STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Mary F. Jones, Petitioner, vs. South Carolina Public Employee Benefit Authority, Employee Insurance Program, Respondent.	)	Docket No. 16-ALJ-30-0430-AP **ORDER**

This matter is before the South Carolina Administrative Law Court (Court or ALC) pursuant to an appeal filed by Appellant Mary F. Jones (Appellant) from a final decision of the South Carolina Public Employee Benefit Authority (PEBA), Employee Insurance Program (EIP) denying her additional long-term disability (LTD) benefits.

BACKGROUND

The Appellant worked for the Medical University of South Carolina (MUSC) as a Registered Nurse (RN) Utilization Review Specialist. She retired from this position on June 28, 2013. As a state employee, the Appellant was insured for basic LTD benefits through EIP. Standard Insurance Company (Standard) administers this insurance.

When the Appellant ceased working, she filed an application for LTD benefits with Standard. She asserted that she was unable to continue working due to numerous health conditions, including hip dysplasia, severe scoliosis, stenosis, osteoarthritis, degenerative change, osteoporosis, sciatica, hypoplastic anemia, chronic pain, and possibly shingles.[1] On July 6, 2013,

[1] The Appellant was approved for disability benefits from the Social Security Administration (SSA) as well as state retirement disability benefits from the South Carolina Retirements System (SRS) dating from her cease-work date. But as PEBA LTD Appeals Committee correctly noted in its decision, the fact that the Appellant has been approved for disability benefits by the SSA and for disability retirement benefits from SRS has no bearing on whether the Appellant is also entitled to basic LTD benefits because the requirements for those benefits are governed by a different disability program – the South Carolina Basic Long Term Disability Income Benefit Plan. This plan has its own rules and criteria that must be satisfied. *See, e.g. Wilson v. State Budget and Control Bd. Employee Ins. Program*, 374 S.C. 300, 305-06, 648 S.E.2d 310, 313 (Ct. App. 2007) (holding that substantial evidence existed to support a denial of disability benefits to claimant despite the SSA's approval of social security benefits to claimant); *cf. Smith v. Cont'l Cas. Co.*, 369 F.3d 412, 420 (4th Cir. 2004) ("[W]hat qualifies as a disability for social security disability purposes does not necessarily qualify as a disability for purposes of an ERISA benefit plan—the benefits provided depend entirely on the language in the plan.").

the Appellant's employer, MUSC, completed an Employer's Statement in support of her application for disability benefits. On January 20, 2014, a vocational consultant reviewed the Appellant's job for classification as an occupation under the United States Department of Labor's *Dictionary of Occupational Titles* (DOT). The Appellant's "Own Occupation" was assigned as "Utilization Review Coordinator" under DOT Code 079.262-010, which is listed as "sedentary."[2] After reviewing the Appellant's medical records and her physician's opinions, Standard denied Appellant's LTD claim on March 19, 2014. The Appellant appealed this decision on April 21, 2014. Standard referred her claim to its Administrative Review Unit (ARU) for independent review. The ARU upheld Standard's decision. The Appellant then appealed to PEBA. On October 28, 2016, the PEBA LTD Appeals Committee (Committee) determined that the Appellant did not qualify for LTD benefits because she did not meet the "Own Occupation Definition of Disability" set forth in the South Carolina Basic Long Term Disability Income Benefit Plan (Plan) from her cease-work date of June 28, 2013 through the 90-day Benefit Waiting Period.

STANDARD OF REVIEW

The PEBA board of directors has the sole authority to establish the procedures by which EIP decisions are made, and those procedures constitute the exclusive remedy for EIP claims, "subject only to appellate judicial review consistent with the standards provided in Section 1-23-380." S.C. Code Ann. § 1-11-710(C) (2005). Accordingly, the Administrative Procedures Act's standard of review governs appeals from decisions of EIP. *See* S.C. Code Ann. §§ 1-23-380, -600(E) (Supp. 2016). Thus, when reviewing EIP decisions, the ALC must apply the following criteria:

> (5) The court may not substitute its judgment for the judgment of the agency as to the weight of the evidence on questions of fact. The court may affirm the decision of the agency or remand the case for further proceedings. The court may reverse or modify the decision if substantial rights of the appellant have been prejudiced because the administrative findings, inferences, conclusions, or decisions are:
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> (a) in violation of constitutional or statutory provisions;
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> (b) in excess of the statutory authority of the agency;

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[2] In its definition of "sedentary work," the DOT provides certain strength requirements and then includes the following: "Sedentary work involves sitting most of the time, but may involve walking or standing for brief periods of time. Jobs are sedentary if walking and standing are required only occasionally and all other sedentary criteria are met." "Occasionally" is defined earlier in the definition as being where an "activity or condition exists up to 1/3 of the time).

