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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

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LORENE LUNDQUIST,  
Plaintiff,

NO. CV 02-9602 FMO

v.

ORDER REVERSING ADMINISTRATIVE  
DETERMINATION RE: ERISA BENEFITS

CONTINENTAL CASUALTY COMPANY,  
et al.,  
Defendants.

INTRODUCTION

This is a claim for the recovery of benefits under the Employee Retirement Income Security Act of 1974 ("ERISA"), 29 U.S.C. § 1001, et seq. For the reasons set forth below, the administrative decision to terminate benefits is reversed.

PROCEEDINGS

On December 17, 2002, plaintiff Lorene Lundquist ("plaintiff" or "Lundquist") commenced this action by filing a "Complaint For Breach Of Employee Retirement Income Security Act Of 1974" ("Complaint"), asserting that her disability benefits were improperly terminated in violation of ERISA. In her Complaint, plaintiff named as defendants Continental Casualty Company ("CNA") and Blue Cross of California Disability Plan.<sup>1</sup> Plaintiff requests the following relief: (1)

<sup>1</sup> Although not addressed by any of the parties, it appears that plaintiff inadvertently named Blue Cross of California Disability Plan as a defendant in her Complaint rather than WellPoint

47

1 a declaration that she is disabled under the terms of the relevant disability plan and entitled to  
2 continued disability benefits; (2) payment of disability benefits due, including all prejudgment and  
3 postjudgment interest, from the date her benefits were terminated; (3) attorney fees and costs  
4 pursuant to 29 U.S.C. § 1132(g)(1); and (4) any further relief the court deems just and proper.

5 CNA and WellPoint STD Plan (collectively "defendants") filed their Answer to plaintiff's  
6 Complaint ("Answer") on February 12, 2003. In their Answer, defendants denied plaintiff's  
7 allegations regarding disability and raised two affirmative defenses, specifically that plaintiff's  
8 Complaint fails to state a claim upon which relief may be granted and that plaintiff's alleged  
9 injuries, if any, were proximately caused, wholly or in part, by the acts, omissions, negligence,  
10 neglect or wrongful acts of parties, persons, entities or corporations other than defendants.

11 On May 13, 2003, the parties consented to proceed before the undersigned United States  
12 Magistrate Judge. Subsequently, on September 17, 2003, the parties stipulated that "the case  
13 will be decided by the court based upon the administrative record, which is less than 200 pages,  
14 and any supplementation of the record the court deems permissible." (Court's Stipulation and  
15 Order Allowing Waiver of Settlement Conference and Setting Briefing Schedule for Trial, filed  
16 September 17, 2003, at 2).

17  
18  
19 Health Networks Group Short Term Disability Plan ("WellPoint STD Plan"). Such inadvertence,  
20 however, does not appear to be substantial or material. Indeed, in her Complaint, plaintiff  
21 correctly referred to Policy No. SR-83094619, the policy number for the WellPoint STD Plan.  
22 (Complaint at 2). Also, plaintiff's Proof of Service of Summons and Complaint reflects that plaintiff  
23 served her summons and Complaint on WellPoint Health Networks, Inc. rather than Blue Cross  
24 of California. In addition, plaintiff, throughout her pleadings, interchangeably used both entities,  
25 Blue Cross of California Disability Plan and WellPoint STD Plan. Furthermore, CNA and  
26 Wellpoint STD Plan, not Blue Cross of California Disability Plan, filed an Answer to plaintiff's  
27 Complaint, and all pleadings filed by defendants have named CNA and WellPoint STD Plan as  
28 the sole defendants in this action. Finally, WellPoint STD Plan, not Blue Cross of California  
Disability Plan, is named in the relevant plan documents submitted as part of the Administrative  
Record. Accordingly, the court will refer to CNA and WellPoint STD Plan as the proper  
defendants in its decision. See Everhart v. Allmerica Financial Life Ins. Co., 275 F.3d 751, 754  
(9th Cir. 2001), cert. denied, 536 U.S. 958, 122 S.Ct. 2662 (2002) (in an ERISA action to recover  
benefits, the plan is a proper defendant); Gaines v. Sargent Fletcher, Inc. Group Life Ins. Plan,  
329 F.Supp.2d 1198, 1210-11 (C.D. Cal. 2004) (insurance company that carried out actual  
administration of claims was proper defendant in ERISA action for recovery of benefits); 29 U.S.C.  
§ 1132(d) (an employee benefit plan may be sued under ERISA as an entity).

