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8 **UNITED STATES DISTRICT COURT**
9 **FOR THE CENTRAL DISTRICT OF CALIFORNIA**
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11 **PATRICK A. ANDERSON,**)
12 **Plaintiff,**)
13 **v.**)
14 **UNITED HEALTH GROUP;**)
15 **PACIFICARE HEALTH SYSTEMS,**)
16 **INC.; UNITED HEALTH GROUP**)
17 **BENEFITS REVIEW COMMITTEE,**)
18 **and Does 1-50, inclusive,**)
19 **Defendants.**)

CASE NO. SACV 07-0965 AG (MLGx)

**ORDER AFFIRMING
ADMINISTRATOR’S DENIAL OF
LONG TERM DISABILITY
BENEFITS**

20 **INTRODUCTION**

21 Plaintiff Patrick Anderson (“Plaintiff”) was an employee of PacifiCare Health Systems,
22 Inc. (“PacifiCare”), when PacifiCare was acquired by United Health Group in December 2005.
23 Plaintiff claims that, after the merger, his job duties changed substantially, and he quit. He then
24 claims that, after quitting, he should have received 52 weeks of severance benefits, but the
25 United Health Group Benefits Review Committee (“Review Committee”) denied his claim. He
26 appealed that denial and lost. He then filed this action under the Employee Retirement Income
27 Security Act of 1974 (“ERISA”), 29 U.S.C. section 1001, et seq., for his severance benefits. The
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1 Court hereby AFFIRMS the Review Committee’s decision to deny benefits to Plaintiff.

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3 **FINDINGS OF FACT**

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5 The Court makes these findings of fact, including any findings of fact found in the
6 Conclusions of Law.

7 Plaintiff was an employee eligible for PacifiCare’s Severance Plan (“the Plan”). The Plan
8 entitled him to severance benefits if PacifiCare consummated a merger with another company
9 and if Plaintiff then voluntarily quit his position for “good cause.” According to the Plan:

10 ‘Good cause’ shall be deemed to exist if an Employee voluntarily terminates
11 his employment with an Employer for any of the following reasons:

- 12 a. Without Employee’s express prior written consent, Employee:
13 (I) is assigned duties materially inconsistent with
14 Employee’s position, duties, responsibilities, or status
15 with an Employer which substantially varies from that
16 which existed immediately prior to the Change of
17 Control.

18 (Plan, p.6.)

19 In December 2005, PacifiCare merged with United Health Group. On June 8, 2006,
20 Plaintiff quit. He submitted a claim for severance benefits to United Health Group’s Benefit
21 Review Committee (“Review Committee”), arguing that his duties and responsibilities post-
22 merger were materially inconsistent with his pre-merger duties and responsibilities.

23 The Review Committee was made up of five employees of United Health Group. They
24 received and investigated plaintiff’s claim, interviewed witnesses, solicited information from
25 Plaintiff, deliberated about the evidence before them, and determined that there was not “good
26 cause” for Plaintiff’s resignation under the Plan. Documents in the Administrative Record show
27 that there was reasonable basis for that determination. (*See* Administrative Record at Tab 5,
28 D0062-0066, D0131-0132, Tab 7, D0426.) The Review Committee denied Plaintiff’s claim.

1 Plaintiff appealed the denial to the Review Committee, which denied the appeal.

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3 **CONCLUSIONS OF LAW**

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5 The Court makes these conclusions of law, including any conclusions of law found in the
6 Findings of Fact.

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8 **1. THE REVIEW COMMITTEE’S DENIAL OF BENEFITS IS REVIEWED**
9 **FOR ABUSE OF DISCRETION**

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11 This case requires examination of the standard of review to be applied to the Review
12 Committee’s denial of Plaintiff’s claim for benefits. The review of a plan administrator’s denial
13 of benefits is *de novo* “unless the benefit plan gives the administrator or fiduciary discretionary
14 authority to determine eligibility for benefits.” *Saffon v. Wells Fargo & Co. Long Term*
15 *Disability Plan*, No. 05-56824, 2008 U.S. App. LEXIS 334, 2008 WL 80704, at *2 (9th Cir.
16 2008) (quoting *Firestone Tire & Rubber Co. v. Bruch*, 489 U.S. 101 (1989)). Where the plan
17 grants such discretionary authority, the administrator’s decision is reviewed for abuse of
18 discretion, unless the administrator so “utterly fails to follow applicable procedures” that “the
19 administrator is not, in fact, exercising discretionary powers.” *See id.*; *Abatie v. Alta Health &*
20 *Life Ins. Co.*, 458 F.3d 955, 962 (9th Cir. 2006). If the administrator utterly fails to follow the
21 procedures applicable to the discretionary analysis, the standard of review reverts to *de novo*. *Id.*