(c) made upon unlawful procedure;

(d) affected by other error of law;

(e) clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or

(f) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

Id. § 1-23-380(5) (Supp. 2016); *see also id.* § 1-23-600(E) (directing administrative law judges to conduct appellate review in the same manner prescribed in § 1-23-380).

A decision is supported by "substantial evidence" when the record as a whole allows reasonable minds to reach the same conclusion reached by the agency. *Bilton v. Best W. Royal Motor Lodge*, 282 S.C. 634, 321 S.E.2d 63 (Ct. App. 1984). The well-settled case law in this State has also interpreted the rule to mean that a decision will not be set aside simply because reasonable minds may differ on the judgment. *Lark v. Bi-Lo*, 276 S.C. 130, 276 S.E.2d 304 (1981). The fact that the record, when considered when considered in their totality, present the possibility of drawing two inconsistent conclusions from the evidence does not prevent the agency's finding from being supported by substantial evidence. *Waters v. S.C. Land Res. Conservation Comm'n*, 321 S.C. 219, 467 S.E.2d 913 (1996) and *Grant v. S.C. Coastal Council*, 319 S.C. 348, 461 S.E.2d 388 (1995). In applying the substantial evidence rule, the factual findings of the administrative agency are presumed to be correct. *Rodney v. Michelin Tire Co.*, 320 S.C. 515, 466 S.E.2d 357 (1996) (citing *Kearse v. State Health and Human Servs. Fin. Comm'n*, 318 S.C. 198, 456 S.E.2d 892 (1995)). Furthermore, the reviewing court may not substitute its judgment for that of the agency unless the agency's findings are clearly erroneous in view of the reliable, probative, and substantial evidence in the whole record. *Wilson v. State Budget and Control Bd. Employee Ins. Program*, 374 S.C. 300, 648 S.E.2d 310 (Ct. App. 2007). Finally, the party challenging an agency action has the burden of proving convincingly that the agency's decision is unsupported by substantial evidence. *Waters*, 321 S.C. 219, 467 S.E.2d 913 (citing *Hamm v. AT&T*, 302 S.C. 210, 394 S.E.2d 842 (1994)).

ISSUES ON APPEAL

I. Whether the Committee abused its discretion in determining that the Appellant did not meet the Own Occupation Definition of Disability and was thus not entitled to LTD benefits based solely on the material duties of her Own Occupation as it is performed in the national economy without regard to the specific tasks involved with her specific occupation; and

II. Whether substantial evidence exists in the record to support the Committee's decision.

DISCUSSION

I. Whether the Committee abused its discretion in determining that the Appellant did not meet the Own Occupation Definition of Disability and was thus not entitled to LTD benefits based solely on the material duties of her Own Occupation as it is performed in the national economy without regard to the specific tasks involved with her specific occupation.

The court will first address several of the Appellant's conditions that she reported after her cease-work date of June 28, 2013. In its decision, the Committee found that the Appellant's records first mention stenosis in April 2014 and sciatica in March 2014. To qualify for LTD benefits under the Plan, a disability must be identified as of a claimant's cease-work date and throughout the 90-day Benefit Waiting Period thereafter. Here, because the Appellant's stenosis and sciatica were not identified until after her cease-work date of June 28, 2013 (indeed, even after the 90-day Benefit Waiting Period), the court affirms the Committee's conclusions that there was no evidence that these two conditions "precluded [Appellant] from performing, with reasonable continuity, the Material Duties of her Own Occupation as of June 28, 2013, and beyond."

Turning to the issue regarding the remaining conditions, the Appellant argues that the Committee erred in its conclusion that her "specific job with her specific employer is not used to determine if she is disabled" but is instead based on her demonstration that "she is disabled, with reasonable continuity, from performing the Material Duties of her Own Occupation as it is performed in the national economy . . . ." The Appellant's position is that her specific job duties should have been considered, and that those duties reflect that her job was not sedentary but instead required "significant standing and walking as well as other physical duties . . . that she would be unable to do." The court agrees. The Committee erred in concluding that a claimant's specific job duties "may not be considered when considering the Material Duties of her Own Occupation."

