

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
ROANOKE DIVISION**

JONATHAN GREENE,)	
)	
Plaintiff,)	Civil Action No.: 7:03cv00025
)	
v.)	<u>MEMORANDUM OPINION</u>
)	
)	By: Samuel G. Wilson
)	United States District Judge
RELIANCE STANDARD LIFE)	
INSURANCE COMPANY,)	
)	
Defendant.)	

Plaintiff Jonathan W. Greene, a former industrial equipment salesman and a participant in an Employee Retirement Income Security Act (ERISA) plan, brings this action pursuant to 29 U.S.C. § 1132(a)(1)(B) against defendant Reliance Standard Life Insurance Company (Reliance), plan fiduciary and insurer, seeking review of Reliance’s decision to discontinue “long term disability” benefits.¹ Reliance concluded that Greene could perform his regular occupation as a “salesperson,” as defined by the Department of Labor’s Dictionary of Occupational Titles (DOT). Applying the modified abuse of discretion standard of review, the court concludes that Reliance abused its discretion in relying exclusively on the DOT’s broad definition of “salesperson,” which generally requires only light work, without assessing the comparability of that definition to Greene’s regular occupation of industrial equipment salesman, which the record shows involves much more than light work. Accordingly, the

¹According to the policy, one who cannot perform “the material duties of his/her regular occupation” is “totally disabled.” This is the language used to define the term “totally disabled” during the 24-month period following the 90-day “elimination period.” Reliance’s decision to terminate Greene’s benefits during this 24-month period is the only decision before the court for review.

court remands Greene's claim to the plan fiduciary for a deliberate and principled analysis of Greene's ability to perform those duties.

I.

Jonathan Greene served as a salesperson for Grand Eagle Companies, Inc. (Grand Eagle) until 2001. His duties as a salesperson, among other things, included daily travel, climbing stairs, ladders, and catwalks, and crawling in and around industrial equipment. In January 2001, Greene began to experience pain in his lower back and right leg. After attempts to relieve the pain with medication and physical therapy failed, Greene underwent a discectomy in March 2001. By August 2001, Greene was receiving physical therapy and was reporting improvements in his pain and other symptoms. As part of his benefits package with Grand Eagle, Greene was covered by a long term disability insurance plan through Reliance, and in September 2001, he submitted a claim. Whether Greene's claim would be approved was left to Reliance, which, under the policy, served as both insurer and decision-maker² and held discretionary authority³ to interpret plan language and make eligibility determinations.

In October, shortly after filing his claim with Reliance, Greene reported the onset of knee pain, and his physician referred him to another physician who started him on a second course of physical therapy. Greene was found to have advanced trochlear chondromalacia, and surgery was performed

²Neither party disputes that Reliance's dual roles as insurer and decision-maker yields an implied conflict of interest.

³Neither party has challenged the conclusion that the plan language, as laid out below, grants Reliance discretion in making eligibility determinations and in plan interpretation: "Reliance Standard Life Insurance Company shall serve as the claims review fiduciary with respect to the insurance plan and the Plan. The claims review fiduciary has the discretionary authority to interpret the Plan and the insurance plan and to determine eligibility for benefits. Decisions by the claims review fiduciary shall be complete, final and binding on all parties."

on his knee in an effort to correct the condition.⁴ On November 9, 2001, Greene learned that Reliance had approved his initial claim for “long-term” disability benefits. Reliance continued to monitor Greene’s progress, though, and they requested a functional capacities examination (FCE) in January 2002. The examiner concluded that Greene was able to work at a sedentary to light level job. Based on that conclusion, Reliance terminated Greene’s long term disability benefits, effective January 2002. According to Reliance, the FCE showed that Greene was capable of “perform[ing] the material duties of his[] regular occupation.” In arriving at this decision, Reliance apparently cross-referenced Greene’s level of ability according to the FCE with the duties of a “salesperson” as defined in the DOT. It is uncontested, though, that Greene’s actual job duties included climbing stairs, ladders, and catwalks and crawling in and around industrial equipment, duties not included in the DOT’s definition.

Greene sought a second opinion and had a second FCE in April 2002. The results of that examination suggested that Greene was capable of only “sedentary level lifting”; that Greene was not capable of crawling, stooping crouching, and kneeling; and that walking should be accomplished with a cane. Greene’s physician, Dr. Harron, informed Reliance that he did not believe Greene could have returned to work in January because he was still suffering back and knee pain as of April 2002. Further, Harron opined that Greene was no longer able to perform the duties of his regular job and that he was totally disabled from performing the duties of any job. Meanwhile, in June 2002, the Social Security Administration found Greene totally disabled as of March 2001 and awarded him social security benefits. Still, in October 2002, Reliance affirmed their termination of benefits. Greene now

⁴Trochlear chondromalacia refers to the presence of an abnormal amount of joint space between the kneecap and the trochlear groove of the femur, which causes pain when the knee is bent.

asks the court to overturn Reliance's determination.

