FRANCIS McGUIGAN, Plaintiff, v. RELIANCE STANDARD LIFE INSURANCE COMPANY, Defendant.

CIVIL ACTION NO. 02-7691

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF PENNSYLVANIA

2003 U.S. Dist. LEXIS 17593*; *31 Employee Benefits Cas. (BNA) 2999

October 6, 2003, Decided
October 6, 2003, Filed

PRIOR HISTORY: *McGuigan v. Reliance Std. Life Ins. Co., 256 F. Supp. 2d 345, 2003 U.S. Dist. LEXIS 5718 (E.D. Pa., 2003)*

DISPOSITION: Plaintiff's motion for summary judgment was granted. Defendant's motion for summary judgment was denied. Plaintiff's request for attorney's fees, costs and expenses was denied.

COUNSEL: [*1] For Francis McGuigan, PLAINTIFF: Alan L Frank, Marc H Snyder, Frank & Rosen, Elkins Park, PA USA.

For Reliance Standard Life Insurance Company, DEFENDANT: Heather J Holloway, Rawle & Henderson LLP, Philadelphia, PA USA.

JUDGES: Robert F. Kelly, Sr. J.

OPINION BY: Robert F. Kelly

OPINION

MEMORANDUM

ROBERT F. KELLY, Sr. J.

OCTOBER 6, 2003

Presently pending before this Court are Cross-Motions for Summary Judgment of Plaintiff Francis McGuigan ("McGuigan") and Defendant Reliance Standard Life Insurance Company ("Reliance"). For the following reasons, McGuigan's Motion will be granted and Reliance's Motion will be denied.

I. BACKGROUND

McGuigan commenced this action against Reliance on October 3, 2002. The action is based upon Reliance's denial of McGuigan's claim for long-term disability benefits. The insurance policy involved in this case is an employee benefit plan and thus this action was brought under the *Employee Retirement Income Security Act of 1974 ("ERISA"), 29 U.S.C. §§ 1001 et seq.*

McGuigan was continuously employed by Heraeus Electro-Nite Co. ("Heraeus") as a Distribution Manager from February 27, 1984 until February 21, 2001. As a benefit **[*2]** for Hereaus employees, the company contracted with Reliance to fund and administer claims for long term disability benefits through an insurance policy (the "Plan") Reliance issued to Heraeus. The Plan states that Reliance will pay benefits for a "Total Disability" as a result of "Injury or Sickness" if: "1)

during the Elimination Period, [1] an Insured cannot perform each and every material duty of his/her regular occupation; and 2) while a Monthly Benefit is payable, an Insured cannot perform the material duties of his/her regular occupation." (Admin. R. at 63). The Plan calls for payment of 60% of an employee's salary if the employee qualifies for benefits. Notably, McGuigan was covered under the Plan as an employee of Heraeus.

> 1 The Plan specifically defines an Elimination Period as 90 consecutive days of Total Disability. In this case, this period would have run from approximately February 21, 2001 until May 21, 2001.

McGuigan has experienced significant heart problems since the early 1990's. Significantly, **[*3]** McGuigan suffered an anterior wall myocardial infraction in 1991, had a coronary bypass in 1993 and has had several cardiac catheterizations. McGuigan has regularly been treated by a cardiologist, Steven G. Hess, M.D. ("Dr. Hess"), since his myocardial infraction in 1991. Dr. Hess has continuously monitored McGuigan's condition and treated him for severe coronary artery disease and hypertension. The record also reveals that on numerous occasions since the onset of his cardiac complications, McGuigan informed Dr. Hess of assorted problems he had with chest heaviness/tightness, shortness of breath and lightheadedness.

On February 21, 2001, while driving home from work, McGuigan experienced an episode of lightheadedness, breathlessness and chest tightness. McGuigan visited Dr. Hess shortly after this incident. In relation to the visit, Dr. Hess noted that McGuigan had "vague anterior chest discomfort with anxiety, but not with exercise such as the treadmill." (Admin. R. at 122). On February 23, 2001, Dr. Hess issued a disability note that informed Heraeus that McGuigan was not to return to work until he was cleared following further testing. McGuigan, however, never returned to work **[*4]** at Heraeus after February 21, 2001.

In March 2001, McGuigan submitted a claim for long-term disability benefits pursuant to the Plan. In conjunction with this claim, Dr. Hess completed Reliance's Attending Physician Statement, where he indicated McGuigan had achieved maximum medical improvement and that he was unsure when and if McGuigan could return to work based on his cardiac condition. On the same form, Dr. Hess indicated that McGuigan had Class 3 limitations according to the American Heart Association ("AHA") scale. According to the AHA scale, patients in this category have marked limitation of physical activity. Specifically, they are comfortable at rest, but less than ordinary activity causes fatigue, palpitation, dyspnea or anginal pain. (Pl.'s Mot. for Summ. J. at 3).

