UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No.	SACV 14-00350 JVS (RNBx)	Date	July 1, 2015
Title	Daniel Valente v. Aetna Life Insurance Company		

Present: The Honorable	James V. Selna
Karla J. Tunis	Not Present
Deputy Clerk	Court Reporter
Attorneys Present for Plaintiffs:	Attorneys Present for Defendants:
Not Present	Not Present

Proceedings: (IN CHAMBERS) **Memorandum of Decision**

This case involves a claim for long-term disability ("LTD") benefits pursuant to the Employee Retirement Income Security Act of 1974 ("ERISA"), 29 U.S.C. § 1001 et seq. Plaintiff Daniel Valente ("Valente") contests the denial of his claim for LTD benefits under a group disability insurance policy (the "Plan" or "LTD Plan") issued and administered by Defendant Aetna Insurance Company ("Aetna"). Valente has submitted an opening trial brief and a responding trial brief (Pl.'s Opening Br., Docket ("Dkt.") No. 30; Pl.'s Responding Br., Dkt. No. 32), and so has Aetna. (Def.'s Opening Br., Dkt. No. 29; Def.'s Responding Br., Dkt. No. 33.)

For the following reasons, the Court **REVERSES** Aetna's denial of Valente's LTD benefits and **REMANDS** the case to Aetna to make limited factual determinations.

I. Background

A. Valente's Job

In 1995, Valente began working at 3D Instruments as a purchasing manager. (AR 1794 ¶¶ 8–9.)[1] The company eventually promoted Valente to supply chain manager. (Id.; AR 0970.) Wika Holding Corporation ("Wika"") acquired 3D Instruments in 2010. (AR 1794 ¶ 10.) As the supply chain manager under 3D Instruments and then under Wika, Valente's duties and responsibilities included, but not limited to, leading and

[1] Citations to "AR" refer to the administrative record provided by Aetna, with the leading "AET/VAL" prefix replaced with "AR."

directing four departments (e.g., purchasing, planning, shipping, warehousing), developing an international supplier base, negotiating domestic and international contracts, reducing inventory, and traveling internationally to meet with suppliers. (AR 0481–0482.) His position required strong management, analytical, and communication skills, the ability to motivate various teams, and presenting a positive image. (AR 0483.) At the time Valente stopped working at Wika, he supervised approximately ten to twelve employees. (AR0970 (states that he supervised 10 employees); AR 1794 ¶ 10 (states that he supervised 12 employees).) In carrying out several of his responsibilities and often while conducting meetings, Valente was either standing or walking. (AR 1795, Valente Decl. ¶ 17.) In light of the physical demands of Valente's position, Wika considered it to be a "light" occupation.[2] (AR 0172.) A light occupation requires "walking or standing to a significant degree" and/or exerting some type of force through pushing or pulling actions. (Pl.'s RJN Supp. Pl.'s Opening Br., Ex. A (Dictionary of Titles 4–5), Dkt. No. 30-1.)

B. Valente's LTD Plan

After Wika acquired 3D Instruments, Valente began reporting to Wika's chief operating officer. (AR 1794, Valente Decl. ¶ 10.) On March 7, 2012, Valente walked out of a meeting with the chief operating officer before it ended. (AR 0970.) That was his last day of work at Wika. (AR 414.) On July 3, 2012, Valente submitted a LTD claim to Aetna (id.), which issued the group policy for Wika employees. (AR 5127–5161.)

Pursuant to the LTD Plan, for the first twenty-four months after a claimant becomes disabled, a claimant is "deemed to be disabled on any date that: [y]ou cannot perform the *material duties* of your *own occupation* solely because of an *illness, injury* or disabling pregnancy-related condition . . . ." (AR 5134 (italics in original).) The plan

[2] Valente requests that the Court take judicial notice of Appendix C of the Department of Labor's Dictionary of Titles ("Dictionary"). (Pl.'s RJN Supp. Pl.'s Opening Br., Ex. A, Dkt. No. 30-1.) Because the Dictionary is a matter of public record and Aetna does not dispute the facts contained therein, and in fact relied on the Dictionary to classify Valente's position (AR 0172), the Court takes judicial notice of the Dictionary. See Fed. R. Evid. 201(b); Lee v. City of Los Angeles, 250 F.3d 668, 688 (9th Cir. 2001), overruled on other grounds, Galbraith v. Cnty. of Santa Clara, 307 F. 3d 1119, 1125 (9th Cir. 2002).

