

defendant's actions violated the fiduciary duty owed to plaintiff under ERISA § 502(a)(2). The parties filed cross motions for summary judgment on December 14, 2005. For the reasons given below, defendant's motion will be granted as to both of plaintiff's claims.

I. Overview

A. Facts and Procedural History

In May of 1994, Independence Communications hired plaintiff to work as a sales manager: a position that required plaintiff to drive five days a week, approximately eight hours per day, and make presentations using a laptop that she carried around with her. (Def. Mot., Ex. C, at 304). Through her employment, she became eligible for a group long-term disability insurance policy administered and funded by defendant on behalf of Independence Publications (the parent company of Independence Communications). *Id.* at 13, 18. To receive long-term disability benefits, a covered individual must be continuously disabled throughout a 180-day elimination period. Under the policy, disability occurs when “Injury or Sickness causes physical or mental impairment to such a degree of severity that [claimant is] (1) continuously unable to perform the *Material and Substantial Duties of [her] Regular Occupation* and (2) not working for wages in any

terms of the plan.”

Section 502(g)(1) provides that “[i]n any action under this subchapter . . . the court in its discretion may allow a reasonable attorney's fee and costs of action to either party.”

occupation for which [claimant is] . . . qualified by education, training or experience.”

The policy defines “material and substantial duties” as “the necessary functions of [claimant’s] *Regular Occupation* which cannot be reasonably omitted or altered.” *Id.* at 3, 20, 29 (emphasis in original).

In November of 2001, plaintiff visited a neurologist, Dr. James Redenbaugh, to obtain treatment for migraine headaches, temporomandibular joint disorder (TMJ), fibromyalgia disorder, and other types of chronic pain. She was subsequently referred to a pain management program at Good Shepherd Rehabilitation Hospital where she received outpatient care including further neurological treatment, psychiatric treatment, physical therapy, and occupational therapy. On January 4, 2002, plaintiff’s treating physician, Dr. Brian Fellechner, advised her to cease working. On January 8, 2002, plaintiff had her last day of work with Independence Communications. She began to collect short-term disability benefits on January 9, 2002.

In June of 2002, plaintiff filed a claim for long-term disability benefits. Defendant arranged for claims specialists to conduct several interviews with plaintiff, and for a Dr. Eugene Truchelut to review plaintiff’s file. In a letter dated December 26, 2002, a “Disability Specialist” employed by defendant informed plaintiff that

[a]lthough you may have a condition, the medical evidence in your file does not support an impairment in your function that would preclude you from performing the substantial and material duties of your regular occupation as a sales representative past the 180-day elimination period of 7/7/02. Therefore, we are unable to honor your claim for LTD benefits, and the claim file has been closed.

Plaintiff requested a reconsideration of this decision on June 10, 2003, enclosing with her request narrative reports from Dr. Fellechner and Dr. Micah R. Sadigh, plaintiff's treating psychologist. Dr. Truchelut reviewed this additional information in July of 2003. In a letter dated August 26, 2003, an "Appeal Committee Member" employed by defendant informed plaintiff that the appeals committee had decided to uphold defendant's original benefit determination. As explained by the letter,

the totality of the evidence and information presented [by plaintiff] could not be correlated to the policy's definition of total disability (from [plaintiff's] regular occupation) throughout the policy's 180-day Elimination period or beyond. . . .

[Plaintiff's] overall functional capacity ha[s] not been illustrated in the medical evidence and file documentation to have been rendered (and remain) throughout the period of Elimination . . . less than that, which is required of her to perform the material and substantial duties of her regular occupation as a Sales Representative, wherein she was required to possess the functional capacity to operate a motor vehicle while driving to meet new and existing customers to sell her company's products, which also involved the carrying of her laptop computer, product literature, and contracts.

Instead, the medical evidence essentially illustrates overall improvement\stabilization in [plaintiff's] functional capacity. . . [T]he evidence and information illustrates her functional capacity remained such, that during this time of Elimination she was able to participate and meet goals in physical rehabilitation and other outpatient therapies, continue to actively participate in the care of her 11 year old son, return to karate class, walk up to 3 miles a day, perform daily home exercises to include stretching and treadmill, attend church services, perform housework, such as laundry, cleaning, and cooking and; [sic] grocery and shop. Shortly before the Elimination Period, [plaintiff] possessed the functional and global capacity to participate in vocational rehabilitation while attending college (with a plan to earn a degree in Psychology by May 2003) and participating and maintaining up to at least 3 courses at one time involving classes 3-days a week and mandatory homework assignments to involve using the computer and reading.

