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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

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|-----------------------------|---|---------------------------------------|
| GEORGE A. HINSHAW, |) | Case No. CV 14-06157 DDP (PLAx) |
| |) | |
| Plaintiff, |) | ORDER GRANTING DEFENDANT UNUM |
| |) | LIFE INSURANCE COMPANY OF |
| v. |) | AMERICA'S MOTION FOR SUMMARY |
| |) | JUDGMENT AND DENYING PLAINTIFF |
| UNUM LIFE INSURANCE COMPANY |) | GEORGE A. HINSHAW'S MOTION FOR |
| OF AMERICA, |) | SUMMARY JUDGMENT |
| |) | |
| Defendant. |) | [Dkt. Nos. 22, 30] |
| |) | |

This is an action for long-term disability benefits pursuant to the Employee Retirement Income Security Act of 1974 ("ERISA"), 29 U.S.C. § 1001 et seq. Plaintiff George A. Hinshaw ("Hinshaw"), proceeding pro se, contests the termination of his long-term disability benefits by Defendant Unum Provident Life Insurance Company of America ("Unum"). Presently before the Court are Hinshaw and Unum's cross-motions for summary judgment. (See Dkt. Nos. 22, 30.) Having considered the parties' submissions and heard oral argument, the Court GRANTS Defendant Unum's motion, DENIES Plaintiff Hinshaw's motion, and adopts the following order.

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1 **I. BACKGROUND**

2 Hinshaw was working as a cable television installer in 2005,
3 when he was involved in a car accident while on the job.
4 (Administrative Record ("AR") 79, 85.) As a result of the
5 accident, he had bad back pain and persistent lumbar/spine issues,
6 and he submitted a claim for long-term disability ("LTD") benefits
7 to Unum in December 2005. (AR 79-85.) In August 2006, After
8 investigation that included review of Hinshaw's medical records and
9 evaluation by a doctor, Unum decided that Hinshaw qualified for LTD
10 benefits and started monthly payments. (AR 203.)

11 Under the terms of Unum's LTD Plan, the first two years of
12 payments are automatic once the employee has been deemed
13 "disabled." (AR 1806.) After this, Unum must determine if the
14 insured remains disabled and thus eligible for continued LTD
15 benefits. (Id.) To qualify as disabled, the insured must show
16 that by reason of his disability, he "cannot perform each of the
17 material duties of his regular occupation and, after 24 months, the
18 insured cannot perform each of the material duties of any gainful
19 occupation for which he is reasonably fitted by training, education
20 or experience." (Id.)

21 The initial 24 month period would have ended for Hinshaw in
22 December 2007. In a June 11, 2007 letter to Hinshaw, Unum
23 indicated that it did not anticipate a change in his disability or
24 medical status and therefore extended its approval of his benefits
25 through the year 2024. (AR 924-26.) The letter stated that this
26 approval was subject to verification from time to time, whereupon
27 Unum would ask Hinshaw to provide Unum with updated medical
28 information or other documentation. (Id.) Unum also required that

1 Hinshaw provide Unum with notice should Hinshaw be able to return
2 to work in any capacity. (Id.) This was consistent with the terms
3 of Unum's LTD Plan, which required that for monthly payments to
4 continue, the insured should provide proof, upon request, of
5 continued disability and regular attendance of a physician. (AR
6 1810.)

7 Unum periodically requested more documentation from Hinshaw
8 after 2007, which Hinshaw provided. (AR 966-1206.) In June 2009,
9 Hinshaw informed Unum that he had been "tutoring and mentoring" at
10 MLB Academy on a part-time basis, but Unum apparently decided to
11 continue Hinshaw's LTD benefits. (AR 997, 1160.) In 2013, during
12 what appears to be a regular review of Hinshaw's file, Unum ran a
13 comprehensive online data search and found that Hinshaw had been
14 working as a baseball coach at Los Angeles City College, a fact
15 Hinshaw had never disclosed to Unum. (AR 1310-1420.) Hinshaw had
16 also obtained a Bachelor's degree (2006) and a Master's degree in
17 Education (2008) from the University of Phoenix. (Id.) Unum sent
18 Hinshaw a request for his 2012 tax returns and supporting
19 documentation. (AR 1423-25.) Unum also sent requests to Hinshaw's
20 doctor for more updated medical records, and Hinshaw's doctor
21 informed Unum that Hinshaw's last visit had been in May 2011. (AR
22 1454-1458.) Based on the new information, in April 2013, Unum
23 requested Hinshaw's tax returns for 2008-2012 as well as updated
24 medical documentation of Hinshaw's disability. (AR 1470-72, 1477-
25 1482.) Hinshaw submitted proof of a request for extension on his
26 2012 taxes, but either could not find or did not file his 2011
27 taxes. (AR 1506.) Hinshaw had been to see a doctor - his
28 orthopedic specialist - as of May 2011, but it appears that Hinshaw

1 did not see a doctor after this date. Unum then requested to
2 schedule an in-person visit with Hinshaw, which Hinshaw cancelled
3 or postponed before it could be held. (AR 1474-75, 1513.)