1 Plaintiff filed her "Trial Brief" ("Plaintiff's Trial Brief") on October 23, 2003, and defendants  
2 filed their "Opening Trial Brief" ("Defendants' Trial Brief") on October 24, 2003. Thereafter, on  
3 November 6, 2003, plaintiff filed a "Response to Defendants' Trial Brief" ("Plaintiff's Response  
4 Brief"), and on November 7, 2003, defendants filed a "Responsive Trial Brief" ("Defendants'  
5 Response Brief").

6 On November 18, 2003, the court heard oral arguments from plaintiff and defendants, after  
7 which the matter was deemed submitted. (See Court's Minute Order of November 18, 2003).

8 On March 3, 2004, plaintiff filed a document entitled "Supplemental Authority Re Standard  
9 of Review Following Trial" ("Plaintiff's Supplemental Authority"), in which plaintiff requested that  
10 the court take judicial notice of an opinion letter and notice issued by the California Department  
11 of Insurance ("California DOI"), on February 26 and 27, 2004, respectively, withdrawing approval  
12 of disability insurance policies containing discretionary clauses. In response to Plaintiff's  
13 Supplemental Authority, the court ordered additional briefing from the parties. (See Court's Order  
14 of March 5, 2004, at 1-2).

15 On March 25, 2004, plaintiff filed her "Supplemental Brief Following Trial" ("Plaintiff's  
16 Supplemental Brief"), and on June 16, 2004, defendants filed their "Post-Trial Supplemental Brief"  
17 ("Defendants' Supplemental Brief"). Shortly thereafter, on July 16, 2004, plaintiff filed a "Reply  
18 Brief In Support of Supplemental Brief Following Trial" ("Plaintiff's Supplemental Reply Brief").

19 The parties filed various requests for judicial notice from July 16, 2004, through March 31,  
20 2005, relating to the California DOI's revocation of its approval of discretionary clauses in disability  
21 insurance policies.

## 22 SUMMARY OF FACTS

### 23 I. PLAINTIFF'S EMPLOYMENT.

24 Plaintiff is a 66-year-old woman who began employment with Blue Cross of California  
25 ("Blue Cross") on April 14, 1997. (Administrative Record for ERISA Trial ("AR") at 2, 16 & 20).  
26 Plaintiff's last day of employment with Blue Cross was on December 7, 2001. (Id. at 19-20, 31,  
27 40, 52, 61, 64, 70, 73 & 125).

1 During her employment with Blue Cross, plaintiff worked as a Clinical Research Manager  
2 in the Grievance and Appeals Department, a department that handles approximately 700 appeals  
3 and complaints per month. (AR at 2, 16, 19-20, 22, 28, 31, 40, 59, 61, 64, 67 & 70). In this  
4 management position, plaintiff earned an annual salary of approximately \$72,185.00 to  
5 \$75,073.00. (Id. at 16 & 20). Her duties included: data entry; reviewing medical records;  
6 handling a case load of approximately 135 cases, each of which had to be closed within 30 days;  
7 handling expedited appeals, each of which had to be closed within three days; training new  
8 employees; and attending three to five employee management meetings a week, which lasted  
9 anywhere from one to four hours. (Id. at 16, 20, 22 & 70).

10 Plaintiff described her job as stressful due, in part, to a decrease in department size and  
11 a hiring freeze that was in place in 2001 and 2002. (AR at 24, 28 & 70). In a letter to defendant  
12 CNA, dated April 12, 2002, plaintiff stated:

13 Since I am one of the managers in [the Grievance and Appeals] department,  
14 I have a twofold job. Over the last 18 months the department has decreased  
15 in size and all the employees, especially the managers, have assumed an  
16 increase in the work load. I added to my work load of trainer of all new hires  
17 with a small case load, to a large case load of 135 cases, plus continued as  
18 a resource manager to all the employees. These cases have to be reviewed,  
19 records requested, re-reviewed and presented to a Medical Director, and  
20 closed with a decision within 30 days. There are also expedited appeals that  
21 have to be handled and closed within 3 days. This was added on to the 135  
22 cases already being reviewed.

