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United States District Court, W.D. Pennsylvania.

DOUGLAS BROWN, Plaintiff,

v.

COVESTRO LLC WELFARE BENEFITS PLAN, COVESTRO LLC, AS PLAN ADMINISTRATOR OF THE COVESTRO LLC WELFARE BENEFITS PLAN; Defendants,

2:22-CV-00954-WSS-CRE
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Filed 11/15/2023

Attorneys and Law Firms

Honorable William S. Stickman, United States District Judge, via electronic filing, Attorneys of record, via electronic filing

REPORT AND RECOMMENDATION

Cynthia Reed Eddy United States Magistrate Judge

I. RECOMMENDATION

***1** This civil action was initiated by Plaintiff Douglas Brown alleging that Defendants Covestro LLC Welfare Benefits Plan and Covestro LLC (collectively "Covestro") improperly denied **long-term disability** benefits he alleges he was entitled to under an Employee Retirement Security Act of 1974 ("**ERISA**") employee benefits plan.

The court has subject matter jurisdiction under 28 U.S.C. § 1331.

Presently pending before the Court are cross-motions for summary judgment. (ECF Nos. 36 and 40). The motions are fully briefed and ripe for consideration. (ECF Nos. 39, 42, 44, 46, 48, 49). For the reasons below, it is respectfully recommended that Plaintiff's motion for summary judgment be denied and Covestro's motion for summary judgment be granted.

II. REPORT

a. Background [1]

Plaintiff was employed beginning on August 15, 2016 by Covestro at its Baytown, Texas manufacturing facility as a Maintenance Technician or Millwright whose duties involved repairing equipment. He ceased work on June 24, 2019 due to lumbar disc herniation and lumbar radicular pain.

i. Covestro's Welfare Benefits Plan

Plaintiff was a participant in Covestro's self-insured Welfare Benefits Plan ("Plan"). The Plan offers Covestro employees short-term ("STD") and **long-term disability** ("LTD") benefits. Covestro is the plan administrator and plan sponsor of the LTD Plan. Standard Insurance Company ("Standard") is the claims administrator for the LTD Plan. The Plan gives discretionary

authority to the Covestro **ERISA** Review Committee to determine appeals from the claims administrator. The Plan pays disabled employees 60% of their pre-disability pay while they are disabled until age 65. The Plan defines "disability" as follows:

> Disability means that you are under the care of a physician whose specialty or experience is appropriate for your condition and, based on objective medical evidence of your illness or injury, you are unable to do your job. You must provide objective medical evidence, satisfactory to the company or its delegate in its sole discretion, to support your initial claim for, and continuing eligibility to receive, disability benefits. The possibility of reasonable accommodations or the availability of medication, surgery or other forms of treatment which would permit you to perform your job may be considered by the company or its delegate in determining disability.
>
> After 18 months of receiving LTD benefits, you must be "totally disabled" to continue eligibility for benefits. "Totally disabled" means you are unable to work at any job for which you are or could become qualified by education, training, or experience.

Defs.' Statement of Facts ("SMF") ECF No. 37 at ¶ 9. After receiving 18 months of LTD benefits, the following "any occupation" definition applies:

> After 18 months of receiving LTD benefits, you must be "totally disabled" to continue eligibility for benefits. "Totally disabled" means you are unable to work at any job for which you are or could become qualified by education, training, or experience.
>
> ***2** You may not be considered totally disabled under this plan when your medical condition allows you to earn a wage comparable to your earnings before you became disabled. For most purposes, a comparable wage would be considered as 60% (70% if on LTD prior to 1/1/2007) or higher of your pre-disability earnings. However, the final decision regarding benefit eligibility rests solely with the company.

Pl.'s SMF (ECF No. 41) at ¶ 41 (the "totally disabled from any occupation" standard).

The Plan provides discretion to the Plan Administrator in fulfilling its functions in determining disability in the terms below:

> The Company shall have the exclusive right to make any finding of fact necessary or appropriate for any purpose under the Plan including, but not limited to, the determination of the eligibility for and the amount of any benefit payable under the Plan. The Company shall have the exclusive discretionary right to interpret the terms and provisions of the Plan and to determine any and all questions arising under the Plan or in connection with the administration thereof, including, without limitation, the right to remedy or resolve possible ambiguities, inconsistencies, or omissions, by general rule or particular decision.... To the extent permitted by law, all findings of fact, determinations, interpretations, and decisions of the Company or its delegee shall be conclusive and binding upon all persons having or claiming to have any interest or right under the Plan.

Defs.' SMF (ECF No. 37) at ¶ 10.

Similarly, the Summary Plan Description provides:

> The company or its delegate reserves the right to determine, in its discretion, if you are disabled. The decision made by the company, or its delegate will be final, subject to appeal procedures. Where conflicting medical opinions are presented, the company or its delegate reserve the right to determine

> which opinion or opinions more plausibly or credibly assess your functional capabilities, without regard to whether the opinion is that of a treating or examining physician.

Id. at ¶ 11.

The Plan requires a participant who is being paid disability income benefits to apply for Social Security Disability Income ("SSDI") at the same time he applies for LTD benefits and the proceeds of the SSDI benefits will reduce the amount a participant is entitled to receive under the Plan and the failure of a participant to file an application for SSDI, his monthly LTD benefit will be calculated on the assumption he was awarded Social Security benefits and his LTD benefits will be reduced thereto. *Id*. at ¶¶ 12-13. The Plan further provides that a participant who becomes employed while being paid LTD benefits must notify the administrator and all earnings are applied to offset the benefit payments for LTD. *Id*. at ¶ 14. The Plan provides that benefits will stop automatically if a participant does "not provide satisfactory objective medical evidence of [his] continuing disability." *Id*. at ¶ 15.

ii. Plaintiff's Disability

Plaintiff ceased work on June 24, 2019 due to lumbar disc herniation and lumbar radicular pain. Plaintiff also contends that he suffered from lumbar disc displacement, sacroiliac pain, thoracic pain, back spasms and degenerative disc disease. Pl.'s SMF (ECF No. 41) at ¶ 3. Plaintiff underwent a scan of his cervical spine on September 11, 2019, which revealed multilevel disc herniations of 1.5-2mm. *Id*. at ¶ 10. He was 35 years old when he went on disability. Plaintiff was approved for STD benefits which expired after 26 weeks. He applied for LTD benefits on December 30, 2019.