Subsequently, McGuigan continued to receive treatment from Dr. Hess. McGuigan's complete medical file and records were sent to Reliance in order for it to make a claim determination. On July 17, 2001, Reliance denied McGuigan's claim for benefits on the basis that McGuigan had not demonstrated a "Total Disability" under the Plan. This determination was made after McGuigan's claim and file were reviewed by **[*5]** a claims administrator and an in-house nurse. The denial letter was based primarily on the conclusion that McGuigan was capable of the sedentary level of work required by his position. The denial letter placed particular significance on a March 7, 2001 exercise stress test and Holter Monitor test that showed negative findings.

On September 11, 2001, McGuigan filed a timely appeal of the denial of his claim. During the appeals process, McGuigan forwarded to Reliance all additional medical documentation and physician reports that the insurance company would need in evaluating the appeal. Significantly, in one report dated October 15, 2001, Dr. Hess made the following statement concerning McGuigan's cardiac condition:

> I have been following Mr. McGuigan for years, and while working, he has never had a controlled blood pressure in my office. This includes employment that is entirely sedentary. Since he quit working, his blood pressure has been consistently controlled . . . With uncontrolled hypertension, he will suffer progressive remodeling and eventually develop end-stage heart disease and refractory congestive heart failure.

(Admin. R. at 149-50). Further, Dr. Hess **[*6]** concluded that McGuigan was so susceptible to stress related to employment that the patient could no longer participate in any type of "gainful employment" without a loss of control of his blood pressure. (Id.). In the same report,

Dr. Hess stated that "because of frequent episodes of lightheadedness and chest discomfort, [McGuigan] should not participate in any type of exertion." (Id.). Specifically, Dr. Hess declared that McGuigan should avoid "prolonged standing or sitting" and "lifting, reaching, or bending." (Id.). Dr. Hess summarized his findings and concluded that McGuigan's "daily activities are limited to the point where he cannot carry out gainful employment and certainly not maintain satisfactory employment." (Id.)

On October 23, 2001, McGuigan underwent a nuclear stress test that showed a "strongly positive nuclear scan for multivessel coronary artery disease with moderately to severely decreased left ventricular function." (Admin. R. at 152). The test also revealed that McGuigan had symptoms suggestive of ischemia. (Id.). Subsequently, in furtherance of the appeal review process, Reliance consulted a cardiologist, Marvin Goldstein, M.D. ("Dr. Goldstein") **[*7]** to review McGuigan's file and offer an opinion. In turn, Dr. Goldstein issued two brief reports to Reliance in which he found that McGuigan was not disabled within the relevant coverage period. Goldstein's opinion relied heavily on the March 2001 exercise stress test that displayed negative findings. Significantly, in his two reports, Goldstein made no mention of Dr. Hess' opinions and conclusions relating to McGuigan's potential to develop end-stage heart disease if he was subject to further occupational stress. Notably, Goldstein did find that McGuigan had a "significant impairment" as of October 23, 2001, based on the results of the nuclear stress test. (Admin. R. at 180). However, Goldstein opined that there was no "objective" evidence of impairment before this date.

Thereafter, via a letter dated January 15, 2002, Reliance denied McGuigan's appeal. This denial letter essentially stated four reasons for the rejection of the appeal. First, Reliance claimed there was no objective evidence that McGuigan was unable to perform his sedentary position at Hereaus. Second, Reliance stated that Dr. Hess' link between McGuigan's occupational stress and end-stage heart disease was irrelevant **[*8]** since the Plan did not offer "monthly benefits due to the possibility of a future deterioration of a person's health." [2] (Admin. R. at 4). Third, the denial letter acknowledged that McGuigan had an impairment as of October 23, 2001, as a result of the test results from the nuclear stress test. Reliance, however, concluded that there was no objective evidence to support a total disability as of February 21, 2001. Finally, the denial letter emphasized that McGuigan had worked for numerous years prior to his disability claim while experiencing many of the same symptoms that currently ailed him. As a result of Reliance's final determination, which exhausted all administrative remedies, McGuigan filed suit in this Court. [3]

2 The appeal denial letter also cited an article by Mark A. Hlatky, M.D. entitled Job Strain and the Prevalence and Outcome of Coronary Artery Disease. This article questioned the correlation between occupational stress and cardiac problems.