To receive LTD benefits, a claimant must show that he/she is "Own Occupation Disabled." According to the Plan, an employee is disabled if a physical disease, injury, pregnancy, or mental disorder renders him/her "unable to perform with reasonable continuity the Material Duties of [his/her] Own Occupation." The Plan further provides, "Own Occupation means any employment, business, trade, profession, calling or vocation that involves Material Duties of the same general character as [the employee's] regular and ordinary employment with the Employer. [His or her] Own Occupation is not limited to [the employee's] job with [his/her] Employer." As mentioned

above, an employee's Own Occupation is determined by a vocation case manager, who matches the employee's job duties with an occupation listed in the DOT. That occupation's description/definition is then used to determine whether a claimant can perform the material duties of his/her occupation, and thus whether he/she is entitled to LTD benefits. The Appellant, whose job title with MUSC was an "RN Utilization Review Specialist," was classified with the occupation "Utilization Review Coordinator" under DOT Code 079.262-010, which was listed in the DOT as a "sedentary" occupation.

Neither party appears to dispute the fact that the material duties of the Appellant's Own Occupation need not be identical to those of her specific job. However, though an employee's Own Occupation and specific job duties need not be identical, they must involve the same "material duties of the same general character." To ensure that those material duties of the employee's Own Occupation accurately reflect those of his/her specific job so that an accurate determination can be made as to whether an employee can perform the actual material duties of his job, the Court concludes that PEBA must consider an employee's job's actual, material physical duties in performing its occupational analysis.

Though there is very little South Carolina case law in this area, the court's approach in this case is supported by a number of ERISA[3] cases, which, though not binding, are factually and legally analogous to the issue in this case and cogently reasoned, and are thus persuasive.[4] In one such case, *McDonough v. Aetna Life Ins. Co.*, the LTD plan, as in this case, required a determination of "whether the claimant was 'able to perform the material duties of [the employee's] own occupation' as 'normally performed in the national economy.'" 783 F.3d 374, 380 (1st Cir. 2015). The court observed:

> [A] reasoned determination of the existence of disability vel non requires, inter alia, a review of the material duties of the claimant's particular position and an assessment of how those duties align with the position as it is normally performed in the national economy. Only then can a claims administrator distill the medical

[3] "ERISA" refers to the Employee Retirement Income Security Act of 1974, 29 U.S.C. §§ 1001 et seq.

[4] The court finds the standard of review used in ERISA cases to be akin to this Court's standard in S.C. Code Ann. § 1-23-380(5). The ALC has also looked to ERISA cases in the past for guidance in its analysis of similar issues. *See, e.g., White v. S.C. Budget & Control Bd., Employee Ins. Program*, Docket No. 07-ALJ-30-0567-AP (S.C. Admin. Law Ct. September 22, 2008). It is also noteworthy that PEBA did not respond with any specificity to the cases cited by the Appellant, instead mentioning them in passing and sloughing them off as inapplicable because they were ERISA cases and not binding; in fact, PEBA provided no legal authority in response to this argument by the Appellant but instead focused on the language of the Plan.

> and vocational evidence, apply it to the occupational profile, and make a reasoned determination of whether or not the claimant is disabled.

Id. (citation omitted). In *McMillan v. AT&T Umbrella Ben. Plan No. 1*, 161 F. Supp. 3d 1069 (N.D. Ok. 2016), the insurer, in denying disability benefits to the claimant, relied on medical reports that failed to take into account or discuss the claimant's ability to perform the cognitive and travel requirements of his position. These medical reports were instead based solely on a referral from the insurer that described the claimant's job duties as simply "sedentary, involving prolonged sitting, talking, and typing." The court observed that "courts have recognized that denial of benefits is arbitrary and capricious if premised on medical reports which fail to consider one or more of the claimant's essential job functions." *McMillan*, 161 F. Supp. 3d at 1079 (citing *Caldwell v. Life Ins. Co. of N. Am.*, 287 F.3d 1276, 1285 (10th Cir.2002); *McDonough*, 783 F.3d at 380 (1st Cir. 2015); *Miller v. Am. Airlines, Inc.*, 632 F.3d 837, 854–55 (3d Cir. 2011); *Elliott v. Metro. Life Ins. Co.*, 473 F.3d 613, 619 (6th Cir.2006)). Based on the record before it, the court remanded the cases because "there [was] simply no way to tell whether the reviewers were applying a correct conception of the [plaintiff's job duties] ... or some other conception[,]" and "[w]ithout such information, the court [could not] conclude that the [the insurer's] denial of benefits [was] predicated on a reasonable basis." *Id.* at 1080 (citation omitted).