The letter further stated that defendant

value[s] the written opinion of [plaintiff's] treating physician, Dr. Fellechner

(D.O.), wherein he opines that [plaintiff] does not possess the functional or cognitive capacity to perform the essential duties of her regular occupation, however, the totality of the presented diagnostic and physical evaluations could be [sic] correlated to Dr. Fellechner's occupational opinion and; [sic] could not be correlated to the policy's definition of total disability as defined in the Occupation Qualifier provision.

Finally, the letter declared that the decision set out therein was the Company's "final benefit determination" and that "with the completion of this process, the administrative record in this matter has been closed and all administrative remedie[s] have been exhausted."

B. The Medical Evidence

(1) Diagnosis Given by Plaintiff's Treating Physician

On July 29, 2002, Dr. Fellechner filled out a "physician statement" form in connection with plaintiff's claim. Dr. Fellechner diagnosed plaintiff as having "severe fibromyalgia, hip flexion contractures, TMJ disorder, [and] migraines" with complications of "mood disorder and chronic pain." He described plaintiff's physical limitations as "no prolonged static postures, i.e. sitting [for more than] 15-20 minutes without [a] break. No repetitive lifting or bending of trunk, no overhead work." Dr. Fellechner also stated that plaintiff had mental and/or nervous limitations, and that defendant should contact plaintiff's treating psychiatrist about these. Finally, Dr. Fellechner characterized plaintiff's prognosis as "fair," stating that "[plaintiff] cannot likely return to her usual occupation as before." (Def. Mot., Ex. C, at 306-307).

(2) Scope of Defendant's Initial Review

As part of his initial review, Dr. Truchelut considered Dr. Fellechner's physician statement as well as medical records from: a bout of disability that plaintiff had in 1989, plaintiff's visits to Dr. Redenbaugh, plaintiff's visit to a TMJ specialist, and plaintiff's treatment at Good Shepherd Rehabilitation Hospital. Dr. Truchelut also reviewed the notes from interviews that defendant's claims specialists conducted with plaintiff.

In an internally circulated memorandum dated December 12, 2002, Dr. Truchelut expressed the opinion that, while plaintiff may have been disabled when she first sought treatment with Good Shepard, medical records from later dates showed significant improvement in her physical condition. Dr. Truchelut based his assessment on the following specific observations:

- In a report from February 6, 2002, Dr. Fellechner had noted that plaintiff was "making definitive progress." Dr. Fellechner also reported that plaintiff "was fully independent in her home activities, but at times, dysesthesias of the right arm interfered with her using a computer." "Plaintiff's physical examination on that date revealed normal neurological testing, ranges of motion all within functional limits, multiple trigger points and 'adaptive shortening in the shoulder girdles, hip girdles with tight hip flexors and right pectorals.'"
- On 03/06/02, plaintiff's "physical examination revealed muscle tightness in the ITB and hip girdle areas, but [plaintiff] was fully independent in ambulation transfers, had a normal neurological examination and full ranges of motion."
- On 04/16/02, "[Dr. Redenbaugh] noted [plaintiff's] improvement with the intense rehab program. . . . Neurological examination on that date was entirely normal, including gait."
- At a 04/19/02 appointment with Dr. Fellechner, plaintiff "reported further improvement" and "[p]hysical examination revealed improved flexibility over the hip girdle area with mild tenderness in the rectus femoris, and trigger points in the trapezius and paracervical muscle areas. Neurological examination was

- normal.”
- “Based on a discharge summary of 04/19/02, it appears that [plaintiff] was discharged from the pain rehabilitation program at Good Shepherd on that date. The summary states that all of the treatment goals had been met.”
 - At a 05/07/02 follow-up appointment with Dr. Fellechner, plaintiff “request[ed] a part-time work schedule. . . . [Plaintiff] also said that she had returned to karate class and was walking three miles a day and performing stretching exercises. A physical examination was negative, and her ranges of motion were described as good.”
 - At an 07/02/02 session with Dr. Fellechner, “[plaintiff] reported improvement in her migraine headaches, at least in their severity. . . . Her physical examination was entirely normal. . . . The physical therapist’s reevaluation on that date noted completing [sic] normal ranges of motion in all joints tested, including cervical and trunk flexibility. The hip joints were among those tested with active range of motion.”
 - On 08/05/02, “[plaintiff]’s] examination was entirely normal, including gait and strength testing.”
 - On 08/12/02, “[plaintiff] said that she no longer had daily headaches (was having migraines only two to three times a month) and had decreases in facial pain, ear symptom and neck discomfort.”
 - According to an 08/19/02 telephone interview with a claims specialist employed by defendant, plaintiff “was using a treadmill once or twice a day, was attending church services on Sunday, was doing housework, including laundry, cleaning and cooking and went shopping for groceries. At that point, she had signed up for fall classes at a local community college.”
 - During an 11/27/02 telephone interview with a claims specialist employed by defendant, plaintiff stated that she was taking three classes at community college and that her homework “required reading and some computer work.”