***3** Plaintiff described the symptoms of his condition on his LTD application as "pain in lower back" and the cause of the pain as "heat stress/wear and tear of the highly physical demands of my job." Defs.' SMF (ECF No. 37) at ¶ 20. To support his LTD application, Plaintiff submitted an Attending Physician Statement by Steve D. Kim, D.O. ("Dr. Kim") of the Kelsey-Seybold Clinic on January 30, 2020 which diagnosed Plaintiff as suffering from lumbar disc herniation and lumbar radicular pain and that Plaintiff had intermittent low back pain that radiates down the right leg with numbness and tingling. Dr. Kim noted that Plaintiff experienced "intermittent episodes of low back pain and right leg/thigh pain. Overall symptoms have remained stable now that he does not perform strenuous activities. Usually occurs with prolong[ed] sitting, standing (20 mins), prolong[ed] laying down, repetitive bending, heavy lifting." Pl.'s SMF (ECF No. 41) at ¶ 11. His restrictions were that he was limited to lifting, pushing and pulling no more than 50 pounds and these limitations were expected to last 6 months.

Standard requested a Peer Review Report from Dr. Joshua F. Lewis on March 13, 2020. Dr. Lewis concluded that based on his review of the records and discussion with Dr. Kim, that Plaintiff's conditions were supported by medical records and that he had the following activity restrictions:

> Sitting: unrestricted.
>
> Standing: up to 2 hours at a time for up to 4 hours per day.
>
> Walking: up to 2 hours at a time for up to 2 hours per day.
>
> Lifting/carrying: frequently up to 10 lbs., occasionally up to 20 lbs.
>
> Pushing/pulling: frequently up to 10 lbs., occasionally up to 20 lbs.
>
> Climbing stairs: occasionally.
>
> Climbing ladders: never.

Stooping: occasionally.

Kneeling: occasionally.

Crouching: occasionally.

Crawling: occasionally.

Reaching: to desk level: unrestricted. Overhead and below desk level: occasionally.

Dr. Lewis further concluded that Plaintiff's condition is likely to improve in the future and that his condition should be reassessed in three months.

Plaintiff's LTD application was approved by Standard on March 24, 2020, effective December 21, 2019, with the note: "the claimant meets the provision of the Plan and I find it reasonable to conclude that the claimant has been precluded from performing the Material Duties of his Own Occupation from his Date of Disability and ongoing." Defs.' SMF (ECF No. 37) at ¶ 23.

On June 29, 2020, Plaintiff submitted the following "Back to Work" letter from his treating physician, Dr. Kim which stated:

> Douglas J. Brown was assessed by Dr. Kim on 6/22/2020 and may return to work on 6/23/2020. He will have Activity restriction, no lifting/pushing/pulling more than 50 pounds from 6/22/20 to 12/22/20. If you have any questions or concerns please contact our office.

Id. at ¶ 24. Covestro would not allow Plaintiff to return to work with these restrictions.

On September 23, 2020, Plaintiff notified Standard that he did not believe that he needed to apply for SSDI benefits "because I don't believe I'm disabled, my job doesn't offer light duty." *Id*. at ¶ 25. Standard replied that Plaintiff was required to apply for any sources of income that he may be entitled to.

On October 6, 2020, Plaintiff notified Standard that he had begun a part-time job as a faculty member at Lee College. This job initially paid Plaintiff $1,790.48 per month and within six months that pay had increased to $2,611.10 per month.

Covestro maintains that Plaintiff did not apply for SSDI, so the Standard contractor closed his file.

On January 7, 2021, Dr. Kim provided Plaintiff another return-to-work letter which stated:

> Douglas J. Brown was seen by Dr. Kim on 1/07/2021 and may return to work on 1/08/2021. He will have Activity restriction, no lifting/pushing/pulling more than 50 pounds from 1/7/2021-7/09/2021.

Id. at ¶ 28. Dr. Kim's office notes also stated that Plaintiff is "independent with all activities of daily living." *Id*. According to Covestro, the restrictions noted by Dr. Kim qualify Plaintiff to perform Sedentary, Light and Medium work, according to the Dictionary of Occupational Titles, Fourth Ed. Rev., 1991 U.S. Department of Labor Employment and Training Administration. *Id*. at ¶ 29.

***4** On January 13, 2021, Standard called Plaintiff to see if he had returned to work per Dr. Kim's note. Plaintiff informed Standard that Covestro would not accommodate his restrictions in his old job. Standard informed Plaintiff that there would be an upcoming "totally disabled from any occupation" review. When Plaintiff began LTD, the 18-month date on which the standard for disability would change from "unable to do his own job" to "totally disabled from any occupation" was noted as June 20, 2021.

The "Any Occupation Review" process began on March 10, 2021 based on the most recent medical information provided by Dr. Kim, which qualified Plaintiff to work at a Medium-effort level. On March 1, 2021, Plaintiff completed and submitted to Standard an Education, Training and Experience Survey. On March 15, 2021, Ivonne Allen, MA, CDMS Vocational Case Manager submitted a Transferable Skills Assessment to Standard based her assessment on Plaintiff's own Education, Training and Experience Survey, a job description and Dr. Kim's assessment, among other things. She concluded that several jobs match Plaintiff's "functional capacity, education, training, and experience," and which also met the wage consideration (i.e., pay of at least 60% of his pre-disability wages). *Id*. at ¶ 34. Three specific jobs were identified: two were at the light strength level and one at the medium strength level.

On April 29, 2021, Standard notified Plaintiff by letter that he did not satisfy the "totally disabled from any occupation" standard required after 18 months of LTD benefits, and that his LTD benefits would be terminated as of June 20, 2021, when the "totally disabled from any occupation" standard took effect. The letter noted Plaintiff did not meet the "totally disabled from any occupation" standard because he could perform "medium" level work and he received benefits through June 20, 2021. Pl.'s SMF (ECF No. 41) at ¶¶ 12-13.

iii. Plaintiff's Appeal and Supplements to Appeal

On October 26, 2021, Plaintiff appealed the adverse decision made by Standard. Plaintiff submitted the following four exhibits in support of his appeal: (1) Kingwood Clinic medical records dated August 6, 2020 to December 14, 2020; (2) office notes of Dr. Kim from November 4, 2019 to January 7, 2021; (3) a medical opinion from Dr. Kim dated July 7, 2021; and (4) a payment history from Lee College for the period June 15, 2021 to August 31, 2021.

