

MAY 16 2013

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

SHARON BARDILL,

Plaintiff - Appellant,

v.

THE LINCOLN NATIONAL LIFE
INSURANCE COMPANY; et al.,

Defendants - Appellees.

No. 11-16960

D.C. No. 3:09-cv-03025-CRB

MEMORANDUM*

Appeal from the United States District Court
for the Northern District of California
Charles R. Breyer, District Judge, Presiding

Argued and Submitted April 17, 2013
San Francisco, California

Before: NOONAN, O'SCANNLAIN, and N.R. SMITH, Circuit Judges.

Sharon Bardill appeals the district court's judgment upholding a fiduciary's decision to deny long term disability benefits in her ERISA action for disability insurance benefits and related relief under the Employee Retirement Income Security Act of 1974 ("ERISA"), 29 U.S.C. §§ 1001 *et seq.* against Lincoln

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

National Life Insurance Co., et al. This court has jurisdiction under 28 U.S.C.

§1291. We affirm.

The parties are familiar with the facts of this case. This court reviews *de novo* a district court's legal determinations in ERISA cases, including the choice and application of the standard of review to decisions by ERISA plan administrators. *Abatie v. Alta Health & Life Ins. Co.*, 458 F.3d 955, 962 (9th Cir. 2006). This court reviews the district court's underlying finding of fact for clear error. *Id.*

The district court correctly reviewed Lincoln's determination for abuse of discretion after finding that Lincoln's structural conflict warranted a low level of weight, a finding which Bardill does not challenge. The district court did not err when it found that there was no abuse of discretion by the administrator. The plan clearly vested discretionary authority with the fiduciary. There was no abuse of discretion by Lincoln when it denied Bardill benefits for physical disability but granted benefits for mental disability. The medical findings were such that Bardill was depressed but was capable of physical work. Lincoln complied with ERISA regulations and properly considered Bardill's chronic pain. Furthermore, the district court did not err when it took into account Bardill's ability to do chores and to go on a cruise when making its decision.

We, therefore, affirm the district court's judgment.

AFFIRMED.