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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

SUSAN SCHOFIELD,)	
)	
Plaintiff,)	2:06-cv-00117-GEB-GGH
)	
v.)	<u>TENTATIVE RULING ISSUED</u>
)	<u>IN ADVANCE OF FEBRUARY 9,</u>
METROPOLITAN LIFE INSURANCE)	<u>2009 HEARING</u>
COMPANY, et al.,)	
)	
Defendants.)	
_____)	

The hearing on the Ninth Circuit’s remand order, in which the Ninth Circuit reversed entry of summary judgment in favor of Defendants in this Employee Retirement Income Securities Act (“ERISA”) action, was held February 9, 2009. The Ninth Circuit held Plaintiff Schofield prevails on her claim for long term disability (“LTD”) benefits under the applicable ERISA plan (“the Plan”), since “the terms of the plan [required] [Defendant Metropolitan Life Insurance Co. (“MetLife”)] . . . to determine whether Schofield was able to earn more than 80% of her predisability earnings at her ‘Own Occupation.’”

Schofield’s “occupation was acknowledged . . . to be a Certified Registered Nurse Anesthetist (CRNA).” Since “[a]n independent physician hired by MetLife reviewed [Schofield’s] records

1 and concluded . . . she could not perform her job as a CRNA," MetLife
2 was required "to follow the Plan definition of 'Own Occupation'" when
3 determining whether Schofield was entitled to LTD benefits. However,
4 "MetLife failed to follow the Plan definition of 'Own Occupation' when
5 it found the medical records supported the conclusion that Schofield
6 could perform 'more-sedentary nursing duties that fall within the
7 category of her Own Occupation.'"

8 The terms of the LTD Plan explain "Disabled": "'Disabled' or
9 'Disability' means that, due to sickness, pregnancy or accidental
10 injury, you are receiving Appropriate Care and Treatment from a Doctor
11 on a continuing basis; and, (1) during your Elimination Period and the
12 next 24 month period, you are unable to earn more than 80% of your
13 Predisability Earnings or Indexed Predisability Earnings at your Own
14 Occupation for any employer in your Local Economy; or (2) after the 24
15 month period, you are unable to earn more than 80% of your Indexed
16 Predisability Earnings from any employer in your Local Economy at any
17 gainful occupation for which you are reasonably qualified taking into
18 account your training, education, experience and Predisability
19 Earnings." The Ninth Circuit held "MetLife incorrectly applied the
20 80% earnings test," stating, "[t]he Plan's definition of 'disability'
21 required MetLife to determine whether Schofield was able to earn more
22 than 80% of her predisability earnings, and MetLife did not follow
23 this definition."

24 Therefore, the Ninth Circuit concluded MetLife abused its
25 discretion in denying Schofield's claim and remanded this case for
26 determination of "the amount of retroactive benefits to be awarded"
27 and for consideration of "whether Schofield is entitled to attorney's
28 fees and prejudgment interest."

1 Schofield misconstrues the scope of the remand, arguing it
2 includes a directive on how her entitlement to benefits under the "any
3 gainful occupation" provision of the LTD Plan. This provision is
4 applicable after the 24-month period of disability covered by the "Own
5 Occupation" provision. "[O]n remand a lower court is bound to follow
6 the appellate court's decision as to issues decided explicitly or by
7 necessary implication. However, the lower court is so bound only as
8 to issues addressed by the appellate court." U.S. v. Garcia-Beltran,
9 443 F.3d 1126, 1129 (9th Cir. 2005). Since the remand does not direct
10 the district court on how Schofield's request for benefits under the
11 "any gainful occupation" provision of the LTD Plan is to be
12 determined, the district court has discretion concerning the
13 resolution of this issue. U.S. v. Cote, 51 F.3d 178, 181-82 (9th Cir.
14 1995) (stating "because the mandates did not contain an order
15 dismissing the cases or an order directing acquittal, a second trial
16 was not necessarily prohibited"). Since MetLife abused its discretion
17 when denying Schofield's claim under the "Own Occupation" provision,
18 and therefore did not reach the issue of Schofield's entitlement to
19 benefits under the "any gainful occupation" provision, this issue will
20 be remanded to MetLife "for a factual determination under a proper
21 construction of the terms of the plan." Saffle v. Sierra Pac. Power
22 Co. Bargaining Unit Long Term Disability Income Plan, 85 F.3d 455, 461
23 (9th Cir. 1996) ("We now make it explicit, that remand for
24 reevaluation of the merits of a claim is the correct course to follow
25 when an ERISA plan administrator, with discretion to apply a plan, has
26 misconstrued the Plan and applied a wrong standard to a benefits
27 determination.")