Dr. Kim's July 7, 2021 report states:

> In an 8-hour day, 5 days a week on a full-time basis, Plaintiff can be expected to be physically capable of the following activities: sit for 6 out of 8 hours, 1 hour at a time; stand or walk for 2 out of 8 hours, 45 minutes at a time.

Plaintiff can lift/carry:

6-10 lbs. at least 1/3 of a day;

11-20 lbs at less than 1/3 of a day;

21-25 lbs. less than 1/3 of a day; and

50 or more pounds never.

Defs.' SMF (ECF No. 37) at ¶ 39; Defs.' Appx. (ECF No. 38-4) at p. 31. The July 7, 2021 report explained that Plaintiff has chronic, recurring low back pain and a history of lumbar disc herniation, that Plaintiff would need breaks on top of the one 30-minute break normally permitted of ten minutes for every one and half hours worked, that his pain, fatigue and other limitations

would interfere with Plaintiff reliably attending an eight-hour day, 40 hours per week and Plaintiff had a reasonable medical need to be absent from a full-time work schedule on a chronic basis, needing around two to three absences per month. Pl.'s SMF (ECF No. 41) at ¶¶ 15-20; Defs.' Appx. (ECF No. 38-4) at pp. 32-33.

***5** Plaintiff's earnings from part-time employment in June through August were $1,305.55 semi-monthly, or $2,611.10 per month.

On November 1, 2021, Plaintiff submitted an Independent Medical Evaluation ("IME") dated August 25, 2021 by Dr. Naveen Korivi, D.O. of Pain Management Associates. Dr. Korivi conducted a records review and a physical examination of Plaintiff. Dr. Korivi's conclusion was as follows: "[Plaintiff] is not able to do his previous job as an industrial mechanic but is able to work in other jobs such as his current teaching job which is less physically demanding." Defs.' SMF (ECF No. 37) at ¶ 42. The IME added that Plaintiff

> is able to drive for approximately 1 hour without difficulty. He is not able to run for any distance. He is able to climb 2 flights of stairs without difficulty. He is able to crawl for a short distance. He is able to bend at the lumbar region on a frequent basis. He is able to walk for about 15 minutes before he has back pain. He is able to sit for approximately 30 minutes before he has back pain. He is able to stand for 15 minutes at a time before he has back pain. He is not able to lift, push, or pull more than 50 pounds.

Id.

On December 8, 2023, Dr. Paul M. Shipkin, Board Certified in Neurology, provided the **ERISA** Review Committee with his opinion based on a review of the entire case file and concluded that "[b]ased on his medical records, [Plaintiff] would be able to engage in sedentary to light fulltime work (desk work in the range of six to eight hours a day, five days a week) where he is able to stand and stretch as needed." Defs.' SMF (ECF No. 37) at ¶ 44. Dr. Shipkin concluded that Plaintiff was not "totally disabled" from performing "any occupation from the date of denial of **long-term disability**, June 21, 2021, forward or for any period following the denial date of his **long-term disability** claim." *Id*.

On December 28, 2021, Plaintiff submitted a December 16, 2021 Functional Capacity Evaluation ("FCE") by Total Health & Rehab. The FCE concluded that Plaintiff "is unable to safely and dependably work at an even Sedentary Physical Demand Level and has difficulties performing normal activities of daily living." Defs.' SMF (ECF No. 37) at ¶ 47. The FCE Report concluded that Plaintiff cannot "occasionally lift up to 10 lbs, which is required to meet a Sedentary physical demand level." *Id*. at ¶ 48. The report indicated that Plaintiff "had difficulty performing the FCE, especially the Lift Tests due to severe burning pain in the low back and shooting pain into the left leg and foot." Pl.'s SMF (ECF No. 41) at ¶ 29.

On January 10, 2022, Plaintiff submitted a follow-up report by Dr. Korivi who stated he reviewed the FCE by Total Health & Rehab and that the report "indicated that [Plaintiff] is unable to work as an Industrial Mechanic at this time." *Id*. at ¶ 31.

On January 20, 2022, Dr. Shipkin provided an Addendum to his earlier report and stated he had reviewed the FCE and follow-up note submitted by Dr. Korivi commenting on the FCE and he concluded that his opinions as outlined in his initial Medical Record Review report remained unchanged. Defs.' SMF (ECF No. 37) at ¶ 50.

iv. Decision on Appeal

***6** On January 31, 2022, the Covestro **ERISA** Review Committee ("Committee") affirmed Standard's decision that Plaintiff was not totally disabled as defined in the Plan as of June 20, 2021. The Committee based its decision on the reports of Dr.

Kim, Dr. Shipkin, the transferable skills assessment, Plaintiff's employment during the period of coverage and Plaintiff's own declaration that "I don't believe that I'm disabled." Defs.' SMF (ECF No. 37) at ¶ 52. Plaintiff maintains that Covestro did not have a vocational consultant evaluate the restrictions Dr. Shipkin opined for whether he could perform a qualifying occupation despite them and relied on the occupations identified by Standard's vocational consultant in March 2021. Pl.'s SMF (ECF No. 41) at ¶¶ 38-39.

b. Standard of Review

The standard for assessing a motion for summary judgment under Rule 56 of the Federal Rules of Civil Procedure is well-settled. A court should grant summary judgment if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. "Only disputes over facts that might affect the outcome of the suit under the governing law will properly preclude the entry of summary judgment." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). Furthermore, "summary judgment will not lie if the dispute about a material fact is 'genuine,' that is, if the evidence is such that a reasonable jury could return a verdict for the nonmoving party." *Id*. at 250.

On a motion for summary judgment, the facts and the inferences to be drawn therefrom should be viewed in the light most favorable to the non-moving party. *See Reeves v. Sanderson Plumbing Prods., Inc.*, 530 U.S. 133, 150 (2000); *Matsushita Elec. Indus. Co., Ltd. v. Zenith Radio Corp.*, 475 U.S. 574, 587-88 (1986); *Huston v. Procter & Gamble Paper Prod. Corp.*, 568 F.3d 100, 104 (3d Cir. 2009) (citations omitted). It is not the court's role to weigh the disputed evidence and decide which is more probative, or to make credibility determinations. *See Anderson*, 477 U.S. at 255; *Marino v. Indus. Crating Co.*, 358 F.3d 241, 247 (3d Cir. 2004); *Boyle v. Cnty. of Allegheny Pennsylvania*, 139 F.3d 386, 393 (3d Cir. 1998). "Only disputes over facts that might affect the outcome of the suit under the governing law will properly preclude the entry of summary judgment." *Anderson*, 477 U.S. at 247–48. An issue is "genuine" if a reasonable jury could possibly hold in the nonmovant's favor with respect to that issue. *Id.* "Where the record taken as a whole could not lead a reasonable trier of fact to find for the nonmoving party, there is no 'genuine issue for trial'." *Matsushita Elec. Indus. Co.*, 475 U.S. at 587; *Huston*, 568 F.3d at 104.

