

2024 WL 2990553

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United States District Court, D. New Hampshire.

Jay DEMERITT

v.

UNUM LIFE INSURANCE
COMPANY OF AMERICA, et al.

Civil No. 23-cv-00035-JL

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Signed June 7, 2024

Attorneys and Law Firms

Edward A. Wicklund, Olinksy Law Group, Syracuse, NY,
Janine Gawryl, Gawryl MacAllister & O'Connor, Nashua,
NH, for Plaintiff.

Byrne J. Decker, Ogletree Deakins Nash Smoak & Stewart
PC, Portland, ME, Scott Pomeroy, Boston, MA, for
Defendant.

MEMORANDUM ORDER

Joseph N. Laplante, United States District Judge

*1 This case arises out of a claim for long term disability insurance benefits based on [narcolepsy](#) and its associated symptoms. Jay Demeritt, who formerly worked for firearm manufacturer SIG Sauer, Inc., sought benefits from Unum Life Insurance Company of America, the claims administrator and insurer under SIG Sauer's long term disability insurance policy. Unum denied Demeritt's claim and appeals, and Demeritt then sued Unum in this court under the Employee Retirement Income Security Act, §§ 29 U.S.C. 1001 et seq. (ERISA). Demeritt asks this court to overturn Unum's decision and award him benefits under the policy. This court has subject matter jurisdiction under [28 U.S.C. § 1331](#) (federal question) and [29 U.S.C. § 1132\(e\)\(1\)](#) (ERISA).

Demeritt and Unum each moved for judgment on the administrative record. *See* L.R. 9.4(c). They submitted a joint statement of material facts, and Unum submitted a short list of disputed facts. *See* L.R. 9.4(b). After reviewing the administrative record and briefs and holding oral argument, the court grants judgment to Unum. The record does not

establish, under the *de novo* standard of review, that Demeritt qualified for long term disability benefits under Unum's plan because, after briefing and oral argument, he has not established his entitlement to long term disability benefits by a preponderance of the evidence.

I. Applicable legal standard

In an ERISA case, the court reviews motions for judgment on the administrative record differently than it would for a typical civil case. "ERISA benefit-denial cases typically are adjudicated on the record compiled before the plan administrator." *Stephanie C. v. Blue Cross Blue Shield of Mass. HMO Blue, Inc.*, 852 F.3d 105, 110 (1st Cir. 2017) (citation omitted). The court "reviews the denial of benefits solely on the administrative record." *Patel v. Aetna Life Ins. Co.*, No. 18-cv-837-JL, 2020 WL 13741006 at *12 (D.N.H. March 31, 2020), citing *Bard v. Boston Shipping Ass'n*, 471 F.3d 229, 235 (1st Cir. 2006) (quotations omitted).

ERISA does not provide a standard for reviewing a denial of long term disability benefits. *Id.* at *13, citing *Rodríguez-López v. Triple-S Vida, Inc.*, 850 F.3d 14, 20 (1st Cir. 2017). But the Supreme Court has held that "a denial of benefits challenged under [ERISA] 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." *Firestone Tire & Rubber Co. v. Bruch*, 489 U.S. 101, 115 (1989).

The parties disagree about the standard of review appropriate for this case. Demeritt argues that because Unum did not comply with [N.H. Code Admin. R. Ins. § 401.04\(I\)](#), the court must review his denial of benefits under the *de novo* standard. This New Hampshire administrative regulation, addressing all licensed writers of life, accident, and health insurance, provides that the New Hampshire Department of Insurance will approve a discretionary clause only if it meets four outlined criteria. [N.H. Code Admin. R. Ins. § 401.04\(I\)\(3\)](#). Demeritt contends that the discretionary clause in Unum's policy does not meet the regulation's criteria, and, therefore, the *de novo* standard applies here. Unum contends that the discretionary standard applies and that the New Hampshire insurance regulation does not apply. Without ruling on which position is correct, the court applies the plaintiff-friendly *de novo* standard here because Unum would prevail under either standard.

