

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

LEO W. LANDAU	:	CIVIL ACTION
	:	
v.	:	
	:	
RELIANCE STANDARD LIFE	:	
INSURANCE COMPANY	:	NO. 98-903

MEMORANDUM AND ORDER

YOHN, J. January , 1999

Dr. Leo Landau (“Landau”) filed this action primarily to recover long term disability benefits allegedly owed him, and to obtain an order clarifying his entitlement to future disability benefits. Defendant, Reliance Standard Life Insurance Co. (“Reliance”), issued a Group Long Term Disability Insurance policy (the “Policy”) to Landau’s employer, an affiliate of the Hospital Service Association of Northeastern Pennsylvania. Landau’s claims are governed by the Employee Retirement Income Security Act of 1974, 29 U.S.C. § 1132 (“ERISA”). Before this court is Reliance’s motion for partial summary judgment which seeks to resolve what standard will control this court’s review of Reliance’s decision to deny long term disability benefits to Landau, and what evidence this court will consider in reviewing that decision. After considering an excessive number of the parties’ submissions, I conclude that Reliance’s motion will be granted.

FACTUAL BACKGROUND

In October 1995, Landau became a full-time employee of Eastern Physician’s Group,

P.C., an affiliate of the Hospital Service Association of Northeastern Pennsylvania (“NEPA”), and as such, was covered by NEPA’s Group Long Term Disability Insurance Policy with Reliance. See Verification of Landau (“Landau Aff.”) (attached to Plaintiff’s Mem. of Law in Opposition to Defendant’s Mot. for Partial Summ. Judgment (“Opposition”) as Exhibit A). Landau suffered a heart attack on August 17, 1996, and underwent quintuple coronary bypass surgery. See id. After the operation, Landau also developed numbness, or paresthesia, in his fingers, toes and chest. See id.

In October 1996, Landau submitted a long term disability claim to Reliance and provided supporting documentation from several treating physicians, and from the hospital where his surgery was performed. See id., at 2. After reviewing this information, Reliance denied Landau’s claim for benefits on April 15, 1997, asserting that Landau was not “totally disabled” within the meaning of the Policy. See Letter from Wendy McCulley to Landau, at 2 (Apr. 15, 1997) (attached to Complaint as Exhibit 11). Landau appealed Reliance’s decision, which was upheld by Reliance’s Quality Review Unit, on July 17, 1997. See Letter from Peter Schiller to Andrew Fichter, at 4 (July 17, 1997) (attached to Complaint as Exhibit 12). Reliance reaffirmed its decision to deny benefits to Landau on September 9, 1997, and informed him that Reliance had reached its “final determination in this matter.” Letter from Peter Schiller to Andrew Fichter, at 4 (Sept. 9, 1997) (attached to Complaint as Exhibit 15). On February 28, 1998, Landau filed this suit, claiming that Reliance had improperly denied him benefits, in violation of 29 U.S.C. § 1132 (a)(1)(B), and that Reliance had failed to provide him with a description of additional evidence it required in order to evaluate his claim for disability based on paresthesia, in violation of 29 U.S.C. § 1133(1).

SUMMARY JUDGMENT STANDARD

Summary judgment is to be granted “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 judgment as a matter of law.” Fed. R. Civ. P. 56 (c). The court should not resolve disputed factual issues, but rather, should determine whether there are factual issues which require a trial. See Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 247-48 (1986). If no factual issues exist and the only issues before the court are legal, then summary judgment is appropriate. See Sempier v. Johnson & Higgins, 45 F.3d 724, 727 (3d Cir.), cert. denied, 515 U.S. 1159 (1995). If, after giving the nonmoving party the “benefit of all reasonable inferences,” id. at 727, 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 Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 587 (1986), and the motion for summary judgment should be granted.

The record before this court reveals no contested factual issues that are material to the current dispute, and the only remaining issues, what standard of review applies to Reliance’s denial of disability benefits, and what evidence should be considered when reviewing that denial, are legal issues for the court to decide. See Mitchell v. Eastman Kodak Co., 113 F.3d 433, 437 (3d Cir. 1997) (standard of review for denial of benefits under ERISA may be determined on summary judgment); Cannon v. Vanguard Group, Inc., No. 96-5495, 1998 WL 310663, at *2 (E.D. Pa. June 11, 1998) (same). Summary judgment is, therefore, appropriate.