A plaintiff may not, however, rely solely on his complaint to defeat a summary judgment motion. *See, e.g., Anderson*, 477 U.S. at 256 ("Rule 56(e) itself provides that a party opposing a properly supported motion for summary judgment may not rest upon mere allegation or denials of his pleading, but must set forth specific facts showing that there is a genuine issue for trial."). Allegations made without any evidentiary support may be disregarded. *Jones v. United Parcel Serv.*, 214 F.3d 402, 407 (3d Cir. 2000).

Where, as here, there are cross-motions for summary judgment, it is simply a claim by each party that it alone is entitled to summary judgment. *Canal Ins. Co. v. Sherman*, 430 F. Supp. 2d 478, 483 (E.D. Pa. 2006). Cross motions for summary judgment "do not constitute an agreement that if one is denied the other is necessarily granted, or that the losing party waives judicial consideration and determination of whether genuine issues of material fact exist." *Id.* "When confronted with cross-motions for summary judgment, the court must rule on each party's motion on an individual and separate basis, determining, for each side, whether a judgment may be entered in accordance with the summary judgment standard." *Marciniak v. Prudential Fin. Ins. Co. of Am.*, 184 F. App'x 266, 270 (3d Cir. 2006).

c. Discussion

*i. Standard of Review for **ERISA** Cases*

***7** The parties differ on what standard of review should be applied in determining whether the denial of Plaintiff's LTD benefits was proper. Plaintiff asks the Court to apply a *de novo* standard, while Covestro argues the Court should apply the "abuse of discretion" or "arbitrary and capricious" standard. For the reasons below, the Court should apply an "abuse of discretion" standard.

Plaintiff's claim for the denial of LTD benefits arises under 29 U.S.C. § 1132(a)(1)(B), which permits "a participant in an **ERISA** benefit plan [who has been] denied benefits" to bring a cause of action "to recover benefits due to him under the terms of his plan." *Howley v. Mellon Fin. Corp.*, 625 F.3d 788, 792 (3d Cir. 2010). The standard of review in these types of cases "is not always easy to apply." *Stratton v. E.I. DuPont De Nemours & Co.*, 363 F.3d 250, 253 (3d Cir. 2004). In cases brought under **ERISA** for the denial of benefits, the court should apply a *de novo* standard "unless the benefit plan gives the administrator or fiduciary discretionary authority to determine eligibility for benefits or to construe the terms of the plan." *Firestone Tire & Rubber Co. v. Bruch*, 489 U.S. 101, 115 (1989). It is undisputed here that the Plan gives the administrator discretionary authority to determine eligibility for benefits. "Where a plan administrator possesses 'discretionary authority to determine eligibility for benefits or to construe the term of the plan[,]' [the court] review[s] the administrator's decision under an 'abuse of discretion' standard or an 'arbitrary and capricious standard, which, in this context, are effectively the same." *Bergamatto v. Bd. of Trustees of the NYSA- ILA Pension Fund*, 933 F.3d 257, 264 (3d Cir. 2019) (quoting *Howley*, 625 F.3d at 792, 793 n. 6).

Under this "highly deferential" standard, "[a]n administrator's decision is arbitrary and capricious if it is without reason, unsupported by substantial evidence or erroneous as a matter of law." *Mirsky v. Horizon Blue Cross & Blue Shield of New Jersey*, 586 F. App'x 893, 896 (3d Cir. 2014) (unpublished) (quoting *Miller v. Am. Airlines, Inc.*, 632 F.3d 837, 845 (3d Cir. 2011) and *Courson v. Bert Bell NFL Player Ret. Plan*, 214 F.3d 136, 142 (3d Cir. 2000)). "Of course, if a benefit plan gives discretion to an administrator or fiduciary who is operating under a conflict of interest, that conflict must be weighed as a factor in determining whether there is an abuse of discretion." *Firestone Tire and Rubber Co.*, 489 U.S. at 115.

On the contrary, if the Court exercises *de novo* review "the role of the court is to determine whether the administrator ... made a correct decision. The administrator's decision is accorded no deference or presumption of correctness. The court must review the record and determine whether the administrator properly interpreted the plan and whether the insured was entitled to benefits under the plan." *Viera v. Life Ins. Co. of N. Am.*, 642 F.3d 407, 413–14 (3d Cir. 2011) (internal citations and quotation marks omitted).

Plaintiff argues that a *de novo* standard applies here because Covestro violated certain procedural **ERISA** Regulations in denying Plaintiff's LTD benefits. He argues that Covestro did not explain its decision to disagree with treating physicians, file reviewing physicians and independent examining providers and did not allow Plaintiff the opportunity to review and respond to evidence that it generated on appeal and did not provide the time limitations for filing suit in its denial letter. Pl.'s Mot. for Summ. J. ("MSJ") Br. (ECF No. 42) at 8-11.

***8** Whether a court applies a *de novo* or an abuse of discretion standard of review in **ERISA** benefit denial cases is determined generally upon one issue alone: whether the language of the policy or plan "gives the administrator or fiduciary discretionary authority to determine eligibility for benefits or to construe the terms of the plan." *Firestone Tire and Rubber Co.*, 489 U.S. at 115 ("*Firestone* deference"). Here, it is undisputed that the Plan delegated the initial review of disability claims to Standard, a third-party administrator, and delegated the appeal/review process to the Covestro **ERISA** Review Committee to review benefits decisions under the Plan. [2] Further, Plaintiff does not dispute that the Plan gave administrators discretionary authority to determine eligibility under the Plan. *See* Pl.'s MSJ Br. (ECF No. 42) at 8 ("Here, the [P]lan does grant discretion."). Therefore, the Court must apply the abuse of discretion standard of review.

