

**IN THE UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION**

JODI SUSON,	)	
	)	
Plaintiff,	)	No. 15 C 10817
	)	
v.	)	Judge Amy J. St. Eve
	)	
THE PNC FINANCIAL SERVICES	)	
GROUP, et al.,	)	
	)	
Defendants,	)	

**ORDER**

The Court, in its discretion, grants the remainder of Plaintiff’s motion to compel brought pursuant to Federal Rule of Civil Procedure 37(a). [45]. Defendants must comply with this ruling on or before December 12, 2016.

**BACKGROUND**

On January 29, 2016, Plaintiff filed an Amended Complaint seeking long-term disability (“LTD”) benefits under her employee benefit plan governed by ERISA. *See* 29 U.S.C. § 1132(a)(1)(B). On October 25, 2016, Plaintiff filed the present motion to compel discovery responses, after which the Executive Committee reassigned this lawsuit to the Court on October 26, 2016. On November 10, 2016, the Court held a status and motion hearing resolving certain issues in Plaintiff’s motion to compel. Before the Court is the remainder of Plaintiff’s motion to compel. For the following reasons, the Court, in its discretion, grants Plaintiff’s motion.

**LEGAL STANDARD**

When an ERISA plan explicitly gives the plan administrator discretion to interpret the terms of the plan, the Court’s review of a denial of benefits is whether the plan administrator’s decision was arbitrary and capricious. *See Rabinak v. United Bhd. of Carpenters Pension Fund*, 832 F.3d 750, 753 (7th Cir. 2016). Under this standard, discovery is usually limited to the information submitted to the plan’s administrator “when there can be no doubt the application was given a genuine evaluation.” *Semien v. Life Ins. Co. of N. Am.*, 436 F.3d 805, 813 (7th Cir. 2006) (quoting *Perlman v. Swiss Bank Corp. Comprehensive Disability Prot. Plan*, 195 F.3d 975 (7th Cir. 2000)). In other words, courts “consider only the evidence that was before the administrator when it made its decision.” *Hess v. Hartford Life & Accident Ins. Co.*, 274 F.3d 456, 461 (7th Cir. 2001). In general, district courts have broad discretion in relation to

controlling and directing discovery. *See Kuttner v. Zaruba*, 819 F.3d 970, 974 (7th Cir. 2016); *Spierer v. Rossman*, 798 F.3d 502, 507 (7th Cir. 2015).

## **BACKGROUND**

Plaintiff seeks LTD benefits under PNC's employee benefit plan governed by ERISA. She alleges that she worked as a financial services representative at PNC from July 1, 2012 until December 17, 2013, when she stopped working due to her disability. Plaintiff alleges that the neuropathy and bilateral carpal tunnel syndrome in her hands made her unable to perform the extensive computer usage her position required because of the pain and numbness in her hands. She also alleges that her spinal deformities further rendered her disabled.

When she stopped working on December 17, 2013, Plaintiff made a claim for short-term disability ("STD") benefits under another plan offered by PNC. After she was awarded STD benefits, Plaintiff attempted to return to work from February 3, 2014 until May 2, 2014, but ceased working due to her disabilities. When she ceased working, she was again awarded STD benefits under a PNC benefit plan through June 20, 2014, until her STD benefits were exhausted. She then claimed LTD benefits under the Plan on June 25, 2014, but the Plan denied her LTD claim on October 8, 2014.

## **ANALYSIS**

In the present motion, Plaintiff seeks discovery pertaining to her STD claim and benefits that Hewitt Associates, the STD fiduciary, granted. Defendants object to this request arguing that Plaintiff's STD file was not before the LTD claims administrator, Liberty Life Insurance Company ("Liberty"), and thus is not discoverable. The remaining discovery issues relate to the following requests:

### **Plaintiff's Request for Admission of Fact No. 1**

PNC has the authority to direct Hewitt Associates to produce a short-term disability claim file to the claim administrator of the Plan.

### **Plaintiff's Document Request No. 1**

The complete file considered to approve Suson for short-term disability benefits.

### **Plaintiff's Document Request No. 3**

All documents and instruments disclosing the eligibility criteria for short-term disability benefits.

At the November 10, 2016 motion hearing, the Court asked Plaintiff to provide information on whether she asked the LTD claim administrator to review the STD documents.

Plaintiff filed a reply on November 17, 2016 with supporting documentation that she requested the STD claim file from PNC and asked the LTD claim reviewer to obtain and review it.

In particular, on November 13, 2014, Plaintiff requested that PNC provide her with the STD file, and on November 26, 2014, PNC's manager of disability plans, Barbara Trant, emailed Plaintiff's counsel stating that PNC mailed the response. PNC, however, only sent the plan documents and not the STD claim file. Plaintiff's counsel followed-up with Ms. Trant informing her that he had not received the STD file. Thereafter, once counsel received the STD file in December 2014, it contained eighteen pages of PNC's notes, but no medical records or medical opinions. Within the documentation provided, however, PNC showed that it had provided full contact information of the STD claim manager to the LTD claim reviewer, along with the STD claim number, diagnoses and co-morbidities upon which it approved Plaintiff's STD claim, the specific dates Plaintiff stopped working and attempted to return to work, and the job title and physical exertion level of her job.