23 Since I am in management I also attend 3-5 meetings per week, that  
24 last anywhere from 1-4 hours. As you can see this is much more than data  
25 entry and record review. With changes in the management of the  
26 department and a hiring freeze in the last year, the department became very  
27 stressful. The case load was 3 times what it was when I hired on with the  
28 company.

1 (Id. at 70).

2 II. THE PLANS.

3 Defendant CNA issued group insurance contracts providing short term and long-term  
4 disability benefits to WellPoint Health Networks, Inc. ("WellPoint"). (AR at 132-61 & 162-97).  
5 WellPoint, in turn, used the contracts to establish its Group Short Term Disability Plan ("WellPoint  
6 STD Plan"), Policy No. SR-83094619, and Group Long Term Disability Plan, ("WellPoint LTD  
7 Plan"), Policy No. SR-83094620, (collectively the "Plans"), which are employee welfare benefit  
8 plans funded by CNA and governed by ERISA. (Id.).

9 The Plans were offered to eligible employees of WellPoint and its subsidiaries, including  
10 Blue Cross. (AR at 139 & 165). Plaintiff, as an employee of Blue Cross, was eligible for, and was  
11 covered by both the WellPoint STD and LTD Plans. (Id. at 16, 20, 139 & 165).

12 Pursuant to the Plans, both WellPoint and CNA had "discretionary authority" to "interpret  
13 the terms of the Plan[s] and to determine eligibility for and entitlement to benefits in accordance  
14 with the Plan[s]." (AR at 158 & 193; see also id. at 147 & 179). As such, WellPoint and CNA  
15 acted as plan fiduciaries under the Plans. (Id. at 147, 158, 179 & 193); see also 29 U.S.C. §  
16 1002(21)(A).<sup>2</sup> Although only WellPoint was named plan administrator under the Plans, (AR at 158  
17 & 193), CNA, in fact, actively participated in the administration of the Plans. Indeed, as set forth  
18 in further detail below, it was exclusively CNA that denied plaintiff's claim for benefits, a decision  
19 that led to the filing of the Complaint in the instant action. See Gaines, 329 F.Supp.2d at 1211  
20 (insurer was not expressly named as plan administrator in the plan, but "participated in the  
21 administration of the plan, having undertaken the sole responsibility for administering claims" and  
22 "specifically rejected the claim in this case").

23 ///

24

25 <sup>2</sup> Pursuant to 29 U.S.C. § 1002(21)(A), "a person is a fiduciary with respect to a plan to the  
26 extent (i) he exercises any discretionary authority or discretionary control respecting management  
27 of such plan or exercises any authority or control respecting management or disposition of its  
28 assets, (ii) he renders investment advice for a fee or other compensation, direct or indirect, with  
respect to any moneys or other property of such plan, or has any authority or responsibility to do  
so, or (iii) he has any discretionary authority or discretionary responsibility in the administration  
of such plan."

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1 A. The WellPoint STD Plan.

2 Under the WellPoint STD Plan, "disability" is defined as:

3 *Injury or Sickness* [that] causes physical or mental impairment to such a  
4 degree of severity that *You* are:

- 5 1. continuously unable to perform the *Material and Substantial Duties*<sup>3</sup>  
6 of *Your Regular Occupation*<sup>4</sup>; and  
7 2. not working for wages in any occupation for which *You* are or become  
8 qualified by education, training or experience.

9 (AR at 149) (italics in original).<sup>5</sup>

10 If an employee establishes "disability," the WellPoint STD Plan provides short term  
11 disability benefits for a maximum period of 26 weeks, subject to a waiting or "elimination" period<sup>6</sup>  
12 of seven days for disability based upon sickness, but no waiting or "elimination" period for  
13 disability based upon injury.<sup>7</sup> (AR at 143-44 & 149). The seven-day elimination period based  
14 upon sickness, rather than injury, is applicable in this case. (*Id.* at 16 & 20).