22 The parties agree that the Plan in this case gave the Review Committee discretionary
23 authority, which would generally merit an abuse of discretion standard of review. But Plaintiff
24 argues that the Review Committee so utterly failed to follow applicable review procedures that
25 the Court should review its decision *de novo*. The Court disagrees. “[A]n administrator’s failure
26 to comply with . . . procedural requirements ordinarily does not alter the standard of review.”
27 *Abatie*, 458 F.3d at 971. Only when “an administrator engages in wholesale and flagrant
28 violations of the procedural requirements of ERISA” should a court review a discretionary

1 decision *de novo*. *Id.* Plaintiff’s allegations of procedural irregularities do not amount to
2 “wholesale and flagrant violations.” Accordingly, the Court reviews the Review Committee’s
3 denial of benefits for abuse of discretion.

4 An ERISA plan administrator’s decision to deny benefits is an abuse of discretion “only if
5 it (1) renders a decision without explanation, (2) construes provisions of the plan in a way that
6 conflicts with the plain language of the plan, or (3) relies on clearly erroneous findings of fact.”
7 *Boyd v. Bell*, 410 F.3d 1173, 1178 (9th Cir. 2005); *see also Taft v. Equitable Life Assurance*, 9
8 F.3d 1469, 1473 (9th Cir. 1994). Under the abuse of discretion standard, “even decisions
9 contrary to evidence in the record do not necessarily amount to an abuse of discretion,” so long
10 as there is some reasonable basis for the decision. *See Taft*, 9 F.3d at 1473; *see also Horan v.*
11 *Kaiser Steel Retirement Plan*, 947 F.2d 1412, 1417 (9th Cir. 1991).

13 **2. THE ABUSE OF DISCRETION STANDARD IS NOT TEMPERED BY THE** 14 **EXISTENCE OF A CONFLICT OF INTEREST**

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16 The abuse of discretion standard does not end the Court’s inquiry regarding the
17 appropriate standard of review. In ERISA benefits cases, the precise nature of the abuse of
18 discretion standard varies depending on the existence and extent of a conflict of interest. *See*
19 *Abatie*, 458 F.3d 955, 963 (9th Cir. 2006) (en banc) (holding that a court’s abuse of discretion
20 review should be “informed by the nature, extent, and effect on the decision-making process of
21 any conflict of interest that may appear in the record.”)

22 The most common conflict of interest situation in an ERISA case is where “an insurer
23 acts as both the plan administrator and the funding source for benefits.” *Id.* at 965. This is
24 known as a “structural conflict of interest.” *Id.* at 965-66 (noting that in such a situation the
25 administrator’s responsibility to see that those deserving benefits receive them is in inherent
26 conflict with the desire to maximize profits by paying as little in benefits as possible). A
27 structural conflict of interest, “even if merely formal and unaccompanied by indicia of bad faith
28 or self-dealing, ought to have some effect on judicial review.” *Id.* at 966. A structural conflict

1 of interest should have even more effect on judicial review when accompanied by evidence of
2 the plan administrator’s bad faith. As explained by *Abatie*:

3 The level of skepticism with which a court views a conflicted administrator’s
4 decision may be low if a structural conflict of interest is unaccompanied, for
5 example, by any evidence of malice, of self-dealing, or of a parsimonious
6 claims-granting history. A court may weigh a conflict more heavily if, for
7 example, the administrator provides inconsistent reasons for denial, fails
8 adequately to investigate a claim or ask the plaintiff for necessary evidence,
9 fails to credit a claimant’s reliable evidence, or has repeatedly denied benefits
10 to deserving participants by interpreting plan terms incorrectly or by making
11 decisions against the weight of evidence in the record.

12 *Id.* at 968-69 (citations omitted).

13 The parties agree that a structural conflict of interest existed in this case, because
14 “the members of the Committee were employed by the company that would necessarily
15 fund any benefit award.” (Defendant’s Proposed Findings of Fact and Conclusions of
16 Law ¶ 23.) The parties disagree, however, over whether there was any additional
17 evidence of the Benefit Committee’s bad faith.

18 Plaintiff argues that the Review Committee’s bad faith is evidenced by (1) an
19 interviewer’s failure to record and submit allegedly pro-Plaintiff statements made by Fritz
20 Wilhelm; (2) the Review Committee’s failure to conduct an additional investigation when
21 it “was informed that three witnesses stated that the record was incomplete and
22 contradictory as to its facts,” (Plaintiff’s Trial Brief 9:15-18); and (3) the fact that large
23 portions of the record were redacted. The Court will address these arguments in turn.