Based on these observations, Dr. Truchelut concluded that

the restrictions given by Dr. Fellechner on 07/29/02 . . . may have been supported by some of the symptoms and physical findings at the time of the claimant’s entry into the pain management program in 01/02 but I do not see any clear reason for these by 07/02, when the claimant had reported improvement in her condition, the physical findings by Dr. Fellechner were all negative (07/02/02), and the examination by the therapist at that same time was confirmatory.

Dr. Truchelut initiated a follow-up phone conversation with Dr. Fellechner on December

16, 2002. Reporting the results of this conversation in an internally circulated letter, Dr.

Truchelut stated that

Dr. Fellechner acknowledged that [plaintiff] had improved with the treatment, but said that if she had returned to her usual work activities at that point, then [t]he symptoms would have recurred again due to the driving. He also said that there were other issues besides physical ones involved here, that there was a mental component to her being unable to return to work . . . I asked him what type of work activities he felt that she could perform at this time, and he said that possibly in a sedentary and part-time level [sic]. . . .

After my discussion with Dr. Fellechner, my impression remains the same. Overall, and from the physical perspective only, I do not think that the findings reported at the conclusion of [plaintiff's] multidisciplinary pain management program at Good Shepherd support an inability to perform her own type of work activities, but Dr. Fellechner believes otherwise for the reasons listed above. Based on his comments, I think it would certainly be reasonable to attempt to utilize breaks in long periods of driving to bring these closer to the durations of time which [plaintiff] is driving now in order to attend community college and other [activities of daily living].”

(3) Plaintiff's Additional Evidence and Defendant's Second-Stage Review

In response to defendant's initial rejection of her claim, plaintiff submitted additional reports from Drs. Fellechner and Sadigh. Dr. Fellechner's letter, dated May 21, 2003, states that plaintiff

suffers from multiple medical problems including fibromyalgia syndrome, sleep disorder, and migraine disorder with temporomandibular joint dysfunction. She suffers from chronic waxing and waning intractable pain. She has disabling migraines . . . [and] suffers from extreme levels of cognitive anxiety [Dr. Sadigh] made a strong recommendation to me based upon our personal conversations that she be considered disabled. . . .

[At an appointment on May 1, 2003, plaintiff] still exhibited deficits of range of motion by the cervical spine. Her driving tolerance is the 3 miles that she travels to go to college to take some limited courses. . . .

[Plaintiff] continues to carry restrictions from myself in regards to no prolonged static posturing either standing or sitting without a break, no commuting distances greater than the 3 miles she travels to school. She is unable to do repetitive upper extremity lifting, reaching, etc.

In my opinion, she is considered totally and temporally [sic] disabled from her usual and any occupation. I offer this opinion . . . based upon [plaintiff's] diagnostic studies, my multiple clinical examinations of her over the past several years as well as the recommendations of her treating psychotherapist, Dr. Micah Sadigh.

Dr. Sadigh's letter, dated June 5, 2003, states that plaintiff "continues to have a great deal of disabling pain" but that, "[d]espite her complications, [plaintiff] has pushed herself to find alternative ways of coping with her limitations." Dr. Sadigh further notes that, while "[plaintiff's] prognosis at this point is quite guarded," plaintiff is "currently taking college courses with the hope that she can look for occupations that can accommodate her limitations and disability."

In an internally circulated letter dated July 12, 2003, Dr. Truchelut expressed the opinion that

the letters from Drs. Fellechner and Sadigh update the claimant's mental health situation and to some extent her physical status, but they do not provide new information which would alter my impressions given on 12/12/02 . . . With the understanding that her treating sources have raised significant mental health issues, my assessment is from the physical standpoint only . . . This conclusion was based on the previous records which I reviewed, as well as [plaintiff's interview responses] of 08/19/02 in which it was clear that she was engaging in a number of sedentary and light activities. . . . [S]ome work restrictions seem reasonable . . . It is not clear that the restrictions which Dr. Fellechner gave in his letter of 05/21/03 would preclude the performance of the claimant's own occupation, if breaks in long periods of driving were utilized.