15 \_\_\_\_\_  
16 <sup>3</sup> "Material and Substantial Duties" are defined under the WellPoint STD Plan as "the  
17 necessary functions of *Your Regular Occupation* which cannot be reasonably omitted or altered."  
(AR at 156) (italics in original).

18 <sup>4</sup> "Regular Occupation" is defined under the WellPoint STD Plan as "the occupation that *You*  
19 are performing for income or wages on *Your Date of Disability*. It is not limited to the specific  
20 position *You* held with *Your* employer." (AR at 157) (italics in original).

21 <sup>5</sup> This definition of disability is based upon the "Occupation Qualifier." (AR at 149).  
22 "Disability" under the WellPoint STD Plan, in fact, can be met by satisfying either the "Occupation  
23 Qualifier" or the "Earnings Qualifier." (*Id.*). However, because both parties concede that plaintiff's  
claim arises under the "Occupation Qualifier," there is no need to discuss or set forth the  
"Earnings Qualifier" definition here. (See Plaintiff's Trial Brief at 11 & Defendants' Trial Brief at  
3, n. 1).

24 <sup>6</sup> The WellPoint STD Plan defines "elimination period" as "the number of calendar days at  
25 the beginning of a continuous period of *Disability* for which no benefits are payable." (AR at 156)  
26 (italics in original). It begins on the day an employee becomes disabled. (*Id.* at 149).

27 <sup>7</sup> "[I]njury" is defined as "bodily injury caused by an accident which results, directly and  
28 independently of all other causes, in *Disability* which begins while *Your* coverage is in force." (AR  
at 156) (italics in original). "Sickness" is defined as "sickness or disease causing *Disability* which  
begins while *Your* coverage is in force." (*Id.* at 157) (italics in original).

1 Under the WellPoint STD Plan, the weekly benefit is calculated based upon the type of plan  
2 in which the employee is enrolled, Plan A, B, or C. (AR at 143). Here, plaintiff was covered under  
3 Plan C of the WellPoint STD Plan, (*id.* at 4, 11, 13, 16, 20 & 52 & Plaintiff's Trial Brief at 11),  
4 which means that her weekly benefit is calculated as:

5 70% of *Weekly Earnings* to a maximum benefit of \$1,500.00 per Week  
6 subject to reduction by deductible sources of income or *Disability Earnings*\*.

7 \*In no event will the Weekly Benefit, after the reductions stated in [the]  
8 Deductible Sources of Income provision, be less than \$25.00 per week.

9 (AR at 143) (italics in original).

10 B. The WellPoint LTD Plan.

11 Under the WellPoint LTD Plan, the definition of "disability" is based upon the type of plan  
12 in which the employee is enrolled, Plan A, B, C, D or E. (AR at 181-82). In the instant case,  
13 plaintiff was covered under Plan C. (*id.* at 16 & 20 & Plaintiff's Trial Brief at 11). Under Plan C,  
14 "disability" is defined in the same manner as under the WellPoint STD Plan for the first 24 months  
15 during which benefits are payable. (AR at 181). Specifically:

16 "Disability" means that during the *Elimination Period*<sup>8</sup> and the following 24  
17 months, *Injury* or *Sickness* causes physical or mental impairment to such a  
18 degree of severity that *You* are:

19  
20  
21  
22  
23  
24  
25 \_\_\_\_\_  
26 <sup>8</sup> The WellPoint LTD Plan, like the WellPoint STD Plan, defines "elimination period" as "the  
27 number of calendar days at the beginning of a continuous period of *Disability* for which no benefits  
28 is subject to an "elimination period" of 180 days or the expiration of the employee's short term  
disability benefits, whichever is longer. (*id.* at 175).

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- 1 1. continuously unable to perform the *Material and Substantial Duties*<sup>9</sup>
- 2 of *Your Regular Occupation*<sup>10</sup>; and
- 3 2. not working for wages in any occupation for which *You* are or become
- 4 qualified by education, training or experience.

5 (*Id.*) (italics in original).