II.

When making an eligibility determination under an ERISA-covered policy, a plan fiduciary must use an "objectively reasonable" description of the insured's occupation which includes duties comparable to those actually performed by the insured. See Gallagher v. Reliance Standard Life Ins. Co., 305 F.3d 264, 271-73 (4th Cir. 2002). Thus, Reliance's eligibility determination should have begun with a listing of the material duties of Greene's "regular occupation." See id.; Ranson v. UNUM Life Insurance Company of America, 250 F.Supp.2d 649, 656-57 (E.D. Va. 2003). Examining the administrative record, the court is unable to conclude that Reliance took this course when reviewing Greene's claim. Reliance failed to accurately list Greene's actual duties; rather, they seem to have relied on exclusively the generic definition of "salesperson" provided by the DOT,⁵ never considering the crawling and climbing activities in which Greene regularly engaged. The court finds this misplaced

⁵The DOL job description for "salesperson" lists occasional reaching, handling, fingering, frequent talking, hearing and near acuity, and occasional color vision as the physical demands of the job. As for the job duties, the DOL definition lists the following:

- 1) Develops list of prospective customers by studying business and telephone directories, consulting business associates, and observing business establishments while driving through sales territory.
- 2) Reviews orders for ideas to expand services available to present customers.
- 3) Calls on prospects to explain features of services, costs and advantages.
- 4) Writes orders and schedules initiation of services.
- 5) Confers with customers and company officials to resolve complaints.

In their brief and oral argument, Reliance essentially argued that use of the DOT is per se acceptable, citing Gallagher v. Reliance Standard Life Ins. Co., 305 F.3d 264, 271-73 (4th Cir. 2002). This argument dodges the central issue, though, which is the question of whether the decision-maker has relied upon an "objectively reasonable" description of the insured's occupation. As the Gallagher court explained, use of the DOT may be appropriate in some cases, but only when the DOT description functions as an "objectively reasonable" description of the insured's occupation.

reliance on the DOT definition to have been unreasonable in Greene’s case, given the disparity between the DOT description of “salesperson” and the reality of Greene’s regular occupation.⁶ The court, therefore, remands the case to the plan fiduciary for a “deliberate [and] principled analysis,” founded upon an “objectively reasonable” description of Greene’s regular occupation.⁷ See Gallagher, 305 F.3d at 271-73.

III.

The case is remanded to the plan fiduciary for further action in accordance with this opinion.

ENTER: This 26th day of October, 2004.

UNITED STATES DISTRICT JUDGE

⁶The court’s finding is bolstered by the fact that Reliance, as both insurer and plan fiduciary, operates under an implied conflict of interest, meaning that its determinations are entitled to the more stringent modified abuse of discretion standard of review. See Bailey v. Blue Cross & Blue Shield of Virginia, 67 F.3d 53, 56 (4th Cir.1995) (“[T]he fiduciary decision will be entitled to some deference, but this deference will be lessened to the degree necessary to neutralize any untoward influence resulting from the conflict.”) (citing Doe v. Group Hospitalization & Medical Services, 3 F.3d 80, 87 (4th Cir. 1993).

⁷As the Fourth Circuit has explained, it is the fiduciary’s role to make an initial eligibility determination. Thus, it is appropriate and necessary for courts to remand ERISA cases to plan fiduciaries in those instances when the fiduciary has failed to adequately consider all the information necessary to yield a proper decision. Berry v. Ciba-Geigy Corp., 761 F.2d 1003, 1007 n.4 (4th Cir. 1985).

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JONATHAN GREENE,)	
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Plaintiff,)	Civil Action No.: 7:03cv00025
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v.)	<u>FINAL ORDER</u>
)	
EASTERN ELECTRIC APPARATUS)	By: Samuel G. Wilson
REPAIR COMPANY and)	United States District Judge
RELIANCE STANDARD LIFE)	
INSURANCE COMPANY,)	
)	
Defendants.)	

In accordance with the memorandum opinion entered on this day, the court hereby
REMANDS this case to the plan fiduciary for further proceedings.

ENTER: This ____ day of October, 2004.

UNITED STATES DISTRICT JUDGE