

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

-----oo0oo-----

JUDITH LOURENE SILVERS,
Plaintiff,

NO. CIV. 09-097 FCD/JFM

v.

MEMORANDUM AND ORDER

CCPOA BENEFIT TRUST HEALTH AND
WELFARE PLAN,
Defendant.

_____ /

-----oo0oo-----

This matter is before the court on the parties' cross-motions for summary judgment, pursuant to Federal Rule of Civil Procedure 52, arising out of defendant CCPOA Benefit Trust Health and Welfare Plan's ("defendant" or "the Plan") denial of plaintiff Judith Lourene Silvers' ("plaintiff" or "Mrs. Silvers") claim for accidental death benefits.¹

/////

¹ Because oral argument will not be of material assistance, the court orders this matter submitted on the briefs. E.D. Cal. L.R. 78-230(h).

1 For the reasons set forth below, the court finds that the
2 proper standard of review is de novo, and thereunder, the court
3 finds that plaintiff has not met her burden in showing that her
4 husband's death "resulted from" the hip injury he suffered ten
5 months prior to his death. As such, the court DENIES plaintiff's
6 motion for summary judgment and GRANTS defendant's motion.

7 **BACKGROUND**

8 Plaintiff's husband, Hal Silvers ("Mr. Silvers"), deceased,
9 was insured under a group accidental death and dismemberment
10 policy ("the policy") through his union, the California
11 Correctional Peace Officers Association ("CCPOA"). Hartford Life
12 and Accident Insurance Company ("Hartford") issued and
13 administered the policy, which covers retired members of the
14 CCPOA. (Ex. A to First Am. Compl. ("Hartford Certificate of
15 Insurance"), filed Feb. 21, 2008.) Mr. Silvers designated his
16 wife, Judith Lourene Silvers, as his beneficiary. (Id.)

17 The policy states in pertinent part: "If a Covered Person's
18 injury results in any of the following losses within 365 days
19 after the date of the accident, we will pay the sum shown
20 opposite the loss. . . . For Loss of: Life . . . The Principal
21 Sum." (Ex. A to Decl. of Richard Davis ("Administrative
22 Record"), filed Sept. 15, 2008, at H057.) "Injury" is defined in
23 the policy as:

24 bodily injury resulting directly and independently of
25 all other causes from accident which occurs while [the
26 covered person] is covered under this policy. Loss
27 resulting from:

- 28 a) sickness or disease, except a pus-forming infection
which occurs through an accidental wound; or
b) medical or surgical treatment of a sickness or

1 disease; is not considered as resulting from injury.
2 (Hartford Certificate of Insurance; Administrative Record at
3 H052.)

4 On May 7, 2003, Mr. Silvers fell at home while undressing to
5 go to bed. (Administrative Record, at H070.) Mr. Silvers, age
6 sixty-five, went to the Redding Medical Center Emergency
7 Department ("the hospital") complaining of left hip and lower
8 back pain. (Id.) Dr. Andrew Knapp examined Mr. Silvers, noting
9 that Mr. Silvers "smokes a pack of cigarettes per day" and
10 "drinks alcohol daily." (Id.) Dr. Knapp further noted that Mr.
11 Silvers had a history of hypertension, osteoporosis, and
12 arthritis and that he was on numerous medications, including
13 "Xanax, Altrace, hydrochlorothiazide, prednisone, and codeine."
14 (Id.) Dr. Knapp's physical examination revealed that the
15 patient's "[l]ungs were clear of auscultation" and that he had a
16 regular heart rate and rhythm. (Id.) Mr. Silvers was diagnosed
17 with a hip fracture and admitted to the hospital under the care
18 of Dr. Dale Adishian in orthopedics. (Id. at H071-72.)

19 Dr. Adishian examined Mr. Silvers later that same day. (Id.
20 at H081-83.) Dr. Adishian reported that Mr. Silvers had been
21 drinking prior to his fall and that Mr. Silvers had chronic
22 obstructive pulmonary disease ("COPD") and hypertension. (Id. at
23 H081.) According to the report, Mr. Silvers denied "any
24 difficulty with ambulation" other than becoming short of breath.
25 (Id.) Dr. Adishian recommended surgery to stabilize Mr. Silvers'
26 left hip. (Id.)