4 After several months of trying to obtain information from
5 Hinshaw and his doctors, Unum arranged for an internal medical
6 review to determine whether the information they had could support
7 a finding that Hinshaw still qualified for benefits. (AR 1526-27.)
8 Internal medical staff determined that, based on the information
9 they have, Hinshaw could perform work that was sedentary to medium
10 in activity, and suggested three alternate occupations for Hinshaw:
11 eligibility worker, order clerk, and student adviser. (AR 1533,
12 1537-1549.) Based on its own internal review, Unum concluded
13 Hinshaw was not entitled to further LTD benefits and sent a letter
14 to Hinshaw informing him that his benefits would be terminated
15 effective August 23, 2013. (1561-66.)

16 In December 2013, Hinshaw appealed the termination decision to
17 UNUM's appeals unit, but did not appear to provide much new
18 information regarding his medical condition other than a detailed
19 medical examination report from 2010 and related deposition
20 testimony of a doctor who had performed the 2010 examination. (AR
21 1578-1663.) When asked if he was going to provide additional
22 information for his appeal, Hinshaw stated that he believed the
23 information that he had provided was sufficient. The specialist
24 assigned to the appeal upheld the decision to terminate. (AR 1781-
25 88.) Hinshaw has now appealed the termination of benefits to this
26 court.

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1 **II. LEGAL STANDARD**

2 Summary judgment is proper where a movant "shows that there is
3 no genuine dispute as to any material fact and the movant is
4 entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a).
5 In other words, summary judgment should be entered against a party
6 "who fails to make a showing sufficient to establish the existence
7 of an element essential to that party's case, and on which that
8 party will bear the burden of proof at trial." Parth v. Pomona
9 Valley Hosp. Med. Ctr., 630 F.3d 794, 798-99 (9th Cir. 2010).

10 To satisfy its burden at summary judgment, a moving party
11 without the burden of persuasion "must either produce evidence
12 negating an essential element of the nonmoving party's claim or
13 defense or show that the nonmoving party does not have enough
14 evidence of an essential element to carry its ultimate burden of
15 persuasion at trial." Nissan Fire & Marine Ins. Co., Ltd. v. Fritz
16 Cos., Inc., 210 F.3d 1099, 1102 (9th Cir. 2000). With respect to a
17 moving party with the burden of persuasion, "to prevail on summary
18 judgment it must show that the evidence is so powerful that no
19 reasonable jury would be free to disbelieve it." Shakur v.
20 Schriro, 514 F.3d 878, 890 (9th Cir. 2008) (internal quotation
21 marks omitted).

22 "If the party moving for summary judgment meets its initial
23 burden," the nonmoving party must, "by affidavit or as otherwise
24 provided in Rule 56," affirmatively identify "specific facts
25 showing that there is a genuine issue for trial." T.W. Elec.
26 Serv., Inc., v. Pac. Elec. Contractors Ass'n, 809 F.2d 626, 630
27 (9th Cir. 1987) (internal citations and quotation marks omitted).
28 Establishing a genuine issue for trial means doing "more than

1 simply show[ing] that there is some metaphysical doubt as to the
2 material facts." Matsushita Elec. Indus. Co., Ltd. v. Zenith Radio
3 Corp., 475 U.S. 574, 586 (1986). "Where the record taken as a
4 whole could not lead a rational trier of fact to find for the non-
5 moving party, there is no 'genuine issue for trial.'" Id. at 587.

6 With that said, courts do not weigh conflicting evidence or
7 adjudge credibility at the summary judgment stage, and must view
8 all evidence and draw all inferences in the light most favorable to
9 the non-moving party. See T.W. Elec. Serv., 809 F.2d at 630-31
10 (citing Matsushita Elec. Indus. Co., 475 U.S. at 587); Hrdlicka v.
11 Reniff, 631 F.3d 1044 (9th Cir. 2011); Motley v. Parks, 432 F.3d
12 1072, 1075 & n.1 (9th Cir. 2005).

