

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

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SHIRLEY MITCHELL

Plaintiff,

-against-

MEMORANDUM & ORDER

THE CIT GROUP HOLDINGS, INC. LONG  
TERM DISABILITY PLAN AND  
FIRST RELIANCE STANDARD LIFE  
INSURANCE COMPANY,

96 Cv. 6153

Defendants.

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GLASSER, United States District Judge:

**BACKGROUND**

Plaintiff, Shirley Mitchell, ("Mitchell") was employed as a receptionist by CIT Group, Inc. ("CIT") until March 9, 1993. Beginning on or about December 1988, plaintiff was covered as a participant by defendant CIT Group Holdings, Inc. Long Term Disability Plan ("the Plan"). The Plan was funded by CIT and insured with defendant First Reliance Standard Life Insurance Company ("First Reliance"). The Plan provides for the payment of monthly income benefits to participants who become totally disabled.

Under the Plan, a participant is considered to be totally disabled if, "an Insured cannot perform the material duties of his/her regular occupation." Defs' Statement of Undisputed Facts, ¶ 5 (quoting plaintiff's long term disability insurance policy).

On March 20, 1992, plaintiff fell and injured her left hip and back. As a result of this fall, plaintiff was on disability leave from CIT from March 31, 1992 through October 2, 1992. During her leave, plaintiff received a letter from CIT notifying her that if she did not return to

work by October 5, 1992, her position would be filled. See Notice of Plaintiff's Cross-Motion, Ex. B. As a result of this letter, and despite pain in her lower back and hip, plaintiff returned to work on October 5.

On March 8, 1993, plaintiff was informed by CIT that her position was to be eliminated by the end of March but that plaintiff was eligible for early retirement. Plaintiff chose to retire and did not return to work after March 8.

In August of 1993, plaintiff applied for long-term disability benefits under the Plan. Her claim for benefits was denied by First Reliance, by letter dated January 4, 1994. See Defs' Mem. of Law, Ex. A. Plaintiff then asked First Reliance to reconsider its denial of her benefits. First Reliance upheld its decision in a letter dated May 26, 1994, which stated that it had "not been provided with objective medical evidence to support a total disability." Id.

Plaintiff then requested further review of the denial, as provided for under ERISA. See 29 U.S.C. § 1133(2). Plaintiff's request was denied a third time. First Reliance, by letter dated September 6, 1995, stated:

We have reviewed the additional information you have provided, including a report from Dr. Balens[weig] dated July 18, 1994, a bone scan done on February 15, 1994 by Dr. Tannenbaum, an MRI of the lumbar spine performed on November 11, 1993 by Dr. Tannenbaum, an X-ray of the left hip and pelvis done on December 20, 1993, and a letter dated January 27, 1994 from the Central Brooklyn Medical Group P.C. However, we are still without medical documentation of a condition that would support Ms. Mitchell's inability to return to work as of her last day worked.

Id.

Plaintiff once again requested review of First Reliance's decision. By letter dated February 12, 1996, First Reliance upheld its denial of plaintiff's claim and advised her that all

administrative remedies had been exhausted. Id.

Plaintiff then filed a complaint in this court alleging that she is entitled to long-term disability benefits. Defendants have moved for summary judgment. In response, plaintiff opposes defendants' motion and cross moves for summary judgment.

## **DISCUSSION**

### **Summary Judgment Standard**

Summary judgment under Rule 56 is proper "if the pleadings, depositions, answers to interrogatories, and admissions on file together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." See Celotex Corp. v. Catrett, 477 U.S. 317, 322 (1986). The moving party bears the burden of proof on such a motion. See United States v. All Funds, 832 F. Supp. 542, 550-51 (E.D.N.Y. 1993).

A genuine factual issue exists if there is sufficient evidence favoring the nonmovant such that a jury could return a verdict in its favor. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 249 (1986). The nonmoving party, however, "must do more than simply show that there is some metaphysical doubt as to the material fact." Matsushita Elec. Indus. Co., Ltd., v. Zenith Radio Corp., 475 U.S. 574, 586 (1986). Rule 56(e) "requires the nonmoving party to go beyond the pleadings and by her own affidavits, or by the 'depositions, answers to interrogatories, and admissions on file,' designate 'specific facts showing that there is a genuine issue for trial.'" Celotex, 477 U.S. at 324.

### **Standard of Review of Denial of Benefits**

"The United States Supreme Court has held that in a claim brought pursuant to 29 U.S.C.

§ 1132(a)(1)(B) challenging the denial of benefits based on the interpretation of an ERISA-regulated plan, the denial “is to be reviewed under a de novo standard unless the benefit plan gives the administrator or fiduciary discretionary authority to determine eligibility for benefits or to construe the terms of the plan.” Scalamandre v. Oxford Health Plans (N.Y.), Inc., 823 F. Supp. 1050, 1057 (E.D.N.Y. 1993) (quoting Firestone Tire & Rubber Co., et al. v Bruch, et al., 489 U.S. 101 (1989)). If an administrator or fiduciary of the plan has the authority and has exercised discretion, this exercise of discretion is reviewed under an “arbitrary and capricious” standard. Such a decision may be overturned only if the decision is “without reason, unsupported by substantial evidence or erroneous as a matter of law.” Pagan v. NYNEX Pension Plan, 52 F.3d 438, 442 (2d Cir. 1995). The trustee or administrator of the plan bears the burden of proving that the “arbitrary and capricious” standard should apply in a given case. See Sharkey v. Ultramar Energy Ltd., 70 F.3d 226, 230 (2d Cir. 1995).

