UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

DANIEL C.,[1]

Plaintiff,

v.

CHEVRON CORPORATION,

Defendant.

Case No. 24-cv-03851-SK

ORDER REGARDING CROSS-MOTIONS FOR JUDGMENT

Regarding Docket Nos. 53, 54

This matter comes before the Court upon consideration of the parties' cross-motions for judgment pursuant to Federal Rule of Civil Procedure ("Rule") 52(a). (Dkt. Nos. 53, 54.) This Court has jurisdiction pursuant to 28 U.S.C. § 1331 and 29 U.S.C. § 1132(e). Both parties have consented to the jurisdiction of a magistrate judge. (Dkt. Nos. 6, 11.) Having carefully considered the parties' papers, relevant legal authority, and the record in the case, and having had the benefit of oral argument, the Court hereby GRANTS the motion for judgment by Plaintiff Daniel C. ("Plaintiff") and DENIES the motion for judgment by Defendant Chevron Corporation ("Defendant").

LEGAL STANDARD AND STANDARD OF REVIEW

The Employee Retirement Income Security Act of 1974 ("ERISA"), 29 U.S.C. §§ 1001 *et. seq.*, allows an individual to sue "to recover benefits due to [the individual] under the terms of [the] plan, to enforce [the individual's] rights under the terms of the plan, or to clarify [the individual's] rights to future benefits under the terms of the plan." 29 U.S.C. § 1132(a)(1)(B).

Rule 52(a) 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 a Rule 52 motion, as opposed to a Rule 56 motion for summary judgment,

[1] Plaintiff's name is partially redacted in compliance with Federal Rule of Civil Procedure 5.2 and the recommendation of the Committee on Court Administration and Case Management of the Judicial Conference of the United States.

the court does not determine whether there is an issue of material fact, but actually decides whether the plaintiff is disabled under the policy." *Prado v. Allied Domecq Spirits and Wine Group Disability Income Pol'y*, 800 F. Supp. 2d 1077, 1094 (N.D. Cal. 2011) (citing *Kearney v. Standard Ins. Co.*, 175 F.3d 1084, 1095 (9th Cir. 1999) (en banc)).

In adjudicating the parties' cross-motions for summary judgment, the Court determined that this case should be reviewed de novo. (Dkt. No. 48.) "When a district court reviews de novo a plan administrator's denial of benefits, it 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) (citation omitted). "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.* "Accordingly, the district court must examine only the rationales the plan administrator relied on in denying benefits and cannot adopt new rationales that the claimant had no opportunity to respond to during the administrative process." *Id.*

The plaintiff bears the burden of establishing by a preponderance of the evidence that he was entitled to benefits. *Armani v. Nw. Mut. Life Ins. Co.*, 840 F.3d 1159, 1163 (9th Cir. 2016). To carry that burden, a plaintiff must establish that he was "more likely than not 'disabled'" under the terms of the applicable ERISA plan at the time benefits were terminated. *Brown v. Unum Life Ins. Co. of America*, 356 F. Supp. 3d 949, 963 (C.D. Cal. 2019).

"The district court must base its decision on the administrative record and may supplement the record only when circumstances clearly establish that additional evidence is necessary to conduct an adequate de novo review of the benefit decision." *Collier*, 53 F.4th at 1186 (quotation marks and citation omitted). The parties previously agreed that no additional evidentiary development was necessary and that the case could be resolved on the administrative record. (Dkt. No. 48.)

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FINDINGS OF FACT[2]

A. Plaintiff's Employment

Plaintiff began working for Defendant as an "Operator" on October 7, 2013. (Administrative Record "AR" 1357, 2240.) Operators are classed as "very heavy" and "required to exert up to 112 lbs., crawl, climb ladders and stairs, kneel, stoop, open and close valves." (AR 2286.) Before joining Chevron, Plaintiff worked in a similar operator position at Valero, and before that, operated boats and equipment for American Workboat. (AR 1357.) Plaintiff has an associate degree in Fire Science. (AR 1355.)

B. The Plan

Plaintiff is a participant in Defendant's Long Term Disability Plan ("the Plan"), an employee welfare benefit plan governed by ERISA. (Dkt. No. 32, pp. 5-6; Dkt. No. 36-1.) The Plan considers an employee disabled where:

> (1) For the first 24 months for which the Member is receiving benefits, "Total Disability" and "Totally Disabled" are defined under the "Usual Occupation" standard. Under the "Usual Occupation" standard, a Member is disabled if "because of injury or sickness the Member is unable to perform the material and substantial duties of the Member's Usual Occupation or any other reasonable occupation that is available within the Company for which the Member is reasonably trained, qualified or experienced. In addition, in the case of a Total Disability resulting from Mental Illness, alcoholism, drug addiction, or use of a hallucinogenic drug, the Member shall be considered Totally Disabled only if the Member participates in a regular medically supervised treatment program."
>
> (2) After the Member has received benefits under the Plan for 24 months, "Total Disability" and "Totally Disabled" are defined under the "Any Occupation" standard. Under the "Any Occupation" standard, a Member is disabled if "because of injury or sickness the Member is unable to perform the duties of any Gainful Occupation (including self-employment) for which the Member is qualified or may reasonably become qualified by reason of education, training, or experience, whether or not a job involving such occupation is available, the Member is under the care of a Licensed Physician and the Member must be receiving Social Security disability benefits or have requested a review of the Member's claim for Social Security disability benefits and fully cooperated with the Disability Management Program's Social Security assistance vendor. In addition, in the case of a Total Disability resulting from Mental Illness, alcoholism drug addiction or use of a hallucinogenic drug, a Member shall be considered Totally Disabled and Plan Benefits shall be payable for the period immediately after the Member has received benefits under the Plan for 24 months

[2] 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.

> only if the Member is confined continuously to a state-licensed hospital for a period of 14 consecutive days or more."

(Dkt. No. 36-1, § 4.)

"Gainful Occupation" means "an occupation that is or can be expected to provide the Member with an income equal to 70 % of the Member's Predisability Annualized Regular Pay within 12 months of the Member's return to work." (*Id.* at § 18(w).)

"Mental illness" means "any condition or disorder that carries with it a psycho-pathological diagnosis contained in the Diagnostic and Statistical Manual of Mental Disorders ["DSM"] (Third Edition-Revised) by the American Psychiatric Association (or any subsequent edition or revision thereof), irrespective of whether the condition or disorder has an identifiable congenital, hereditary, biochemical or other physiological cause" including but not limited to "bipolar affective disorder (manic depressive syndrome); schizophrenia; delusional (paranoid) disorders; psychotic disorders; depressive disorders; anxiety disorders; somatoform disorders (psychosomatic illness); and eating disorders." (*Id.* at § 18(jj).)

