UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

KRIS B.,

Plaintiff,

v.

LIFE INSURANCE COMPANY OF NORTH AMERICA,

Defendant.

Case No. 22-cv-03717-RFL

ORDER GRANTING DEFENDANT'S MOTION FOR JUDGMENT; DENYING PLAINTIFF'S MOTION FOR JUDGMENT; GRANTING JOINT MOTION TO SEAL

Re: Dkt. Nos. 36, 38, 40

In this action brought under the Employee Retirement Income Security Act of 1974 ("ERISA"), Plaintiff Kris B.[1] sues Defendant Life Insurance Company of North America ("LINA") for failure to pay long-term disability ("LTD") benefits under 29 U.S.C. § 1132(a)(1)(B). LINA denied Plaintiff's LTD claim based on her back and knee conditions, concluding that they did not impose limitations severe enough to render her disabled under LINA's policy. Before the Court are the parties' cross-motions for judgment.[2] This Order comprises the findings of fact and conclusions of law required by Federal Rule of Civil Procedure 52(a).[3] For the reasons set forth below, LINA's motion for judgment is granted, and

[1] In the interest of privacy, Plaintiff's name is partially redacted.

[2] While Plaintiff's motion is styled as one for summary judgment under Federal Rule of Civil Procedure 56, at oral argument, Plaintiff agreed that converting this motion to a motion for judgment under Rule 52 was proper. In their joint proposed findings of fact and conclusions of law, the parties agree that the Court should decide this case under Rule 52. (*See* Dkt. No. 55 at 3.)

[3] To the extent that any findings of fact are included in the Conclusions of Law section, they shall be deemed findings of fact, and to the extent that any conclusions of law are included in the Findings of Fact section, they shall be deemed conclusions of law.

Plaintiff's motion for judgment is denied.

I. FINDINGS OF FACT

A. Plaintiff's Employment

Plaintiff worked as a junior staff accountant/cost accountant at Blue Mountain Construction Services, Inc., from August 19, 2019 to December 14, 2020. (AR 112, 2584, 2593, 2659.) As an accountant, Plaintiff's essential duties and responsibilities included organizing and maintaining invoices and expense reports, ensuring proper authorization for cash disbursements, as well as reconciling bank accounts. (AR 112.) Blue Mountain's job description stated that "[p]hysical demands include sitting, standing, walking, [and] repetitive use of either or both hands." (AR 112.)

LINA's vocational analysis, relying on the Dictionary of Occupational Titles, determined that Plaintiff's occupation as an accountant involved tasks such as compiling financial information and documenting business transactions. (AR 116.) That analysis further classified the job of an accountant as sedentary. (AR 117.)

B. Plaintiff's LTD Disability Policy

Plaintiff was a participant in LINA's group LTD plan (the "Policy"). (AR 2874–942.) Under the Policy, the claimant is required to provide satisfactory proof of disability. (AR 2924.) As relevant here, a claimant is disabled when LINA determines that solely because of injury or sickness, the claimant is "unable to perform the material duties of his or her Regular Occupation" and "unable to earn 80% or more of his or her Indexed Earnings from working in his or her Regular Occupation." (AR 2919.) Regular occupation is defined as "[t]he occupation the Employee routinely performs at the time the Disability begins." (AR 2935.) In evaluating the disability, LINA is to "consider the duties of the occupation as it is normally performed in the general labor market in the national economy," rather than "work tasks that are performed for a specific employer or at a specific location." (AR 2935.) Benefits become payable following a 180-day elimination period, throughout which time the claimant must be continuously disabled. (AR 2890, 2894, 2919, 2924.)

C. Plaintiff's Medical Conditions and LTD Benefits Claim

Plaintiff has a history of back and knee problems. (*E.g.*, AR 314, 2563.) At age 16, Plaintiff broke her right femur and also had spine surgery. (AR 288, 345, 687, 1849.) Plaintiff previously had been able to work with her diagnosed conditions of chronic low back pain with lumbar radiculopathy and right knee pain and osteoarthritis. (AR 124.) MRIs in May 2018 and October 2020, before she stopped working, were largely unchanged and showed similar multilevel lumbar degenerative joint disease. (AR 204–05.)

In April 2021, Plaintiff submitted a claim for LTD benefits to LINA on the ground that she became unable to perform her occupational duties as of December 14, 2020, reporting a flare-up in back pain that she suspected was caused by doing housework and gardening. (AR 78, 764, 2593, 2613, 2782–83.)

On July 12, 2021, Plaintiff provided LINA with a completed Disability Questionnaire & Activities of Daily Living form, indicating that her treating physicians were Dr. Jerome Lee, a physical medicine and rehabilitation doctor, and Dr. Ranvir Sandhu, a family medicine doctor. (AR 125, 460.) On July 23, 2021, LINA informed Plaintiff that it needed medical records from Dr. Lee and Dr. Sandhu. (AR 146–47.)

LINA subsequently received Plaintiff's medical records during the period from January 2021 to August 2021, which indicated that she managed her care conservatively with medications, injections, home exercise, physical therapy, classes, and pain management. (AR 182–456, 497–770.) Dr. Lee's January 6, 2021 office visit note indicated that Plaintiff received a left L5 transforaminal epidural steroid injection. (AR 194–99.) Later that month, Plaintiff emailed Dr. Lee that "the pain was mostly gone" from her back after the injection. (AR 202–03.) Plaintiff also indicated that she had nerve issues in her feet and toes, and discussed what her future options would include. (AR 202.) On a January 28, 2021 phone visit, Dr. Lee indicated that Plaintiff's symptoms were consistent with a right L5/S1 radiculopathy secondary to lateral recess narrowing at L4-5 and L5-S1. (AR 203–06.) He referred Plaintiff to physical therapy, stated he could repeat the steroid injection, and recommended Plaintiff follow up with

Dr. Boskovitz, a surgeon, if the right foot strength did not improve in the next month. (AR 203–06, 1044.)