II. Discussion

A. Summary Judgment

A grant of 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 moving party bears the burden of proving that there are no genuine issues of material fact. Celotex Corp. v. Catrett, 477 U.S. 317, 323 (1986). Moreover, the court views the evidence in the light most favorable to the non-moving party, drawing all “justifiable inferences” from the evidence in the nonmovant’s favor. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 249 (1986). The absence of “sufficient evidence favoring the nonmoving party for a jury to return a verdict for that party” establishes that there is no genuine issue for trial. Id. at 249.

B. Defendant’s Decision to Deny Long-term Disability Benefits

(1) Standard of Review

In accordance with Firestone Tire & Rubber Co. v. Bruch, 489 U.S. 101 (1989), benefit determinations challenged under ERISA § 502 (a)(1) are normally 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, 489 U.S. at 115]. In that event, an ‘arbitrary and capricious’ standard is to be applied.” Smathers v. Multi-Tool, Inc., 298 F.3d 191, 194 (3d Cir. 2002). “Under

the arbitrary and capricious standard, the 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. (3d Cir. 1993) (quoting Adamo v. Anchor Hocking Corp., 720 F. Supp. 491, 500 (W.D.Pa. 1989)).

When an employer pays an independent insurance company to fund—as well as interpret and administer—a plan, the reviewing court applies a heightened standard of arbitrary and capricious review. In Pinto v. Reliance Standard Life Ins. Co., 214 F.3d 377, 392 (3d Cir. 2000), the Third Circuit set out a “sliding scale” approach that requires courts to heighten their level of arbitrary and capricious review based on “the nature and degree of apparent conflicts [of interest].” Id. at 393. Thus, under Pinto, the reviewing court may take into account—among other factors—“the sophistication of the parties, the information accessible to the parties, . . . the exact financial arrangement between the insurer and the company,” id. at 392, and “the process by which the result was achieved,” id. at 393.

The parties agree that a heightened standard of review is warranted here because defendant both funds and administers the plan. Plaintiff does not express a view as to the appropriate intensity of review. Defendant requests that the court apply “minimally heightened scrutiny.” (Def. Mot. 7).

In Thompson-Harmina v. Reliance Standard Life Ins. Co., No. 04-425, 2004 WL 2700342 (E.D.Pa. 2004), Judge Newcomer found a “slightly heightened standard of

review” appropriate because of the “potential for bias and . . . disparate sophistication of the parties.” Id. at *3. However, because the court found no financial conflict of interest, it declined to heighten its review any further. Id.

In Dorsey v. Provident Life and Accident Ins. Co., 167 F.Supp. 2d 846 (E.D.Pa. 2001), Judge Katz determined that an insurance company’s use of the same medical specialist to conduct both the initial and secondary review of the claimant’s file constituted a procedural anomaly of a “structural” nature since the medical specialist “reviewed her own work during the appeal process and, not surprisingly, came to the same conclusion both times.” Dorsey, 167 F.Supp. 2d at 854. Judge Katz also took into account that the insurer’s “appeals consultants” could not reverse initial decisions to deny benefits, since this further suggested a “less-than-impartial appeal process designed to make it more difficult for an appellant to succeed.” Dorsey, 167 F.Supp. 2d at 854. On that basis, the court fixed its review “at the far end of the sliding scale,” reviewing the insurer’s decision with a “high degree of skepticism.”

Here, as in Thompson-Harmina, plaintiff is of course less sophisticated than defendant, and the potential for bias exists due to defendant’s position as both administrator and payer of plaintiff’s benefits. In addition, as in Dorsey, the same physician performed both the initial and secondary review of plaintiff’s medical file. Because the evidence submitted by the parties does not indicate any other factors

warranting further heightening of review,³ I will apply “heightened review”: a standard that lies between the “slightly heightened review” applied in Thompson-Harmina and the “highly skeptical review” applied in Dorsey.

(2) Analysis

Plaintiff alleges that defendant’s denial of benefits “constitutes an abuse of discretion as a matter of law [because] Defendant rendered its denial absent any physical examination of Plaintiff and, in spite of, the opinions of Plaintiff’s treating physicians.” (Pl. Mot. 7). Applying heightened review, I find that defendant’s decision was reasonably made, supported by substantial evidence, and not erroneous as a matter of law.