further provides the following relevant definitions: (1) "own occupation" is defined as: "[t]he occupation that you are routinely performing when your period of disability begins"; and (2) "material duties" is defined as: "[d]uties that [a]re normally needed for the performance of your own occupation; and [c]annot be reasonably left out or changed." (AR 5150.)

After the first twenty-four months, the plan defines disability as "any day you are unable to work at any *reasonable occupation* solely because of an *illness, injury* or disability pregnancy-related condition." (AR 5134 (italics in original).) A claimant is also not considered disabled after twenty-four months "if it is determined that your disability is primarily caused by: [a] mental health or psychiatric condition, including physical manifestations of these conditions . . . ." (AR 5136.)

C. Aetna's Denial of Valente's Claim

Aetna received Valente's LTD benefits claim on July 3, 2012 (AR 0098), and confirmed its receipt of his request in a letter dated July 11, 2012. (AR 0475.) On August 21, 2012, Aetna informed Valente that it required an extension for reviewing his claim and stated that it would reach a decision by September 17, 2012. (AR 0491.) Aetna terminated his claim on September 28, 2012 because it had not yet received various medical records. (AR 0506.) Valente's medical provider, Kaiser Permanente ("KP"), provided Aetna with some medical records in October 2012. (AR 509.) On February 7, 2013, Aetna informed Valente that after a review by its "clinician and behavioral health consultant," it submitted a request for more medical records from KP. (AR 0956.)

Those records included a report from Valente's primary care physician, Dr. Jason Hunt ("Dr. Hunt"). (AR 1788–1790; AR 1762 (listing Dr. Hunt as being included in the medical evidence Aetna considered in its later denial decision).) Dr. Hunt's November 12, 2012 report noted Valente's long history of medical problems. (AR 1788–1790.) Dr. Hunt noted that, prior to that time, Valente was treated with chemotherapy and radiation for Non-Hodgkin's Lymphoma, had a permanent pacemaker inserted for his heart, and had a left quadriceps rupture. (AR 1790.) According to Dr. Hunt, Valente also had chronic problems that included recurrent "gastrointestinal bleeding causing significant anemia requiring cauterization from Argon plasma coagulation treatment," adjustment disorder with mixed anxiety and depression, obstructive sleep apnea, and obesity. (Id.)

He concluded that Valente's "extreme fatigue and lack of energy" had "worsened over the past year" and that these symptoms were "multifactorial directly due to a combination of his current and medical illnesses." (Id.)

By May 9, 2013, Aetna had not yet decided on Valente's claim and his newly obtained counsel requested an update from Aetna. (AR 1753.) After Aetna did not respond, Valente's counsel informed Aetna that it had until June 12, 2013 before Valente was going to assume that his claim was denied. (AR 1760.) In a letter dated June 12, 2013, Aetna denied Valente's LTD benefits claim. (AR 1762–1763.) The letter indicated that after its clinical consultant and behavioral health consultant reviewed Valente's medical records from January 3, 2012 through April 17, 2013, the two consultants concluded that Valente was not totally disabled pursuant to the terms of the LTD Plan. (Id.) The letter noted that Aetna understood he "ceased work due to symptoms of adjustment disorder and depression which included sad mood, low energy, low motivation, insomnia, fatigue and poor concentration." (Id.) However, the letter did not indicate that any physicians reviewed Valente's records. (Id.) Aetna further informed Valente of his right to appeal the denial. (Id.)

D. Valente's Appeal of Aetna's Denial

On December 5, 2013, Valente appealed Aetna's denial of his claim. (AR 1771.) His appeal attached reports from doctors who had seen Valente personally. He also attached the previously mentioned report from Dr. Hunt. (AR 1788–1790.)

