

United States District Court
Northern District of California

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

ANTHONY RAMOS,
Plaintiff,
v.
UNITED OF OMAHA LIFE INSURANCE
COMPANY,
Defendant.

Case No. 12-cv-03761-JST

**ORDER GRANTING DEFENDANT’S
MOTION FOR ADMINISTRATIVE
RELIEF, GRANTING DEFENDANT’S
MOTION FOR JUDGMENT, AND
DENYING PLAINTIFF’S MOTION FOR
JUDGMENT**

Re: ECF Nos. 35, 38, and 44.

In this case arising under the Employee Retirement Income Security Act, 29 U.S.C. § 1001, et seq. (“ERISA”), Plaintiff Anthony Ramos (“Plaintiff”) and Defendant United of Omaha Life Insurance Company (“Defendant”) have filed cross-motions for judgment pursuant to Rule 52 of the Federal Rules of Civil Procedure. Notice of Motion and Motion for Judgment (“Plaintiff’s Motion”), ECF No. 35; Defendant United of Omaha Life Insurance Company’s Notice of Motion and Motion for Judgment on Partial Findings (“Defendant’s Motion”), ECF No. 38. Defendant has also filed an administrative motion objecting to Plaintiff’s response brief, pursuant to Local Rule 7-11. Defendant United of Omaha Life Insurance Company’s Notice of Administrative Motion and Motion (“Defendant’s Administrative Motion”).

I. BACKGROUND

A. Procedural Background

Plaintiff filed this complaint against Defendant in July 2012, asserting a cause of action for recovery of employee benefits pursuant to 29 U.S.C. § 1132(a)(1)(B) and a second cause of action for equitable relief for breach of fiduciary duty. In January 2013, the Court granted Defendant’s motion to dismiss the second cause of action with prejudice. ECF No. 25.

1 The parties stipulated that this matter would be resolved on the merits through dispositive
2 cross-motions for judgment pursuant to Rule 52 of the Federal Rules of Civil Procedure. Joint
3 Case Management Statement, ECF No. 23; Supplemental Joint Case Management Statements at
4 ECF Nos. 27 & 30. The parties also stipulated to the completeness of the Administrative Record
5 upon which the Court would decide the motions. ECF No. 38-1. In May, Plaintiff and Defendant
6 each filed such motions, and responses thereto. Plaintiff’s Motion; Defendant’s Motion;
7 Plaintiff’s Opposition to Defendant United of Omaha Life Insurance Company’s Motion for
8 Judgment (“Plaintiff’s Opp.”), ECF No. 42; Defendant United of Omaha Life Insurance
9 Company’s Opposition to Plaintiff’s Motion for Judgment on Partial Findings (“Defendant’s
10 Opp.”), ECF No. 41.

11 Plaintiff’s Motion argued that Plaintiff was totally disabled by his seizure condition.
12 Plaintiff’s Motion, at 18:7-8. In his opposition, Plaintiff argued that other conditions besides his
13 seizure condition rendered him disabled, and submitted a declaration with exhibits relating to his
14 subsequent social security disability benefits award. Plaintiff’s Opp. at 9:21-10:27; Declaration of
15 Anthony Ramos in Support of Plaintiff’s Opposition to Defendant United’s Motion for Judgment,
16 ECF No. 43. Defendant filed a Motion for Administrative Relief, objecting to the declaration and
17 to Plaintiff raising new arguments in its opposition that it did not raise in its motion. Defendant’s
18 Motion for Administrative Relief. Plaintiff declined to stipulate to withdraw those materials, and
19 also did not file any response or opposition to Defendant’s Administrative Motion, as was his right
20 under Civil Local Rule 7-11(b). Declaration of Brendan V. Mullan, at ¶ 5, ECF. No. 45.

21 **B. Jurisdiction**

22 Plaintiff’s cause of action arises under ERISA, a federal statute. This Court therefore has
23 federal-question jurisdiction pursuant to 28 U.S.C. § 1331.

24 **C. Legal Standard**

25 “ERISA was enacted ‘to promote the interests of employees and their beneficiaries in
26 employee benefit plans,’ and ‘to protect contractually defined benefits.’” Firestone Tire & Rubber
27 Co. v. Bruch, 489 U.S. 101, 113 (1989) (internal citations omitted). ERISA “permits a person
28 denied benefits under an employee benefit plan to challenge that denial in federal court.”