In Dorsey, the court declined to uphold an insurer’s denial of benefits because the insurer’s review of plaintiff’s claims file had been “incomplete and inaccurate,” id. at 854, as well as unacceptably cursory. As the court noted, “the fact that five doctors diagnosed [the plaintiff] with a severe case of fibromyalgia and three concluded that she was permanently disabled suggests that [the insurer’s] medical review needed to be more substantial than a half page summary of selective information.” Id. at 855.

³ The only procedural irregularity alleged by plaintiff is defendant’s failure to arrange an independent physical examination. However, as several courts have observed, an insurance company is under no obligation to provide an independent medical examination when no provision of the insurance policy requires this. See, e.g., Edgerton v. CNA Ins. Co., 215 F.Supp. 2d 541, 550 (E.D.Pa. 2002); Dorsey, 167 F.Supp. 2d at 855 n.10 (listing cases). Here, plaintiff’s policy gives defendant the right to examine plaintiff but does not provide plaintiff with a right to demand an examination. (Def. Mot., Ex. C, at 26).

Similarly, in Edgerton v. CNA, 215 F.Supp. 2d 541 (E.D.Pa. 2002), Judge Robreno found that the insurer's decision could not be sustained because the insurer did not either obtain an independent medical examination of the plaintiff or "undertake the simple step of submitting [the plaintiff's] claim for a physician review" despite "strong evidence pertaining to disability in the record . . ." Id. at 550. The court also criticized the insurer for accepting the treating physician's diagnosis but rejecting his "prognosis as to the practical, functional effects of that diagnosis, without providing a reason for doing so." Id. at 551.

None of the above-described deficiencies obtains here. First, plaintiff's file did not contain strong evidence of disability, as only one of the physicians who examined her (Dr. Fellechner) provided record testimony that she was totally disabled from her current occupation. Second, defendant arranged for a physician review of plaintiff's file by Dr. Truchelut, who appears to have carried out that function diligently and accurately,⁴ producing internal reports that are appreciably more detailed than the physician review found wanting in Dorsey. Dr. Truchelut's internal reports run to six full pages: four full pages for his initial review plus an additional page describing his follow-up conversation

⁴ Dr. Truchelut's reports emphasize that his opinion of plaintiff's condition is "from the physical standpoint only." However, his approach does not seem inconsistent with the wording of plaintiff's policy since none of plaintiff's doctors stated, or even surmised, that whatever mental and nervous limitations she might have were disabling in nature.

with Dr. Fellechner; and slightly over one page describing the conclusions from his second-stage review. Finally, as both Dr. Truchelut's internal memoranda and the letters sent to plaintiff reflect, defendant did not reject Dr. Fellechner's assessment of plaintiff's limitations, but rather concluded that these limitations would not prevent plaintiff from performing the material and substantial duties of her occupation.

In Thompson-Harmina, the court found that the insurer had reasonably assessed the material and substantial duties of the plaintiff's occupation, as well as plaintiff's capacity to perform these, where there was record evidence supporting the insurer's determinations and plaintiff's submissions to the insurer did not definitively establish that "she could no longer perform each and every material duty of her regular occupation." 2004 WL 2700342, at *3. Here, defendant's conclusion that plaintiff was not disabled under the terms of her long-term disability policy was based on record evidence showing that plaintiff's condition had improved to the point where she was able to drive, walk, and operate a computer several times a week with no ill effects—and thus seemed capable of performing "the material and substantial duties of her regular occupation as a Sales Representative, wherein she was required to possess the functional capacity to operate a motor vehicle while driving to meet new and existing customers to sell her company's products, which also involved the carrying of her laptop computer, product literature, and contracts."

In all, I find that the job description provided by plaintiff's employer, physical

assessments provided by plaintiff's physicians, and daily activities described by plaintiff provide sufficient support for defendant's decision to deny plaintiff's application for long-term disability benefits. Accordingly, I will grant summary judgment for the defendant on this claim.

C. Breach of Fiduciary Duty Claim

Plaintiff alleges that "[d]efendant's refusal to pay [her] long term disability benefits is frivolous and unfounded and constitutes a breach of the terms of the benefit plan, and of the fiduciary [sic] owed by the plan administrator." (Compl. ¶ 33). She therefore asks the court to "[i]ssue a declaratory judgment declaring [that] the [d]efendant's actions, including the denial of benefits, as alleged herein, violated the terms of the plan and violated the fiduciary duty owed to [p]laintiff under ERISA section 502[(a)(2)]." *Id.* at ¶ 36.