*2 "An overarching principle applies to both aspects of the district court's decision: an ERISA beneficiary who

claims the wrongful denial of benefits bears the burden of demonstrating, by a preponderance of the evidence, that she was in fact entitled to coverage.” *Stephanie C.*, 852 F.3d at 112-13. “[D]e novo review generally consists of the court’s independent weighing of the facts and opinions in [the administrative] record to determine whether the claimant has met his burden of showing he is disabled within the meaning of the policy.” *Orndorf v. Paul Revere Life Ins. Co.*, 404 F.3d 510, 518 (1st Cir. 2005). The court “owes no deference to the insurer’s interpretations or conclusions....[and] stands in the shoes of the administrator....[and t]he plaintiff bears the burden of showing by a preponderance that they are entitled to the benefits they seek.” *Ministeri v. Reliance Standard Life Ins. Co.*, 523 F. Supp. 3d 157, 166 (D. Mass. 2021) (Sorokin, J.), *aff’d*, 42 F.4th 14 (1st Cir. 2022) (citations and quotations omitted).

II. Background

a. The disability insurance policy

Unum insured Demeritt under a long term disability policy that SIG Sauer provides for its employees. Unum’s policy “provides financial protection...by paying a portion of [an employee’s] income while [he is] disabled.”¹ After a claimant starts receiving short term disability benefits, the policy requires that, to receive long term disability benefits, the claimant must be “continuously disabled through [the] elimination period.”² The policy defines a claimant as “disabled” when that person is “limited from performing the material and substantial duties of [his] regular occupation due to [his] sickness or injury” for 24 months.³ Material and substantial duties “are normally required for the performance of [his] regular occupation” and “cannot be reasonably omitted or modified.”⁴ The policy defines “regular occupation” as “the occupation [the claimant is] routinely performing when [his] disability begins.”⁵ Unum examines “[a claimant’s] occupation as it is normally performed in the national economy, instead of how the work tasks are performed for a specific employer at a specific location.”⁶

b. Demeritt’s medical conditions and treatment

In 1999, Demeritt was diagnosed with [narcolepsy](#) based on [polysomnogram](#) testing and his medical history.⁷ From 2011 to 2021, Demeritt worked at SIG Sauer.⁸ During that decade, he had or developed [sleep apnea](#), [obesity](#), and other medical conditions.⁹

A couple months before he stopped working at SIG Sauer in 2021, Demeritt had an appointment with neurologist Dr. Paul Cass, D.O., to seek treatment for his [narcolepsy](#), [sleep apnea](#), and [testosterone](#) deficiency.¹⁰ The visit was a “telephone-only” virtual clinic visit.¹¹ In his notes from the virtual visit, Dr. Cass reported that Demeritt was working mostly from home but that, when he needed to travel once per week for work (presumably commuting to SIG Sauer), it was “extremely problematic because of the severe fatigue” and that, generally, Demeritt had “not been doing very well.”¹² Although Demeritt used his CPAP machine and had his [sleep apnea](#) under “good control,” Dr. Cass noted that Demeritt was still experiencing severe fatigue.¹³ At oral argument, the parties both took the position that Demeritt managed his [sleep apnea](#) well and that [sleep apnea](#) did not appear to cause Demeritt’s daytime sleepiness.

Dr. Cass observed that Demeritt was taking the maximal dose of the stimulant [methylphenidate](#), and that, although Demeritt had tried other medications, those medications had not worked out because of side effects, ineffectiveness, or lack of medical insurance coverage.¹⁴ In his notes, Dr. Cass stated that he had no other treatments to prescribe and recommended a “napping strategy” where Demeritt would take a nap in the morning and afternoon to reduce his fatigue.¹⁵ Dr. Cass stated that he thought “it is unsafe for [Demeritt] to drive an automobile in his present condition until that fatigue is relieved.”¹⁶

c. Medical evidence during the “elimination period”

*3 Demeritt applied for short term disability on August 16, 2021, and his last day at SIG Sauer was September 15, 2021.¹⁷ Unum approved his application and paid Demeritt benefits for the maximum amount of time in the elimination period.¹⁸ Unum’s policy requires that a claimant’s disability continue through the entire “elimination period.” The elimination period is “a period of continuous disability which must be satisfied before [the claimant is] eligible to receive

benefits from Unum.”¹⁹ Demeritt's elimination period began on September 15, 2021 and lasted until March 15, 2022.²⁰ During the elimination period, he sought medical treatment several times.