C. Plaintiff's Medical and Claim History

1. Mental Health Crisis and Short-Term Disability Benefits Claim

On October 3, 2017, Plaintiff had a "crisis" appointment with a social worker due to stress, anxiety, and depression. (AR 1508.) Plaintiff was diagnosed with depressive disorder, other specified anxiety disorder, and occupational problems or work circumstances. (AR 1511.) He was referred to a psychiatrist and therapist. (*Id.*)

On October 4, 2017, Plaintiff applied for short term disability benefits due to major depressive disorder and "occupational problems" stemming from conflict with his supervisor. (AR 001347, 1709, 2117, 2129.) On October 5, 2017, Plaintiff had his first appointment with Psychiatrist Dr. Sinh Tran, who diagnosed Plaintiff with major depressive disorder, recurrent episode, severe and intermittent explosive disorder. (AR 1102, 1527.) In October and November 2017, Tran submitted several work status reports certifying Plaintiff as totally disabled due to his mental health conditions. (AR 1704, 1708, 2107.) On November 28, 2017, ReedGroup, a third party claims administrator, approved Plaintiff's short term disability request on Defendant's behalf

for the October 4, 2017 – December 1, 2017 period. (AR 1709.)

On November 9, 2017, Plaintiff had his first appointment with therapist Steven Baima, who diagnosed Plaintiff with major depressive disorder, recurrent episode, severe and adverse effects of work environment. (AR 1592.)

ReedGroup extended Plaintiff's short term disability payments through December 31, 2017. (AR 2252.) Plaintiff's condition improved, and he was cleared for a return-to-work date in early January 2018. (AR 2258, 2370.) However, he was unable to return to work as planned due to an accident.

2. Accident and Hospitalization

On December 31, 2017, Plaintiff was hit by a motor vehicle while walking. (AR 2400, 2258.) Plaintiff was in a coma for ten days and was hospitalized for two weeks. (AR 1083, 2400.)

A CT scan showed that Plaintiff had suffered a pulmonary embolism. (AR 1814.) An MRI revealed: "Trace residual subarachnoid hemorrhage, right parietal lobe with increased FLAIR signal along the sulci. Small residual edema and contusions with trace hemorrhage, right anterior temporal lobe and the right inferior frontal lobe. Skull fractures as appreciated on CT." (AR 1814.) Attending Physician Dr. Frank Ercoli diagnosed Plaintiff with closed head injury, traumatic subarachnoid hemorrhage as well as blunt thoracic trauma with multiple left-sided rib fractures, left hemopneumothorax, pulmonary contusions, pulmonary embolism, and left scapular fracture. (AR 1811, 1814.) Ercoli noted that "patient continues to remain somewhat confused despite imaging studies which did not indicate organic cause for patient's confusion." (AR 1811-82). Ercoli also indicated Plaintiff would be unable to work in any capacity for at least 90 days. (AR 1808.)

On January 14, 2018, Plaintiff was discharged to an acute rehab center, where he remained until January 24, 2018. (AR 2400.)

After the accident, ReedGroup approved several extensions to Plaintiff's short-term disability leave. (AR 1389.)

3. Post-Accident Treatment and Long-Term Disability Benefits Claim

Beginning January 31, 2018, Plaintiff was under the care of Internist Dr. Jenny Banh, who

treated Plaintiff every three to six months. (AR 210, 900.) Plaintiff also saw Neurologist Dr. Manpreet Multani on February 20, 2018. (AR 2216.) Multani's notes refer to a February 12, 2018 CT scan showing "acute on chronic [subdural hematoma]." (*Id.*) Multani ordered a new CT scan[3] and noted Plaintiff's complaints of increased headaches, fogginess, and numbness in his right upper extremity. (AR 2216.)

On May 29, 2018, ReedGroup sent Plaintiff a letter indicating that it was beginning to review his eligibility for long term disability ("LTD") benefits and requesting Plaintiff submit an LTD application and supporting information. (AR 1320.) Plaintiff submitted his application on June 14, 2018. (AR 1348-51.) On his application, Plaintiff indicated his disability was "Traumatic brain injury" and was related to "Medical" but not "Mental Illness/alcoholism/drug addiction/or use of a hallucinogenic drug." (*Id.*) Plaintiff indicated that his disability began October 4, 2017, the date his short term benefits were first approved, but he indicated that his first treatment for the disabling condition was in December 2017, when the accident occurred. (*Id.*) Plaintiff also explained that his disability was caused by an "accident/injury" and stated: "Suspected that I was ran into from behind by motorcycle or dune buggy." (AR 1349.) On July 6, 2018, ReedGroup approved Plaintiff's request for LTD benefits and awarded benefits from April 2, 2018 to August 2, 2018. (AR 1359.)

On September 4, 2018, Plaintiff had an additional MRI requested by Multani. (AR 2219.) The MRI revealed "multiple punctate chronic microhemorrhagic residua at the grey/white junction," "multiple small cavernous malformations," and "the suspicion for traumatic etiology." (*Id.*) Multani saw Plaintiff on September 20, 2018. (AR 2215.) Plaintiff complained of cognitive issues, memory problems (e.g., locking his keys in the car, repeating himself), headaches, sleep problems, dizziness, and overstimulation, with some improvement to the headaches and sleep problems. (*Id.*) Multani performed various recall tests, which Plaintiff was able to complete, with the exception of 2/3 delayed recall. (*Id.*) Multani diagnosed Plaintiff with post-concussion syndrome, traumatic brain injury, and subdural hematoma. (*Id.*)

[3] This CT scan, if it occurred, does not appear to be in the administrative record.

On January 10, 2019, Banh submitted a work status report recommending Plaintiff be placed off work through January 16, 2020 due to "traumatic brain injury, sequela." (AR 91.)

Plaintiff also began seeing a new neurologist, Neurologist Resident Dr. Edward Markus, on January 11, 2019. (AR 624.) Banh had referred Plaintiff to Markus. (*Id.*)

On June 4, 2019, Plaintiff had an appointment with Banh. (AR 210.) Plaintiff's mother accompanied him to the appointment. (AR 211.) Plaintiff complained that his sensory overload, concentration, and memory had worsened, including that he was "unable to remember key features of his old job." (*Id.*) Banh's notes also include emotional stressors, including Plaintiff's report that his wife left him and he had full responsibility for his children. (*Id.*) Banh diagnosed Plaintiff with post-concussion syndrome, ordered a CT scan, and advised Plaintiff to follow up with neurology and psychiatry. (AR 213-14.) As to psychiatry, Banh wrote, "followup with psychiatry regarding possible PTSD and depression but suspect symptoms are due to [traumatic brain injury], but made worse by current situation." (AR 213.)

The CT scan ordered by Banh was performed the same day. (AR 215-16.) Radiologist Dr. Jason Lee analyzed the results, finding "resolution of previously seen acute on chronic bilateral frontal subdural fluid collections" and preservation of "grey-white matter differentiation." (AR 216.)

Plaintiff had a follow-up appointment with Markus on September 11, 2019. (AR 623-24.) Plaintiff's mother accompanied him to the appointment. (*Id.*) Markus noted Plaintiff's complaints of problems with concentration, memory, overstimulation, headaches, multitasking, and balance, and that his "[s]ymptoms have been worse since a divorce with his wife, death of their dog, and other emotional stressors." (*Id.*) Markus agreed with the interpretation of the February 2, 2018 and June 4, 2019 CT scans and reviewed the images with Plaintiff. (AR 629.) Markus diagnosed Plaintiff with traumatic brain injury, intermittent explosive disorder, mood disorder, major depressive disorder, and headache. (AR 630.) Markus noted that Plaintiff had "difficulty concentrating/processing, and easily overstimulated, possibly unmasking of his ADHD" and "Likely with PTSD." (AR 630.) Markus also suggested "follow up with Psychiatry" and "Consider neuropsychologic testing." (AR 630.)