DISCUSSION

A. The Standard for Reviewing a Denial of Benefits Under ERISA.

Reliance contends that its determination that Landau is not entitled to long term disability benefits should only be overturned if it was arbitrary or capricious. See Defendant's Mem. of Law in Support of its Mot. for Partial Summ. Judgment ("Defendant's Mem."), at 6. Landau argues, to the contrary, that this court is entitled to conduct a de novo review of Reliance's decision. See Opposition, at 6-7.

ERISA does not specify a standard of review that the courts should use to evaluate the denial of benefits by a plan administrator. The Supreme Court, however, 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). De novo review of plan administrators' factual determinations, as well as their interpretations of plan language, "is appropriate if the plan does not grant the plan administrator discretion to make those determinations." Mitchell, 113 F.3d at 438. If the plan does grant such authority to the plan administrators, their benefit determinations are reviewed under an arbitrary and capricious, or an abuse of discretion, standard.¹ See Abnathya v. Hoffmann-La Roche, Inc., 2 F.3d 40, 45 (3d Cir. 1993).

¹ A heightened arbitrary and capricious standard applies if the plan administrator has a conflict of interest arising from its dual role as the policy writer and the ERISA fiduciary. See Perri v. Reliance Standard Life Ins. Co., No. 97-1369, 1997 WL 476386, at * 5 (E.D. Pa. Aug. 19, 1997). As neither party has briefed the issue of whether Reliance has a conflict of interest, or provided information that Reliance has such a conflict, this court will not consider the necessity of applying a heightened standard at this time.

To determine whether a plan grants discretion over benefits determinations to plan administrators, courts first examine the language of the plan. If the plan's language is not determinative, the court may also consider "all the circumstances and such other evidence of the intention of the [plan's creator] with respect to the [plan]." Heasley v. Belden & Blake Corp., 2 F.3d 1249, 1256 (3d Cir. 1993) (quoting Firestone, 489 U.S. at 112). Thus, contrary to Landau's assertion here, a plan's grant of discretion may be either express or implied, and need not constitute a "clear and unequivocal statement of discretion." Heasley, 2 F.3d at 1256; Luby v. Teamsters Health, Welfare & Pension Trust Funds, 944 F.2d 1176, 1180 (3d Cir. 1991) ("Discretionary power may be implied by a plan's terms even if not granted expressly."). Nonetheless, a grant of "general administrative power" to the plan administrator is insufficient to demonstrate that discretion over benefits determinations has been bestowed upon the plan administrator. See Luby, 944 F.2d at 1180-81.

Reliance, the administrator of the Policy, relies upon two provisions of the Policy to establish the grant of discretion justifying the application of the arbitrary and capricious standard of review to its denial of benefits to Landau. See Defendant's Mem., at 4. The Insuring Clause of the Policy provides:

- We will pay a Monthly Benefit if an insured:
- (1) is Totally Disabled as the result of a Sickness or Injury covered by this Policy;
 - (2) is under the regular care of a Physician;
 - (3) has completed the Elimination Period; and
 - (4) submits satisfactory proof of Total Disability to us.

Policy, at 7.0 (attached to Defendant's Mem. as Exhibit A). Additionally, the Payment of Claims provision states that "[w]hen we receive written proof of Total Disability covered by this Policy, we will pay any benefits due." Policy, at 4.0. Though Reliance claims that both of these

provisions establish that benefits determinations are discretionary, its argument focuses on the requirement that claimants must provide “satisfactory proof . . . to us.”