- On October 18, 2021, Demeritt had a telephone appointment with Dr. Cass. In his notes, Dr. Cass recorded that Demeritt still took methylphenidate, went to bed between 7:00 and 7:30 PM, slept until 4:00 or 5:00 AM, and then got out of bed for the day. Demeritt said he took daily hourlong naps at 10:00 AM and 4:00 PM.²¹ Dr. Cass wrote that Demeritt “has reached maximum medical improvement and is totally disabled and unable to return to work.”²² He wrote that Demeritt was positive for fatigue, was using his CPAP machine effectively, and was “nervous/anxious.”²³
- A week later, Dr. Cass submitted a “Restrictions and Limitations” form stating, again, that Demeritt had reached maximum medical improvement, required three naps every day, and was unable to work. The end date for the restrictions was five months later, on March 18, 2022.²⁴
- About a month later, on December 14, 2021, Demeritt had an in-person appointment with a primary care provider, Tammy Fortier, APRN. Nurse Fortier wrote that Demeritt was alert and communicative, but he had slowed speech and “signs of [narcolepsy](#).”²⁵ His eyes would also “roll up at times.”²⁶
- Another month later, on January 18, 2022, Demeritt saw Nurse Fortier again, where she noted that his physical examination showed normal constitution, neurology, and psychiatry.²⁷ She noted that she had reduced his dosage of [Cymbalta](#) (which the parties have stipulated was prescribed to treat anxiety)²⁸, and he tolerated the reduction well in part because he had stopped working.²⁹ (At oral argument, counsel for Demeritt took the position that Nurse Fortier had reduced his [Cymbalta](#) dosage.)
- On February 2, 2022, Demeritt visited Gina Bedell, APRN for a pre-operative [colonoscopy](#) visit. Demeritt “[a]ppear[ed] tired” but was still “alert, oriented 3x, pleasant.” His cognition and speech were normal, and he was “able to speak in complete sentences.”³⁰

- On February 15, 2022, Demeritt saw Nurse Fortier again. She noted that he was unable to discontinue taking [Cymbalta](#) because of stresses in his home life, but he wanted to maintain the current dosage and “manag[ed] his symptoms effectively without causing increase in his [narcolepsy](#).”³¹

d. Demeritt's long term disability application

Demeritt applied for long term disability benefits. He told Adam Van Clief, a disability benefit specialist in Unum's Benefits Center, that he was not getting his work done and was afraid to drive to work because he once fell asleep at the wheel and hit the “rumble strip,” which woke him up.³² Demeritt told Van Clief that his [narcolepsy](#), rather than his [sleep apnea](#), was keeping him from going to work. Further, Demeritt stated that his job as a “Systems Administrator” required him to drive to various locations to set up computer networks.³³

*4 Laura Sweeney, a vocational rehabilitation counselor at Unum, conducted a review of Demeritt's job and found that, rather than a “Systems Administrator,” Demeritt's job was more akin to “Technical Information Technology,” which was classified as sedentary.³⁴ At oral argument, the parties agreed that Demeritt's job description, as defined in the national economy, likely did not make a difference for the benefits determination.

Alyssa Rutledge, RN, an Unum medical consultant, reviewed the medical evidence and reported that, in her opinion, Demeritt's self-report of [narcolepsy](#) was not consistent with the medical evidence. She noted that “[t]here are not [restrictions and limitations] from a doctor but [Demeritt] reports that he has set them for himself,” but she also wrote that Dr. Cass's restrictions and limitations were “overly restrictive.” She mentioned that Demeritt had not recently changed his treatment or medication, and the medical evidence from Nurse Fortier did not “support a functional loss.”³⁵

Van Clief also sought a written opinion from internal medicine specialist Dr. Renee Chervenak, MD. In advance of preparing her analysis, Dr. Chervenak wrote to Dr. Cass and asked him whether he agreed that Demeritt's medical records did not indicate a disability.³⁶ Dr. Cass responded that Demeritt was “[unable to] function in a work capacity”

and that he “had no other treatment recommendations other than napping in the morning and afternoon to decrease his fatigue.”³⁷ Dr. Chervenak reviewed the medical evidence and found that the “available medical records do not provide evidence that new functional deficits were identified on his clinical exams or indicate that there has been any significant change in his treatment regimen as might be medically reasonable to expect if his functional status changed.”³⁸ Further, Dr. Chervenak believed that Dr. Cass's note was “based on the claimant's request, rather than based on functional deficits identified on exam.” And, because Demeritt “perform[ed] the demands of his occupation for another 2 months [after this appointment], the absence of functional deficits on exam and absence of any significant change in medical management of his [narcolepsy](#) are not consistent with the reported level of impairment that [Demeritt] reported or which Dr. Cass opined.”³⁹

