

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

WILLIAM HAVENS :
 :
 : CIVIL ACTION
 v. :
 :
 : NO. 04-3268
 CONTINENTAL CASUALTY CO. :

MEMORANDUM AND ORDER

Juan R. Sánchez, J.

June 6, 2005

William Havens claims Continental Assurance Company (Continental) violated the Employee Retirement Income Security Act of 1974 (“ERISA”), 29 U.S.C. §§ 1001 *et seq.* when it denied his claim for long-term disability benefits. Havens claims Continental’s conclusion he was not disabled from “any occupation” was not supported by the evidence and its termination of his long term disability benefits was arbitrary and capricious. Continental agrees Havens was disabled from his own occupation, but claims he was not disabled from “any occupation,” as defined by the policy. After a bench trial, this Court finds Continental did not act arbitrarily and capriciously when it terminated Havens’ long term disability benefits.

STANDARD OF REVIEW

ERISA does not provide a standard of review for the denial of benefits. The Supreme Court, however, addressed the issue in *Firestone Tire and Rubber Co. v. Bruch*, stating:

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 Of course, 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 facto[r] in determining whether there is an abuse of discretion.

489 U.S. 101, 115 (1989). The Third Circuit subsequently held that when the language of a plan gives the administrator discretionary authority, courts must apply the arbitrary and capricious standard of review. *Abnathya v. Hoffmann-La Roche, Inc.*, 2 F.3d 40, 45 (3d Cir. 1993).

“Under the arbitrary and capricious (or abuse of discretion) standard of review, 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. Hoffmann-La Roche, Inc.*, 2 F.3d 40, 45 (3d Cir.1993)(citing *Adamo v. Anchor Hocking Corp.*, 720 F. Supp. 491, 500 (W.D. Pa. 1989)). The court may not, however, substitute its own judgment for that of the Plan administrator. *Id.*

“[W]hen an insurance company both funds and administers benefits, it is generally acting under a conflict that warrants a heightened form of the arbitrary and capricious standard of review.” *Pinto v. Reliance Std. Life Ins. Co.*, 214 F.3d 377, 378 (3d Cir. 2000). When applying a heightened arbitrary and capricious standard, district courts must use a “sliding scale” approach, “intensifying the degree of scrutiny to match the degree of the conflict.” *Id* at 379. This approach allows the court to “take notice of discrete factors suggesting that a conflict may have influenced the administrator's decision.” *Id.* The courts should consider not only the reasonableness of the result, but also the process by which the result was achieved. *Id.* at 393. “Suspicious events” and “procedural anomalies” raise the likelihood of self-dealing and move the review toward the stricter extreme of the arbitrary and capricious range. *Id.* at 394.

FINDINGS OF FACT¹

William Havens is a fifty-five year old male with an Associates Degree in Business. Def.'s Exhibit A at 85. Prior to working for Continental Financial Corporation (CNA), Havens worked for a family owned construction business. He also worked for Metropolitan Insurance as an auto and property inspector. Def.'s Exhibit A at 85. Havens began his employment with CNA 11 years ago. Def.'s Exhibit A at 85. He started as an auto appraiser, but soon became a Commercial Insurance Property Reinspector. Def.'s Exhibit A at 85. Havens' job was physically demanding. Def.'s Exhibit A at 274-77. He was required to drive long distances, climb ladders, and crawl on his hands and knees. Def.'s Exhibit A at 274-77.

On October 15, 1999, while traveling on business, Havens suffered an injury to his back when a hotel bed collapsed under him. Def.'s Exhibit A at 522. After his injury, the company employed Havens on a modified basis until August 4, 2000, when Havens began collecting workers' compensation benefits. Def.'s Exhibit A at 410; Def.'s Exhibit A at 257. Havens received workers' compensation benefits until October 13, 2000. Def.'s Exhibit A at 257. On November 1, 2000, Continental granted Havens request for Short Term Disability Benefits (STD). Def.'s Exhibit A at 257. At the expiration of his short term disability benefits, Havens applied for long term disability benefits.

CNA funded its long term disability plan through the purchase of a long term disability policy from Continental Assurance Company. The Plan granted Continental discretion to make benefit

¹The findings of fact and conclusions of law are made after applying a heightened arbitrary and capricious standard of review to the administrative record. Findings of fact and conclusions of law are necessary after a non-jury trial. Fed.R.Civ.P. 52(a); *see also Kosiba v. Merck & Co.*, 384 F.3d 58, 61 (3d Cir. 2004).

determinations. The Plan had a two-tier definition of “disability.” Under the Plan, a claimant was eligible for long term disability if disabled from his or her “own occupation” for 12 months.² After 12 months, a claimant’s long term disability benefits would continue only if the claimant was disabled from “any occupation.”³ Exhibit B Policy 10-11.