1 Metropolitan Life Ins. Co. v. Glenn, 554 U.S. 105, 108 (2008). “ERISA’s civil-enforcement
2 provision . . . allows a claimant ‘to recover benefits due to him under the terms of his plan [and] to
3 enforce his rights under the terms of the plan.’” Muniz v. Amec Const. Mgmt., Inc., 623 F.3d
4 1290, 1294 (9th Cir. 2010) (quoting 29 U.S.C. § 1132(a)(1)(B)).

5 “[A] denial of benefits challenged under § 1132(a)(1)(B) is to be reviewed under a de
6 novo standard unless the benefit plan gives the administrator or fiduciary discretionary authority to
7 determine eligibility for benefits or to construe the terms of the plan.” Firestone, 489 U.S. at 115.
8 In this case, the parties have stipulated, and the Court agrees, that de novo review is appropriate.
9 Joint Case Management Statement, ECF No. 23; Supplemental Joint Case Management
10 Statements at ECF Nos. 27 & 30.

11 Under de novo review, “the court simply proceeds to evaluate whether the plan
12 administrator correctly or incorrectly denied benefits with no deference given to the
13 administrator’s decision.” Abatie v. Alta Health & Life Ins. Co., 458 F.3d 955, 963 (9th Cir.
14 2006) (en banc). “[W]hen the court reviews a plan administrator’s decision under the de novo
15 standard of review, the burden of proof is placed on the claimant.” Muniz, 623 F.3d at 1294.

16 ERISA’s “statutory scheme . . . ‘is built around reliance on the face of written plan
17 documents.’” U.S. Airways, Inc. v. McCutchen, ___ U.S. ___, 133 S. Ct. 1537, 1548 (2013)
18 (quoting Curtiss–Wright Corp. v. Schoonejongen, 514 U.S. 73, 83 (1995)). “Courts construe
19 ERISA plans, as they do other contracts,” with reference to “ordinary principles of contract
20 interpretation.” U.S. Airways, 133 S. Ct. at 1548-49 (2013). “[A]mbiguities are construed contra
21 proferentem, and . . . ambiguities are construed in favor of the insured.” Kearney v. Standard Ins.
22 Co., 175 F.3d 1084, 1090 (9th Cir. 1999).

23 “When a Court conducts a de novo review of an administrator’s denial of long-term
24 disability benefits in an ERISA case, the Court effectively conducts a bench trial upon the record,”
25 and can proceed to enter judgment pursuant to Rule 52. Allenby v. Westaff, Inc., Case No. 04-
26 2423 TEH, 2006 WL 3648655, at *1 (N.D. Cal. Dec. 12, 2006) (citing Kearney, 175 F.3d at 1094-
27 95). “In a Rule 52 motion . . . the court does not determine whether there is an issue of material
28 fact, but whether the plaintiff is disabled under the policy, and is to ‘evaluate the persuasiveness of

1 conflicting testimony,’ and make findings of fact.” Wiley v. Cendant Corp. Short Term Disability
2 Plan, Case No. 09-00423 CRB, 2010 WL 309670, at *6 (N.D. Cal. Jan. 19, 2010) (quoting
3 Kearney, 175 F.3d at 1095).

4 **II. FINDINGS OF FACT AND CONCLUSIONS OF LAW**

5 Eichleay Engineers, Inc. (“Eichleay”) maintained a Long-Term Disability Plan for its
6 employees that is governed by ERISA. Complaint, at ¶ 3; Answer, at ¶ 3. Defendant issued a
7 group insurance policy (“the Policy”) funding the disability benefits provided by Eichleay, which
8 became effective January 1, 2010. Administrative Record (“AR”) 1-56.

9 Under the Policy, long-term disability benefits were payable for any employee deemed
10 “Totally Disabled.” AR, 35 & 49. The Policy defines Totally Disabled and Total Disability as
11 follows:

12 Totally Disabled or Total Disability means that as a result of Injury
13 or Sickness You are unable to perform with reasonable continuity
14 the Substantial and Material Acts necessary to pursue Your Usual
Occupation and You are not working in Your Usual Occupation.

15 AR 49. The Policy defines “Usual Occupation” as the “Substantial and Material Acts
16 of the occupation You were regularly performing for the Policyholder when Disability began.

