2019 WL 1894752
Only the Westlaw citation is currently available.
United States District Court, C.D. California.

Jennett HARLOW
v.
METROPOLITAN LIFE
INSURANCE COMPANY, et al.

Case No. EDCV 17-2091 JGB (SPx)
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Filed 03/11/2019

Attorneys and Law Firms

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Proceedings: FINDINGS OF FACT AND CONCLUSIONS OF LAW (IN CHAMBERS)

JESUS G. BERNAL, UNITED STATES DISTRICT JUDGE

***1** In this Employment Retirement Income Security Act ("ERISA") action, Jennett Harlow ("Plaintiff") alleges she was wrongfully denied disability benefits. Plaintiff seeks recovery of disability benefits under an ERISA-governed benefit plan established and maintained by her employer, Kaiser Foundation Health Plan, Inc. Long Term Disability ("Kaiser"). Metropolitan Life Insurance Company ("MetLife" or "Defendant") is the payor of the benefits Plaintiff seeks.

Plaintiff and Defendant filed their trial briefs on November 6, 2018. ("Pl. Br.," Dkt. No. 40, and "Def. Br.," Dkt. No. 41.) On November 21, 2018, the Parties each filed responsive trial briefs. ("Pl. Opp'n," Dkt. No. 50, "Def. Opp'n," Dkt. No. 51.) Upon reviewing the Parties' trial briefs and the Administrative Record ("AR"), the Court determined that oral argument was unnecessary for decision on this matter, and therefore took the matter under submission on January 17, 2019. See Local Rule 7-15; Fed. R. Civ. P. 78.

I. EVIDENTIARY OBJECTIONS

Defendant objects to Plaintiff's explanation of medical terms appearing in footnotes one through eleven of her opening brief. ("Def. Objection," Dkt. No. 52 at 2.) Defendant contends these explanations should be excluded as they lack satisfactory indicia of reliability. (Id. (citing Tremain v. Bell Industries, Inc., 196 F.3d 970, 978 (9th Cir. 1999)).) Plaintiff responds that these footnotes are not "medical evidence" but merely meant to assist the Court's understanding of the medical terms. ("Pl. Resp.," Dkt. Not. 54 at 10.) Plaintiff contends that because the terms are "undisputed facts that can be easily verified," it is not improper to define them without citation. (Id. at 11.) Plaintiff further notes that Defendant provides the same definitions of the terms in its own brief. (Id. at 12-13.) It is an important distinction, however, that Defendant provides citations to support its explanations. The Court cannot rely on Plaintiff's uncited explanation of medical terms. Accordingly, Defendant's objection to footnotes one through eleven is SUSTAINED.

II. REQUEST FOR JUDICIAL NOTICE

A court may take judicial notice of an adjudicative fact not subject to "reasonable dispute," either because it is "generally known within the territorial jurisdiction of the trial court," or it is capable of accurate and ready determination by resort to sources whose "accuracy cannot reasonably be questioned." Fed. R. Evid. 201. Under Federal Rule of Evidence 201, "[a] court must take judicial notice if a party requests it and the court is supplied with the necessary information." Fed. R. Evid. 201(c)(2). Proceedings of other courts, including orders and filings, are also the proper subject of judicial notice when directly related to the case. See United

States ex rel. Robinson Rancheria Citizens Council v. Borneo, Inc., 971 F.2d 244, 248 (9th Cir. 1992) (stating that courts "may take notice of proceedings in other courts, both within and without the federal judicial system, if those proceedings have a direct relation to matters at issue.") Judicial notice is also appropriate for "materials incorporated into the complaint or matters of public record." Coto Settlement v. Eisenberg, 593 F.3d 1031, 1038 (9th Cir. 2010). However, a court may not take judicial notice of a disputed fact in a public record. Lee v. City of Los Angeles, 250 F.3d 699, 689 (9th Cir. 2001).

A. Plaintiff's RJN: Department of Labor's "Dictionary of Titles"

***2** Plaintiff requests judicial notice of the non-existence of the "Compliance Officer" title by providing the Department of Labor's ("DoL") Dictionary of Titles ("DoT"). ("Pl. RJN," Dkt. No. 40-1.) The DoT is a 1991 reference work published by the DoL and available on the DoL's website. (Id. at 2.) Plaintiff notes and Defendant concedes that "Compliance Officer" does not appear in the 1991 online version of the DoT. (Id.; Def. Objection at 1.) Defendant asserts the code for "Compliance Officer" was created after the 1991 edition of the DoT was finalized but before it was published. (Id.) Defendant continues that "O*Net," the DoT replacement, contains references to the 1991 title for "Compliance Officer." (Id.) Defendant argues, therefore, the online version of the DoT is incomplete and the Court should disregard it. (Id.) Defendant provides a link to an attorney's blog itemizing the job titles created by the DoL but not published in the DoT as well as an entry on O*Net cross-referencing the "Compliance Officer" title. (Id.) Finally, Defendant provides an email correspondence from a DoL employee explaining that the "Compliance Officer" code did not appear in the 1991 DoT because it was added to a revised edition after the 1991 edition was published. ("Frugoli Email," Dkt. No. 57-1.) After the 1991 edition, the DoL did not publish DoT data but used it to develop O*Net. (Id.) Accordingly, the Court finds that whether the title "Compliance Officer" exists is subject to reasonable dispute and not a proper matter for judicial notice. Thus, the Court DENIES Plaintiff's request for judicial notice.

B. Defendant's RJN: O*Net Dictionary of Occupational Titles

Defendant requests judicial notice of an excerpt from the O*Net Dictionary of Occupational Titles published in 2004 referencing the 1991 DoT job title and code for "Compliance Officer" to support a finding that the title of "Compliance Officer" existed in the revised 1991 DoT. ("Def. RJN," Dkt. No. 51-1). Defendant argues the publication is not subject to reasonable dispute and can be accurately and readily determined from sources whose accuracy cannot be reasonably questioned. (Id.) Plaintiff contends this source is not one of unquestionable accuracy. (Pl. Resp. at 5.) Specifically, Plaintiff asserts the Court should not take judicial notice of purported facts in privately published books to establish a fact in dispute. (Id. at 6 (citing Von Saher v. Norton Simon Museum of Art at Pasadena, 578 F.3d 1016 (9th Cir. 2009)).) But the Court may take judicial notice of publications to "indicate what was in the public realm at the time, not whether the contents of those [publications] were in fact true." Von Saher v. Norton Simon Museum of Art at Pasadena, 592 F.3d 954, 960 (9th Cir. 2010) (internal quotations omitted). Defendant, without citation, argues it is irrelevant that a non-governmental entity compiled and published the O*Net data. ("Def. Resp.," Dkt. No. 57 at 4.) Other courts have taken judicial notice of O*Net job descriptions. Haber v. Reliance Standard Life Ins. Co., 2016 WL 4154917, at *5 (C.D. Cal. 2016) (citing Granger v. Life Ins. Co., 2016 WL 2851434, at *11 (M.D. Fla. Mar. 28, 2016)). Additionally, the Frugoli email clearly establishes the Compliance Officer title existed. (Frugoli Email.) Thus, the Court GRANTS Defendant's request for judicial notice.