To the extent that Plaintiff argues that procedural violations of **ERISA** regulations entitle him to a *de novo* review, this argument is also unavailing. [3] *See Becknell*, 644 F. App'x at 211 ("*De novo* review is appropriate[ ] when ... 'there simply is no analysis or reasoning to which the Court may defer.' ") (quoting *Gritzer v. CBS, Inc.*, 275 F.3d 291, 295 (3d Cir. 2002)). Procedural irregularities in following **ERISA** regulations or the plan's guidelines are simply factors to consider in determining "how the

administrator treated the particular claimant[,]" and whether denial was an abuse of discretion. *Miller*, 632 F.3d at 845. The following factors may suggest arbitrariness: "(1) reversing a decision to award benefits without new medical evidence to support the change in position, (2) relying on the opinions of non-treating over treating physicians without reason, (3) conducting self-serving paper reviews of medical files, (4) failing to address all relevant diagnoses before terminating benefits, (5) relying on favorable parts while discarding unfavorable parts in a medical report, or (6) denying benefits based on inadequate information and lax investigatory procedures." *Emmerling v. Standard Ins. Co.*, No. CV 14-5202, 2015 WL 5729240, at *5–6 (E.D. Pa. Sept. 30, 2015) (collecting cases).

Considering Plaintiff's arguments that Covestro's denial of benefits did not explain why it decided to disagree with certain treating physicians, did not allow Plaintiff the opportunity to review and respond to evidence that Covestro generated on appeal, and did not provide the time limitations for filing suit in its denial letter, these are factors to consider in determining whether Covestro abused its discretion in denying benefits, and does not require a departure from *Firestone* deference. *Howley*, 625 F.3d at 793 (conflicts of interest do not alter the standard of review and are factors in determining whether a benefits determination constituted an abuse of discretion). Accordingly, this Court should review Plaintiff's benefits determination under the abuse of discretion standard.

ii. Plaintiff's Motion for Summary Judgment

The Transferrable Skills Assessment

***9** Plaintiff first argues that Dr. Shipkin concluded in June 2021 that Plaintiff was only able to perform sedentary-to-light work, yet because he relied on the previous transferrable skills assessment ("TSA") which was based on a significantly less restricted assessment of Plaintiff's functional capacity (*i.e.*, "medium" strength work), that there was not appropriate vocational evidence to determine whether Plaintiff could not perform "any occupation" and that the denial was therefore an abuse of discretion. Pl.'s MSJ Br. (ECF No. 42) at 11-15. Plaintiff explains that the TSA included three alternative occupations – one was a "medium" strength level occupation, and while the other two were noted as "light" strength occupations, Plaintiff argues a review of the principal duties of the occupation illustrates that those occupations are not "sedentary-light" strength work and are better characterized as "medium" strength work. *Id*. at 12-13. Plaintiff seemingly argues that the Committee should have completed another TSA based on "sedentary-light" strength work, essentially arguing that the record lacked a vocational analysis, and that its failure to do so was an abuse of discretion.

While the TSA may have included jobs that were not in the "sedentary-light" strength category, there was record evidence that the Committee considered that found Plaintiff could perform occupations within the light-to-medium strength levels. While Dr. Shipkin concluded in June 2021 that Plaintiff could perform jobs within the sedentary-to-light strength category, Dr. Kim in July 2021 (Plaintiff's own treating physician) and Dr. Korivi in August 2021 (who performed the IME) both found that Plaintiff could perform jobs within the light-to-medium strength levels. [4] Dr. Kim found that Plaintiff could carry up to 25 pounds less than one-third of the day, and Dr. Korivi concluded that Plaintiff could not lift, push, or pull more than 50 pounds. The TSA based Plaintiff's functional capacity by being unable to lift, push or pull more than 50 pounds and included occupations with strength factors up through and including "medium" strength. Defs.' Appx. (ECF No. 38-5) at pp. 309-310. The Committee was not bound to consider only Dr. Shipkin's report. Accordingly, it was not an abuse of discretion for the Committee to only consider what Plaintiff deems "medium" strength level positions in the transferrable skills analysis.

Additionally, Plaintiff's characterization that all the occupations included in the TSA were in fact "medium" strength level positions despite the TSA's characterization as "light" strength occupations, Plaintiff provides no evidence for the Court to conclude that the TSA inappropriately classified the alternative occupations. A plain reading of the TSA concludes that the alternate job descriptions included occupations within the light and medium strength levels and are not contrary to what the

physicians concluded were Plaintiff's physical abilities.[5] Accordingly, it was not an abuse of discretion for the Committee to deny benefits based on the TSA.

The Functional Capacity Evaluation

***10** Next, Plaintiff argues that he submitted evidence from his treating provider and two independent providers that show he is disabled under the Plan. He argues that the Functional Capacity Evaluation ("FCE") report by Total Health & Rehab concluded that Plaintiff "is unable to safely and dependably work at an even Sedentary Physical demand Level, and has difficulties performing normal activities of daily living." Pl.'s MSJ Br. (ECF No. 42) at 16. Plaintiff therefore maintains that it was arbitrary and capricious for Covestro to deny Plaintiff's LTD benefits.

Despite Plaintiff's contention, viewing the medical evidence in total, it was reasonable for Covestro to deny LTD benefits and find that Plaintiff did not meet the "totally disabled for any occupation" standard and that conclusion was supported by substantial evidence. *Courson*, 214 F.3d at 142. Dr. Kim's July 7, 2021 report stated that in an 8-hour 5-days a week full-time basis, Plaintiff could sit for 6 out of the 8 hours, 1 hour at a time, could stand/walk for 2 out of the 8 hours, for 45 minutes at a time, could carry up to 25 pounds less than one-third of the day, would need a 10-minute break every one and a half hours worked and would need 2-3 absences per month. Pl.s' SMF (ECF No. 41) at ¶¶ 15-20; Defs.' Appx. (ECF No. 38-4) at pp. 32-33. Dr. Korivi's IME stated that Plaintiff can drive for 1 hour, cannot run, can climb two flights of stairs, crawl for a short distance, bend at the lumbar region on a frequent basis, walk for about 15 minutes, sit for about 30 minutes, stand for about 15 minutes and not able to lift, push, or pull more than 50 pounds. Defs.' SMF (ECF No. 37) at ¶ 42. There was further evidence that Plaintiff earned $2,600 a month in a part-time college teaching job while on disability leave and did not consider himself disabled.

