NOT FOR PUBLICATION

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

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

ALICE MCBURNIE, Plaintiff-Appellant, v. LIFE INSURANCE COMPANY OF NORTH AMERICA, a Pennsylvania corporation and DOES, 1 to 10, inclusive, Defendants-Appellees.	No. 17-55915 D.C. No. 5:16-cv-01250-JGB-KK MEMORANDUM*

Appeal from the United States District Court
for the Central District of California
Jesus J. Bernal, District Judge, Presiding

Argued and Submitted February 5, 2019
Pasadena, California

Before: WARDLAW and BEA, Circuit Judges, and DRAIN,** District Judge.

Plaintiff–Appellant, Alice McBurnie ("McBurnie"), appeals the decision of the United States District Court for the Central District of California denying her long-term disability benefits ("LTD"). McBurnie

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

** The Honorable Gershwin A. Drain, United States District Judge for the Eastern District of Michigan, sitting by designation.

submitted an LTD claim to Defendant/Appellee Life Insurance Company of North America ("LINA") under her employee welfare benefit plan after she suffered a lower back injury at her former place of employment. LINA approved benefits to McBurnie under the policy's "own occupation" standard of disability. Two years later, the policy's "any occupation" standard of disability took effect. LINA denied McBurnie benefits under the "any occupation" standard, finding that she could perform sedentary work. McBurnie internally appealed LINA's claim decision twice; LINA denied her appeal on both occasions. On appeal to the federal district court, the court ruled in favor of LINA that McBurnie was not entitled to LTD. On appeal to this court, McBurnie claims that the district court erred in denying her LTD. We have jurisdiction pursuant to 28 U.S.C. § 1291. We affirm.

We review the district court's factual findings for clear error. *Withrow v. Halsey*, 655 F.3d 1032, 1035 (9th Cir. 2011). "The clear error standard is significantly deferential" and requires the reviewing court to have a "definite and firm conviction that a mistake has been committed" before reversal is warranted. *Fischer v. Tucson Unified Sch. Dist.*, 652 F.3d 1131, 1136 (9th Cir. 2011) (quoting *Cohen v. U.S. Dist. Court for N. Dist. Cal.*, 586 F.3d 703, 708 (9th Cir. 2009)). We may have a "definite and firm conviction" that the district court committed reversible error only if its factual findings were

illogical, implausible, or "without support in inferences that may be drawn from the facts in the record." *United States v. Hinkson*, 585 F.3d 1247, 1262 (9th Cir. 2009) (en banc). Indeed, we may not reverse the district court if the district court's findings are plausible considering the entire record, "even if we would have weighed the evidence differently." *Lewis v. Ayers*, 681 F.3d 992, 998 (9th Cir. 2012).

First, the district court properly considered McBurnie's subjective complaints of severe back pain. McBurnie cites to no binding authority that requires LINA or the district court to consider her subjective complaints of pain. But even if such a requirement exists, here, the district court recognized McBurnie's subjective complaints of pain. However, despite her subjective complaints of back pain, McBurnie's treating physicians stated she could perform sedentary work with restrictions. The district court did not clearly err when it concluded that it could not "come up with its own medical conclusions as to [McBurnie's] limitations to supersede specific and express findings by physicians who examined her."

Next, the district court did not clearly err in its determination that LINA properly conducted its Transferable Skills Analysis ("TSAs"). As part of its TSAs, LINA must determine whether McBurnie can perform "any occupation." The "any occupation" standard is not demanding. *McKenzie v.*

Gen. Tel. Co. of Cal., 41 F.3d 1310, 1317–18 (9th Cir. 1994). We concluded in *McKenzie* that it is sufficient to show that an employee has the capacity to perform some job for which she is qualified or can reasonably become qualified. *Id.* at 1317; *see also Pannebecker v. Liberty Life Assurance Co. of Boston*, 542 F.3d 1213, 1220 (9th Cir. 2008) (finding that the benefit plan did not require the employer to specifically identify a job with a reasonably substantial income). Here, LINA identified three jobs McBurnie could perform or reasonably become qualified to perform. Thus, the district court did not clearly err in determining LINA properly conducted its TSAs.

The district court did not commit clear error when it determined that McBurnie is not disabled under the "any occupation" standard. The district court reasonably afforded greater weight to the opinions of the physicians who directly examined McBurnie during multiple visits over extended periods of time, Drs. Bergey and Sofia. The court properly discounted the opinions of the peer review doctors who did not personally examine McBurnie, Dr. Karande and Dr. Rea.

McBurnie's treating physicians concluded that she is able to work with restrictions. Dr. Sofia's December 28, 2015 report stated that McBurnie had the residual functional capacity to participate in vocational rehabilitation and that she could be retrained for a different job. Dr. Bergey did not state in

any of his reports that McBurnie cannot perform a sedentary job. The opinions of Drs. Alpern, Johnson, and Roger—which described McBurnie as "totally disabled"—do not rebut the conclusions of Drs. Bergey and Sofia because they failed to explain how McBurnie's condition prevented her from performing sedentary work. Moreover, none of McBurnie's treating physicians gave her sitting restrictions, a fact to which McBurnie concedes.

Lastly, LINA's September 3, 2014 denial letter meets the requirements that LINA engage in meaningful dialogue with McBurnie. Engaging in meaningful dialogue requires a claims administrator to provide the beneficiary with "[t]he specific reason or reasons for the adverse determination." 29 C.F.R. § 2560.503-1(g)(1)(i). The claims administrator must provide "[a] description of any additional material or information" that is "necessary" to "perfect the claim," and do so "in a manner calculated to be understood by the claimant." 29 C.F.R. § 2560.503-1(g)(1); *Saffon*, 522 F.3d at 870.

LINA issued its first denial letter to McBurnie on September 3, 2014. The letter quoted the definition of disability under the "any occupation" standard. It further included a section entitled "How Was the Claim Decision Reached." This section described what information LINA used to reach its decision, including the February 1, 2012 report of Dr. Bergey, the February

22, 2012 evaluation of Dr. Sofia, and a TSA identifying several jobs McBurnie was able to perform given her limitations. The letter described to McBurnie in specific detail the reasons for denying her LTD claim. It concluded by informing McBurnie that she could submit additional medical records, test results, and therapy notes for the period from September 30, 2012 onward. It also informed McBurnie that she could submit medical records "that depict her functional abilities." LINA's denial letter fulfills the statutory requirement that it include "[a] description of any additional . . . information necessary . . . to perfect the claim." 29 C.F.R. § 2560.503-1(g)(1)(iii). The letter therefore meets the requirements of meaningful dialogue.

AFFIRMED.