

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
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION**

CHRISTIAN HULBERT,

Plaintiff,

v.

HARTFORD LIFE AND ACCIDENT
INSURANCE COMPANY,

Defendant.

Case No. 20-cv-03687-BLF

**ORDER GRANTING DEFENDANT’S
MOTION UNDER RULE 52 AND
DENYING PLAINTIFF’S MOTION
UNDER RULE 52**

I. INTRODUCTION

Plaintiff Christian Hulbert (“Hulbert”) filed this ERISA¹ action against Defendant Hartford Life and Accident Insurance Company (“Hartford”) following Hartford’s denial of his claim for long term disability benefits under a group insurance policy that Hartford issued to Hulbert’s former employer, Infinera Corporation (“Infinera”). *See* Compl., ECF 1. The policy in question is Group Long Term Disability Policy No. GLT681103 (“Disability Policy”), which is one component of Infinera Corporation Employee Health and Welfare Benefits Plan (“the Plan”). AR 1376, ECF 28. Infinera is the plan administrator, and Hartford is the insurer. AR 1376, 1442.

The Disability Policy outlines what employees must show in order to be deemed “Totally Disabled.” AR 1441. A worker is Totally Disabled when he is “unable to perform with reasonable continuity the Essential Duties necessary to pursue [his Own] Occupation in the usual or customary way” for a period of two years. *Id.* To continue to receive benefits beyond 24 months, the worker must show that he cannot perform with reasonable continuity in “Any Occupation.” *Id.* Hulbert left his job on August 15, 2018, after tripping down three stairs and hitting his head,

¹ Employee Retirement Income Security Act of 1974, 29 U.S.C. § 1001 *et seq.*

1 resulting in a concussion. AR 1160, 1375. Hartford granted Hulbert short-term disability benefits.
2 AR 175, ECF 27. Hulbert then applied for long-term benefits under the Disability Policy. AR 79.
3 In April 2019, Hartford rejected Hulbert’s long-term disability application, finding that Hulbert
4 did not show he was disabled under the Plan. AR 114. Hulbert appealed this decision the
5 following October, supported by new medical evidence. AR 12. Hartford rejected the appeal in
6 December 2019. AR 84.

7 The parties filed cross motions for judgment pursuant to Federal Rule of Civil Procedure
8 52. *See* Pl.’s Mot., ECF 30; Def.’s Mot., ECF 32. The Court heard oral arguments on April 22,
9 2021. *See* Min. Entry, ECF 36. For the reasons discussed below, the Court issues the following
10 findings of fact and conclusions of law and GRANTS Hartford’s Rule 52 motion. The Court
11 DENIES Mr. Hulbert’s Rule 52 motion.

12 **II. LEGAL STANDARD**

13 Federal Rule of Civil Procedure 52 provides that “[i]n an action tried on the facts without a
14 jury ... the court must find the facts specially and state its conclusions of law separately.” Fed. R.
15 Civ. P. 52(a)(1). “In a Rule 52 motion, as opposed to a Rule 56 motion for summary judgment, the
16 court does not determine whether there is an issue of material fact, but actually decides whether
17 the plaintiff is [entitled to benefits] under the policy.” *Prado v. Allied Domecq Spirits and Wine*
18 *Group Disability Income Policy*, 800 F. Supp. 2d 1077, 1094 (N.D. Cal. 2011) (citing *Kearney v.*
19 *Standard Ins. Co.*, 175 F.3d 1084, 1095 (9th Cir. 1999)). In making that determination, the court
20 must “evaluate the persuasiveness of conflicting testimony and decide which is more likely true”
21 in order to make findings of fact that will be subject to review under a clearly erroneous standard
22 if appealed. *Kearney*, 175 F.3d at 1095.

23 The parties agree that California Insurance Code § 10110.6 applies to this case. Pl.’s Mot.
24 15. The Court thus must determine, based on the evidence in the administrative record, whether
25 Hulbert carries the burden of showing, by a preponderance of the evidence, that he was disabled
26 under the terms of the Plan, without according deference to Hartford’s denial of claim. *Kearney*,
27 175 F.3d at 1087-90; *Abatie v. Alta Health & Life Ins. Co.*, 458 F.3d 955, 963 (9th Cir. 2006);
28

1 *Oster v. Standard Ins. Co.*, 759 F. Supp. 2d 1172, 1185 (N.D. Cal. 2011). To prevail, Hulbert
2 needs to prove it is “more likely than not” that he was disabled under the terms of the Plan.
3 *Armani v. Nw. Mut. Life Ins. Co.*, 840 F.3d 1159, 1163 (9th Cir. 2016) (standard of proof in de
4 novo ERISA disability claim is preponderance of the evidence); *Sanchez v. Monumental Life Ins.*
5 *Co.*, 102 F.3d 398, 404 (9th Cir. 1996) (defining “preponderance of the evidence” as “more likely
6 than not”).

7
8 **III. FINDINGS OF FACT**

9 **A. Mr. Hulbert’s Occupation**

10 Mr. Hulbert was employed as a Senior Support Technician (DOT No. 032.262-010,
11 Sedentary, SVP - 7) with Infinera from 2013 until 2018. AR 257. This “sedentary” work is not
12 physically demanding. AR 259. Hulbert spent most of the workday sitting, and he was not
13 generally called upon to lift, carry, push, or pull objects. *Id.* However, this work had some mental
14 rigor. AR 261. The work “require[d] that [Hulbert] be able to correctly analyze, troubleshoot, and
15 evaluate computer network problems in order to quickly resolve problems [sic] issues.” *Id.*

16
17 **B. The Long-Term Disability Plan**

18 While working for Infinera, Mr. Hulbert was enrolled in the Infinera Corporation
19 Employee Health and Welfare Benefits Plan, which is an ERISA employee welfare benefits plan.
20 AR 1442. Infinera is the Plan Administrator of the Plan. *Id.* Disability benefits under the Plan are
21 insured by Hartford under Group Long Term Disability Policy No. GLT681103 issued by
22 Hartford to Infinera. AR 1376.

23 In order to qualify for long-term benefits, a policyholder must show that he/she is “Totally
24 Disabled” under the language of the Policy. The Disability Policy defines “Total Disability” as:

25 Total Disability or Totally Disabled means during the Elimination Period and for the next
26 2 years, as a result of injury or sickness, you are unable to perform with reasonable
27 continuity the Essential Duties necessary to pursue Your Occupation in the usual or
28 customary way. After that, as a result of injury or sickness you are unable to engage with
reasonable continuity in Any Occupation.