3 The Court notes that on September 13, 2002, McGuigan was awarded Social Security Disability Benefits based on a Administrative Law Judge's determination that McGuigan was disabled, as a result of a cardiac impairment, as of February 21, 2001. The findings and decision of the Administrative Law Judge were not a part of the record that Reliance considered in deciding McGuigan's claim, and therefore, will not be considered by this Court in evaluating Reliance's claim decision.

[*9] II. SUMMARY JUDGMENT STANDARD OF REVIEW

Pursuant to *Rule 56(c) of the Federal Rules of Civil Procedure*, summary judgment is proper "if there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law." *FED. R. CIV. P. 56(c)*. Essentially, the inquiry is "whether the evidence presents a sufficient disagreement to require submission to the jury or whether it is so one-sided that one party must prevail as a matter of law." *Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 251-252, 91 L. Ed. 2d 202, 106 S. Ct. 2505 (1986)*. The moving party has the initial burden of informing the court of the basis for the motion and identifying those portions of the record that demonstrate the absence of a genuine issue of material fact. *Celotex Corp. v. Catrett, 477 U.S. 317, 323, 91 L. Ed. 2d 265, 106 S. Ct. 2548 (1986)*. An issue is genuine only if there is a sufficient evidentiary basis on which a reasonable jury could find for the non-moving party. *Anderson, 477 U.S. at 249*. A factual dispute is material only **[*10]** if it might affect the outcome of the suit under governing law. *Id. at 248*.

To defeat summary judgment, the non-moving party

cannot rest on the pleadings, but rather that party must go beyond the pleadings and present "specific facts showing that there is a genuine issue for trial." *FED. R. CIV. P. 56(e)*. Similarly, the non-moving party cannot rely on unsupported assertions, conclusory allegations, or mere suspicions in attempting to survive a summary judgment motion. *Williams v. Borough of W. Chester, 891 F.2d 458, 460 (3d Cir. 1989)*(citing *Celotex, 477 U.S. at 325 (1986))*. Further, the non-moving party has the burden of producing evidence to establish *prima facie* each element of its claim. *Celotex, 477 U.S. at 322-23*. If the court, in viewing all reasonable inferences in favor of the non-moving party, determines that there is no genuine issue of material fact, then summary judgment is proper. *Id. at 322*; *Wisniewski v. Johns-Manville Corp., 812 F.2d 81, 83 (3d Cir. 1987)*. Finally, in considering cross-motions for summary judgment, the court **[*11]** must consider each party's motion individually. Each party bears the burden of demonstrating that there are no genuine issues of material fact. *Reinert v. Giorgio Foods, Inc., 15 F. Supp. 2d 589, 593-94 (E.D. Pa. 1998)*.

3. DISCUSSION

A. Standard of Review for ERISA Claim

Generally, the denial of benefits challenged pursuant to *29 U.S.C. § 1132(a)(1)(B)* is reviewed under a *de novo* standard. *Firestone Tire & Rubber Co. v. Bruch, 489 U.S. 101, 109, 103 L. Ed. 2d 80, 109 S. Ct. 948 (1989)*. Nevertheless, *ERISA* requires the reviewing court to apply a deferential arbitrary and capricious standard of review to benefits determinations when plan administrators are given discretionary authority to interpret the terms of the plan. *Abnathya v. Hoffmann-La Roche, Inc., 2 F.3d 40, 44-45 (3d Cir. 1993)*. The term "arbitrary and capricious" has been interpreted to mean "without reason, unsupported by substantial evidence or erroneous as a matter of law." *Id. at 45*. According to this deferential standard, the scope of review is narrow and the reviewing court is not at liberty to substitute its **[*12]** own judgment for that of the administrator in deciding a claimant's eligibility for benefits. Id.

The Supreme Court has also stated that "if a benefit plan gives discretion to an administrator or fiduciary who is operating under a conflict of interest, that conflict must be weighed as a factor in determining whether there is an abuse of discretion." *Firestone, 489 U.S. at 115*. The Court of Appeals for the Third Circuit ("Third Circuit") has interpreted this statement by the Supreme Court to mean that a "higher standard of review is required when reviewing benefits denials of insurance companies paying *ERISA* benefits out of their own funds." *Pinto v. Reliance Standard Life Ins. Co., 214 F.3d 377, 390 (3d Cir. 2000)*. A "heightened" arbitrary and capricious standard is applied when an insurance company both makes benefit eligibility determinations and pays benefits out of its own funds. *Id. at 378*. According to Pinto, when this conflict of interest exists, courts modify the arbitrary and capricious standard using a "sliding scale method, intensifying the degree of scrutiny to match the degree of conflict." *Id. at 379.* **[*13]**

