

**IN THE
UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF VIRGINIA
Roanoke Division**

SHARON B. COTTRELL,)	
)	Civil Action No. 7:00CV00178
Plaintiff,)	
)	
v.)	<u>MEMORANDUM OPINION</u>
)	
LONG TERM DISABILITY PLAN)	By: Judge James Turk
FOR EMPLOYEES OF FIRST VIRGINIA)	District Judge
BANKS, INC.,)	
)	
Defendant.)	

This matter is before the Court on Defendant’s, Long Term Disability Plan for Employees of First Virginia Banks, Inc. (“FVB”), Motion for Summary Judgement pursuant to Federal Rule of Civil Procedure 56. Upon consideration of the record, the arguments of counsel, and the applicable law, this Court grants the Defendant’s motion.

I. FACTUAL BACKGROUND

FVB has employed Plaintiff in its Adjustment Department as a collector of installment loans since her commencement of employment in 1987. Plaintiff’s official title was Collector Adjustment II.

In January of 1998, Plaintiff underwent treatment for skin cancer and saw Joseph P. Lemmer, M.D. for fatigue, sore muscles and joint pain. Dr. Lemmer diagnosed the plaintiff as suffering from “[d]iffuse myalgias and arthralgias with tender points most consistent with myofascial pain syndrome/fibromyalgia syndrome,” which is probably related to “sleep disturbance associated with situation anxiety.” Since Plaintiff’s first visit with Dr. Lemmer, he has

evaluated her symptoms as consistent with fibromyalgia syndrome and prescribed medication to lessen her pain.

Plaintiff initially left FVB to give birth to her child. Following childbirth, she received short-term disability benefits from January 4, 1999 to July 2, 1999. First Virginia notified Plaintiff, by letter dated May 26, 1999, that as of July 2, 1999 her short term disability payments would terminate and that she should file a long term disability claim to continue receiving benefits. Defendant also included an application form for Plaintiff and an Attending Physician Form for her doctor to complete. Further, the Defendant suggested several types of materials that may prove beneficial to accurately assess her claim.

The record reflects that Plaintiff completed the application for long term disability benefits on July 5, 1999, but that Defendant did not receive the application until July 14, 1999. Plaintiff indicated that as of January 4, 1999, she became disabled to work. Plaintiff further indicated that her injuries consisted of a “broken tail bone during deliver/also previous diagnosed with Fibromyalgia [and] melanoma cancer.”

In response to the application’s inquiry about her limitations, she wrote “have days not able to go out when in lots of pain[,] have help with home duties and taking care of my children.” Cottrell listed her primary physician as Dr. Joseph Lemmer, and included the names of Dr. Donald Williams, Dr. Larry Patton and Alan Katz as doctors who treated her since the injury’s inception. In regards to Dr. Lemmer’s treatment, Plaintiff indicated that she saw him once a month for an update of her condition. In response to the inquiry regarding how the injury has affected her, Plaintiff explained that she “get[s] stiff and hurt[s] all over—in constant pain—the medication I am on makes me drowsy and sleepy—not able to function or concentrate—hands lock up and hard to

type on keypad of computer.” The claim form further reiterated that her job duties required her to collect installment loans through the aid of a computer and that her position necessitated her to sit while at work.

FVB received Alan Katz’s Attending Physician’s Statement on July 16, 1999. Mr. Katz, a PhD psychologist, was not a medical doctor, and thus, did not constitute a “physician” as determined by the Plan. Mr. Katz explained on the form, however, that “low energy, chronic fatigue and health preoccupation all compromise patient’s capacity to remain focused on her job.” He further noted that she appears to suffer from “chronic fatigue, diffuse pain, feelings of guilt and self criticism, [and] loss of interest.”

During approximately the same time period and at the Plaintiff’s request, Dr. Patton also submitted several medical records to the Plan Administrator for review. Dr. Patton’s records indicate that he is a dermatologist who treated Cottrell for among other things, melanoma. Dr. Patton apparently treated Plaintiff for this skin cancer mostly in 1998, which occurred during her active employment with FVB. It appears from the administrative record and the Plaintiffs’ brief that Dr. Patton’s medical evaluations have little to do with Cottrell’s claim for long term disability benefits.

On July 12, 1999, Plaintiff provided Dr. Lemmer’s office with an Attending Physician’s Statement. Dr. Lemmer, however, did not have the opportunity to complete the form until August 6, 1999. He indicated that Plaintiff should “avoid repetitive use of limbs [and] avoid bending.” He further noted that her fibromyalgia was an “ongoing condition” that was not likely to change in the future. The administrative record reflects that the H.R. Department of FVB received Dr. Lemmer’s statement on August 17, 1999.