Because Dr. Chervenak disagreed with Dr. Cass's assessment of Demeritt, Van Clief sought another independent medical opinion from neurologist Dr. Michael Chilungu, an independent board-certified neurologist.⁴⁰ Dr. Chilungu agreed with Dr. Chervenak. He found:

“[t]he available information related to the claimant's neurologic physical examinations...reveals no evidence of significant abnormalities on a medical examination that would lead to neurologic functional impairment of such severity as to preclude full-time sedentary work. Comprehensive documentation of neurologic physical examinations is lacking the medical record, but available documentation reveals an individual who has retained the ability to ambulate independently, retains normal cognition, normal speech, without suggestions of weakness in the available medical documentation.”⁴¹

Based on these opinions, Van Clief found that Demeritt did not qualify for long term disability benefits. An Unum quality compliance consultant agreed.⁴²

e. Demeritt's appeal of his denial of long term disability

*5 Demeritt appealed the denial of long term disability benefits and submitted additional evidence for his appeal.⁴³

- On April 18, 2022, Demeritt had another 15-minute, telephone-only appointment with Dr. Cass. Dr. Cass noted that Demeritt's [sleep apnea](#) was well managed, but

his [narcolepsy](#) was not. Dr. Cass said Demeritt should continue to take [methylphenidate](#) and take three naps every day.⁴⁴ Dr. Cass later submitted a letter stating that Demeritt “has [n]arcolepsy and is totally disabled. He requires medications and multiple short naps per day to function at a minimal level. This would not allow him to work in any capacity.”⁴⁵

- Demeritt submitted a letter from Jessica Vachon, his former supervisor at SIG Sauer, who noticed a “rapid decline...[and] ‘fog’ in his thoughts and a slowness in ability to verbally communicate...[and also noticed that his] health was declining significantly and he was putting his safety at risk if he tried to continue his duties.” She also stated that Demeritt's duties were consistent with a Network Engineer, not a Systems Administrator.⁴⁶
- Demeritt submitted a letter from former coworker Eric Perkins, who noted that he had “started to notice [Demeritt] was finding it hard to concentrate and to put together his speech....This accounted for tasks taking longer and details being missed. Declining alertness and concentration were also affecting [Demeritt's] safety and ability to travel.”⁴⁷

Demeritt argued that his job description was inaccurate because his position was not entirely sedentary; rather, he needed to work on ladders and mechanical lifts to install networking equipment.⁴⁸ A senior vocational rehabilitation consultant at Unum, G. Shannon O'Kelley, prepared a new vocational review. O'Kelley opined that the original vocational review (which categorized him as a Systems Administrator) was correct, and found, as a result, that Demeritt's job, as defined in the national economy, did not require driving.⁴⁹

Unum asked Dr. Neal Greenstein, an internal medicine specialist and independent physician reviewer from third-party vendor Dane Street, to review the file. Dr. Greenstein opined that the additional evidence Demeritt submitted did not support restrictions and limitations that would preclude his sedentary work.⁵⁰ Dr. Greenstein explained his reasoning, stating:

[T]he existence, intensity, frequency, and duration of the claimant's reported symptoms, including but not limited to drowsiness and fatigue is not consistent with physical

exam or diagnostic findings and treatment intensity, would not rise to a level that would be considered impairing, and would not support that the claimant is precluded from performing the occupational demands...[Demeritt's] several co-morbidities that include [obstructive sleep apnea], anxiety/depression, exertional dyspnea, knee pain/osteoarthritis, and obesity...are managed and stable. The records do not support any medication side effects that would preclude the performance of the occupational demands under review.⁵¹

*6 Demeritt had the opportunity to respond to this review, and he did not provide any new information to Unum.⁵² Based on the above information, Cilecia Gagnon, Unum's lead appeals specialist, found that Demeritt was not disabled under the terms of the policy. An Unum quality control compliance officer reviewed and affirmed Gagnon's analysis.⁵³

f. Unum's voluntary post-exhaustion review of Demeritt's claim

Demeritt asked Unum to reconsider his appeal determination based on: (1) SIG Sauer's revision of his job description and (2) a letter from Dr. Cass. Unum agreed to conduct an additional review.⁵⁴

As to Demeritt's job description, Sue Trembly of SIG Sauer clarified Demeritt's job position as a Network Engineer, whose responsibilities included infrequent travel and lifting up to 25 pounds.⁵⁵ Unum then obtained a new vocational analysis, where O'Kelley agreed that Demeritt's new job description corresponded with the classification for "Network Engineer," which was a "light physical demand occupation."⁵⁶