13 **III. ANALYSIS**

14 **A. Unum's Termination of Plaintiff's Benefits**

15 The initial issue in this case is what standard of review the
16 Court should apply. Unum argues in its motion that the abuse of
17 discretion applies. Although Hinshaw mostly seems to accept an
18 abuse of discretion standard in sections of his motion, he also
19 appears to argue that the Court should apply a more rigorous
20 standard of review.

21 The denial of benefits under an ERISA plan is reviewed de novo
22 by the district court, unless the terms of the plan "unambiguously"
23 grant the plan administrator or fiduciary discretionary authority
24 to determine eligibility for benefits. Opeta v. Northwest Airlines
25 Pension Plan, 484 F.3d 1211, 1216 (9th Cir. 2007); Firestone Tire &
26 Rubber Co. v. Bruch, 489 U.S. 101, 115 (1989). In that event, the
27 denial of benefits is reviewed for abuse of discretion. Saffon v.
28 Wells Fargo & Co. Long Term Disability Plan, 511 F.3d 1206, 1209

1 (9th Cir. 2008). Accordingly, the "essential first step" is to
2 "examine whether the terms of the ERISA plan unambiguously grant
3 discretion to the administrator." Feibusch v. Integrated Device
4 Tech., Inc., 463 F.3d 880, 883 (9th Cir. 2006)(internal quotation
5 omitted).

6 Discretionary authority consists of the "power to construe the
7 terms of the plan," as opposed to where the plan merely
8 "identif[ies] the plan administrator's tasks, but bestow[s] no
9 power to interpret the plan." Opete, 484 F.3d at 1216 (internal
10 quotation omitted); see also Abatie v. Alta Health & Life Ins. Co.,
11 458 F.3d 955, 962-65 (9th Cir. 2006)(holding that discretion is
12 unambiguously conferred on the administrator when a plan grants
13 "the power to interpret plan terms and to make final benefits
14 determinations," and particularly where exclusive authority for
15 final benefits determinations rests with the plan administrator).

16 However, if the plan administrator is also an insurer, then
17 there is a conflict of interest, and that conflict of interest
18 "must be weighed as a factor in determining whether there is an
19 abuse of discretion." Tremain v. Bell Industries, Inc., 196 F. 3d
20 970, 976 (1999). In such a circumstance, although the review is
21 still for abuse of discretion, it is less deferential to the
22 administrator. Id.

23 If a plaintiff can present evidence that the conflict of
24 interest arises to the level of a breach of a fiduciary duty to the
25 plan participant, however, then the district court should review
26 the plan administrator's decision de novo. If, however, the
27 program participant presents "material, probative evidence, beyond
28 the mere fact of the apparent conflict, tending to show that the

1 fiduciary's self interest caused a breach of the administrator's
2 fiduciary obligations to the beneficiary," a rebuttable presumption
3 arises in favor of the participant. Lang v. Long-Term Disability
4 Plan of Sponsor Applied Remote Technology, Inc., 125 F.3d 794, 798
5 (9th Cir. 1997). The plan then "bears the burden of rebutting the
6 presumption by producing evidence to show that the conflict of
7 interest did not affect its decision to deny or terminate
8 benefits." Id. If the administrator fails to carry this burden of
9 rebutting the presumption, the court will review the
10 administrator's decision de novo.

11 Here, the terms of the LTD Plan explicitly give Unum
12 "discretionary authority both to determine an employee's
13 eligibility for benefits and to construe the terms of this policy."
14 AR at 1800. This grant of discretionary authority is unambiguous.
15 However, at a minimum, a heightened standard of review should
16 apply because Unum is both the plan administrator and the insurer,
17 a factor which must be taken into account as a potential cause of a
18 conflict of interest.

19 Unum contends that under the abuse of discretion standard, its
20 termination of Hinshaw's benefits was clearly reasonable and
21 justified. Hinshaw's arguments are difficult to decipher, but at a
22 minimum, he argues that the LTD Plan's terms were unclear, and that
23 Unum's communications to him were misleading and in bad faith -
24 possibly in violation of Unum's fiduciary duty towards Hinshaw.
25 Hinshaw further argues that Unum's termination of his benefits fail
26 the abuse of discretion standard. Although it is unclear whether
27 there is sufficient evidence before the Court to show that Unum's
28 self-interest cause a breach of fiduciary duty to Hinshaw, the

1 Court need not resolve this issue, as it finds that either under a
2 de novo or abuse of discretion standard, Unum's termination of
3 Hinshaw's benefits was sufficiently supported by the evidence on
4 the record.