6 Thereafter, the definition of "disability" is defined as follows:

7 After the *Monthly Benefit* has been payable for 24 months, "*Disability*" means

8 that *Injury or Sickness* causes physical or mental impairment to such a

9 degree of severity that *You* are:

- 10 1. continuously unable to engage in any occupation for which *You* are
- 11 or become qualified by education, training or experience; and
- 12 2. not working for wages in any occupation for which *You* are or become
- 13 qualified by education, training or experience.

14 (*AR* at 181) (italics in original).

15 Accordingly, if an employee can establish "disability" under the definitions set forth above,

16 the WellPoint LTD Plan provides long term disability benefits for a period of 24 months and a

17 determinate period thereafter,<sup>11</sup> as long as the employee is "continuously unable to engage in any

18 occupation for which [the employee] [is] or become[s] qualified by education, training or

19 experience" and "not working for wages in any occupation for which [the employee] [is] or

20 become[s] qualified by education, training or experience." (*AR* at 181) (italics in original).

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21 <sup>9</sup> "Material and Substantial Duties" are defined under the WellPoint LTD Plan as "the

22 necessary functions of *Your Regular Occupation* which cannot be reasonably omitted or altered."

23 (*AR* at 191) (italics in original). This definition is identical to that found in the WellPoint STD Plan.

24 (*Id.* at 156).

25 <sup>10</sup> "Regular Occupation" is defined under the WellPoint LTD Plan as "the occupation that *You*

26 are performing for income or wages on *Your Date of Disability*. It is not limited to the specific

27 position *You* held with *Your* employer." (*AR* at 192) (italics in original). This definition is identical

28 to that found in the WellPoint STD Plan. (*Id.* at 157).

<sup>11</sup> An individual, such as plaintiff, who was 63 years of age on the date her disability

commenced, is entitled to a maximum benefit period of 36 months under the WellPoint LTD Plan.

(*AR* at 176 & 185).



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1 Under Plan C of the WellPoint LTD Plan, the monthly benefit is calculated as follows:  
2 60% of *Monthly Earnings* to a maximum benefit of \$13,757.00 per month  
3 subject to reduction by deductible sources of income or *Disability Earnings*.  
4 (AR at 175) (italics in original).

5 III. PLAINTIFF'S CLAIMS FOR BENEFITS.

6 A. July 2001 Claim.

7 Plaintiff began treatment with Dr. John Y. Hess, a cardiologist with the Regional Heart  
8 Center of Thousand Oaks, on February 12, 2001. (AR at 16 & 35-36). At that time, plaintiff  
9 complained of palpitations, which apparently were made worse by thyroid replacement therapy.  
10 (Id. at 35-36). An echocardiogram study conducted on March 23, 2001, revealed some cardiac  
11 abnormalities. (Id. at 105-06).

12 On July 15, 2001, plaintiff was admitted to the hospital due to atrial fibrillation and evidence  
13 of tachycardia/bradycardia syndrome.<sup>12</sup> (AR at 16, 31, 35 & 113-18). She complained of  
14 "irregular palpitations both fast and slow with dizziness and some shortness of breath." (Id. at  
15 113). Various medical tests revealed significant bradyarrhythmias and sick sinus syndrome,<sup>13</sup> and  
16 plaintiff was diagnosed with sick sinus syndrome, diabetes, and hypothyroidism. (Id. at 31, 70 &  
17 113). Plaintiff underwent surgery for the insertion of a pacemaker to control her cardiac  
18 arrhythmia, and she was discharged from the hospital on July 19, 2001. (Id. at 16, 31, 35 & 113).  
19 Because of her medical condition, plaintiff sought and received an approved leave of absence  
20 from work in July 2001, with her last day of work occurring on July 13, 2001. (Id. at 2, 6 & 16).

21 On July 22, 2001, two days after her hospital discharge, plaintiff completed and submitted  
22 a Disability Claim Form for short term disability benefits, Claim No. 9525041212. (AR at 16-17).

23  
24 <sup>12</sup> "Tachycardia" is defined as a "[r]apid beating of the heart, conventionally applied to rates  
25 over 100 per minute." Stedman's Medical Dictionary (26th ed. 1995) at 1758. "Bradycardia" is  
26 defined as a "[s]lowness of the heartbeat, usually defined (by convention) as a rate under 60  
beats per minute." Id. at 230.