C. Plaintiff's RJN: Occupational Title for "Quality Assurance Coordinator"

Plaintiff requests judicial notice of the DoT title for "Quality Assurance Coordinator" and an "Appendix" which contains a "Definition Trailer" explaining the strength codes listed in each entry. ("Pl. RJN 2," Dkt. No. 50-1.) Plaintiff offers

the same arguments as her first request for judicial notice. (Id.) Defendant argues the Court may not consider additional evidence outside the Administrative Record not presented to the claim administrator at the time it made its decision. ("Def. RJN 2 Objection," Dkt. No. 56 at 1.) Defendant is correct.

"When a district court reviews an ERISA administrator's denial of benefits under the de novo standard of review, 'extrinsic evidence [may] be considered only under certain limited circumstances.' " Nagay v. Grp. Long Term Disability Plan for Employees of Oracle Am., Inc., et al., 183 F. Supp. 3d 1015, 1024 (N.D. Cal. 2016), appeal docketed, No. 16-16160 (9th Cir. Jun. 30, 2016) (quoting Opeta v. Northwest Airlines Pension Plan for Contract Employees, 484 F.3d 1211, 1217 (9th Cir. 2007) (citation omitted)). A district court "exercise[s] its discretion to consider evidence outside the administrative record only when circumstances *clearly establish* that additional evidence is *necessary* to conduct an adequate de novo review of the benefit decision." Opeta, 484 F.3d at 1217 (citation and quotation marks omitted).

***3** In Opeta, the Ninth Circuit quoted the Fourth Circuit, which formulated a non-exhaustive list of exceptional circumstances justifying the introduction of extrinsic evidence:

> claims that require consideration of complex medical questions or issues regarding the credibility of medical experts; the availability of very limited administrative review procedures with little or no evidentiary record; the necessity of evidence regarding interpretation of the terms of the plan rather than specific historical facts; instances where the payor and the administrator are the same entity and the court is concerned about impartiality; claims which would have been insurance contract claims prior to ERISA; and circumstances in which there is additional evidence that the claimant could not have presented in the administrative process.

Id. Even if several of these circumstances are present, a court must still find that these circumstances require consideration of the extrinsic evidence to conduct a de novo review of the benefits decision. Id. Here, the Court does not find that these circumstances present nor does it find that this additional job title is necessary to conduct an adequate de novo review of the benefits decision. Accordingly, Plaintiff's second request for judicial notice is DENIED.

III. FINDINGS OF FACT

"In bench trials, Fed. R. Civ. P. 52(a) requires a court to 'find the facts specially and state separately its conclusions of law thereon.' " Vance v. American Hawaii Cruises, Inc., 789 F.2d 790, 792 (9th Cir. 1986) (quoting Fed. R. Civ. P. 52(a)). "One purpose behind Rule 52(a) is to aid the appellate court's understanding of the basis of the trial court's decision. This purpose is achieved if the district court's findings are sufficient to indicate the factual basis for its ultimate conclusions." Id. (citations omitted). The following constitutes the Court's findings of fact based on the Administrative Record.

A. Plaintiff's Employment History

Plaintiff worked for Kaiser as a Quality Analyst beginning in August 2008. (AR 1481.) Plaintiff's position is described as follows:

> Supports the effective execution of quality improvement plan program

> activities for assigned medical staff services and departments. Guides the medical staff in the area of interpretation of regulatory and licensing requirements and interpretation and implementation of quality improvement processes. Coordinates the development of quality improvement indicators. Prepares Chiefs and Chairs for all surveys. Work is overseen by the Coordinator or Director.

(AR 1481-82.) In a September 24, 2014, "Supervisor Statement," Kaiser's Rebecca Stovall outlined the following physical requirements of Plaintiff's position: (1) sitting, standing and walking 3-4 hours per day; (2) using hands repetitively for keyboarding 5-6 hours per day; (3) using head and neck for 3-4 hours per day; (4) bending, twisting, reaching, pushing, pulling 1-2 hours per day (but infrequently); and (5) occasionally lifting up to 10 pounds. (AR 1512-13.) Plaintiff stopped working on January 13, 2014. (AR 1674.)

B. Relevant Plan Terms

Plaintiff was a participant in Kaiser's Long Term Disability Plan ("Plan"), which was insured by a MetLife. (Def. Br. at 2; Pl. Br. at 8.) The Plan provides benefits to employees if they are "totally disabled" as defined in the Plan. (See Plan.) During the first 24 months of benefits, the Plan defines totally disabled as follows:

> ***4** During the Elimination Period and the next 24 months, [1] You are unable to perform with reasonable continuity the Substantial and Material Acts necessary to pursue Your Usual Occupation in the usual and customary way.

(Plan at 23.) The Plan defines "Usual Occupation" to mean "any employment, business, trade or profession and the Substantial and Material Acts of the occupation You were regularly performing for the employer when the Disability began. Usual Occupation is not necessarily limited to the specific job that You performed for the employer." (Plant at 24.)

Finally, "Substantial and Material Acts" is defined as

> the important tasks, functions and operations generally required by employers from those engaged in Your Usual Occupation that cannot be reasonably omitted or modified. In determining what substantial and material acts are necessary to pursue Your Usual Occupation, We will first look at the specific duties required by Your job. If You are unable to perform one or more of these duties with reasonable continuity, We will then determine whether those duties are customarily required of other employees engaged in Your Usual Occupation. If any specific, material duties required of You by Your job differ from the material duties customarily required of other employees engaged in Your Usual Occupation, then We will not consider those duties in determining what substantial and material acts

> are necessary to pursue Your Usual Occupation.

(Plant at 24.)

C. Plaintiff's Medical History

On December 17, 2013, Plaintiff was injured at work while lifting boxes. (AR 1636.) She felt and heard a loud pop followed by severe pain in her right wrist. (AR 1636.) Plaintiff attempted to continue her duties but the pain in her wrist, hand, and elbow worsened. (AR 1636.)

