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United States District Court, S.D. California.

SIAM MENDOZA, Plaintiff,

v.

FIRST UNUM LIFE INSURANCE COMPANY, Defendant.

Case No.: 3:24-cv-00834-H-VET
|
Filed 05/05/2025

MEMORANDUM OF DECISION AND ORDER

MARILYN L. HUFF, District Judge UNITED STATES DISTRICT COURT

***1** On May 10, 2024, Plaintiff Siam Mendoza filed a complaint against Defendant First Unum Life Insurance Company challenging the denial of his claim for long-term disability benefits under the Employee Retirement Income Security Act of 1974 ("ERISA"). [1] (Doc. No. 1.) On March 7, 2025, the parties filed cross-motions for judgment under Federal Rule of Civil Procedure 52 based on the administrative record in the underlying ERISA dispute. (P. Mem., Doc. No. 31; D. Mem., Doc. No. 32.) On March 28, 2025, Defendant filed a response in opposition to Plaintiff's motion. (D. Opp., Doc. No. 34.) On March 31, 2025, Plaintiff filed a response in opposition to Defendant's motion. (P. Opp., Doc. No. 35.) On March 31, 2025 and April 3, 2025, Plaintiff filed objections and motions to strike evidence cited by Defendant. (Doc. Nos. 36, 37.) On April 9, 2025, Defendant filed a declaration of its counsel in opposition to Plaintiff's objections and motions to strike. (Doc. No. 38.)

Plaintiff's complaint seeks an award of disability benefits from March 27, 2023 to the date of judgment and attorneys' fees and costs. Defendant argues its decision to deny Plaintiff benefits during this timeframe was correct, and therefore, it is entitled to judgment. The Court held a hearing on the parties' motions on May 5, 2025. Michael Brian Horrow appeared for Plaintiff and Michael Bernacchi appeared for Defendant. For the following reasons, the Court concludes that Plaintiff has not met his burden of proving entitlement to long-term disability benefits under the terms of the plan.

FINDINGS OF FACT

A. Overview of Plaintiff's Employment

Plaintiff Siam Mendoza, born in 1975, was formerly employed as a "senior underwriter" or "senior underwriting consultant" at American International Group ("AIG"). (Administrative Record ("AR") at 4, 271, 279-80. [2]) Plaintiff was hired at AIG on December 2, 2019 and last worked there on September 25, 2022. (AR at 5.) He was assigned to AIG's high net worth division. (AR at 332.)

Plaintiff's job description stated that the role of a senior underwriting consultant was to "develop insurance solutions that address the exposure of companies and individuals" and to "find insurance solutions for risks from a range of areas[.]" (AR at 279.) The role required him to "underwrite complex applications with the ability to evaluate and take final action in an independent manner within approval authority guidelines." (Id.) Plaintiff's role was "skilled work requiring the ability to deal with others, evaluate information for insurance based on established underwriting standards, and make judgments and decisions based on this evaluation." (AR at 528.) Plaintiff's role could be performed from home more than 50% of the time and could be performed

sitting for at least 6 hours a shift. (AR at 5123.) Plaintiff's job required frequent bilateral handling and reaching, and occasional fingering. (AR at 528.) It required occasional lifting, carrying, pushing, and pulling of up to 10 pounds. (Id.)

B. The ERISA Plan

***2** Plaintiff participated in AIG's ERISA-governed disability benefit plan, which included short-term disability ("STD") and long-term disability ("LTD") plans. (AR at 5131-33.) The STD coverage provided disability benefits for 26 weeks after a 7-day waiting period and after the STD benefits were exhausted, the participant became eligible to receive LTD benefits. (See AR at 62; P. Mem., Doc. No. 31 at 1; D. Mem., Doc. No. 32 at 2.)

Under the LTD policy, for the first two years, a participant was considered disabled when Defendant determined they (1) were limited from performing the material and substantial duties of their regular occupation due to their sickness or injury; and (2) had a 20% or more loss in their indexed monthly earnings due to the same sickness or injury. (AR at 171, 5614.) In order to be eligible for benefits, a participant had to be continuously disabled through a 182-day elimination period. (AR at 171-72, 5614-15.) "Material and substantial duties" were defined as those that were (1) normally required for the performance of the participant's regular occupation; and (2) could not be reasonably omitted or modified. (AR at 192, 5635.) "Regular occupation" was defined as the occupation the participant was routinely performing when their disability began. (AR at 193, 5636.)

C. Plaintiff's Hospitalizations and Subsequent Medical History

Plaintiff reported that on December 23, 2020, he had contact with a friend who later tested positive for **COVID**. (AR at 1508, 2017.) Plaintiff reported that on January 1, 2021, he began experiencing symptoms including cough and body aches. (AR at 1508, 2017.) Plaintiff was hospitalized on January 8, 2021 when his symptoms worsened. (AR at 503, 2017.)

Plaintiff tested negative for **COVID** on January 8 and 9, 2021. (AR at 2017.) Tests for influenza and RSV were also negative. (Id.) Plaintiff's chest x-ray and chest CT scan showed ground glass infiltrates consistent with **COVID** pneumonitis (Id.) He required supplemental oxygen. (Id.) An infectious disease consultation assessed him to have a probable **COVID** infection and recommended remdesivir, dexamethasone, and to continue broad-spectrum antibiotics with ceftriaxone and azithromycin. (AR at 503, 2017.) He also received 30 milligrams of enoxaparin twice daily for deep vein thrombosis prophylaxis. (AR at 2017.) On January 20, 2021, Plaintiff was discharged on room air. (Id.)

Plaintiff was reevaluated in the emergency room on January 29, 2021 complaining of new hypoxemia with room air saturations in the 70 and 80% range. (AR at 503, 2017.) He was admitted for one day and received a repeat CT angiogram and comprehensive blood work. (AR at 2017.) No new infiltrates or evidence of ischemia were identified. (Id.) Plaintiff was prescribed supplemental oxygen. (Id.)

Follow-up cardiology records from March 1, 2021 show Plaintiff was experiencing ventricular systolic dysfunction (meaning his ventricles were not pumping effectively), with an ejection fraction of less than 35%. (AR at 1931-32, 2023.) On March 22, 2021, he underwent a cardiac catheterization, also known as a coronary angiogram. (AR at 1913, 1916-17.) On April 29, 2021, Plaintiff had an unremarkable brain MRI with unremarkable results. (AR at 113-14.) By August 3, 2021, his left ventricular ejection fraction was 48% and his right ventricular ejection fraction was normal. (AR at 3372-73.)

D. Plaintiff's Return to Work and STD Claim

Plaintiff returned to work in November 2021. (AR at 268.) Prior to his ultimate departure on September 23, 2022, Plaintiff had performance problems at work which he attributed to his symptoms. (Id.) Plaintiff reported that ultimately, his doctors recommended some time off work to recover, and human resources suggested he work with Defendant to take a leave of absence. (AR at 268, 1509-10.) Plaintiff's last date of work was September 23, 2022. (AR at 268.)