In analyzing the degree of scrutiny, a court may consider the following factors: 1) the sophistication of the parties; 2) the information accessible to the parties; 3) the exact financial arrangement between the insurer and the company; 4) the current financial status of the fiduciary; and 5) any procedural irregularities in the decision-making process. *Id. at 392-93*; *Sapovits v. Fortis Benefits Ins. Co., No. C.A. 01-3628, 2002 U.S. Dist. LEXIS 24987, 2002 WL 31923047, at *5 (E.D. Pa. Dec. 30, 2002)*(stating that "scrutiny should be intensified if there are any procedural irregularities in the decision-making process"). Moreover, in contrast to a court's substantive review of the insurance company's decision, "a court is permitted to examine evidence outside of the administrative record" in setting the standard of review on the Pinto "sliding scale." *McLeod v. Hartford Life and Accident, Ins. Co., 247 F. Supp. 2d 650, 654 (E.D. Pa. 2003)*.

B. Standard of Review Analysis

In the instant case, the parties agree that Reliance had discretionary authority, pursuant to the Plan, to determine eligibility for disability benefits. Moreover, there is no dispute **[*14]** that Reliance had an inherent conflict of interest since it funded and administered the Plan. This Court, however, must determine the level of scrutiny that will be applied to Reliance's decision based on the extent of the conflict of interest in this matter. As the Third Circuit recently emphasized, the level of scrutiny is "more penetrating the greater is the suspicion of partiality, less penetrating the smaller the suspicion."*Lasser v. Reliance Std. Life Ins. Co., No. C.A. 02-4123, 146 F. Supp. 2d 619, 2003 WL 22146433, at *2 (3d Cir. 2003)*.

As previously stated, the Court is free to examine evidence outside the administrative record to evaluate the

administrator's conflict of interest or bias, in order to determine the appropriate standard of review. In the instant case, after a thorough review of evidence both outside and within the administrative record, the Court determines that a *substantially* heightened form of arbitrary and capricious review is appropriate. At this point, it should be noted that at oral argument on the Cross-Motions for Summary Judgment, both counsel agreed that the Court's review in this matter should be limited to the record set forth in **[*15]** the summary judgment papers because there were no outstanding issues of material fact that necessitated a trial. Thus, the parties are in agreement that no trial is necessary in setting the standard of review despite the fact that evidence outside the administrative record is admissible on this issue.

The Court finds that there are numerous reasons for substantially increasing the standard of review on the Pinto "sliding scale." In general, in relation to the factors raised in*Pinto*, the sophistication of the parties and a vast array of procedural irregularities during Reliance's review process necessitate a considerably heightened form of arbitrary and capricious review. In terms of procedural irregularities, numerous actions by Reliance during the review of McGuigan's claim suggest that bias and a conflict of interest influenced the decision to deny McGuigan's claim for disability benefits.

As a preliminary matter, the fact that McGuigan was not a sophisticated applicant for benefits suggests that a higher degree of heightened review is appropriate. The fact that McGuigan was not on equal footing with Reliance raises the standard of review in this case. *Hevener v. Paul Revere Life Ins. Co., No. C.A. 02-415, 2002 U.S. Dist. LEXIS 11751, 2002 WL 1969492, at *3 (E.D. Pa. 2002)* **[*16]** ("There is no evidence here to suggest that Plaintiff was a sophisticated applicant for benefits who would be on equal footing with the Defendant, thus suggesting the appropriateness of heightened review."). More importantly, in terms of the standard of review, throughout Reliance's review of McGuigan's claim it displayed an inattentive process and a propensity to engage in a selective, self-serving examination of the available medical records, physician reports and medical evidence.

There are numerous ways in which Reliance performed a self-serving, selective and incomplete review of McGuigan's medical records. First, in its denial letters and before this Court, Reliance justified the decision by pointing out that Dr. Hess indicated on specific forms that McGuigan could perform sedentary work. The emphasis on this evidence was self-serving because it ignored the fact that Dr. Hess contemporaneously stated that McGuigan had reached maximum medical improvement, had classified McGuigan as having Class 3 limitations and he was unable to predict when and if McGuigan could return to his position at Heraeus. Furthermore, this emphasis on physical capacity ignored **[*17]** Dr. Hess' conclusion that the risk occupational stress posed to McGuigan's cardiac health was the primary reason McGuigan could no longer be employed. Courts have examined the administrative records in similar *ERISA* cases with closer scrutiny when administrators have engaged in this type of behavior when reviewing the reports of treating physicians. *Friess v. Reliance Standard Life Ins. Co., 122 F. Supp. 2d 566, 575 (E.D. Pa. 2000)*.