Tran referred Plaintiff to Neuropsychologist Dr. Priscilla Armstrong for a neuropsychological assessment, which was conducted on October 4, 2019. (AR 816.) Armstrong administered a variety of tests for intelligence and cognition. (AR 817.) She found that Plaintiff likely put forth adequate effort on the evaluation. (*Id.*) Plaintiff's intellectual functioning, visuospatial skills, language skills, and executive functioning were generally average to high average, with an IQ of 108 (70th percentile). (AR 817-18.) However, Plaintiff exhibited difficulty with some processing and memory tasks. He scored in the 18th percentile for processing speed skills, 16th percentile for a graphomotor processing task, 25th percentile for a visual spatial processing task, and 14th to 21st percentiles for verbal memory tasks. (*Id.*) During a story memory task, Plaintiff became overwhelmed and did not complete the test. (*Id.*) His immediate recall of basic designs was in the 42nd percentile, but his delayed recall dropped to the 10th percentile. (*Id.*) Armstrong observed that Plaintiff was alert, attentive, logical, and coherent, but that "[h]e was observed to often close his eyes to reduce environmental stimuli." (*Id.*) Armstrong summarized:

> [Plaintiff] placed in the average to well above average range with most cognitive tasks including verbal reasoning, visual reasoning, attention, most aspects of processing speed, language/naming skills, visualspatial skills, visual memory, and executive functioning.
>
> He scored below average with the immediate and delayed recall of a word list learning task, and on one task of graphomotor speed. He did not score in the impaired range with any cognitive tasks presented to him.
>
> [Plaintiff's] neuropsychological profile is generally intact. However, he does present with mild weakness with verbal memory. He also reports significant levels of anxiety. It is likely that perceived cognitive deficits are impacted by psychological factors following life changes from [traumatic brain injury]."

(*Id.*)

On October 18, 2019, Banh submitted a work status report indicating that Plaintiff was disabled due to traumatic brain injury, post-concussion syndrome, depression, and mood disorder. (AR 857.) On November 11, 2019, ReedGroup requested Banh complete an "Attending Provider Statement." (AR 898.) On November 25, 2019, Banh submitted the requested form. (AR 900-02.) She indicated that Plaintiff could not perform his former job, but that she was "unsure" whether he could perform other work. (*Id.*) She further indicated that she did not expect a "fundamental or marked change" in the future, but she was "unsure" whether Plaintiff was

permanently disabled. (*Id.*) Banh assessed Plaintiff as having no physical limitations but marked mental limitations based on diagnoses of traumatic brain injury and post-concussion syndrome. (*Id.*) On March 25, 2020, Banh submitted an additional work status report placing Plaintiff off work through June 1, 2020 due to a diagnosis of post-concussion syndrome. (AR 1055.)

At Tran's request, Armstrong performed a neurological re-assessment of Plaintiff on June 9, 2020. (AR 1057.) She administered the same tests and again found that Plaintiff put forth adequate effort. (AR 1058.) Plaintiff demonstrated some improvement since the previous examination. His processing speed skills improved from the 18th percentile to the 30th percentile, his visual spatial processing task score improved from the 25th percentile to the 50th percentile, and his verbal memory improved from the 14-21st percentiles to the 21-46th percentiles. (AR 1058-59.) Plaintiff completed the story memory task that he had not been able to complete on the first examination, but "[h]e was observed to become emotional and tearful . . . , stating that he gets overwhelmed with more than 3-5 sentences presented at once and he became tearful that this reminds him of his cognitive difficulties." (*Id.*) His results on the story memory tasks were well below average, falling in the 9th, 9th, and 5th percentiles. (*Id.*) The only score that declined from the first examination to the second was visual sequential reasoning, which dropped from the 84th percentile to the 50th percentile. (*Id.*) Armstrong summarized:

> Since previous testing in 2019, [Plaintiff] shows improvements with processing speed, immediate and delayed verbal memory, and delayed visual memory. He shows commensurate skills with attention, visualspatial skills, language skills, and most aspects of executive functioning. He shows very slight decline with sequential visual reasoning only, however remains in the average range for his age.

(*Id.* at 1060.) Armstrong repeated her overall assessment that Plaintiff's "neuropsychological profile is generally intact" with "mild weakness with verbal memory when too much information is presented at once." (*Id.*)

On June 4, 2020, Dr. Theodore Thien Nguyen submitted a work status report placing Plaintiff off work from June 4, 2020 through July 5, 2020 and deeming Plaintiff "able to return to work at full capacity" on July 6, 2020. (AR 1056.) The work status report does not include a diagnosis or supporting rationale, and the record does not include any visit notes or other documentation from Nguyen.

Tran submitted a work status report on June 25, 2020, his first such report since 2017. (AR 1066, 1248-49.) The report certifies Plaintiff as unable to work from July 6, 2020 – September 4, 2020, but it does not include a diagnosis or other detail. (AR 1063.)

On July 6, 2020, Plaintiff saw Banh for a "work note." (AR 1066.) Banh informed Plaintiff that he already had an extended work note from Tran for psychological issues. (*Id.*) No work status report based on this visit appears in the record. (AR 1248-49.)

ReedGroup approved Plaintiff's continued requests for LTD benefits through June 30, 2020, totaling 27 months of LTD benefits. (AR 2101.) ReedGroup's approvals did not specify the grounds for approval. (AR 1358-59.)

Throughout this period, Plaintiff continued to receive mental health treatment from Tran and Baima. (AR 96-97, 133-34, 254-57, 582, 683-86, 889, 1033, 1212, 1716-19.) Both providers consistently noted Plaintiff's depression and anxiety were "moderate" to "high" and "moderately severe" to "severe." (*Id.*)

4. Denial of Long Term Disability Benefits and Appeal

On August 4, 2020, ReedGroup informed Plaintiff that his request to continue benefits beyond June 30, 2020 had been denied. (AR 2101.) The letter explained that Plaintiff had previously received LTD benefits based on his healthcare providers' diagnoses of "post-concussion syndrome, major depression with recurrent episodes, and traumatic brain injury." (AR 2102.) As the "Reason for Denial," ReedGroup provided:

> ReedGroup did not receive supportive medical documentation from you or any healthcare provider containing sufficient information to certify you were totally disabled and unable to perform the duties of Any Occupation beginning on 07/01/2020. As a result, you have reached the maximum limit of LTD-benefit eligibility for total disability resulting from a mental/behavioral health condition. Therefore, ReedGroup denied your request for LTD benefits from 07/01/2020 going forward.

