UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

Shirley Lacko v. United of Omaha Life Insurance Company

Shirley Lacko v. United of Omaha Life Insurance Company, 926 F.3d 432 (7th Cir. 2019) · No. No. 18-2155 · Decided June 12, 2019

SUMMARY

Shirley Lacko v. United of Omaha Life Insurance, 926 F.3d 432 (7th Cir. 2019) **Topics:** ERISA disability benefits; arbitrary and capricious review; conflict of interest; selective consideration of evidence; Social Security disability determination; occupational classification under the Dictionary of Occupational Titles (DOT); combination of impairments; mental limitations. **Holdings:** The Seventh Circuit reversed summary judgment for the plan administrator, holding that United's denial of short-term and long-term disability benefits was arbitrary and capricious. United selectively characterized the record by misrepresenting the SSA's mental residual functional capacity findings (which found moderate limitations precluding skilled work) and by using an overly generic DOT classification ("Manager, Department") that omitted the specialized audit and accounting duties of the claimant's Senior Manager position. United also failed to address the combination of physical and cognitive impairments, including medication side effects. The court remanded for a fresh administrative decision, noting that the structural conflict of interest (administrator as both evaluator and payor) was a factor but not the sole basis for reversal.

CASE DETAILS

COURT	United States Court of Appeals for the Seventh Circuit
WRITING FOR THE COURT	Rovner; Bauer; St. Eve
JURISDICTION	Federal
DECIDED	June 12, 2019
DOCKET	No. 18-2155
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Appeal from the district court's grant of summary judgment in favor of defendant in an ERISA action to recover disability benefits.
STANDARD OF REVIEW	De novo review of summary judgment, but the plan administrator's benefits decision is reviewed under the arbitrary and capricious standard because the plan grants discretionary authority to the administrator. The conflict of interest is a factor in that review.
PRECEDENTIAL VALUE	Published

PARTIES Shirley Lacko v. United of Omaha Life Insurance Company

TOPICS

erisa · insurance coverage · summary judgment · standard of review · appellate procedure

PRACTICE AREAS

Employment Law · Insurance Law

QUESTIONS PRESENTED

1. Whether United erred in concluding that there was no change in Lacko's functional capacity that would prevent her from performing her job.
2. Whether United used an incorrect occupational description in determining her eligibility for LTD benefits.
3. Whether United failed to adequately address the Social Security Administration's disability determination.
4. Whether United failed to address the combination of impairments, including mental limitations.
5. Whether United improperly relied on the opinions of non-examining physicians.

HOLDINGS

1. United's denial of benefits was arbitrary and capricious because the administrator failed to acknowledge and address the mental limitations found by Dr. Fritz in the SSA's mental residual functional capacity assessment, which determined that Lacko was moderately limited in understanding and remembering detailed instructions, carrying out detailed instructions, and responding appropriately to changes in the work setting, and that she was limited to unskilled work. The administrator's statement that SSA eligibility requirements 'may differ' was insufficient to constitute a reasoned consideration.
2. United's use of the DOT title 'Manager, Department' was improper because the vocational expert's job description omitted essential technical and specialized duties of Lacko's position as Senior Manager in the Audit Department, such as conducting technical research in complex accounting areas and maintaining a CPA license. The failure to reconcile with the SSA's classification as an Auditor or Accountant and the failure to consider the mental skill level required for the position rendered the determination arbitrary.
3. The plan's requirement of a 'change' in functional capacity does not preclude a degenerative condition from qualifying if the deterioration eventually prevents the claimant from performing her job. United's focus on the long duration of the conditions without considering the point at which they became unmanageable was unreasonable.

KEY QUOTATIONS

> *"The first 90 days of disability are covered by the STD plan, which in relevant part provides benefits when, 'because of an Injury or Sickness, a significant change in Your mental or physical functional capacity has*

> *occurred in which: … You are prevented from performing the Material Duties of Your Regular Job (on a part-time or full-time basis) or are unable to work Full-Time … .'"* (at 3)

> *"Disability and Disabled means that because of an Injury or Sickness, a significant change in your mental or physical functional capacity has occurred in which You are: (a) prevented from performing at least one of the Material Duties of Your Regular Occupation on a part-time or full-time basis; and (b) unable to generate Current Earnings which exceed 99% of Your Basic Monthly Earnings due to that same Injury or Sickness."* (at 4)

> *"That trite statement is of no value in any analysis. That something 'may differ' from the Plan requirements says nothing, as it is noncommittal as to whether there is any actual difference. It failed to identify any difference, and to explain how that difference would impact the disability determination."* (at 17-18)

> *"We would note that the Plan's requirement of a 'change' in a person's physical or mental capacity in order to qualify for benefits does not by its terms preclude a degenerative condition from qualifying a claimant for benefits. A condition can exist for years, and only prevent a person from performing her job at a later point in time when the worsening condition proves unmanageable. The deterioration can be sufficient to constitute a change in conditions under the plain language."* (at 26-27)

FACTUAL BACKGROUND

Shirley Lacko worked as a Senior Manager in the Audit Department at BKD, Inc., an accounting firm, earning $93,250.04 annually. She stopped working on September 25, 2015, due to a combination of impairments including gastroparesis, diabetes, rheumatoid arthritis, congestive heart failure, breathing difficulties, anxiety, musculoskeletal impairments, and cognitive difficulties related to medication. She applied for short-term disability (STD) and long-term disability (LTD) benefits under group insurance policies issued by United. United initially approved STD benefits for a period but later denied them, and also denied LTD benefits. The Social Security Administration (SSA) granted Lacko disability benefits, finding that she was limited to unskilled, light work due to mental and physical limitations. United's denial of benefits was based on a review of the medical evidence, using a vocational expert who classified her job as a Department Manager under the Dictionary of Occupational Titles (DOT).

PROCEDURAL HISTORY

Shirley Lacko filed suit under ERISA challenging United's denial of short-term and long-term disability benefits. The district court granted summary judgment to United, and Lacko appealed.

DISPOSITION

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reversed_and_remanded
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REMAND INSTRUCTIONS

The case is remanded to the district court with instructions to remand to United for a fresh administrative decision consistent with the opinion, including proper consideration of the SSA's mental limitations findings, the appropriate occupational classification, and the combination of impairments.

CASES CITED

- Hennen v. Metro. Life Ins. Co., 904 F.3d 532 (7th Cir. 2018)
- Holmstrom v. Metropolitan Life Ins. Co., 615 F.3d 758 (7th Cir. 2010)
- Metro. Life Ins. v. Glenn, 554 U.S. 105 (2008)
- Jenkins v. Price Waterhouse Long Term Disability Plan, 564 F.3d 856 (7th Cir. 2009)
- Dragus v. Reliance Standard Life Ins. Co., 882 F.3d 667 (7th Cir. 2018)
- Raybourne v. Cigna Life Ins. Co. of New York, 700 F.3d 1076 (7th Cir. 2012)
- Black & Decker Disability Plan v. Nord, 538 U.S. 822 (2003)

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