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

WALTER MARCINIAK	:	
	:	CIVIL ACTION
v.	:	
	:	NO. 04-2156
PRUDENTIAL FINANCIAL INSURANCE COMPANY OF AMERICA	:	

MEMORANDUM AND ORDER

Juan R. Sánchez, J. **August 29, 2005**

Walter Marciniak claims Prudential Financial Insurance Company of America (Prudential) denied his claim for extended long-term disability benefits without substantial evidence, violating the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. §§ 1001 *et seq*. Prudential counters Marciniak is not disabled from "any occupation" as the plan requires for benefits. This Court will affirm Prudential's decision because it was neither arbitrary nor capricious.

FACTS

Walter Marciniak is a sixty year old male with hypertension, coronary artery disease and peripheral vascular disease. Marciniak received short term and long term disability benefits from his employer, Xerox, from May 2001, when heart surgery prevented his continued work as an outside sales and supplies account manager, until October 2003, when his company benefits expired.

In October 2003, Marciniak left Xerox, and applied for long term benefits through a Xerox plan administered by Prudential. Marciniak's application for benefits included a letter from his doctor, Dr. Robert Barnes, which stated Marciniak's prognosis for returning to work was poor and

Marciniak's functional abilities were sedentary due to his severe claudication.[1] Marciniak also informed Prudential he was diagnosed with coronary artery disease, hypertension, peripheral vascular disease, left renal artery stenosis, and stent of the left renal artery and that he underwent a left heart catheterization, and triple bypass surgery in August 2001.

Under Prudential's policy, Marciniak was only eligible for benefits if he was "totally disabled." To meet the definition of total disability under the plan Marciniak was required to meet each of the following criteria:

> (1) Due to Sickness or Accidental Injury you are not able to perform, for wage or profit, the material and substantial duties of any gainful occupation for which you are reasonably fitted by your education, training, or experience, or other work, which the Employer has made available to you.
> (2) You are not working at any job for wage or profit. This does not apply to a job with another employer, which began prior to your Total Disability.
> (3) You are under the regular care of a Doctor

Prudential reviewed Marciniak's claim by consulting with its Medical Director, Dr. Albert Kowalski. Prudential and Dr. Kowalski determined Marciniak was not disabled from any occupation because Marciniak could perform sedentary work. Prudential denied Marciniak's claim on October 6, 2003.

Marciniak appealed Prudential's decision. In his appeal he included a letter from his vascular surgeon, Dr. Goodreau, which stated Marciniak's ambulatory discomfort was a permanent source of disability. On December 23, 2003, Prudential sent a follow up letter to Dr. Goodreau, asking Dr. Goodreau to cite the medical evidence he relied on in determining Marciniak was disabled. Dr. Goodreau responded that Prudential's request was beyond the scope of his care and referred Prudential to a physical medicine or rehabilitation specialist. Prudential also sent Marciniak a letter

[1] Claudication is pain in the calf, thigh, or buttock which occurs during exertion, such as walking, and is relieved by rest.

stating Dr. Goodreau's letter was insufficient because it focused on Marciniak's ability to perform his "own occupation" and asked Marciniak to furnish proof he was disabled from "any" occupation. Marciniak did not provide additional medical documentation and on February 4, 2004 Prudential denied Marciniak's appeal. Thereafter, Marciniak filed this action.

DISCUSSION

Summary judgment is appropriate when there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. Fed.R.Civ.P. 56. In a motion for summary judgment, the moving party bears the burden of proving no genuine issue of material fact is in dispute. *Matsushita Elec. Industrial Co. v. Zenith Radio Corp.*, 475 U.S. 574, 587, 106 S.Ct. 1348 (1986). After reviewing all of the evidence in the record, the Court must draw all reasonable inferences in favor of the nonmoving party. *Id*. "This does not require a court to turn a blind eye to the weight of the evidence . . . ." *Big Apple BMW, Inc. v. BMW of North America, Inc.*, 974 F.2d 1358, 1363 (3d Cir. 1992) (citing *Matsushita*, 475 U.S. at 586). Rather, "when the moving party has carried its burden under Rule 56(c), its opponent must do more than simply show that there is some metaphysical doubt as to the material facts." *Matsushita*, 475 U.S. at 586. The nonmoving party must "come forward with specific facts showing there is a genuine issue for trial." *Matsushita*, 475 U.S. at 587 (citing Fed.R.Civ.P. 56(e)).

A motion for summary judgment will not be denied because of the mere existence of some evidence in support of the nonmoving party. The nonmoving party must present sufficient evidence for a jury to reasonably find for them on that issue. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 249 (1986). "Where the record taken as a whole could not lead a rational trier of fact to find for the nonmoving party, there is no genuine issue for trial." *Matsushita* 475 U.S. at 587.

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). 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.

Prudential had discretionary authority, and administered and funded the plan; therefore, an

arbitrary and capricious standard of review applies. *Abnathya*, 2 F.3d at 45. Because nothing in Prudential's handling of Marciniak's file suggests a suspicious event or procedural anomaly, we apply the lowest level of scrutiny to Prudential's decision.

The three physicians, Marciniak's two treating physicians and Prudential's medical director, all agree Marciniak's medical conditions restrict him to sedentary occupations. Marciniak's treating physicians both found Marciniak disabled from his own occupation of outside sales and account manager but neither offered an opinion regarding his ability to perform any occupation.[2] Prudential's medical director found Marciniak capable of sedentary work, "provided he can change positions at will to accommodate his lower extremity, claudication symptoms. None of his other conditions would prevent sedentary work activity." Prudential claim file, page 4. Marciniak was not eligible for extended long term disability benefits unless he was unable to engage in any gainful employment he was reasonably fitted by training or experience. Based on Dr. Kowalski's conclusion Marciniak could perform sedentary work, Prudential's vocational expert determined Marciniak could work as an account manager, technical services representative and district sales manager. The vocational expert selected alternate positions based upon a broad list of skills he determined were transferrable to other positions, including "dealing with people, time management, decision making, and

[2]Marciniak's treating physician, Dr. Barnes, stated Marciniak's prognosis for return to work was "poor." His vascular surgeon Dr. James Goodreau stated, "[i]f [Marciniak's] employment . . . required a lot of traveling and a lot of walking, which indeed it did, he was unable to perform those tasks due to his vascular disease." Dr. Goodreau also said Marciniak could not be employed in any position that required any amount of walking, and that Marciniak's blood pressure was uncontrolled and his multiple medications caused a variety of side effects which adversely impacted his lifestyle. Dr. Goodreau concluded by stating Marciniak's "ambulatory discomfort, which is his major clinical problem from my perspective, continues to be a major problem that we are attempting to address but, at the present time, still represents a source of permanent disability."

keyboarding and computer skills."[3] An appropriate order will follow.

[3] The decision of the Social Security Administration granting Marciniak disability benefits is not controlling although it is a factor this Court considers. *Edgerton v. CNA Ins., Inc.*, 215 F. Supp.2d 541, 549 (E.D. Pa. 2002).

IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF PENNSYLVANIA

WALTER MARCINIAK	:	
	:	CIVIL ACTION
v.	:	
	:	NO. 04-2156
PRUDENTIAL FINANCIAL INSURANCE	:	
COMPANY OF AMERICA	:	

ORDER

AND NOW, this 29th day of August, 2005, it is ORDERED that Judgment is entered in favor of Prudential Financial Insurance Company of America. The clerk is directed to mark the case closed.

BY THE COURT:

\s\ Juan R.Sánchez
Juan R.Sánchez, J.