It was also reasonable for the Committee to not find the FCE credible. The FCE contradicts the opinions of all the other physicians in finding that Plaintiff could at least work at the sedentary level. Moreover, in considering the FCE, Plaintiff's expert, Dr. Korivi stated only that the report suggested that Plaintiff could not work as an Industrial Mechanic, not that Plaintiff was totally disabled for any occupation. "[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, 823 (2003). While plan administrators "may not arbitrarily refuse to credit a claimant's reliable evidence, including the opinions of a treating physician[,] ... courts have no warrant to require administrators automatically to accord special weight to the opinions of a claimant's physician; nor may courts impose on plan administrators a discrete burden of explanation when they credit reliable evidence that conflicts with a treating physician's evaluation." *Id.* at 823–24. The "mere existence of contradictory evidence does not render a plan fiduciary's determination arbitrary and capricious. Indeed, when the medical evidence is sharply conflicted, the deference due to the plan administrator's determination may be especially great." *Leahy v. Raytheon Co.*, 315 F.3d 11, 19 (1st Cir. 2002). It was therefore reasonable and supported by the substantial medical evidence for the Committee to conclude that Plaintiff did not meet the total disability for any occupation standard and for it to deny benefits under the Plan.

The Denial Letter

Next, Plaintiff argues that it was an abuse of discretion for Covestro to ignore medical opinions in his file including Plaintiff's treating provider's opinion, the functional capacity evaluation, the independent medical evaluation, and the file reviewing physician that it hired to review Plaintiff's claim. Pl.'s MSJ Br. (ECF No. 42) at 7, 16-17.

***11** **ERISA** plan administrators must "provide adequate notice in writing to any participant or beneficiary whose claim for benefits under the plan has been denied, setting forth the specific reasons for such denial, written in a manner calculated to be understood by the participant." 29 U.S.C. § 1133(1). **ERISA** also requires that "plan procedures 'afford a reasonable opportunity ... for a full and fair review' of dispositions adverse to the claimant." *Black & Decker Disability Plan*, 538 U.S. at 830–31 (quoting 29 U.S.C. § 1133(2)).

If an adverse decision is made with respect to disability benefits, the plan administrator must include "an explanation of the basis for disagreeing with or not following [t]he views presented by the claimant to the plan of health care professionals treating the claimant and vocational professionals who evaluated the claimant[.]" 29 C.F.R. 2560.503-1(j)(6)(i)(A). Courts require "substantial compliance with **ERISA's** notice requirements[,]" *Mirza v. Ins. Adm'r of Am., Inc.*, 800 F.3d 129, 136 (3d Cir. 2015), and "[n]ot all procedural defects will invalidate a plan administrator's decision." *Ellis v. Metro. Life Ins. Co.*, 126 F.3d 228, 234–35 (4th Cir. 1997).

The denial letter provided the full definition of the "totally disabled from any occupation" standard that Plaintiff had to meet to continue to qualify for LTD benefits under the Plan and it specified the medical information on which it based its decision. To this end, the denial letter provided:

> The Committee determined after reviewing the medical information provided by the treating physician Dr. Kim who provided a return to work notice most recently on 1/7/2021 stating that [Plaintiff] could return to work with "no lifting/pushing/pulling of more than 50 lbs." through 7/9/2021; the opinion of the third party medical review Dr. Paul Shipkin who stated that [Plaintiff] is not totally disabled from performing any occupation; and a transferrable skills assessment performed by The Standard that found that there [are] alternate occupations available in [Plaintiff's] residential area. Additionally, Mr. Brown reported employment during his period of disability coverage as a part time college teacher and also inquired through an email dated 9/23/2020 if he was required to file for Social Security benefits as he did not believe that he was disabled but his job did not offer light duty.

Defs.' Appx. (ECF No. 38-7) at 1.

The denial letter substantially meets **ERISA** standards as it sets forth the specific reasons for Plaintiff's denial of benefits. The denial letter considered Plaintiff's own treating physician Dr. Kim's opinion that Plaintiff could return to work and was limited to not lifting/pushing/pulling of more than 50 lbs., considered the medical records review performed by Dr. Shipkin, which included a review of the functional capacity evaluation, and concluded Plaintiff was not totally disabled under the Plan. The only evidence of record that suggests Plaintiff was "totally disabled" under the Plan was through the Total Health & Rehab FCE. While the denial letter does not include an explanation for why it rejected the findings of the FCE, it impliedly included a rejection of the FCE through crediting Dr. Shipkin's finding that, even considering the FCE, Plaintiff was not totally disabled under the Plan. The denial letter therefore substantially complied with the regulations by specifying the medical basis for denying benefits and provided "a sufficiently clear understanding of the administrator's position to permit effective review." *Morningred v. Delta Fam.-Care & Survivorship Plan*, 790 F. Supp. 2d 177, 194 (D. Del. 2011) (unpublished) (quoting *Brogan v. Holland*, 105 F.3d 158, 165 (4th Cir. 1997), abrogated on other grounds (internal quotation marks omitted)). It was therefore not arbitrary and capricious for the denial letter not to include reference to the FCE in concluding that Plaintiff was not "totally disabled" under the Plan denying Plaintiff benefits.

Plaintiff's Review and Response to New Evidence

***12** Plaintiff next argues that it was arbitrary and capricious for not allowing him to review and respond to new evidence before the denial of benefits. Plaintiff argues he should have had the opportunity to review and respond to Dr. Shipkin's medical review and addendum. Plaintiff argues that on January 11, 2022, Covestro sent a letter to Plaintiff with Dr. Shipkin's December 8, 2021 report attached thereto and upon review Plaintiff noticed that Dr. Shipkin did not consider the FCE or IME addendum. On January 18, 2022, Covestro confirmed that Dr. Shipkin did not consider those documents and that it was sending him those documents to review. On January 20, 2022, Dr. Shipkin prepared an addendum which stated that he reviewed the FCE and the IME addendum and stated "[f]ollowing review of the above-noted additional medical records, my opinions, as outlined in my initial Medical record review report, are unchanged." Pl.'s MSJ Br. (ECF No. 42) at 10. By letter dated January 31, 2022, Covestro upheld the decision to deny Plaintiff's benefits based on its determination that he did not meet the "totally disabled from any occupation" standard. *Id.* Plaintiff maintains that Covestro did not send him Dr. Skipkin's addendum for him to review

and respond to before denying his benefits claim and that because the denial issued by Covestro was a final denial, Plaintiff was unable to adequately provide any proof needed to prove his disability. *Id*. at 10-11.