In a report dated November 5, 2013, a cardiologist named Dr. Neil Gulati ("Dr. Gulati") also noted Valente's various chronic medical problems. (AR 1782–1785.) In particular, Dr. Gulati noted that Valente had cardiomyopathy with an ejection fraction of 35 percent. (AR 1784.) In his opinion, Valente was "unable to do any heavy lifting or prolonged standing or walking activities" and had "dyspnea on exertion at 100 feet." (Id.) As a result, Dr. Gulati concluded that Valente had "poor functional status." (Id.)

In a report dated November 8, 2013, a psychiatrist named Dr. David Chandler ("Dr. Chandler") recommended restrictions on Valente's activities based on the "sum total of" his multiple medical problems and "psychiatric condition of depression." (AR 1778–1779.) He opined that Valente should not sit for more than thirty consecutive minutes and not concentrate on a computer screen for more than ten minutes per hour.

(AR 1779.)

In a report dated November 10, 2013, a gastroenterologist named Dr. Jocelyn Miller ("Dr. Miller") took note, in addition to Dr. Hunt, of Valente's recurrent gastrointestinal bleeding and diagnosed the condition as gastric antral vascular ecstasia ("GAVE"). (AR 1791–1792.) She concluded that Valente's GAVE condition caused his chronic fatigue, anemia, obesity, and sleep apnea. (AR 1791.) She recommended that Valente not engage in activities that "cause shortness of breath." (AR 1792.)

Drs. Hunt, Gulati, and Chandler concluded that Valente was permanently disabled or that he should not go back to work because of his medical problems. (AR 1778 (Dr. Chandler), 1782 (Dr. Gulati), 1790 (Dr. Hunt).)[3]

However, on February 10, 2014, Aetna upheld its denial of Valente's claim. (AR 5125–5126.) It based this decision on reports prepared by two independent physicians who had reviewed Valente's medical records. (Id.)

One was a January 14, 2014 report prepared by a cardiologist named Dr. Ira Feldman ("Dr. Feldman"). (AR 5078–5080.) Board certified in internal medicine, Dr. Feldman reviewed Valente's various medical records. (Id.) Based on this review, Dr. Feldman concluded that the records did not demonstrate evidence of functional impairment from March 12, 2012 through December 31, 2013. (AR 5079.) The report did not mention Valente's GAVE diagnosis, but reasoned that Valente "was not having any evidence [sic] congestive heart failure or myocardial ischemia." (AR 5080.) At four separate times in his report, Dr. Feldman indicated that he reached his conclusion based on Valente's job being classified as "sedentary." (AR 5078–5080.) However, two weeks later, Dr. Feldman amended his report to state that "I inadvertently stated that the claimant could work his own occupation described as sedentary when in fact the claimant's own occupation is described as light as a Supply Chain Manager." (AR 5115.) As a result, he further opined that Valente was not functionally impaired to perform his

[3] Although Dr. Miller concluded that Valente had chronic fatigue and shortness of breath because of his GAVE condition and iron deficiency anemia, she indicated in her report that she did not advise Valente to cease working because of his illness and that she had not advised Valente either way as to whether he could return to work. (AR 1791–1792.)

"light"-classified job. (AR 5114–5116.)

The second report was prepared on January 12, 2014 by a psychiatrist named Dr. Mark Schroeder ("Dr. Schroeder"). (AR 5084–5093.) The report listed in detail certain medical records regarding Valente's mental and physical medical issues, including the reports prepared by Drs. Hunt, Gulati, Miller, and Chandler. (AR 5085–5089.) Based on his review of this evidence, Dr. Schroeder concluded that Valente's psychiatric condition was not "severe enough to rise to the level of functional impairment" from March 12, 2012 through December 31, 2013. (AR 5090.) Although admitting that the "record occasionally suggested that [Valente] might be experiencing more severe psychological problems," Dr. Schroeder opined that the evidence was "not sufficient to support substantial psychiatric impairment." (AR 5090–5091.) He further concluded that Dr. Chandler's report was not supported by the evidence. (AR 5092.) Instead, Dr. Schroeder inconclusively stated that the evidence "raised the question" that Valente's absence from work was "due at least in part to ambivalence and apprehensiveness about returning to work." (Id.) Outside of his scope of expertise, Dr. Schroeder did not assess Valente's potential physical impairment. (Id.) The report was based on Valente's job being classified as sedentary. (AR 5084.)