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1 The parties also dispute whether the benefits Schofield
2 received through Social Security Disability Insurance ("SSDI") are to
3 be offset from the retroactive benefits owed to Schofield for the "Own
4 Occupation" disability period. The Plan provides that a claimant's
5 benefits under the Plan is "reduced by Other Income Benefits" and
6 defines "Other Income Benefits" as including benefits received under
7 "the Federal Social Security Act." (ADMIN 17.) Since MetLife has a
8 duty under 29 U.S.C. § 1104(a)(1)(D) to apply the Plan "in accordance
9 with the documents and instruments governing the plan," SSDI benefits
10 Schofield received during the "Own Occupation" disability period shall
11 be offset.

12 The parties also dispute the amount of SSDI benefits
13 Schofield received during the "Own Occupation" disability period.
14 Each party submits an expert's declaration on this issue. Schofield
15 objects to Defendants' expert's averment that Schofield's SSDI
16 benefits were "\$1655.00 per month," arguing Defendants' expert has not
17 shown how he arrived at this amount. (Suter Decl. ¶ 6.) Since
18 Defendants' expert does not provide the basis for his conclusion,
19 Schofield's objection is sustained.

20 Schofield's expert also assumes without explanation that
21 Schofield's monthly SSDI benefits payment was \$1630 after the first 18
22 months of disability. (Busco Supp. Decl. ¶ 13.) However, letters
23 from the Social Security Administration to Schofield, submitted by
24 Schofield's expert, show the following: Schofield was retroactively
25 awarded a total of \$23,235 for the first 18 months of disability; then
26 awarded \$1722 per month for the next 5 months; and thereafter awarded
27 \$1663 per month. (Busco Decl. Exh. F.) The amounts shown in the
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1 letters from the Social Security Administration will be used to
2 determine the offset amount.

3 The parties also dispute whether prejudgment interest should
4 be awarded, and if so, what interest rate should be applied. “[A]
5 court may award prejudgment interest on an award of ERISA benefits in
6 its discretion.” Blankenship v. Liberty Life Assurance Co. of Boston,
7 486 F.3d 620, 627-28 (9th Cir. 2007) (citations omitted). Prejudgment
8 interest may be awarded to “compensate a plaintiff for ‘the losses
9 [she] incurred as a result of [the defendant’s] nonpayment of
10 benefits.’” Id. at 628 (quoting Dishman v. UNUM Life Ins. Co. of Am.,
11 269 F.3d 974, 988 (9th Cir. 2001)). Further, “the interest rate
12 prescribed for post-judgment interest under 28 U.S.C. § 1961 is
13 appropriate for fixing the rate of pre-judgment interest unless the
14 . . . judge finds, on substantial evidence, that the equities of [a]
15 particular case require a different rate.” Grosz-Salomon v. Paul
16 Revere Life Ins. Co., 237 F.3d 1154, 1164 (9th Cir. 2001).

17 Here, Schofield declares due to MetLife’s denial of her
18 benefit claims, she became almost destitute for the next three to four
19 years: she was forced to sell her custom house, her health insurance
20 with her employer was discontinued, she had to use her credit cards
21 which charged a high interest rate of 14% or more, she could only
22 afford to rent rooms in friends’ houses, and had to move approximately
23 seven times during this time period.

24 Defendants object to Schofield’s declaration, arguing it is
25 inadmissible because MetLife has discretion to decide Schofield’s
26 entitlement to benefits under the plan and the Court must confine its
27 review of MetLife’s decision to evidence in the administrative record.

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1 However, Defendants do not support their objection with applicable
2 authority. Therefore, the objection is overruled.

3 Schofield's declaration shows she is entitled to prejudgment
4 interest as part of her compensation for the losses she suffered as a
5 result of MetLife's denial of her disability benefits. However, the
6 evidence is insufficient to justify departure from the interest rate
7 prescribed in 28 U.S.C. § 1961. Section 1961 provides the interest
8 rate is "the weekly average 1-year constant maturity Treasury yield."
9 Therefore, "the interest rate [shall] be determined individually for
10 each disability benefit payment that Schofield was denied, based on
11 the rate at the time that the benefit payment became due." Cherry v.
12 Digital Equipment Corp., No. S-05-2165, 2006 WL 2594465, at *12 (E.D.
13 Cal. Sept. 11, 2006) (internal quotation and citation omitted).

14 Accordingly, the amount of retroactive benefits owed to
15 Schofield after offsetting Schofield's SSDI benefits, including
16 prejudgment interest, for the "Own Occupation" disability period, is
17 \$123,935.60. The issue concerning Schofield's entitlement to benefits
18 under the "any gainful occupation" provision of the Plan is remanded
19 to MetLife for a benefit determination which shall be made within
20 sixty days of the date on which this Order is filed.

21 Dated: February 6, 2009

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GARLAND E. BURRELL, JR.
25 United States District Judge
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