Finally, in *Sapp. V. Liberty Life Assur. Co. of Boston*, 210 F. Supp. 3d 846 (E.D. Va. 2016), a case factually analogous to the instant case, the claimant sought LTD benefits under an insurance plan. The vocational expert for the insurance company used a standard vocational resource to classify the claimant's occupation, which the DOT described as involving "perform[ance] at the sedentary and light levels of physical demand . . . ." Based on the vocational report, the insurance company denied claimant coverage, asserting that his "Own Occupation" was considered a "'light work' position under Department of Labor . . . occupations." However, the court found that the vocational expert's occupational analysis, though containing a general part of the claimant's job description, was missing the part of the job description detailing the actual physical demands/requirements of the job. Indeed, the court found that there was evidence that the claimant's job, the details of which were available to the insurance company, was much more physically demanding than a sedentary occupation. The court noted that the insurance company focused on the language of the policy. The court agreed with the insurance company that the policy stated that it would "consider the Covered Person's occupation as it is normally performed

in the national economy" and agreed that the claimant's "job and occupational physical requirements need not be identical." Nevertheless, the court pointed out:

> [T]he vocational analysis on which [the insurance company] relied did not examine the physical requirements of [the claimant's] job at all. The analysis skipped over a "review of the material duties of the claimant's particular position" and went straight to the material duties of the abstract sales positions listed on [the vocational resource]. As such, it is impossible to tell whether the job's physical requirements resemble those of the occupation because the job's physical requirements are completely absent from the analysis.
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> Under the terms of the policy, the job's Material and Substantial duties need not be identical to those of [the claimant's] Own Occupation, but it was unreasonable for [the insurance company] to not consider the job's actual physical duties in performing its occupational analysis. This is particularly true with regard to the information [the claimant] provided on appeal. The flaw in this process is highlighted by the fact that [the insurance company's] Own Occupation determination (which required only light or sedentary work) did not encompass [the claimant's] actual job (which required heavy lifting and significant driving). Because it is unreasonable to fail to consider the physical requirements of [the claimant's] actual job when making a disability determination, [the insurance company] abused its discretion in denying [the claimant's] LTD benefits.[5]

In this case, as in *Sapp*, the Committee relied solely on the Vocational Case Manager's classification of the Appellant' position based on the occupational description in the DOT. Accordingly, the Appellant's occupation was deemed to be sedentary. However, like *Sapp*, the Vocational Case Manager's report did not examine the Appellant's actual physical duties apart from review of patients and communications with other personnel. The report discusses physical demands and covered many physical activities (e.g., lifting, carrying pushing, climbing, balancing, stooping, kneeling, et al.), but it was curiously silent as to walking or otherwise performing functions upon one's feet, which is the very activity at issue in this case. Even the occupation description provided in the DOT for "Utilization Review Coordinator" makes no mention of walking, standing, or otherwise moving about on one's feet. But a review of Appellant's job description for "RN Utilization Review," as provided by her final employer (MUSC), specifically

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[5] The South Carolina Court of Appeals, in an unpublished opinion addressing LTD benefits, also incorporated the employee's specific job duties in its analysis. *See Ex Parte State Budget and Control Bd., Employee Ins. Program*, 2008 WL 9842600 *1 (S.C. Ct. App. 2008). Though the issue in that case was not whether the occupation accurately reflected the employee's specific job duties but was instead the subsequent question of whether there was substantial evidence to support the Appeals Committee's denial of LTD benefits, the Court of Appeals nevertheless set forth the employee's specific job description in its analysis before also setting forth the occupation classified by the vocational case manager. *Id.*