27 Prior to the surgery, Dr. Adishian referred Mr. Silvers to
28 Dr. Than Aung for review of Mr. Silvers' electrolyte imbalance.

1 (Id. at 134.) Dr. Aung noted that Mr. Silvers was an "alcohol
2 drinker" (daily) and an "active smoker" (one to two packs a day).
3 (Id.) He also reported that at the time of the physical
4 examination, Mr. Silvers had no other illnesses and that
5 "[r]espiratory wise and cardiac wise he seem[ed] to be stable."
6 (Id. at H135.)

7 Mr. Silvers underwent hip surgery on May 8, 2003. (Id. at
8 H186.) Orthopedic surgeon Dr. Adishian inserted an
9 "intramedullary hip screw" in Mr. Silvers' left hip and femur.
10 (Id.)

11 Post-operation, the following day, Mr. Silvers experienced
12 "[w]orsening shortness of breath" and was transferred to the
13 intensive care unit ("ICU"). (Id. at H138.) Dr. Aung referred
14 Mr. Silvers to Dr. Amjad Musthafa. (Id.) Dr. Musthafa's
15 impressions included, among other things: (1) "[a]cute
16 postoperative respiratory insufficiency" and "early right upper
17 lower pneumonia" (which had "arisen within 48 hours of
18 admission"); (2) "[a]cute exacerbation of chronic obstructive
19 pulmonary disease"; and (3) "[c]hronic alcohol abuse with
20 significant risk of alcohol withdrawal/delirium tremens." (Id.
21 at H140.)

22 A chest x-ray taken on May 10, 2003 revealed right upper
23 lobe pneumonia. (Id. at H161.) Another x-ray, taken the
24 following day, revealed a "clearing of the right upper lobe
25 infiltrate" and was "[n]egative for pneumonia." (Id. at H159.)
26 According to the hospital discharge summary, Mr. Silvers
27 experienced the following complications: (1) "increased
28 hypertension," (2) "shortness of breath and confusion associated

1 with chronic obstructive pulmonary disease," and (3) "[a]lcohol
2 withdrawal requiring an ICU stay." (Id. at H067.) Mr. Silvers'
3 condition continued to improve and, four days after the surgery,
4 he was transferred out of the ICU and back to Orthopedics. (Id.
5 at H068.) Mr. Silvers was discharged in stable condition on May
6 14, 2003. (Id. at H067-68.) According to the Discharge Planning
7 Report, the hospital discharged Mr. Silvers to Canyonwood Skilled
8 Nursing Facility for short term placement for physical therapy.
9 (Id. at H129.)

10 During the period between the hip fracture and his death ten
11 months later, Mr. Silvers visited the Palo Cedro Medical Clinic
12 and was seen by Dr. Charles Honnold. (Id. at H018, H291-93.)
13 Mr. Silvers visited Dr. Honnold on several occasions between July
14 2003 and March 2004. (Id. at H291-93 (noting visits in July
15 2003, August 2003, September 2003, November 2003, and March
16 2004).) Mr. Silvers' chief complaint during this time appeared
17 to be pain in his back and hip, for which Dr. Honnold prescribed
18 medication. (Id.) Dr. Honnold's notes state the following:
19 "sodium penathal, heart, breathing problems." (Id.)

20 Dr. Honnold also noted the following during Mr. Silvers'
21 visits to the Palo Cedro Medical Center in the months preceding
22 Mr. Silvers' death:

- 23 - July 2003 visit: Mr. Silvers' lungs "clear."
- 24 - August 5, 2003 visit: Mr. Silvers "ambulating with a
25 cane" but "not tolerating walking well."
- 26 - September 3, 2003 visit: Mr. Silvers taking flu
27 medication and his ambulation "slowly improving."
- 28 - November 17, 2003 visit: Mr. Silvers had "[g]ood days
and (mostly) bad days" and "wanted to stop smoking."

1 - March 11, 2004 visit: Mr. Silvers suffered a "mini-
2 stroke" one and a half months ago and was suffering
3 from "cognitive disorder."

4 (Id. at H291-93.)