Here First Reliance argues that its determination that plaintiff is not entitled to disability benefits must be reviewed under an arbitrary and capricious standard. In support of this view, First Reliance points to its policy, which requires claimant to present “satisfactory proof” of disability to the insurance company and notes that numerous circuit courts of appeal have found this language to be sufficient to constitute a grant of discretionary authority. Defs’ Mem. of Law (unnumbered) (citing Pinto v. Reliance Standard Life Ins. Co., Appellate Docket No. 97-5297 (3<sup>rd</sup> Cir. 1998), unpublished decision; Buckley v. Metropolitan Life Ins. Co., 115 F.3d 939 (11<sup>th</sup> Cir. 1996); Donato v. Metropolitan Life Ins. Co., 19 F.3d 375 (7<sup>th</sup> Cir. 1994); Miller v. Metropolitan Life Ins. Co., 925 F.2d 979 (6<sup>th</sup> Cir. 1991); Snow v. Standard Ins. Co., 87 F.3d 327 (9<sup>th</sup> Cir. 1990)). Furthermore, asserts First Reliance, its Summary Plan Description also requires

proof of disability to be submitted to the insurance company.

Nevertheless, Judge Leisure, in Kinstler v. First Reliance Standard Life Ins. Co., No. 96 Civ. 921, 1997 WL 401813 \*1 (S.D.N.Y. July 16, 1997) found that the very same language was insufficient to create the discretionary authority required to justify a deferential standard of review. The court stated that

the “vast majority” of cases decided since Firestone in which ERISA plans have been found to grant discretionary authority have involved much more clear and explicit language regarding the scope of discretion. . . . The policy at issue in this case does not contain any explicit grant of discretionary authority to interpret the terms of the Policy. First Reliance was certainly free to include such clear and express language but chose not to do so. Defendant, which bears the burden of showing that deferential review is warranted, does not convince the Court that the isolated phrases, “satisfactory proof” and “[w]e consider,” should be construed to imply a broad grant of discretion over decisions regarding denial of benefits.

Id. at \*6 (citations omitted).<sup>1</sup>

Since this court finds that under either a de novo or arbitrary and capricious standard, defendant is entitled to summary judgment, this court will assume without deciding that a de novo standard applies to a review of First Reliance’s denial of benefits.

#### Denial of Benefits

The issue disputed by the parties is whether plaintiff was totally disabled in accordance with the Plan on March 8, 1993, the last day of her employment at CIT. This court finds that there is no evidence in the record to support plaintiff’s contention that she was totally disabled on that date.

Plaintiff was working on March 8, 1993. She did not return to work thereafter because

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<sup>1</sup>The Kinstler decision is on appeal to the Second Circuit.

she chose to take early retirement after learning that her position at CIT was to be terminated. This, clearly, is evidence that plaintiff was not disabled on March 8 – on that date she was present at her place of employment and able to perform her duties. Indeed, in Kunstenaar v. Connecticut General Life Ins. Co., 902 F. 2d 181 (2d Cir. 1990), the Second Circuit Court of Appeals found that a plaintiff who had worked until the day his employment was terminated could not claim that he was disabled. “Kunstenaar could not be considered to have been ‘completely prevented’ from doing those things which he in fact continued to do.” Id. at 184 (citations omitted).

Nevertheless, in support of her contention that she was disabled on March 8, 1993, plaintiff asserts that her treating physician, Dr. Akhtar, advised her to stop working due to her hip pain. However, there is no indication in plaintiff’s medical records that Dr. Akhtar found plaintiff to be disabled on or before March 8. Indeed, although First Reliance sent several letters to Dr. Akhtar asking why plaintiff ceased working on March 8, 1993, his only response was a note that states: “This is to certify that [Ms. Mitchell] remains under H.I.P. Care at the Center for Back and Hip Pain. P[atient] has post traumatic arthritis with variable symptomatology. . . P[atient] did return to work and was sent home due to inability to continue her job due to pain [sic].” This provides no evidence that plaintiff was disabled on March 8, 1993.

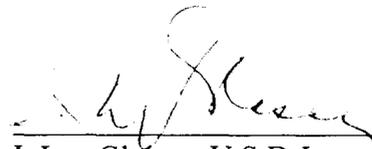
Similarly, a Dr. Balensweig, in a report submitted to First Reliance by plaintiff, states that in July of 1994 plaintiff was disabled due to Paget’s disease. However, this report does not suggest that plaintiff was disabled in March of 1993. In fact, Dr. Balensweig notes that plaintiff left her job due to early retirement “because they were planning on phasing out her job.” Defs’ Mem. of Law, Ex. A.

CONCLUSION

Although plaintiff provides evidence suggesting that she was disabled at some time after March of 1993, plaintiff's disability insurance policy only allows for payment if a claimant is disabled on the last day of her employment.<sup>2</sup> Since there is no evidence on the record to suggest that this was so, plaintiff's motion for summary judgment is denied and defendants' motion for summary judgment is granted.

SO ORDERED.

Dated:           September <sup>24</sup>  , 1998  
                  Brooklyn, New York

  
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I. Leo Glasser, U.S.D.J.

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<sup>2</sup>See Summary Plan, Pl.'s ex. A, pp. 8, 10 and the Policy, Defs' Ex. B, p. 20.

A copy of the foregoing Order was this day sent to:

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