1 AR 1441.

2 “Your Occupation” means any job that shares the same “Essential Duties” as the job the
3 policyholder worked when he/she became disabled. AR 1441. “Any Occupation” is any job that
4 the policyholder is qualified for, so long as it has an earning potential greater than either (1) the
5 product of the Indexed Pre-disability Earnings and the Benefit Percentage, or (2) the Maximum
6 Monthly Benefit. AR 1438.

7 The Policy includes a provision for “Mental Illness and Substance Abuse.” AR 1431. If a
8 disability is caused by “Mental Illness” or “Substance Abuse,” benefits are limited, and only
9 payable for 24 months, unless the policyholder is confined to a hospital at the end of the 24-month
10 period. *Id.* The policy defines “Mental Illness” narrowly, only recognizing illnesses listed in the
11 Diagnostic and Statistical Manual of Mental Disorders, published by the American Psychiatric
12 Association. AR 1439.

13 **C. Mr. Hulbert’s Medical Treatment History**

14 Mr. Hulbert has reported various symptoms since at least 2014. AR 372. A 2014 MRI of
15 his brain revealed the presence of multiple cerebral cavernous hemangiomas (“cavernomas” or
16 “angiomas”). *Id.* His sister and son, according to Mr. Hulbert, also have cerebral malformations,
17 but he declined the recommended follow-up with adult genetics. *Id.* He has seen many medical
18 professionals over the years to treat his various symptoms. Below is a survey of the relevant
19 portions of Mr. Hulbert’s medical history, organized in chronological order and by treatment
20 provider. AR 330.

21 **1. Sarim Mir**

22 In March of 2017, Mr. Hulbert began seeing Dr. Sarim Mir, a neurologist. AR 704.
23 Starting in 2017 and continuing until 2019, Mr. Hulbert repeatedly complained of headaches,
24 memory issues, and difficulty reading to Dr. Mir and physician assistants practicing under his
25 supervision. AR 704-745. Mr. Hulbert also complained about vision issues related to his
26 headaches, AR 714, and dizziness, AR 730. Dr. Mir treated Mr. Hulbert’s headaches through
27 prescription medication and Botox injections. AR 704-745. Mr. Hulbert reported to Dr. Mir on
28

1 June 21, 2017, that he “has trouble telling the difference between letters and numbers that look
2 alike” while stressed at work, but he also stated that it has not affected his performance. AR 711.
3 At the same visit, Dr. Mir prescribed Mr. Hulbert medication to deal with anxiety and referred Mr.
4 Hulbert to a therapist. AR 711, 714. Dr. Mir’s notes from his March 30, 2018 visit with Mr.
5 Hulbert indicate that he started mental health treatment. AR 727, 730.

6 Mr. Hulbert agreed in 2018 that his memory issues mainly present when he is faced with
7 stress. AR 719, 727. Dr. Mir further stated that Mr. Hulbert’s “intermittent word finding difficulty
8 is likely secondary to anxiety.” AR 722, 730. After working with a mental health professional, Mr.
9 Hulbert stated on August 10, 2018, that his headache and memory issues improved. AR 734. From
10 this point on, Heather Hall, Dr. Mir’s Physician’s Assistant, reported in subsequent appointments
11 that his headaches were “stable” and noted the continued improvement connected to working with
12 a mental health provider. AR 735-743. In January 2019, Ms. Hall reported to Hartford that Mr.
13 Hulbert’s headaches were “not disabling.” AR 1147-1148. In April 2019, Mr. Hulbert
14 characterized his headaches as “tolerable.” AR 740.

15
16 **2. 2018 Meetings with Laura Hanes**

17 In 2018, Mr. Hulbert began to see Laura Hanes, a psychiatric nurse therapist, for “social
18 phobia” and anxiety. AR 656-57. On July 20, 2018, at a medication management session with Ms.
19 Hanes, Mr. Hulbert reported that he began having auditory hallucinations the day prior. *Id.* One
20 month later, Mr. Hulbert suffered a mild concussion after tripping down three stairs and hitting his
21 head. AR 1160. While in the hospital getting treatment for his concussion, Mr. Hulbert
22 experienced bradycardia, lowering his heartbeat to 52 b.p.m. *Id.* Mr. Hulbert returned to see Ms.
23 Hanes for another medication management session on August 15, 2018, the day after his
24 concussion. AR 665. At that session, Hulbert reported that he has been “hearing voices for years
25 [and said] that they have only recently worsened.” *Id.* He said that he never told anyone, including
26 his prior therapist, about the voices and offered no reason for this omission. *Id.*

27 Mr. Hulbert returned to see Ms. Hanes in September 2018 and noted that he was “cleared
28 medically by his neurologist, cardiologist and medical doctor.” AR 668. Despite these clearances,

1 Mr. Hulbert continued to report symptoms of passing out and difficulties reading, saying that he
2 was not comfortable returning to work until those symptoms subside. *Id.*

3
4 **3. Thomas P. Pallmeyer**

5 On September 7, 2018, Mr. Hulbert met with Dr. Pallmeyer, a psychologist. AR 1267. Dr.
6 Pallmeyer administered a number of tests to Mr. Hulbert. Mr. Hulbert scored outside the normal
7 limits of Conners' Adult ADHD Rating Scales (CAARS); Dr. Pallmeyer noted that the results
8 "reflect a profile significant for the combined type of ADHD." AR 1268-1269. At the same time,
9 Pallmeyer also noted that the built-in validity scale notes some "response inconsistency," casting
10 doubt on the validity of the administration of the test. AR 1269. Dr. Pallmeyer also found that Mr.
11 Hulbert's results on the Test of Variables of Attention (TOVA) suggested a possibility that he was
12 exaggerating his symptoms. *Id.* Testing administered by Dr. Pallmeyer indicated that Mr. Hulbert
13 suffers from anxiety and depression. AR 1272. Mr. Hulbert placed in the "severely depressed"
14 range of the Beck's Depression Inventory (BDI-II) test. *Id.* Mr. Hulbert also placed in the "high
15 anxiety" range of the Beck Anxiety Inventory (BAI). *Id.* Dr. Pallmeyer concluded that Mr.
16 Hulbert's depression and anxiety may be factors contributing to his attention difficulties. *Id.*
17 Furthermore, Dr. Pallmeyer noted that Mr. Hulbert's drug use may have compromised the test
18 results. *Id.* Nonetheless, Dr. Pallmeyer notes that the test results are consistent with a comorbid
19 diagnosis of ADHD. *Id.*

20 In his examination, Dr. Pallmeyer asked Mr. Hulbert about his personal history. AR 1267.
21 Mr. Hulbert offered that he served in the United States Air Force for a period of time, before he
22 was discharged with a diagnosis of Borderline Personality Disorder. AR 1268. Dr. Pallmeyer's
23 report shows that Mr. Hulbert also discussed his personal "history of alcohol and polysubstance
24 abuse, including past use of methamphetamines, cocaine, and heroin." *Id.*

25 **4. Rebecca Newcomer and Early 2019 Meetings with Laura Hanes**

26 When Ms. Hanes was on maternity leave, Mr. Hulbert met with a new psychiatric nurse
27 therapist, Rebecca Newcomer. AR 665, 674. On October 4, 2018, their first meeting, Mr. Hulbert
28 reported that his auditory hallucinations were less significant. AR 674. On November 1, 2018, Ms.