(AR 2103.) ReedGroup further explained:

> The supportive medical documentation received from your healthcare providers reported the following information regarding your health condition: you were involved in a motor vehicle accident on 12/31/2017, underwent trauma surgery, and were hospitalized after surgery; you underwent treatment for traumatic brain injury with subdural hematoma and post-concussion syndrome; Dr. Tran noted during your psychiatric office visit on 09/16/2019 that you were experiencing depression and

> anxiety due to your current domestic situation; and a psychiatric evaluation on 10/14/2019 indicated deficits in your immediate and delayed recall of word-related tasks, but that you were generally cognitively intact elsewhere. Based on this information, ReedGroup approved your LTD benefits from 04/02/2018 through 04/01/2020. Additionally, due to the social effects of the COVID-19 pandemic, ReedGroup also approved your LTD benefits from 04/02/2020 through 06/30/2020 to await the results from your second neuropsychological evaluation and the current status of your functional limitations due to your traumatic brain injury. However, as of the date of this letter, you did not meet the criteria required to continue receiving LTD benefits, as defined by your employer's LTD Plan, because sufficient supportive medical documentation was not received from you or any healthcare provider to medically certify your inability to work in Any Occupation due to a totally disabling nonmental/behavioral health condition from 07/01/2020 going forward.
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> . . .
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> Your current treating healthcare provider, Dr. Tran, reported that you were undergoing ongoing treatment for depression and anxiety. Additionally, in the Neuropsychological Evaluation Report dated 06/09/2020, Dr. Armstrong reported the following information: testing showed improvement with processing speed, immediate and delayed verbal memory, and delayed visual memory. Overall, your neuropsychological profile was intact, and it was recommended that you continue psychiatric treatment to address your symptoms of depression and process life stressors/family dynamics. None of your treating providers included adequate supportive medical documentation addressing how the physical symptoms of your health condition and/or treatment plans prevented you from working in Any Occupation due to a non-mental/behavioral health condition; the Neuropsychological Evaluation Report dated 06/09/2020 confirmed that your primary diagnoses were ongoing depression and anxiety, and that your cognitive deficits from your traumatic brain injury were minor. Therefore, the information provided to ReedGroup was not sufficient to support the medical necessity of your continuous absence from work from 07/01/2020 going forward.
>
> After a thorough review, ReedGroup's clinical team concluded that your disability exceeded the maximum benefit period for total disability resulting from a mental/behavioral health condition, and you no longer met the definition of "Disability" under the Chevron LTD Plan. Therefore, you are no longer eligible to receive LTD benefits, and ReedGroup denied your LTD benefits from 07/01/2020 going forward.

(AR 2108-09.) The August 4, 2020 letter informed Plaintiff that he could appeal the decision by submitting a written appeal request alongside additional documentation, including documentation from a physician supporting his "disability and inability to work in Any Occupation due to a health condition that is unrelated to mental/behavioral health from 07/01/2020 going forward." (AR 2110.)

Tran apparently submitted a work status report on September 2, 2020, (AR 1248), but it does not appear in the record produced for the Court.

On September 9, 2020, Plaintiff (accompanied by his sister) had an appointment with

Banh. (AR 1073.) According to Banh's notes, Plaintiff and his sister reiterated the request for a work note, explaining, "[t]hey feel these symptoms are due to [traumatic brain injury] and not from psychological impairment." (*Id.*) Banh's notes also state that Plaintiff stopped visits with Markus because Plaintiff did not like that Markus "thought everything was psychological." (AR 1074.) Banh reviewed Armstrong's neuropsychological evaluation results and "discussed with patient and sister that current symptoms described are certainly concerning and acknowledge that he may not be fit to perform his former job, [sic] however, evidence does not support a physical disability, but rather a psychologic disability as per neuropsychiatric testing." (AR 1074.) The next day, Banh spoke with Armstrong on the phone. (AR 1073.) Banh noted that Armstrong "does not believe patient has a physical disability based on neuropsychiatric testing as he score [sic] above average on most ability." (*Id.*)

On October 7, 2020, Tran submitted a work status report that was omitted from the record. (AR 1248.)

On October 7, 2020, Plaintiff consulted neurologist Dr. Carolyn Neff for a second opinion, based on a referral from Banh. (AR 1083.) Plaintiff's sister accompanied him to the appointment. (*Id.*) Neff's report indicates "[v]isit with me is per their request, that they need a note stating he had brain injury, and what is [sic] disability is related to his injury." (AR 1107.) Neff noted Plaintiff's history, including complaints about residual memory loss, overstimulation, cognition, task completion ability, headaches, and dizziness, and reviewed Plaintiff's imaging and the testing from Armstrong. (AR 1083-85.) She made the following assessment:

> [Plaintiff] has history of traumatic brain injury, and has residual deficit by neuropsychiatric testing scoring below average with the immediate and delayed recall of a word list learning task, and on one task of graphomotor speed. He has subjective reported hypersensitivity to sensory and environmental stimuli, dizziness and headaches, fatigue, and sensitivity to motion. He has slower fluency of conversational speech. Left sided motor slowing with upper extremity. These symptoms would be considered disabling for work, especially any job that requires multitasking, movement and processing of various stimuli and sensory inputs.

(AR 1108.) Based on that visit, Neff prepared a work status report placing Plaintiff off work for the next year due to traumatic brain injury, sequela, and cognitive disorder. (AR 1100.)

ReedGroup hired Neurologist Dr. Mostafa Farache to review Plaintiff's file. (AR 1173.)

Farache is board certified in neurology and clinical neurophysiology, with a self-described expertise in carpal tunnel syndrome. (AR 1242.) On November 12, 2020, Farache conducted his review, for which he billed two hours. (AR 1173-74.) Farache concluded that there was no medical evidence supporting Plaintiff's neurological impairment, relying on Banh's July 6, 2020 visit notes, Armstrong's June 9, 2020 evaluation, and Neff's October 7, 2020 visit notes. (AR 1177.)

On November 30, 2020, Plaintiff had a PET Scan requested by Neff. (AR 1188-89.) Radiologist Dr. David Alvarez analyzed the results, finding no significant abnormality. (*Id.*) In an addendum, Alvarez explained:

> Additional data analysis was performed comparing this patient's regional metabolic activity to age-matched cohort and the entire population available on the software analysis package. There is slight symmetric relative diminished frontal lobe activity with a Z score of -0.3 when compared with the entire population and -0.6 when compared with an age-matched cohort (and normal positive z-scores elsewhere). These values are probably not statistically significant, however they may be a very early indicator of diminished frontal lobe metabolism.

(*Id.*)

In early December 2020, Neff exchanged messages with Plaintiff regarding the PET scan results. (AR 1187-89.) She explained that the results "suggest[] possible early changes" and shared Alvarez's report. (*Id.*) Plaintiff asked, "Does the frontal lobe show damage that could be the cause of my symptoms?" (*Id.*) In response, Neff explained, "[i]t helps as a supportive data point, but alone is not diagnostic of illness." (*Id.*)

During a January 8, 2021 follow-up visit, Neff noted: "Frontal lobe decreased metabolism on the PET FDG may be supportive of the central nervous system injury and cognitive issues" and "Pet supports frontal injury." (AR 1191.)

It appears that at some point, Plaintiff requested from Neff a "follow up neuropsychiatric exam to be conducted 'real life' with outside noises and stimuli rather than quiet room [sic]." (AR 1202.) Neff sent Plaintiff a message explaining "The neuropsychiatric medical doctor (MD) does not feel that there is another option for testing that they can provide." (AR 1215.)