After Unum completed the new vocational review, it referred Demeritt's file to a medical consultant.⁵⁷ Demeritt provided more evidence:

- In an August 15, 2022 letter, Dr. Cass described Demeritt's daytime sleepiness as unpredictable, noted that Demeritt was required to nap, and said that Demeritt had a reduced ability to conduct normal activities.⁵⁸
- In a September 9, 2022 letter, Robert Carpe, Demeritt's former coworker, noted that "[i]n the summer of 2021 [Carpe] noticed that [Demeritt] stuttered and had a difficult time finding the words to express his feeling.

[A]fter a couple hours it got worse and [Demeritt] had to go home [to] take a nap."⁵⁹

Unum then asked Dr. Jacqueline Crawford, a board-certified neurologist, to evaluate the medical evidence based on Demeritt's revised job description. Dr. Crawford still did not find that the medical evidence supported the restrictions and limitations on Demeritt's ability to work. Her reasoning included the fact that narcolepsy typically does not worsen many years after diagnosis; the lack of escalation of treatment; the fact that Demeritt's neurologist did not suggest lab studies based on Demeritt's fatigue and memory problems; and a lack of formal mental status testing.⁶⁰

Demeritt then sent further information to Unum, and Dr. Crawford re-reviewed his application in light of the new information.⁶¹

- Rose Burrows, Demeritt's partner, described his condition and stated that Demeritt "spent more and more time sleeping during the day [and] he could not concentrate on his work because he was so sleepy all the time."⁶²
- Nurse Fortier described that Demeritt's narcolepsy was "progressing despite treatment through neurology... The narcolepsy results in physical weakness and mental cognition. In his last visit, he was showing great difficulty maintaining train of thought in attention and expression."⁶³

Dr. Crawford reviewed these materials and prepared a supplemental report stating that the additional evidence did not change her opinion.⁶⁴ Gagnon reviewed Demeritt's information again and determined that he was not disabled. Jennifer McAvoy, an Unum Appeal Quality Compliance Consultant, reviewed the record and agreed with Gagnon's decision.⁶⁵

III. Analysis

*7 The parties have cross-moved for judgment on the administrative record. Unum asks the court to affirm its denial of Demeritt's benefits, and Demeritt asks the court to reverse Unum's decision and grant him benefits. As shown below, *de novo* review reveals that Demeritt does not qualify for long term disability benefits under Unum's plan.

Under Unum's plan, Demeritt is disabled if he is "limited from performing the material and substantial duties of [his] regular occupation due to [his] sickness or injury." The "material and substantial duties" for Demeritt's job as a network engineer, as it is defined in the national economy, include light work, frequent sitting and occasionally standing or walking, and occasional stooping, crouching, or kneeling. It also includes interpersonal relationships and making decisions. The job does not include driving or climbing.⁶⁶

To meet his burden of proving his disability, Demeritt relies on notes from Dr. Cass, notes from Nurse Fortier, data from his CPAP machine, treatment notes from a pre-operative colonoscopy appointment, and letters from his partner and former co-workers. Dr. Cass stated that Demeritt's narcolepsy had worsened in recent years and that, as a result, Demeritt suffered random "sleep attacks," or bouts of excessive daytime sleepiness.⁶⁷ Dr. Cass opined that Demeritt required multiple naps each day, could endanger himself if he drove, could not concentrate on his work, and could not carry out "normal work activities."⁶⁸ Dr. Cass reported that he could not increase Demeritt's methylphenidate medication because Demeritt was already on the maximal dose, and that Demeritt's sleep apnea was under control, as evidenced by the CPAP machine usage data. Nurse Fortier's notes and letter support Dr. Cass's opinions about the effects of narcolepsy on Demeritt. The other notes and letters Demeritt provided support his claims of daytime sleepiness and its effect on his work performance.