5 Mrs. Silvers described Mr. Silvers' condition in the months
6 following the accident on Hartford's Proof of Loss form. (Id. at
7 H290.) According to Mrs. Silvers, her husband "was on oxygen
8 since" his hip surgery and "was never able to walk again or
9 breath without oxygen." (Id.) Mrs. Silvers further stated that
10 she believed her husband "had a low grade temperature since" the
11 surgery and that "[i]t was a downward spiral to his death on 3-
12 21-04." (Id.)

13 Ten months after the surgery, on March 19, 2004, Mr. Silvers
14 was admitted to Mercy Medical Center in Redding, California with
15 worsening back pain "to the point where he was unable to ambulate
16 and unable to be cared for at home." (Id. at H318-19.) Dr.
17 David Short evaluated Mr. Silvers, indicating that he had not
18 seen Mr. Silvers for approximately one year. (Id. at 319.) Dr.
19 Short described Mr. Silvers as a "66-year-old male who has a
20 history of chronic alcohol abuse, COPD, and chronic back pain and
21 arthritis." (Id.) Dr. Short's assessment included: (1)
22 "[i]ntractable low back pain," (2) "[e]levated WBC of uncertain
23 significance," (3) "[c]hronic alcohol abuse," and (4) "COPD."
24 (Id. at H320-21.)

25 While hospitalized, Mr. Silvers was attended by Dr. William
26 Harden. (Id. at H331.) On March 21, 2004, Dr. Harden reported
27 that Mr. Silvers had a urinary tract infection and possible
28 urosepsis. (Id. at H323.) Mr. Silvers passed away later that
day. (Id. at H331.) Dr. Harden's summary report stated: "This

1 66 year old gentleman, alcoholic with a long history of frailty
2 and progressive weakness was admitted 3/19/04 for back pain,
3 decreased level of consciousness, and possible pneumonitis."
4 (Id.) Mercy Medical Center noted that Mr. Silver's principal
5 diagnosis was "urinary tract infection," with secondary diagnoses
6 as: "Chronic airway obstruction," "unspecified alcohol
7 dependence," "abdominal aneurysm without rupture," "essential
8 hypertension, unspecified benign or malignant," and "tobacco use
9 disorder." (Id. at H329.)

10 Dr. Short completed Mr. Silvers' death certificate on March
11 23, 2004. (Id. at 370-71.) The death certificate lists the
12 immediate cause of death as "pneumonia," with a time interval
13 between onset and death of one week. (Id. at H371.) The death
14 certificate further lists COPD as the underlying cause of death,
15 with a time interval between onset and death of ten years. (Id.)

16 Subsequently, on April 21, 2004, Dr. Short reported on
17 Hartford's Cause of Death form that the leading cause of death
18 was pneumonia "due to" COPD and "debility from hip fracture."²
19 (Id. at H017, H019.)

20 STANDARD

21 Before reaching the merits of the parties' motions, the
22 court must determine the appropriate standard of review to apply
23 to Hartford's denial of benefits determination.
24

25
26 ² The parties have not indicated, nor can the court
27 determine from the record, who gave this Hartford form to Dr.
28 Short, for what purpose it was given to him, why it was signed
almost one month after the death certificate, and why this is the
first mention that the pneumonia was "due to," in part, debility
from hip fracture.

1 The policy at issue here is a group accidental death and
2 dismemberment policy governed by ERISA. In Firestone Tire &
3 Rubber Co. v. Bruch, the United States Supreme Court held that a
4 challenge to the denial of benefits under an ERISA plan is
5 reviewed *de novo* "unless the benefit plan gives the administrator
6 or fiduciary discretionary authority to determine eligibility for
7 benefits or to construe the terms of the plan." 489 U.S. 101,
8 115 (1989). Where a plan document gives an administrator such
9 discretionary authority, a court must apply the "abuse of
10 discretion" or "arbitrary and capricious" standard of review to
11 the administrator's decision to deny benefits. Id. at 111; see
12 also Abatie v. Alta Health & Life Insur. Co., 458 F.3d 955, 963
13 (9th Cir. 2006).