On January 13, 2014, Plaintiff consulted with Dr. Michael Neri who diagnosed her with a sprained wrist and possibly a ligament injury. (AR 630, 637.) Dr. Neri indicated Plaintiff could not use her right hand until January 27, 2014 and deemed her able to return to work at full capacity on January 28, 2014. (AR 594.) The following day, Plaintiff saw Dr. Gerald West who concluded that if modified activity is not accommodated, she is temporarily and totally disabled. (AR 595.) Dr. West noted her wrist was tender and swollen and diagnosed her with "Right Lateral Epicondylitis" and a right wrist sprain. (AR 648, 595.) He advised Plaintiff to apply heat and ice to her wrist and prescribed physical therapy. (AR 650.) Plaintiff saw Dr. West on February 5, 2014, after six physical therapy sessions. (AR 667.) Dr. West recommended she continue physical therapy and recommended and orthopedic consultation. (AR 667.) He continued her modified activity order for work and at home. (AR 597.)

On February 13, 2014, and MRI indicated distal radio ulnar joint instability, two small ganglion cysts, and a mild signal at ulnar aspect of triangular fibrocartilage. (AR 684, 705-06.) The finding was indeterminate and "can be seen with normal anatomy[.]" (AR 706.) On February 19, 2019, a physician determined no surgery was necessary. (AR 717.)

***5** Plaintiff continued to see Dr. West. (AR 793-822.) She also tried acupuncture. (AR 781.) At a June 6, 2014 appointment, Plaintiff told Dr. West her wrist pain was increasing. (AR 826.) She also explained her arm sometimes becomes cold and the skin turns "purplish." (AR 826.) Dr. West noted her symptoms were consistent with complex regional pain syndrome ("CRPS"). (AR 826.) He referred Plaintiff to an anesthesiologist and requested a nerve conduction study. (AR 826-27.) Plaintiff met with Dr. Michael Kim, an anesthesiologist, on June 12, 2014. (AR 848.) He considered a CPRS diagnosis questionable but possible and recommended another orthopedic consultation. (AR 848.) Plaintiff saw Dr. West again on June 27, 2014 who supported the consultation and noted Plaintiff's reported symptoms suggest nerve dysfunction. (AR 878.) A July 15, 2014 Nerve Conduction Study suggested right ulnar motor neuropathy with slowing across the elbow consistent with cubital tunnel syndrome. (AR 911-12.)

On August 11, 2014, Plaintiff consulted with orthopedic surgeon Dr. Brian Hild, who gave her a cortisone injection. (AR 946.) On November 13, 2014, Dr. Hild performed a "cubital tunnel release" surgery. (AR 1125-32.) He placed Plaintiff off work from November 13, 2014 through December 2, 2014 for recovery. (AR 617.) After December 2, 2014, Plaintiff continued seeing Dr. West, who placed her on modified activity at work and home. (AR 619-21, 1221-24.) He noted she could only occasionally lift, push or pull with her right hand, could not lift anything greater than 5 pounds, and could not perform any repetitive movement. (AR 619-21, 1221-24.) On December 30, 2014, Plaintiff reported the numbness in her fingers was improving but the pain in her wrist was increasing. (AR 1254.)

On February 13, 2015, Dr. West released Plaintiff to return to work for 4 hours per day with the following restrictions: no lifting, pushing or pulling greater than 10 pounds and no keyboarding or writing longer than 10 minutes continuously for a total of 30 minutes per hour. (AR 623.) At a February 27, 2015 appointment, Plaintiff told Dr. West that as she typed and moused for longer periods at home, her arm became cold and painful. (AR 1324.) On March 4, 2015, in a post-operation visit, Dr. Hild noted sensation was intact for all digits, her range of motion was good, her Tinel's

sign was negative at the medial elbow, and she had some sensitivity over the dorsal lateral forearm. (AR 1368-69.) Dr. Hild concluded this was a good clinical result despite Plaintiff's indication of vague pain. (AR 1369.) Plaintiff reported continued hypersensitivity and dyesthesias over the forearm. (AR 1362.) She returned to work on March 9, 2015 on a reduced schedule and went back off work on March 11, 2015. (AR 509, 1761.)

On March 11, 2015, Dr. West examined Plaintiff and agreed with Dr. Hild's assessment of her surgery results. (AR 1395.) He explained that her current pain is secondary to a variation of CRPS. (AR 1395.) Plaintiff was instructed to follow up with Dr. Kim. (AR 1395.) Plaintiff saw Dr. Kim on March 17, 2015, and he noted Plaintiff's surgery did not alleviate her problem. (AR 1413.) He expressed strong skepticism as to a CRPS diagnosis but conceded it was possible. (AR 1413-14.) Dr. Kim discussed with Plaintiff stellate ganglion blocks and warned her the procedure was risky. (AR 1414.) She decided to decline this procedure. (AR 393.)

D. Plaintiff's Initial Claim

In August 2014, Plaintiff submitted a claim and asserted she was unable to perform her duties as Quality Analyst as of January 10, 2014 due to her work-related wrist injury and listed Dr. West as her attending physician. (AR 1623-25.) Plaintiff failed to provide certain requested documents and MetLife denied her claim. (AR 1442-46.) Plaintiff finally provided the information and a signed authorization on March 25, 2015. (AR 1420.) MetLife then requested and received Plaintiff's records from her treating physicians and referred the records to a Clinical Nurse Consultant, Jennifer Koffen, for review. On April 10, 2015, Nurse Koffen concluded the medical evidence supported Plaintiff's inability to perform her job duties including repetitive use of both hands for 5-6 hours and repetitive use of her right hand 3-4 hours. (AR 1791-92.) Nurse Koffen noted that Plaintiff's condition should be re-evaluated. (AR 1785-96.) On April 21, 2015, MetLife approved Plaintiff's benefits effective July 13, 2014 (the date the 6-month elimination period expired). (AR 565.)

E. Termination of Benefits

***6** On September 1, 2015, MetLife requested updated medical records concerning Plaintiff's condition. (AR 496.) At this time, Dr. West concluded Plaintiff was unable to use her right arm at all from April through June 2015. (AR 379-84.) As of June 30, 2015, Dr. West determined Plaintiff had permanent restrictions on the use of her right arm requiring no repetitive use and no keyboard or computer use greater than 10 minutes for with a maximum of 30 minutes per hour. (AR 385-88.) Dr. West diagnosed CRPS and Chronic Right Arm Pain. (AR 450, 483.) On June 16, 2015, Plaintiff saw Dr. Amanda Barker, a pain management specialist. (AR 462.) Dr. Barker was skeptical of a CRPS diagnosis and saw no allodynia, hyperesthesia, but reported hypoesthesia. (AR 463.) She concluded the requirements for CRPS were not met. (AR 463.) Dr. West disagreed with Dr. Barker's evaluation and continued imposing the above-outlined restrictions. (AR 484.) On August 27, 2015, Dr. West concluded Plaintiff had reached maximum medical improvement. (AR 483-84.)