At Plaintiff's request (AR 201), Dr. Lee completed a work status report placing Plaintiff on modified activity at work and home, from January 28, 2021 to March 31, 2021, with restrictions and limitations of standing and sitting no more than 30 cumulative minutes per hour each; lifting, carrying, pushing, and pulling no more than five pounds; and no driving. (AR 213.) Dr. Lee's work status report did not indicate the medical basis for the restrictions and limitations.

On February 17, 2021, Plaintiff reported to Dr. Maryam Safa, a family medicine doctor, that she fell off a ladder the week prior that resulted in leg and back pain, which Dr. Safa diagnosed as a lower leg contusion and lumbar muscle strain. (AR 223–26, 767.) Dr. Safa ordered an x-ray and physical therapy. (AR 225.) The x-rays confirmed there was no evidence of fracture or dislocation. (AR 182–85.)

On March 4, 2021, Plaintiff reported to Dr. Sandhu in a phone visit that she had left-side low back pain into her buttock and left leg for about a month. (AR 251–52.) He advised her to apply ice and heat, rest, stretch, massage, and use Motrin, Zanaflex, and Voltaren gel. (AR 252.) On March 9, 2021, Dr. Lee administered another left L5 transforaminal epidural steroid injection (AR 258–60), and recommended Plaintiff to use a sit/stand desk to minimize back pain flare-ups (AR 264). On a March 25, 2021 video visit, Dr. Lee indicated that he discussed Plaintiff's back condition and noted that Plaintiff received surgical opinions, but that she was apprehensive about surgery. (AR 269–70.) Dr. Lee's plan included a joint injection and following up with Dr. Boskovitz. (AR 270.) Dr. Lee also extended Plaintiff's modified activity to May 31, 2021 in another work status report, which was otherwise identical to his prior work status report. (AR 275.)

A video visit with Dr. Sandhu on April 14, 2021 noted that Plaintiff complained about right knee pain for years and pain with walking. (AR 282–83.) An MRI indicated severe osteoarthritis. (AR 283.) Dr. Sandhu recommended a plan to ice, heat, rest, stretch, use a brace,

and receive a corticosteroid injection. (AR 283.) A video visit on April 30, 2021 with Daniel Steven McKim, a physician assistant, for Plaintiff's knee noted that she was alert, in no distress, had no lesions on her right knee, and that her right hip was pain-free. (AR 288–91.) In an office visit with McKim on May 21, 2021, he noted that Plaintiff's pain was located to the lateral/posterior and anterior knee, and observed mild swelling, but Plaintiff was able to ambulate without restrictions. (AR 622–27.) McKim also administered a right knee Kenalog injection. (AR 624–28.) On May 5, 2021, Dr. Lee administered a bilateral L4-5, L5-S1 intra-articular facet injection, which increased Plaintiff's pain. (AR 298–302, 344–47.) Dr. Lee explained that injections in rare cases can increase pain, though it typically resolves itself within a couple of weeks. (AR 308.) He also ordered an MRI to ensure there was no bleeding or infection following the injection. (*Id.*)

On May 28, 2021, Plaintiff requested a muscle relaxer refill from Dr. Sandhu, noting the new pain following the steroid injection for her back and that her "knees great." (AR 647–48.) On May 29, 2021, a lumbar MRI revealed slight lumbar dextroscoliosis and no new fluid collections or inflammation, with findings similar to the prior MRI in October 2020. (AR 186–89.) On a June 4, 2021 phone visit, Dr. Lee noted Plaintiff's increased back pain after the injection, that she was unable to sleep, that she was feeling depressed from the pain, and that the MRI showed no new fractures or disc herniations. (AR 344–47.) Plaintiff agreed to follow up with Dr. Lee as needed and continue her home exercise program. (AR 346.) Dr. Lee also referred her to a chronic pain management program. (*Id.*) In addition, Dr. Lee extended Plaintiff's modified activity to July 31, 2021 in another work status report, which was otherwise identical to his prior work status reports. (AR 350.)

On June 28, 2021, Plaintiff began the chronic pain management program. (AR 361, 365–67, 374–80.) On July 9, 2021, Julie Grantham, a physical therapist, noted Plaintiff's ongoing severe back pain and discussed exercise techniques for the pain and using ice regularly, changing positions, unloading while sitting, and putting her feet up on a wedge pillow. (AR 390–94.) On July 16, 2021, at Plaintiff's request, Dr. Lee extended her modified activity to

September 30, 2021 in another work status report, which again was identical to his previous work status reports. (AR 410–12.)

On July 30, 2021, Plaintiff saw Dr. Sandhu for a check-up in which she reported right knee pain and a painful callus on her right foot. (AR 424–32.) Based on a physical exam, Dr. Sandhu observed that Plaintiff's right knee joint pain was stable, advising her to continue icing, resting, exercising, and using Tylenol and Motrin as needed. (AR 426.) As for Plaintiff's foot callus, Dr. Sandhu noted tenderness with pressure at the ball of her right foot and recommended warm soaks, gentle filing, and using a callus pad/cushion. (*Id.*) The plan was to continue conservative management for her knee, as well as continuing pain management and physical therapy for her back pain. (AR 424, 426.)

In August 2021, LINA's nurse case manager, Damaris Wairimu, reviewed Plaintiff's medical records in connection with her LTD claim. (AR 763–71.) On August 25, 2021, Wairimu reached out to Dr. Lee (AR 485–89) and Dr. Sandhu (AR 491–95) to clarify Plaintiff's activity restrictions, noting her low back pain diagnosis. Wairimu asked the doctors to clarify whether Plaintiff had function of her bilateral upper extremities, whether they had active lumbar range of motion and strength measurements, whether there were specific activities she was unable to perform that helped them arrive at their imposed activity restrictions, and what specific evidence they had to support the activity restrictions since December 10, 2020. (AR 485, 491.) The letter further stated that an "off work" note was not sufficient documentation. (AR 485, 491, 2749.) They did not respond to LINA's request for clarification on her activity restrictions. (AR 793.)

