period.

(HLI00106.) The last medical treatment received from Dr. Nasir was on July 18, 2001, at which time Dr. Nasir noted that Johnston was suffering from "mid-line lumbar pain" and administered paravertebral nerve blocks to the lumbar area. (HLI00140.) Dr. Nasir did not report that Johnston was suffering from any cervical pain at that time nor did he treat Johnston's cervical spine during that July visit. (HLI00140.) On August 8, 2001, Dr. Romano concluded that Johnston's cervical spine revealed full range of motion and that the degenerative disc disease of the cervical spine was stable. (HLI00203.) Although Johnston was continuing to complain of "low back pain," he did not complain of neck pain. (HLI00203.) Further, Dr. Romano stated that as of August 8, 2001, Johnston had "slight limitations but nothing that is preventing him from working or seeking employment."

(HLI00113.) Moreover, Dr. Romano stated that Johnston "may have chronic pain in the neck, but he can function." (HLI00113.) On January 16, 2002, Dr. Romano again saw Johnston and confirmed that Johnston's functionality was fine, and that if there were

any changes, they were minimal. (HLI00113.)⁷

Hartford's denial of LTD benefits was based on its conclusion that Johnston did not remain disabled throughout the Elimination Period. Specifically, Hartford concluded that, "In our opinion, based on the medical records, Mr. Johnston was capable of performing the above stated material and substantial duties of his occupation as of August 8, 2001 and he was not Totally Disabled through the Elimination Period nor is he currently Totally Disabled." (HLI00109.) Hartford also based its denial in part on Johnston's lumbar condition, stating that it would be subject to the pre-existing condition exclusion. (HLI00107.)

Johnston's treating physician, Dr. Romano, made clear that Johnston was not disabled from his occupation, and rejected the claim that Johnston was disabled solely as the result of his cervical condition and not his lumbar condition. The record establishes that Johnston complained of pain in both his lumbar and cervical areas, and received treatment for both during that period. As a result, Hartford's determination that Johnston is

⁷ That Dr. Romano did not provide his own written report in this matter to Hartford beyond the return fax transmission of April 24, 2002 written by Hartford as a summary of its conversation with Dr. Romano, as Plaintiff argues, is of no moment. There is no indication that Dr. Romano's statements were, as Plaintiff argues, "off the cuff impressions" that were unsupported by medical evidence. (See Pl.'s Br. in Support of Summ. J. at 10.)

not totally disabled for the entirety of the Elimination Period is supported by substantial evidence.

Additionally, none of the procedural problems that plagued Pinto are present here.⁸ The record establishes that Hartford gave Johnston ample opportunities to submit information in support of his claim and that it considered all of that evidence when making its determination. In the absence of these anomalies, Hartford's decision should be afforded deference, and we affirm Hartford's determination that Johnston is not entitled to LTD benefits.

IV. CONCLUSION

For the foregoing reasons, Defendant's Motion for Summary Judgment is **GRANTED** and Plaintiff's Motion for Summary Judgment is **DENIED**.⁹ Judgment is entered in favor of Defendant and

⁸ In Pinto, the insurance company: first, reversed its own initial determination that the plaintiff was totally disabled without receiving any additional medical information; second, in a self-serving manner relied heavily on parts of a particular doctor's report while rejecting the doctor's conclusion that the plaintiff was disabled; and, third, rejected its own employee's recommendation that benefits be paid to the plaintiff pending further testing and instead suspended her benefits. Pinto, 214 F.3d at 393-94.

⁹ Plaintiff also moves for remand for enlargement of the administrative record to include, or in the alternative, for this Court to consider on summary judgment, an October 16, 2003 report from Dr. Joseph Dryer and a December 31, 2003 report from Dr. Romano. As these additional evaluations were submitted seventeen months and nineteen months, respectively, after the final benefits decision was made on May 6, 2002, we do not consider

against Plaintiff.

them in our assessment of whether, on the basis of the record available to the administrator at that time, Hartford's decision to deny Johnston benefits was unreasonable, unsupported by the evidence or erroneous as a matter of law. See Abnathya, 2 F.3d at 48 n.8 ("none of these evaluations were submitted until months after the Committee's final decision to affirm the discontinuation of Abnathya's benefits. Thus, these evaluations cannot be considered by the court in deciding whether the discontinuation of Abnathya's benefits was arbitrary and capricious."); Mitchell, 113 F.3d at 440 ("Given our conclusion that the district court should have asked only whether the Arbitrator's denial was arbitrary and capricious, on the basis of the record before the Administrator, this means that the relevant record on appeal is the evidence before the Administrator at the time of his final denial"). Accordingly, Plaintiff's Motion for Remand for Enlargement of the Administrative Record is **DENIED**.

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

OLIVER JOHNSTON, : CIVIL ACTION
Plaintiff, :
 :
v. :
 :
HARTFORD LIFE AND ACCIDENT :
INSURANCE COMPANY, :
Defendant. : No. 03-3336

O R D E R

AND NOW, this day of August, 2004, in consideration of the Motion for Summary Judgment (Doc. No. 5) and Brief In Support of Motion for Summary Judgment (Doc. No. 6) filed by Defendant Hartford Life and Accident Insurance Company ("Defendant"), the Administrative Record for Plaintiff Oliver Johnston ("Plaintiff") (Doc. No. 7), the First Motion for Summary Judgment (Doc. No. 19) and Brief In Support of First Motion for Summary Judgment (Doc. No. 20) filed by Plaintiff, the Response in Opposition to Plaintiff's First Motion for Summary Judgment (Doc. No. 23) and Memorandum in Opposition (Doc. No. 24) filed by Defendant, **IT IS ORDERED** that Defendant's Motion for Summary Judgment (Doc. NO. 5) is **GRANTED** and Plaintiff's First Motion for Summary Judgment (Doc. NO. 19) is **DENIED**.

IT IS FURTHER ORDERED that, upon consideration of the Motion for Remand for Enlargement of Administrative Record (Doc. No. 8), Response in Support of Motion to Remand (Doc. No. 9) and Certificate of Nonconcurrence (Doc. No. 10) filed by Plaintiff, and the Response in Opposition (Doc. No. 12) and Memorandum in

Opposition (Doc. No. 13) filed by Defendant, Plaintiff's Motion for Remand (Doc. No. 8) is **DENIED**.

The Clerk of Court **SHALL** enter judgment is entered in favor of Defendant Hartford Life and Accident Insurance Company, and against Plaintiff Oliver Johnston.

BY THE COURT:

JAMES MCGIRR KELLY, J.