***3** On September 26, 2022, Plaintiff requested STD benefits from AIG. (AR at 5147-51.) Defendant sent Plaintiff correspondence dated October 3, 2022 informing him that it would be working with AIG to administer his claim and requesting certain additional information from him including medical certification from his doctor to support his leave. (Id.) On October 12, 2022, Plaintiff's neurologist Mayra Vaysbrot, D.O. submitted a form stating that Plaintiff would be unable to work through January 15, 2023 and stating he had difficulty concentrating due to brain fog and headaches. (AR at 92-93, 5203-04.) She later extended the leave through February 15, 2023 with fifteen-minute breaks every three hours. (AR at 5278.)

Defendant ultimately approved Plaintiff's STD claim through March 26, 2023. (AR at 5236-39, 5319-22, 5357-60, 5420-23.) After exhausting the maximum for Plaintiff's STD benefits, toward the end of February 2023, his claim was transitioned for LTD review. (AR at 61-63, 5348, 5354.) In a correspondence dated February 24, 2023, Defendant notified Plaintiff that his claim would be considered for benefits under the LTD plan and requested authorization to gather additional medical records to make a decision on his claim. (AR at 61-63.) Some of the records Defendant considered are discussed below.

E. Medical Records from March 2022 to May 2023

On March 22, 2022, Plaintiff's treating neuropsychologist, Dr. Joanne Hamilton conducted a neuropsychological evaluation of Plaintiff. (AR at 503-16.) Dr. Hamilton estimated Plaintiff's pre-disability intellect in the average range based on a reading test and his educational and occupational history. (AR at 504.) Plaintiff's cognitive test performance was within normal limits. (Id.) He demonstrated weakness in learning new information that was not repeated, but with repetition his ability to learn verbal and nonverbal information normalized. (Id.) Dr. Hamilton opined that while it was possible that the severe hypoxia Plaintiff experienced when he was hospitalized in January 2021 caused subtle changes to the efficiency of his brain's ability to learn, it was more likely depression, anxiety, and sleep disturbance were working together to impact his ability to focus. (Id.) She advised Plaintiff to consider coordinated treatment for those conditions and noted such treatment would likely require a combination of psychiatric medication and behavioral therapy. (Id.) On April 20, 2022, Dr. Hamilton recommended referral to sleep medicine for coordinated care for insomnia. (AR at 517.)

Records from an October 25, 2022 visit with Dr. Vaysbrot show Plaintiff continued to complain of symptoms related to his status as a "long **COVID** hauler" like brain fog and memory difficulty, though his headaches had resolved. (AR at 5222-26.) Dr. Vaysbrot noted on January 3, 2023 that Plaintiff's fatigue and focus were getting worse. (AR at 5308.) She noted further that he was seeking a psychiatrist for possible severe depression. (Id.)

On January 10, 2023, Plaintiff visited psychiatrist Ankur Bindal, M.D., who diagnosed Plaintiff with major depressive disorder and anxiety disorder. (AR at 269, 5332-34.) Dr. Bindal prescribed Plaintiff Trintellix and Wellbutrin. (Id.) Dr. Bindal further referred Plaintiff for psychotherapy and for transcranial magnetic stimulation to improve his mood. (Id.)

On January 26, 2023, Plaintiff saw speech language pathologist Shinah Lee, CCC-CLP for a cognitive-linguistic evaluation. (AR at 5339-45.) Records from the visit state that Plaintiff "presents with mild high level thought organization and executive functioning deficits[.]" (AR at 5342.) They state Plaintiff's "cognitive deficits are likely multifactorial, related to severe insomnia ... anxiety and depression, persistent headaches and multiple comorbidities." (Id.) Lee concluded that Plaintiff's deficits "impact [his] ability to efficiently and accurately complete appointments and necessary [activities of daily living.]" (Id.)

***4** Notes from an office visit with cardiologist Dr. Sandeep Mehta on February 7, 2023 state that Plaintiff's physical condition had improved but plateaued. (See AR at 947, 977, 987 4216, 4864, 4894.) They state that Plaintiff could walk a couple miles and do some strength training but notice fatigue and occasional orthostatic symptoms. (See id.) Plaintiff's exam at that visit was normal without findings that would suggest he had decompensated heart failure. (AR at 947, 987.)

On February 24, 2023, Defendant's in-house nurse Rechelle Colfer reviewed some of the restrictions and limitations opined by Plaintiff's doctors. (AR at 5351-52.) She noted a December 7, 2022 narrative indicating Plaintiff needed additional time doing work tasks because of difficulty focusing. (AR at 5351.) She further noted the records from Plaintiff's January 10, 2023

visit with Dr. Bindal, his January 26, 2023 visit with speech language pathologist Lee. (AR at 5352.) She concluded that the diagnosis of R41.89 (indicating other symptoms and signs relating to cognitive function and awareness) was valid. (Id.)

On February 28, 2023, Dr. Bindal completed a psychiatric assessment form indicating that because of his depression and anxiety, Plaintiff was unable to: relate to others in a work setting; understand, remember, and carry out instructions; respond appropriately to supervision; supervise or manage others; perform tasks requiring minimal intellection effort; or perform tasks requiring minimal contact with others (AR at 5413-16.) Dr. Bindal indicated that Plaintiff was anticipated to return to work on April 24, 2023. (AR at 5415-16.)

Defendant's records indicate that on March 20, 2023, Dr. Mehta signed a work capacity narrative stating the following limitations: no lifting more than 30 pounds, and no prolonged walking, lifting, or bending over. (AR at 723.) It further stated that Plaintiff had significant cognitive and physical limitations and would need frequent breaks and time off for appointments and treatment. (Id.) Defendant's records further indicate that the same day, Dr. Vaysbrot signed a work capacity narrative stating that from June 16, 2022 through December 1, 2023 Plaintiff would be unable to focus for long periods of time and would be unable to work more than six hours, with no more than 75% of current responsibilities. (AR at 723, 4918.)

On March 23, 2023, Plaintiff saw Dr. Vaysbrot, who documented Plaintiff's complaints of brain fog and memory difficulty. (AR at 378.) Plaintiff reported he could not focus at work, even when on medications. (Id.)

Defendant's records indicate that on April 7, 2023, Dr. Hamilton stated that based on the neuropsychological testing done March 22, 2022, no cognitive disorder was diagnosed. (AR at 994.) She stated further that moderate to severe depression and anxiety were addressed by psychiatry. (Id.)

On May 2, 2023, Plaintiff saw speech pathologist Lee, who noted ongoing mild high level thought organization and executive functioning deficits. (AR at 540-41.) The records further noted that Plaintiff was jet lagged from a trip overseas and that the following two sessions would be pushed back due to Plaintiff traveling to a family event out of town for a week. (AR at 541.)

F. Defendant's Review of Plaintiff's LTD Claim

As part of Defendant's review of Plaintiff's LTD claim, it commissioned a clinical review of Plaintiff's medical records, which was conducted by Supratim Boruah, M.B.B.S. on May 10, 2023. (AR at 721-26.) Dr. Boruah opined that the available medical records did not support that Plaintiff lacked the functional capacity to perform the demands of his job from September 26, 2022 through March 26, 2023. (AR at 726.)

***5** Defendant commissioned additional medical reviews to determine Plaintiff's functionality. First, Dr. Christina Vietor, D.O. reviewed records related to Plaintiff's physical capacity. (AR at 943-49.) Dr. Vietor's review was then assessed by Stephanie Kao, M.D. (AR at 975-79.) Second, Dr. Alex W. Ursprung, Ph.D. reviewed records related to Plaintiff's mental and cognitive capacity. (AR at 964-66.) Dr. Ursprung's review was then assessed by Dr. Mark Schroeder. (AR at 991-93.)