The day after FVB received Dr. Lemmer's statement, the company wrote Mrs. Cottrell and informed her that her application for long term disability benefits was denied. The letter further stated that:

The information provided by Lewis-Gale Clinic, and the statement from Dr. Katz, do not indicate you have been totally and continuously unable to perform the duties of your regular occupation. Additionally Dr. Katz is not a medical doctor. The Plan requires that a Physician's Statement be completed by a licensed medical physician.

Importantly, the letter indicated that FVB's evaluation was based only on Dr. Katz's Attending Physician's Statement and medical records from Lewis-Gale Clinic, not Dr. Lemmer's statement received one day prior to the date of the letter. FVB informed Plaintiff that she has a right to appeal the decision. To appeal, the letter explained, Plaintiff must make a written request and may include any additional issues or records for the Plan Administrator to review.

On August 26, 1999, Plaintiff sent the Plan Administrator a letter that indicated she would send additional information immediately. FVB received Cottrell's formal request for an appeal on October 18, 1999, approximately two months subsequent to FVB's initial denial of long term disability benefits. Plaintiff explained in her letter that Dr. Katz's evaluation and the records from Lewis-Gale "are just supporting factors to be considered with how they affect my current condition[,] which is Fibromyalgia." Plaintiff provided additional medical records and documents with her letter of appeal. Importantly, Plaintiff included, among other documents, Dr. Lemmer's same Attending Physician Statement from August, which now had additional notations. Dr. Lemmer added on his original statement that Plaintiff should avoid "long periods sitting."

At some point after Plaintiff's written appeal, the Plan Administrator sought a review of the administrative record by a third party, hired by FVB. Metropolitan Life Insurance Company

(“MetLife”), as a hired consultant to the Plan Administrator, conducted the review as the independent third party. At no time would MetLife bear any of the responsibility for paying any portion of long term disability benefits to which Plaintiff may be entitled. MetLife’s review of the file was performed by a nurse, a disability resource specialist, and a case manager. The review concluded that the Plaintiff did not demonstrate she was totally disabled under the terms and conditions of the Plan.

It appears from the record that FVB then did nothing in response to Plaintiff’s appeal until Mrs. Cottrell’s attorney contacted the Plan Administrator with a letter dated January 28, 2000. That same day, the Employee Benefits Committee of FVB, acting as Plan Administrator, met to consider Plaintiff’s appeal. After reviewing the Plaintiff’s documentation and MetLife’s evaluation, FVB affirmed their previous decision and denied Cottrell’s claim for long term disability payments in a letter to Plaintiff and her lawyer dated February 3, 2000. The letter explained that under section 1.6 of the Plan, the committee “may seek the advice of one or more physicians or other medical consultant or consultants in making a determination” of a claim for benefits. The Committee noted that “three medical consultants” indeed reviewed Plaintiff’s file. FVB further explained to Plaintiff that in her case “[i]t was the opinion of the medical consultants retained by this corporation that the various health problems you are experiencing do not meet the standard for total disability under the plan.” The alleged medical consultants in fact were all insurance company representatives and not licensed physicians.

II. ANALYSIS

Upon motion for summary judgment, the court must view the facts, and the inferences to be drawn from those facts, in the light most favorable to the party opposing the

motion. Ross v. Communications Satellite Corp., 759 F.2d 355 (4th Cir. 1985). Summary judgment is proper where there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(c). However, "[t]he mere existence of some alleged factual dispute between the parties will not defeat an otherwise properly supported motion for summary judgment; the requirement is that there be no genuine issue of material fact." Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 247-48 (1986).

When a motion for summary judgment is made and properly supported by affidavits, depositions, or answers to interrogatories, the non-moving party may not rest on the mere allegations or denials of the pleadings. Instead, the non-moving party must respond by affidavits or otherwise and present specific facts showing that there is a genuine issue of disputed fact for trial. Fed. R. Civ. P. 56(e). If the non-moving party fails to show a genuine issue of fact, summary judgment, if appropriate, may be entered against the non-moving party.