Second, evidence of bias is demonstrated by the fact that Reliance failed to consider adequately Dr. Hess' conclusion that continuing occupational stress would cause McGuigan to develop end-stage heart disease. This opinion was only summarily addressed in Reliance's denial letters and was completely ignored by Reliance's consulting cardiologist (Dr. Goldstein) in the reports that he authored and that Reliance relied on in denying McGuigan's appeal. This almost complete failure to address the heart of McGuigan's disability claim, [4] along with the failure to obtain any professional opinion on this important medical issue, suggests that the level of scrutiny should be raised. Again, this type of review that displays procedural bias has **[*18]** been utilized by the courts in heightening the standard of review. *Weinberger v. Reliance Std. Life Ins. Co., No. 01-3627, 54 Fed. Appx. 553, 2002 WL 31746546, at *3 (3d Cir. 2002)*(finding decision-making procedure troubling because the "administrator rejected the only medical evidence by a physician who had examined the plaintiff, and [the physician's] consistent opinions that [the plaintiff] was indeed totally disabled . . . were not contradicted by any other professional opinion").

> 4 Reliance's only response to Dr. Hess' position was that the Plan did not "provide monthly benefits due to the possibility of a future deterioration of a person's health." (Admin. R. at 4). Moreover, Reliance attached an article to the denial letter that questioned the impact of job

> stress on cardiac conditions. Of course, the attachment of this *one* article was in and of itself self-serving because of the prevalence of studies that find a strong correlation between occupational stress and severe cardiac conditions. (Pl.'s Mot. for Summ. J., Ex. G). This type of adversarial use of available medical studies is simply another indication that bias clouded Reliance's review of McGuigan's claim. The availability of these articles, set forth by McGuigan for the first time in his Motion papers, can be considered at this level of the analysis because evidence beyond the administrative record can be considered in setting the standard of review. In contrast, the substance of these articles will not be considered in determining whether Reliance was arbitrary and capricious in denying McGuigan's claim.

[*19] Finally, Reliance showed a tendency to be self-serving in the review of the objective medical evidence related to McGuigan's claim. Specifically, Reliance and its consulting cardiologist focused on the March 2001 stress test as the critical objective evidence that McGuigan was not disabled as of February 21, 2001. This biased review of the record ignored McGuigan's long history of cardiac problems including, but not limited to, a 1991 heart attack and the need for a coronary bypass in 1993, that were recorded in objective medical records that were before Reliance when it made the claim decision. McGuigan's cardiac history, combined with his medical condition as of February 2001, helped form the foundation for Dr. Hess' conclusion that further occupational stress would cause McGuigan to develop end-stage heart disease and refractory congestive heart failure. Reliance also dismissed the positive test results from the October nuclear stress test as irrelevant and not indicative of McGuigan's condition as of February 21, 2001. This review ignored the fact that the more detailed and thorough nuclear stress test may have revealed findings (i.e. indications of ischemia) that dated back to **[*20]** the relevant disability period. Instead, Reliance gave no weight to the nuclear stress test because of the date on which it was performed and because of the results of earlier treadmill stress test that was performed in March 2001. This substantial evidence of a biased review of the medical records calls for the standard of review to be substantially heightened on the*Pinto* "sliding scale."

In the instant matter, there is also evidence that Reliance demonstrated an inattentive process in reviewing McGuigan's claim. For example, in its initial review of McGuigan's claim, Reliance merely had a claims administrator and an in-house nurse examine the file. At that stage in the review, Reliance did not have a cardiologist or physician of any sort review the claim. Moreover, at no point during the entire review process did Reliance make any attempt to contact Dr. Hess about his findings, despite the fact that his ultimate conclusion related to the risks of occupational stress on McGuigan's health were almost completely ignored by Reliance. The Court recognizes that Pinto makes clear that an insurance company is under no specific duty to gather information. *Pinto, 214 F.3d at 394 n.8*. **[*21]** Further, "plan administrators are not obliged to accord special deference to the opinions of treating physicians." *Black & Decker Disability Plan v. Nord 538 U.S. 822, 155 L. Ed. 2d 1034, 123 S. Ct. 1965, 1967-68 (2003)*. Nevertheless, as courts have found, an "unreasonably lax investigation" or an "inattentive process" can be considered in heightening the standard of review. *Friess, 122 F. Supp. 2d at 574-75*. In this case, the Court finds that Reliance's failure to contact Dr. Hess concerning his ultimate findings, after summarily addressing them in the claim review, is evidence of an inattentive process. Specifically, Reliance's treatment of the opinions and conclusions of McGuigan's long term cardiologist appeared to be cursory at best. While an administrator does not have to give special deference to the opinions of treating physicians, a failure to consider seriously a treating physician's conclusions is evidence of an inattentive review process. The Court concludes that Reliance's handling of this matter raises suspicions of a biased review of McGuigan's claim.

