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SC Court of Appeals

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Jerry Arnette,

Appellant,

v.

South Carolina Public Employee Benefit
Authority, Employee Insurance Program,

Respondent.

Docket No.: 21-ALJ-30-0222-AP

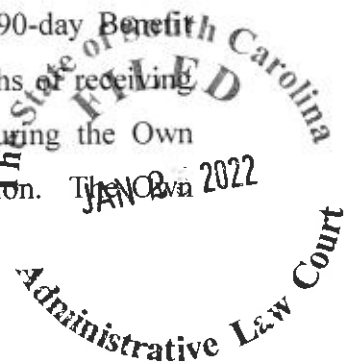
FINAL ORDER

This matter is before the Administrative Law Court (ALC or court) pursuant to a Notice of Appeal filed on June 25, 2021, by Jerry Arnette (Appellant). The Appellant seeks review of the final decision of the South Carolina Public Employee Benefit Authority, Employee Insurance Program (PEBA or Respondent), denying the Appellant's claim for additional long-term disability (LTD) benefits.

BACKGROUND

The Appellant worked for the South Carolina Department of Motor Vehicles as a Driver's License Examiner. His last day of work was February 13, 2017. The Appellant met the Own Occupation Definition of Disability as of February 14, 2017, which was his date of disability, in that he was unable to perform his light level Own Occupation of Driver's License Examiner due to neck, mid and low back pain, and radiculopathy. The Basic Long Term Disability (BLTD) plan has a 90-day Benefit Waiting Period, meaning benefits are payable after the 90-day waiting period if the claimant has been disabled as defined under the plan for the entire 90-day waiting period. The Appellant's 90-day Benefit Waiting Period ended on May 14, 2017, and because he had been disabled from performing his Own Occupation for the entire 90-day Benefit Waiting Period, his BLTD benefits commenced on May 15, 2017.

Under the BLTD plan, the Own Occupation Period occurs during the 90-day Benefit Waiting Period after the date of Disability, and the first twenty-four (24) months of receiving BLTD disability benefits. The Appellant was eligible for BLTD benefits during the Own Occupation Period because he could not perform his light level Own Occupation.



Occupation period ended on May 14, 2019. The BLTD further provides that no BLTD Benefits are payable after a person has been disabled for twenty-four (24) months during their entire lifetime, if the disability is caused or contributed to by chronic pain, musculoskeletal and connective tissue conditions. Therefore, for the Appellant to remain eligible for BLTD benefits after the twenty-four month benefit period ending on May 14, 2019, he must be disabled from performing any occupation due to a condition or conditions not limited by the twenty-four (24) month chronic pain, musculoskeletal and connective tissue conditions (the Any Occupation Period).

The Any Occupation Period began on May 15, 2019, the day after the Own Occupation Period expired. The Appellant would be disabled from Any Occupation if, as a result of a nonlimited physical disease, mental disorder or injury, he is unable to perform with reasonable continuity the material duties of any occupation. Any Occupation means any occupation or employment the Appellant is able to perform, whether due to education, training, or experience, which is available at one or more locations in the national economy, and in which the Appellant can be expected to earn at least sixty-five (65) percent of his Indexed Predisability Earnings within twelve (12) months following his return to work, regardless of whether the Appellant was working in that or any other occupation. The Standard Insurance Company (Standard) identified alternative sedentary level occupations for which the Appellant has the necessary education, training, and experience; that would pay at least sixty-five (65) percent of the Appellant's Indexed Predisability Earnings; and that are available at one or more locations in the national economy. These alternative sedentary level occupations are appointment clerk, customer complaint clerk, and customer service representative. Standard closed the Appellant's BLTD claim after May 14, 2019, because it determined that he had the capacity to perform the above enumerated alternative sedentary occupations under the Any Occupation standard. The Appellant appealed Standard's decision to close his BLTD claim to the South Carolina Public Employee Benefit Authority (PEBA), and in a letter dated June 17, 2021, PEBA determined that the Appellant's BLTD claim was properly closed after May 14, 2019. This appeal followed.

STANDARD OF REVIEW

PEBA's board of directors has the sole authority to establish the procedures by which Employee Insurance Plan (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) (2021). Accordingly, the Administrative Procedures Act’s standard of review governs appeals from decisions of EIP. See S.C. Code Ann. §§ 1-23-380(5) (2008).

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:

- (a) in violation of constitutional or statutory provisions;
- (b) in excess of the statutory authority of the agency;
- (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.

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 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

Whether PEBA's determination to close the Appellant's Basic Long Term Disability claim is supported by substantial evidence?

DISCUSSION

The Appellant argues that PEBA's decision to close his Basic Long Term Disability claim is clearly erroneous in view of the reliable, probative, and substantive evidence in the record. Specifically, because the Appellant's physicians have opined that he is completely and totally disabled due to lumbar radiculopathy, a non-limited condition under the plan, the Appellant's LTD claim should not have been denied.

During the first 24 months of disability and following the 90-day Benefit Waiting Period, a claimant is entitled to LTD benefits if disabled from performing his Own Occupation. After the first 24 months of disability, a claimant is entitled to additional LTD benefits if he is disabled from performing Any Occupation. The state BLTD Income Benefit Plan (Plan) explains and defines Any Occupation Disability as follows:

During the Any Occupation Period^[1] you are required to be Disabled from all occupations.