On September 10, 2021, LINA obtained an independent medical opinion from Dr. Raisa Bakshiyev, a board-certified doctor in physical medicine and rehabilitation, who reviewed Plaintiff's medical records and clinical findings to determine whether her conditions independently or collectively impacted her functionality. (AR 775–80.) Dr. Bakshiyev walked through and summarized the records reviewed, noting that Plaintiff's examinations on file were unremarkable. (*Id.*) Dr. Bakshiyev also noted that Plaintiff had been able to manage her

injuries at home with conservative management, medication management, chiropractic care, as well as physical therapy by videoconferencing. (AR 779–80.) Based on this review of the medical evidence, Dr. Bakshiyev found that Plaintiff was able to work full time with certain limitations in regard to her lumbar radiculopathy, lumbar facet arthropathy, and right knee osteoarthritis, including in relevant part sitting and standing for 30 minutes at a time and no heavy lifting beyond five pounds. (*Id.*) Unlike Dr. Lee's work status reports, Dr. Bakshiyev did not impose a cumulative limit on Plaintiff's sitting limitation. Dr. Bakshiyev opined that Plaintiff could sit and work at a desk if she took a brief stretch break every 30 minutes. (AR 780.) Finally, Dr. Bakshiyev imposed no restrictions on driving, observing that "[d]riving is not restrictive for any of the above diagnoses, other than having to take rest breaks every 30 minutes if possible." (AR 779–80.) Using Dr. Bakshiyev's restrictions and limitations, on September 15, 2021, LINA's rehabilitation specialist conducted an occupational analysis and confirmed that they were within Plaintiff's occupational demands as an accountant. (AR 781.)

After completing its review of Plaintiff's LTD claim, on September 20, 2021, LINA determined that Plaintiff did not meet the Policy's regular occupation definition of disability based on the medical and vocational evidence, and called her to explain its adverse decision. (AR 2739–40.) LINA also mailed Plaintiff a letter concluding that Plaintiff was not disabled from working as an accountant, noting the applicable Policy terms and above medical and vocational evidence. (AR 790–95.) LINA stated that its nurse case manager reviewed the medical evidence and reached out to Plaintiff's providers to clarify their limitations, but did not receive a response. (AR 793.) LINA also described Dr. Bakshiyev's opinion and conclusions about the medically-supported limitations. (*Id.*) LINA further stated that Plaintiff's records were reviewed by its rehabilitation specialist, who found that the medically-supported limitations were consistent with the required demands of Plaintiff's sedentary occupation as an accountant, which are: "Exerting up to 10 pounds of force occasionally (Occasionally: activity or condition exists up to 1/3 of the time) and/or a negligible amount of force frequently (Frequently: activity or condition exists from 1/3 to 2/3 of the time) to lift, carry, push, pull, or

otherwise move objects, including the human body. Sedentary work involves sitting most of the time, but may involve walking or standing for brief periods of time. Jobs are sedentary if walking and standing are required only occasionally and all other sedentary criteria are met." (*Id.* (emphasis omitted).) Plaintiff was informed about her right to file an administrative appeal. (AR 793–94.)

On November 18, 2021, LINA received Plaintiff's appeal. (AR 2333–34.) In her appeal letter, Plaintiff cited the limitations imposed by Dr. Lee in his work status reports, as well as her difficulty with commuting and her chronic pain-induced insomnia. (*Id.*) Plaintiff also submitted additional medical records, which included records from the late 2020 period when Plaintiff stopped working. (AR 802–2332, 2334–79.) These records include Plaintiff's November 30, 2020 visit with Dr. Fang Lan, where she reported developing back pain an hour after house cleaning and gardening. (AR 839.) She noted that the pain started in the lower back and traveled down to the ball of her left foot. (*Id.*) There was constant aching in the back, and she reported that any movement triggered shocking pain. (AR 838–40.) Plaintiff also reported a similar episode three to four years ago. (*Id.*) Dr. Lan provided a work status report placing Plaintiff off work from November 30 to December 4, 2020, which did not mention any restrictions or limitations. (AR 843.)

On a December 2, 2020 video visit, Dr. Sandhu also noted Plaintiff's pain flare-up, but found her in no distress. (AR 868–72.) Dr. Sandhu provided a work status report, placing Plaintiff on modified activity at work and at home from December 2 through December 9, 2020, stating the following restrictions and limitations: standing, walking, and bending at the waist up occasionally (up to 25% of shift); no limitations on torso/spine twist, climbing ladders, or using scaffolds/work at height; lifting, carrying, pushing, and pulling no more than 10 pounds; and avoiding travel/commute. (AR 873.) Plaintiff was "[o]k to work from home if able." (*Id.*) Dr. Sandhu did not impose any sitting limitations. On December 8, 2020, at Plaintiff's request, Dr. Sandhu extended this modified activity through December 23, 2020 in another work status report, with the same limitations. (AR 891–95.) On December 10, 2020, Dr. Lee also provided

another work status report, extending Plaintiff's modified activity through January 31, 2021 with the same limitations imposed by his prior work status reports. (AR 805.)

The additional records also included treatment after the Policy's elimination period had ended on June 7, 2021. (AR 2408, 2558.) In August 2021, Plaintiff had another lumbar MRI, showing that her arthritis remained, that the L5-S1 disc bulge was stable, and that no infection, bleeding, new disc herniation, or new nerve pinching was found. (AR 1374, 1432, 1502, 1609.) On September 27, 2021, Dr. Lee extended, at Plaintiff's request, her modified activity to November 30, 2021 in another work status report, again imposing the same limitations as his previous work status reports. (AR 2046, 2053.) On September 29, 2021, Plaintiff's video visit with Dr. Sandhu noted that she had restless legs at night for about a year, though there was no pain and no issues during the daytime. (AR 2245.) On October 8, 2021, Plaintiff saw Dr. Roger Chieh Lee for an injection for left piriformis pain. (AR 2263–70.) He noted Plaintiff's pain, and that riding a stationary bike was her main form of cardio exercise due to her knee pain. (AR 2264.) On October 13, 2021, Plaintiff had a phone visit with Dr. Sayed Naqvi for pain management regarding her ongoing back pain. (AR 2161–63.) On a November 5, 2021 phone visit with Dr. Lee, he noted that Plaintiff reported ongoing back and leg pain, and that Plaintiff has since started the pain management program with Dr. Naqvi. (AR 2300–03.) Dr. Lee extended her modified activity for a year in another work status report, again without any changes to her limitations. (AR 2304.)