On September 18, 2015, Kristal Bell, a vocational rehabilitation coordinator, noted Plaintiff's job was sedentary and required repetitive use of both hands for 5-6 hours and repetitive use of her right hand for 3-4 hours. (AR 1870.) On October 6, 2015, Dee Franco, a claims specialist, performed a "Usual Occupation Assessment." (AR 1873-81.) Ms. Franco characterized Plaintiff's position as "Utilization Review Coordinator" (DoT Code: 079.262-010). (AR 1876.) Ms. Franco described the material and substantial functions of this role as ensuring patients meet criteria for hospital admission, ensuring hospital admissions and length of stay policies comply with governmental regulations, and assisting in federally mandated quality assurance reviews. (AR 1876-79.) Ms. Franco noted Plaintiff's job was sedentary and required frequent "[f]ingering," "handling," and "reaching." (AR 1880.) Ms. Franco concluded Plaintiff did not have the ability to return to her "[u]sual occupation" as a "Utilization Review Coordinator" because the position requires fingering and handling that exceeds what Plaintiff was able to perform. (AR 1880.) MetLife continued paying benefits. (Def. Br. at 8.)

On February 22, 2016, MetLife received updated records from October 2015 to early January 2016. (AR 271.) The updated records included office notes from Dr. West for October and November 2015. (AR 272-317.) On October 14, 2015, Plaintiff reported increased pain in her right arm. (AR 280.) Dr. West did not impose any new restrictions or limitations. (AR 272-317.) In a March 14, 2016 interview, Plaintiff told Nurse Koffen her arm felt cold, throbs, falls asleep, tingles, and feels like it is on fire from the inside out. (AR 1925.) Plaintiff reported to Nurse Koffen that if she used a computer for more than 25 minutes, she would be in pain for a week or two. (AR 1926.) Plaintiff also told Nurse Koffen she was seeing Dr. Andrew Hesseltine, a pain management specialist. (AR 1927.) On March 30, 2016, MetLife requested Dr. Hesseltine's records. (AR 220.)

Dr. Hesseltine first consulted with Plaintiff on January 11, 2016 concerning her CRPS. (AR 259-62.) As of March 31, 2016, Dr. Hesseltine determined Plaintiff could sit, stand, walk, climb, twist, bend, stoop and perform eye/hand movement continuously for eight hours and that she could reach above her shoulder level and at desk level for 45 minutes. (AR 261.) Dr. Hesseltine concluded Plaintiff could not perform any fine finger movements (i.e., typing and writing) and could not lift, push, pull or carry with her right arm. (AR 261.)

On April 8, 2016, MetLife sought the opinion of its Medical Director, Dr. David Peters. (AR 1960.) In his April 13, 2016 report, Dr. Peters noted MetLife had not received Dr. Hesseltine's records to support a restriction of no work. (AR 248.) Dr. Peters concluded Plaintiff was capable of working with the restrictions and limitations outlined by Dr. West. (AR 248.) Among other restrictions, Dr. Peters suggested Plaintiff's "repetitive upper extremity activities, such as keyboarding, should be limited to 10 minutes per hour and to a daily total of 60 minutes." (AR 248.) These restrictions are more limiting than Dr. West's. (See AR 272, 274, 387, 484.)

***7** On April 13, 2016, MetLife sent Dr. Peters's report to Dr. Hesseltine and Dr. West. (AR 242, 247.) Subsequently, MetLife received additional records from Dr. Hesseltine. (AR 218-233.) A record from a January 11, 2016 appointment with both Dr. Hesseltine and Alexandria Arias, a physician assistant (PA-C), noted Plaintiff's upper extremity had no cyanosis, no anasarca, and no edema. (AR 224.) The record of this initial consultation notes color changes, trophic changes, allodynia, and that Plaintiff guards her right upper extremity. (AR 224.) Plaintiff visited another of Dr. Hesseltine's PA-Cs, Brianna Cardenas, on February 9, 2016. (AR 226.) No changes were noted, and Dr. Hesseltine signed off on the Cardenas notes. (AR 226-27.) Plaintiff returned on March 8 and April 7, 2016 for follow up appointments with PA-C Arias. (AR 228-232.) Arias noted that Plaintiff's pain complaints continued, and Dr. Hesseltine signed off on her notes. (AR 228-232.) MetLife sent these additional records to Dr. Peters for further review. (AR 1980-82.) On May 3, 2016, Dr. Peters concluded the additional records did not change his prior opinion and that Plaintiff's keyboarding should be limited to 10 minutes per hour with a daily maximum of 60 minutes. (AR 217.)

MetLife then sought a vocational analysis from vocational rehabilitation coordinator Faith Rossworn. (AR 2003.) In her May 10, 2016 report, Rossworn noted under "Occupational Identification" that based on file information, a Quality Analyst

> supports the effective execution of quality improvement plan program activities for assigned medical staff services and departments. Guides the medical staff in areas of interpretation of regulatory and licensing requirements and interpretation and implementation of quality improvement processes. Coordinates the development

> of quality improvement indicators. Prepares chiefs and chairs for all surveys.

(AR 213.) Rossworn concluded this position is best represented by the DoT job title of "Compliance Officer" (186.117-090). Rossworn provided the following explanation of the duties of a "Compliance Officer":

> Directs and coordinates activities of compliance department of institution to ensure corporate policies and procedures comply with federal and state laws, rules, and regulations. Reviews, analyzes, and interprets new, proposed, or revised laws, rules, and regulations to assess effect of laws or revisions on corporate institutions, policies, and procedures. Establishes guidelines for and directs implementation of monitoring of new procedures and policies to comply with new and revised laws and regulations. Directs design, revision, and rewriting of establishment guidelines, forms, reports, and documents to comply with interpretation of new or revised laws. Directs or arranges for training programs to instruct staff on changes to laws and regulations and compliance with new policies and procedures. Maintains technical knowledge of compliance law and provides written or oral answers to compliance questions from corporate officers or staff. [2]

(AR 213.) Rossworn notes that this position is "sedentary" in terms of physical demands. (AR 214.) Sedentary positions "require occasional reaching, handling, and fingering," "exerting up to 10 pounds of force occasionally and/or negligible amount of force frequently to lift, carry, push, pull or otherwise move objects." (AR 214.) Based on this description, Rossworn concluded, considering Plaintiff's restrictions, she was able to perform with reasonable continuity her Usual Occupation in the usual and customary way. (AR 214.) On May 12, 2016, MetLife informed Plaintiff she was no longer disabled as defined by the Plan based on the medical and vocational evidence in the record. [3] (AR 205-09.) The letter informed Plaintiff no benefits were payable beyond May 12, 2016. (AR 208.) The letter further informed Plaintiff that if she wanted additional review of her claim, she must submit proof that she continued to be disabled from May 12, 2016 and beyond. (AR 208.)