17 Usual occupation is not necessarily limited to the specific job You performed for the
18 Policyholder.” Id. The Policy also defines Substantial and Material Acts as follows:

19 Substantial and Material Acts means the important tasks, functions,
20 and operations generally required by employers from those engaged
21 in Your Usual Occupation that cannot be reasonably omitted or
22 modified. In determining what substantial and material acts are
23 necessary to pursue Your Usual Occupation, We will first look at
24 the specific duties required by Your employer. If You are unable to
25 perform one or more of the duties with reasonable continuity, We
26 will then determine whether those duties are customarily required of
27 other employees engaged in Your Usual Occupation. If any specific,
28 material duties required of You by Your employer differ from the
material duties customarily required of other employees engaged in
Your Usual Occupation, then We will not consider those duties in
determining what substantial and material acts are necessary to
pursue Your Usual Occupation.

AR 48-49.

Plaintiff began working for Eichleay in 2005, and became insured under the terms of the
Plan when it came into effect in January 2010. AR at 57. Plaintiff was employed by Eichleay, but

1 he performed his work at the site of an oil refinery run by one of Eichleay’s clients Valero, where
2 he was supervised by Valero employees. Id.

3 In January 2011, Plaintiff submitted a long-term disability claim to Defendant, stating that
4 he was unable to work due to “seizures/disorientation,” but expected to return to work in March
5 2011. AR 701. Plaintiff supported his claim with a statement from neurologist Dr. Albert
6 Mitchell. AR 706-07. Dr. Mitchell diagnosed Plaintiff with “partial complex seizures,” and
7 identified a number of workplace limitations: “no climbing ladders or heights,” and “[n]o working
8 with heavy equipment.” AR 707. Defendant approved Plaintiff’s claim on May 31, 2011, and
9 paid benefits retroactively to January 11, 2011 and monthly thereafter. AR 493-95.

10 After receiving a supplemental statement from Dr. Mitchell on August 15, 2011,
11 Defendant sought a medical review from two nurse-consultants. AR 140-42; 742-43, 746-48.
12 Defendant, Dr. Mitchell, and Plaintiff engaged in written correspondence and exchanged
13 information regarding Plaintiff’s job requirements and current medical conditions. AR 166-68,
14 172-73, 356, 368. In this correspondence, Dr. Mitchell made clear his opinion that Plaintiff was
15 restricted from walking or climbing to any heights, and that it would be dangerous to rely on
16 Plaintiff to read pressure valves because Plaintiff had difficulty concentrating during a seizure
17 episode. AR 140-42, 172-73. Plaintiff also provided Defendant with his own description of his
18 prior job duties, and included a position qualification outline from his former employer. AR 356
19 & 368. Defendant denied further disability benefits on December 11, 2001, after determining that
20 Plaintiff was not prevented from performing the Substantial and Material Acts of his Usual
21 Occupation. AR 284-89.

22 Plaintiff submitted a written appeal. AR 269. In evaluating this appeal, Defendant
23 obtained updated medical records from Dr. Mitchell and Plaintiff’s primary physician Dr. Josefina
24 Arenas. AR 156-62; 234-41. In response to a questionnaire and job description sent by Eichleay,
25 Dr. Mitchell stated that Plaintiff “would be unable to work in a production facility where he was
26 required to climb heights over 150 feet without a harness,” and “he shouldn’t work around volatile
27 fluids.” AR 244-45. Defendant’s nurse-consultant went slightly further, concurring that based on
28 Plaintiff’s self-reported seizures, it was appropriate to restrict Plaintiff from climbing ladders,

1 working at heights, working with hazardous materials, working around moving/operating
2 machinery, and driving commercial vehicles. AR 735-38. Defendant denied Plaintiff's appeal
3 March 12, 2012, again concluding that the medical records did not explain why Plaintiff was
4 disabled from performing the Substantial and Material Acts of his Usual Occupation. AR 82-88.

5 Plaintiff offers three arguments why he has met his burden of showing that Defendant
6 wrongly denied benefits. First, Plaintiff offers various criticisms about the manner in which
7 Defendant considered Plaintiff's claim, and criticizes Defendant for improperly reaching a
8 different conclusion about Plaintiff's medical condition than Dr. Miller. Defendant concedes this
9 point arguendo for the purposes of this motion, because the manner in which Defendant conducted
10 its review is irrelevant to the Court's de novo review. The parties do not dispute that Dr. Miller's
11 assessment of Plaintiff's seizure condition is the single pertinent assessment of Plaintiff's medical
12 condition. Defendant's sole ground for denying Plaintiff benefits was that that condition did not
13 render him totally disabled from performing his usual occupation within the meaning of the
14 Policy. The Court accepts the truth of Dr. Miller's diagnosis, and the validity of his workplace
15 restrictions: Plaintiff cannot climb ladders, work at high heights, drive or operate machinery or
16 work with hazardous materials.