You are Disabled from all occupations if, as a result of Physical Disease, Injury, Pregnancy or Mental Disorder, you are unable to perform with reasonable continuity the Material Duties of Any Occupation.

Any Occupation means any occupation or employment which you are able to perform, whether due to education, training, or experience, which is available at one or more locations in the national economy and in which you can be expected to earn at least 65% of your Indexed Predisability Earnings within twelve months following your return to work, regardless of whether you are working in that or any other occupation.

Therefore, to qualify for additional LTD benefits, a claimant must provide objective medical evidence that his condition prevented him from performing the material duties of Any

¹ For further definitions, see the Record on Appeal, page 35, *et seq.*

Occupation due to a condition or conditions not limited by the 24-month chronic pain, musculoskeletal and connective tissue conditions limitation.

In support of his claim, the Appellant submitted additional information, including medical records, which supported that he had lumbar radiculopathy, a condition excluded from the 24-month coverage limitation. Standard referred the Appellant's claim to its Administrative Review Unit (ARU) for an independent review. The ARU requested an independent medical opinion from a medical specialist, Dr. Rojhani, regarding the cause and extent of the Appellant's limitations and restrictions. Based on Dr. Rojhani's medical opinion, the ARU found that the Appellant had limitations and/or restrictions from working due to his additional diagnosis of lumbar radiculopathy with neurological abnormalities, a condition specifically excluded from the 24-month limitation. Therefore, the ARU returned the Appellant's file to Standard for additional evaluation to determine his eligibility, if any, for additional benefits after May 14, 2019, due to the non-limited condition.

As part of Standard's review to determine whether the Appellant's lumbar radiculopathy and related symptoms prevented him from working in any occupation after May 14, 2019, Standard conducted a vocational assessment to determine whether sedentary strength level jobs existed that he could perform. Based on the Appellant's education, training, and experience, Standard's vocational consultant identified the following sedentary strength level occupations that the Appellant could perform on a reasonably continuous basis with his limitations and restrictions: Real Estate Clerk, Customer Service Representative, and Receptionist. Standard then determined that the Appellant was not entitled to LTD benefits after May 14, 2019, due to lumbar radiculopathy. The Appellant appealed the determination.

Standard's ARU conducted another independent review and requested another independent medical opinion from another medical specialist, Dr. Burke, regarding the Appellant's limitations and restrictions caused by lumbar radiculopathy. Dr. Burke opined that the Appellant's lumbar radiculopathy would require some limitations and restrictions, however, those limitations and restrictions would not preclude full-time work activities. After reviewing the available information, both Dr. Rojhani's and Dr. Burke's opinions, and the identification of alternative sedentary occupations for which the Appellant was qualified for, the ARU upheld the decision to close the Appellant's LTD claim under the Plan's Any Occupation Definition of Disability. The Appellant appealed this determination to PEBA.

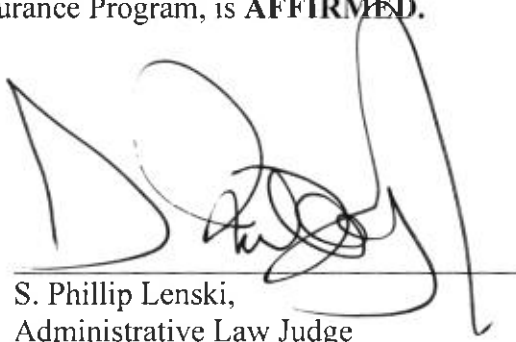
PEBA then conducted a *de novo* review of the Appellant's claim. After reviewing the Appellant's claim and considering all of the evidence in his file, PEBA determined that while the Appellant has limitations due to radiculopathy and neurological abnormalities, those limitations did not prevent the Appellant from working a sedentary level occupation on a full-time basis after May 14, 2019.

In light of the facts articulated above, the court finds that substantial evidence on the record supports the determination of PEBA that the Appellant is not entitled to additional long-term disability benefits. Therefore, based on the foregoing,

ORDER

IT IS HEREBY ORDERED that the determination of the South Carolina Public Employee Benefit Authority, Employee Insurance Program, is **AFFIRMED**.

AND IT IS SO ORDERED.

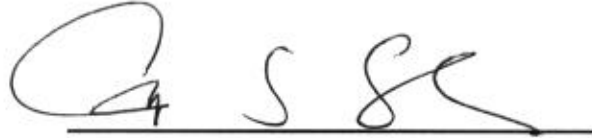


S. Phillip Lenski,
Administrative Law Judge

January 25, 2022
Columbia, South Carolina

CERTIFICATE OF SERVICE

I, Erika S. Easler, hereby certify that I have this date served this Order upon all parties to this cause by depositing a copy hereof, in the United States mail, postage paid, or by electronic mail to the address provided by the party(ies) and/or their attorney(s).

A handwritten signature in black ink, appearing to read 'E S E', is written over a horizontal line.

Erika S. Easler
Judicial Law Clerk

January 25, 2022
Columbia, South Carolina