On the other hand, Unum provided opinions from a host of reviewing physicians who did not find that Demeritt's narcolepsy impaired his ability to function in his regular occupation. Dr. Jacqueline Crawford, an independent board-certified neurologist, conducted a review of Demeritt's entire file with his updated job description. The court gives some special weight to Dr. Crawford because, like Dr. Cass, she specializes in neurology. *See, e.g., Patel, 2020 WL 13741006 at *16.*

Dr. Crawford disagreed with Dr. Cass, stating that the record did not support the restrictions and limitations that Dr. Cass imposed on Demeritt for several reasons. First, she said, Demeritt was diagnosed with narcolepsy as early as 1999, yet he continued to function at work for nearly twenty years afterward.⁶⁹ Dr. Crawford noted that the "clinical course of narcolepsy would not be anticipated to include worsening many years after diagnosis."⁷⁰ Further, Dr. Crawford stated

that no one escalated Demeritt's treatment for narcolepsy, as one would expect if Demeritt's condition were worsening.⁷¹ Dr. Crawford did acknowledge that Demeritt was on the maximal dose of methylphenidate, but also noted that Demeritt had been on this dose (and functioned in a vocational setting) as early as 2018.⁷² Dr. Crawford noted that Dr. Cass was also not "sufficiently concerned regarding [Demeritt's] report of increased fatigue and memory difficulties to request laboratory studies, MRI, or repeat sleep investigations as might be seen in an attempt to investigate alternative treatable conditions."⁷³ Dr. Crawford noted that the file also did not show that Dr. Cass asked Demeritt to discontinue his oxybutynin, "as might be seen if a neurologist was concerned about cognitive clouding."⁷⁴ Dr. Crawford found it significant that Demeritt's file also does not have any "formal mental status testing[,] as might be seen when cognitive complaints are a significant clinical concern."⁷⁵ Based on this reasoning, Dr. Crawford concluded that Demeritt's symptoms did not warrant the restrictions and limitations imposed by Dr. Cass.⁷⁶

*8 Dr. Crawford's supplemental report stated that Nurse Fortier's latest letter "does not contain new diagnostic or therapeutic data."⁷⁷ As to Demeritt's cognition, Dr. Crawford noted that, although Demeritt showed difficulty maintaining his train of thought in one visit with Nurse Fortier, "this type of behavior can be under voluntary control, and is inconsistent with other visits where no abnormal cognition is noted. Even if [Demeritt's] impaired cognition were confirmed at that time, the insured reported improvement after Cymbalta dosage was decreased, prior to the [elimination period] end date of 3/15/22."⁷⁸ Finally, as to Demeritt's mental health, Dr. Crawford stated that "[t]he new letter from [Nurse] Fortier indicates anxiety and depression are impacting the insured's ability to maintain cognitive level, however, the file does not contain evidence of [behavioral health] providers opining impairment."⁷⁹

The court finds the analysis and opinions of Dr. Crawford and the other Unum consultants more persuasive than those of Dr. Cass and Nurse Fortier. The court acknowledges that the opinions of Unum's other medical consultants did not have the full wealth of information that Dr. Crawford did, but the court considers their opinions to a lesser degree and notes that the analyses of these three consultants was consistent with Dr. Crawford's analysis and supported her conclusion.

Demeritt claims that Dr. Crawford based her analysis of the record and her opinion on “erroneous statements of fact.” After reviewing Demeritt’s briefs and hearing counsel explain this point at oral argument, however, the court finds that these alleged factual errors amount to nothing more than disagreement with Dr. Crawford’s opinion. Under *de novo* review, the court evaluates medical opinions anew, and it finds Dr. Crawford’s opinion persuasive.

In his briefing, Demeritt also raises several issues with Unum’s final determination. His arguments about the insufficiency or inaccuracy of the final determination do not persuade the court. For example, Demeritt criticizes Dr. Crawford’s opinion because she does not explain what “escalation of treatment” Demeritt would need to show. To the extent that Demeritt expected an explanation from Dr. Crawford in a “manner calculated to be understood by the claimant,” he refers to a requirement for Unum’s final determination, which does not apply to Dr. Crawford’s analysis or opinions for the purpose of the court’s *de novo* review. See 29 C.F.R. §§ 2560.503-1(h)-(j).

Demeritt has failed to meet his burden of proving by a preponderance of the evidence that he is disabled within the meaning of the policy. Weighing the facts and opinions that Demeritt and Unum have advanced, the court finds that Unum’s medical opinions are more persuasive and that Demeritt’s evidence does not show that he was unable to perform his profession as defined by the policy.

IV. Conclusion

For the reasons set for above, Unum’s motion for judgment on the administrative record (doc. no. 21) is GRANTED, and Demeritt’s motion for judgment on the administrative record (doc. no. 20) is DENIED. The clerk of court shall enter judgment accordingly and close the case.