1. Dr. Vietor's Review of Plaintiff's Physical Capacity

On June 5, 2023, Dr. Vietor concluded that based on a review of Plaintiff's medical records, there was not evidence that any physical conditions precluded Plaintiff from performing the occupational demands of his job for the entire elimination period. (AR at 943, 945.) Dr. Vietor came to her conclusion after noting and considering Plaintiff's reported cognitive symptoms in the context of the severity of his **COVID** illness. (AR at 945-46.) She noted that records from examinations with Dr. Vaysbrot documented that Plaintiff was alert, well appearing, appropriate, and not in acute distress on October 25, 2022, January 3, 2023, and March 23, 2023. (AR at 945.) She noted that an MRI performed for **COVID**-related memory loss on April 29, 2021 was unremarkable. (Id.) She noted that the "[i]ntensity of management" did not support a conclusion that Plaintiff was precluded from performing the demands of his job. (Id.) She noted there was no indication of anemia. (Id.)

Dr. Vietor noted further that while Plaintiff had a severe **COVID** infection in January 2021, he returned to work full-time from November 2021 through September 2022, which was inconsistent with the presence of impaired cognition due to his infection. (AR at 946.) She noted that neuropsychological testing from March 22, 2022 was largely within normal limits. (Id.) She noted that neuropsychological testing from May 20, 2022 recommended referral to sleep medicine, but the record did not contain records of evaluation with a sleep specialist. (Id.) She noted that records from a May 2, 2023 visit indicated Plaintiff was experiencing jet lag, and international travel indicates a level of functional capacity. (Id.)

Dr. Vietor noted that despite the severity of Plaintiff's cardiomyopathy following his **COVID** infection, the records did not support a conclusion that a cardiac condition precluded Plaintiff from performing the demands of his sedentary occupation for the entire elimination period. (Id.) For example, while the records showed severely reduced ejection fraction after his infection in January 2021, they demonstrated recovery as of August 2021 and beyond with values during the time under consideration having normalized. (AR at 947.)

2. Dr. Kao's Review of Plaintiff's Physical Capacity

On June 6, 2023, Dr. Kao concurred with Dr. Vietor's opinion that the record did not support that Plaintiff was precluded from performing his sedentary occupation for the entirety of time from September 26, 2022 through March 26, 2023 and beyond due to a physical condition. (AR at 975-79.) She noted, for example, Plaintiff's normal coronary artery findings from March 22, 2021, normal brain MRI from April 29, 2021, and normal cognitive test performance from March 22, 2022. (AR at 976-78.) She further noted records from a February 7, 2023 cardiology visit with Dr. Sandeep Mehta showing Plaintiff can walk a couple miles and do some strength training, despite fatigue and occasional orthostatic symptoms. (Id.)

3. Dr. Ursprung's Review of Plaintiff's Mental and Cognitive Capacity

***6** On June 5, 2023, Dr. Ursprung concluded that based on a review of Plaintiff's medical records, Plaintiff's psychiatric conditions would not preclude his return to work. (AR at 964-66.) Dr. Ursprung noted that March 22, 2022 neuropsychological records indicated significant depression and anxiety which could cause some cognitive inefficiency. (AR at 965.) Dr. Ursprung noted that while psychiatric records from September 2022 through March 26, 2023 indicate depressive symptoms, they nonetheless reflect improvement. (Id.) He opined that "[g]iven the improved psychiatric status the mild cognitive findings would be expected to be improved, and in any event were not suggestive of cognitive impairment." (Id.) Dr. Ursprung noted further that the nature of Plaintiff's treatment – medication management every three months, transcranial magnetic stimulation ("TMS"), but no psychotherapy or referral to a high level of treatment like intensive outpatient treatment – did not suggest an impairing psychiatric condition. (Id.)

4. Dr. Schroeder's Review of Plaintiff's Mental and Cognitive Capacity

On June 8, 2023, Dr. Schroeder concurred with Dr. Ursprung's opinion that based on the review of Plaintiff's psychiatric symptoms, Plaintiff would not be precluded from returning to work. (AR at 991-93.) Specifically, he concluded that Plaintiff's self-report of inability to perform his occupational duties due to depression, anxiety, insomnia, and cognitive impairment was not supported by the weight of the clinical evidence in his claim file. (AR at 993.)

Dr. Schroeder noted that while significant abnormal mental status exams can support the presence of impairment, no such exams were present in the records from the elimination period. (Id.) He noted that records from Dr. Bindal showed Plaintiff was dysthymic with unremarkable speech, thought content, thought process, attention, concentration, judgment, and insight. (Id.) Dr. Vaysbrot's records did not include mental status exams. (Id.) And Dr. Hamilton's records from March 22, 2022 showed Plaintiff's cognitive performance was largely within normal limits. (Id.)

Dr. Schroeder noted further that while it would be expected that a significant mental disorder would cause substantial disruption of normal daily activities, the record did not contain treatment providers' detailed assessments of Plaintiff's activities of daily living to support their opinions about impairment. (Id.) He noted Dr. Vaysbrot's March 20, 2023 opinion that Plaintiff could work

75% of his current responsibilities, which puts into question the severity of Plaintiff's claimed severe psychiatric impairments. (Id.) Dr. Schroeder also noted that while frequent and intensive psychotherapy would be expected in a case of a severe and impairing mental disorder, the record contained no documentation of Plaintiff's participation in psychotherapy during the elimination period. (Id.)

G. Defendant's Denial of Plaintiff's LTD Claim

On June 9, 2023, Defendant denied Plaintiff's LTD claim. (AR at 999-1006.) The denial notice stated that Plaintiff's psychiatric records reflected improvement in his depression; his cognition was noted to be essentially intact; the nature of his current treatment was not suggestive of an impairing psychiatric condition; there was no record of treatment for his headaches and as of January 3, 2023 Plaintiff reported they had resolved; and there was no indication of anemia or any showing of iron deficiency without anemia that would rise to the level of precluding Plaintiff from performing the occupational demands of his job. (AR at 1001-02.)

H. The LTD Appeal

On December 6, 2023, Plaintiff submitted an appeal of Defendant's decision. (AR at 1103-66.) Plaintiff's appeal discussed his pre-disability occupation, the events of his initial hospitalization and his medical history thereafter, and his return to work. (AR at 1104-05.) It also discussed the CDC and NIH understandings of long **COVID**. (AR at 1105-06.) The appeal argued Defendant failed to comprehensively assess the multisystemic effects of Plaintiff's long **COVID** symptoms. (AR at 1107-08.) Plaintiff argued Defendant improperly denied Plaintiff's LTD claim by failing to explain upon denial what additional information he could have provided to Defendant to satisfy the plan's definition of disability. (AR at 1108-09.)