***8** On May 25, 2016, Plaintiff appealed the denial through a note from Dr. Hesseltine stating she was "most definitely still disabled." (AR 202.) The note asserted Plaintiff had a chronic condition involving her entire right upper extremity and could not reach or grab any item weighing more than 1-2 pounds. (AR 202.) Dr. Hesseltine explained his practice was working on alleviating Plaintiff's pain to where she is no longer in tears, but that she was in no condition to return to work. (AR 202.) MetLife received additional records from Dr. Hesseltine's office including a December 2015 fax of a prescription stating Plaintiff is "permanently disabled" and a notes from a May 5, 2016 appointment with PA-C Arias. (AR 169, 160.) The notes from May 5, 2016 indicate exam findings consistent with Plaintiff's prior exams. (AR 160-62.)

MetLife referred these files to Appeals Nurse Consultant Mary Jordan, RN, who concluded the records may not support the severity of Plaintiff's claimed restrictions. (AR 2043, 2053-54.) Nurse Jordan recommended referring the file to a pain management specialist for additional

review. (AR 2054.) MetLife referred the file to Dr. Howard Grattan, an independent physician consultant board-certified in physical medicine and rehabilitation pain medicine. (AR 151-56.) Dr. Grattan concluded Plaintiff had the capacity to sustain full-time employment with restrictions. (AR 154.) He determined no restrictions were necessary concerning fingering, handling, or feeling. (AR 154.) Dr. Grattan also concluded Plaintiff did not meet the criteria for a CRPS diagnosis because all positive indicators were patient-reported and the records had "clear objective deficits[.]" (AR 155.)

MetLife sent Dr. Grattan's report to Dr. West and Dr. Hesseltine. (AR 143.) On February 13, 2017, MetLife received a response from PA-C Arias disagreeing with Dr. Grattan's findings. (AR 101.) Arias explained that Plaintiff suffers continuing pain and allodynia. (AR 101.) She also asserted Plaintiff has had "evidence AT SOME TIME of edema, changes in skin blood flow, or abnormal sudomotor activity." (AR 101.) Arias noted color asymmetry, temperature asymmetry, and sweating on an exam performed that same day. (AR 101.) In her letter, Arias relayed Plaintiff's explanation of how her pain limits her functionality. (AR 101.) Dr. Hesseltine also signed this letter from Arias. (AR 102.) Arias included additional records from her February 13, 2017 exam of Plaintiff. (AR 103-05.) She also included notes from a January 26, 2017 exam performed by PA-C Eric Song. (AR 106-07.)

On February 27, 2017, Dr. Grattan wrote his final report summarizing the additional records he had received from Dr. Hesseltine's office and noting that he made two unsuccessful attempts to contact Dr. Hesseltine. (AR 96-97.) Based on these new records, Dr. Grattan found symptoms consistent with a CRPS diagnosis due to evidence of allodynia, dyesthesias, and sweating and color asymmetry as well as trophic changes. (AR 98.) Dr. Grattan concluded that as of May 12, 2016, Plaintiff had the capacity to sustain full-time employment with restrictions. (AR 98.) Among other restrictions, Dr. Grattan recommended a restriction on typing allowing for 10 minutes of continuous typing alternating with another activity for five minutes before resuming typing. (AR 98.)

MetLife then referred Plaintiff's file to vocational rehabilitation consultant, Susan Sineni, for review. (AR 2061.) Ms. Sineni noted that the "Quality Analyst" description outlines 5-6 hours per shift of repetitive use of both hands and acknowledges Plaintiff's assertion that she types nearly all day. (AR 2084-85.) Ms. Sineni also reviewed Dr. Grattan's supplemental report and determined his restrictions on typing in 10 minute intervals with 5 minute alternation to different tasks fall within her "Usual Occupation" job demands which requires repetitive use of both hands up to 5-6 hours per shift. (AR 2065-68, 2084-89.) Ms. Seneni concluded Plaintiff could perform the duties of her "Usual Occupation" with Dr. Grattan's restrictions. (AR 2087-89.) On March 16, 2017, MetLife informed Plaintiff it was upholding its decision to terminate her benefits based on the medical and vocational evidence in the record. (AR 87-92.) The March 16, 2017 letter indicates that MetLife relied on the restrictions outlined by Dr. Grattan in determining whether Plaintiff was able to perform her Usual Occupation. (See AR 91.) The letter explained that MetLife found the medical evidence did not support Plaintiff's claim that her pain caused severe restrictions preventing her from performing her job. (AR 91.)

IV. CONCLUSIONS OF LAW

A. Standard of Review

***9** Under ERISA, a beneficiary or plan participant may sue "to recover benefits due to him under the terms of his plan, to enforce his rights under the terms of the plan, or to clarify his rights to future benefits under the terms of the plan." 29 U.S.C. § 1132(a)(1)(B) (2006). A denial of benefits under 29 U.S.C. § 1132(a)(1)(B) is 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, 956-957 (1989). A court employing de novo review in an ERISA case "simply proceeds to evaluate whether the plan administrator correctly or incorrectly denied benefits." Abatie v. Alta Health & Life Ins. Co., 458 F.3d 955, 963 (9th

Cir. 2006). "[T]he court does not give deference to the claim administrator's decision, but rather determines in the first instance if the claimant has adequately established that he or she is disabled under the terms of the plan." Muniz v. Amec Const. Mgmt. Inc., 623 F.3d 1290, 1295-96 (9th Cir. 2010). In reviewing the Administrative Record, "the Court evaluates the persuasiveness of each party's case, which necessarily entails making reasonable inferences where appropriate." Schramm v. CNA Fin. Corp. Insured Grp. Ben. Program, 718 F. Supp. 2d 1151, 1162 (N.D. Cal. 2010). Plaintiff bears the burden of showing, by a preponderance of the evidence, that she was disabled under the terms of the plan during the claim period. Eisner v. The Prudential Ins. Co. of Am., 10 F. Supp. 3d 1104, 1114 (N.D. Cal. 2014).