1 Newcomer filled out an attending physician statement in support of Mr. Hulbert’s short-term
2 disability claim. AR 1310. In this statement, she gave a primary diagnosis of ADHD and a
3 secondary diagnosis of major depression. *Id.*

4 In early 2019, Mr. Hulbert began meeting with Ms. Hanes again. AR 683. On January 9,
5 2019, Ms. Hanes discussed Mr. Hulbert’s marijuana use with him and noted Dr. Pallmeyer’s
6 report, which concluded that some of Mr. Hulbert’s symptoms may be caused by substance abuse.
7 *Id.* Ms. Hanes noted that she would “decline to prescribe any further stimulants until [Mr. Hulbert]
8 has abstained from marijuana use.” *Id.* Mr. Hulbert’s testimony that he was clean from marijuana
9 was not enough; Ms. Hanes needed corroborating evidence from a urine sample. *Id.*

10 In notes from a February 5, 2019 meeting, Ms. Hanes wrote,

11
12 Is clear with me that he does not feel depression and anxiety [are] the result of his symptoms
13 and he feels the brain cavernoma that he has his [sic] what is causing his symptoms. However
14 the neurologist that he last saw told him that cavernoma would not cause any of his
15 symptoms. He is deciding to get a second opinion from a different neurologist. He
16 acknowledges that his pursuit of long-term disability is equally as stressful as his condition
17 that is preventing him from working and is definitely exacerbating his symptoms.

18 AR 692.

19 After Ms. Hanes returned from maternity leave and before Mr. Hulbert’s April 2019
20 session with Dr. Marcella Wozniak, Mr. Hulbert met with Ms. Hanes five times for his depression
21 and ADHD. AR 683-697. On a three of these occasions, he communicated a theory that his
22 symptoms are caused by a neurological condition and not anxiety. AR 689, 692, 695. He
23 expressed frustration that “all the doctors say it is anxiety.” AR 689.

24 **5. Marcella Wozniak**

25 On April 9, 2019, Mr. Hulbert saw Dr. Marcella Wozniak, a neurologist at the University
26 of Maryland Medical Center. AR 334. He was referred to her for an evaluation for attention deficit
27 disorder. AR 333. Dr. Wozniak concluded that Mr. Hulbert does not have any gross language or
28 reading deficits, and that “he clearly does read despite stating multiple times he can not.” AR 334.

Mr. Hulbert noted his symptoms in detail. AR 329. He noted that his symptoms include

1 poor attention, headaches, decreased memory, and difficulty seeing numbers and letters. *Id.* Mr.
2 Hulbert stated that his job involved careful review of computer code, and if he made a mistake
3 while reviewing code, it could have serious financial implications for Infinera. *Id.*

4 Dr. Wozniak reviewed an April 2019 MRI of Mr. Hulbert’s brain. Dr. Wozniak was clear
5 that the new MRI showed no change in size or location of Mr. Hulbert’s cavernomas. AR 327,
6 334. The newest MRI showed cavernomas that could not be seen on previous MRIs. AR 333.
7 Since the April 2019 MRI was taken on more sensitive machinery, Dr. Wozniak assured Mr.
8 Hulbert that the apparently “new” cavernomas “likely were present just not detectable on prior
9 imaging.” *Id.* Since the cavernomas had not physically worsened, Dr. Wozniak therefore
10 concluded that the cavernomas are not the primary cause of Mr. Hulbert’s symptoms. AR 327. Dr.
11 Wozniak told Mr. Hulbert that the cavernomas cause only “mild difficulties which would not rise
12 to level of disability that is specified by insurance or social security.” *Id.* Accordingly, Dr.
13 Wozniak referred him to psychiatry for adjustment to illness. *Id.* Dr. Wozniak also noted that
14 “given small size of cerebral cavernous angiomas, results of be[d]side testing of language and
15 reading and reported anxiety/social phobia, I would not expect more detailed testing to show large
16 focal disabling cognitive dysfunction related to cerebral angiomas alone.” AR 334.

17 Three days after speaking with Dr. Wozniak in April, Mr. Hulbert had a medication
18 management session with Ms. Hanes. AR 698. Plaintiff told Ms. Hanes that Dr. Wozniak believed
19 it was possible that his symptoms were caused by new cavernomas. *Id.* This report directly
20 contradicts Dr. Wozniak’s records. AR 327, 698.

21 On May 21, 2019, Dr. Wozniak met with Mr. Hulbert again. She reiterated her conclusions
22 from their first meeting: the cavernomas are not obviously new or worsening. AR 319.

23
24 **6. Ben Jones**

25 Mr. Hulbert saw Dr. Ben Jones, a neuropsychologist, for examination and testing on April
26 23, 2019, and again on April 26, 2019. AR 515. He contacted Dr. Jones’s office and stated that his
27 neurologist, Dr. Wozniak, had requested that he have neuropsychological testing. *Id.* Generally,
28 Mr. Hulbert performed well on the tests that Dr. Jones administered. AR 518. However, Dr. Jones

1 noted a number of tests that may indicate that Mr. Hulbert is impaired. *Id.* First, Dr. Jones found
2 Mr. Hulbert to be mildly impaired on both the Time Score for his right hand and the Localization
3 Score on the Halstead-Reitan Neuropsychological Test Battery. *Id.* Second, Dr. Jones found a
4 large disparity between Mr. Hulbert’s Verbal IQ (108) and his Performance IQ (134) scores on the
5 Wechsler Adult Intelligence Scale. *Id.* Dr. Jones indicated that this suggests possible left
6 hemisphere dysfunction. *Id.* Next, Dr. Jones found a significant difference in grip strength
7 between Mr. Hulbert’s left and right hands, strongly favoring the right hand. *Id.* Dr. Jones noted
8 that this may be due to motor weakness in the right hemisphere of the brain. *Id.* Mr. Hulbert also
9 made more errors using his left hand on the Reitan-Klove Tactile Form Recognition Test, which
10 Dr. Jones concluded may again be related to the right hemisphere of Mr. Hulbert’s brain. *Id.*
11 Finally, Dr. Jones confirmed Mr. Hulbert’s issues reading and recognizing symbols on the Reitan-
12 Indiana Aphasia Screening Test, again indicating this finding is related to the right hemisphere of
13 Mr. Hulbert’s brain. *Id.*

