

In the
United States Court of Appeals
For the Seventh Circuit

No. 19-1701

STEPHANIE DORRIS,

Plaintiff-Appellant,

v.

UNUM LIFE INSURANCE COMPANY
OF AMERICA,

Defendant-Appellee.

Appeal from the United States District Court for the
Southern District of Illinois.

No. 3:16-cv-00508 — **Staci M. Yandle**, *Judge*.

ARGUED NOVEMBER 7, 2019 — DECIDED FEBRUARY 3, 2020

Before HAMILTON, SCUDDER, and ST. EVE, *Circuit Judges*.

ST. EVE, *Circuit Judge*. Courts and practitioners frequently say that § 502 of the Employee Retirement Income Security Act (ERISA), 29 U.S.C. § 1132(a)(1)(B), provides for “de novo review” of certain decisions relating to welfare plan benefits. That phrase is really a misnomer. At least in this circuit, ERISA de novo review requires no review at all, but an independent decision. In such a case, the plaintiff bears the burden

of proving not that the plan administrator erred, but that she is entitled to the benefits she seeks.

Stephanie Dorris did not fully recognize her burden. After her disability insurance provider, Unum Life Insurance Company of America, terminated her benefits, she fought hard to prove that Unum's explanation for its decision was wrong. She convinced the district court that it was, so the court proceeded to decide whether Dorris was then entitled to benefits. It saw barely a thing in the administrative record going to that question, and no attempt from Dorris to supplement the record. Based on this lack of evidence, the court entered judgment in Unum's favor. On appeal, Dorris contends that some of the evidence proved her entitlement to benefits, or alternatively, that the district court should have given her the opportunity to supplement the record after judgment. Because we see no clear error in the district court's factual findings nor an abuse of discretion in its decision to limit itself to the record before it, we affirm the judgment.

I. Background

About two decades ago, Dorris served as the president of Beans Plus, Inc., which offered its employees a long-term disability insurance plan through Unum. The plan covered employees who met a three-pronged definition of disability.

Under the first prong, the employee had to demonstrate that, "because of injury or sickness," she "cannot perform each of the material duties of [her] regular occupation." This showing alone would be enough for the employee to obtain benefits for the first two years of her disability.

To maintain benefits after two years, an employee was required to provide Unum proof of continued disability under

either one of the remaining two prongs. If she proceeded under the second, she would have to show that she “cannot perform each of the material duties of any gainful occupation for which [she is] reasonably fitted by training, education, or experience.” We refer to this as the “any occupation” option. Alternatively, under the third prong, she could show that she is (a) “[p]erforming at least one of the material duties of [her] regular occupation or another occupation on a part-time or full-time basis,” and (b) “[c]urrently earning at least 20% less per month than [her pre-disability income] due to that same injury or sickness.” This we call the “20% less” option.

A. Dorris’s Disability

Throughout the 1990s and 2000s, Dorris suffered from severe pain linked to endometriosis. This pain eventually became disabling, which prevented her from continuing her duties as Beans Plus’s president, and Unum started paying her benefits in 2002. A few years later, a doctor diagnosed Dorris with Lyme disease as well. By 2007, the Social Security Administration agreed that her Lyme disease, endometriosis, and other impairments were disabling and granted benefits. As far as the record shows, the Social Security Administration never sought additional evidence from Dorris after 2007.

Unum, in contrast, would frequently review Dorris’s case to check for her continued disability. In 2013, its review led it to maintain benefits, but its consultant noted that Dorris’s functional abilities were improving and, if this persisted, she might be able to return to work. By this point her endometriosis symptoms had subsided and her primary diagnosis had shifted to Lyme disease.

Unum reviewed Dorris's case again in 2015, starting with a phone call to Dorris to ask how she was faring. She told Unum that she was improving and had started golfing nine holes a week and volunteering. She had a three-hour weekly shift as a docent for the St. Louis Zoo and a position as treasurer of a non-profit called Art on the Square, which ran an annual art show. Unum's sleuthing revealed she was also an active member of a group protesting a hospital's decision to move out of Belleville, Illinois.

Dorris's doctors also provided information to Unum. Her Lyme disease specialist, Dr. Steven Harris, informed Unum that Dorris was still experiencing fatigue, headaches, nausea, dizziness, insomnia, and joint and muscle pain because of her Lyme disease. His records noted both improvements and regressions in Dorris's self-reports.

Unum later sent a letter to Dr. Harris in which it defined the terms "light" and "sedentary" work consistent with the Department of Labor's Dictionary of Occupational Titles and the Social Security Administration's regulations, 20 CFR § 404.1567(a)-(b), and asked if Dorris could work at either level of exertion. He responded that she could perform sedentary work part-time, no more than four hours a day and with frequent breaks and absences. Under a line asking him to identify the limitations supporting his opinion, Dr. Harris wrote "N/A." When Unum followed up, Dr. Harris elaborated that Dorris suffered from "extreme fatigue" and "major memory and cognitive issues" (as well as nausea, migraines, cramps, and aches), so she could not work at all, for fear of stress exacerbating her symptoms. Dorris's other doctors, including her primary care physician, deferred to Dr. Harris.

With Dorris's medical records in hand, Unum hired two consulting physicians to review the file to see whether she could return to her regular occupation as a president—a sedentary job that required, among other things, the frequent use of mental functions. The first doctor determined that the evidence did not show limitations that would preclude such work. He acknowledged that Dorris continued to complain of fatigue and pain, but thought her reported activities were out of proportion to her complaints. He ruled out ongoing Lyme disease as a disabling impairment because he saw no evidence of an active infection. The second consulting physician concurred. He too doubted that Dorris had Lyme disease and found that whatever fatigue she had did not preclude her active lifestyle. Shortly thereafter, Unum ended Dorris's benefits because it concluded that she could perform the duties of her regular occupation.

B. Administrative Appeal

Dorris appealed, criticizing Unum's apparent focus on only the physical demands of being a president. She had worked 70-hour weeks, she asserted, and needed constant mental focus during that time. Furthermore, she noted that Unum had never considered whether she could meet the standards of the any occupation or 20% less options.

In her appeal, she offered new evidence and qualified her activities. She explained that she missed golf matches, docent shifts, and protests frequently. And, as treasurer for Art on the Square, she worked only one hour a week, with no deadlines. Fellow volunteers wrote letters to support her story. Dr. Harris also supplemented his opinion of Dorris's limitations. Returning to the long hours and stressful work of a president

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