Both the Third Circuit, in an unpublished opinion,² and the Sixth Circuit have concluded that the Reliance Policy at issue here grants discretion to Reliance to make benefits determinations. See Pinto v. Reliance Standard Life Ins. Co., No. 97-5297, at 7 (3d Cir. May 28, 1998) (attached to Defendant’s Mem. as Exhibit B); accord Yeager v. Reliance Standard Life Ins. Co., 88 F.3d 376, 381 (6th Cir. 1996). In reaching its conclusion, the Sixth Circuit reasoned that “[a] determination that evidence is satisfactory is a subjective judgment that requires a plan administrator to exercise [its] discretion.” Yeager, 88 F.3d at 381. Other courts evaluating language similar to that in this Reliance Policy have also concluded that a requirement that benefit applicants provide “satisfactory proof” to a plan administrator vests discretionary authority in that administrator to make benefit determinations. See Perez v. Aetna Life Ins. Co., 150 F.3d 550, 555, 558 (6th Cir. 1998) (en banc) (arbitrary and capricious standard applies when insurer has “the right to require as part of the proof of claim satisfactory evidence . . . that [the claimant] has furnished all required proofs for such benefits”); Snow v. Standard Ins. Co., 87 F.3d 327, 330 (9th Cir. 1996) (arbitrary and capricious standard applies when plan “provides that there will be no benefit payment unless [the administrator] is presented with what it considers to be satisfactory written proof of the claimed loss”); Patterson v. Caterpillar, Inc., 70 F.3d 503, 505

² Though an unpublished opinion of the Third Circuit is not binding precedent upon this court, it is extremely persuasive, especially when it addresses the precise issue before this court. See Third Circuit Internal Operating Procedure 5.8. In the Pinto appeal, though the parties did not dispute the application of an arbitrary and capricious standard of review, the Court of Appeals specifically found that “the provision of the Plan requiring that a claimant provide ‘satisfactory proof’ of disability provides the necessary discretion” to justify arbitrary and capricious review. See Pinto, at 7 (citing Luby, 944 F.2d at 1180).

(7th Cir. 1995) (arbitrary and capricious standard applies when plan will pay benefits only when its administrator receives “such notice, and such due proof, as shall be from time to time required of such disability”); Walker v. Smithkline Beecham & Chemco, No. 96-5273, 1997 WL 137331, at * (E.D. Pa.), aff’d, 133 F.3d 912 (3d Cir. 1997) (arbitrary and capricious standard applies when plan provides that “separation pay may be granted to . . . [an] employee”); Scarinci v. Ciccio, 880 F. Supp. 359, 364 (E.D. Pa. 1995) (arbitrary and capricious standard applies when plan requires employee to “furnish the Benefit Claims & Appeal committee [with] ‘satisfactory’ evidence of disability”).

In arguing that these decisions should not control this court’s disposition of the standard of review inquiry, Landau urges us to follow two decisions of the Eastern District of Pennsylvania, and one of the Eighth Circuit, which applied a de novo standard of review, and argues that the “satisfactory proof” language “is at best a grant of administrative authority to Reliance empowering it to determine *only* whether the proof submitted by the insured is sufficient to make a decision regarding total disability.”³ Opposition, at 12. Taking Landau’s second argument first, this court concludes that Landau has misinterpreted the Policy. The

³ Landau also asserts that because the Policy does not clearly grant discretion to the administrator, the rule of *contra proferentem* directs that the Policy does not contain a grant of discretion, and thus, that a de novo standard of review applies. See Opposition, at 13-14. This rule, which resolves ambiguities in insurance policies against the insurance company as the drafter of the policy, only applies, however, when there are ambiguities in the policy. See Heasley, 2 F.3d at 1257 (applying rule when policy was ambiguous about whether determining if a proposed treatment was “experimental” was part of determining whether that treatment was “medically necessary”). The rule does not apply to the present Policy because its terms are not ambiguous. The Eighth Circuit’s contrary interpretation of the policy’s terms flows not from ambiguity in the policy language, but rather from a different standard for evaluating grants of discretion than that applied by the Third Circuit. Cf., Brown v. Seitz Foods, Inc. Disability Benefit Plan, 140 F.3d 1198, 1200 (8th Cir. 1998); Heasley, 2 F.3d at 1256.

Policy requires that a benefits claimant “submit[] satisfactory proof of Total Disability to us;” in other words, it requires enough proof to convince the plan administrator that the claimant is actually totally disabled. The Policy does not provide, as Landau contends, that a claimant must only submit evidence that would enable some decision maker other than Reliance to determine that a claimant was disabled. See Yeager, 88 F.3d at 381 (“there is no reason to believe that someone other than the party that received the proof would make a determination regarding its adequacy”).