14 Dr. Jones stated that Mr. Hulbert brought with him (1) Dr. Pallmeyer’s report, (2) Mr.
15 Hulbert’s April 2019 MRI, and (3) Dr. Wozniak’s report. AR 515. However, Dr. Jones’s notes
16 regarding the April 2019 MRI differ significantly from Dr. Wozniak’s conclusions regarding the
17 same MRI. Dr. Jones noted the alleged dates of three prior examinations (June 20, 2018, March
18 24, 2017, and October 5, 2015), and his notes state that on the April 2019 MRI “there are at least
19 six additional lesions identified.” AR 515. It is not clear what this comparison is based on, since
20 Dr. Jones does not indicate that he reviewed prior MRIs from those dates—he just notes reviewing
21 the April 2019 MRI. The notes also do not definitively reflect that he was adopting Mr. Hulbert’s
22 characterization of past MRI results.

23 Analyzing these reports in conjunction with the testing he administered, Dr. Jones found
24 that the cavernomas “may” be consistent with his reported symptoms and test results. AR 519. Dr.
25 Jones found that the cavernomas may be “slowly exerting more influence on the left hemisphere”
26 while also noting that the cavernomas on that side of his brain have remained unchanged since
27 2015. *Id.* Furthermore, Dr. Jones offered that “The more recent lesions in the right hemisphere
28 also may explain the recent onset of Mr. Hulbert’s difficulty identifying numbers and letters that

1 come and go at this time but may become more consistent as the effects of the cavernous
2 angiomas increase over time.” *Id.* Dr. Jones ultimately diagnosed Mr. Hulbert with “anxiety
3 disorder due to a general medical condition.” *Id.*

4
5 **7. Paul Heavner**

6 Dr. Paul Heavner, an optometrist, saw Mr. Hulbert on May 28, 2019. AR 636. Mr. Hulbert
7 reported that the severity of his double vision was “a little” and lasted “a few minutes.” AR 636.
8 He also reported that the problem began “months ago.” *Id.* The eye exam itself did not produce
9 any abnormal results. AR 637-38. Dr. Heavner diagnosed Mr. Hulbert with “monocular double
10 vision in each eye most likely due to vascular changes in the brain.” AR 638. Dr. Heavner
11 recommended a follow-up with neurology and a return visit in one year. *Id.*

12 **8. Enslin Aldrich**

13 Mr. Hulbert did follow up with neurology as instructed. Dr. Enslin Aldrich, a physician,
14 met with Mr. Hulbert and reviewed his brain MRI in June 2019. AR 527. Dr. Aldrich indicated
15 that it is “unlikely” that the cavernomas are causing Mr. Hulbert’s issues such as his reading
16 difficulty. *Id.* Dr. Aldrich also agreed with Dr. Wozniak that the cavernomas are “quite stable” and
17 the most recent MRI did not indicate that they are worsening. *Id.* Dr. Aldrich strongly
18 recommended against brain surgery or gamma knife radiation to treat the cavernomas, since it was
19 “seriously debatable” if these treatments would be beneficial to Mr. Hulbert at all. *Id.*

20 **9. June 2019 Meeting with Laura Hanes**

21 Plaintiff had a medication management session with Laura Hanes on June 6, 2019. AR
22 701. At this session, Plaintiff voiced the theory espoused by Dr. Jones that his cavernomas are
23 causing his word finding issues. *Id.* Ms. Hanes was confused by this, writing in her report that “he
24 has been claiming that for some reason suddenly he has been unable to work due to these
25 angiomas causing word finding issues.” *Id.* She continued that Dr. Wozniak “has stated that
26 [Hulbert] is able to return to work [but Hulbert] does not feel he is able to return to work and has
27 been laid off.” *Id.*

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

10. J. Marc Simard

Mr. Hulbert met with Dr. J. Marc Simard, a neurosurgeon, on June 25, 2019. AR 771. Dr. Simard’s conclusions mirrored those of Dr. Aldrich, also finding that the risks of surgery outweigh the potential benefits. AR 772. Dr. Simard wrote: “I was also quite clear [in discussion with plaintiff] that the symptoms of reading difficulty and so forth that he has, I do not believe would be addressed by treating this lesion.” *Id.*

D. Mr. Hulbert’s Application for Short-Term Disability Benefits

An appeals specialist employed by Hartford categorized Mr. Hulbert’s short-term benefits as stemming from “symptoms related to an intracranial injury after slipping and falling on his head. The injury resulted in complaints of psychosis and anxiety.” AR 85. They appear to have begun on August 15, 2018.²

Records from the emergency department at Meritus Medical Center indicate that, on August 13, 2018, Mr. Hulbert tripped down three steps and hit his head but did not lose consciousness. AR 1160.³ He was diagnosed with a concussion. AR 1162.

Mr. Hulbert reported to Ms. Hanes in the August 15 visit that he had an episode of bradycardia, where his heart rate dropped into the 30s. AR 665. His emergency room records confirm this. AR 1161-62. He underwent an EKG, which returned unremarkable results, and was discharged two hours later. AR 1162. Ms. Hanes did not have his emergency room records, and Mr. Hulbert reported to her that he was still suffering symptoms of bradycardia, including “feeling extremely tired, reportedly passing out when sitting, and feeling dizzy and forgetful.” AR 665. Ms. Hanes wrote, “[a]t this point we have decided it is not safe for him to continue driving and going to work with his current cardiac symptoms.” *Id.* She also prescribed Seroquel for his hallucinations and anxiety but instructed him to not start the medicine until he saw and received approval from his primary care doctor, given his current reported cardiac symptoms. *Id.*

² Mr. Hulbert’s short-term disability benefits lasted 90 days and terminated on November 13, 2018. AR 175. That would make the starting date August 15, 2018.

³ Mr. Hulbert told the emergency room personnel that he had been recently taken off of Effexor and Paxil due to hallucinations and wondered if the weakness he was experiencing was due to withdrawal from these medications. AR 1160.