Because plaintiff's underlying suit seeks relief for herself rather than her benefit plan, her claim fails as a matter of law. In Massachusetts Mut. Life Ins. Co. v. Russell, 473 U.S. 134 (1985), the Supreme Court observed that "a fair contextual reading of [section 502(a)(2)] makes it abundantly clear that its draftsmen were primarily concerned with the possible misuse of plan assets, and with remedies that would protect the entire plan, rather than with the rights of an individual beneficiary." *Id.* at 142. Applying that observation, the Third Circuit has determined that "ERISA § 502(a)(2) . . . does not allow

for individual recovery.” Ream v. Frey, 107 F.3d 147, 152 (3d Cir. 1997).⁵

Here, plaintiff’s complaint alleges injuries to her interests rather than those of her benefit plan. Thus, following Ream, this court will grant summary judgment to defendant on plaintiff’s breach of fiduciary duty claim.⁶

⁵ See also Russell, 473 U.S. at 142 n.9 (noting that it was “Congress’s intent that [section 502(a)(2)] actions for breach of fiduciary duty be brought in a representative capacity on behalf of the plan as a whole”); Kennedy v. Metropolitan Life Ins. Co., 357 F.Supp. 2d 1346 (M.D.Fla. 2005) (holding that the plaintiff was “precluded from stating an individual claim for relief under [29 U.S.C.] § 1132(a)(2)”); Hart v. Group Short Term Disability Plan For Employees of Cap Gemini Ernst & Young, 338 F.Supp. 2d 1200 (D.Colo. 2004) (finding that “loss to the plan is an element of any [502(a)(2)] claim . . . and the remedy is recoverable only by or on behalf of the plan, and not beneficiaries of the plan individually”); Nechis v. Oxford Health Plans, Inc., 328 F.Supp. 2d 469, 477, aff’d 421 F.3d 96 (S.D.N.Y. 2004) (finding that the plaintiffs were seeking individual recovery where “[t]he complaint's factual allegations focus[ed] on harm suffered by the putative class members . . . [rather than] allege[d] a loss of plan assets”).

⁶ Even if plaintiff could be construed as requesting relief on behalf of her benefit plan, it would still be appropriate to grant summary judgment for defendant on this particular claim since plaintiff has not produced sufficient evidence to establish that defendant’s actions amounted to a breach of fiduciary duty. As the Ninth Circuit has stated, “material, probative evidence [of a breach of fiduciary duty] may consist of inconsistencies in the plan administrator's reasons, insufficiency of those reasons, or procedural irregularities in the processing of the beneficiaries' claims.” Nord v. Black & Decker Disability Plan, 356 F.3d 1008, 1010 (9th Cir. 2004). In Firestone v. Acuson Corp. Long Term Disability Plan, 326 F.Supp. 2d 1040 (N.D.Cal. 2004), the court found that the plaintiff had “not put forth material, probative evidence demonstrating that defendant breached its fiduciary duty and allowed its conflict of interest to influence its decision regarding [plaintiff’s] benefits,” id. at 1053, where

[defendant] has taken a consistent view towards [plaintiff’s] disability claims[;]
. . . [t]he administrative record indicates that plaintiff was provided a full
opportunity to submit materials in support of his claim[;] . . . [defendant] submitted
the medical record to a consulting physician [;] . . . [and] [the physician’s]
recommendations to [defendant] are buttressed by a modicum of analysis.

Conclusion

I find that defendant CNA Insurance/Continental Casualty did not improperly deny Andrea Imperato's request for long-term disability benefits. I also find that defendant did not violate the fiduciary duty owed to Imperato under Section 502(a)(2) of the Employee Retirement Income Security Act, 29 U.S.C. § 1132. Therefore, defendant's motion for summary judgment will be granted, and Imperato's motion for summary judgment will be denied.

An appropriate order follows.

Id. at 1052-53. As that court determined, “[t]hat [defendant] chose to credit [its physician’s] conclusions regarding the available medical information over those of [plaintiff’s] treating physicians is not, by itself, a legally adequate basis upon which this court may conclude that [defendant] breached its fiduciary duty to [plaintiff]. See Black & Decker Disability Plan v. Nord, [538 U.S. 822 (2003)]. Id. at 1052-53. This analysis accurately captures the situation presented by the record and pleadings in the instant case.