On May 27, 2021, ReedGroup sent Plaintiff a letter notifying him that he had 30 days to submit records relevant to his appeal. (AR 1245.)

On June 25, 2021, Plaintiff submitted a written appeal request along with supplemental documentation. (AR 1202-30.) The documentation included the work status report from Neff, Neff's visit notes and messages, and the PET scan report. (*Id.*) Plaintiff also submitted a letter from Tran dated November 26, 2020, stating:

> After many evaluations with [Plaintiff], we have determined that the main cause of his disability since Dec 30th 2017, is not psychological. Psychological disability typically means disability from depression, anxiety, bipolar, or schizophrenia symptoms. He does not meet criteria for being disabled for any of these conditions. His moods remain well controlled under our current psychiatric medications. The nature of his disability seems to be centered around physical limitations, cognitive processing limitations, memory impairments, balance problems. I would defer to his other doctors for any further comments on these conditions.

(AR 1102, 1202.) Lastly, Plaintiff submitted letters from his family members describing their perceptions of his cognitive difficulties. (AR 1209.) In a letter dated June 20, 2021, Plaintiff's ex-wife discussed Plaintiff's difficulties with task completion and sensory overload. (AR 1219-20.) In a letter dated June 21, 2021, Plaintiff's sister (a nurse), described his memory impairments, attention and concentration deficits, sensory overload, visuospatial deficits, social-emotional difficulties, and physical symptoms. (AR 1224-26.) In a letter dated June 24, 2021, Plaintiff's mother described his hypersensitivity and short-term memory issues. (AR 1210-11.)

On June 29, 2021, Neff saw Plaintiff again. (AR 1236.) She noted his diagnoses of cognitive disorder and history of traumatic brain injury and ordered an MRI. (*Id.*) On the same day, Plaintiff's mother emailed ReedGroup, acknowledging that the deadline for submitting documentation had lapsed and requesting inclusion of Neff's most recent notes. (AR 1232.) ReedGroup granted that request. (AR 1249.)

On July 26, 2021, Farache conducted a second review of Plaintiff's file, for which he billed 45 minutes. (AR 1239.) Farache reviewed the additional records submitted on appeal and concluded that the additional records did not change his assessment. (AR 1240-42.) He explained that "[t]he new records consisted mainly of family members [sic] testimonies trying to confirm that the claimant developed cognitive and memory difficulties following his accident in 2017 and this is not supported by the neuropsychology test." (AR 1241-42.) On the first page of his report, Farache incorrectly described Plaintiff as a "50 year old female." (AR 1240.) On the next page of

the same report, Farache correctly described Plaintiff as a "45 year old man." (*Id.*)

On August 19, 2021, ReedGroup upheld its original decision and reiterated its conclusion that "there were no supportive medical findings to certify that you were totally disabled and unable to perform the duties of Any Occupation beginning 07/01/2020. Therefore, you have reached the maximum limit of LTD benefit eligibility for total disability resulting from a mental/behavioral health condition." (AR 1245.) ReedGroup relied on Farache's second review in its denial. (AR 1250.)

On February 22, 2022, Plaintiff requested reconsideration of his claim and attached additional records. (AR 1269.) The additional records include a more recent work status report from Neff, notes from additional visits with Neff, and an audiological report performed by Dr. Samantha Nieves on July 13, 2021. (AR 1269-84.)

CONCLUSIONS OF LAW

A. Consideration of Extra-Record Evidence

Judicial review of an ERISA plan administrator's decision on the merits is limited to the administrative record, which consists of "the papers the insurer had when it denied the claim." *Montour v. Hartford Life & Acc. Ins. Co.*, 588 F.3d 623, 632 n.4 (9th Cir. 2009) (citing *Kearney*, 175 F.3d at 1086). Although expansion of the administrative record is occasionally warranted, here, the parties declined to expand the record and agreed that the case may be resolved based on the existing record. (Dkt. No. 48, p. 7.) Accordingly, the Court limits its review to papers that were before ReedGroup when it denied the claim.

Plaintiff urges the Court to consider an audiological evaluation performed by audiologist Dr. Samantha Nieves on July 13, 2021. (Dkt. No. 53, p. 10.) On May 27, 2021, ReedGroup sent Plaintiff a letter notifying him that he had 30 days to submit records relevant to his appeal. (AR 1245.) The record closed before the audiological evaluation was performed, and there is no evidence suggesting that Plaintiff requested expansion of the record to include the audiological report. Instead, it appears that Plaintiff did not share the audiological evaluation with ReedGroup until February 22, 2022, nearly eight months after the close of the record and over six months after the appeal was denied. (AR 1243, 1298.) Consequently, ReedGroup did not have the audiological

evaluation when it adjudicated Plaintiff's claim. (AR 1248-49.) The Court thus declines to consider the audiological evaluation.

In addition, Plaintiff's reply brief cites numerous scientific journal articles. Plaintiff did not provide these articles to ReedGroup, and Plaintiff has waived his opportunity to expand the record. (Dkt. No. 48, p. 7.) Moreover, the articles are not "necessary" to conduct adequate de novo review of ReedGroup's decisions. *See Collier*, 53 F.4th at 1186. The Court therefore declines to consider the articles.[4]

B. Reviewable Rationales

To qualify for continued disability benefits after 24 months, Plaintiff must either (1) due to a nonmental disability, be unable to perform the duties of any occupation that can be expected to pay at least 70% of Plaintiff's predisability pay within 12 months of his return to work, or (2) due to a mental disability, be confined continuously to a state-licensed hospital for a period of 14 consecutive days or more. (Dkt. No. 36-1, §§ 4, 18(w).) As such, LTD benefits for mental disabilities are generally unavailable after 24 months, except in limited circumstances.

ReedGroup relied on both provisions in its decisions. As to nonmental disability, ReedGroup stated, "[n]one of your treating providers included adequate supportive medical documentation addressing how the physical symptoms of your health condition and/or treatment plans prevented you from working in Any Occupation due to a non-mental/behavioral health condition" and thus "you no longer met the definition of 'Disability' under the Chevron LTD Plan." (AR 2109.) As to mental disability, ReedGroup stated, "ReedGroup's clinical team concluded that your disability exceeded the maximum benefit period for total disability resulting from a mental/behavioral health condition." (*Id.*)

In discussing the insufficiency of Plaintiff's medical documentation supporting nonmental disability, ReedGroup specifically discussed some—but not all—of the medical records. (AR 2108-09.) Plaintiff argues that *Collier*'s prohibition on post hac arguments prevents the Court

[4] Plaintiff notes that certain documents are missing from the administrative record produced before this Court. (Dkt. No. 53, p. 14.) However, neither party's arguments relate to the omitted records, and neither party advocates for reconsideration of the case based on these omissions. Any error in the administrative record is harmless in this case.

from considering medical evidence that was not specifically discussed in ReedGroup's decisions, such as Plaintiff's June 4, 2019 CT scan. (Dkt. No. 55, p. 13.)

