

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

JOHN H. BYRD,	:	CIVIL ACTION
Plaintiff,	:	
	:	
v.	:	
	:	
RELIANCE STANDARD LIFE	:	
INSURANCE COMPANY, ET. AL.,	:	
Defendants.	:	NO. 04-2339

Order and Reasoning

AND NOW, on this 7th day of December, 2004, upon consideration of the Parties' Cross-Motions for Summary Judgment (Doc. 19, 24), their Responses, Defendant's Suggestion of Bankruptcy (Doc. 28), and Plaintiff's Response, it is hereby ORDERED that Defendants' Motion is GRANTED, and Plaintiff's Motion is DENIED. Plaintiff's Motion for Permission to File a Reply Memorandum (Doc. 34) is GRANTED. Judgment is hereby ENTERED in favor of Defendant and against Plaintiff. The Clerk of the Court shall mark this case closed for statistical purposes. It is further ORDERED that the Parties' Unopposed Motion for Extension of Time to Complete Discovery (Doc. 36) is DENIED as moot.

I. BACKGROUND

Presently before the Court are the Parties' Cross-Motions for Summary Judgment. Plaintiff John H. Byrd seeks review of Defendant Reliance Standard Life Insurance Company's ("Reliance") decision to deny his claim for long-term disability ("LTD") benefits. For the reasons set forth below, Plaintiff's

Motion is denied and Defendant's Motion is granted. The Court's reasoning follows.

Beginning in January, 1996, Plaintiff was employed as a Manager of Human Resources for Dan River, Inc. ("Dan River").¹ Dan River, a textile manufacturer located in Danville, Virginia, provides LTD benefits under a group plan ("Plan") covering its employees. Reliance funded and administered Plaintiff's plan ("Policy"). On January 28, 2003, Plaintiff stopped working because of "chronic back pain and leg pain." (Admin. R. at 131.) On January 30, 2003, Plaintiff underwent lumbar fusion surgery. By July 11, 2003, he was walking "about four miles a day." (Admin. R. at 295.) On June 23, 2003, Reliance notified Plaintiff that his disability claim was approved, with benefits payable through August 4, 2003. Reliance requested updated medical records to determine if he was disabled beyond that date. After Reliance reviewed these records, it sent a denial letter to him on November 6, 2003. Plaintiff appealed the denial, and Reliance affirmed the denial of benefits on March 2, 2004. In the interim, Plaintiff filed for, and received, Social Security ("SSA") disability benefits on February 27, 2004. On April 6, 2004, Plaintiff notified Reliance of the SSA's award.

¹ The Parties have briefed the Court on the effect of Dan River's bankruptcy filing on this case. The Court finds that the bankruptcy of a non-party should not stay any action in this case even if Defendants are co-obligors, insurers, or guarantors of Dan River. See Maritime Electric Company Inc. v. United Jersey Bank, 959 F.2d 1194, 1205 (3d Cir. 1992). Accordingly, Dan River's bankruptcy filing will not stay the proceedings in this case.

II. JURISDICTION

The Court has jurisdiction over this case pursuant to 28 U.S.C. § 1331 because the Policy is an "employee benefit plan" as defined by ERISA.

III. DISCUSSION

A. Standards of Review

Two standards of review are applicable here: the summary judgment standard and the arbitrary and capricious standard of review. Summary judgment is appropriate "if there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law." FED. R. CIV. P. 56(c). Essentially, the inquiry is "whether the evidence presents a sufficient disagreement to require submission to the jury or whether it is so one-sided that one party must prevail as a matter of law." Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 251-52 (1986). The moving party has the initial burden of informing the court of the basis for the motion and identifying those portions of the record that demonstrate the absence of a genuine issue of material fact. See Celotex Corp. v. Catrett, 477 U.S. 317, 323 (1986). An issue is genuine only if there is a sufficient evidentiary basis on which a reasonable jury could find for the non-moving party. See Anderson, 477 U.S. at 249. A factual dispute is material only if it might affect the outcome of the suit under governing law. See id. at 248. Finally, with

cross-motions for summary judgment, each party bears the burden of demonstrating that there are no genuine issues of material fact. See Reinert v. Giorgio Foods, Inc., 15 F. Supp. 2d 589, 593-94 (E.D. Pa. 1998).