ERISA regulations provide that "before a plan can issue an adverse benefit determination on review of a disability benefit claim, the plan administrator shall provide the claimant, free of charge, with any new or additional evidence considered, relied upon, or generated by the plan, insurer, or other person making the benefit determination." 29 C.F.R. § 2560.503-1(h)(4)(i).

Covestro argues that Dr. Shipkin's January 20, 2022 report does not add any new evidence to the record and therefore it did not have to provide the report to Plaintiff before the denial. Defs.' Resp. Br. to Pl.'s MSJ (ECF No. 46) at 5. Moreover, Covestro argues that Plaintiff has not stated what response he would have made in response to Dr. Shipkin's report, and that Plaintiff was provided the opportunity to file four medical reports to support his appeal before denial. *Id*. at 6.

While Covestro is correct that Dr. Shipkin's report does not contain any "new" evidence, as he considered other evidence submitted and did not change his opinion, the report contained "additional" evidence that the Committee considered in denying benefits, as stated in its denial letter. Therefore, the report should have been given to Plaintiff before the denial of benefits pursuant to 29 C.F.R. § 2560.503-1(h)(4)(i) and failing to do so constitutes substantial noncompliance with the **ERISA** regulations. Generally, the remedy for a violation of Section 503 of the **ERISA** regulations is to remand the action to the plan administrator to allow the claimant a full and fair review. *Syed v. Hercules Inc.*, 214 F.3d 155, 162 (3d Cir. 2000). But where a remand "would be a useless formality, then remanding the case is not required." *Hitchens v. Bd. of Trustees, Plumbers & Pipefitters Loc. Union No. 74 Pension Fund*, No. CV 20-1206-CJB, 2022 WL 4448195, at *12 (D. Del. Sept. 23, 2022) (collecting cases). Because as explained *infra*, Defendant properly denied Plaintiff LTD benefits because Plaintiff did not meet the Plan definition of "totally disabled for any occupation", it would be futile for the Court to remand the case.

Time Limitations in Denial Letter

Lastly, Plaintiff argues that it was arbitrary and capricious for Covestro to not provide the time limitations for filing suit in its denial letter.

Covestro responds that Plaintiff suffered no prejudice in not being notified of the time limitations to file suit for the denial of benefits because he timely filed this action, and therefore Covestro's failure to include those time limits was not an abuse of discretion.

The **ERISA** regulations provide that a plan administrator must include a statement of the time limits for claimant's right to bring a civil action following an adverse benefit determination. 29 C.F.R. § 2560.503-1(g)(1)(iv). "Without this time limit, a notification is not in substantial compliance with **ERISA**." *Mirza*, 800 F.3d at 136. Because Covestro did not include the time limits for Plaintiff to file his civil complaint in his denial of benefits letter, they did not substantially comply with **ERISA**. In any event, the remedy for such noncompliance is to set aside the plan's deadline for filing suit and borrow the statute of limitations from the most analogous state-law claim. *Mirza*, 800 F.3d at 138. Here, there would be no plan deadline to set aside due to Covestro's failure to provide the deadlines in the denial letter, as Plaintiff timely filed her civil suit. As a result, Plaintiff has suffered no prejudice from Covestro's noncompliance with 29 C.F.R. § 2560.503-1(g)(1)(iv).

***13** Accordingly, it is respectfully recommended that Plaintiff's motion for summary judgment be denied in its entirety.

iii. Covestro's Motion for Summary Judgment

Covestro argues that it is entitled to summary judgment because the decision to terminate Plaintiff's LTD benefits was supported by substantial evidence. It argues that Plaintiff did not meet the "totally disabled from any occupation" standard as of April 29,

2021, the date that Standard made the decision, that Plaintiff's own treating physician Dr. Kim found that Plaintiff could return to work with limited restrictions on January 7, 2021. Covestro argues that even on appeal, Plaintiff did not provide any evidence that he met the "totally disabled from any occupation" standard, since his treating physician Dr. Kim found that Plaintiff could perform a light or sedentary job, and the IME by Dr. Korivi found that Plaintiff could perform a medium physical demand job. Covestro further argues that Dr. Shipkin was the only physician to address whether Plaintiff was totally disabled as defined in the Plan, and he concluded that Plaintiff was not. Covestro argues that the only evidence of record that supported a finding that Plaintiff was totally disabled was the December 28, 2021 FCE Report that the Board did not accept because it contradicted the opinions of all other physicians and mentioned no other medical information in the record to establish that Plaintiff was disabled.

Under the "arbitrary and capricious" standard, a plan administrator's decision must be upheld by the court unless it is "without reason, unsupported by substantial evidence or erroneous as a matter of law." *Courson*, 214 F.3d at 142 (citations omitted). "A decision is supported by 'substantial evidence if there is sufficient evidence for a reasonable person to agree with the decision.' " *Id.* (quoting *Daniels v. Anchor Hocking Corp.*, 758 F. Supp. 326, 331 (W.D. Pa. 1991)). While plan administrators "may not arbitrarily refuse to credit a claimant's reliable evidence, including the pinions of a treating physician[,]" ... courts have no warrant to require administrators automatically to accord special weight to the opinions of a claimant's physician; nor may courts impose on plan administrators a discrete burden of explanation when they credit reliable evidence that conflicts with a treating physician's evaluation." *Black & Decker Disability Plan*, 538 U.S. at 834. In other words, "plan administrators are not obliged to defer to the treating physician's opinion[.]" *Stratton*, 363 F.3d at 258 (citing *Black & Decker Disability Plan*, 538 U.S. at 825).

As explained *supra*, in this case, Covestro's decision to terminate LTD benefits was supported by substantial evidence. During the "totally disabled for any occupation" review, Plaintiff submitted, *inter alia*, a medical opinion from his treating physician Dr. Kim dated July 7, 2021 in which Dr. Kim found that in an 8-hour work day for 5 days per week on a full-time basis, Plaintiff could be expected to sit for 6 out of 8 hours of the day for 1 hour at a time, stand or walk for 2 out of the 8 hours, for 45 minutes at a time, and could carry up to 25 pounds less than a third of the day. Defs.' SMF (ECF No. 37) at ¶ 39; Defs.' Appx. (ECF No. 38-4) at p. 31. Dr. Kim further found that Plaintiff would need a ten-minute break for every one-and-a-half hours worked and that he would need about two to three absences per month. Pl.'s SMF (ECF No. 41) at ¶¶ 15-20; Defs.' Appx. (ECF No. 38-4) at pp. 32-33. Therefore, Dr. Kim did not find that Plaintiff was totally disabled from any occupation.