Meanwhile, in mid-August 2014, Plaintiff spoke with the STD claim administration, and the administrator stated that her claim was in "escalation" that day, meaning she was no longer eligible for STD benefits and that the claim was transferred to LTD. In general, "escalation" means that the STD claim transitions to LTD and the claim reviewer reviews the STD claim file to determine next steps. Plaintiff maintains that she had every reason to believe that because her STD file had escalated, PNC had forwarded any supporting documentation of her STD benefits to Liberty for review. Also, in her April 2015 letter requesting review of Liberty's denial of her LTD claim, Plaintiff pointed out that she had been approved for STD benefits.

Under these circumstances, Plaintiff asserts that when information that is relevant to a claimant's entitlement to benefits is within the control of the plan administrator, this information becomes part of the administrative record that the Court can consider in determining whether the plan administrator's discretionary decision was arbitrary and capricious. *See Hess v. Hartford Life & Accident Ins. Co.*, 274 F.3d 456, 462-63 (7th Cir. 2001). In *Hess*, the plan examiner had information referencing the relevant document at issue – an employment contract – although the examiner never saw the document. *Id.* at 462. The Seventh Circuit reasoned that because the examiner had been alerted to the document's existence, he easily could have obtained a copy through a simple telephone call the plaintiff's lawyer or employer. *Id.*; *see also Perry v. Sheet Metal Workers' Nat'l Pension Fund*, No. 03 C 4729, 2004 WL 2211614, at \*2 (N.D. Ill. Sept. 30, 2004) ("if an administrator is given notice that relevant documents exist, he cannot simply ignore documents and expect the district court to refuse to consider them simply because the administrator didn't read them."). The *Hess* court further cautioned that evidence of an examiner disregarding an applicant's submissions could support a finding of an arbitrary and capricious decision. *See Hess*, 274 F.3d at 462-63 ("The fact that the examiner did not bother to read pertinent evidence actually before him cannot shield [the plan's] decision from review.").

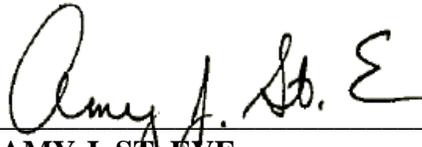
Here, Plaintiff not only contacted PNC about securing her STD claim file, PNC told her that her STD claim file was in "escalation" in August 2014, thus leading Plaintiff to believe that the LTD claim administrator would consider her STD claim file. There is also documentation

dated July 24, 2014, that PNC alerted Liberty about Plaintiff's STD file. Further, in her April 2015 letter requesting review of Liberty's denial of her LTD claim – which is part of the administrative record – Plaintiff pointed out that PNC's STD plan approved her STD benefits. The letter specifically states: “At the recommendation of her employer, Ms. Suson successfully applied for short-term disability (“STD”) benefits on December 17, 2013” and “PNC approved Ms. Suson's STD claim and awarded STD benefits through the maximum duration of the short-term disability benefit period; i.e., June 23, 2014.” (R. 52-6, Ex. 5, 4/6/15 Letter, at 1, AR 360.)

Accordingly, Liberty knew about Plaintiff's STD benefits and, although the STD files were not part of the administrative record, they were only a phone call away. *See Hess*, 274 F.3d at 462; *see, e.g., Crespo v. Unum Life Ins. Co. of Am.*, 294 F. Supp. 2d 980, 994 (N.D. Ill. 2003); *see also Harrison v. Wells Fargo Bank, N.A.*, 773 F.3d 15, 21 (4th Cir. 2014) (“It is not asking too much that, in the course of a ‘full and fair review,’ administrators notify a claimant of specific information that they were aware was missing and that was material to the success of the claim.”); *Helton v. AT & T Inc.*, 709 F.3d 343, 353 (4th Cir. 2013) (circuit courts “confronted with a plan administrator that knew or should have known of certain pieces of evidence outside of the administrative record have held that a district court properly considered such evidence on abuse of discretion review”); *Gaither v. Aetna Life Ins. Co.*, 394 F.3d 792, 808 (10th Cir. 2004) (“An ERISA fiduciary presented with a claim that a little more evidence may prove valid should seek to get to the truth of the matter.”).

Under these circumstances, the Court, in its discretion, grants Plaintiff's motion to compel discovery pertaining to her STD benefits, and orders Defendants to answer Plaintiff's Request for Admission of Fact No. 1, Plaintiff's Document Request No. 1, and Plaintiff's Document Request No. 3 by December 12, 2016.

**Dated:** November 28, 2016

  
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AMY J. ST. EVE  
United States District Court Judge