27 <sup>13</sup> "Sick sinus syndrome" is a medical condition with "symptoms ranging from dizziness to  
28 unconsciousness due to chaotic or absent atrial activity often with bradycardia alternating with  
tachycardia, recurring ectopic beats including escape beats, and runs of supraventricular and  
ventricular arrhythmias." Stedman's Medical Dictionary at 1741.

1 She listed the nature of her disability as "irregular heart beat – pacemaker insertion." (Id. at 16).  
2 She also provided that her employment duties included "review of medical records, data entry[.]  
3 No physical demands." (Id.). Dr. Hess completed a portion of the form, listing plaintiff's diagnosis  
4 as tachycardia/bradycardia syndrome, and stated that plaintiff's disability began on July 15, 2001.  
5 (Id.). Dr. Hess estimated that plaintiff would be able to return to work on August 15, 2001. (Id.)

6 Defendant CNA accepted plaintiff's claim and began paying her short term disability  
7 benefits under the STD Plan on July 22, 2001, following the seven-day elimination period.<sup>14</sup> (AR  
8 at 1, 4, 11 & 13). In accepting plaintiff's claim, CNA stated that disability benefits would continue  
9 through August 14, 2001, due to plaintiff's estimated return to work date of August 15, 2001. (Id.  
10 at 4 & 11). Plaintiff's weekly benefit under the STD Plan, reduced by the California Compulsory  
11 Disability Benefit Law, was \$481.72. (Id. at 4, 9, 11 & 13).

12 Subsequently, Dr. Hess recommended a revised return to work date of September 4, 2001,  
13 due to reprogramming of plaintiff's pacemaker and a change in plaintiff's medications. (AR at 1  
14 & 12). Based on this recommendation, plaintiff's short term disability benefits were extended  
15 through September 3, 2001. (Id. at 1 & 8). Plaintiff returned to work in September 2001, and her  
16 claim consequently was closed. (Id. at 1).

17 B. December 2001 Claim.

18 Plaintiff continued to work for Blue Cross until December 7, 2001, at which time she  
19 permanently left her employment with the company due to "continued problems" with her medical  
20 condition. (AR at 19, 20, 28, 52 & 70). Specifically, plaintiff stated that "any physical or mental  
21 exertion caused atrial fibrillation" and that she was "very sensitive" to changes in blood pressure  
22 and heart rate. (Id. at 28). She also indicated that after the insertion of her pacemaker and  
23 "numerous medications" for hypertension and tachycardia, she continued to experience  
24 "increased pulse rates and cardiac arrhythmias" over the course of several months and "realized  
25 that [she] could not continue working." (Id. at 70).

26

27

28 <sup>14</sup> The seven-day elimination period lasted from July 15, 2001, to July 21, 2001. (AR at 1, 4, 11 & 13).

1 On December 16, 2001, plaintiff completed and submitted a second Disability Claim Form  
2 for short term disability benefits, Claim No. 9525041213. (AR at 20). Plaintiff listed the nature  
3 of her disability as "cardiac arrhythmia [and] sick sinus syndrome." (Id.). She also indicated that  
4 she was receiving, or entitled to receive, state disability benefits and described her job duties as  
5 "data entry [and] review of medical records." (Id.). Her treating physician, Dr. Edward B. Portnoy,  
6 an internist, completed a portion of the form, listing plaintiff's diagnosis as cardiac arrhythmia  
7 disorder and sick sinus syndrome, and provided that plaintiff's disability began on December 7,  
8 2001. (Id.). Dr. Portnoy also estimated that plaintiff would be able to return to work on February  
9 1, 2002. (Id.).

10 Defendant CNA initially accepted plaintiff's claim and began paying her short term disability  
11 benefits under the STD Plan on December 15, 2001, following the seven-day elimination period.<sup>15</sup>  
12 (AR at 52). At that time, CNA approved disability benefits through January 31, 2002, due to  
13 plaintiff's estimated return to work date of February 1, 2002. (Id.). Plaintiff's weekly benefit under  
14 the STD Plan, reduced by the California Compulsory Disability Benefit Law, was \$481.72. (Id. at  
15 52, 125 & 129).