As to the standard of review for claim denial, the arbitrary and capricious standard of review is appropriate in this case because the Policy provides discretionary authority to the claims fiduciary. See Firestone Tire and Rubber Co. v. Bruch, 489 U.S. 101, 111 (1989). The term "arbitrary and capricious" has been interpreted to mean "without reason, unsupported by substantial evidence or erroneous as a matter of law." Abnathya v. Hoffmann-LaRoche, Inc., 2 F.3d 40, 45 (3d Cir. 1993). In this case, Plaintiff argues that Reliance's decision must be subject to a heightened level of scrutiny because of the inherent conflict of interest in funding and administering the Policy. While Reliance agrees that the standard should be modified in accordance with the "sliding scale" approach adopted by the Third Circuit in Pinto v. Reliance Standard Life Ins. Co., 214 F.3d 377 (3d Cir. 2000), it contends that there was no conflict of interest.

Under the "sliding scale" approach, the standard begins with arbitrary and capricious review and applies less deference if evidence reveals that the claims fiduciary's decision was influenced as a result of the conflict. See Pinto, 214 F.3d at

379. A court may look outside of the administrative record when setting the standard of review on the Pinto sliding-scale. See McLeod v. Hartford Life and Accident, Ins. Co., 247 F. Supp. 2d 650, 654 (E.D. Pa. 2003). To guide this analysis, Pinto provides a nonexclusive list of factors to consider in determining whether a structural conflict of interest warranting heightened review exists, including: the sophistication of the parties; the information available to the parties; the exact financial arrangement between the insurer and the employer; and whether the decision-maker is a current employer, former employer, or insurer. See Pinto, 214 F.3d at 392.

The Pinto factors weigh in favor of slightly heightening the standard of review. First, it cannot be said that Plaintiff is completely unsophisticated in employment contract matters; he was a human resources manager who answered grievances in accordance with labor contracts and participated in major contract negotiations. (Admin. R. at 233). Second, there is no evidence that Plaintiff lacked the information to make an informed decision, or that particular information was unavailable to either of the Parties at the time of the Policy execution or thereafter. Third, Plaintiff has failed to demonstrate the exact financial relationship between Reliance and Plan, and thus this factor does not call for heightened review. Finally, the fourth Pinto factor, however, signals that some form heightened standard

of review is appropriate because the claims fiduciary was in fact the insurer. Because the Court finds that a structural conflict of interest exists, the Court will slightly heighten the standard of review.

B. Review of Reliance's Claim Denial

The primary issue before the Court remains whether Defendant Reliance acted arbitrarily and capriciously when it determined that Plaintiff was not "Totally Disabled" as that term is defined under the Policy.² For this analysis, the Court may only review the evidence that was before the administrator at the time the decision was made. See Mitchell v. Eastman Kodak Co., 113 F.3d 433, 440 (3d Cir. 1997). In this case, the burden of proof to make a prima facie case remains on the Plaintiff because his insurer is not calling into question the scientific basis of the physicians' reports. See Lasser v. Reliance Standard Life Ins. Co., 344 F.3d 381, 391 (3d Cir. 2003) (discussing the burden of proof in disability cases). For the reasons discussed below, the Court finds that Plaintiff has not met his prima facie burden of proving that he could no longer perform "the material duties of his regular occupation on a part-time basis or some of the

² The Court notes that the arbitrary and capricious standard of review has been *slightly* heightened in accordance with Pinto, and therefore it has undertaken a more probing view of the Administrative Record to determine whether Reliance's determinations were reasonable. Nevertheless, the standard of review has not been substantially heightened, nor has it been transformed into a *de novo* review.

material duties on a full-time basis.”

1. Plaintiff’s Material Duties of His Regular Occupation

“A duty is ‘material’ when it is sufficiently significant in either a qualitative or quantitative sense that an inability to perform it means that one is no longer practicing the ‘regular occupation.’” Lasser v. Reliance Standard Life Ins. Co., 146 F. Supp. 2d 619, 636 (D. N.J. 2001), aff’d 344 F.3d 381 (3d Cir. 2003). “‘Regular occupation’ is the usual work that the insured is *actually performing* immediately before the onset of disability.” See Lasser, 344 F.3d at 386 (emphasis added). After a careful review of the Administrative Record, this Court must reject Defendants’ argument that potential work situations such as breaking up fights, saving employees from occupational disasters, and performing CPR is a part of Plaintiff’s regular occupation. There is no evidence to suggest that Plaintiff actually performed any of these tasks, or that they represent any part of Plaintiff’s regular occupation. In addition, the Court in Lasser did not categorically reject the DOT manual as a resource in determining the material duties of an occupation. See Lasser, 344 F.3d at 386. That Court found that Reliance’s use of the DOT manual was unreasonable when it used a broader DOT title description of “surgeon” to find that several duties of an “orthopedic surgeon” were immaterial. See id. at 387 n.5. However, the Lasser Court’s determination has no bearing on this