A. Standard of Review

Upon an appeal of employee benefits under 29 U.S.C. § 1132(A)(1)(b), a district court must first determine what standard of review to apply. See Firestone Tire & Rubber Co. v. Burch, 489 U.S. 101, 103 (1989). A district court must review an ERISA denial of benefits under a de novo standard unless the employee benefit plan empowers the administrator or fiduciary of such plan the discretionary authority to interpret the plan's terms and/or determine eligibility for benefits under the plan. Id. at 115. As a threshold issue, therefore, the Fourth Circuit has mandated that a reviewing court must first determine

“whether the particular plan at issue vests in its administrator discretion either to settle disputed eligible questions or to construe ‘doubtful provisions’ of the plan itself.” De Nobel v. Vitro Corp., 885 F.2d 1180, 1186 (4th Cir. 1989). If this Court determines that the plan indeed confers discretion to the administrator, the Court may only disturb the determination of benefits upon a showing of abuse of discretion. See Sheppard & Enock Pratt Hosp. v. Travelers Ins. Co., 32 F.3d 120, 123-24 (4th Cir. 1994); see also Haley v. Paul Revere Life Ins. Co., 77 F.3d 84, 89 (4th Cir. 1996).

In the case at bar, the Plan defines the “Plan Administrator” as “the person or persons appointed by the Corporation to carry out the administration of the Plan” Plan, § 1.17. The Plan further clarifies that “[t]he Plan Administrator shall determine if an Employee is disabled” Id., § 1.6. FVB delegated the duties of a Plan Administrator to the Employee Benefits Committee. Under the terms of the Plan, the Plan Administrator “will interpret the Plan and determine all questions in the administration, interpretation, and application of the Plan.” Id., § 10.2. The Plan Administrator also has the power under the plain language of the Plan to “determine if an Employee is disabled as defined herein and, in its sole discretion, may seek the advice of one or more Physicians or other medical consultant or consultants in making the determination.”

Both the plain language of the Plan and common sense dictate that the Plan confers discretion on the Plan Administrator. Importantly, Section 11.1 of the plan further provides that “[u]pon receipt by the plan Administrator of [an employee’s application for long term disability benefits], it shall determine all facts which are necessary to establish the right of the applicant to benefits under the provisions of the Plan and the amount thereof as herein

provided.” This language appears to this Court to empower the Plan Administrator to evaluate an employee’s application and grant benefits only if the employee provided sufficient proof to support a claim for disability. Courts do not require “magic words” to trigger an abuse of discretion review. deNobel v. Vitro Corp., 885 F.2d 1180, 1187 (4th Cir. 1989). For this deferential standard to apply, the Fourth Circuit stated that it “need only appear on the face of the plan documents that the fiduciary has been ‘given [the] power to construe doubtful terms’–or to resolve disputes over benefits eligibility.” Id. at 1187 (quoting Firestone, 489 U.S. at 115). Several unpublished opinions also provide enlightening guidance for this Court. See Nessel v. Crown Life Ins. Co., 92 F. Supp.2d 523, 530 (E.D. Va. 2000) (citing O’Bryhim v. Reliance Standard Life Ins. Co., No. 98-1472, 1999 WL 617891, at *4 (4th Cir. Aug. 16, 1999)(explaining that a requirement of “satisfactory proof” in a Policy confers discretion on plan administrators); Wilcox v. Reliance Standard Life Ins. Co., No. 98-1036, 1999 WL170411, at *2 (4th Cir. Mar. 23, 1999)(holding that “only the most tortured reading of the language [satisfactory proof] could lead to a conclusion that the plan in this case is not vested with the discretionary authority to determine eligibility for benefits.”)). Based upon the face of the Plan, this Court holds that the language in FVB’s Plan empowers the administrator of the Plan to both determine eligibility for long-term disability benefits and interpret the Plan’s terms. Accordingly, this Court reviews FVB’s denial of long term disability benefits under an abuse of discretion standard.

An abuse of discretion standard dictates that a reviewing court must determine whether the administrator’s decision was in fact reasonable. See Booth v. Wal-Mart Stores, Inc. Assoc. Health and Welfare Plan, 201 F.3d 335, 342 (4th Cir. 2000). The Fourth Circuit

established that under an abuse of discretion review a plan administrator's determination of benefits is reasonable if it derives from a "deliberate, principled reasoning process and if it is supported by substantial evidence.'" Bernstein v. Captialcare, Inc., 70 F.3d 783, 787 (4th Cir. 1995)(quoting Baker v. United Mine Workers of Am. Health and Retirement Funds, 929 F.2d 1140, 1144 (6th Cir. 1991)). If the reviewing court finds sufficient evidence to support this review, the court must uphold the administrator's decision, "even if the court itself would have reached a different conclusion." Haley v. Paul Revere Life Ins. Co., 77 F.3d 84, 89 (4th Cir. 1996); See Doe v. Group Hosp. & Medical Serv., 3 F.3d 80, 85 (4th Cir. 1993).

