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6 UNITED STATES DISTRICT COURT
7 WESTERN DISTRICT OF WASHINGTON
8 AT SEATTLE

9 KENNETH KOCH,

10 Plaintiff,

11 v.

12 INFOSYS, LTD., a foreign corporation, and
13 AETNA LIFE INSURANCE COMPANY, a
foreign corporation,

14 Defendant.

NO. C14-1649RSL

ORDER GRANTING
DEFENDANT'S MOTION FOR
SUMMARY JUDGMENT AND
DENYING PLAINTIFF'S MOTION
FOR SUMMARY JUDGMENT

15 This matter comes before the Court on cross-motions for summary judgment. Dkt. ## 21,
16 25. Having reviewed the memoranda, declarations, exhibits, and the remainder of the record, the
17 Court finds as follows.

18 **BACKGROUND**

19 Plaintiff Kenneth Koch began working for Infosys, Ltd.¹ ("Infosys") on March 5, 2012.
20 As part of his employment, Koch was covered under the Infosys Technologies Limited Group
21 Policy GP-8834 ("Plan"). The Plan provided both long-term disability benefits ("LTD
22 benefits") and temporary disability income benefits ("TDI benefits"). Defendant Aetna Life
23 Insurance Company ("Aetna") issued the Plan to Infosys. In January 2013, Koch became
24 disabled and stopped working for Infosys. Based on this disability, Koch applied for and
25 ultimately received both TDI benefits paid by Aetna and social security disability benefits.

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27 ¹ Pursuant to a joint motion, the Court previously dismissed defendant Infosys. Dkt. # 20.

1 Aetna denied Koch’s claim for LTD benefits on the basis that he had not met the eligibility
2 requirements. Koch brought this action to recover LTD benefits under the Employee Retirement
3 Income Security Act, 29 U.S.C. § 1001 et seq. (“ERISA”). Aetna and Koch both moved for
4 summary judgment.

5 DISCUSSION

6 A. Summary Judgment Standard

7 Summary judgment is appropriate if, viewing the evidence and all reasonable inferences
8 drawn therefrom in the light most favorable to the nonmoving party, the moving party shows
9 that “there are no genuine issues of material fact and the moving party is entitled to judgment as
10 a matter of law.” Fed. R. Civ. P. 56(a); Torres v. City of Madera, 648 F.3d 1119, 1123 (9th Cir.
11 2011). The moving party “bears the initial responsibility of informing the district court of the
12 basis for its motion.” Celotex Corp. v. Catrett, 477 U.S. 317, 323 (1986). Where the nonmoving
13 party will bear the burden of proof at trial, the moving party may meet its burden by “pointing
14 out . . . that there is an absence of evidence to support the nonmoving party’s case.” Id. at 325.
15 Once the moving party has satisfied its burden, the nonmoving party must then set out “specific
16 facts showing that there is a genuine issue for trial” in order to defeat the motion. Id. at 324.
17 “The mere existence of a scintilla of evidence in support of the non-moving party’s position” is
18 not sufficient; this party must present probative evidence in support of its claim or defense.
19 Arpin v. Santa Clara Valley Transp. Agency, 261 F.3d 912, 919 (9th Cir. 2001); Intel Corp. v.
20 Hartford Accident & Indem. Co., 952 F.2d 1551, 1558 (9th Cir. 1991). An issue is genuine only
21 if there is a sufficient evidentiary basis on which a reasonable fact finder could find for the
22 nonmoving party. In re Barboza, 545 F.3d 702, 707 (9th Cir. 2008). On cross motions for
23 summary judgment, the Court evaluates the motions separately, “giving the nonmoving party in
24 each instance the benefit of all reasonable inferences.” Lenz v. Universal Music Corp., No.
25 13-16106, 2015 WL 5315388, at *2 (9th Cir. Sept. 14, 2015) (internal quotation marks and
26 citation omitted).

1 **B. Entitlement to Long Term Disability Benefits²**

2 Section 502 of ERISA allows a plan participant or beneficiary “to recover benefits due to
3 him under the terms of his plan, to enforce his rights under the terms of the plan, or to clarify his
4 rights to future benefits under the plan.” 29 U.S.C. § 1132(a)(1)(B). The parties agree that
5 Aetna’s denial of disability benefits under an ERISA plan is subject to de novo review. Dkt. ##
6 21 (Aetna’s Motion for Summary Judgment) at 16 n.11; 25 (Plaintiff’s Motion for Summary
7 Judgment) at 15-18. When the Court reviews an ERISA benefits decision under a de novo
8 standard, it is the claimant’s burden to prove entitlement to benefits. Muniz v. Amec Const.
9 Mgmt., Inc., 623 F.3d 1290, 1294 (9th Cir. 2010).

10 The Plan established two classes of employees for the purpose of determining eligibility
11 for LTD benefits. Dkt. # 18-3 (Summary of Coverage) at 19. Class I employees become
12 eligible for LTD benefits on the date they “complete a probationary period of one year of
13 continuous service” for the employer, while Class II employees are eligible for LTD coverage
14 without any probationary period. Id. Therefore, to prove that he is entitled to benefits, Koch
15 must prove either that he was a Class II employee or that he was a Class I employee who had
16 completed the requisite probationary period. The Court will first address whether Koch has
17 offered evidence that he is a Class II employee not subject to a probationary period.