Based on the foregoing, there is substantial evidence that bias and a conflict of interest influenced **[*22]** Reliance's decision to deny McGuigan's claim. Thus, the Court finds that it will substantially increase the standard of review on the *Pinto* "sliding scale." The Court will review Reliance decision's according to a substantially heightened form of arbitrary and capricious review.

C. Review of Reliance's Claim Determination

After deciding that the appropriate standard of review is a substantially heightened form of arbitrary and capricious reveiw, the Court must now determine whether Reliance erroneously denied McGuigan's claim in light of where this case falls on the Pinto "sliding scale." As

previously discussed, this Court will perform a fairly penetrating review because of the manner in which bias and a conflict of interest appeared to shape Reliance's decision. As opposed to the standard of review analysis, the Court may only review "that evidence that was before the administrator when [it] made the decision being reviewed." *Mitchell v. Eastman Kodak Co., 113 F.3d 433, 440 (3d Cir. 1997)*. The Court notes that some of the evidence within the administrative record that indicates how Reliance's conflict impacted its claim decision is factored into **[*23]** the analysis of whether Reliance acted arbitrarily and capriciously in light of the heightened standard of review. *Cohen v. Standard Life Insurance Co., 155 F. Supp. 2d 346, 354-55 (E.D. Pa. 2001)* (considering conflict of interest evidence in determining whether defendant arbitrarily and capriciously denied plaintiff's claim). Based on the following reasons, and in light of the substantially heightened standard of review in this case, the Court finds that Reliance acted arbitrarily and capriciously in denying McGuigan's claim for benefits.

As with most cases of this type, the language of the policy coverage is significant in the analysis of the administrator's decision. As previously noted, the Plan provides that Reliance will pay benefits for a "Total Disability" as a result of "Injury or Sickness" if: "1) during the Elimination Period, an Insured cannot perform each and every material duty of his/her regular occupation; and 2) while a Monthly Benefit is payable, an Insured cannot perform the material duties of his/her regular occupation." (Admin. R. at 63). It is important to note that the burden of proving entitlement to benefits under any policy rests upon the **[*24]** claimant. *Lasser v. Reliance Standard Life Ins. Co., 146 F. Supp. 2d 619, 639 (D.N.J. 2001)*, aff'd, *344 F.3d 381, 2003 U.S. App. LEXIS 19345, 2003 WL 22146433 (3d Cir. Sept. 18, 2003)*. Thus, a key question in this case is whether McGuigan met his burden of proof in proving to Reliance that he could not "perform each and every material duty of his regular occupation" as of February 21, 2001.

The medical evidence and physician reports that are a part of the administrative record support McGuigan's claimed "Total Disability" pursuant to the language of the Plan. Reliance was aware that McGuigan's disability claim was based on his extensive cardiac history/uncontrolled hypertension and a cardiac incident of February 2001 with subsequent continued symptoms, as well as Dr. Hess' conclusion that further occupational stress would result in McGuigan developing end-stage heart disease and refractory congestive heart failure. Throughout the administrative record there are reports from Dr. Hess that recorded the physical impact of stress and anxiety on McGuigan (i.e. chest discomfort). As previously noted, Dr. Hess made his ultimate findings clear in a report when he stated "[McGuigan] is so prone **[*25]** to stress related to employment, I feel he cannot participate in any type of gainful employment without loss of control of his blood pressure." (Admin. R. at 149-50). In the same report, Dr. Hess declared that "with uncontrolled hypertension, he will suffer progressive remodeling and eventually develop end-stage heart disease and refractory congestive heart failure." Id. Even prior to this report, Dr. Hess indicated on Reliance physical assessment forms that he was unsure if McGuigan could ever return to work. These facts demonstrate that Reliance knew that McGuigan's long-term treating cardiologist had classified him as disabled from employment and it was also aware of the basis for that determination.

As previously noted, Reliance denied McGuigan's claim on the basis that McGuigan had failed to prove he was "Totally Disabled" under the Plan. After a thorough review of the record, the Court finds this determination to be unreasonable under the heightened standard of review. In a recent Third Circuit case that is strikingly similar to the instant case, the Court clarified the burden of proof in disability cases. In that case, the Third Circuit stated that:

> once a claimant **[*26]** makes a *prima facie* showing of disability through physicians' reports (as [claimant] has done here through physicians' reports stating that stress will exacerbate his heart condition) and if the insurer wishes to call into question the scientific basis of those reports (as Reliance has attempted to do so here), then the burden will lie with the insurer to support the basis of its objections.