***14** Plaintiff further submitted an IME dated August 25, 2021 from Dr. Korivi who concluded that while Plaintiff could not do his previous job as an industrial mechanic, he "is able to work in other jobs such as his current teaching job which is less physically demanding." Defs.' SMF (ECF No. 37) at ¶ 42. Therefore, Dr. Korivi did not found that Plaintiff was totally disabled from any occupation.

Dr. Shipkin provided his medical opinion to the Committee on December 8, 2021 and concluded that Plaintiff was "able to engage in sedentary to light fulltime work (desk work in the range of six to eight hours a day, five days a week) where he is able to stand and stretch as needed." Defs.' SMF (ECF No. 37) at ¶ 44. Dr. Shipkin specifically concluded that Plaintiff was not "totally disabled" from performing "any occupation from the date of denial of **long-term disability**, June 21, 2021, forward or for any period following the denial date of his **long-term disability** claim." *Id.*

The only evidence of record that concludes that Plaintiff is totally disabled for any occupation is the December 16, 2021 Total Health & Rehab FCE. It concluded that Plaintiff "is unable to safely and dependably work at an even Sedentary Physical Demand Level and has difficulties performing normal activities of daily living." Defs.' SMF (ECF No. 37) at ¶ 47.

Dr. Korivi, who performed the IME, reviewed the FCE and concluded that the report stated that Plaintiff was "unable to work as an Industrial Mechanic." Pl.'s SMF (ECF No. 41) at ¶ 31. Dr. Shipkin reviewed the FCE and Dr. Korivi's follow-up note and concluded that his opinion outlined in his initial report remained unchanged. Defs.' SMF (ECF No. 37) at ¶ 50.

There was substantial evidence for the Committee to conclude that Plaintiff did not meet the definition of "totally disabled for any occupation" based on the reports from Dr. Kim, Dr. Korivi, and Dr. Shipkin, who all concluded Plaintiff was not totally

disabled. It was not arbitrary and capricious for the Committee not to give weight to the Total Health & Rehab FCE — the only evidence of record that concluded Plaintiff met the "totally disabled" standard. This is all the more true given that Dr. Korivi and Dr. Shipkin reviewed the FCE and essentially concluded it did not change their medical opinions that Plaintiff was not totally disabled under the Plan definition. Plaintiff also worked as a part-time faculty member of Lee College during his disability leave and did not consider himself disabled. It was therefore reasonable for the Committee to conclude that Plaintiff was not "totally disabled for any occupation" under the Plan. Accordingly, it is respectfully recommended that Covestro's motion for summary judgment be granted.

d. Conclusion

Based on the above, it is therefore respectfully recommended that Plaintiff's motion for summary judgment (ECF No. 40) be denied and Covestro's motion for summary judgment (ECF No. 36) be granted.

Therefore, pursuant to 28 U.S.C. § 636(b)(1)(B) and (C), Federal Rule of Civil Procedure 72, and the Local Rules for Magistrates, the parties have until **November 29, 2023** to object to this report and recommendation. Unless otherwise ordered by the District Judge, responses to objections are due fourteen days after the service of the objections. Failure to file timely objections will waive any appellate rights. *Brightwell v. Lehman*, 637 F.3d 187, 193 n.7 (3d Cir. 2011).

All Citations

Slip Copy, 2023 WL 8481914

Footnotes

1 Unless noted, the facts are not in dispute.

2 To be clear, Plaintiff does not argue that the delegation to Covestro **ERISA** Review Committee to determine benefits requires the Court to apply the *de novo* standard, or that it is a structural or procedural conflict of interest to be considered. Plaintiff simply argues that because Covestro violated **ERISA** regulations in its denial of benefits, that alone entitles him to a *de novo* review of the denial of his benefits.

3 This remains true despite Plaintiff's contention in his reply brief that the post-2018 **ERISA** regulations require strict adherence and failure to adhere to the regulations results in a *de novo* standard of review. Plaintiff cites no controlling case law from the United States Court of Appeals for the Third Circuit for this proposition and only cites a district court case from the Southern District of New York which relies on caselaw from the United States Court of Appeals for the Second Circuit. The applicable law regarding standards of review in **ERISA** cases in our court of appeals is disparate from the law in other circuit courts. *See Becknell v. Severance Pay Plan of Johnson & Johnson & U.S. Affiliated Companies*, 644 F. App'x 205, 213 (3d Cir. 2016) (unpublished) (explaining differentiation between circuit courts for standard of review in **ERISA** cases for procedural violations). Plaintiff provides no reason for this Court to deviate from the controlling case law from our circuit court.

4 Again, Dr. Kim's July 7, 2021 report stated that in an 8-hour 5-days a week full-time basis, Plaintiff could sit for 6 out of the 8 hours, 1 hour at a time, could stand/walk for 2 out of the 8 hours, for 45 minutes at a time, could carry up to 25 pounds less than one-third of the day, would need a 10-minute break every one and a half hours worked and would need 2-3 absences per month. Pl.'s SMF (ECF No. 41) at ¶¶ 15-20; Defs.' Appx. (ECF No. 38-4) at pp. 32-33. Dr. Korivi's IME stated that Plaintiff can drive for 1 hour, cannot run, can climb two flights of stairs, crawl for a short distance, bend

at the lumbar region on a frequent basis, walk for about 15 minutes, sit for about 30 minutes, stand for about 15 minutes and not able to lift, push, or pull more than 50 pounds. Defs.' SMF (ECF No. 37) at ¶ 42.

5 For example, the occupational alternative "Millwright Supervisor" in the TSA was classified as a "light" strength occupation which could be performed with lifting, carrying, pushing or pulling up to 20 pounds occasionally, Defs.' Appx. (ECF No. 38-4) at p. 310, and the occupational alternative "Gas-Welding-Equipment Mechanic" in the TSA was classified as a "light" strength occupation which could be performed with lifting, carrying, pushing or pulling up to 20 pounds occasionally. *Id*. at p. 313.

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