***7** In support of his appeal, Plaintiff included additional medical evidence. For example, Plaintiff provided a cognitive functional assessment conducted via Zoom on November 16, 2023 by clinical psychologist Bahareh Talei, Psy.D. (AR at 1109-16, 1438-45.) Dr. Talei conducted a clinical interview and three objective tests, one of which was the Structured Inventory of Malingered Symptomology ("SIMS"). (AR at 1438.) Plaintiff's scored were elevated in 2 of the 5 scales measured by the SIMS. (AR at 1442-43.) Nonetheless, Dr. Talei concluded that there was no indication of malingering. (AR at 1444.) Overall, Dr. Talei opined that Plaintiff's overall cognitive ability falls in the low average to average range with notable impairments in cognitive flexibility and strategic thinking. (Id.) She opined that Plaintiff would be able to understand, remember, and carry out short, simplistic instructions without difficulty, and that he would be able to make simplistic work decisions without special supervision. (Id.) But she opined further that due to problems with executive functioning, Plaintiff has a mild to moderate inability to understand, remember and carry out detailed instructions without difficulty. (Id.) She concluded that Plaintiff's cognitive deficits would notably interfere with his ability to perform his job for AIG. (Id.)

Plaintiff also submitted a **COVID** expert report from a December 1, 2023 telehealth medical examination by Dr. F. Ramzi Asfour, M.D. (AR at 1116-25, 1450-79.) Dr. Asfour concluded that Plaintiff's symptoms and exam findings were consistent with long **COVID**. (AR at 1475.) Dr. Asfour opined that Plaintiff suffers from severe neurocognitive disability due to long **COVID** and that he is unable to process complex tasks in a reasonable time frame to permit employment. (AR at 1478.)

Plaintiff further submitted a vocational report with labor market survey prepared by vocational expert Linda Hayes, M. Ed, CRC, ARP. (AR at 1125-34, 1486-1503.) Ms. Hayes concluded that based on the evidence, Plaintiff lacks the capacity to sustain routine work activity and is totally disabled from the labor force. (AR at 1498.) She opined that his residual **COVID** symptoms including fatigue and cognitive deficit prevent Plaintiff from performing his own occupation, which requires a high level of cognitive functioning. (AR at 1501.) She further opined that Plaintiff's difficulties with focus, memory, concentration, fatigue, and cognitive decline make it impossible for him to perform any occupation that requires physical stamina and a high level of concentration. (Id.)

Plaintiff also provided updated medical records since the denial of his LTD claim, which report continued fatigue, brain fog, depression, anxiety, insomnia, cognitive issues, and difficulty concentrating. (AR at 1134-45, 1506.) Lastly, Plaintiff's appeal

included a personal narrative (AR at 1508-12) and letters from friends explaining how Plaintiff's medical issues limited his abilities. (AR at 1513-27.) [3]

I. Defendant Upholds the Denial of Plaintiff's Claim

Defendant commissioned a nurse review of the medical records Plaintiff submitted with his appeal, which was conducted by Megan N. Yeaton, RN, BSN. (AR at 4860-67.) She noted that his cardiac function had improved (ejection fraction between 50 and 55%) and would not preclude sedentary work capacity. (AR at 4866.) She noted a September 28, 2023 cardiology note stating that Plaintiff's symptoms at that point were not cardiac and an October 25, 2022 report from Plaintiff that his headaches had resolved. (Id.) She noted that Plaintiff reports impairing fatigue but also reports the ability to perform low-impact exercise, walk multiple miles, and perform his activities of daily living independently. (AR at 4867.) She noted that sessions of TMS reportedly led to improvement in anxiety and depression. (Id.)

Defendant also asked Neal Greenstein, M.D. to review Plaintiff's medical records and opine as to whether his symptoms prevented him from performing the occupational demands of his job from September 26, 2022 through March 26, 2023. (AR at 4893-96.) Dr. Greenstein concluded they did not. (AR at 4893.) He noted that while Plaintiff and Drs. Vaysbrot, Bindal, and Mehta opine he is precluded from his occupational demands, no other providers opined restrictions and limitations, and Plaintiff's self-reported symptoms were disproportionate to clinically unremarkable exams and diagnostics. (AR at 4894-95.) Specifically, Dr. Greenstein opined that if Plaintiff's fatigue symptoms precluded him from performing his job during the elimination period, he would have expected exams and diagnostics with deficits or abnormalities, but the exams consistently documented Plaintiff was alert, awake, and appeared well. (AR at 4895.) He noted that psychiatric conditions were referred to the behavioral health specialists for comment. (AR at 4896.)

***8** Defendant asked Peter Brown, M.D. to opine as to Plaintiff's ability to work during the elimination period. (AR at 4905-09.) Dr. Brown noted the restrictions and limitations opined by Dr. Bindal – inability to: relate to others; understand, remember, and carry out instructions; respond appropriately to supervision; supervise others, perform tasks requiring minimal intellectual effort; perform tasks requiring minimal contact with others – and concluded they were not supported by the medical evidence. (AR at 4907.) Dr. Brown noted that while there was evidence of depression and anxiety symptoms during the time frame in question, mental status examinations were completely normal aside from dysphoric mood, and there was no qualitative or quantitative description of symptoms or report of any functional impairment in activities. (AR at 4908.) He noted that cognitive testing from March 22, 2022 did not support a diagnosis of cognitive disorder, and that the evaluation by Dr. Talei on November 16, 2023 was beyond the time frame in question. (AR at 4908-09.) He noted further that cognitive dysfunction was unsupported in the absence of: consideration of previous test results, adequate validity measures, personality testing, or consideration of the differential diagnosis. (AR at 1909.)

Defendant sent its reports to Plaintiff, who responded on March 4, 2024. (AR at 5014-29.) Plaintiff argued that Dr. Greenstein and Dr. Brown erred by failing to assess his claim in the context of his long **COVID**, and he highlighted medical records he argued these doctors failed to properly consider. (Id.) On April 11, 2024, Defendant upheld its decision on appeal. (AR at 5038-46.)

CONCLUSIONS OF LAW

"The Employee Retirement Income Security Act of 1974 (ERISA) permits a person denied benefits under an employee benefit plan to challenge that denial in federal court." Metro. Life Ins. Co. v. Glenn, 554 U.S. 105, 108 (2008) (citing 29 U.S.C. § 1132(a)(1)(B)). ERISA benefit determinations are reviewed *de novo*, "unless the benefit plan gives the administrator or fiduciary discretionary authority to determine eligibility for benefits or to construe the terms of the plan," in which case the standard of review is for abuse of discretion. Firestone Tire & Rubber Co. v. Bruch, 489 U.S. 101, 115 (1989). Here, the parties have stipulated to *de novo* review. (See Doc. Nos. 18, 22.) See Rorabaugh v. Cont'l Cas. Co., 321 F. App'x 708 (9th Cir. 2009) (adhering to parties' stipulation to *de novo* review).

A. *De Novo* Review of the Benefit Decision

"In an ERISA case involving de novo review, the plaintiff has the burden of showing entitlement to benefits." Schramm v. CNA Fin. Corp. Insured Grp. Ben. Program, 718 F. Supp. 2d 1151, 1162 (N.D. Cal. 2010). See also Richards v. Hewlett-Packard Corp., 592 F.3d 232, 239 (1st Cir. 2010) (plaintiff bears burden of proving disability); Juliano v. Health Maint. Org. of New Jersey, Inc., 221 F.3d 279, 287-88 (2d Cir. 2000) (same). The plaintiff must prove "by a preponderance of the evidence that he was disabled under the terms of the plan." Armani v. Nw. Mut. Life Ins. Co., 840 F.3d 1159, 1163 (9th Cir. 2016).

