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In an insurance policy, don't ignore a term — each and every one matters

Disability insurance policies vary in their terminology, even with respect to how the term "disability" is defined. A recent ruling from the 5th U.S. Circuit Court of Appeals illustrates how specific policy terms affect the outcome of litigation.

In *George v. Reliance Standard Life Insurance Co.*, 2015 U.S.App. LEXIS 658 (5th Cir., Jan. 15, 2015), plaintiff Robert George had served as a helicopter pilot in the Army until injuries from a crash in 1987 resulted in a partial leg amputation and necessitated his retirement from the military.

However, George was able to work as a helicopter pilot in the private sector until 2008, when he had to stop working after severe pain at the amputation site rendered him unable to operate a helicopter's foot controls. At the time he stopped flying, George was earning approximately $75,000 per year.

Because he was no longer able to fly due to his physical condition, George applied for disability benefits from Reliance Standard Life Insurance Co., his employer's group long-term disability insurer.

The policy contained two definitions of "disability" — for the first 24 months, George needed to show his inability to perform the duties of his regular occupation. For benefits to continue beyond 24 months, though, George was required to submit proof of his inability to "perform the material duties of any occupation which provides substantially the same earning capacity."

The policy also contained a provision limiting the duration of benefits to 24 months for disabilities "caused by or contributed to by mental or nervous disorders."

George received benefits for 24 months, but Reliance refused to pay additional benefits, asserting there were other jobs he could perform even if he could no longer fly a helicopter.

The insurer also contended George's claim was limited by the mental impairment limitation. Although the insurer won in U.S. District Court, the appeals court reversed and ordered George's benefits reinstated.

Despite the application of a deferential standard of review, the court determined that Reliance abused its discretion by ignoring the earnings requirement contained in the "any occupation" definition of "disability."

The insurer made no mention of the "same earnings" component of the disability definition in its denial; the record failed to provide support for a conclusion that the jobs Reliance asserted were within George's capability were occupations that met the policy's earnings threshold.

The court also rejected Reliance's application of the mental impairment limitation. Although the court acknowledged that George suffered from depression and post-traumatic stress disorder, which contributed to his employment status, the court determined that he was disabled due to his physical impairments irrespective of his psychiatric condition.

This ruling demonstrates the importance of reading all of the terms of a policy. The court zeroed in on the defendant's utter disregard of the similar earnings provision in the policy.

The 5th Circuit noted it hadn't previously considered the meaning of the phrase "caused by or contributed to by," but in similar cases, other courts applied comparable limitations to apply "only when the claimant's physical disability was insufficient to render him totally disabled. In other words, those courts have asked whether the mental disability is a but-for cause of the total disability."

The 5th Circuit concurred with that interpretation and concluded that the question "is whether George's physical disabilities were independently sufficient to render him totally disabled."

In answering that question in the affirmative, the court held:

"The record shows that George's physical disabilities placed a firm ceiling on his vocational prospects. Even if George were completely healed of his mental disabilities, he would still be limited to sedentary jobs. And as we explained above, there is no evidence in the record that George could have earned a salary in a sedentary job that was substantially similar to the one he earned as a helicopter pilot.

"Thus there is no rational connection between the fact that George's mental disabilities may have impaired his ability to hold down a sedentary job, and the conclusion that his mental disabilities caused or contributed to his total disability."

Thus, the court ordered Reliance to reinstate George's benefits. A dissenting opinion was filed by Judge Carolyn Dineen King in relation to the portion of the opinion addressing the applicability of the mental impairment limitation.

This ruling demonstrates the importance of reading all of the terms of a policy. The court zeroed in on the defendant's utter disregard of the similar earnings provision in the policy.

In effect, Reliance tried to rewrite the policy to exclude that language. But provisions such as an earnings threshold are necessary to give employees more protection and increase the value of the benefit. And surely, that provision was built in to the premium pricing for the policy.

With respect to the mental impairment limitation, the majority ruling is consistent with logic and common sense, as well as with a similar holding from the 7th Circuit in *Krolnik v. Prudential Insurance Co. of America*, 570 F.3d 841 (7th Cir. 2009), which also found that mental impairment limitations in disability insurance policies cannot be invoked if the claimant is independently disabled by physical causes.

Chronic illness often results in depression and anxiety, but if that could be taken into consideration without regard to the disabling effects of the underlying conditions, insurers could limit payments for conditions such as multiple sclerosis or other physical disorders that cause physical impairments irrespective of any comorbid psychiatric conditions.

The best illustration of that issue was expressed in *Weitzenkamp v. Unum Life Insurance Co. of America*, 661 F.3d 323, 330-31 (7th Cir. 2011), where the appeals court rejected an insurer's claim that it could invoke a "self-reported illness" limitation even as to stage IV cancer or advanced heart disease so long as the claimant asserted self-reported symptoms of pain or fatigue.

As in *Weitzenkamp*, the 5th Circuit here likewise refused to countenance such a reading of the policy.

WORKPLACE ISSUES

MARK D. DEBOFSKY

Mark D. DeBofsky is a name partner of DeBofsky & Associates P.C. He handles civil and appellate litigation involving employee benefits, disability insurance and other insurance claims and coverage and Social Security law. He can be reached at mdebofsky@debofsky.com.