*Lasser v. Reliance Standard Life Insurance Co., 2003 WL 22146433, at *7*. Further, the Third Circuit emphasized that "while the burden of proving disability ultimately lies with [the claimant], to require him to provide statistics detailing the harm that working in his regular occupation might precipitate . . . raises the bar too high." Id.

The Court notes that the Lasser case also involved a claimant asserting a disability pursuant to a Reliance insurance policy based on the risk of occupational stress to his future cardiac condition. Based on this burden of proof standard clarified by*Lasser*, the Court finds that McGuigan met his *prima facie* burden of proving that he could no longer perform "each and every material duty" of his "regular occupation" **[*27]** as a mid-level manager at Hereaus because of the risk that the occupational stress would have on his cardiac condition. The medical records show that stress and anxiety has had a detrimental impact on McGuigan's physical condition. Further, the medical records display McGuigan's continued problems with uncontrolled blood pressure. In fact, in the October 2001 report that is part of the administrative record, Dr. Hess specifically emphasized that McGuigan's blood pressure was consistently controlled after he stopped working and that this was the first time he had seen his patient with controlled blood pressure. Finally, as in Lasser, McGuigan attached a physician report stating that further occupational stress would have a devastating impact on his cardiac condition.

In actuality, in light of*Lasser*, the Court finds it was Reliance that failed to meet its burden to refute the basis of McGuigan's disability claim. After McGuigan made his *prima facie* showing, Reliance only summarily addressed and Reliance's consulting cardiologist completely ignored any link between occupational stress and further cardiac problems. In fact, Reliance's only response to this key component **[*28]** of McGuigan's claim was to state that the Plan did not provide benefits due the possibility of a future risk to health and to attach an article that questioned the link between occupational stress and further cardiac issues. This response was insufficient under Lasser because it failed to adequately address Dr. Hess' conclusion that McGuigan could no longer work because of the impact that occupational stress would have on his future health. Reliance did not obtain a professional opinion on this critical issue and the attachment of one article to the January denial letter was insufficient because it failed to address McGuigan's individual symptoms, cardiac condition and prior medical history. Thus, the nature of Reliance's consideration of this important issue displays the arbitrary and capricious nature of the claim decision.

In addition to Reliance's insufficient response to the occupational stress issue, the Court finds that Reliance's reasons for denying McGuigan's claim were unreasonable. The Court makes this finding despite the deference that is owed to Reliance even under a heightened standard of review. Most importantly, Reliance's contention that the Plan does not provide **[*29]** monthly benefits based on the risk of future harm is erroneous in this Circuit. In Lasser, both the District Court and the Third Circuit considered this precise issue in analyzing a similar policy in light of a claimant's disability claim based on the cardiac risks that occupational stress would pose to his health. In that case, the District Court emphasized that "it is a basic tenet of insurance law that an insured is disabled when the activity in question would aggravate a serious condition affecting the insured's health." *Lasser, 146 F. Supp. 2d at 628*. The Court also emphasized that an insured is considered disabled when he is unable to work without endangering his health or risking his life. Id.

The Third Circuit accepted the District Court's reasoning and found that "the risk that stress would cause future injury was sufficient to create a present disability." *Lasser, 2003 WL 22146433, at *7 n.12*. Specifically, the Third Circuit stated that "whether risk of future effects creates a present disability depends on the probability of the future risk's occurrence." Id. In considering the specific facts of the case, the Third Circuit **[*30]** recognized that stress does not only always incapacitate an individual, but found that the claimant's doctors had concluded that the stress was incapacitating in that case. Similarly, in the instant case, Dr. Hess has clearly stated that McGuigan can no longer return to work because of the risk that occupational stress would have on his health. The*Lasser* case makes clear that a future risk to a claimant's health can qualify as a present disability. Thus, Reliance's failure to consider the risk to McGuigan's future health as a basis for a disability claim was erroneous.