B. Discussion

On July 23, 2019, the Court granted the parties' stipulation to apply a de novo standard of review. (Dkt. No. 36.) Accordingly, no deference is given to the claim administrator's decision, and the Court merely evaluates the persuasiveness of each side's case and determines if Plaintiff has adequately established that she is disabled under the Plan. Plaintiff must show that her medical conditions cause an impairment and that the impairment is disabling. See Jordan v. Northrop Grumman Corp. Welfare Benefit Plan, 370 F.3d 869, 872 (9th Cir. 2004), overruled on other grounds by Abatie, 458 F.3d at 969.

Here, the key conflicts concern (1) which doctor's determination of Plaintiff's restrictions was most persuasive, and (2) whether Plaintiff could perform her "Usual Occupation" with those restrictions.

1. Plaintiff's Restrictions

As a preliminary matter, the Court notes certain credibility issues arise concerning doctors who review paper files as well as doctors who are treating physicians. See, e.g., Popovich v. Metro. Life Ins. Co., 281 F. Supp. 3d 993 (C.D. Cal. 2017). In Popovich, the court conducted a de novo review of the denial of ERISA benefits and noted, "[a]s in this case, a claimant's treating physician and the plan's hired medical expert often provide conflicting opinions and courts must determine which opinion to credit. ERISA does not provide district courts with guidance for resolving such conflicts." Id. at 1003. The court also stated, "ERISA does not require a plan administrator to accord greater weight to a claimant's treating physician." Id. (citation omitted). A court may, however, consider the following: the "credibility of physicians' opinions turns not only on whether they report subjective complaints or objective medical evidence of disability, but on (1) the extent of the patient's treatment history, (2) the doctor's specialization or lack thereof, and (3) how much detail the doctor provides supporting his or her conclusions." Shaw v. Life Ins. Co. of N. Am., 144 F. Supp. 3d 1114, 1129 (C.D. Cal. 2015)).

The Court finds it useful to summarize the examinations Plaintiff underwent surrounding the 2016 denial. The Court focuses on the medical records from 2016 and after, since the question is whether MetLife wrongfully denied Plaintiff's benefits in May 2016 (and wrongfully affirmed its denial following Plaintiff's appeal). Plaintiff's condition in 2014 and 2015, while not irrelevant, are less probative than her condition—as documented in medical records—in 2016.

- Office Note 1/11/2016, Dr. Hesseltine & PA-C Arias: "Pain is rated at least a 9 and at worst a 10. The pain is characterized as sharp, dull, throbbing, burning, aching, electricity and pins and needles." (AR 224.) "She has had extensive conservative care including physical therapy, acupuncture, application of ice, injections, various medications and right cubital tunnel release." (AR 224.) "She believes the pain has gotten progressively worse over time. Today patient is rating her pain level as 10/10 without pain medication and 8/10 with pain medication." (AR 224.) "No Cyanosis, No Anasarca, No Edema. Color changes, Trophic Changes, patient guards RUE. + allodynia." (AR 224.) Dr. Hesseltine confirmed Plaintiff's CRPS diagnosis. (AR 224.)

***10** - Office Note 2/9/2016, PA-C Cardenas: "Chief Complaints: pain in the entire right arm and hand, shoulder pain, elbow pain,

wrist pain, hand pain and finger pain." (AR 226.) "Pain is rated at least a 7 and at worst a 10." (AR 226.) "The pain is characterized as sharp, dull, throbbing, burning, aching, electricity and pins and needles. The pain is constant and radiating." (AR 226.) "No Cyanosis, No Clubbing, No Anasarca, No Edema. Color changes, Trophic Changes, patient guards RUE. + allodynia." (AR 226.)

- Office Note 3/8/2016, PA-C Arias: "Chief Complaints: pain in the entire right arm and hand and shoulder pain." (AR 228.) "Pain is rated at least a 7 and at worst a 10. Medication improves her condition." (AR 228.) "The pain is characterized as sharp, dull, throbbing, burning, aching, electricity and pins and needles. The pain is constant and radiating." (AR 228.) "No Cyanosis, No Clubbing, No Anasarca, No Edema. Color changes, Trophic Changes, patient guards RUE. + allodynia." (AR 228.)

- 3/31/2016 Form Concerning Plaintiff's Claim, Dr. Hesseltine: The note describes Plaintiff's CRPS to include pain, burning, and a feeling of pins and needles. (AR 260.) Dr. Hesseltine also notes color changes, trophic changes, and allodynia of Plaintiff's right upper extremity. (AR 260.) The note indicates Plaintiff cannot do any lifting, pushing, or pulling nor can she perform any fine finger movements. (AR 261.) Dr. Hesseltine restricts Plaintiff's work to no typing or writing and no lifting, pushing, or pulling with her right arm. (AR 262.)

- Office Note 4/7/2016, PA-C Arias: "Chief Complaints: pain in the entire right arm and hand, shoulder pain, elbow pain, wrist pain, hand pain and finger pain." (AR 231.) "Pain is rated at least a 7 and at worst a 10. Medication improves her condition." (AR 231.) "The pain is characterized as sharp, dull, throbbing, burning, aching, electricity and pins and needles. The pain is constant and radiating." (AR 231.) "There was a delay in [approval] of her medications and therefore she was without meds for 2 weeks. Patient was bedbound and her husband had to take her to the ER." (AR 231.) "No Cyanosis, No Clubbing, No Anasarca, No Edema. Color changes, Trophic Changes, patient guards RUE. + allodynia." (AR 231.)

- 4/13/2016 Report, Dr. Peters: "42 y/o QM ANALYST with history of work related injury to the [right upper extremity] 12/2013." (AR 248.) "We are trying to get the medical records from Dr. Hesseltine." (AR 248.) Plaintiff reported to a MetLife Nurse Clinician "she did not think she could work with the P&S restriction per Dr. West and that she had less functionality than that." (AR 248.) "We do not have any notes from Dr. Hesseltine to support a restriction of 'no work' with the [right upper extremity]." (AR 248.) "[K]eyboarding should be limited to 10 minutes per hour and a daily total of 60 minutes." (AR 248.) "In my opinion she is at [maximum medical improvement]." (AR 248.)

- 5/3/2016 Report, Dr. Peters: "The office visit notes from Dr. Andew Hesseltine (Pain Management) on 1/11/15, 2/9/16, 3/8/16 and 4/7/16 are noted and appreciated but do not change the opinion that I previously expressed. These additional notes are consistent with CRPS. I had previously agreed that she had a significant impairment and noted that right upper extremity activities, such as keyboarding, should be limited to 10 minutes per hour and to a daily total of 60 minutes." (AR 217.)

