

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

OCT 15 2018

FOR THE NINTH CIRCUIT

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

PETRA HENG,

Plaintiff-Appellant,

v.

METROPOLITAN LIFE INSURANCE
COMPANY,

Defendant-Appellee.

No. 17-16726

D.C. No. 3:16-cv-04136-EMC

MEMORANDUM*

Appeal from the United States District Court
for the Northern District of California
Edward M. Chen, District Judge, Presiding

Submitted October 11, 2018**

Before: TROTT, SILVERMAN, and TALLMAN, Circuit Judges.

Petra Heng appeals pro se from the district court's summary judgment in her action under the Employee Retirement Income Security Act of 1974 ("ERISA") for accidental death and dismemberment ("AD&D") benefits. We have jurisdiction under 28 U.S.C. § 1291. We review de novo. *Tremain v. Bell Indus., Inc.*, 196

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

** The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

F.3d 970, 975 (9th Cir. 1999). We affirm.

The district court properly granted summary judgment because Heng failed to raise a genuine dispute of material fact as to whether defendant incorrectly denied AD&D benefits. *See Abatie v. Alta Health & Life Ins. Co.*, 458 F.3d 955, 962-63 (9th Cir. 2006) (en banc) (on de novo review, the district court “simply proceeds to evaluate whether the plan administrator correctly or incorrectly denied benefits;” this court reviews de novo the district court’s application of the standard of review to decisions by fiduciaries in ERISA cases, and for clear error the underlying findings of fact). As appellant conceded in district court in response to Met Life’s motion for summary judgment, her husband Thomas was “no longer co-employed by Tri Net after June 30, 2012.” Accordingly, the contract on which appellant relies no longer covered her husband, either on July 1, 2012 or July 25, 2012 when he was discovered deceased. The conversion option rights in the contract, which were never exercised, unambiguously related only to life insurance coverage, not to AD&D.

We do not consider matters not specifically and distinctly raised and argued in the opening brief, or arguments and allegations raised for the first time on appeal. *See Padgett v. Wright*, 587 F.3d 983, 985 n.2 (9th Cir. 2009).

AFFIRMED.