Plaintiff is correct that *Collier* prohibits district courts from relying on rationales that a claims administrator did not raise as grounds for denying a claim. 53 F.4th at 1187. There, the Ninth Circuit held that a district court could not rely on a plaintiff's lack of credibility where the claims administrator "did not specify that it found [the plaintiff] not credible, that she failed to present objective medical evidence, or that such evidence was required under the Plan." *Id.* at 1187. The court reasoned that "credibility determinations are *not* inherently part of the de novo review," such that "[i]f the denial was not based on the claimant's credibility, the district court has no reason to make a credibility determination." *Id.* at 1187.

Unlike credibility determinations, review of the record *is* inherently part of de novo review. "[W]hen review is de novo and credibility is not at issue, the district court *should weigh the record evidence* and any evidence admitted by the court to determine whether the plan administrator properly denied benefits." *Id.* at 1188 (emphasis added). Moreover, *Collier* specifically instructs that "a plan administrator need not address every piece of evidence submitted by a participant in support of a claim for benefits." *Id.* ReedGroup's denial explained that none of Plaintiff's supporting medical documentation was adequate. (AR 2109.) The Court must therefore review all supporting medical documentation to determine whether ReedGroup correctly found it inadequate.

Plaintiff also argues that Defendant's argument "that Plaintiff was disabled by mental health conditions following his [traumatic brain injury]" is "post-hac." (Dkt. No. 55, p. 14.) Defendant's argument is not post-hac. In denying Plaintiff's claim, ReedGroup explained its conclusion that the medical documentation supported psychological, rather than neurological, disability. ReedGroup's initial denial specified that medical reports showed Plaintiff was experiencing depression and anxiety but was "cognitively intact." (AR 2108-09). On appeal, ReedGroup noted Farache's finding that Plaintiff's "providers did inform him that there is no evidence of physical disability and his disability is psychological." (AR 1250.)

Accordingly, the Court considers the full record to determine whether Plaintiff has demonstrated entitlement to continued benefits under the terms of the Plan.

C. Exhaustion of Mental Disability Benefits

Plaintiff argues that ReedGroup's reliance on the mental illness limitation is unsupported. (Dkt. No. 53, p. 19.) The Court agrees with Plaintiff that ReedGroup's April 2, 2018 – June 30, 2020 LTD benefits award was likely based on nonmental disability. Defendant conceded during oral argument that, at a minimum, Plaintiff's disability in 2018 was nonmental. In addition, there was limited psychological evidence supporting disability during this period, and Plaintiff did not request nonmental disability benefits.

However, the rationale for granting benefits in the past does not dictate the outcome in this case. Plaintiff does not dispute that he is ineligible for mental disability benefits under the now-applicable "Any Occupation" standard. Plaintiff has received benefits under the Plan for over 24 months, and there is no evidence suggesting Plaintiff has been confined continuously to a state-licensed hospital for a period of 14 consecutive days or more. (*See* Dkt. No. 36-1, § 4.) Thus, regardless of whether Plaintiff was found to have a mental or nonmental disability in the past, the dispositive question here is whether Plaintiff demonstrated that he had a nonmental disability justifying benefits as of July 1, 2020.

D. Nonmental Disability as of July 1, 2020

1. Review of Medical Evidence

Plaintiff argues that he continued to have a nonmental disability—traumatic brain injury—as of July 1, 2020. He relies on early brain imaging showing the acute trauma caused by the accident, the November 30, 2020 PET Scan's finding of diminished frontal lobe activity, his below-average scores on Armstrong's neuropsychological tests, the opinions of Eroli, Banh, and (especially) Neff, and the letters from family members describing Plaintiff's symptoms. (Dkt. No. 53, p. 13-15.)

Defendant argues that Plaintiff's disability as of July 1, 2020, if any, was psychological. It relies on Armstrong's conclusion that Plaintiff was not neurologically impaired, Banh's indication that Plaintiff had no limitations on physical activity, the June 4, 2019 CT scan showing resolution of the previously-observed hematoma, the November 30, 2020 PET Scan's finding of "no significant abnormality," and Farache's review finding no neurological impairment. (Dkt. No. 54,

p. 22-24.)

i. Brain Imaging

There is no question that Plaintiff suffered an acute nonmental disability at the time of his accident and that the CT scan and MRI performed in 2018 evince this injury. However, these scans have little relevance to Plaintiff's condition as of July 1, 2020.

The June 4, 2019 CT scan and November 30, 2020 PET scan are more temporally relevant. The June 4, 2019 CT scan shows "resolution of previously seen acute on chronic bilateral frontal subdural fluid collections" and preserved "grey-white matter differentiation." (AR 216.) While this scan does not substantiate Plaintiff's nonmental disability claim, it is not clear whether the scan discredits Plaintiff's assertions of continued neurological damage. Banh, who ordered the CT scan, continued to certify Plaintiff's disability based on traumatic brain injury after reviewing the results. (AR 213, 857, 900.) This continued certification indicates that the CT scan is not necessarily dispositive of Plaintiff's neurological condition.

The November 30, 2020 PET Scan found no significant abnormality but "slight symmetric relative diminished frontal lobe activity" that was "probably not statistically significant." (AR 1188-89.) Neff noted the PET result as "may be supportive of the central nervous system injury and cognitive issues." (AR 1191.) However, she also explained to Plaintiff that the PET result "alone is not diagnostic of illness." (AR 1187-89.)

The brain imaging provides, at best, ambiguous evidence regarding Plaintiff's alleged ongoing neurological impairment.

ii. Armstrong's Neuropsychological Testing

Both parties argue that Armstrong's testing supports their position. Defendant emphasizes that Plaintiff did not score in the impaired range on any task, that Armstrong concluded that Plaintiff's "neuropsychological profile is generally intact," and that Plaintiff improved between the two tests by Armstrong. (Dkt. No. 57, p. 5; AR 817-18, 1058-59.) Defendant's interpretation is supported by Armstrong's own conclusions and Banh's notes. Banh, who had previously certified Plaintiff as disabled, concluded that "evidence does not support a physical disability" after viewing Armstrong's results. (AR 1074.)

Plaintiff emphasizes that his results were well below average for processing and memory tasks, especially the story memory task. (Dkt. No. 55, p. 8.) Plaintiff opines that these poor processing results are incompatible with gainful employment. (*Id.*) Plaintiff's position is supported by Neff's work status report certifying Plaintiff's continued disability. Neff referenced some of Armstrong's results in her work status report, writing, "residual deficit by neuropsychiatric testing scoring below average with the immediate and delayed recall of a word list learning task, and on one task of graphomotor speed." (AR 1108.) Neff does not discuss the tests where Plaintiff's scores were average or higher, nor does she address Armstrong's ultimate conclusions that plaintiff "did not score in the impaired range with any cognitive tasks presented to him" and that his "neuropsychological profile is generally intact." (AR 818.) Neff's credibility is undermined by her selective reliance on tests where Plaintiff scored poorly.