"When conducting a de novo review of the record, the court does not give deference to the claim administrator's decision, but rather determines in the first instance if the claimant has adequately established that he or she is disabled under the terms of the plan." Muniz v. Amec Const. Mgmt., Inc., 623 F.3d 1290, 1295-96 (9th Cir. 2010). "The *de novo* standard requires the court to make findings of fact and weigh the evidence." Anderson v. Liberty Mut. Long Term Disability Plan, 116 F. Supp. 3d 1228, 1231 (W.D. Wash. 2015) (citing Walker v. Am. Home Shield Long Term Disability Plan, 180 F.3d 1065, 1069 (9th Cir. 1999)). In order to "evaluate[ ] the persuasiveness of each party's case," the court must also "mak[e] reasonable inferences where appropriate." Schramm, 718 F. Supp. 2d at 1162 (discussing and citing Saffon v. Wells Fargo & Co. Long Term Disability Plan, 522 F.3d 863, 871 (9th Cir. 2008)). See also Kearney v. Standard Ins. Co., 175 F.3d 1084, 1095 (9th Cir. 1999) (discussing bench trials on the administrative record in ERISA cases pursuant to FRCP 52).

The central issue in this case is whether Plaintiff was disabled throughout the elimination period from September 26, 2022 through March 25, 2023. (See AR at 171-72, 5614-15.) To meet his burden of showing he was disabled under Defendant's policy, Plaintiff must prove that he (1) was limited from performing the material and substantial duties of his regular occupation due to their sickness or injury; and (2) had a 20% or more loss in his indexed monthly earnings due to the same sickness or injury. (AR at 171, 5614.)

1. Plaintiff Has Not Shown by a Preponderance of the Evidence that His Symptoms Limited Him from Performing His Occupation Throughout the Elimination Period

***9** The administrative record documents a variety of symptoms that Plaintiff argues disabled him from performing his job during the elimination period, many or all of which Plaintiff argues are related to his long **COVID** diagnosis. The Court analyzes the evidence for each of these symptoms below.

a. Physical Symptoms Including Cardiac Issues

First, Plaintiff's medical records contain evidence of physical symptoms including cardiac issues. For example, cardiology records from March 1, 2021 show Plaintiff was experiencing ventricular systolic dysfunction (meaning his ventricles were not pumping effectively), with an ejection fraction of less than 35%. (AR at 1931-32, 2023.) On March 22, 2021, he underwent a cardiac catheterization, also known as a coronary angiogram. (AR at 1913, 1916-17.) But as Defendant's reviewers Dr. Christina Vietor and Megan N. Yeaton, RN, BSN noted, his cardiac function improved by August 2021 with ejection fraction having normalized, and his cardiac function would not preclude sedentary work capacity. (AR at 947, 3372-73, 4866.) Indeed, Plaintiff does not argue that physical limitations including **COVID**-related cardiac issues are what preclude him from performing the requirements of his job. (See P. Opp., Doc. No. 35 at 18 ("He has never said that he cannot work due to an inability to lift a 10 lb. box of files. It is the inability to concentrate and remember the information in those files that renders him disabled, thus the ability to walk or even paddle on the ocean is irrelevant to the issue of whether Mr. Mendoza can perform the material and substantial duties of a Senior Underwriter.").) Accordingly, Plaintiff has not shown that any physical symptoms including cardiac issues prevented him from performing the duties of his occupation throughout the elimination period.

b. Psychiatric Symptoms, Insomnia, and Headaches

Plaintiff's medical records also document his psychiatric conditions, namely his major depressive and anxiety disorders, as well as his insomnia and headaches. But the record does not contain evidence sufficient to support the conclusion that these symptoms prevent Plaintiff from performing the requirements of his occupation. [4]

Plaintiff's depression and anxiety are documented throughout the record. For example, on January 10, 2023, psychiatrist Ankur Bindal, M.D. diagnosed Plaintiff with major depressive disorder and anxiety disorder, prescribed Trintellix and Wellbutrin, and referred Plaintiff for psychotherapy and TMS to improve his mood. (AR at 269, 5332-34.) The record further suggests that Plaintiff suffered from psychiatric impairments prior to his initial hospitalization. (See AR at 504 (March 22, 2022 record from Dr. Hamilton noting Plaintiff has suffered from anxiety since his late 20s).) But as Dr. Brown noted, Plaintiff's treatment records do not describe any functional impairments caused by Plaintiff's depression and anxiety. (AR at 4908.) His mental status exams were normal other than dysphoric mood, and he was stable on his medications. (Id.) Further, Dr. Brown noted that while Plaintiff was referred for psychotherapy, there is no indication that he complied with the recommendation. (Id.) Moreover, the record contained no indication of treatment that would be expected in a case severe and ongoing impairment, like an intensive outpatient program. (Id.) Dr. Ursprung also noted that the nature of Plaintiff's treatment – medication management every three months, TMS, but no psychotherapy or referral to a high level of treatment – did not suggest an impairing psychiatric condition. (AR at 965.) Dr. Ursprung noted further that while psychiatric records from September 2022 through March 26, 2023 indicate depressive symptoms, they nonetheless reflect improvement. (Id.)

***10** Plaintiff points to provider records concluding that Plaintiff's psychiatric conditions preclude him from working. For example, in a form dated February 28, 2023, Dr. Bindal checked boxes indicating that because of his depression and anxiety, Plaintiff was unable to: relate to others in a work setting; understand, remember, and carry out instructions; respond appropriately to supervision; supervise or manage others; perform tasks requiring minimal intellection effort; or perform tasks requiring minimal contact with others. (AR at 5413-16.) But no further explanation or support is provided for these conclusions, and they are not supported by Dr. Bindal's mental status exam from the month prior which was unremarkable aside from dysthymic mood. (AR at 5332-33.) See Shaw v. Life Ins. Co. of N. Am., 144 F. Supp. 3d 1114, 1129 (C.D. Cal. 2015) (doctor credibility turns on, among other factors, "how much detail the doctor provides supporting his or her conclusions"). Nor does Plaintiff point to any other evidence in the record that would support the conclusion that his psychiatric conditions limit his work abilities.

Similarly, while the record documents Plaintiff's insomnia and headaches, it does not contain evidence to support the conclusion that those symptoms preclude him from working. For example, Dr. Hamilton noted on March 22, 2022 that Plaintiff has dealt with insomnia since his twenties and has managed it with medication for years. (AR at 504.) On June 20, 2023, Derek Loewy, Ph.D. of Scripps Sleep Center noted that Plaintiff's insomnia persisted with some variability from night to night and directed him to continue taking clonazepam and Belsomra at bedtime. (AR at 3806-07.) He also gave Plaintiff practical advice including going to bed around 1:00 a.m. and not checking the clock if he wakes up in the middle of the night. (AR at 3607.)

With respect to Plaintiff's headaches, the record reflects that Plaintiff dealt with frequent headaches that resolved over time. (See AR at 4786 (notes from August 13, 2021 visit with Dr. Vaysbrot documenting reports of daily, constant headaches); AR at 390, 448 (records from Dr. Vaysbrot on January 3, 2023 and March 3, 2023 noting that Plaintiff's headaches had resolved).) In the personal narrative Plaintiff submitted with his LTD appeal, Plaintiff stated that he still experiences headaches that feel like nonstop pounding. (AR at 1510.) But he also noted that his headaches are responsive to the Ritalin prescribed by his neurologist, albeit for finite periods of time. (Id.) Overall, there is not evidence in the record to show that Plaintiff's headaches are debilitative such that they prevented him from working throughout the elimination period.