24 Plaintiff has submitted a declaration by Fritz Wilhelm, which states that he was
25 interviewed regarding his work relationship with Plaintiff, and that the interviewer’s notes
26 have been provided to him in connection with this litigation. (Wilhelm Declaration ¶¶ 2-
27 3.) Mr. Wilhelm states that the notes “do not include a great deal of what was discussed
28 during that interview.” (*Id.* ¶ 3.) The topics he mentions that were discussed but not

1 recorded in the interviewer's notes were topics that would have been helpful to Plaintiff's
2 claim. (*See id.* ¶¶ 4-6.) Mr. Wilhelm further states that the interviewer seemed interested
3 only in topics that would have been detrimental to Plaintiff's claim. (*See id.* ¶ 6 ("Mr.
4 Sanchez, however, seemed to be more interested in reaffirming his point that work still
5 existed, but not necessarily the specific context of the work.")) Lastly, Mr. Wilhelm
6 states that the interviewer concluded the interview by saying, "Thank you I've got what I
7 needed." (*Id.* ¶ 7.)

8 Included in the Administrative Record is a document that Defendant identifies as
9 the notes Danny Sanchez took when he interviewed Mr. Wilhelm. The document is
10 handwritten, and not lengthy. But the notes on the document indicate that Mr. Sanchez
11 asked Mr. Wilhelm about Plaintiff's duties, recorded quotes attributable to Mr. Wilhelm,
12 and, significantly, wrote down a quote from Mr. Wilhelm that would be supportive of
13 Plaintiff's case. This shows that Mr. Sanchez's interview was not unbalanced. Further,
14 Defendant argues that Mr. Wilhelm was Plaintiff's employee, and had only started work
15 with the company a few months before the merger occurred. The Court finds it more
16 likely that Mr. Wilhelm's lack of knowledge, not Mr. Sanchez's bias, accounted for the
17 brevity of Mr. Sanchez's notes. The Court finds that Mr. Wilhelm's declaration is not
18 evidence of the Review Committee's bad faith.

19 Second, Plaintiff argues that, in his notice of appeal, he notified the Review Board
20 of three witnesses who stated that the record was incomplete, but that the Review Board
21 did not conduct any additional investigation. (Plaintiff's Opening Brief 9:15018.)
22 Plaintiff does not describe who the "three witnesses" are and the Court sees only two such
23 witnesses referenced in the notice of appeal. Those witnesses are Mr. Wilhelm and Jake
24 Oner. But Mr. Wilhelm's statements, as discussed above, do not show bad faith or that
25 additional investigation needed to be taken. And the section in the notice of appeal
26 discussing Mr. Oner does not say that he thought the record was incomplete. Instead, it
27 appears to merely repeat his earlier statements. Thus, this argument does not show the
28 Review Committee's bad faith.

1 Finally, Plaintiff argues that large portions of the Administrative Record have been
2 redacted, and that proves the Review Committee's sinister motives. Defendant responds
3 that those portions were redacted because they related to other claimants. The Court finds
4 this credible. Accordingly, the redactions are not evidence of the Review Committee's
5 bad faith.

6 Because Plaintiff has not presented evidence that the Review Committee's conflict
7 of interest went beyond the "structural" conflict, the Court brings a low level of
8 skepticism to its application of the abuse of discretion standard. *See Abatie*, 458 F.3d at
9 968.

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11 **3. THE REVIEW COMMITTEE DID NOT ABUSE ITS DISCRETION IN**
12 **DENYING SEVERANCE BENEFITS**

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14 After reviewing the evidence in the Administrative Record, the Court finds that the
15 Review Committee did not abuse its discretion in denying Plaintiff severance benefits.
16 The evidence shows that the Review Committee provided a detailed explanation in
17 writing for its decision, did not construe provisions of the plan in a way that conflicted
18 with the plain language of the plan, and based its decision on substantial evidence in the
19 Administrative Record.

20 Accordingly, the Review Committee's denial of severance benefits is **AFFIRMED**.

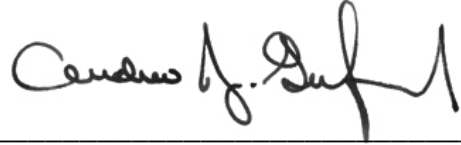
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22 **DISPOSITION**

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24 Defense counsel is directed to prepare the judgment and serve it on Plaintiff by
25 October 17, 2008. Plaintiff shall have 14 days from the date of service of the proposed
26 judgment to object to the proposed judgment. If no objection is received within 14 days,
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1 the judgment will be entered immediately, and Federal Rule of Civil Procedure 52(b) will
2 apply on entry of the judgment.

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4 IT IS SO ORDERED.

5 DATED: September 30, 2008



Andrew J. Guilford
United States District Judge

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