Armstrong's neuropsychological testing weighs against Plaintiff's entitlement to benefits.

iii. Medical Opinions

In evaluating medical opinions, courts consider the opportunity the physician had to evaluate the plaintiff, whether the examining physician specializes in the condition at issue, and how well the physician's conclusions are supported. *Filarsky v. Life Ins. Co. of N. Am.*, 391 F. Supp. 3d 928, 940 (N.D. Cal. 2019). Courts also consider that medical opinions are often plagued by bias. Treating providers are incentivized to find disability in order to satisfy the wishes of the person hiring them—the plaintiff. Medical examiners are incentivized to find no disability in order to satisfy the wishes of the person hiring them—the claims administrator. *See Black & Decker Disability Plan v. Nord*, 538 U.S. 822, 832 (2003) ("[I]if a consultant engaged by a plan may have an 'incentive' to make a finding of 'not disabled,' so a treating physician, in a close case, may favor a finding of 'disabled.'"); *Caplan v. CNA Fin. Corp.*, 544 F. Supp. 2d 984, 992 (N.D. Cal. 2008) ("[The reviewing physician] . . . stood to benefit financially from the repeat business that might come from providing [the claim administrator] with reports that were to its liking.").

The only medical opinions supporting Plaintiff's continued entitlement to benefits beyond June 30, 2020 are Neff and Tran. Neff recommended Plaintiff be placed off work through October

7, 2021. (AR 1100.) Neff is a specialist in neurology. (AR 1083.) However, Neff based her opinion on a single appointment, selectively relied on Armstrong's supportive results while disregarding contrary results, and otherwise relied only on Plaintiff's reported symptoms. (AR 1083-1108.) Neff also noted that Plaintiff's PET scan supported an injury to the frontal lobe, yet she did not acknowledge that the impairment was characterized as "slight." (AR 1187-91.) The Court finds her opinion unsupported.

Tran, a psychiatrist, certified Plaintiff as unable to work from July 6, 2020 – September 4, 2020, but his work status report does not include a diagnosis or other detail. (AR 1063.) Banh characterized the work note as grounded in psychological issues, which is consistent with Tran's specialization. (AR 1066.) However, Tran later provided a letter opining that the main cause of Plaintiff's disability is not psychological. (AR 1102.) That opinion is inconsistent with Tran's visit notes, which consistently document severe psychological impairments. (AR 685, 889, 892, 1033.) Moreover, to the extent Tran's letter suggests that Plaintiff's disability is neurological, Tran is not qualified to render such an opinion. Tran is not a neurologist. In his letter, he implicitly acknowledged this limitation by stating, "I would defer to [Plaintiff's] other doctors" regarding non-psychological limitations. (AR 1102.)

Nguyen, who appears to be a treating physician, certified Plaintiff as "able to return to work at full capacity" on July 6, 2020, and thus his opinion supports Defendant's position. (AR 1056.) Nguyen's opinion is entitled to minimal weight, given that no supporting medical records are included in the record.

Banh, a non-specialist who regularly treated Plaintiff over several years, certified Plaintiff as disabled through June 1, 2020 due to a diagnosis of post-concussion syndrome. (AR 900, 1055.). On November 11, 2019, Banh submitted an Attending Physician Statement indicating that Plaintiff was totally disabled as to his job. (AR 900-02.) However, Banh was "unsure" whether Plaintiff was disabled as to "any other work" and "unsure" if or when Plaintiff would recover. (*Id.*) Defendant argues that the November 11, 2019 documentation suggests Plaintiff had mental, but not physical, restrictions. (Dkt. No. 54, n. 10.) Defendant mischaracterizes Banh's submission, which indicated that Plaintiff did not have physical activity restrictions (e.g., sitting,

standing), not that Plaintiff did not have a physical (i.e., neurological) causes of his cognitive deficits. (AR 900-02 (diagnosing Plaintiff with traumatic brain injury and post-concussion syndrome).) However, the fact that Banh did not certify Plaintiff as disabled as to "any other work" supports Defendant's position.

Notably absent from the record is any work status report from Banh certifying Plaintiff as disabled beyond June 1, 2020. Banh had previously submitted documentation on Plaintiff's behalf, and Plaintiff requested additional documentation from Banh on July 6, 2020 and September 9, 2020. (AR 1055, 1066, 1073.) Banh did not provide the requested work status reports. In her notes from July 6, 2020, Banh documents that she explained to Plaintiff that Tran had provided a work note for psychological issues. (AR 1066.) On September 9, 2020, Plaintiff (accompanied by his sister) again requested a work note because "[t]hey feel these symptoms are due to [traumatic brain injury] and not from psychological impairment." (AR 1073.) Banh "discussed with patient and sister that current symptoms described are certainly concerning and acknowledge that he may not be fit to perform his former job, however, evidence does not support a physical disability, but rather a psychologic disability as per neuropsychiatric testing." (AR 1074.) Thus, it appears that Banh declined to provide the requested work status extensions.

The Court finds Banh highly credible—although she is not a specialist, she is the only non-psychiatric provider to have a longstanding relationship with Plaintiff throughout his post-accident medical journey, she communicated with other providers (Armstrong and Tran), her notes include details about the bases for her diagnoses, and her opinions are consistent with every medical provider other than Neff. (AR 900-02, 1055, 1066, 1073-74.) The Court thus considers Banh's assessment that the "evidence does not support a physical disability" following Armstrong's testing to be highly probative.

Markus also did not provide a work status report for Plaintiff, although it is unclear whether Plaintiff requested one. Markus is a specialist, but his treating relationship with Plaintiff appears to be brief. (AR 622-30.) His notes document Plaintiff's subjective symptoms and the previous brain imaging studies. (AR 622-30.) Markus's assessment included both traumatic brain injury and psychological diagnoses. (AR 630.) However, he noted that Plaintiff reported his

symptoms had worsened in response to emotional stressors, and observed that Plaintiff's difficulties with concentration, processing, and overstimulation could be related to "unmasking of his ADHD." (AR 623-24, 630.) The Court finds Markus credible and concludes that his observations of psychological factors provide slight support for Defendant's position. Banh's notes include Plaintiff's complaint that Markus "thought everything was psychological." (AR 1074.) Because this statement constitutes double hearsay, the Court accords it little weight.

The remaining evidence from Plaintiff's treating providers is too remote in time to be probative of Plaintiff's condition at the time his claim was denied, including the documentation from Plaintiff's visits with Ercoli and Multani.

ReedGroup's consultant, Farache, twice concluded that Plaintiff had no neurological impairment. (AR 1177, 1241.) Plaintiff attacks Farache's opinions on multiple grounds, arguing that Farache was biased, rushed, unqualified, and lacking relevant information. (Dkt. No. 55, p. 14.) Contrary to Plaintiff's arguments, the record reflects that Farache is a specialist in neurology. (AR 1242.) Farache's assessments are consistent and supported, relying on Banh's notes indicating no physical disability, Tran's notes indicating psychological disability, Armstrong's normal neurological test results, and the PET scan report noting frontal lobe changes were not statistically significant. (AR 1174-78, 1240-42.) However, Farache's persuasiveness is limited because he never examined Plaintiff or spoke with his treating physicians, because his review was limited by time and the documents before him, and because he had an incentive to find no disability. Even omitting Farache's opinions, the medical evidence does not support Plaintiff's position. Accordingly, the Court does not rely on Farache's opinions.

iv. Letters from Family Members

The Court declines to credit the letters from Plaintiff's family members discussing his cognitive decline. While the Court appreciates the devastating impact of the accident on Plaintiff's life, the family testimonials cannot overcome the lack of credible medical evidence supporting neurological disability. *See Shaw v. Life Ins. Co. of N. Am.*, 144 F. Supp. 3d 1114, 1135-36 (C.D. Cal. 2015) (discussing credibility problems inherent to family narratives).