On December 2, 2021, Plaintiff reported to LINA that she was unable to work due to back pain and sciatica. (AR 2709–10.) LINA further advised Plaintiff that its external reviewing physician may be conducting a telephone interview with her treating physicians and advised Plaintiff to contact her physicians and request their cooperation. (AR 2390–91.)

After confirming all records were received (AR 2710), LINA obtained an independent review from Dr. Frank Polanco, who is board certified in occupational medicine (AR 2395–401). On December 29, 2021, Dr. Polanco issued his report, noting the records he reviewed from November 2020 through December 2021. (AR 2395–97.) He also summarized Plaintiff's

conditions, symptoms, and treatment. (AR 2397–400.) Dr. Polanco noted that while Plaintiff had diagnosed conditions and reported symptoms, her exams indicated that she did not present in acute distress, did not have any recently reported gait deficits, and had no neural focal deficits. (AR 2399–40.) He opined that the medical evidence supported that Plaintiff was limited in her ability to perform frequent, prolonged, and strenuous physical/work activities, but concluded that the findings did not support that she was incapacitated or incapable of full-time, modified, work activities with appropriate limitations, given that she retained a functional gait, mobility, strength, and had no focal neurological deficits. (*Id.*) Dr. Polanco also noted that Plaintiff reported being able to ride an exercise bike. (AR 2398; *see also* AR 1849 (Plaintiff reporting that she bikes 15–30 miles daily as of October 2021).)

Based on the totality of the medical evidence, Dr. Polanco opined that with Plaintiff's diagnoses, symptoms, imaging findings, and pain complaints, she could work full time (40 hours, 5 days a week) from December 14, 2020 and continuing over the next six months with the following limitations: (1) occasional walking and standing up to 20 minutes at a time, for a total of 2.7 hours combined; (2) occasional crawling, kneeling, stooping, bending, and climbing; (3) occasional lifting and carrying up to 20 pounds, and pushing and pulling up to 35 pounds; (4) constant sitting with the ability to alter position as necessary; and (5) frequent reaching at all planes, gripping, grasping, and fingering. (AR 2400.) Dr. Polanco did not impose a driving limitation. Dr. Polanco noted that on December 20, 2021, he tried to call both Dr. Sandhu and Dr. Lee, but they did not respond. (AR 2395, 2400.) On December 27, 2021, Dr. Polanco again attempted to call Dr. Sandhu and Dr. Lee, neither of whom responded. (AR 2395, 2400.)

On January 7, 2022, LINA sent Plaintiff a letter with Dr. Polanco's report and allowed her the opportunity to review and respond with additional evidence prior to issuance of a final determination. (AR 2407–09.) The letter cited the Policy's definition of disability and 180-day elimination period, and also summarized Plaintiff's claim history and sedentary demands as an accountant. (AR 2407–08.) LINA also noted the medical history, conditions, treatment, as well as Dr. Polanco's review and findings set forth above. (AR 2408–09.) LINA stated that while

medical evidence supported some limitations due to chronic low back pain and radiculopathy, they were consistent with the demands of her occupation as an accountant. (AR 2409.) LINA further noted that Plaintiff had been diligent with physical therapy, acupuncture, and made a concerted effort with the pain management program. (*Id.*) LINA also addressed Plaintiff's right knee pain and osteoarthritis, but noted that on exams, she presented in no acute distress, had no recent gait deficits, and no neural focal deficits. (*Id.*) LINA adopted the supported restrictions set forth by Dr. Polanco. (*Id.*)

After LINA produced Plaintiff's claim file to her attorney on February 10, 2022 (AR 2416–20), Plaintiff filed additional information for her appeal on April 4, 2022 (AR 2427–28). Plaintiff's counsel submitted a letter in support of the appeal that enclosed a March 31, 2022 report by Irene Mendelsohn, a rehabilitation counselor, which opined that Plaintiff could not perform her duties as an accountant based on the limitations of lifting no more than five pounds, sitting no more than four hours a day/30 cumulative minutes an hour, as well as issues with fatigue, concentration, memory recall, and absenteeism. (AR 2427–34.) Mendelsohn did not indicate that she was a physician or otherwise had medical training as to restrictions and limitations, nor did Mendelsohn cite any medical source for the additional restrictions and limitations she imposed. (AR 2432–33.) Although Mendelsohn described her impression of Plaintiff's fatigue and ability to concentrate, she did not state whether or how she assessed whether those were caused by Plaintiff's back and knee pain, as opposed to sleep apnea or another issue. While noting that she reviewed Dr. Polanco's report (AR 2429), Mendelsohn did not specifically address his opinions or limitations. Mendelsohn reported that Plaintiff must be able to sit five hours and 20 minutes total per day and lift up to 10 pounds to perform her occupation as an accountant. (AR 2431–32.) She did not list a specific duty that "required" lifting 10 pounds or sitting five hours and 20 minutes, or comment on whether the occupation allowed for the ability to sit, stand, or change positions while working. Nor did Mendelsohn compare her opinion with LINA's vocational analyses. Mendelsohn concluded that Plaintiff was unable to work not only as an accountant, but was also "unemployable" in any capacity due

to her pain and resultant activity limitations. (AR 2431–33.)