18 The sole argument that Koch offers to prove that he was immediately eligible for LTD
19 benefits as a Class II employee is that “the Infosys personnel and payroll records indicate that,
20 for the purposes of monitoring of dates, Koch was a “No Probation” employee. Dkt. # 25
21 (Plaintiff’s Motion for Summary Judgment) at 15. But the only evidence that Koch submitted in
22 support of this contention is the declaration of his attorney, Patrick LePley, which states that the
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24 ² Aetna moved to supplement the administrative record with the declaration of Peggy Tayloe,
25 Dkt. # 24, which it contends is necessary for the Court to conduct an adequate de novo review of
26 Aetna’s benefits decision. See Dkt. # 21 (Aetna’s Motion for Summary Judgment) at 16-18. The Court
27 did not find the declaration necessary to its determination on the parties’ cross-motions for summary
28 judgment, and therefore has not considered it.

1 “personnel records from Infosys . . . show that Koch was hired as a non-probationary, at-will
2 employee . . .” and an Infosys personnel document that states “No probation” under the heading
3 “Monitoring of Dates.” Dkt. # 26 (Declaration of Patrick H. LePley) ¶ 5; Dkt. # 18-1 (Infosys
4 Personnel Records for Koch) at 64. Koch offers no evidence to tie this entirely ambiguous
5 notation to his status as a Class I or Class II employee for the purposes of LTD benefits. In fact,
6 the only evidence regarding Koch’s Class status indicates that he was categorized as Class I.
7 Dkt. # 22-1 (Excerpts of Administrative Record) at 32. Because Koch has offered not more than
8 a scintilla of evidence that he may have been a Class II employee immediately eligible for LTD
9 benefits, the Court will turn to the question of whether Koch completed the Class I “probationary
10 period of one year of continuous service” for Infosys.

11 It is undisputed that Koch began working for Infosys on March 5, 2012. Dkt. # 1
12 (Complaint) ¶ 16; Dkt. # 21 (Aetna’s Motion for Summary Judgment) at 6. It is also undisputed
13 that Koch received payment in the amount of his full salary until April 2013, some payment
14 from Infosys until June 2013, and that he separated from Infosys in June 2013. Dkt. # 18-1
15 (Kenneth Koch’s Personnel Records) at 68-70; Dkt. # 18-2 (Kenneth Koch’s Pay Records) at 2-
16 14; Dkt. # 22-1 (Administrative Record) at 46-49. There is no evidence that Koch performed
17 any work for Infosys after January 2013. Koch’s own statements, and other evidence in the
18 record, lead to the opposite conclusion: that Koch did not perform any work for Infosys after
19 January 11, 2013. See, e.g., Dkt. # 22-1 (Administrative Record) at 10, 22, 25; accord Dkt. # 1
20 (Complaint) ¶¶ 8, 21.

21 The Court must determine whether these facts establish that Koch has met the
22 requirement that he “complete a probationary period of one year of continuous service” for
23 Infosys. Koch seems to concede that merely being paid by Infosys is insufficient to meet the
24 “continuous service” requirement. Instead, he asks the Court to infer that he provided service to
25 Infosys since Infosys continued to pay him beyond the date of his disability. See, e.g., Dkt. # 25
26 (Plaintiff’s Motion for Summary Judgment) at 14 (“[C]ommon sense would indicate that if an
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1 employer is paying you, you are of continuous service to the employer.”); *id.* at 15 (“Arguably,
2 he provided continuous service for his employer for more than a year.”); Dkt. # 30 (Plaintiff’s
3 Opposition to Defendant’s Motion for Summary Judgment) at 4 (“The reasonable inference is
4 that Koch was valued by Infosys.”). The Court is not willing to make such an inference.
5 “Service,” as it is commonly understood and defined, requires work or labor. *See* Dkt. # 29-1
6 (dictionary excerpts) at 3, 6. Because Koch has not produced evidence that he performed any
7 work for Infosys after January 2013, he cannot show that he provided continuous service for one
8 year as was required to receive LTD benefits.

9 Moreover, the LTD plan contains an Active Work Rule: “If you happen to be ill or
10 injured and away from work on the date your coverage would take effect, the coverage will not
11 take effect until the date you return to work full-time.” Dkt. # 18-3 (Summary of Coverage) at
12 19. Even if the Court were to accept that simply being paid by Infosys is sufficient to meet the
13 requirement of one year of continuous service for LTD benefits eligibility, there is no evidence
14 that Koch returned to work on or after March 5, 2013, the date his one year probationary period
15 would have ended. Therefore, under the Active Work Rule, Koch’s LTD benefits coverage
16 would not have taken effect.

17 Because Koch has not provided more than a scintilla of evidence that he may be entitled
18 to LTD benefits, the Court grants Aetna’s motion for summary judgment on this claim.

19 **C. Claim for ERISA Penalties**

20 Koch alleges that he is entitled to ERISA penalties because Aetna failed to respond to
21 requests for information. Dkt. # 1 (Complaint) ¶¶ 12, 22. ERISA penalties may only be
22 assessed against the plan administrator, as designated in the plan documents. *See* 29 U.S.C. §§
23 1002(16)(A), 1132(c)(1). In this case, the plan documents specify that the plan administrator is
24 Infosys. Dkt. # 18-3 (plan documents) at 24. The penalties may not be assessed against Aetna
25 as a third-party claims administrator. *See Sgro v. Danone Waters of N. Am., Inc.*, 532 F.3d 940,
26 944-45 (9th Cir. 2008); *Moran v. Aetna Life Ins. Co.*, 872 F.2d 296, 301 (9th Cir. 1989).

1 Aetna's motion for summary judgment on plaintiff's claim for ERISA penalties is granted.

2 **CONCLUSION**

3 For the foregoing reasons, the Court GRANTS Aetna's motion for summary judgment
4 (Dkt. # 21) and DENIES plaintiff's motion for summary judgment (Dkt. # 25). The Clerk of
5 Court is directed to enter judgment against plaintiff and in favor of defendants.

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7 DATED this 9th day of December, 2015.

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11 Robert S. Lasnik
12 United States District
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