1 On September 5, 2018, Mr. Hulbert saw Dr. Syyeda Syed, who is in the same practice
2 (Summit Behavioral Health) as Ms. Hanes. AR 668-70. Dr. Syed wrote that Mr. Hulbert had been
3 out of work since August 15 and had come to pick up his disability paperwork. AR 668. He
4 reported “feeling stressed out, as he still has symptoms of passing out, unable to read and
5 comprehend sometimes.” *Id.* Dr. Syed wrote that Mr. Hulbert had been medically cleared by his
6 neurologist, cardiologist, and medical doctor. *Id.*

7 On October 4, 2018, another practitioner with Summit Behavioral Health, Ms. Newcomer,
8 noted that Mr. Hulbert remained on short-term disability “due to psychiatric and medical
9 conditions.” AR 674-76. On his November 1, 2018 visit with Ms. Newcomer, he denied having
10 auditory hallucinations. AR 677. Ms. Newcomer’s notes from her November 7, 2018 visit with
11 Mr. Hulbert reported that he is “[n]o longer hallucinating” and he is tapering off Seroquel. AR
12 681. Ms. Newcomer noted that Mr. Hulbert was continuing to request disability due to “inability
13 to recognize words consistently.” *Id.* Ms. Newcomer wrote that “Neurology is told [sic] him it is
14 anxiety that he is experiencing causing reading difficulty.” *Id.*

15 Short-term disability benefits lasted 90 days, terminating on November 13, 2018. AR 175.

16 **E. Mr. Hulbert’s Application for Long-Term Disability Benefits**

17 On November 5, 2018, Mr. Hulbert submitted an application for long-term benefits under
18 the Plan. AR 79. When reviewing Mr. Hulbert’s application, Hartford sent a number of questions
19 to Ms. Hanes. In her January 21, 2019 response, Ms. Hanes set a timeline to return to work of six
20 months. AR 1152. Ms. Hanes also noted that she stopped prescribing medication due to concerns
21 about Mr. Hulbert’s marijuana dependence. AR 1153. Finally, Ms. Hanes concluded that “[she
22 does] not believe ADHD is what is disabling. [She] suspect[s] his anxiety/conversion symptoms
23 are at fault.” *Id.*

24 In support of his application, Mr. Hulbert submitted an attending physician statement from
25 Ms. Hanes, which she completed on January 28, 2019. AR 1136. In the statement, Ms. Hanes
26 listed a primary diagnosis of major depressive disorder and a secondary diagnosis of ADHD,
27 combined type. *Id.* Ms. Hanes noted that Mr. Hulbert has reported severe deficits in attention,
28

1 concentration, and memory, but Ms. Hanes did not have sufficient observation or testing to
2 independently confirm these deficits. *Id.* Ms. Hanes set a timeline of approximately six months for
3 Mr. Hulbert to return to work. AR 1137.

4 Hartford employed a medical doctor named Dr. Fariha Qadir to review Mr. Hulbert's file
5 and determine if he is eligible for long-term disability under the plan. AR 1086. On March 25,
6 2019, Dr. Qadir issued a report finding that Mr. Hulbert was not disabled under the plan. Dr. Qadir
7 noted that Mr. Hulbert has a valid diagnosis of depression and anxiety, but his reported symptoms
8 of these conditions were not disabling. AR 1089. Dr. Qadir downplayed the importance of Mr.
9 Hulbert's ADHD diagnosis from Dr. Pallmeyer, noting that Dr. Pallmeyer reported potential
10 symptom exaggeration and that Mr. Hulbert's substance abuse may be a cause of his symptoms.
11 AR 1089, 1087.

12 Dr. Qadir attempted to contact Ms. Hanes while preparing his report but could not reach
13 her. AR 1088. On March 29, 2019, four days after Dr. Qadir finished her report, Ms. Hanes sent a
14 letter to Hartford. AR 1102. She wrote that she had attempted multiple times to return Dr. Qadir's
15 calls. *Id.* Ms. Hanes also wrote, "I agree, no impairment that would affect his ability to work at
16 this time. Difficulty reading which is subjective, would impact his ability to function but this
17 appears to be unrelated to depression, anxiety at this time." *Id.*

18 In accord with Dr. Qadir's findings and Ms. Hanes's letter, Hartford denied Mr. Hulbert's
19 claim for long term disability on April 4, 2019. AR 116.

20
21 **F. Mr. Hulbert's Appeal for Long-Term Disability Benefits**

22 In October 2019, Mr. Hulbert filed an appeal to Hartford, seeking to overturn its April
23 2019 decision denying him of long-term disability benefits. AR 9. In support of the appeal, Mr.
24 Hulbert submitted more evidence, including the report of Dr. Jones and a Vocational
25 Rehabilitations Assessment by Wallace Stanfill. AR 224, 517.

26 Walter Stanfill is a Certified Rehabilitation Counselor. AR 224. Mr. Stanfill interviewed
27 Mr. Hulbert via telephone and reviewed his medical records. *Id.* Mr. Stanfill sent his report
28 directly to counsel for Mr. Hulbert. *Id.* Mr. Stanfill's summation of Mr. Hulbert's medical record

1 does include one error of note. Mr. Stanfill states that “Mr. Hulbert’s treating neurologist, Dr.
2 Marcella A. Wozniak, placed him on medical leave as of August 15, 2018.” AR 225. However,
3 Dr. Wozniak first saw Mr. Hulbert on April 9, 2019. AR 334. It was Ms. Hanes, the psychiatric
4 nurse therapist, who recommended Mr. Hulbert stop attending work due to cardiac problems after
5 a fall down several stairs. AR 665.

6 Mr. Stanfill determined that Mr. Hulbert is disabled from any profession for which he is
7 trained or reasonably qualified. AR 230. He based this decision on Dr. Wozniak’s treating records,
8 AR 230, but Dr. Wozniak explicitly found that, as of April 9, 2019, Mr. Hulbert was not disabled
9 and does not have any gross language or reading deficits or issues recognizing symbols, AR 334.

10 On appeal, Hartford employed Dr. David Lang, a psychiatrist, and Dr. Scott Sautter, a
11 neuropsychologist, to review Mr. Hulbert’s medical records. AR 87. Faced this time with a much
12 larger medical record, both doctors concluded that Mr. Hulbert was not disabled under the
13 plan. AR 84-90.

14 In his report, Dr. Lang criticized Dr. Jones’s report because it did not properly utilize
15 embedded validity testing. AR 100. In response to this critique, Dr. Jones wrote a letter in support
16 of Mr. Hulbert’s appeal. Dr. Jones defended the lack of validity testing in his test administrations,
17 pointing to his academic credentials and experience administering these tests. AR 223. Dr. Sautter
18 responded to this letter, harshly criticizing Dr. Jones’s decision to rely only on his professional
19 judgment. AR 209. Dr. Sautter writes that it is “necessary to conduct both symptom and
20 performance validity measures in neuropsychological assessment to maintain scientific integrity.”
21 *Id.* Dr. Sautter and Dr. Lang did not change their opinions in light of Dr. Jones’s letter. AR 209,
22 213.