Plaintiff argues that his depression, anxiety, insomnia, and headaches are symptoms of long **COVID**, and that Defendant failed to assess his claim in this context of this diagnosis. (P. Mem., Doc. No. 31 at 18-19.) But Plaintiff does not explain what it would mean to do so, or what significance is added by the symptoms' possible relationship to Plaintiff's long **COVID** diagnosis.

Overall, as discussed above, the record does not contain evidence that the symptoms discussed above disabled Plaintiff from working, regardless of those their possible underlying causes.

For these reasons, Plaintiff has not shown that his depression, anxiety, insomnia, or headaches prevented him from performing the requirements of his occupation throughout the elimination period.

c. Fatigue

Plaintiff argues his long **COVID**-related fatigue limits him from performing the duties of his occupation. (P. Mem., Doc. No. 31 at 16.) Specifically, in the personal narrative Plaintiff submitted with his LTD appeal, dated November 30, 2023, Plaintiff reported that if he does not have doctor's appointments, his day consists of letting his dog out, napping, and trying to find something to eat. (AR at 1508, 1511.) But Plaintiff's reports regarding the extreme degree of fatigue he experienced are not supported by other evidence in the record. For example, records indicate that Plaintiff engages in activities including international travel and occasional light outrigger paddling. (See AR at 541, 2049, 3651.) The record also shows that Plaintiff can walk a couple miles and do some light strength training. (See AR at 947.) While the record indicates Plaintiff is unable to perform these physical activities at the same intensity that he could prior to his illness, Plaintiff has not offered any explanation for the apparent inconsistency between these activities and Plaintiff's descriptions of his extreme fatigue.

***11** Plaintiff's chronic fatigue is mentioned throughout his medical records. For example, an April 20, 2022 record from Dr. Hamilton shows a diagnosis of "**COVID**-**19** long hauler manifesting chronic fatigue." (AR at 517.) A January 3, 2023 note from Dr. Vaysbrot states that Plaintiff reports worsening of his fatigue. (AR at 119, 5308.) A February 7, 2023 record from Dr. Mehta noted "a decent amount of fatigue." (AR at 403). A June 20, 2023 note from Derek Loewy, Ph.D. of Scripps Sleep Center noted impressions of insomnia and fatigue. (AR at 3807.) But these notations do not reflect the level of extreme, debilitating fatigue Plaintiff reported in his personal narrative.

Further, Plaintiff has not explained how his fatigue prevents him from meeting the demands of his occupation, which was classified as sedentary, could be performed from home more than 50% of the time, and could be performed sitting for at least 6 hours a shift. (AR at 5123.) Rather, as mentioned in the section above regarding his physical symptoms, Plaintiff at times seems to concede that his challenges physically exerting himself are not what prevent him from working. (See P. Opp., Doc. No. 35 at 18 ("He has never said that he cannot work due to an inability to lift a 10 lb. box of files. It is the inability to concentrate and remember the information in those files that renders him disabled, thus the ability to walk or even paddle on the ocean is irrelevant to the issue of whether Mr. Mendoza can perform the material and substantial duties of a Senior Underwriter.").)

For these reasons, Plaintiff has not shown that his fatigue prevented him from performing the material and substantial duties of his occupation throughout the elimination period.

d. Cognitive Symptoms Including Brain Fog and Concentration Deficits

Lastly, Plaintiff argues that his cognitive symptoms of long **COVID** including brain fog and concentration deficits preclude him from performing the responsibilities of his occupation. In the personal narrative Plaintiff submitted with his LTD appeal, Plaintiff stated that he has brain fog and trouble remembering details. (AR at 1510.) He reported that during conversation, there are times when he repeatedly asks the same questions with no memory of having done so. (Id.) He stated he often has to hear something two or three times for it to stick. (Id.) He reported forgetting his phone, wallet, and keys when leaving the house. (Id.) He stated he is disappointed that he lacks the mental sharpness and critical thinking he used to have. (AR at 1512.)

Plaintiff's cognitive abilities were assessed by multiple physicians, whose findings and opinions are included in the administrative record. "The credibility of physicians' opinions turns not only on whether they report subjective complaints or

objective medical evidence of disability, but on (1) the extent of the patient's treatment history, (2) the doctor's specialization or lack thereof, and (3) how much detail the doctor provides supporting his or her conclusions." Shaw, 144 F. Supp. 3d at 1129. "[P]lan administrators are not obliged to accord special deference to the opinions of treating physicians." Black & Decker Disability Plan v. Nord, 538 U.S. 822, 825 (2003).

Plaintiff received a neuropsychological evaluation from his treating neuropsychologist, Dr. Joanne Hamilton, on March 22, 2022. (AR at 503-16.) She found that Plaintiff's "[p]rocessing speed was average and auditory attention was average. Comprehension of complex verbal information was within normal limits; object naming was average. Sentence repetition was average. Spelling, writing, and reading were grossly normal. Phonemic fluency and category fluency were within normal limits." (AR at 504.) She further found that his "[v]erbal abstract reasoning was average. Problem solving on an ambiguous test that requires attention to examiner feedback was within normal limits. [H]e had minimal tendency to be repetitive in his responses. Number sequencing was low average. Performance remained low average when the task was made more complicated by a switching component. Verbal list learning was average. Delayed recall of the list was average." (Id.)

***12** Overall, based on these findings, Dr. Hamilton concluded that Plaintiff's cognitive test performance was within normal limits. (Id.) Though he demonstrated weakness in learning new information that was not repeated, with repetition, his ability to learn verbal and nonverbal information normalized. (Id.) Further, Dr. Hamilton opined that while it was possible that the severe hypoxia Plaintiff experienced when he had **COVID** caused "subtle changes" to his brain's ability to learn, it was more likely that his problems with focus were caused by factors like depression and anxiety. (Id.) Dr. Hamilton's findings do not support the conclusion that Plaintiff's cognitive deficits were severe enough during the elimination period and beyond to preclude him from completing the responsibilities of his occupation. The Court assigns significant weight to Dr. Hamilton's findings because she was Plaintiff's treating neuropsychologist, she saw him multiple times during the elimination period, and she provided detailed information about the observations and results that supported her conclusions.

Other medical opinions in the administrative record similarly reflect mild deficits and largely align with Dr. Hamilton's conclusions about Plaintiff's cognitive function. For example, records from a cognitive-linguistic evaluation on January 26, 2023, with speech language pathologist Shinah Lee, CCC-CLP "presents with mild high level thought organization and executive functioning deficits with complications [due to] reduced selective and alternating deficits and recall deficits." (AR at 5342.) The records indicate Plaintiff had no barriers to learning, cognitive or otherwise. (AR at 5343.) In terms of treatment, the recommendation was cognitive-linguistic therapy once a week for 4 weeks. (AR at 5342.) Records from a June 7, 2022 visit with speech pathologist Abby Dwyer, CCC-CLP reflect similar conclusions. (See AR at 2565 (noting "mild high level thought organization and selective/alternating attention deficits which further impact memory and executive functioning" and recommending "short term modifications for work load/schedule" including 6-hour days and workload reduced to 75%").) While both speech pathologists Lee and Dwyer acknowledged that Plaintiff's deficits impact his ability to efficiently and accurately complete work responsibilities and activities of daily living (AR at 2565, 5342), neither their findings nor Dr. Hamilton's findings seem to support the conclusion that Plaintiff's cognitive deficits fully preclude him from performing the material and substantial duties of his job. The additional reviewers commissioned by Defendant reached similar conclusions. (See AR at 965 (Dr. Ursprung noting only "mild cognitive findings" that "were not suggestive of cognitive impairment"); AR at 993 (Dr. Schroeder concluding that Plaintiff's "self-report of inability to perform full occupational duties because of ... cognitive impairment is not supported by the weight of the clinical evidence in the claim file during the timeframe in question").)