- Office Note 5/5/2016, PA-C Arias: "Chief Complaints: pain in the entire right arm and hand, shoulder pain, elbow pain, wrist pain, hand pain and finger pain." (AR 160.) "Pain is rated at least a 6 and at worst a 10. Medication improves her condition." (AR 160.) "The pain is characterized as sharp, dull, throbbing, burning, aching, electricity and pins and needles. The pain is constant and radiating." (AR 160.) "No Cyanosis, No Clubbing, No Anasarca, No Edema. Color changes, Trophic Changes, patient guards RUE. + allodynia." (AR 231.)

***11** • 1/20/17 Report, Dr. Grattan: "[T]he claimant would have the capacity to sustain

full time employment with restrictions throughout an eight hour day, and 40 hours week to include: ... [n]o restrictions with fingering, handling or feeling." (AR 154.) "Although it is indicated that the claimant was assessed with [CRPS] the claimant does not meet all the criteria for this diagnosis. She does have allodynia and some skin changes however, I would agree with the providers that her findings do not correlate with this diagnosis given the absence of any edema, increased hair growth in the area of pain, or increased sweating." (AR 155.)

- Office Note 1/26/2017, PA-C Song: "The pain is characterized as sharp, dull, throbbing, burning, aching, electricity and pins and needles." (AR 106.) "(+) Bilateral RSD Allodynia, (+) Bilateral RSD Dyesthesias, (+) Bilateral RSD Sweating Asymmetry, (+) Bilateral RSD Trophic Changes." (AR 106.) "Work status and PTP to be reviewed at next visit." (AR 106.)

- Office Note 2/13/2017, PA-C Arias: "Chief Complaints: pain in the entire right arm and hand, shoulder pain, elbow pain, wrist pain, hand pain, finger pain, and knee pain." (AR 103.) "Pain is rated at least a 9 and at worst a 10. Medication improves her condition." (AR 103.) "The pain is characterized as sharp, dull, throbbing, burning, aching, electricity and pins and needles. The pain is constant and radiating." (AR 103.) "She reports pain and numbness in the entire R hand. The pain extends to the shoulder and is also now affecting the left side." (AR 103.) "No Cyanosis, No Clubbing, No Anasarca, No Edema. Color changes, Trophic Changes, patient guards RUE. + allodynia... She reports 'itching' of the left upper extremity." (AR 103.)

- 2/13/2017 Arias Objection to Grattan Report: "There is continuing pain and allodynia with which the pain is out of proportion to the inciting event." (AR 101.) Arias also noted there is "evidence AT SOME TIME of edema, changes in skin blood flow, or abnormal sudomotor activity in this area of paint-there are periods where there is edema, to where she is unable to wear her rings or put her watch on. There is color asymmetry and temperature asymmetry. Also, there is sweating, which is noted on exam today." (AR 101.) Arias also details that Plaintiff is unable to prepare a meal and cannot type for more than three minutes. (AR 101.)

- 2/27/2017 Report, Dr. Grattan: "Based on the documentation provided for review, the clinical findings supporting functional limitations provided by Andrew Hesseltine, MD (Pain Medicine) on 01/26/2017 and 2/13/2017 include findings consistent to [CRPS][.]" (AR 98.) "She is restricted to typing and fingering 10 minutes continually alternating with another activity for five minutes before resuming typing or fingering." (AR 98.) Dr. Grattan identifies these restrictions existing as of May 12, 2016. (AR 98.)

Considering the evidence, the Court finds Plaintiff has carried her burden of establishing that she was "totally disabled" as of May 16, 2016. Defendant notes that Dr. West, Dr. Peters, and Dr. Grattan each concluded Plaintiff had the capacity to work full time with restrictions. (Def. Br. at 18-19.) However, the fact that Plaintiff was able to return to work with restrictions does not mean she was able to perform her "Usual Occupation." In denying Plaintiff's appeal, MetLife relied on Dr. Grattan's recommended restrictions. (AR 91.) The Court is unpersuaded these accurately reflect Plaintiff's restrictions.

Dr. West's most recent restrictions are dated November 4, 2015 and limit Plaintiff's keyboarding to 10 minutes continuously for a total of 30 minutes per hour. (AR 274.) This implies a daily work maximum of 4 hours. However, this is the last record cited to the Court concerning Plaintiff's consultations with Dr. West. Accordingly, by May 2016, and certainly by the March 2017 denial of Plaintiff's appeal, Dr. West's records were stale. They are unable to account for any changes to Plaintiff's condition in the early months of 2016 before MetLife terminated her benefits. Accordingly, Dr. West's recommendations are minimally probative.

***12** On May 3, 2016, after reviewing Plaintiff's file, Dr. Peters concluded her keyboarding should be limited to 10 minutes per hour with a daily maximum of 60 minutes. (AR 217.) This paper review included records from Dr. Hesseltine's office. Dr. Peters's report is somewhat credible under the Shaw factors because it considers a long history of Plaintiff's treatment for her CRPS. See Shaw, 144 F. Supp. at 1129. However, Dr. Peters is not a pain management specialist, but an occupational medicine specialist. Additionally, Dr. Peters does not provide much detail supporting his recommended restrictions. (AR 248.) These two shortcomings impact the reliability of his conclusions. See Shaw, 144 F. Supp. at 1129.

Dr. Hesseltine concluded Plaintiff was unable to work. Dr. Hesseltine's opinion is particularly credible under Shaw. Dr. Hesseltine and his staff treated Plaintiff's pain continuously from early 2016 until at least February 2017. (AR 103-05.) As detailed above, his office kept detailed and routine records of Plaintiff's condition. Dr. Hesseltine is a specialist in pain management. Finally, over the course of treating Plaintiff, his office maintained detailed records from each appointment providing significant detail of Plaintiff's reporting of symptoms as well as objective observations concerning her right upper extremity. One such report indicated that Plaintiff could not type for more than three minutes. (AR 101.) Thus, Dr. Hesseltine's opinion that Plaintiff could not type and was not ready to return to work in May 2016 is quite credible. See Shaw, 144 F. Supp. at 1129.

Finally, although Dr. Grattan's 2/27/2017 report has indicia of credibility under Shaw, the Court is unconvinced of his ultimate conclusions concerning Plaintiff's restrictions. In his 1/20/17 Report, Dr. Grattan provides a summary of Plaintiff's treatment history. (AR 151-53.) Dr. Grattan summarizes many of Dr. Hesseltine's records concerning Plaintiff's treatment. (AR 153.) He incorporates this summary into his 2/27/2017 Report and adds summaries of additional appointments. (AR 98.) Accordingly, Dr. Grattan appears to have considered a great extent of Plaintiff's medical history. See Shaw, 144 F. Supp. at 1129. Additionally, he has an appropriate expertise to lend credibility to his report, as he is a specialist in rehabilitation pain medicine. Id. However, the Court notes Dr. Grattan does not provide any detail supporting his conclusion that Plaintiff could type for 10 minutes with a 5 minute break for a full day. This would amount to 5 hours and 20 minutes of typing each day. Dr. Grattan's 2/27/2017 Report concludes Plaintiff has CRPS, changing his previous finding, and then offers the above restrictions. (AR 98.) He provides no explanation as to why, despite the recent restrictions recommended by Drs. Hesseltine and Peters, he finds Plaintiff capable of significantly greater keyboarding activity. The Court finds this shortcoming significant.