If the Plan Administrator also pays the benefits at issue or otherwise toils under a conflict of interest, the Fourth Circuit has modified the abuse of discretion standard to take account for any conflict of interest with the beneficiaries of such benefits. See Martin v. Blue Cross & Blue Shield of Virginia, Inc., 115 F.3d 1201, 1206 (4th Cir. 1997); Doe, 3 F.3d at 87. A reviewing court, therefore, applies a sliding scale in a modified abuse of discretion standard, which gives less deference to administrator's decisions laboring under a conflict of interest. See Ellis v. Metropolitan Life, 126 F.3d 228, 233 (4th Cir. 1997). In the case at bar, this Court finds that FVB in fact labored under a conflict of interest as the plan fiduciary. FVB employed Plaintiff and would have supported her disability payments if proof supported such a claim. Thus, this Court will employ the modified abuse of discretion standard to determine whether FVB, if free from its conflict of interest with Plaintiff, was reasonable in determining denying Cottrell's claim for long term disability benefits.

B. Evidence Not Reviewed By Canada Life

This Court is very cognizant that ERISA intended to promote and provide a manner in which employers and beneficiaries can resolve benefit disputes efficiently. See Quesinberry v. Life Ins. Co. of North America, 987 F.2d 1017, 1023 (4th Cir. 1993). Accordingly, it behooves this Court to emphasize that the administration of employee benefits properly falls within the power of the designated fiduciaries, not the purview of the federal courts. See Bernstein v. Capitalcare, Inc., 70 F.3d 783, 788 (4th Cir. 1995). As this Court reviews FVB's decision under a modified abuse of discretion standard, it is "limited to the evidence that was before the plan administrator at the time of the decision." Id. at 788 (citing Sheppard & Enoch Pratt Hospital v. Travelers Ins. Co., 32 F.3d 120, 125 (4th Cir. 1994)).

Plaintiff attached the affidavit of Sharon Cottrell to its Motion in Opposition to Defendants' Summary Judgment. An affidavit opposing a motion for summary judgement, however, must contain admissible evidence. Fed. R. Civ. P. 56(e). As discussed above, this Court is without the power to review any evidence submitted subsequent to FVB's evaluation of Cottrell's claim for disability benefits. Although Cottrell opines that the Plan Administrator failed to consider her employment history with FVB, this Court does not have the authority to review Plaintiff's affidavit in its consideration of FVB's evaluation. Much of the information in Cottrell's affidavit contains evidence that this Court determines to fall outside the scope of the administrative record. Accordingly, any information submitted to this Court after FVB's initial determination and subsequent decision of Cottrell's appeal, including information contained in Cottrell's affidavit, may not be addressed by this Court in

determining whether FVB acted reasonably. See Elliot v. Sara Lee Corp., 190 F.3d 601, 608-09 (4th Cir. 1999); Quesinberry, 987 F.2d at 1026.

C. FVB Did Not Abuse its Discretion in Denying Cottrell Long Term Disability Benefits

After concluding that a modified abuse of discretion standard applies to FVB's evaluation, ERISA now charges this Court with determining whether the Plan Administrator's decision to deny Plaintiff long term disability payments was reasonable. The Fourth Circuit has enumerated several different factors for a reviewing court to consider when doing such. See deNobel v. Vitro Corp., 885 F.2d 1180, 1188 (4th Cir. 1989)(noting five factors for reviewing courts to consider); See Bernstein, 70 F.3d at 788 (4th Cir. 1995)(recognizing that a reviewing court may also consider the adequacy of the administrative record before the fiduciary); See Haley, 77 F.3d at 89 (4th Cir. 1996)(noting five additional factors for reviewing courts to consider); See Restatement (Second) of Trusts § 187, cmts. E-h (1959)(advising that reviewing courts should also consider the integrity of the fiduciary's decision making process). In Booth v. Wal-mart Stores, Inc. Assoc. Health and Welfare Plan, the Fourth Circuit clarified the criteria for determining the reasonableness of a fiduciary's discretionary decision. 201 F.3d 335, 342-43 (4th Cir. 2000). The Court concluded that a reviewing court may consider, but is not limited to, such factors as:

(1) the language of the plan; (2) the purposes and goals of the plan; (3) the adequacy of the materials considered to make the decision and the degree to which they support it; (4) whether the fiduciary's interpretation was consistent with other provisions in the plan and with earlier interpretations of the plan; (5) whether the decision making process was reasoned and principled; (6) whether the decision was consistent with the procedural and substantive requirements of ERISA; (7) any external standard relevant to the exercise of discretion; and (8) the fiduciary's motives and any conflict of interest it may have.