SO ORDERED.

All Citations

Slip Copy, 2024 WL 2990553

Footnotes

- 1 Admin. R. at UA-CL-LTD000521.
- 2 Joint Statement of Material Facts (doc. no. 18) at ¶ 14.
- 3 Admin. R. at UA-CL-LTD000533.
- 4 Joint Statement of Material Facts (doc. no. 18) at ¶ 16.
- 5 *Id.* at ¶ 17.
- 6 *Id.*
- 7 *Id.* at ¶ 22.
- 8 *Id.* at ¶ 23.
- 9 *Id.*
- 10 *Id.* at ¶ 24.
- 11 *Id.*
- 12 *Id.*
- 13 *Id.*
- 14 *Id.*

- 15 *Id.*
- 16 Admin. R. at UA-CL-LTD000813. At oral argument, counsel for Demeritt conceded that Dr. Cass's recommendation about driving did not qualify as a formal restriction or limitation.
- 17 Joint Statement of Material Facts (doc. no. 18) at ¶¶ 26, 29.
- 18 *Id.* at ¶ 30.
- 19 Admin R. at UA-CL-LTD000346.
- 20 Joint Statement of Material Facts (doc. no. 18) at ¶¶ 31, 40.
- 21 *Id.* at ¶ 32.
- 22 *Id.*
- 23 *Id.*
- 24 *Id.* at ¶ 33.
- 25 *Id.* at ¶ 34.
- 26 *Id.* At oral argument, counsel for Demeritt took the position that (1) because Demeritt took a low dosage of [oxybutynin](#), the medication did not affect his [narcolepsy](#) symptoms and (2) decreasing Demeritt's dosage of [Cymbalta](#) (prescribed for anxiety, depression, and fibromyalgia-like symptoms) did not decrease his [narcolepsy](#) symptoms.
- 27 *Id.* at ¶ 35.
- 28 *Id.*
- 29 *Id.*
- 30 *Id.* at ¶ 36.
- 31 *Id.* at ¶ 38.
- 32 *Id.* at ¶ 42.
- 33 *Id.*
- 34 *Id.* at ¶ 43.
- 35 *Id.* at ¶ 45.
- 36 *Id.* at ¶ 46.
- 37 *Id.* at ¶ 47.
- 38 *Id.* at ¶ 48.
- 39 *Id.*
- 40 *Id.* at ¶¶ 49, 50.
- 41 *Id.* at ¶ 50.
- 42 *Id.* at ¶ 51.

- 43 *Id.* at ¶ 53.
- 44 *Id.* at ¶ 54.
- 45 *Id.* at ¶ 56.
- 46 *Id.* at ¶ 55.
- 47 *Id.* at ¶ 58.
- 48 *Id.* at ¶ 57.
- 49 *Id.* at ¶ 59.
- 50 *Id.* at ¶ 60.
- 51 *Id.*
- 52 *Id.* at ¶ 61.
- 53 *Id.* at ¶ 62.
- 54 *Id.* at ¶¶ 69, 70.
- 55 *Id.* at ¶ 67.
- 56 *Id.* at ¶ 70.
- 57 *Id.* at ¶ 71.
- 58 *Id.* at ¶ 66.
- 59 *Id.* at ¶ 72.
- 60 *Id.* at ¶ 73.
- 61 *Id.* at ¶¶ 77-78. Demeritt also provided Jessica Vachon's April 24, 2022 letter and Mr. Perkins's April 28, 2022 letter.
- 62 *Id.* at ¶ 75.
- 63 *Id.* at ¶ 74.
- 64 *Id.* at ¶ 78.
- 65 *Id.* at ¶ 79.
- 66 Admin. R. at UA-CL-LTD000964. At oral argument, counsel for Demeritt conceded that Demeritt's job description, as defined in the national economy, did not involve driving.
- 67 *Id.* at UA-CL-LTD000729.
- 68 *Id.* at UA-CL-LTD000729-30.
- 69 Admin. R. at UA-CL-LTD000888.
- 70 *Id.* At oral argument, counsel for Demeritt noted that he disagreed with this statement but that he acknowledged he did not brief it.

71 *Id.*

72 *Id.*

73 *Id.*

74 *Id.*

75 *Id.*

76 *Id.* at UA-CL-LTD000887.

77 *Id.* at UA-CL-LTD000956.

78 *Id.*

79 *Id.*

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