For the reasons detailed above, the Court finds Dr. Grattan's restrictions are minimally persuasive and do not adequately consider Plaintiff's medical records. The Court is much more persuaded by the conclusions of Drs. Peters and Hesseltine. Accordingly, the Court finds that on May 12, 2016, when her benefits were terminated, Plaintiff was not able to type more than 60 minutes per day and possibly not able to type at all.

2. Usual Occupation

MetLife discussed Plaintiff's "Usual Occupation" and its required "Substantial and Material Acts" in denying her appeal. (AR 88.) MetLife relied on a description of Plaintiff's job that required 5-6 hours of repetitive use of both hands. (AR 89.) MetLife also relied on Dr. Grattan's recommended restrictions to conclude that she could perform this task. (AR 91.) As addressed above, the Court does not find the Dr. Grattan restrictions persuasive. Under either set of restrictions proposed by Dr. Hesseltine or Dr. Peters, Plaintiff cannot use her hands repetitively for 5-6 hours. Accordingly, MetLife's denial of Plaintiff's appeal was improper.

***13** The Court also looks to MetLife's May 12, 2016 termination of Plaintiff's benefits. As noted in the Plan, "Usual Occupation" and "Substantial and Material Acts" are not specific to the employee's responsibilities, but to what the customary duties are for other employees engaged in that same Usual Occupation. (Plan

at 24.) Considering Kaiser's Quality Analyst job description, Rossworn's vocational analysis determined it was the "Usual Occupation" of a "Compliance Officer" as outlined in the DoT. (AR 213.) A Kaiser Quality Analyst

> supports the effective execution of quality improvement plan program activities for assigned medical staff services and departments. Guides the medical staff in areas of interpretation of regulatory and licensing requirements and interpretation and implementation of quality improvement processes. Coordinates the development of quality improvement indicators. Prepares chiefs and chairs for all surveys.

(AR 213.) Rossworn outlined the following "Compliance Officer" duties:

> Directs and coordinates activities of compliance department of institution to ensure corporate policies and procedures comply with federal and state laws, rules, and regulations. Reviews, analyzes, and interprets new, proposed, or revised laws, rules, and regulations to assess effect of laws or revisions on corporate institutions, policies, and procedures. Establishes guidelines for and directs implementation of monitoring of new procedures and policies to comply with new and revised laws and regulations. Directs design, revision, and rewriting of establishment guidelines, forms, reports, and documents to comply with interpretation of new or revised laws. Directs or arranges for training programs to instruct staff on changes to laws and regulations and compliance with new policies and procedures. Maintains technical knowledge of compliance law and provides written or oral answers to compliance questions from corporate officers or staff.

(AR 213.) The Court notes Rossworn's reproduction of the Compliance Officer description omits phrasing about compliance departments of securities or financial institutions. (Frugoli Email.) However, the Court does not find this distinction significant, as reviewing policies for compliance would seem to require similar physical demands. The Court finds the description of "Compliance Officer" adequately describes Plaintiff's responsibilities as a Quality Analyst.

Rossworn's analysis noted that this position is "sedentary" in terms of physical demands. (AR 214.) Sedentary positions "require occasional reaching, handling, and fingering," "exerting up to 10 pounds of force occasionally and/or negligible amount of force frequently to lift, carry, push, pull or otherwise move objects." (AR 214.) Without adopting any one doctor's restrictions, Rossworn concluded Plaintiff was able to perform these responsibilities with her physical restrictions. (AR 214.) Rossworn was incorrect. As addressed above, the only persuasive restrictions are those recommended by Drs. Hesseltine and Peters. Under Dr. Hesseltine's restrictions, Plaintiff cannot perform "occasional reaching, handling, and fingering," as she cannot type. Under Dr. Peters's restrictions, Plaintiff would only be able to perform her Usual Occupation if a daily total of 60 minutes of typing qualifies as "occasional." The Court

finds that a daily maximum of 60 minutes of typing renders Plaintiff unable to occasionally handle and finger such that she can perform her Usual Occupation. Alternatively, the Court notes the DoT title on which Rossworn relies is from 1991, and Rossworn fails to account for rapid technological advances that would shift the work of Compliance Officers onto computers. Accounting for the technological changes since 1991, the Court finds a Compliance Officer physical demands require more than just "occasional ... handling and fingering." Thus, Plaintiff's 60 minute maximum for typing renders her unable to perform the duties of a Compliance Officer. The evidence which the Court accords the most credibility shows Plaintiff is unable to perform her Usual Occupation and is "totally disabled." Thus, MetLife improperly terminated her benefits.

V. CONCLUSION

***14** Based on its findings of fact and conclusions of law, the Court concludes that Plaintiff has adequately established she was "totally disabled" under the terms of the plan during the 24-month period. [4] Accordingly, the Court reverses MetLife's May 12, 2016 decision to terminate Plaintiff's LTD benefits during the 24-month period.

IT IS SO ORDERED.
Initials of Deputy Clerk MG

All Citations

Slip Copy, 2019 WL 1894752

Footnotes

1 After the 24-month period, the definition of "totally disabled" changes. (Plan at 23.) Accordingly, the Court only considers Plaintiff's entitlement to benefits in this 24 month period.

2 The Court notes the version of this title provided to MetLife by a DoL employee in the Frugoli Email indicates a Compliance Officers "[d]irects and coordinates activities of compliance department of securities or financial institution ...." (Frugoli Email (emphasis added).)

3 Plaintiff asserts this letter adopts Dr. Peters's opinion that she was only able to type for 10 minutes per hour with a daily maximum of 60 minutes. (Pl. Br. at 14.) This is incorrect. The denial letter summarizes the recommendation of Dr. West, Dr. Hesseltine, and Dr. Peters but does not adopt any one recommendation. (AR 199.) The only inference possible is that MetLife did not adopt the opinion of Dr. Hesseltine, who determined Plaintiff should not type at all.

4 The Court makes no finding as to whether Plaintiff was "totally disabled" after the 24-month period of the Plan.