

Fifth Circuit: Remand to Determine Disability was Not a “Second Bite at the Apple” for Insurer

Article By:

Stephanie O. Zorn

Daniel P. Crowner

In *Newsom v. Reliance Standard Life Insurance Company*, 2022 U.S. App. LEXIS 4505 (5th Cir. Feb. 18, 2022), the United States Court of Appeals for the Fifth Circuit clarified the difference between an *eligibility* determination and a *disability* determination for disability benefits.

James Newsom worked as a software architect for Lereta. He had a series of health problems dating back to 1999. By September 2017, his health had deteriorated to a point where he was unable to work a 40-hour week. Lereta reduced Newsom’s schedule to a 32-hour week, which was still considered full-time. By October 2017, Lereta placed Newsom on a part-time status. By January 2018, Newsom was unable to work.

Newsom submitted a claim for short-term disability (STD) and long-term disability (LTD) benefits. Newsom noted that he was first unable to work because of his disability in January 2018. Lereta indicated that Newsom had worked four days per week for seven hours per day before he was unable to work.

With regard to STD benefits, Reliance Standard Life Insurance Company denied Newsom’s claim on the basis that Newsom was not a full-time active employee in January 2018 and that, therefore, he did not qualify for STD benefit coverage. With regard to LTD benefits, Reliance determined that Newsom’s date of disability was in January 2018 and that Newsom had not worked full-time in the weeks prior to that date. Therefore, Reliance determined that Newsom was ineligible for LTD benefits.

Newsom appealed. With regard to STD benefits, Reliance reversed its decision and agreed to pay Newsom STD benefits for the STD benefit period. With regard to LTD benefits, Reliance affirmed its decision that Newsom was ineligible for LTD benefits.

Ultimately, Newsom filed suit, challenging Reliance’s denial of LTD benefits under 29 U.S.C. § 1132(a)(1)(B) of ERISA. At a trial upon submission of documentary evidence, the district court ruled for Newsom, concluding that Reliance erroneously denied Newsom LTD benefits. The district court agreed with Newsom that “regular work week” essentially meant “normal, ordinary, standard work

week” or “scheduled work week,” and disagreed with Reliance’s view that the “actual hours worked” was determinative. The district court also found that Newsom was disabled as of October 2017, and that Newsom was entitled to more than \$194,000 in LTD benefits.

Reliance appealed, arguing that the district court: (1) erred in its interpretation of “regular work week” under the LTD policy; (2) erred in finding October 2017 as Newsom’s date of disability; and (3) should have remanded the claim back to Reliance for an analysis of whether Newsom was disabled.

The Fifth Circuit quickly rejected Reliance’s first and second arguments. As to its third argument, Reliance argued that—because it denied Newsom’s claim on eligibility grounds—it never had a chance to determine whether Newsom was actually disabled for purposes of the LTD policy. Reliance argued that the district court should have remanded the claim to Reliance to develop a full factual record and to make a decision—for the first time—concerning whether to award benefits, and, if awarded, in what amount. On the other hand, Newsom argued that remand to Reliance would amount to an “impermissible ‘second bite at the denial apple.’”

The Fifth Circuit agreed with Reliance, explaining that Reliance had made only an *eligibility* determination, not a *disability* determination—two determinations that are “in fact distinct.” The Fifth Circuit explained that once Reliance determined Newsom was not eligible for LTD benefits, Reliance stopped its decision-making process. Accordingly, once the district court determined that Newsom was in fact eligible for benefits and determined the date on which Newsom’s eligibility began, the district court similarly should have stopped its decision-making process and remanded the case to Reliance to make the separate disability determination.

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