

MAY 11 2010

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

NOT FOR PUBLICATION
UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

ALLAN J. HAMILTON, M.D.,

Plaintiff - Appellant,

v.

**HARTFORD LIFE AND ACCIDENT
INSURANCE COMPANY,**

Defendant - Appellee.

No. 09-16009

D.C. No. 4:06-cv-00417-DCB

MEMORANDUM*

Appeal from the United States District Court
for the District of Arizona
David C. Bury, District Judge, Presiding

Argued and Submitted April 15, 2010
San Francisco, California

Before: **KOZINSKI**, Chief Judge, **ARCHER**** and **CALLAHAN**, Circuit
Judges.

Even if we were to review the Plan Administrator's interpretation of "Total
Disability" and "Totally Disabled" de novo, plaintiff would not be entitled to this

* This disposition is not appropriate for publication and is not precedent
except as provided by 9th Cir. R. 36-3.

** The Honorable Glenn L. Archer, Jr., Senior United States Circuit
Judge for the Federal Circuit, sitting by designation.

kind of benefit. The Plan's language is unambiguous, and plaintiff does not satisfy its requirement that he be "earning less than 20% of [his] Pre-disability Earnings."

[ER 260–61] Because the definition of these terms is also conspicuous and unambiguous, plaintiff cannot claim that any expectations he had to the contrary were reasonable. See Peterson v. Am. Life & Health Ins. Co., 48 F.3d 404, 411–12 (9th Cir. 1995).

In light of these considerations, we have no need to reach plaintiff's other assertions of error, which are unavailing in any event. The district court's rulings on discovery and the administrative record were not abuses of discretion.

AFFIRMED.