Consequently, Valente timely filed the instant action to seek review of Aetna's denial and upholding of the denial of LTD benefits. (Compl., Dkt. No. 1.)

II. Legal Standards

The parties have stipulated that the de novo standard of review applies in this case. (Pl.'s Opening Br. 22:16; Def.'s Opening Br. 19:15–16.) Under de novo review in an ERISA denial of benefits case, "[t]he court simply proceeds to evaluate whether the plan administrator correctly or incorrectly denied benefits, without reference to whether the administrator operated under a conflict of interest." Abatie v. Alta Health & Life Ins. Co., 458 F.3d 955, 963 (9th Cir. 2006). Additionally, the Court "does not give deference to the claim administrator's decision, but rather determines in the first instance if the claimant has adequately established that he or she is disabled under the terms of the plan." Muniz v. Amec Constr. Mgmt., Inc., 623 F.3d 1290, 1295–96 (9th Cir. 2010). In considering whether a plaintiff is "disabled within the terms of the policy," the Court is to analyze the record anew and "evaluate the persuasiveness of conflicting testimony and decide which is more likely true." Kearney v. Standard Ins. Co., 175 F.3d 1084, 1095

(9th Cir. 1999) (en banc).

A plaintiff suing for benefits under ERISA, 29 U.S.C. § 1132(a)(1)(B), "bears the burden of proving his entitlement to contractual benefits." Muniz, 623 F.3d at 1294 (quoting Horton v. Reliance Standard Life Ins. Co., 141 F.3d 1038, 1040 (11th Cir. 1998)).

III. Discussion

The primary issue the Court must consider is whether Valente was disabled as defined under Aetna's policy after March 12, 2012. Because the Court concludes that Valente has adequately established that he was disabled under the terms of the LTD Plan, the Court also addresses two additional issues relevant to whether Valente is still considered disabled after the initial twenty-four month period, including (1) whether Valente's disability was primarily caused by a mental health or psychiatric condition; and (2) whether the Court should remand the case to Aetna to determine if Valente is entitled to future benefits under the "any reasonable occupation" clause in the plan (see AR 5134).

A. Whether Valente Met His Burden to Establish Disability Under the Plan

Valente and Aetna present directly contradictory sets of medical reports. The reports presented by Valente, particularly those of Drs. Hunt, Gulati, and Chandler, all concluded that he was disabled based on in-person medical evaluations. The reports presented by Aetna, particularly those of Drs. Feldman and Schroeder, both concluded that Valente was not disabled based on a review of his medical records.

As the Court "evaluate[s] the persuasiveness of conflicting testimony and decide[s] which is more likely true," Kearney, 175 F. 3d at 1095, the Court first addresses the parties' dispute regarding its consideration of two factors. First, Aetna's two doctors did not conduct an in-person medical evaluation of Valente, but based their conclusions on a review of his medical records only. See Montour v. Hartford Life & Acc. Ins. Co., 588 F.3d 623, 634 (9th Cir. 2009) (holding that such a "pure paper" review "raises questions about the thoroughness and accuracy of the benefits determination"); Salomaa v. Honda Long Term Disability Plan, 642 F.3d 666, 676 (9th Cir. 2011) (noting that the only doctors who concluded the plaintiff was not disabled "were [] the physicians the

insurance company paid to review his file"). Aetna objects to the Court's consideration of this factor because Montour and Salomaa involved an abuse of discretion review as opposed to the de novo review the Court engages in here. (Def.'s Responding Br. 11–12, 15); see also Brown v. Conn. Gen. Life Ins. Co., No. C 13-5497 PJH, 2014 U.S. Dist. LEXIS 175112, at *37 (N.D. Cal. Dec. 17, 2014). The Court's consideration of this factor here does not imply that Aetna was required to conduct an in-person medical evaluation of Valente. However, it is helpful to the Court's understanding of Aetna's denial and the evidentiary basis for that denial given that the only physician that concluded Valente was not physically disabled, Dr. Feldman, did not address the physical disability conclusions reached by Drs. Hunt or Gulati. Dr. Feldman's report also does not even mention Valente's GAVE diagnosis by Dr. Miller. The failure of Dr. Feldman to address conclusions reached by physicians who personally evaluated Valente makes this factor relevant here.