23 In accord with the reports from Dr. Lang and Dr. Sautter, Hartford denied Mr. Hulbert’s
24 appeal on December 19, 2019. AR 88.

25 **IV. CONCLUSIONS OF LAW**

26 A participant in an ERISA plan may bring a civil action under § 502(a)(1)(B) “to recover
27 benefits due to him under the terms of his plan, to enforce his rights under the terms of the plan, or
28

1 to clarify his rights to future benefits under the terms of the plan.” 29 U.S.C. § 1132(a)(1)(B).
2 “When a district court reviews de novo a plan administrator’s determination of a claimant’s right
3 to recover long term disability benefits, the claimant has the burden of proving by a preponderance
4 of the evidence that he was disabled under the terms of the plan.” *Armani v. Nw. Mut. Life Ins.*
5 *Co.*, 840 F.3d 1159, 1162-63 (9th Cir. 2016). “In a trial on the record, the court can evaluate the
6 persuasiveness of conflicting testimony and decide which is more likely true.” *Shaw v. Life Ins.*
7 *Co. of N. Am.*, 144 F. Supp. 3d 1114, 1123 (C.D. Cal. 2015) (internal quotations and citations
8 omitted).

9 At the hearing, counsel for Mr. Hulbert clarified that he is seeking a determination from
10 this Court that Mr. Hulbert entitled to 24 months of long-term disability benefits on account of
11 being unable to perform, with reasonable continuity, the essential duties necessary to pursue his
12 occupation in the usual or customary way, which is how the Plan defines “Total Disability.” AR
13 1441. Further, Mr. Hulbert is seeking that the Court remand this case back to Hartford to
14 determine if he is eligible for further benefits beyond the initial 24 months as a result of not being
15 able to perform “any occupation.” Counsel for Mr. Hulbert also explicitly stated that he is not
16 pursuing a claim based on substance abuse. The Court finds that Mr. Hulbert has not established
17 by a preponderance of the evidence that he is disabled under the Plan and entitled to long-term
18 disability benefits.

19 The Court does not dispute Mr. Hulbert’s contention, and the cases he cites, that establish
20 that Mr. Hulbert’s functional limitations, rather than the titles of his diagnosis, dictate whether he
21 is disabled under the Plan. Mot. 20-21; see *Jordan v. Northrop Grumman Corp. Welfare Benefit*
22 *Plan*, 370 F.3d 869, 880 (9th Cir. 2004) (“That a person has a true medical diagnosis does not by
23 itself establish disability. Medical treatises list medical conditions from amblyopia to zoologia
24 that do not necessarily prevent people from working.”), *overruled in part on other grounds by*
25 *Abatie v. Alta Health & Life Ins. Co.*, 458 F.3d 955, 969 (9th Cir. 2006). However, as detailed
26 below, the Court is persuaded by the findings of Ms. Hanes, Dr. Wozniak that Mr. Hulbert does
27 not have functional limitations that rise to the level of rendering him disabled as defined by the
28 Plan. Additionally, the Court does not find the opinion of Dr. Jones or Mr. Stanfill persuasive.

1 As a threshold matter, the Court finds Mr. Hulbert’s arguments regarding Hartford “cherry
2 picking” the best evidence irrelevant here on this de novo review. Mot. 19; Pl.’s Reply 9-10, ECF
3 33. “Under a de novo standard of review, the Court performs ‘an independent and thorough
4 inspection’ of the Plan administrator’s decision to determine whether the Plan administrator
5 correctly or incorrectly denied benefits.” *Western v. Unum Life Ins. Co. of Am.*, No. CV 16-9527-
6 JFW (ASX), 2018 WL 6071090, at *11 (C.D. Cal. July 3, 2018) (quoting *Silver v. Exec. Car*
7 *Leasing Long-Term Disability Plan*, 466 F.3d 727, 733 (9th Cir. 2006)), *aff’d*, 798 F. App’x 154
8 (9th Cir. 2020)). The Court had conducted its own review of the administrative record and reached
9 its own conclusions.

10 **A. Mr. Hulbert Has Not Established By a Preponderance of the Evidence that He**
11 **Suffers from Functional Limitations that Cause Him to Be Disabled from His**
12 **Occupation**

13 The Court will review Mr. Hulbert’s possible grounds for disability below.

14 **1. Mr. Hulbert Has Not Established that He Is Disabled by His Cavernomas**

15 Mr. Hulbert has brain cavernomas. AR 319, 327, 372, 519, 527. Multiple medical
16 professionals confirmed this fact. *Id.* Mr. Hulbert urges the Court to find that a neurological
17 condition potentially related to the cavernomas is the cause of his subjective symptoms, and that
18 those symptoms are disabling. Mot. 21; Pl’s Reply 10-11. However, the substantial majority of
19 medical professionals who examined Mr. Hulbert did not find these cavernomas to be the cause of
20 his reported symptoms. The existence of a medical condition alone does not establish the existence
21 of a disability. *See Leipzig v. AIG Life Ins. Co.*, 362 F.3d 406, 409 (7th Cir. 2004) (“Many persons
22 with serious heart conditions work at stressful jobs for years without ill effects. Think of President
23 Eisenhower, Vice President Cheney, and Associate Justice Stevens.”).

24 Dr. Jones is the only treating professional who found that the cavernomas “may” be
25 causing Mr. Hulbert’s symptoms. However, irregularities in Dr. Jones’s testing and conclusions
26 cause the Court to find his report less credible and assign it less weight than those of other medical
27 professionals who treated Mr. Hulbert. *See Kearney*, 175 F.3d at 1095 (stating that the Court must
28

1 “evaluate the persuasiveness of conflicting testimony and decide which is more likely true”).

2 Dr. Jones ignored the embedded validity testing in his tests on Mr. Hulbert. AR 100. Dr.
3 Jones instead relied only on his “professional judgment” and therefore trusted that Mr. Hulbert’s
4 responses were valid. AR 223. Dr. Sautter, Hartford’s neuropsychologist, sharply criticized this
5 choice, saying that it undermined the “scientific integrity” of the test. AR 209. Both of Hartford’s
6 paper reviewers called Dr. Jones’s conclusions into question on this basis. AR 209, 213. Dr.
7 Jones’s failure to use validity testing is especially problematic when considered in conjunction
8 with Dr. Pallmeyer’s report. When Dr. Pallmeyer administered testing on Mr. Hulbert months
9 earlier, the embedded validity tests showed “response inconsistency.” AR 1269. Dr. Pallmeyer
10 offered that Mr. Hulbert’s drug use may have compromised the test, and therefore the results of
11 the test may not be valid. AR 1272. Dr. Jones reviewed Dr. Pallmeyer’s report. AR 515.
12 Therefore, Dr. Jones should have known that testing on Mr. Hulbert had triggered validity
13 problems in the past, and Dr. Jones’s decision to nonetheless ignore embedded validity testing
14 prompts causes the Court to view his report as less credible than the reports from Dr. Wozniak and
15 Dr. Aldrich.