Id. This Court now must shift its analysis to the language of the Plan and the Plan Administrator's decision to deny Cottrell her claim for long term disability benefits.

1. FVB's Decision Was Reasonable Under the Terms of the Plan and the Administrative Record

Plaintiff asserts that FVB failed to provide sufficient procedural safeguards that would have served to protect Cottrell's interest. Among other objections, Plaintiff opines that the defendant failed to properly consider her employment records, failed to review Dr. Lemmer's physician statement, and improperly relied on non-medical consultants' evaluation of Plaintiff's appeal. None of the Plaintiff's allegations, however, find support in the administrative record properly before this Court.

Section 10.2 of the Plan reads, in pertinent part, "The Plan Administrator will rely on the records of the Employer with respect to any and all factual matters dealing with the employment of an Employee." Plaintiff interprets Section 10.2 to place the burden on the Plan Administrator to evaluate the Plaintiff's employment record when determining her eligibility for benefits. This Court, however, must analyze Plaintiff's interpretation under the rubric of ERISA law, which places the burden to prove a claim for benefits on the beneficiary. See Elliot, 190 F.3d at 608-09. The Fourth Circuit clearly explained that a "plan administrator is under no duty to secure specific forms of evidence." Id. at 609. Nothing in the administrative record before this Court indicates that Plaintiff provided employment records or requested that the Plan Administrator review her employment history. Consequently, even if the Plan requires the

Plan Administrator to evaluate a beneficiary's employment history,¹ Plaintiff has the burden of providing such information, or at a minimum, to request as part of the record that the Plan Administrator review her employment records. See Berry v. Ciba-Geigy Corp, 761 F.2d 1003, 1008 (4th Cir. 1985). In the same breath, the Plaintiff also has the burden of providing medical records to the Plan Administrator.

Plaintiff further avers that the Defendant's failure to consider Dr. Lemmer's August 6 report should alone warrant this Court's denial of the Defendant's motion. As the record indicates, FVB received Dr. Lemmer's report one day prior to their drafting a letter to Cottrell denying her claim. Although FVB physically had the physician's report in their office, this Court refuses to recognize any allegations of purposeful negligence in FVB's failure to review Dr. Lemmer's evaluation. Although FVB did not review Dr. Lemmer's statement during its initial consideration, the record clearly reflects that FVB advised Cottrell in its initial denial letter that she had the right to supplement her file. In fact, FVB suggested several documents that may prove fruitful in her claim for disability payments. Plaintiff responded by sending FVB several medical reports and Dr. Lemmer's original Attending Physician Statement with an additional notation concerning Cottrell's ability to sit for long periods of time. On appeal, both MetLife and the Plan's appeal process examined Dr. Lemmer's most recent evaluation, which merely advised Cottrell to "avoid repetitive use

¹ Section 10.2 reads, in pertinent part, "The Plan Administrator will rely on the records of the Employer with respect to any and all factual matters dealing with the employment of an Employee." Contrary to the Plaintiff's averment, the Plan does not direct the Plan Administrator to specifically use an employee's history to determine a claim for benefits. If the Plan Administrator decides to evaluate employment history at all, which does not appear mandatory under a plain reading of the Plan, he would likely use such information to ensure that the employee satisfied the threshold requirement of one year employment with FVB. See Plan, § 2.1.

of limbs, avoid bending, long periods sitting and allowances for time missed.” Based on MetLife’s consideration and its evaluation, the Employee Benefits Committee determined that nothing in the record supports a claim for long term disability benefits. Although Plaintiff appears to rely on Dr. Lemmer’s evaluation to support her claim, this Court believes that the Doctor’s opinion failed to do so. In fact, Dr. Lemmer suggested “allowances for time missed,” which aptly suggests that Cottrell is physically able to perform her own occupation. The attending physician statement dictates that Cottrell may, based on her symptoms, have to miss days from time to time, but as a general matter she can physically work in her current position at FVB.