LINA then provided the letter from Plaintiff's attorney and Mendelsohn's report to Dr. Polanco, who summarized and evaluated them in an addendum to his initial report on April 14, 2022. (AR 2442–43.) Dr. Polanco found that the additional information did not alter his prior opinion, noting that requiring Plaintiff to take occasional breaks and alter her sitting position as needed would not preclude her from her sedentary work activities as an accountant. (AR 2443.)

Subsequently, Plaintiff submitted additional records from November 2021 to March 2022, which largely included progress notes from physical therapy, pain management, and clinicians. (AR 2444–545.) Dr. Polanco reviewed these records as well and, on April 22, 2021, issued another addendum that summarized the records and stated that they did not alter his prior opinion, noting there were no new conditions or clinical findings that were not already addressed in his prior report. (AR 2553–56.) Aside from another of Dr. Lee's identical work status reports (AR 2464), the additional records did not include any reports by physicians imposing restrictions and limitations.

On May 2, 2022, LINA informed Plaintiff's attorney that, based on the above evidence, the appeal review indicated an adverse decision was warranted. (AR 2557–60.) LINA stated that Plaintiff had another opportunity to review and respond with additional evidence. (AR 2557.) Like LINA's January 7, 2022 letter, this letter summarized Plaintiff's medical records, discussed additional medical evidence that was submitted, and concluded that the medically-supported restrictions and limitations were consistent with the sedentary demands of her job. (AR 2557–60.) LINA requested a response by May 16, 2022. (AR 2560.) On May 11, 2022, LINA left a message for Plaintiff's attorney about the appeal. (AR 2691.) The record does not indicate whether Plaintiff provided a further response.

On May 17, 2022, LINA upheld the denial in a final, written appeal letter. (AR 2591.) LINA concluded that Plaintiff did not meet the Policy's regular occupation definition of disability from December 14, 2020 and continuously through the Policy's 180-day elimination period. (AR 2591–94.) The letter stated the Policy's definition of disability and Plaintiff's

sedentary demand activities as an accountant, which according to the Dictionary of Occupational Titles involved "[e]xerting up to 10 pounds of force occasionally or a negligible amount of frequently to lift, carry, push, pull, or otherwise move objects including the human body," as well as "sitting most of the time, but may involve walking or standing for brief periods of time." (AR 2591–92.) LINA's final denial letter mirrored its May 2, 2022 letter, including a summary of the claim and appeal history, Plaintiff's conditions and treatment, and Dr. Polanco's review and findings previously communicated. (AR 2592–94.) LINA concluded that, "[w]hile restrictions are supported" based on Plaintiff's records, "the findings do not reflect that she is incapacitated or incapable of fulltime, modified, work activities as she retains a functional gait, mobility, strength and ha[s] no focal neurological deficits." (AR 2593.) LINA found that Plaintiff had back and knee conditions, including pain, but determined that the medically-supported restrictions or limitations would not preclude her from working as an accountant. (AR 2593–94.)

II. LEGAL STANDARDS AND STANDARD OF REVIEW

Federal Rule of Civil Procedure 52 provides that, "[i]n an action tried on the facts without a jury or with an advisory jury, the court must find the facts specially and state its conclusions of law separately." Fed. R. Civ. P. 52(a)(1). In resolving Rule 52 motions, "the Court conducts what is essentially a bench trial on the record, evaluating the persuasiveness of conflicting testimony and deciding which is more likely true." *McCulloch v. Hartford Life & Accident Ins. Co.*, No. 19-CV-07716-SI, 2020 WL 7711257, at *7 (N.D. Cal. Dec. 29, 2020) (citing *Kearney v. Standard Ins. Co.*, 175 F.3d 1084, 1094–95 (9th Cir. 1999)).

The parties agree that the standard of review is *de novo*. On *de novo* review, the court "examines the administrative record without deference to the administrator's conclusions to determine whether the administrator erred in denying benefits." *Collier v. Lincoln Life Assurance Co. of Bos.*, 53 F.4th 1180, 1182 (9th Cir. 2022). "The district court's task is to determine whether the plan administrator's decision is supported by the record, not to engage in a new determination of whether the claimant is disabled." *Id.*

The claimant bears the burden of proving their disability under the terms of the plan by a preponderance of the evidence. *See Armani v. Nw. Mut. Life Ins. Co.*, 840 F.3d 1159, 1163 (9th Cir. 2016). To prevail, the claimant "must proffer evidence not only that she has a relevant diagnosis, but also that the illness or injury precludes her from performing the tasks required by her regular occupation." *Shaw v. Life Ins. Co. of N. Am.*, 144 F. Supp. 3d 1114, 1129 (C.D. Cal. 2015).

ERISA does not "require administrators [to] automatically . . . 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 v. Nord*, 538 U.S. 822, 834 (2003); *see also Williby v. Aetna Life Ins. Co.*, 867 F.3d 1129, 1137 (9th Cir. 2017). "At the same time, courts have typically afforded greater weight to the opinions of physicians who have treated the claimant for an allegedly disabling condition for a long period of time and to doctors whose specialty relates to the alleged disability." *Haag v. Unum Life Ins. Co. of Am.*, No. 22-CV-03130-TSH, 2023 WL 6960369, at *14 (N.D. Cal. Oct. 20, 2023) (cleaned up). But where the treating physician's records do not adequately support the diagnosis, their opinion may be deemed "particularly unreliable." *Shaw*, 144 F. Supp. 3d at 1130. "Under such circumstances, a paper review by a physician retained by the plan administrator may be more reliable than the opinion of a treating physician." *Id.*

III. CONCLUSIONS OF LAW

For the reasons described below, Plaintiff has failed to show by a preponderance of the evidence that she was disabled under the terms of the Policy during the claim period.

A. Limitations

It is insufficient for Plaintiff to establish that she has a diagnosed sickness or injury; rather, she must show that these conditions are disabling under the Policy. *See Matthews v. Shalala*, 10 F.3d 678, 680 (9th Cir. 1993) ("The mere existence of an impairment is insufficient proof of a disability. A claimant bears the burden of proving that an impairment is disabling."