14 In this case, however, the parties agree that no such
15 discretionary provision exists in the policy and thus the *de novo*
16 standard of review applies. (Pl.'s Mot. for Summ. J. ("Pl.'s
17 MSJ"), filed Sept. 15, 2008, at 6; Def.'s Mot. for Summ. J.
18 ("Def.'s MSJ"), filed Sept. 15, 2008, at 9.) Under *de novo*
19 review, the court determines whether the plaintiff is entitled to
20 benefits under the terms of the plan without deference to either
21 party's interpretation. Firestone Tire & Rubber Co., 489 US at
22 112; see also Abatie v. Alta Health & Life Ins. Co., 458 F.3d
23 955, 963 (9th Cir. 2006) ("If *de novo* review applies, no further
24 preliminary analytical steps are required. The court simply
25 proceeds to evaluate whether the plan administrator correctly or
26 incorrectly denied benefits"). Pursuant to Federal Rules
27 of Civil Procedure, Rule 52(a), the court conducts what is
28 essentially a bench trial on the administrative record. Kearney

1 v. Standard Ins. Co., 175 F.3d 1084, 1094-95 (9th Cir. 1999).

2 Under a *de novo* standard of review, the plaintiff has the
3 burden of proving his or her eligibility for benefits under the
4 terms of the plan by a preponderance of the evidence.³ Sabatino
5 v. Liberty Life Assurance Co. of Boston, 286 F. Supp. 2d 1222,
6 1232 (N.D. Cal. 2003) ("Plaintiff must carry the burden to prove
7 that she was disabled under the meaning of the plan");
8 see also Jordan v. Northrop Grumman Corp. Welfare Ben. Plan, 63
9 F. Supp. 2d 1145, 1155 (C.D. Cal. 1999) ("[T]he burden in making
10 [an ERISA] claim is on Plaintiff"); see also Wies v.
11 Accidental Death & Dismemberment Benefit Plan of Kaiser Found.
12 Health Plan Inc., 442 F. Supp. 2d 850, 855-56 (N.D. Cal. 2006)
13 (applying the preponderance of the evidence standard to determine
14 whether the accident was the proximate cause of the plaintiff's
15 loss). The defendant has the burden of proving "the
16 applicability of any plan coverage exclusion [it] seek[s] to
17 invoke." Sabatino, 286 F. Supp. 2d at 1232.

18 ANALYSIS

19 Applying the *de novo* standard of review to the facts of this
20 case, the court must first determine whether plaintiff has met
21 her burden in proving that her husband's death is covered by the
22 terms of the policy.

23
24
25 ³ Pursuant to the Ninth Circuit jury instructions, "When
26 a party has the burden of proof on any claim . . . by a
27 preponderance of the evidence, it means [that the factfinder]
28 must be persuaded by the evidence that the claim . . . is more
probably true than not true." 9th Cir. Jury Instr. § 1.3. This
decision should be based "on all of the evidence, regardless of
which party presented it." Id.

1 The policy at issue here is an "Accidental Death and
2 Dismemberment Policy," which pays the principal sum of
3 \$100,000.00 when a covered "injury" results in the loss of life
4 of the insured person within 365 days after the date of the
5 accident. (Administrative Record, at H057.) The "injury" must
6 result "directly and independently of all other causes" from an
7 "accident" that occurs while the insured person is covered under
8 the policy. (Id. at H052.) The policy covers "loss" resulting
9 from said injury, including the loss of life. (Id. at H057.)
10 However, loss resulting from "sickness or disease is not
11 considered resulting from injury." (Id. at H052.)

12 Defendant contends that under the terms of the policy, the
13 "loss" suffered by the insured person must result directly and
14 independently from the injury. (Def.'s MSJ, at 1 ("The policy
15 provided benefits only for loss 'resulting directly and
16 independently of all other causes from accident.'" (emphasis
17 deleted)).) In other words, defendant contends that plaintiff
18 must prove that Mr. Silvers' hip fracture directly and
19 independently caused Mr. Silvers' death ten months later.
20 However, defendant misreads the policy. The court must
21 "'interpret terms in ERISA insurance policies in an ordinary and
22 popular sense as would a [person] of average intelligence and
23 experience.'" McClure v. Life Ins. Co. of N. Am., 84 F.3d 1129,
24 1134 (9th Cir. 1996) (quoting Evans v. Safeco Life Ins. Co., 916
25 F.2d 1437, 1441 (9th Cir. 1990)). Here, the policy clearly
26 states: "If a Covered Person's injury results in any of the
27 following losses within 365 days after the date of the accident,
28 [Hartford] will pay the sum shown opposite the loss."