17 Second, in Plaintiff's Opposition (but not in his Motion), Plaintiff argues that various
18 additional medical conditions besides his seizure condition also rendered him disabled, and further
19 argues that the Court should consider Plaintiff's subsequent social security disability benefit award
20 in considering whether Defendant rightly denied Plaintiff's application for benefits. Plaintiff's
21 Opp. at 9:21-10:27. The Court agrees with Defendant that it would be inappropriate to consider
22 arguments Plaintiff did not raise in its motion, especially since in stipulating to cross-motions for
23 judgment the parties waived their rights to file reply briefs.¹ Therefore, the Court GRANTS

24 _____
25 ¹ It is true that there has been some exchange on this issue, because Defendant addressed the
26 argument of whether Plaintiff's other medical conditions rendered him disabled, and Plaintiff
27 responded to these arguments his opposition. Defendant's Motion, at 17:1-21:22; Plaintiff's Opp.,
28 at 9:21-10:27. This does not change the fact that Plaintiff declined, in its motion, to raise the
argument that physical conditions other than seizures rendered Plaintiff disabled. And Plaintiff
did not introduce materials from the social security process in his initial motion; he introduced it
for the first time as an exhibit to his opposition brief.

1 Defendant's Motion for Administrative Relief, and will not consider these arguments or evidence
2 in resolving this motion.²

3 This action, therefore, comes down to whether Plaintiff's physical condition and work
4 restrictions, as documented by Dr. Miller, render him "Totally Disabled" within the meaning of
5 the Policy. And that question is resolved by determining "the important tasks, functions, and
6 operations generally required by employers from those engaged in" Plaintiff's Usual Occupation
7 "that cannot be reasonably omitted or modified."

8 According to Defendant, Plaintiff's "Usual Occupation" was essentially a desk job, and
9 involved few, if any, high-intensity activities that could not be reasonably omitted or modified.
10 Plaintiff's account is that his "Usual Occupation" involved climbing ladders, working at high
11 heights, driving and operating machinery and working with hazardous materials. The parties have
12 identified the following potential sources of information on this question:

- 13 1. The definition of "Drafter-Oil & Gas" in the U.S. Department of Labor's
14 Dictionary of Occupational Titles' ("DOT"). (As quoted by Defendant's vocational
15 analysts at AR 71-73 & 731.)
- 16 2. The description of "Architectural Drafter" in the Occupational Information
17 Network / Standard Occupational Classification coding system ("SOC/O*NET").
18 (Also quoted by Defendant's vocational analysts at AR 71-73 & 731.)
- 19 3. The Occupational Outlook Handbook ("OOH") (cited, but not quoted by Mr. White
20 in his vocational analysis at AR 731).
- 21 4. The job description supplied by Eichleay's office manager ("First Job
22 Description"), AR 57-62.

24 ² The Court is strengthened in its conclusion by the fact that Plaintiff declined to file any
25 opposition to Defendant's Motion for Administrative Relief, as was his right under Civil Local
26 Rule 7-11(b). At oral argument, the Court invited Defendant counsel again to argue against the
27 Motion for Administrative Motion. Defendant's counsel argued only that a court performing a de
28 novo review in an ERISA case is permitted to consider evidence outside of the Administrative
Record. This is true, but it fails to address Defendant's argument that it was inappropriate to
introduce this evidence for the first time in an opposition brief which gave Defendant no right of
reply. Neither does it demonstrate that the information from the Social Security Award is relevant
to Defendant's denial of benefits, which occurred months earlier.

- 1 5. The Employer’s Statement supplied by Eichleay’s office manager Jette Jensen
- 2 (“Employer’s Statement”), 722-25.
- 3 6. The Position Qualification outline provided by Ramos’ former supervisor, Valero
- 4 employee Al Ex. AR 360-61; 368 (“Position Qualification Outline”).
- 5 7. The second job description received as part of Dr. Mitchell’s records in appeal. AR
- 6 244-49 (“Second Job Description”).
- 7 8. Plaintiff’s own account of his job in his original claim form, AR 703-05, and in his
- 8 response to Defendant’s initial denial. AR 356-68 (“Plaintiff’s Job Description”).