With respect to Landau’s first argument, he argues that this court should apply the decisions in Brown, 140 F.3d at 1200; Cannon, 1998 WL 310663, at *4; and Clouse v. Philadelphia, Bethlehem & New England Railroad Co., 787 F. Supp. 93, 96 (E.D. Pa. 1992), to conclude that a de novo standard is appropriate here. In Clouse, the court held that despite plan language authorizing the administrator “to interpret and construe the provisions of the Plan, to determine eligibility to participate in the Plan” and “to decide such questions as may arise in connection with the operation of the Plan,” a de novo standard should apply to the administrator’s decisions because of “the absence of terms like ‘discretion’, ‘good faith’ or their cognates.” Id. at 96. Clouse’s validity is severely undermined, however, by a Third Circuit opinion which interpreted identical language as providing discretionary authority to a plan administrator and justifying the application of an arbitrary and capricious standard. See Nazay v. Miller, 949 F.2d 1323, 1335 (3d Cir. 1991); cf. Abnathya, 2 F.3d at 45 (finding a clear grant of discretion in plan language that gave the administrator “power to interpret and construe the Plan . . . and to determine all questions relating to eligibility . . . for disability income benefits”).

Cannon is distinguished in a similar manner. It is clear that the Cannon court did not

have the benefit of the Third Circuit’s unpublished opinion in Pinto, which was issued on May 28, 1998, just two weeks before Cannon was issued on June 11, 1998. Moreover, in Cannon, the court held that a plan which provided that “[b]enefits will be paid monthly immediately after [w]e receive due written proof of loss,” “confers only de minimis discretion.” Cannon, 1998 WL 310663, at *2-3. That provision was contained in a section of Vanguard’s policy describing when claims would be paid, but no similar requirement of “due” proof appeared in the section of the policy describing the claimant’s duty to provide information concerning the loss to the plan administrator. See id. at *2. In Reliance’s Policy, however, the “satisfactory proof” requirement appears in the Insuring Clause itself, and thus indicates that claimants are not eligible for benefits unless they persuade Reliance’s administrators that they are totally disabled.

Brown is similarly inapplicable to our analysis because, in reaching its conclusion that decisions under a plan with language identical to the Cannon plan should be reviewed de novo, it concluded that “express discretion-granting language” is required to invoke the arbitrary and capricious standard of review. This holding is directly contrary to the Third Circuit’s holding in Luby that discretion may be implied in a policy. See Brown, 140 F.3d at 1200; Luby, 944 F.2d at 1180; see also supra, n. 3.

Given the weight of authority in this, and other circuits, and this court’s reading of Reliance’s policy, an arbitrary and capricious standard of review will apply to Reliance’s decision to deny disability benefits to Landau.

B. Scope of Evidentiary Review

As an arbitrary and capricious standard of review will be applied to evaluate Reliance’s decision to deny benefits to Landau, the court will only examine documents that were part of the

record when Reliance made its final benefits determination. As even Landau concedes, the court is limited to considering the evidence before the plan administrator when it considers whether that administrator's decision was arbitrary and capricious. See Opposition, at 16; Mitchell, 113 F.3d at 440 (“the relevant record on appeal is the evidence before the Administrator at the time of his final denial”); Abnathya, 2 F.3d at 48, n.8 (on arbitrary and capricious review, excluding evidence that was not submitted to the plan administrators before it reached a final decision to discontinue benefits).

CONCLUSION

Because the Policy gives Reliance the discretion to determine claimants' eligibility for long term disability benefits, the court will review a denial of Policy benefits under an arbitrary and capricious standard. In conducting this review, the court will only consider evidence that was before Reliance's claims department when it decided to deny benefits to Landau. Reliance's Motion for Partial Summary Judgment will, therefore, be granted.

An appropriate order follows.

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v.	:	
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RELIANCE STANDARD LIFE	:	
INSURANCE COMPANY	:	NO. 98-903

ORDER

AND NOW, this _____ day of January, 1999, after consideration of Defendant's motion for partial summary judgment, the plaintiff's reply, and the various responses thereto, IT IS ORDERED that Defendant's Motion for Partial Summary Judgment is GRANTED.

William H. Yohn, Jr., J.