1 (Administrative Record, at H057) (emphasis added). The policy
2 goes on to state that for the *loss of life*, the beneficiary
3 receives the "principal sum" of \$100,000.00. (Id.) Thus,
4 according to the plain language of the policy, death is a "loss"
5 *resulting from* an injury, not the injury itself. The policy goes
6 on to define "injury" as "bodily injury resulting directly and
7 independently of all other causes from accident which occurs
8 while [the insured] is covered under [the] policy." (Id. at
9 H052) (emphasis added). Thus, the "directly and independently"
10 language connects the *injury* to the *accident*, not the *loss* to the
11 *injury*. Compare McClure, 84 F.3d at 1135 (analyzing an ERISA
12 policy that "insures against loss 'resulting directly and
13 independently of all other causes from bodily injuries caused by
14 accident.'" (emphasis added)).

15 Given this reading of the policy, for plaintiff to prove her
16 eligibility for benefits, she must show: (1) that Mr. Silvers'
17 injury (i.e., the hip fracture) was "directly and independently
18 caused" by the accident (i.e., the fall) and (2) that the loss
19 (i.e., the death) resulted from the injury within 365 days of the
20 injury.

21 The parties do not dispute that Mr. Silvers fell while
22 getting undressed on the night of May 7, 2003 (Administrative
23 Record, at H070), and that this fall constitutes an "accident"
24 within the terms of the policy. Nor do the parties dispute that
25 Mr. Silvers' "injury" (i.e., his fractured hip) "result[ed]
26 directly and independently of all other causes" from the fall.
27 The issue here is whether plaintiff has met her burden in
28 establishing that the loss (i.e., Mr. Silvers' death) *resulted*

1 from the injury.⁴

2 Defendant cites McClure to support its contention that
3 plaintiff does not qualify for benefits under the policy.
4 (Def.'s MSJ, at 10-12.) The accidental disability policy at
5 issue in McClure insured against loss "resulting directly and
6 independently from the accident." 84 F.3d at 1135. The court
7 sought to interpret the language "directly and independently" and
8 to determine whether the plaintiff's preexisting back condition
9 precluded recovery. Id. at 1134-35. However, as discussed
10 above, the "directly and independently" language in Hartford's
11 policy at issue here refers to the relation of the "injury" to
12 the "accident" (which neither party disputes), not the relation
13 of the "loss" to the injury. Thus, the test used by the court in
14 McClure is inapplicable here. Rather, in this case, the court
15 must simply determine whether Mr. Silvers' death "resulted from"
16 the fractured hip.

17 The court interprets "resulted from" to require that the
18 accident set in motion a chain of events leading directly to the
19 loss at issue (i.e., death). See Henry v. The Home Ins. Co., 907
20 F. Supp. 1392, 1398 (C.D. Cal. 1995) (interpreting "proximate
21 cause"); McClure, 84 F.3d 1129 at 1133. In other words, to meet
22 her burden in showing that Mr. Silvers' death "resulted from" the
23 hip fracture, plaintiff must point to specific evidence in the
24 administrative record demonstrating that Mr. Silvers was in state
25 of deterioration from his fall until his death. Plaintiff fails

26
27 ⁴ Neither party disputes that the death occurred within
28 365 days of the accident. The accident took place on May 7,
2003, and Mr. Silvers died a little over ten months later on
March 21, 2004. (Administrative Record, at H070 H331.)

1 to meet this burden.

2 Although Mr. Silvers' lungs were "clear of auscultation" when
3 he was admitted for surgery, various doctors' reports noted Mr.
4 Silvers' preexisting medical problems. Specifically, these
5 doctors noted that Mr. Silvers suffered from hypertension,
6 osteoporosis, arthritis, and COPD at the time of the accident.
7 (Administrative record, at H070, H081.) Several doctors also
8 reported that Mr. Silvers had a history of "active" drinking and
9 smoking. (Id. at H070, H081, H134.)