/ / /

v. Summary

The only evidence unambiguously supporting Plaintiff's neurological disability are Neff's reports, which include unexplained inconsistencies with Armstrong's test results and Neff's own communications. Tran's letter suggests Plaintiff did not have a psychological disability, but Tran is not qualified to opine on whether Plaintiff did have a neurological disability. The June 4, 2019 CT Scan and November 30, 2020 PET scan are ambiguous at best. On the other hand, Armstrong's test results, Banh's notes indicating a lack of physical disability, and the lack of an updated work report from Banh all suggest Plaintiff did not have a neurological disability. Given the lack of credible evidence supporting Plaintiff's position, the medical evidence does not establish that Plaintiff is unable to enter the workforce. However, because the Plan's "Any Occupation" standard has an earnings requirement, the determination of whether Plaintiff can enter the workforce does not end the inquiry.

2. Necessity of Vocational Evidence.

Plaintiff argues that Defendant could not reasonably conclude he was capable of Gainful Occupation without conducting a vocational analysis. (AR 53, p. 6.) Defendant argues that vocational evidence is unnecessary and relies on *McKenzie v. Gen. Tel. Co. of California*, 41 F.3d 1310 (9th Cir. 1994), *overruled on other grounds by Saffon v. Wells Fargo & Co. Long Term Disability Plan*, 522 F.3d 863 (9th Cir. 2008).

In *McKenzie*, the Ninth Circuit held that "the plan administrator is not required in every case where the 'any occupation' standard is applicable to collect vocational evidence in order to prove there are available occupations for the claimant." *Id.* at 1317. There, the plaintiff, a former manager with a master's degree, applied for continued disability benefits based on back pain. *Id.* at 1312-13. The plan's definition of "any occupation" required the plaintiff to be "completely unable to engage in any and every duty pertaining to any occupation or employment for wage or profit for which [he was or could] become reasonably qualified by training, education or experience." *Id.* at 1313 n.2.

Reviewing for abuse of discretion, the *McKenzie* court concluded that consideration of vocational evidence was "unnecessary" because "the administrative record supports the conclusion that the claimant does not have an impairment which would prevent him from performing some

identifiable job." *Id.* at 1314, 1317. That conclusion rested on four circumstances specific to *McKenzie*'s situation. First, the language of the "any occupation" standard was "not demanding." *Id.* It required only that the plaintiff "be able to perform a job for which he is qualified or for which he can reasonably become qualified by training, education or experience." *Id.* Second, the plaintiff could perform other occupations because he was 52 years' old and highly educated. *Id.* Third, the medical evidence suggested, "at most," that the plaintiff had a "slight impairment." *Id.* at 1317. Fourth, there was a disconnect between the plaintiff's impairment and his prior previous occupation, which "did not involve heavy exercise." *Id.* at 1318. As such, the court opined that "he may even be able to work at his old occupation." *Id.*

"*McKenzie* did *not* hold that vocational evidence would *never* be required," but that vocational evidence "is not required in *every case*." *Regula v. Delta Fam.-Care Disability Survivorship Plan*, 266 F.3d 1130, 1141 n.6 (9th Cir. 2001) (quoting *id.* at 1317), *abrogated on other grounds by Black & Decker*, 538 U.S. 822. Accordingly, courts find vocational evidence necessary where the medical evidence suggests the plaintiff has "an impairment which would prevent him from performing some identifiable job." *McKenzie*, 41 F.3d at 1317; *see Stoyko v. Kemper Ins. Co.*, 124 F. App'x 534, 536 (9th Cir. 2005) ("The administrator improperly neglected to examine vocational evidence before determining that [the plaintiff] could find other work because his impairment was not 'slight.'" (quoting *id.*)); *see also Moore v. Bert Bell/Pete Rozelle NFL Player Ret. Plan*, 282 F. App'x 599, 601 n.2 (9th Cir. 2008) (distinguishing *McKenzie* where the plaintiff had "undisputed and substantial impairments").

The record in this case does not demonstrate that consideration of vocational evidence was "unnecessary." *Cf. McKenzie*, 41 F.3d at 1317. Indeed, each circumstance that supported the decision in *McKenzie* is distinguishable from the present case. First, *McKenzie* involved a "not demanding" definition of "any occupation" encompassing any work for "wage or profit." *Id.* at 1313 n.2, 1317. Here, the "any occupation" standard *is* demanding, requiring Plaintiff to be capable of work "that is or can be expected to provide [him] with an income equal to 70 % of [his] Predisability Annualized Regular Pay within 12 months of [his] return to work." (Dkt. No. 36-1, § 18(w).) Determining whether Plaintiff can perform work that meets this heightened income threshold necessarily requires vocational expertise beyond what was at issue in *McKenzie*.

Second, whereas the *McKenzie* plaintiff was capable of a wide range of sedentary occupations by virtue of his master's degree, 41 F.3d at 1317, Plaintiff is not highly-educated, and his only job experience involves operating heavy machinery. (AR 1355, 1357, 2240, 2286.)

Third, in *McKenzie*, the plaintiff's "slight" back pain is not comparable to Plaintiff's traumatic brain injury. 41 F.3d at 1313-14, 1317. Although the medical evidence does not establish that Plaintiff's traumatic brain injury remains disabling, the record demonstrates that he sustained a severe injury and continues to experience some degree of cognitive impairment. (*See* AR 817-18, 1058-59.); *See Giobres v. Hewlett-Packard Co. Income Prot. Plan*, No. C 95-20379 JW, 1996 WL 288434, at *2 (N.D. Cal. May 23, 1996) (distinguishing *McKenzie* and finding vocational evidence necessary where "the general consensus is that [p]laintiff suffers from some level of cognitive dysfunction.").

Fourth, whereas, in *McKenzie*, the plaintiff's physical limitations bore little relation to his sedentary work, 41 F.3d at 1318, here, Plaintiff's past employment operating heavy machinery directly depended on cognitive acuity.

Moreover, *McKenzie* was decided under an abuse of discretion standard. *Id.* at 1314. As the Court is reviewing this case *de novo*, ReedGroup is entitled to significantly less deference.

Absent vocational evidence, the Court cannot determine whether Plaintiff meets the disability definition under the Plan. The Court thus remands this action to the claims administrator for an initial factual determination based on a record with additional vocational evidence. *See Scothorn v. Connecticut Gen. Life Ins. Co.*, No. C 95-20437 JW, 1996 WL 341110, at *4 (N.D. Cal. June 13, 1996).

CONCLUSION

For the foregoing reasons, Plaintiff's motion for judgment is GRANTED and Defendant's motion for judgment is DENIED.

IT IS SO ORDERED.

Dated: October 1, 2025

SALLIE KIM
United States Magistrate Judge