On August 27, 2001, Continental approved Havens claim for long-term disability benefits, finding Havens was disabled from performing his “own occupation.” Def.’s Exhibit A at 153. Consistent with the long term disability policy, the “own occupation” period of disability continued for 12 months. Exhibit B Policy 10-11. After August 2002, Havens would continue to receive long term disability benefits only if he remained disabled from “any occupation.” Exhibit B Policy 10-11.

In August 2002, Continental notified Havens his long term disability benefits would terminate on September 5, 2002, because Havens was not disabled from “any occupation.” Def.’s Exhibit A at 20. In reaching its decision, Continental considered Havens’ treating physicians’ reports, the results of a functional assessment tool, a functional capacity evaluation, a vocational expert’s opinion, and an independent medical examiner’s opinion.

² During the Elimination Period and the following 12 months, Injury or Sickness causes physical or mental impairment to such a degree or severity that You are:

- Continuously unable to perform the Material and Substantial Duties of Your regular occupation; and
- Not working for wages in any occupation for which You are or became qualified by education, training, or experience.

³ After the Monthly Benefit has been payable for 12 months, “Disability” means that Injury or Sickness causes physical or mental impairment to such a degree of severity that You are:

- Continuously unable to engage in any occupation of which you are or become qualified by education, training or experience; and
- Not working for wages in any occupation for which You are or become qualified by education, training or experience.

The record shows Continental considered the report of Havens' first treating physician, Dr. Leon DeMasi. Dr. DeMasi diagnosed Havens with degenerative disk disease of the spine exacerbated by trauma and degenerative joint disease of the spine exacerbated by trauma. Pl's Exhibit H 40- 41. He opined Havens' conditions were permanent and might become progressive. Pl's Exhibit H 40- 41.

Continental also considered the reports of Dr. Andrew Freese, Havens' neurosurgeon, and Dr. Marc. Cohen, Havens' functional capacity evaluator. Dr. Freese diagnosed Havens with a disc abnormality with nerve impingement, a herniated disk and a degenerated and desiccated disc. Def.'s Exhibit A at 304-6; Def.'s Exhibit A at 23. Dr. Freese arranged for Havens to complete a functional capacity evaluation (FCE), conducted by Dr. Cohen. Dr Cohen concluded Havens was unable to stoop, climb stairs, and sit or stand for longer than thirty minutes at a time, but Havens could walk, carry up to fifty pounds, balance, kneel, reach to the front, and handle objects with his hands and fingers. Def.'s Exhibit A at 304-10. Dr. Cohen stated Havens should not sit, stand, or drive for more than thirty minutes at a time, but that he could return to work for a maximum of four hours a day. Def.'s Exhibit A at 310.

Continental also sought and considered evidence supplied by its own doctors and experts. Dr. Menachem Meller conducted an independent medical evaluation (IME) of Havens. Dr. Meller concluded Havens' "work related injury is fully and completely resolved without any residuals." Def.'s Exhibit A at 45. He found Havens had no evidence of acute symptoms and that a significant component of Havens symptoms were related to anxiety. Def.'s Exhibit A at 476-86.

Continental also asked Havens' family physician to complete a functional assessment tool. Def.'s Exhibit A at 145. The functional assessment tool concluded Havens was fully ambulatory,

although not currently capable of performing work that was “primarily seated in nature” or involved lifting or more than minimal physical activity. Def.’s Exhibit A at 34, 145.

Finally, Continental considered the report of Vocational Expert Megan Victor. Def.’s Exhibit A at 34. Victor’s report concluded, based on Havens’ age, work history, education, geographic location and function, he could work in project/construction management, supervision-property inspection and sales- building materials. Def.’s Exhibit A at 34

After considering the evidence Havens and his physicians supplied, and the evidence Continentals experts supplied, Continental concluded Havens was not disabled from any occupation. Continental’s benefit denial letter stated, “based on your level of function with said restrictions, your age and education, as well as a labor market survey, you have the capacity to return to gainful work within the restrictions provided.” Def.’s Exhibit A at 30. In good faith, Continental gave Havens a 30 day good faith extension on its long term disability benefits.

Havens appealed Continental’s decision on October 22, 2002. Def.’s Exhibit A at 18. Havens included in his appeal an additional doctor’s report, MRI reports from September 12, 2000 and February 1, 2002, deposition testimony from his workers’ compensation hearing and documentation showing his Social Security benefit award. Def.’s Exhibit A at 18. On December 10, 2002, Continental rejected Havens’ appeal, based on a file review by two nurses:

“[W]e acknowledge that his test results do show abnormalities that would cause some limitations in his functional abilities. We further acknowledge that [Havens] would not be able to perform the material and substantial duties of his own occupation that included heavy lifting, bending and stooping, as previously stated in CNA’s letter dated 8/26/02. However, the evidence presented revealed that both Dr. Freese and Meller revealed that [Mr. Havens’] lower extremity strength and sensation was intact and Dr. Meller noted that [Mr. Havens] was able to move about without signs of discomfort. We also relied on the expertise of CNA’s vocational assessment that concluded that based on the evidence presented [Mr. Havens] would be able to perform any occupation and provided

a sample of these types of occupations. . . . Therefore, the evidence presented does not support a continuous functional impairment that would preclude [Mr. Havens] from performing low activity level occupations (any occupation).”