5 When reviewing a decision under either a de novo or abuse of
6 discretion standard, the Court generally should only consider the
7 record that was in front of the plan administrator at the time of
8 the decision. See Kearney v. Standard Ins. Co., 175 F.3d 1084,
9 1090 (9th Cir. 1999); Winters v. Costco Wholesale Corp., 49 F.3d
10 550, 553 (9th Cir. 1995). Unum has provided the Court with the
11 full administrative record, which the Court has reviewed in making
12 its determination. Hinshaw has not argued for the Court to
13 consider any material outside of the administrative record.

14 Hinshaw primarily argues that Unum only conducted a "paper
15 review" of his eligibility for benefits, which was insufficient for
16 Unum to determine whether he was still disabled as defined by the
17 terms of the LTD Plan. However, the administrative record shows
18 that Unum gave Hinshaw notice that it was reviewing his eligibility
19 and requested prior tax returns as well as medical documentation
20 from him. At least from April 2013, if not earlier, Hinshaw was on
21 notice that Unum was aware of his employment during the time when
22 he was disabled and required documentation of his continued
23 disability. Unum gave Hinshaw several months to provide additional
24 documentation of his injury and continued lack of ability to return
25 to work. It also attempted to schedule an in-person visit with
26 Hinshaw, which Hinshaw himself cancelled. Hinshaw confirmed that
27 his last visit to a doctor had been in 2011, two years prior.

28 Given evidence of Hinshaw's coaching and tutoring jobs in

1 2008-2009 and his lack of post-2011 medical visits, added to
2 Hinshaw's lack of responsiveness to Unum's request for further
3 documentation and proof of disability, Unum reasonably concluded
4 that Hinshaw no longer qualified for benefits under the LTD Plan.
5 Although Unum's own internal review conducted by medical personnel
6 was only a "paper" review, Unum's conclusion that Hinshaw could be
7 employed in a more sedentary position was reasonably supported by
8 the evidence. The suggested types of employment in Unum's internal
9 report would qualify as "any gainful occupation for which [the
10 insured] is reasonably fitted by training, education or
11 experience." (AR 1806.)

12 The Court cannot find evidence of egregious mishandling of
13 Hinshaw's case - either under abuse of discretion standard or under
14 de novo review. Although Unum might have conducted a more thorough
15 investigation of Hinshaw's disability, Unum gave Hinshaw multiple
16 opportunities to provide updated medical documentation of his
17 disability, both during its 2013 review of Hinshaw's eligibility
18 and during Hinshaw's appeal. Unum also requested an in-person
19 visit from a representative, which Hinshaw cancelled. Unum made
20 clear to Hinshaw in its letters and in the terms of the LTD Plan
21 that he would be asked to provide documentation such as doctor's
22 exams in order to support his continued claim. As Hinshaw had not
23 seen his doctor since 2011 and did not see his doctor even after
24 receiving Unum's letters requesting medical documentation, it was
25 reasonable and within the terms of the LTD Plan for Unum to decide
26 to terminate Hinshaw's benefits.

27 **B. Safe Harbor**

28 Hinshaw also argues that ERISA is not applicable to this case,

1 because the "safe harbor" provision applies. Typically, ERISA
2 provides the exclusive remedies for claims for benefits under a
3 plan governed by ERISA, and completely preempts application of
4 state law to an action based upon an insurer's alleged failure to
5 pay benefits under the terms of an ERISA plan. 29 U.S.C. §
6 1144(a). Plans which are not maintained or established by an
7 employer, however, fall under a "safe harbor" provision, and
8 are exempt from ERISA coverage. 29 C.F.R. § 2510.3-1(j).

9 The "safe harbor" provision does not apply here, as the
10 evidence undisputably shows that the LTD Plan . The LTD Plan
11 specifically states that it falls under ERISA, and further that the
12 employer and employee both pay into the plan. (AR 1796, 1800.)
13 Since the LTD Plan at issue is an employer-sponsored plan, it does
14 fall under ERISA and the "safe harbor" provision does not apply.

15 **IV. CONCLUSION**

16 For the reasons stated above, the Court GRANTS Unum's motion
17 for summary judgment and DENIES Hinshaw's motion for summary
18 judgment.

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21 IT IS SO ORDERED.

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24 Dated: May 6, 2015


DEAN D. PREGERSON
United States District Judge

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