(cleaned up)); *see also Shaw*, 144 F. Supp. at 1129 (plaintiff "must proffer evidence not only that she has a relevant diagnosis, but also that the illness or injury precludes her from performing the tasks required by her regular occupation").

The central dispute in this case is whether Plaintiff has proven, by a preponderance of the evidence, that she suffered from a physical or cognitive limitation preventing her from performing her sedentary work as an accountant. As explained below, Plaintiff has failed to do so.

1. Sitting limitation

Plaintiff contends that she is disabled under the terms of the Policy because her back condition prevented her from working in a sitting position as required as an accountant. For this contention, Plaintiff relies on the work status reports by Dr. Lee, Plaintiff's treating physician, in which she was limited to "[s]tand[ing] no more than 30 cumulative minutes per hour" and "[s]it[ting] no more than 30 cumulative minutes per hour." (*See, e.g.*, AR 2464.) However, Dr. Lee did not explain in those reports why he imposed that cumulative sitting restriction. Dr. Lee informed Plaintiff that he was "not a disability doctor" and did "not have the expertise to make disability determinations." (AR 721–22.) Plaintiff cites to no other medical opinion imposing a sitting limitation. Indeed, Dr. Sandhu, another of Plaintiff's treating physicians who placed her on modified activity at work and at home, did not impose a sitting limitation. (AR 873.)

On the other hand, Dr. Polanco, one of LINA's reviewing physicians who is board certified in occupational medicine, concluded that Plaintiff could engage in "[c]onstant sitting with the ability to alter position as necessary." (AR 2441; *see also* AR 2442.) Based on Plaintiff's medical records, Dr. Polanco opined that "[r]equiring the claimant to take occasional breaks and alter their sitting position as needed would not preclude the claimant from performing sedentary work activities." (AR 2443.) LINA's other reviewing physician, Dr. Bakshiyev, concluded that Plaintiff could work with the limitation of "no sitting or standing/walking for more than 30 minutes at a time," and that Plaintiff "would be able to sit and work at a desk if allowed to take a brief stretch break every 30 minutes." (AR 778–80.)

It is undisputed that Plaintiff's job as an accountant involves sedentary physical demands. (AR 112, 116–17, 2591.) However, a sitting limitation does not necessarily preclude full-time sedentary work. The evidence in the record supports the conclusion that Plaintiff could perform her job by alternating between sitting and standing, as demonstrated by LINA's reviewing physicians and vocational analysis. (AR 778–81, 2441–43.) Indeed, even Dr. Lee recommended that Plaintiff use a sit-stand desk (AR 264, 573, 1032), which would allow Plaintiff to alternately sit and stand, and therefore work within the limitations set forth by Dr. Lee.

Contrary to Plaintiff's argument, there is no evidence to support her claim that, as an accountant, either a sit-stand desk or the ability to alternate between sitting and standing would require a workplace accommodation.[4] *See Perez v. Unum Life Ins. Co. of Am.*, No. 5:21-CV-03207-EJD, 2022 WL 6173217, at *16 (N.D. Cal. Oct. 7, 2022), *aff'd*, 2023 WL 7675458 (9th Cir. Nov. 15, 2023) (rejecting argument that alternating sit/stand positions is an accommodation and finding that "working at a sit/stand workstation or desk is commonplace in today's work environment and are commonly made available by employers to all employees, including those without medical needs, for ergonomic and health reasons"); *cf. Goldman v. Berryhill*, No. 2:17-CV-2450, 2019 WL 498996, at *6 (E.D. Cal. Feb. 8, 2019) (observing in the Social Security context that a sit/stand option was "a permissible method for performing an identified job that has long been recognized by the courts," as opposed to a reasonable accommodation). While Plaintiff relies on the opinion of her vocational expert, Mendelsohn, who claims that "[h]aving to alternate position that frequently, i.e., twice hourly, is inconsistent with performing highly skilled, cognitively challenging work" and would interfere with "proper completion of the job duties in a timely manner" (AR 2432), the Court is not persuaded by this conclusory assertion, which is undermined by the ubiquity of sit/stand options in offices and is in any event unsupported by any underlying evidence. *See Perez*, 2022 WL 6173217, at *16; *see also Seleine*

[4] As such, the Court need not reach the parties' dispute over the Policy's workplace modification provision.

v. Fluor Corp. Long-Term Disability Plan, 598 F. Supp. 2d 1090, 1101 (C.D. Cal. 2009), *aff'd*, 409 F. App'x 99 (9th Cir. 2010) (claim administrator is not required to accept "unsupported conclusions and opinions" of a treating physician or one hired by claimant's lawyer (citing *Black & Decker v. Nord*, 538 U.S. 822 (2003))).

Nor has Plaintiff met her burden to show that an inability to commute to her job rendered her disabled. While Dr. Lee's work status reports "[r]ecommend[ed] no driving and to work from home if possible" (*e.g.*, AR 2464), Dr. Lee did not provide any specific medical reasoning behind that recommendation, except to state generally that she will experience degenerative changes and will have chronic back pain (*e.g.*, AR 2461). By contrast, while not highly detailed either, Dr. Bakshiyev's opinion at least explained that stretching and changing position every 30 minutes of sitting or driving should be sufficient in light of Plaintiff's conservative medical treatment history and her examinations. (AR 775–80.) Moreover, Dr. Polanco concurred by not imposing a driving condition. The medical evidence does not support the conclusion that Plaintiff is incapable of driving, as long as she can take breaks to stretch or rest on her way to work. (*E.g.*, AR 779 (imposing no restrictions on driving "other than having to take rest breaks every 30 minutes if possible").)