The second factor involves Aetna's failure to address the fact that the Social Security Administration ("SSA") had found Valente to be disabled. (Pl.'s Opening Br. 24–25; AR 1615); see also Montour, 588 F.3d at 636–37. Aetna objects to the Court's consideration of this factor for the same reason it objected to the first factor. It also objects to this factor because Valente did not properly notify Aetna of the SSA disability determination and his only citation in the record of this determination is one line from a January 2013 progress note from Dr. Chandler. (Def.'s Responding Br. 18–19; AR 1615.) Valente does not address this objection in his Responding Brief. The Court agrees with Aetna that this was insufficient notification to Aetna of the SSA determination. Cf. Montour, 588 F.3d at 637 ("[T]he record reflects that [plaintiff] kept [defendant] regularly apprised of his continuing disability status with the SSA.")

Thus, with only the first factor in mind, the Court concludes that several reasons militate in favor of the reports presented by Valente and against those presented by Aetna.[4]

[4] The parties dispute whether Aetna effectively communicated with Valente throughout the claim review process. (Compare Pl.'s Opening Br. 13–17 with Def.'s Opening Br. 22-23.) Consequently, they dispute whether Aetna's decision is entitled to deference because of Aetna's alleged "meaningful dialogue" with Valente. See Saffon v. Wells Fargo & Co. Long Term Disability Plan, 522 F.3d 863, 873 (9th Cir. 2008). The Court does not resolve this dispute because even with deference to Aetna's decision, the

First, the reports by Drs. Feldman and Schroeder were not requested by Aetna until after it had already denied Valente's claim and Valente had appealed that denial. Aetna's original denial was not based on the opinions of any physicians, but rather on the opinions of Aetna's own clinical consultant and behavioral health consultant. (AR 1762–1763.) Aetna's denial failed to rely on any physician despite having available Dr. Hunt's recounting of Valente's various medical issues. (See AR 1790.)

Second, the credibility of the reports submitted by Drs. Feldman and Schroeder are undermined by the fact that both originally relied on Valente's job being classified as "sedentary" to conclude that he was not functionally impaired. However, his job was classified as "light." (AR 0172.) Assessing Valente's functional abilities through the incorrect perspective of his job's requirements severely undercuts any conclusions reached by both doctors. Dr. Feldman's amendment to his report to reflect the "light" job classification does not cure the deficiency in his report's credibility; rather, it only further demonstrates that deficiency.

Third, the reports presented by Valente are from his primary care physician (Dr. Hunt), cardiologist (Dr. Gulati), psychiatrist (Dr. Chandler), and gastroenterologist (Dr. Miller). Aetna's upholding of its denial was based on the reports of only a cardiologist (Dr. Feldman) and a psychiatrist (Dr. Schroeder). That comparison alone detracts from the thoroughness of Aetna's two reports because Dr. Feldman and Dr. Schroeder were not qualified to respond to any of the conclusions reached by Dr. Miller. More specifically, Dr. Miller concluded that Valente suffered chronic fatigue and shortness of breath because of Valente's GAVE condition. (AR 1791–1792.)[5] Dr. Hunt also raised the issue of "significant anemia" resulting from Valente's GAVE condition. (AR 1790.) Notwithstanding, Dr. Feldman did not address Valente's GAVE condition at all, or whether it was contributing to Valente's fatigue. Dr. Schroeder admitted that he was not qualified to opine on a physical illness such as GAVE. (AR 5092.)

Court's conclusion would remain the same.

[5] Given Dr. Miller's November 2013 report regarding Valente's GAVE condition, Aetna is incorrect in asserting that Valente only cites to medical records from 2010 regarding this issue. (Def.'s Responding Br. 6:6–8.) Moreover, Dr. Miller's report states that her initial date of treatment was January 2011 and her most recent date of treatment was January 2013.