Def.’s Exhibit A at 7. Havens instituted this suit, claiming Continental’s decision he was not disabled from “any occupation” was not supported by the evidence and the termination of his long term disability benefits was arbitrary and capricious.

DISCUSSION

Continental had discretionary authority, and administered and funded the plan; therefore, a heightened arbitrary and capricious standard of review applies. *Abnathya*, 2 F.3d at 45. Under the sliding scale approach, this Court will scrutinize Continental’s decision with a low degree of scrutiny because there are no suspicious events, procedural anomalies, or bad faith evident in Continental’s review process. *Pinto*, 214 F.3d at 394.

This case turns on whether Continental was arbitrary and capricious in its interpretation of the Plan’s long term disability requirement. Under the Plan, long term disability benefits are payable if “[i]njury or [s]ickness causes physical or mental impairment to such a degree of severity that [y]ou are: [c]ontinuously unable to engage in any occupation of which you are or become qualified by education, training or experience; and [n]ot working for wages in any occupation for which [y]ou are or become qualified by education, training or experience.” Exhibit B Policy 10-11. Havens, therefore, was not eligible for long term disability benefits unless he was unable to engage in “any occupation” for which he was qualified.

Continental conducted a full review of Havens’ medical file before concluding Havens was not disabled from “any occupation.” It reviewed and relied on a variety of sources including, the opinion of a vocational expert, an independent medical examiner, and the reports of Havens’ treating

physicians. This Court finds Continental's decision to terminate Havens' long term benefits was consistent with the weight of the medical information available to it and was not arbitrary and capricious.

Havens' treating physicians indicated Havens suffered from a variety of significant medical problems. He was diagnosed with degenerative disk disease of the spine exacerbated by trauma, degenerative joint disease of spine exacerbated by trauma and disk abnormalities. Pl's Exhibit H 40-41; Def.'s Exhibit A at 304-6. One physician concluded Havens' conditions were permanent and might become progressive. Pl's Exhibit H 40. None of Havens' physicians, however, found his conditions rendered him totally disabled from any occupation.

Havens is fully ambulatory. He cannot do a job that requires him to stoop, climb stairs, or sit for a prolonged period, but he can do a job that requires him to walk, carry up to fifty pounds, balance, kneel, reach in front of him and handle items with his hands. Havens' independent medical exam (IME) concluded Havens had no evidence of acute symptoms and a significant component of Havens symptoms appeared to be related to anxiety.

Continental reasonably relied on its vocational expert, who determined Havens was disabled from his occupation as a Property Reinspector, but was not disabled from any occupation. The vocational expert concluded, based on Havens physical limitations, work history and a labor market survey, that he was capable of working in "project/construction management, supervision-property inspection and sales-building materials" jobs.

Havens argues Continental did not give any weight to the fact that he qualified for Social Security benefits. A Social Security award (SSA), however, is not binding on a plan administrator. *Dorsey v. Provident Life and Accident Ins. Co.*, 167 F. Supp. 2d 846, 856 n.11 (E.D. Pa. 2001). "A

plan administrator's decision on ERISA disability that differs from that of the SSA is not arbitrary and capricious provided it is reasonable and supported by substantial evidence.” *Russell v. Paul Revere Life Ins. Co.*, 148 F. Supp. 2d 392, 409 (D. Del. 2001)(citations omitted). Havens’ argument that Continental should have given his SSA more weight, therefore, fails.

Havens also argues Continental did not give adequate weight to the opinion of his treating physician. “[P]lan administrators are not obliged to accord special deference to the opinions of treating physicians.” *Black & Decker Disability Plan v. Nord*, 538 U.S. 822, 825 (2003). In *Black & Decker*, the Supreme Court stated, “plan administrators . . . may not arbitrarily refuse to credit a claimant's reliable evidence, including the opinions of a treating physician. But, . . . courts have no warrant to require administrators automatically to accord special weight to the opinions of a claimant's physician; nor may courts impose on plan administrators a discrete burden of explanation when they credit reliable evidence that conflicts with a treating physician's evaluation.” *Id.* at 1972. Continental, therefore, had no obligation to afford special weight to Havens’ treating physicians.

Continental’s decision to terminate Havens’ long term benefits was consistent with the weight of the medical information available to it. Continental thoroughly considered a variety of medical sources before deciding Havens was not disabled from any occupation. Accordingly, this Court concludes the decision to terminate Haven’s benefits was not arbitrary and capricious and will enter an appropriate order.