10 After the surgery, Mr. Silvers experienced "acute
11 postoperative respiratory insufficiency," "early right upper lobe
12 pneumonia," "[a]cute exacerbation" of COPD, and "alcohol
13 withdrawal/delirium tremens." (Id. at H140.) He was immediately
14 transferred to the ICU upon experiencing "worsening shortness of
15 breath." (Id. at H138.) Rather than continue on a "downward
16 spiral toward death," Mr. Silvers' condition improved. An x-ray
17 taken on May 11, 2003 revealed a clearing of the lungs and was
18 negative for pneumonia. (Id. at H159.) Mr. Silvers was
19 discharged in stable condition on May 14, 2003. (Id. at H067-
20 68.)

21 Moreover, and most problematic for plaintiff, Mr. Silvers
22 died over ten months after the surgery. (Id. at H186; 331.)
23 Significantly, in neither moving for summary judgment nor
24 opposing defendant's motion, did plaintiff cite any evidence in
25 the record describing Mr. Silvers' medical condition during this
26 ten month period. Upon its independent review of the entire
27 administrative record, the court discovered Dr. Honnold's notes,
28 presumably taken during medical visits with Mr. Silvers between

1 July 2003 and March 2004. (Id. at H291-93.) However, there is
2 no declaration or affidavit deciphering or explaining the
3 significance of these notes; the court cannot, on its own, draw
4 medical inferences. From what the court can properly discern,
5 Mr. Silvers was seen, during this time, primarily for hip and
6 back pain. (Id.) Dr. Honnold also describes that Mr. Silvers
7 suffered a stroke some time around the end of January/beginning
8 of February 2004. (Id. at H291.) However, plaintiff does not
9 attempt to explain the circumstances surrounding the stroke or
10 otherwise connect it to the hip fracture in any way, and the
11 administrative record itself does not reveal these answers.

12 The only evidence relating to this ten-month period upon
13 which plaintiff specifically relies is (1) the written statement
14 by Mrs. Silvers on Hartford's Proof of Loss form (id. at H290
15 (stating that Mr. Silvers' "was on oxygen since" his surgery,
16 "was never able to walk again or breath without oxygen," "had a
17 low grade temperature since the surgery," and was on a "downward
18 spiral to his death")), and (2) Dr. Short's April 24, 2004
19 statement, that the leading cause of Mr. Silvers' death was
20 pneumonia "due to" COPD and "debility from hip fracture." (Id.
21 at H019.) However, these statements do not adequately bridge the
22 ten-month gap between Mr. Silvers' hip fracture and death.
23 Neither Dr. Short's nor Mrs. Silvers' statements are adequately
24 corroborated by the administrative record. Indeed, nothing in
25 the contemporaneous notes from Mr. Silvers' second hospital stay
26 mention debility or immobility from hip fracture, so as to
27 support Dr. Short's subsequent statement on April 24, 2004.
28 Moreover, the April 24 statement is inconsistent with Dr. Short's

1 previous findings on March 23, 2004, indicating on Mr. Silvers'
2 death certificate that the cause of death was pneumonia, with
3 COPD as the underlying cause of death.

4 Ultimately, Mr. Silvers' initial post-operative bout with
5 pneumonia cleared up within a couple days. (Id. at H161, H159.)
6 His death certificate indicated that the pneumonia that caused
7 his death began only a week prior to his death (id. at H371);
8 there is no indication that Mr. Silvers suffered from pneumonia
9 or any surgery-related complication in the ten months between the
10 surgery and just prior to his death. In fact, the death could
11 have resulted from any number of intervening events, including
12 the unexplained stroke, or Mr. Silvers' documented struggles with
13 COPD, alcoholism, and smoking. Given Mr. Silvers' preexisting
14 medical conditions, the fact that his condition significantly
15 improved after the surgery, and the ten-month gap in the record
16 explaining Mr. Silvers' interim medical condition, plaintiff has
17 not met her burden in proving by a preponderance of the evidence
18 that Mr. Silvers' death resulted from the hip injury.

19 **CONCLUSION**

20 For the foregoing reasons, the court GRANTS defendant's
21 motion for summary judgment and DENIES plaintiff's motion for
22 summary judgment. The Clerk of the Court is directed to close
23 this file.

24 IT IS SO ORDERED

25 DATED: April 14, 2009.

26 

27 _____
28 FRANK C. DAMRELL, JR.
UNITED STATES DISTRICT JUDGE