Plaintiff does not argue that the findings of Dr. Hamilton or his speech pathologists should be discounted. Rather, he highlights medical opinions with different findings, including the opinion of clinical psychologist Bahareh Talei, Psy.D. following a November 16, 2023 cognitive functional assessment via video conference. After conducting a clinical interview and three objective tests, Dr. Talei concluded that Plaintiff "suffers from cognitive deficits attributed to his conditions." (AR at 1444.) She concluded he "experiences emerging memory lapses, rigid thinking, emotional volatility, headaches severely limiting task persistence, and profound exhaustion requiring extensive periods of rest." (Id.) She opined that his "documented cognitive deficits would notably interfere with and inhibit his ability to perform as a High-Net-Worth Senior Underwriter for AIG's high net worth private client services division or any similar occupation with consistency, accuracy, and efficacy." (Id.)

***13** Dr. Talei's documented findings and test results do not overall support her conclusions. On the test that seems to support her opinion, Plaintiff's scores "suggest[ed] deficits in executive functioning, particularly in cognitive flexibility, strategic thinking, and concept formation." (AR at 1442.) But the results of the clinical interview seem not to support Dr. Talei's conclusions. For example, regarding intellectual functioning, Dr. Talei observed Plaintiff "was fully oriented to person, place, and situation" and found his "intellectual functioning [was] in the low average to average range." (AR at 1440.) She noted that his "[m]emory functions appear broadly intact based on ability to accurately report personal history without reliance on notes." (Id.) Regarding attention and concentration, she observed that Plaintiff's "[a]ttention was adequate for one-on-one conversation though the patient exhibited some tangential tendencies when explaining work history without impacting coherence." (AR at 1441.) She further noted that his "fund of knowledge was above average" and "[i]nsight and judgment were otherwise grossly intact[.]" (Id.)

Moreover, on the Reynolds Intellectual Assessment Scales, Plaintiff scored in the average range on 9 out of 10 scales and in the low average range in 1 out of 10 scales. (Id.) Starting from the premise that Plaintiff's "high-level occupational history suggests premorbid intellectual abilities were previously within the high average to superior range," Dr. Talei concluded that Plaintiff's scores indicate a decline in his cognitive skills. (AR at 1444.) But as Defendant notes, Dr. Hamilton estimated that Plaintiff's premorbid intellect was "in the average range based on a test of single word reading and his educational/occupational history" conducted in-person on March 22, 2022. (AR at 504.) And in any event, it is not clear how scores reflecting Plaintiff's average intellectual functioning demonstrate that he is unable to perform the demands of his occupation. Additionally, although Dr. Talei concluded there was no indication of malingering, Plaintiff's scores on the Structured Inventory of Malingered Symptomatology were elevated on 2 of the 5 scales, one of which was the scale for neurologic impairment. (AR at 1442-44.) The records explain that the neurologic impairment scale "reflects the degree to which a respondent endorses illogical or highly atypical neurologic symptoms" and states that Plaintiff's score on this scale was elevated. (AR at 1443.)

Plaintiff also highlights the opinion of **COVID** expert F. Ramzi Asfour, M.D., board certified in internal medicine and infectious diseases, who opined that Plaintiff suffers from severe neurocognitive disability due to long **COVID** and that he is unable to process complex tasks in a reasonable time frame to permit employment. (AR at 1478.) But as Defendant notes, Dr. Asfour's opinion appears to have relied heavily on the opinion of Dr. Talei, which suffers from the issues described above. (AR at 1476, 1478.) And most of the remainder of the discussion in Dr. Asfour's opinion regarding cognitive issues pertained not to Plaintiff's specific symptoms, but to how individuals with long **COVID** are affected by neurocognitive issues in general. (See AR at 1476-78.) Further, Dr. Asfour's opinion includes very little detail regarding what took place during the video conference examination of Plaintiff. Lastly, it is difficult to ascertain the extent to which Dr. Asfour based his conclusions on his examination, Plaintiff's prior medical records, or Dr. Asfour's general knowledge about long **COVID** patients. The Court assigns less weight to Dr. Asfour's opinion regarding Plaintiff's cognitive abilities due to this lack of detailed explanation.

For these reasons, Plaintiff has not shown by a preponderance of the evidence that cognitive issues prevented him from performing the material and substantial duties of his occupation throughout the elimination period.

2. Despite His Remaining Arguments, Plaintiff Has Not Met His Burden of Showing Entitlement to Benefits

As explained above, Plaintiff has not shown that his symptoms prevented him from performing the duties of occupation. Accordingly, he has not met his burden of showing entitlement to benefits. The Court reaches this conclusion notwithstanding the remaining arguments Plaintiff raises in his moving papers, which are addressed as follows.

***14** First, Plaintiff argues that Defendant approved Plaintiff's claim for STD benefits for largely the same time frame as the elimination period in question but failed to distinguish its STD decision. (P. Mem., Doc. No. 31 at 20-22; P. Opp., Doc. No. 35 at 5-8.) Plaintiff concedes that the STD decision did not obligate Defendant to approve his claim for LTD benefits, but argues that nonetheless, the fact that Defendant approved his STD claim suggests it improperly denied his LTD claim. Defendant argues that the reason Plaintiff's STD claim was approved but his LTD claim was denied can be explained by differences between those plans' respective terms. (D. Opp., Doc. No. 34 at 14-16 (citing Randall v. Unum Life Ins. Co., 2011 WL 4528144, at *8 (C.D.

Cal. Sept. 26, 2011) (approval of STD claim prior to denial of LTD claim did not alone render LTD denial improper because the "LTD claim evaluation was more comprehensive and accurate").)

Defendant highlights documents suggesting that the STD evaluation was less thorough than the LTD process. (See, e.g., AR at 5147-48 (notifying Plaintiff that in order for Defendant to process his STD claim he needed to return a certification form from his healthcare provider); AR at 61 (informing Plaintiff that his STD claim was being transitioned for LTD review and noting that additional information may be required due to "some differences in the terms and provisions of the two plans").) Plaintiff does not contest that the plans were governed by different terms. Accordingly, the differences between the STD and LTD plans could explain the different outcomes in Plaintiff's respective claims. In any event, the because the standard of review here is *de novo*, "the court does not give deference to the claim administrator's decision, but rather determines in the first instance if the claimant has adequately established that he or she is disabled under the terms of the plan." Muniz, 623 F.3d at 1295-96. See also id., 623 F.3d at 1296 (previous award of benefits "may be evidence relevant to the issue of whether the claimant was disabled and entitled to benefits at a later date" but does not shift burden of proof to prove disability away from plaintiff).