Additionally, it was unreasonable for Reliance to deny McGuigan's claim because he allegedly did not submit any objective evidence of his disability. Courts have rejected the proposition that a claimant must submit objective evidence of a disability when the insurance plan does not call for objective medical evidence. *Mitchell, 113 F.3d at 442-43*; *Cohen v. Standard Ins. Co., 155 F. Supp. 2d 346, 354 (E.D. Pa. 2001)*. In Cohen, as in this case, the insurance company's denial rested upon the conclusion that objective medical evidence did not support the claimant's disability claim **[*31]** that was based on the correlation between work stress and a

further cardiac risk. Id. In that case, the Court found that the claimant had "done more than what was required of him under the terms of the plan" by proving he had serious heart problems and by submitting his medical records, objective medical literature and the opinions of his treating physician. Id. In the instant action, McGuigan has provided Reliance with nearly the same evidence of a disability as the claimant provided in the Cohen case. [5] As in*Cohen*, Reliance's Plan does not require that objective evidence be submitted to obtain disability benefits. Thus, it was unreasonable for Reliance to deny McGuigan's claim even partially on this basis.

> 5 Unlike the *Cohen* case, McGuigan failed to submit objective medical literature that supported the correlation between work place stress and a future cardiac risk. The Court emphasizes that this evidence was not required under the Plan to entitle McGuigan to disability benefits. The Court notes, however, that submission of this type of evidence would have strengthened McGuigan's disability claim and clarified Dr. Hess' opinions and conclusions.

[*32] Further, the Court finds it was erroneous for Reliance to deny McGuigan's claim on the basis that there was allegedly no evidence that he was unable to perform the sedentary duties of his position at Hereaus. As previously discussed, this emphasis on physical capacity was misplaced because it ignored Dr. Hess' conclusion that occupational stress posed the primary threat to McGuigan's health. As the District Court emphasized in Lasser, a claimant may be capable of physical activity and still be disabled under an insurance policy. *Lasser, 146 F. Supp. 2d at 628*. Specifically, the Court stated that "the risk of a heart attack may be a disabling factor even through the claimant can sit, stand, or ambulate." Id. In this case, the risk to McGuigan's health was the focal point of McGuigan's claim and not his physical ability to perform his position. In relation to the language of the policy, the risk of end-stage heart disease and refractory congestive heart failure displayed that McGuigan could not "perform each and every material duty of his/her regular occupation." (Admin. R. at 63). Thus, Reliance was incorrect to deny McGuigan's claim based upon on his physical **[*33]** capacity to perform his position.

Finally, the Court concludes that Reliance incorrectly relied on the fact that McGuigan had performed his position for several previous years with many of the same symptoms he had during the relevant disability period. In Lasser, the Third Circuit considered a closely analogous issue and found that post-diagnosis employment is not dispositive of a disability claim when economic necessity forces the claimant to work. *Lasser, 2003 WL 22146433, at *7*. Moreover, other courts have specifically found that a claimant's status as a employee is not indicative of his/her ability to perform the material duties of his/her occupation. *Levinson v. Reliance Standard Life Ins. Co., 245 F.3d 1321, 1326 n.6 (11th Cir. 2001)*. The fact McGuigan was able to function as manager at Hereaus in the past, while suffering episodes of lightheadedness and chest discomfort, was not dispositive of whether he could "perform each and every material duty of his/her regular occupation" as of February 21, 2001. In fact, it is possible that at certain times in the past McGuigan was performing the duties of his job to his detriment because of the **[*34]** risk it posed to his health. McGuigan's past ability to perform his job should have had no bearing in Reliance's claim determination. The critical factor in this case is that Dr. Hess made a determination that as of February 21, 2001, McGuigan could no longer perform his position at Hereaus any longer without endangering his health. Thus, it was erroneous for Reliance to place substantial weight on the duties and functions that McGuigan could perform several years prior to the pertinent disability date. The relevant consideration should have been what duties McGuigan could perform as of February 21, 2001, and in the future, without endangering his health.

4. CONCLUSION

For the reasons set forth above, and in light of the substantially heightened form of review that is appropriate in this case due to the manner in which bias and a conflict of interest influenced Reliance's claim determination, the Court finds that Reliance arbitrarily and capriciously denied McGuigan the disability benefits he was entitled to under the Plan. Accordingly, the Court will grant McGuigan's Motion for Summary Judgment and deny Reliance's Motion for Summary Judgment.

An appropriate Order **[*35]** follows.

ORDER

AND NOW, this 6th day of October, 2003, upon consideration of Plaintiff's Motion for Summary Judgment (Doc. No. 9), Defendant's Motion for Summary

Judgment (Doc. No. 10) and the Responses and Replies thereto, it is hereby ORDERED that:

1. Defendant's Motion for Summary Judgment is DENIED;

2. Plaintiff's Motion for Summary Judgment is GRANTED and Plaintiff is entitled to all past due, present and future disability benefits under the Plan based on an eligibility date of February 21, 2001; and

3. Plaintiff's request for attorney's fees, costs and expenses is DENIED.

BY THE COURT

Robert F. Kelly, Sr. J.