16 Contrary to Dr. Jones’s assumption, Dr. Wozniak found that the apparently new
17 cavernomas on the April 2019 MRI appeared only because of the use of more sensitive machinery.
18 AR 333. In essence, these cavernomas were previously present, and the fact that doctors can see
19 them for the first time now does not mean they are new. Dr. Aldrich implicitly agreed with Dr.
20 Wozniak, as he noted that the recent MRI showed Mr. Hulbert’s cavernomas were stable. AR 527.
21 The Court finds the reports from both doctors persuasive and finds that Mr. Hulbert has not
22 established by a preponderance of the evidence that he is disabled due to his cavernomas.

23
24 **2. Mr. Hulbert Has Not Proven that His Other Symptoms Are Disabling by a**
25 **Preponderance of the Evidence**

26 Over years of treatment, medical professionals suggested that Mr. Hulbert’s reported
27 symptoms could be caused by mental illnesses such as ADHD, anxiety, and depression. AR 1136,
28 1153, 1272, 1310. Treating professionals also suggested that Mr. Hulbert’s symptoms may be

1 caused by substance abuse. AR 1153, 1272. Other than Dr. Jones, whom the Court has already
2 addressed, no treating professional ever found Mr. Hulbert’s symptoms disabling outside of his
3 short-term benefits period. The Court finds that the degree and effect of Mr. Hulbert’s reported
4 symptoms are unconfirmed by reliable objective evidence, and the objective evidence suggests
5 Mr. Hulbert has a tendency to exaggerate his symptoms. Additionally, Ms. Hanes, wrote in March
6 2019 that Mr. Hulbert had “no impairment that would affect his ability to work at this time” and
7 that his reading difficulty was “subjective.” AR 1102. Accordingly, the Court does not find Mr.
8 Hulbert to be disabled by a preponderance of the evidence.

9 A plan administrator is under no obligation to accept subjective complaints when the
10 complaints are subject to verification by objective medical evidence. *Seleine v. Flour Corp. Long-*
11 *Term Disability Plan*, 598 F. Supp. 2d 1090, 1102 (C.D. Cal. 2009), *aff’d*, 409 Fed. App’x. 99, 101
12 (9th Cir. 2010); *see also Sanchez-Levine v. Metro. Life Ins. Co.*, No. CV 16-3179 DMG (SKX),
13 2017 WL 4286139, at *10 (C.D. Cal. Sept. 26, 2017), *Bratton v. Metropolitan Life Ins. Co.*, 439 F.
14 Supp. 2d 1039, 1052 (C.D. Cal. 2006) (“A finding of disability based on mere subjective
15 complaints would open the Plan up to malingering and would greatly hamper [the insurance
16 company] from exercising its fiduciary role of scrutinizing requests for benefits.”). Mr. Hulbert
17 has reported a number of other symptoms over recent years. These symptoms include difficulty
18 reading, memory difficulty, attention issues, and optical issues. AR 329, 636, 668, 704, 772, 1136.
19 All of these symptoms are subjective and difficult to independently confirm and in fact contradict
20 the examination findings of his most consistent treating medical professionals. The Court finds
21 that Mr. Hulbert’s self-reported symptoms are less reliable than the results of his medical
22 evaluations by Ms. Hanes and Dr. Wozniak in particular. *See Biggar v. Prudential Ins. Co. of Am.*,
23 274 F. Supp. 3d 954, 968 (N.D. Cal. 2017) (finding objective evidence more credible when self-
24 reported symptoms contradicted doctors’ findings), *Langlois v. Metro. Life Ins. Co.*, No. 11-CV-
25 03472 RMW, 2012 WL 1910020, at *14 (N.D. Cal. May 24, 2012) (same).

26 On her January 2019 attending physician statement in support of Mr. Hulbert’s application
27 for long-term disability, Ms. Hanes specifically indicated to Hartford that Mr. Hulbert’s symptoms
28 are only “self-reported.” AR 1136. Ms. Hanes indicated that she did not have sufficient

1 observation or testing to independently confirm his symptoms. *Id.* Ms. Hanes, who treated Mr.
2 Hulbert frequently in 2018 and 2019, also stated in her March 29, 2019 letter that “no impairment”
3 would “affect his ability to work at this time.” AR 1102. Dr. Wozniak administered a bedside
4 neurological exam, which tested Mr. Hulbert’s ability to read. AR 329. This test did not confirm
5 Mr. Hulbert’s reported symptoms. *Id.* To the contrary, he performed well on this exam. *Id.* In Dr.
6 Wozniak’s words: “he clearly does read despite stating multiple times he can not.” *Id.* The Court
7 finds the evidence presented by these two treating professionals persuasive. The Court also finds
8 the results of Dr. Pallmeyer’s objective testing of Mr. Hulbert persuasive, as Dr. Pallmeyer found
9 that Hulbert was inconsistent in his responses, potentially due to symptom exaggeration. AR
10 1269.⁴

11 The Court also finds that Mr. Hulbert expressed to his treating professionals that he
12 recovered from some of his symptoms. Specifically, he stated that he recovered from his
13 headaches, bradycardia, and auditory hallucinations. AR 677, 740, 903. Both Mr. Hulbert and his
14 treating professionals at Mir Neurology indicated that Mr. Hulbert’s issues with headaches
15 subsided. Less than a week before he left his job at Infinera, Mr. Hulbert stated that his headaches
16 had improved. AR 734. On September 21, 2018, Ms. Hall wrote after treating Mr. Hulbert,
17 “Patient’s headaches are stable...Headaches and memory have improved with working with a
18 mental health provider and encouraged to continue.” AR 738. In January 2019, Ms. Hall stated
19 that Mr. Hulbert’s headaches were “not disabling.” AR 1147-48. In April 2019, Mr. Hulbert said
20 that his headaches were “tolerable.” AR 740.

21 Mr. Hulbert also recovered from bradycardia. At their September 5, 2018 meeting, Ms.
22 Hanes noted that Mr. Hulbert was cleared by a cardiologist. AR 668. When Mr. Hulbert met with
23 Dr. Heavner in May 2019, Mr. Hulbert stated that he had no cardiovascular issues. AR 903.