Second, Plaintiff points to the personal narrative he submitted with his LTD appeal (AR at 1508-12), along with statements submitted by friends (AR at 1513-27). While Plaintiff's friends' statements document his fatigue and memory issues, their statements suffer from the same issues as do his own statements on those subjects. Regarding Plaintiff's fatigue, his friends' extreme accounts of Plaintiff's difficulty physically exerting himself are inconsistent with evidence in the medical records about his physical abilities, and they do not remedy Plaintiff's lack of explanation as to how his fatigue prevents him from performing his sedentary occupation. Regarding Plaintiff's cognitive issues, his friends' statements about his extreme memory loss and forgetfulness are not supported by the medical records documenting Plaintiff's cognition and memory. Further, only one of the individuals who submitted a statement appears to be a practicing medical professional, and as an EMT in the ER, that individual does not appear to specialize in neurocognitive issues that are of central importance in Plaintiff's case. (AR at 1513.) See Shaw, 144 F. Supp. 3d at 1136 ("Given that courts discount the opinions of doctors outside the area of their specialty, the reports from individuals with no medical background cannot overcome medical evidence and should receive even less weight."). Overall, these narratives written by Plaintiff and his friends "do not compensate for the fact that there is insufficient medical evidence of functional disability in the record." Id. [5]

***15** Finally, Plaintiff argues that Defendant improperly relied on physicians who never examined him to support its denial. (P. Mem., Doc. No. 31 at 23-25; P. Opp., Doc. No. 35 at 20-21.) But "plan administrators are not obliged to accord special deference to the opinions of treating physicians." Black & Decker Disability Plan v. Nord, 538 U.S. 822, 825 (2003). And on *de novo* review, the Court is not required to defer to the claim administrator's decision, "but rather determines in the first instance if the claimant has adequately established that he or she is disabled under the terms of the plan." Muniz, 623 F.3d at 1295-96.

In sum, Plaintiff has not met his burden of showing by a preponderance of the evidence that his sickness limited him from performing the material and substantial duties of his occupation throughout the elimination period.

B. Additional Evidence Is Unnecessary to Conduct an Adequate *De Novo* Review

On *de novo* review, "the district court has discretion, subject to the guidelines set forth in Mongeluzo v. Baxter Travenol Long Term Disability Benefit Plan, 46 F.3d 938 (9th Cir. 1995), to consider additional evidence." Thomas v. Oregon Fruit Prods. Co., 228 F.3d 991, 997 (9th Cir. 2000). Under Mongeluzo, the court should exercise that discretion "only when circumstances clearly establish that additional evidence is necessary to conduct an adequate *de novo* review of the benefit decision." 46 F.3d at 944 (quoting Quesinberry v. Life Ins. Co. of N. Am., 987 F.2d 1017, 1025 (4th Cir. 1993)). In Opeta v. Northwest Airlines Pension Plan for Contract Employees, the Ninth Circuit identified the following "non-exhaustive list of exceptional circumstances" in which it may be necessary for a court to consider additional evidence:

> claims that require consideration of complex medical questions or issues regarding the credibility of medical experts; the availability of very limited administrative review procedures with little or no evidentiary record; the necessity of evidence regarding interpretation of the terms of the plan rather than specific historical facts; instances where the payor and the administrator are the same entity and the court is concerned about impartiality; claims which would have been insurance contract claims prior to ERISA; and circumstances in which there is additional evidence that the claimant could not have presented in the administrative process.

484 F.3d 1211, 1217 (9th Cir. 2007) (quoting Quesinberry, 987 F.2d at 1027). Notwithstanding possible exceptional circumstances, "a district court should not take additional evidence merely because someone at a later time comes up with new evidence," and "[i]n most cases ... the district court should only look at the evidence that was before the plan administrator ... at the time of the determination." Id. (quoting Mongeluzo, 46 F.3d at 944).

Here, Defendant has cited to certain evidence outside the administrative record. Specifically, Defendant cited to websites about Plaintiff's background in paddling (D. Mem., Doc. No. 32 at 3); the organizational structure of AIG (id. at 4 n.3); FMLA requirements (id. at 6 n.5); the process of undergoing TMS (id. at 13 n.6); and the assessment of response validity in neuropsychological testing (id. at 24 n.8). Further, in support of its response in opposition to Plaintiff's motion for judgment, Defendant filed a declaration of its counsel and exhibit that Defendant argues show that Plaintiff was not out of work for ten months following his January 2021 hospitalization before finally returning to work in November 2021. (Doc. Nos. 34-1, 34-2.) Finally, also in its response in opposition to Plaintiff's motion for judgment, Defendant cited to a website explaining normal ranges of ejection fraction. (Doc. No. 34 at 12.)

***16** At the May 5, 2025 hearing on the parties' motions, Defendant argued the evidence listed above is not offered to prove Plaintiff is not disabled, but rather to rebut inaccurate representations in the statements of Plaintiff and his friends that Plaintiff submitted in his ERISA appeal. Defendant noted that there was no occasion to rebut these statements during the ERISA appeal process since such decision was made in Defendant's favor, but that it has a right to rebut the evidence here under Opeta. Plaintiff objects to the admission of the evidence and moves to strike it. (Doc. Nos. 36, 37.) Specifically, Plaintiff argues that (1) Defendant improperly cited to this evidence without moving to augment the administrative record; and (2) the evidence is unnecessary under Opeta and Mongeluzo. (Id.)

The Court agrees with Plaintiff that consideration of the evidence is unnecessary. Having reviewed and considered the administrative record, which exceeds 5500 pages, the Court finds that the record is fully developed such that the Court may exercise its "informed and independent judgment" and has not considered additional evidence beyond the administrative record in making its findings of fact and conclusions of law. Mongeluzo, 46 F.3d at 943. Accordingly, Plaintiff's objections are overruled and his motions to strike are denied as moot.

CONCLUSION AND ORDER

For the reasons discussed, the Court **GRANTS** Defendant's motion for judgment and **DENIES** Plaintiff's motion for judgment. Accordingly, the Clerk of the Court shall enter judgment for Defendant.

IT IS SO ORDERED.

All Citations

Slip Copy, 2025 WL 1393871

Footnotes

1 Plaintiff's complaint also names as defendant American International Group, Inc. Long-Term Disability Plan. (Doc. No. 1.) On July 17, 2024, the Court granted the parties' joint motion to dismiss American International Group, Inc. Long-Term Disability Plan. (Doc. No. 13.)

2 All citations to the Administrative Record are to the record filed at Doc. Nos. 27 and 28.

3 Defendant seeks to admit evidence challenging the veracity of these statements. The admission of Defendant's additional evidence is addressed later in the Court's order.

4 Plaintiff also argues that these symptoms – particularly his depression, anxiety, and insomnia – have caused him to suffer from cognitive issues and fatigue, which in turn preclude him from being able to work. (P. Mem., Doc. No. 31 at 9-10, 14, 16, 21; P. Opp., Doc. No 35 at 18.) In this section, the Court addresses the extent to which Plaintiff's depression, anxiety, insomnia, and headaches have impacted his work capacity directly. The impact of any cognitive issues and fatigue are addressed in subsequent sections.

5 Defendant seeks to admit evidence challenging the veracity of these statements. The admission of Defendant's additional evidence is addressed in the subsequent section of the Court's order.