9 Defendant’s vocational analysts reviewed the First Job Description and the Employer’s
10 Statement, and then consulted the first three sources to identify the scope of Plaintiff’s Usual
11 Occupation. The parties strongly dispute the weight this Court should afford to the first three
12 sources. While there is authority on both sides of the question, the DOT especially has been
13 recognized as a widely used and reasonable reference for administrators and courts to use under
14 ERISA. See Dionida v. Reliance v. Reliance Standard Life Ins. Co., 50 F.Supp. 2d 934, 939-40,
15 n. 4 (N.D. Cal. 1999). However, it is undisputed is that these three sources are general job
16 descriptions, not specific accounts of Plaintiff’s actual Usual Occupation. They are only
17 persuasive to the extent that the particular definitions identified by Defendant’s vocational
18 consultants do, in fact, coincide with Plaintiff’s Usual Occupation. See, e.g., Prado v. Comecq,
19 Case No. 05-2716 SC, 2008 WL 191985, at *8 (N.D. Cal. Jan. 22, 2008) (use of the DOT is less
20 compelling when there are noted differences between the DOT definition and the claimant’s actual
21 job description).

22 Plaintiff’s best evidence is as follows. The Position Qualification Outline, with its
23 handwritten additions, requires that Plaintiff be able to maneuver and climb as well as drive, and
24 Mr. Ex stated that Plaintiff would not be able to resume that job with his seizure condition. AR,
25 360 & 368. The Second Job Description requires that Plaintiff climb a ladder and balance,
26 without creating a hazard to others. AR 247. Plaintiff’s Job Description describes him as needing
27 to verify piping and climb 200 feet. AR 356 & 362. The Employer’s Statement required Plaintiff
28 to wear personal protection equipment and gather data in an industrial/construction job site. AR

1 720. Even the DOT and SOC/O*NET definitions (the persuasiveness of which Plaintiff disputes)
2 call for constant visual acuity, and require the employee to visit sites to compile measurements
3 (which, in the case of the Valero refinery, appears to require climbing and driving).

4 However, there are reasons to consider this evidence less persuasive evidence of Plaintiff's
5 "Usual Occupation" than the evidence cited by Defendant. Plaintiff's Job Description, in addition
6 to being potentially self-serving, seems to describe his specific role at the Valero refinery rather
7 than the "Usual Occupation" that Defendant insured. The Second Job Description is of unclear
8 origin and dubious validity, since it seems to describe a different job than in Plaintiff's original
9 application. It, too, appears to describe only Defendant's specific tasks and additional
10 responsibilities at the Valero refinery. The same is true of the Position Qualification Outline,
11 which has additional handwritten information of unclear origin.

12 The Court must weigh this evidence against the evidence indicating that, for the most part,
13 Plaintiff's Usual Occupation did not require activities from which he was disabled. The First Job
14 Description mainly describes an office job, with no boxes checked for hazardous conditions. The
15 Employer's Statement describes a job that is "generally performed in an office environment." AR
16 725. That statement's job title – "Piping Designer B" – does not mandate that the employer gather
17 field data, in contrast to the requirements for "Piping Designer A." AR 724-25. And the
18 definitions in the DOT and SOC/O*NET (which are the only definitions any analyst has identified
19 as coinciding with Plaintiff's Usual Occupation) call for light physical demand level, and do not
20 indicate that climbing, driving, and working with heavy equipment are necessary requirements.

21 The preponderance of the evidence does not indicate that climbing ladders, working at high
22 heights, driving or operating machinery or working with hazardous materials were important
23 tasks, functions, and operations generally required by those engaged in Plaintiff's Usual
24 Occupation, such that those tasks could not be reasonably omitted or modified. Therefore,
25 Plaintiff has not demonstrated that his seizure condition and his workplace restrictions rendered
26 him "Totally Disabled" within the meaning of the Policy. On de novo review, the Court does not
27 conclude that Defendant wrongly denied benefits.

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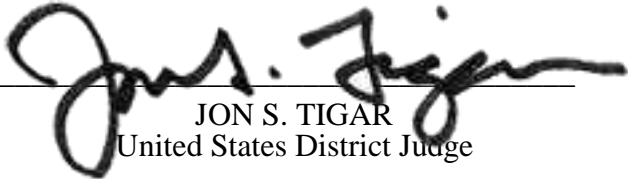
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III. CONCLUSION

For the foregoing reasons, Defendant’s motion for judgment is hereby GRANTED and Plaintiff’s motion for judgment is hereby DENIED.

IT IS SO ORDERED.

Dated: August 13, 2013



JON S. TIGAR
United States District Judge