Fourth, Dr. Gulati concluded that Valente's reduced ejection fraction of 35 percent contributed in part to Valente's dyspnea upon exertion at one hundred feet. (AR 1784.) Although Dr. Feldman mentioned Valente's reduced ejection fraction in the report's summary of files he reviewed, he did not address why or how such a condition could not have caused Valente's limited exertion ability. (AR 5079.) He did not dispute Dr. Gulati's objective finding. (See AR 1782.) At no point in the report did Dr. Feldman address or respond to Dr. Gulati's conclusion, even though both physicians are cardiologists.

Fifth, both Dr. Hunt and Dr. Chandler concluded that Valente's fatigue resulted from a combination of his physical illnesses and psychiatric conditions. (AR 1778, 1790.) However, neither Dr. Feldman nor Dr. Schroeder address this conclusion. Dr. Feldman did not discuss Valente's psychiatric conditions and Dr. Schroeder admitted that he was unqualified to discuss Valente's physical illnesses. (AR 5079–5080, 5092.) Aetna's failure to present any evidence rebutting this conclusion by Drs. Hunt and Chandler further undermines the thoroughness of Aetna's decision.

Sixth, Aetna's assertions that the record reflects that Valente's anemia was stable (see, e.g. Def.'s Opening Br. 3:3–4, 22:18–19, 24:16–17), and that his red blood count was not a continuing issue (Def.'s Responding Br. 9:16–18) are without basis and inaccurately portray the record. The only evidence Aetna cites that Valente's anemia was stable is its own June 2013 denial letter that stated his anemia "appears to be stable at this time." (AR 1763.) That conclusion does not cite to, and has no basis in, Valente's medical records. Aetna tries to support this conclusion by citing an email Dr. Hunt sent to Valente in which he states that his "red blood count looks beautiful. Almost normal. Nothing to do." (AR 1717; Def.'s Responding Br. 9:16–18.) However, Aetna fails to acknowledge the last phrase of that quote, which states "[r]epeat in 4-6 weeks." (AR 1717.) This phrase, in addition to the "[a]lmost normal" phrase, demonstrate that Valente's red blood count actually remained a physical problem for Valente.

For these various reasons, the Court finds that Valente has satisfied his burden to show that he was disabled under Aetna's Plan. Valente has presented virtually unrebutted evidence that he suffered chronic fatigue because of his GAVE condition, reduced ejection fraction, and the combination of these illnesses with his psychiatric conditions. The evidence demonstrates that his chronic fatigue, shortness of breath, and dyspnea upon exertion over one hundred feet prevented Valente from carrying out the

duties normally needed for the performance of his own occupation. Aetna incorrectly denied Valente LTD benefits given the weight of the evidence presented by Valente demonstrating that he was disabled.

B. Whether Valente's Disability was Primarily Caused by a Psychiatric Condition

In its Opening Brief, Aetna contended that if the Court concluded Valente met his burden, then the Court should find that his disability was primarily caused by a mental health or psychiatric condition. (Def.'s Opening Br. 23–24.) Accordingly, Valente would not be considered disabled after the initial twenty-four month period. (Id.; AR 5136.) Valente noted in his Responding Brief that it would be improper for the Court to decide this issue in the first instance. (Pl.'s Responding Br. 22–23.) The Court agrees that, Aetan, as the plan administrator, should decide this issue in the first instance. See Saffle v. Sierra Pac. Power Co. Bargaining Unit Long Term Disability Income Plan, 85 F.3d 455, 460 (9th Cir. 1996) (holding that the district court erred in ordering benefit payments past the initial twenty-four month disability period because the plan administrator had never considered or been presented with a claim for such benefits).