24 Mr. Hulbert claimed that he is no longer affected by auditory hallucinations. In July and
25

26 ⁴ Further evidence of Mr. Hulbert’s tendency to exaggerate can be found in his communications to
27 Ms. Hanes. Mr. Hulbert gave an incorrect account of Dr. Wozniak’s medical findings to Ms.
28 Hanes. AR 327, 698. Mr. Hulbert claimed that Dr. Wozniak said it was possible that his symptoms
were caused by new cavernomas. *Id.* This report directly contradicts Dr. Wozniak’s records.
Compare AR 327 with AR 698. The Court finds this evidence persuasive in evaluating Mr.
Hulbert’s credibility.

1 August of 2018, Mr. Hulbert reported “hearing voices.” In November 2018 Mr. Hulbert expressed
2 that he no longer dealt with auditory hallucinations. AR 677. After November 2018, Mr. Hulbert
3 never again reported auditory hallucinations.

4 The Court does not find Mr. Stanfill’s report finding Mr. Hulbert totally disabled from any
5 occupation for which he is trained and reasonably qualified persuasive. AR 224-231. Mr. Stanfill,
6 a rehabilitation counselor, interviewed Mr. Hulbert via telephone on October 9, 2019. AR 224. He
7 categorizes Mr. Hulbert’s headaches as symptoms of his angiomas, which is not a finding
8 supported by any medical professional. AR 224-25. As previously noted, he misstates that “Mr.
9 Hulbert’s treating neurologist, Dr. Marcella A. Wozniak, placed him on medical leave as of
10 August 15, 2018,” and he states this in the same paragraph detailing the headaches as “symptoms”
11 of the allegedly worsening angiomas. *Id.* He bases his conclusion that Mr. Hulbert is totally
12 disabled from any occupation for which he is trained and reasonably qualified on Dr. Wozniak’s
13 treating records, which he states “indicate that Mr. Hulbert is unable to perform the visual and
14 sustained concentration activities required in the job of a Senior Support Technician.” AR 230.
15 This completely misrepresents Dr. Wozniak’s findings. Dr. Wozniak was clear that Mr. Hulbert’s
16 cavernomas were not worsening and were not the primary cause of his symptoms. AR 327, 333.
17 Dr. Wozniak told Mr. Hulbert that the cavernomas cause only “mild difficulties which would not
18 rise to level of disability that is specified by insurance or social security.” 327. Because Mr.
19 Stanfill’s report relies on a complete misrepresentation of Dr. Wozniak’s findings, the Court does
20 not find it persuasive.

21 Weighing all the evidence, the Court finds that Mr. Hulbert has not established by a
22 preponderance of the evidence that any of his symptoms are disabling.

23
24 **3. Hartford’s Decision to Pay Short-Term Benefits Does Not Weigh Against its**
25 **Decision to Deny Long-Term Benefits in This Case.**

26 In his motion, Mr. Hulbert argues that, because Hartford granted short-term benefits to
27 him, its failure to grant long-term benefits should be “subject to heightened suspicion.” Mot. 21-
28 22. The Court disagrees. The fact that Mr. Hulbert received short-term disability benefits may be

1 considered evidence of his disability, but Courts have made clear that they “are not suggesting that
2 paying benefits operates forever as an estoppel so that an insurer can never change its mind.”
3 *Muniz v. Amec Const. Mgmt., Inc.*, 623 F.3d 1290, 1296–97 (9th Cir. 2010) (quoting *McOsker v.*
4 *Paul Revere Life Ins. Co.*, 279 F.3d 586, 589 (8th Cir. 2002)).

5 Here, Mr. Hulbert received short-term benefits due to cardiac issues stemming from his
6 episode of bradycardia while in the emergency room after tripping and hitting his head and his
7 reports of auditory hallucinations. AR 85. However, Ms. Hanes’s records show that Mr. Hulbert
8 was cleared by a cardiologist before their September 5, 2018 meeting. AR 668. Furthermore, Mr.
9 Hulbert told Dr. Heavner that he had no cardiovascular issues when they met in May 2019. AR
10 903. He also reported in November 2018 that he was no longer hallucinating. AR 681. The fact
11 that Hartford issued short-term benefits for Mr. Hulbert’s auditory hallucinations and
12 cardiovascular issue—both of which resolved—does not affect the future decision to issue long-
13 term benefits for a separate neurological issue.

14 **4. Hartford’s File-Only Review Echoes the Findings of Mr. Hulbert’s Treating** 15 **Medical Professionals**

16 Finally, Mr. Hulbert argues that Hartford’s decision not to conduct an in-person
17 examination of him should “raise questions” regarding its validity. Mot. 17-19. The Court does
18 look carefully at the entire record when there is a file-only review, but the Court does not find that
19 review to be automatically less credible, especially in this case when it relied on the consistent
20 opinions of Mr. Hulbert’s treating physicians, who found that he was not disabled. “[C]onsulting
21 physicians’ opinions based on reviews of medical records are an acceptable basis of an
22 administrator's determination.” *Broyles v. A.U.L. Corp. Long-Term Disability Ins. Plan*, 2009 WL
23 3817935, *6 (N.D. Cal. 2009) (citing *Jordan v. Northrop Grumman Corp.*, 370 F.3d at 879-80).
24 Mr. Hulbert cites cases where the file reviewing physicians reached different conclusions than the
25 treating medical professionals, but that is not the situation here. See Mot. 18 (citing *Salomaa v.*
26 *Honda Long Term Disability Plan*, 642 F.3d 666, 676 (9th Cir. 2011) (noting every doctor who
27 personally examined Salomaa concluded that he was disabled) and *Rabbat v. Standard Ins. Co.*,
28

1 894 F. Supp. 2d 1311, 1321-22 (D. Or. 2012)). Here, the file-reviewing physicians reached the
2 same conclusion about Mr. Hulbert’s lack of disability that Mr. Hulbert’s own most frequent
3 treating medical professionals reached. On this basis, the Court finds that the conclusion reached
4 by Drs. Lang and Sautter are more credible than those reached by Dr. Jones and Mr. Stanfill.

5 It is this Court’s conclusion that Mr. Hulbert has not proven by a preponderance of the
6 evidence that he is entitled to long-term disability benefits under the Plan.

7 **V. ORDER**

8 Consistent with the findings of fact and conclusions of law set forth above:

- 9 (1) Mr. Hulbert’s Rule 52 motion for judgment is DENIED; and
10 (2) Harford’s Rule 52 motion for judgment is GRANTED.

11 **IT IS SO ORDERED.**

12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Dated: August 2, 2021



BETH LABSON FREEMAN
United States District Judge