2. Lifting limitation

Next, Plaintiff contends that she cannot perform her job as an accountant due to a lifting limitation. Plaintiff relies on Mendelsohn's vocational opinion, which concluded that Plaintiff "needs to be able to lift 10 pounds," namely "paper files (even stacks of them) and sometimes bankers boxes of records." (AR 2432.) Due to this lifting limitation, according to Mendelsohn, Plaintiff was unable to perform her job as an accountant. (AR 2432–33.)

Plaintiff's treating physicians did not agree on whether she could lift 10 pounds. Dr. Lee's work status reports opined without further explanation that Plaintiff was limited to lifting no more than five pounds. (*See, e.g.*, AR 805.) On the other hand, Dr. Sandhu opined that Plaintiff could lift up to 10 pounds. (AR 895.) LINA's reviewing physician, Dr. Bakshiyev, opined that Plaintiff cannot engage in "heavy lifting" over five pounds, but did not specify what

constituted "heavy." (AR 779.) Dr. Polanco concluded that the medical evidence demonstrated that Plaintiff's back and knee conditions did not warrant a five-pound limitation. (AR 2440–43.) Instead, Dr. Polanco opined that Plaintiff could engage in "[o]ccasional lifting and carrying to 20 lbs." (AR 2441.)

Even if Plaintiff were limited to lifting only five pounds at once, based on the record as a whole, the Court credits LINA's vocational analysis, which found that a five-pound lifting limitation would not prevent Plaintiff from performing the duties required of an accountant. (*See* AR 781.) While Mendelsohn asserted that an accountant must be able to lift 10 pounds of stacks of paper files or bankers boxes (AR 2432), as a matter of common sense, it is unclear why Plaintiff would not be able to break up this load into smaller weights, such as by taking individual files out of the stack or box. Mendelsohn offers no explanation as to why breaking up the amount needed to be lifted at once would be inconsistent with the job of an accountant, or whether there is something unique about the job that would preclude Plaintiff from doing so (as opposed to, say, a construction worker, who may need to lift a heavy object that cannot feasibly be split up).

3. Other alleged limitations

Plaintiff also argues that her back and knee pain, and their attendant effects, precluded her from working as an accountant. Relying on Mendelsohn's opinion, Plaintiff contends that such pain is disabling, causing her difficulty sleeping, fatigue, and cognitive issues with memory and concentration. (*See* AR 2430–33.) According to Mendelsohn, these "pain and resultant activity limitations" prevent Plaintiff from not only working as an accountant, "but also that she is unemployable." (AR 2332–33.)

However, Plaintiff has failed to offer sufficient medical evidence establishing that her pain is of a severity that prohibits her from performing her job. Mendelsohn is a rehabilitation counselor, not a physician, and so her assessment of the degree of Plaintiff's sleep, fatigue, and cognitive issues—which she does not support with any evidence in Plaintiff's medical records—carries little weight.

Nor is Mendelsohn's conclusion otherwise substantiated by Plaintiff's medical records. *See, e.g., Biggar v. Prudential Ins. Co. of Am.*, 274 F. Supp. 3d 954, 970 (N.D. Cal. 2017) (finding "no way to confirm" cognitive limitations absent appropriate records or underlying objective evidence); *Seleine*, 598 F. Supp. 2d at 1101–02 (claim administrator not required to accept "unsupported conclusions and opinions," and subjective complaints, which are "subject to verification by objective medical evidence," need not be "accept[ed] . . . at face value"). The record is devoid of medical evidence sufficiently corroborating these issues and how they affect her work duties. For instance, unlike Mendelsohn, Plaintiff's treating physicians do not claim that Plaintiff's pain is so severe that it would cause fatigue or affect her cognition. And while Plaintiff did report her difficultly sleeping to Drs. Lee and Sandhu, Dr. Sandhu referred Plaintiff for sleep apnea testing, and the record does not establish whether Plaintiff followed through with the evaluation. (*See* AR 510–11, 647–48, 1385, 1439, 2311, 2465.)

By contrast, the only medical evidence that adequately explains the extent to which Plaintiff's pain restricts her activities is the reports by LINA's reviewing physicians. While Dr. Polanco acknowledged that Plaintiff's pain "limits . . . her ability to perform frequent, prolonged, and strenuous physical/work activities," he nonetheless concluded that her medical records "do not reflect that she is incapacitated or incapable of full-time, modified, work activities as she retains a functional gait, mobility, strength and has no focal neurological deficits." (AR 2441.) Similarly, Dr. Bakshiyev found that Plaintiff was able to keep her knee pain under control at home with conservative management, medication, chiropractic care, and physical therapy. (*See* AR 779–80.) Beyond sitting, lifting, and other movement-based limitations, neither physician found that additional restrictions or limitations on Plaintiff's ability to work were warranted based on her medical records, contrary to Mendelsohn's opinion. Nor does it appear that either reviewing physician set artificially high thresholds or failed to account for Plaintiff's subjective symptoms. *Cf. Eisner v. The Prudential Ins. Co. of Am.*, 10 F. Supp. 3d 1104, 1117 (N.D. Cal. 2014) (disregarding reviewing physician opinions that set "a threshold that can never be met by claimants . . . , no matter how disabling the pain" (cleaned up)). Rather, their reports are

detailed, account for her available medical records, and consider findings that both support and contradict Plaintiff's claimed limitations.