All the evidence before this Court indicates that FVB engaged in a reasoned and principled decision making process. The Plan Administrator appears from the record to have considered all the evidence in light of the terms of the Plan, and thus, did not abuse its discretion in denying Cottrell long term disability benefits. At all times, FVB attempted to inform Cottrell about her claim for disability. Upon the conclusion of her short term disability benefits, FVB urged her to apply for long term disability and suggested the documentation needed to support a claim. Upon her denial of long term benefits, FVB explained its reasoning and advised her of the right to appeal. FVB further noted her right to supplement the file and again suggested proper documentation she could provide to assist in the most accurate evaluation of her claim. Finally, the Employee Benefits Committee clearly informed Plaintiff of its decision affirming the Plan Administrator’s denial of benefits. The Committee explained that based on its own evaluation, as well as outside medical consultants, Cottrell did not qualify for long term disability benefits. Nothing in the record even suggests that FVB did not fully and adequately review and re-review

Plaintiff's claim for benefits. Simply because Cottrell did not agree with the Plan Administrator's decision does not empower this Court, under a modified abuse of discretion standard, to second guess the reasoned and principled decision making process that FVB undertook in this case.

Plaintiff also avers that this Court should deny Defendant's motion because it stated in its appellate denial letter that "three medical consultants" reviewed Cottrell's documentation. As the Plaintiff properly points out, these consultants are actually employees of MetLife, an independent third party hired by FVB to review the Plan Administrator's decision to deny benefits. The three consultants consisted of one nurse, a disability resource specialist, and a case manager, none of whom are licensed doctors. The Plaintiff fails to take into account, however, that under the language of the Plan, the Plan Administrator may or may not hire outside consultants. As FVB informed the Plaintiff in its February 3, 2000 letter affirming the Administrator's ruling, under section 1.6 of the Plan, the committee "may seek the advice of one or more physicians or other medical consultant or consultants in making a determination" of a claim for benefits. In other words, FVB could have performed a very reasoned and principled decision without the aid of MetLife's evaluation. Therefore, the fact that FVB may not have properly characterized the identity of its consultants will not serve to undermine its evaluation. On the contrary, this Court encourages Plan Administrators to utilize third parties to more fully and independently evaluate an employee's claim for disability benefits. FVB's election to use outside consultants, under section 1.6 of the Plan, actually demonstrates FVB's reasoned and principled decision making process. To discourage such action may negatively impact future employees seeking the aid of long term disability payments. Accordingly, this Court finds Plaintiff's contentions without merit.

The administrative record before this court indicates that FVB reviewed all the

documentation before its employees and did so in a fair and efficient manner. Moreover, FVB afforded Cottrell sufficient procedural safeguards throughout her claim for benefits. The evidence before this Court indicates that FVB did not abuse its discretion by determining that nothing in the record supported Cottrell's claim that she cannot perform her own occupation. Dr. Lemmer explained that she should have "allowances for time missed," but never indicated that Plaintiff was totally disabled. Therefore, under a modified abuse of discretion standard, this Court holds that FVB performed a detailed analysis of Cottrell's claim and that its final decision was the product of a reasoned and principled process that adhered to the language of the Plan and the purview of ERISA law.

III. CONCLUSION

For the foregoing reasons, Defendant's Motion for Summary Judgment is granted. The Clerk is directed to send certified copies of this Memorandum Opinion and accompanying Order to counsel of record for Plaintiff and counsel of record for Defendant. The Clerk is further directed to strike this case from the Court's active docket.

This _____ day of December, 2000.

UNITED STATES DISTRICT JUDGE

**IN THE
UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF VIRGINIA
Roanoke Division**

SHARON B. COTTRELL,)	
)	Civil Action No. 7:00CV00178
Plaintiff,)	
)	
v.)	<u>ORDER</u>
)	
LONG TERM DISABILITY PLAN)	By: Judge James Turk
FOR EMPLOYEES OF FIRST VIRGINIA)	District Judge
BANKS, INC.,)	
)	
Defendant.)	

This matter is before the Court on Defendant’s, Long Term Disability Plan for Employees of First Virginia Banks, Inc., Motion for Summary Judgement pursuant to Federal Rule of Civil Procedure 56. Upon consideration of the record, the arguments of counsel, and the applicable law it is hereby

ADJUDGED AND ORDERED

- (1) that Defendant’s Motion For Summary Judgment pursuant to Rule 56(c) is **GRANTED**, and
- (2) that Defendant’s Motion to Strike Affidavit of Sharon Cottrell is **GRANTED**.

The Clerk of Court is directed to send a copy of this Order and accompanying Memorandum Opinion to all counsel of record and to the Plaintiff and to strike this case from the Court's active docket.

ENTER: This _____ day of December, 2000.

UNITED STATES DISTRICT JUDGE