case because there is a DOT description on point: "Manager, Human Resources". Here, Reliance considered both the DOT occupation description as well as that of Dan River to determine the material duties of Plaintiff's regular occupation. Both title descriptions, read in conjunction with the Administrative Record, do not support Plaintiff's argument that breaking up fights and performing CPR are material duties of a Human Resource Manager.³

2. Plaintiff's Performance of His Material Duties

a. The Medical Evidence Does Not Establish that Plaintiff is Disabled.

The Parties have submitted contradictory medical evidence as to whether Plaintiff could have performed some of the material duties of his regular occupation. While this Court is precluded from making credibility determinations when ruling on summary judgment motions, it does not find Reliance's determination to be arbitrary and capricious, even under a heightened standard of review. In their Motions, both Parties have submitted the results of their respective Functional Capacity Evaluations ("FCE's") of Plaintiff. Plaintiff's FCE, according to his treating physician Dr. Lawrence F. Cohen, concludes that he could not perform the material duties of his

³ See Admin. R. at 234 (reflecting that Dan River crossed out the portion of the occupation description which stated that Human Resource Manager was responsible for supervising the duties of the plant nurse). In addition, it appears that the first aid duties were relegated to the plant nurse, and not to the Human Resource Manager.

"job" at Dan River. (Admin. R. at 63.) This Report does not provide any objectively satisfactory guidance as to what material duties Plaintiff can perform. See Gallagher v. Reliance Std. Life Ins. Co., 305 F.3d 264, 274-75 (4th Cir. 2002) (finding that the physician's opinion was inconclusive with regard to whether Gallagher was incapable of performing all of his occupational duties). Defendants have submitted their FCE, which concludes that Plaintiff is "able to perform at a Sedentary Physical Demand Level for an 8-hour day." (Admin. R. at 178.) It should be noted that Defendants' FCE does not discuss any of Plaintiff's material duties; however, it does present a detailed report of his physical capacities before drawing the conclusion that he can perform at a sedentary physical level. This medical evidence reasonably supports Reliance's denial of LTD benefits. The only remaining issue is whether Plaintiff's regular occupation was properly classified as sedentary.

b. The Vocational Evidence Does Not Establish that Plaintiff is Disabled.

Reliance conducted a vocational review, which concluded that Plaintiff's regular occupation should be classified as sedentary. (Admin. R. at 213.) Although the vocational review specialist only considered the DOT designation, "Manager, Human Resources", the determination to use the DOT description was not arbitrary and capricious because it mirrors the requirements identified by Dan River. (Admin. R. at 214-15; 233.) Reliance's determination that the requirements are sedentary in nature is

reasonable after a review of Dan River's Position Description and the DOT designation. See id. Moreover, this Court does not find any procedural irregularities in Reliance's claim review process. After reviewing the Administrative Record, it does not appear that Reliance performed a self-serving review of the claims file or a self-serving application of the DOT manual to the facts.

3. Reliance's Refusal to Consider Plaintiff's Social Security Award Was Not Arbitrary and Capricious.

Plaintiff correctly argues that the SSA's determination of disability should be considered See Edgerton v. CNA Ins., Inc., 215 F. Supp. 2d 541, 549 (E.D. Pa. 2002) (finding that "[a]lthough an SSA decision may not be dispositive in determining whether an ERISA administrator's decision is arbitrary and capricious, it is a factor that should be considered"). Yet, the Social Security award is not binding on Reliance any more than Reliance's denial of benefits is binding on the SSA. Reliance's decision not to consider the SSA award was not arbitrary and capricious because Reliance was not made aware of the SSA award until April 6, 2004, which is a month after the appellate determination was issued.

IV. CONCLUSION

Reliance's decision to deny benefits was not arbitrary and capricious, even under heightened scrutiny. Because there are no genuine disputes of material fact as to whether Reliance acted arbitrarily and capriciously under the Pinto standard, the Court will grant Defendant's Motion and deny Plaintiff's Motion.

AND IT IS SO ORDERED.

S/ Clarence C. Newcomer
United States District Judge