In addition, Plaintiff contends that chronic medically necessary absences rendered her disabled from working as an accountant. Plaintiff relies on Mendelsohn's opinion, which speculates that, "[g]iven the nature and frequency of [Plaintiff's] symptoms," she would exceed the permissible number of absences, and that as a result, "even if [Plaintiff] were to obtain employment, she would lose it within the first 90 days." (AR 2433.) However, as Mendelsohn is not a physician, her conclusory opinion on the frequency of absences necessitated by Plaintiff's medical conditions is not alone sufficient. Nor does Mendelsohn substantiate her assertion by pointing to any medical evidence. In any event, the record lacks sufficient evidence establishing Plaintiff's claim of chronic absenteeism as a basis for disability, as Plaintiff's own cited cases demonstrate is necessary. *See, e.g.*, *Katzenberg v. First Fortis Life Ins. Co.*, 500 F. Supp. 2d 177, 195–96 (E.D.N.Y. 2007) (recognizing the medical evidence "that polycythemia and the phlebotomies used to control it were so fatiguing and would have necessitated such frequent absences from work as to render plaintiff unable to function as a CEO," including a physician's report finding "physical symptoms that make it almost impossible for [the plaintiff] to conduct himself in normal working situations and make it impossible for him to function as a president of any corporation," and that the plaintiff would not "be able to function under his current physical condition"); *Douglas v. Bowen*, 836 F.2d 392, 396 (8th Cir. 1987) (noting that "[t]he evidence clearly shows that [the claimant] would have more than two absences a month due to his various impairments").

At bottom, despite having a full and fair opportunity to present sufficient evidence, Plaintiff has failed to carry her burden to prove that she suffered from physical or cognitive limitations severe enough to render her disabled from performing her job as an accountant. Although Plaintiff appears sincere in her belief that she cannot work as an accountant due to her

conditions, she has not submitted the medical evidence necessary to support her position.[5]

B. Evidence outside the administrative record

"In most cases," the district court is to consider "only the evidence that was before the plan administrator at the time of determination." *Opeta v. Nw. Airlines Pension Plan for Cont. Emps.*, 484 F.3d 1211, 1217 (9th Cir. 2007) (cleaned up). The court may, in its discretion, consider evidence beyond the administrative record "only when circumstances clearly establish that additional evidence is necessary to conduct an adequate de novo review of the benefit decision." *Id.* (cleaned up).

LINA submitted extra-record evidence related to the calculation of benefits in the event that the Court concluded that Plaintiff was disabled. (Dkt. No. 46 at 17.)[6] In response, Plaintiff submitted her own extrinsic evidence, including an award letter for Social Security disability benefits. (Dkt. No. 45 at 2–3.) Plaintiff maintains that her evidence need only be considered if the Court were to consider LINA's evidence. (*Id.* at 3.)

Given the conclusion that Plaintiff was not disabled, the Court need not consider LINA's extrinsic evidence. As such, in light of Plaintiff's position, nor does the Court consider Plaintiff's extrinsic evidence.[7] Accordingly, this ruling is based solely on the evidence in the

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[5] Plaintiff also complains about LINA's purported failure to inform Plaintiff of its inability to reach her treating physicians, Dr. Lee and Dr. Sandhu. As an initial matter, that assertion has questionable support in the record. Prior to final adjudication of Plaintiff's claim, Plaintiff was provided with documents stating that LINA was unable to reach Drs. Lee and Sandhu. (*See* AR 793 (Sept. 20, 2021 letter noting that LINA's nurse case manager was unable to reach Drs. Lee and Sandhu regarding clarification of the activity restrictions).) In addition, Plaintiff's counsel explicitly affirmed that he "reviewed" Plaintiff's claim file, a complete copy of which LINA sent to him (*see* AR 2420, 2423), which would contain Dr. Polanco's report detailing his inability to reach Drs. Lee and Sandhu. Regardless, even assuming that Plaintiff was not adequately informed, such a "procedural irregularity is not sufficient to merit an award of benefits." *Nagy v. Hartford Life & Accident Ins. Co.*, No. 16-CV-05309-HSG, 2018 WL 2183269, at *10 (N.D. Cal. May 11, 2018), *aff'd*, 800 F. App'x 555 (9th Cir. 2020); *see also Gray v. United of Omaha Life Ins. Co.*, No. 223CV00630, 2024 WL 324899, at *8 (C.D. Cal. Jan. 29, 2024) (procedural defects in claim handling are irrelevant on *de novo* review).

[6] Citations to page numbers refer to the ECF pagination.

[7] In any event, the Court would have declined to admit the Social Security award letter (Dkt. No.

administrative record.

IV. CONCLUSION

Based on the foregoing, LINA's motion for judgment is **GRANTED**, and Plaintiff's motion for judgment is **DENIED**. The parties' joint motion for leave to file the administrative record under seal is **GRANTED**, as "the majority of documents in the administrative record contain Plaintiff's confidential personal information." *See Gallegos v. Prudential Ins. Co. of Am.*, No. 5:16-cv-01268-BLF, Dkt. No. 41 at 2 (N.D. Cal. Apr. 3, 2017). The Clerk of Court shall enter judgment in favor of LINA and against Plaintiff.

IT IS SO ORDERED.

Dated: September 12, 2024

RITA F. LIN
United States District Judge

45-1 at 8–12) in reviewing the merits of Plaintiff's LTD claim, because it "does not clarify the basis on which plaintiff is considered disabled." *Dorsey v. Metro. Life Ins. Co.*, No. 215CV02126, 2017 WL 3720346, at *10 (E.D. Cal. Aug. 29, 2017) (Social Security disability award letter did not satisfy standard for admitting extrinsic evidence on *de novo* review, where "[t]here is no discussion of which disabling conditions support the SSA award or why, such that the court could fairly and adequately determine if the SSA determination supports finding plaintiff is disabled under the Plan's terms").

Ramirez, Victor H.

From: ECF-CAND@cand.uscourts.gov
Sent: Thursday, September 12, 2024 4:11 PM
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Subject: Activity in Case 3:22-cv-03717-RFL Baker v. Life Insurance Company of North America, et al Order on Administrative Motion to File Under Seal

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California Northern District

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Case Name: Baker v. Life Insurance Company of North America, et al
Case Number: 3:22-cv-03717-RFL
Filer:
Document Number: 60

Docket Text:

ORDER by Judge Rita F. Lin granting [42] Defendant's Motion for Judgment; denying [37] Plaintiff's Motion for Judgment; granting [36] Administrative Motion to File Under Seal. (mkl, COURT STAFF) (Filed on 9/12/2024)

3:22-cv-03717-RFL Notice has been electronically mailed to:

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