includes, under the category "Physical Requirements" and among other duties, "Ability to perform job functions while standing"; "Ability to perform job functions while walking"; "Ability to walk long distances between various buildings"; and "Ability to fully use both legs." And in parentheses following each of these physical requirements is one of the following indicators of the frequency or infrequency of each duty: (C), meaning "Continuous 6-8 hours per shift"; (F), meaning "Frequent 2-6 hours per shift";[6] or (I), meaning "Infrequent 0-2 hours per shift." Even under the "Physical Demands – Strength Ratings*" at the end of the Vocational Case Manager's report, "Light Work" is distinguished from "Sedentary Work" as follows, in pertinent part: "Physical demand requirements are in excess of those for Sedentary Work. Even though the weight lifted may be only a negligible amount, a job should be rated Light Work: (1) when it requires walking or standing to significant degree . . . ."

In this case, the physical activities of standing, walking, and walking long distances were each classified by the Appellant's employer with an "(F)" for "Frequent," and the ability to fully use both legs was classified with a "(C)" for "Continuous." This supports the fact that on July 6, 2013, the Appellant's employer completed an Employer's Statement in support of her application for disability benefits. The Committee, though disregarding the Appellant's specific job tasks, even acknowledged that "[Appellant's] job required her to walk to different hospital rooms and audit charts." However, neither the Vocational Case Manager's report nor the Committee's decision discusses walking or standing, which, according to the Appellant's employer, were important parts of her job. The extent of walking or standing is also a crucial factor in determining whether work is sedentary or is "light work" under the Vocational Case Manager's own classification system. Thus, this court concludes that the Vocational Case Manager erred in her classification of the Appellant's work as "sedentary" without any consideration of the actual physical duties of walking and standing involved in Appellant's specific job. The court further concludes that Standard and the Committee both erred in considering the Vocational Case

[6] It is noteworthy that there is a discrepancy between MUSC's standard for "frequent" and what the DOT considers to be "frequently" under its definition of "sedentary work." MUSC defines frequency in its job description for Appellant's position as 2-6 hours per shift, whereas the DOT defines "frequently" as "1/3 to 2/3 of the time" and "occasionally" as "up to 1/3 of the time." The DOT also states that "[j]obs are sedentary if walking and standing are required only occasionally and all other sedentary criteria are met." Assuming an employee works at least 8 hours per shift, 1/3 of the time would be approximately 2.67 hours. Therefore, if an employee is walking for 2.5 hours of her shift, then she could be considered walking "frequently" under MUSC's definition but only "occasionally" under the DOT's definition, and thus her position would be considered "sedentary" under the DOT even though the employer did not consider the position to be so.

Manager's classification alone while disregarding Appellant's specific job duties in their decisions to deny Appellant LTD benefits.

If an occupation from the DOT is assigned based on "Material Duties of the same general character as [the employee's] regular and ordinary employment," and that occupation is the basis for a determination of whether an employee can perform that occupation and thus whether he/she is entitled to LTD benefits, then surely the Court can review whether that determination was in error based on an omission of one or more of those "Material Duties" inherent in the employee's "regular and ordinary employment." Under PEBA's theory that only the Material Duties of a claimant's Own Occupation as it is performed in national economy can be considered, vocational case managers would be beyond judicial review for the erroneous classifications on their part that lead to erroneous determinations as to claimants' disabilities and entitlement to benefits, such as clearly occurred in this case. However, such judicial review is guaranteed by S.C. Code Ann. § 1-23-380 (Supp. 2016) and Article I, Section 22 of the South Carolina Constitution. Therefore, I conclude that PEBA must take into account the actual physical duties of a claimant's specific job when determining whether to grant LTD benefits, and that its failure to do so in this case was an abuse of discretion.

II. Whether substantial evidence exists in the record to support the Committee's decision.

In light of the disposition of the first issue on appeal, the court need not address this remaining issue. *See Futch v. McAllister Towing of Georgetown, Inc.*, 335 S.C. 598, 613, 518 S.E.2d 591, 598 (1999) (finding an appellate court need not address remaining issues on appeal when a decision in a prior issue is dispositive).

ORDER

IT IS THEREFORE ORDERED that PEBA's decision is **AFFIRMED IN PART, AND REVERSED AND REMANDED IN PART** for further consideration consistent with this Order.

AND IT IS SO ORDERED.

S. Phillip Lenski
Administrative Law Judge

August 30, 2017
Columbia, South Carolina