Notwithstanding, Valente did not object to the Court deciding in the first instance whether Valente's disability was primarily caused by a mental health or psychiatric condition. (Pl.'s Responding Br. 23:15–17.) Aetna did not address this issue in its Responding Brief, but instead continued to urge the Court to decide on this issue. (Def.'s Responding Br. 16–18.) In its tentative ruling, the Court ruled against Aetna on this issue under to the invited error doctrine. See Sovak v. Chugai Pharm. Co., 280 F.3d 1266, 1270 (9th Cir. 2002) ("The invited error doctrine holds that '[O]ne may not complain on review of errors below for which he is responsible.'") (quoting Deland v. Old Republic Life Ins. Co., 758 F.2d 1331, 1336-37 (9th Cir. 1985)), amended by 289 F.3d 615 (9th Cir. 2002). At oral argument following the Court's issuance of its tentative ruling, Aetna withdrew its request for the Court to decide whether Valente's disability was primarily caused by a psychiatric condition. Valente objected to Aetna's withdrawal. The Court thus granted both parties leave to submit briefing regarding the propriety of Aetna's oral application to withdraw. (Dkt. No. 38.)

In his response, Valente maintains his objection to Aetna's oral application to withdraw. (See generally Resp. Withdraw Req., Dkt. No. 39.) Valente rests his position

primarily on the argument that Aetna's Opening and Responding Briefs constituted a binding stipulation between the parties which permitted the Court to adjudicate this issue. (Id. at 1–2.) The Court disagrees with that assertion. Although Aetna asked the Court to adjudicate this issue in both its Opening and Responding Briefs, neither request constituted a binding stipulation pursuant to Local Rule 7-1. A written stipulation must be "filed with the Court, be accompanied by a separate order as provided in L.R. 52-4.1, and will not be effective until approved by the judge . . . ." L.R. 7-1. Aetna never provided, and the Court never approved, the required separate order. Valente's consent to Aetna's initial request for the Court to decide this issue, on its own, is insufficient to form a binding stipulation.

Additionally, the invited error doctrine does not apply here. See Sovak, 280 F.3d at 1270. The Court acquiesced to the parties' initial joint request to adjudicate this issue because both parties urged the Court to do so.[6] But once Aetna orally withdrew its request, any continuing effort by the Court to adjudicate the issue would require the Court to directly violate Ninth Circuit precedent. See Saffle, 85 F.3d at 460.

Therefore, the Court remands the case to Aetna to make a factual finding as to whether Valente's disability was primarily caused by a mental health or psychiatric condition. See, e.g., Patterson v. Hughes Aircraft Co., 11 F.3d 948, 951 (9th Cir. 1993) ("We remand to the district court with instructions to remand to the plan administrator for a factual determination, based on the medical evidence in the record, as to the cause of [plaintiff's] total disability."). Notwithstanding, the Court reminds Aetna that if Valente is dissatisfied with Aetna's factual finding, that decision is open to review in this Court. See Saffle, 85 F.3d at 460; Abatie, 458 F.3d at 963.

C. Whether the Plan's "Any Occupation" Limitation Applies

If the Court decides against Aetna on the issues of whether Valente was disabled and whether that disability was primarily caused by a psychiatric condition, then Aetna requests that the Court remand the case to Aetna solely to determine whether Valente qualifies for benefits beyond the initial twenty-four month period under the "any

[6] Obviously, parties may by contract waive rights; here, the right of the carrier to adjudicate the issue in the first instance.

occupation" limitation in the plan. (See Def.'s Opening Br. 24–25; AR 5134.) Valente did not address this issue in his Responding Brief. The Court thus remands the case to Aetna to make a factual finding as to whether Valente's disability prevents him from working in "any reasonable occupation" in accordance with the Plan. See, e.g., Patterson, 11 F.3d at 951.

IV. Conclusion

For the foregoing reasons, the Court concludes that Valente is disabled under Aetna's LTD Plan and thus **REVERSES** Aetna's denial of Valente's LTD benefits. Aetna is ordered to pay Valente his entitled LTD benefits for the initial twenty-four month period. However, the Court **REMANDS** the case to Aetna to make factual determinations as to whether: (1) Valente's disability was primarily caused by a mental health or psychiatric condition; and (2) the "any reasonable occupation" limitation applies to Valente.

IT IS SO ORDERED.

Counsel for Valente shall prepare, serve and submit, forthwith, a proposed judgment in accordance with this Court's ruling.

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