16 Defendant CNA thereafter extended plaintiff's short term disability benefits on three  
17 occasions, specifically extending her benefits through February 15, 2002, (AR at 54 & 82), through  
18 February 22, 2002, (id. at 81), and again through March 1, 2002, (id. at 55). CNA first extended  
19 benefits based on a request submitted by Dr. Hess on January 30, 2002, in which he stated that  
20 plaintiff was still disabled and would not be able to return to work until April 1, 2002. (Id. at 27,  
21 84 & 99). According to CNA, benefits thereafter were approved in order to allow plaintiff "to adjust  
22 to the medication after the input of a pacemaker and all testing to be completed," including a  
23 Holter monitor test.<sup>16</sup> (Id. at 24-25, 61 & 64). Each time CNA extended plaintiff's benefits, CNA  
24

25  
26 <sup>15</sup> The seven-day elimination period lasted from December 8, 2001, to December 14, 2001.  
(AR at 27, 52 & 125).

27 <sup>16</sup> A "Holter monitor" is "a technique for long-term, continuous recording of  
28 electrocardiographic signals on magnetic tape for scanning and selection of significant but fleeting  
changes that might otherwise escape notice." Stedman's Medical Dictionary at 1125.

1 informed plaintiff, "[y]our claim will be reviewed on a continuing basis and benefits will be provided  
2 while you remain disabled." (Id. at 54-55 & 81-82).

3 On March 4, 2002, however, defendant CNA terminated plaintiff's short term disability  
4 benefits. (AR at 23, 56-58 & 72-75). CNA expressly based its decision on "a telephone interview  
5 with [plaintiff] and the medical documentation which has been received and reviewed." (Id. at 72).  
6 In denying plaintiff's claim, CNA stated, in part:

7 During a telephone conversation with you on 2/15/02, you indicated  
8 you were capable of driving, performing self care, housework and going to  
9 water aerobics. You indicated you were not capable of a return to work due  
10 to an uncontrolled heart rate with any type of stress. You also indicated you  
11 have shortness of breath with the increased heart rate.

12 Upon review of your file, you were initially disabled due to coronary  
13 heart disease, sick sinus syndrome and then stress related atrial fibrillation.  
14 The result of the Holter Monitor test, in addition to the physical examination  
15 findings, fail to indicate an impairment that would prevent you from  
16 performing the duties of your occupation as a Clinical Research Manager.  
17 The duties of a Clinical Research Manager are sedentary in nature, and your  
18 activities of daily living indicate you are functioning above a sedentary level  
19 as reflected in your Holter Monitor report. We regret to inform you there is  
20 insufficient medical evidence in our file to support a continued functional  
21 impairment or your inability to return to work beyond the current paid through  
22 date of 3/1/02. Therefore, no additional benefits are payable.

23 (Id. at 57 & 74). CNA informed plaintiff that she could submit a formal request for reconsideration,  
24 within 180 days of CNA's decision to terminate benefits. (Id.).

25 On April 12, 2002, plaintiff requested reconsideration of the denial of her short term  
26 disability claim. (AR at 70). Plaintiff submitted a letter from Dr. Portnoy, dated April 12, 2002, and  
27 a letter from herself, also dated April 12, 2002, in support of her request for reconsideration. (Id.)  
28

1 at 69-70). Dr. Portnoy, in his letter, opined that plaintiff was "totally disabled." (Id. at 69).  
2 Specifically, he stated:

3 I am caring for the above patient whom I feel is totally disabled at this  
4 time. She suffers from organic heart disease. She is status post pacemaker  
5 implant and diabetes mellitus. These conditions are aggravated by stress at  
6 work. It is due to "stress" that this patient should be considered totally  
7 disabled for any occupation at this time.

8 (Id. at 69). Plaintiff, in her letter, detailed her specific job duties and responsibilities with Blue  
9 Cross. (Id. at 70). She also denied that she was doing any housework, a fact that CNA used in  
10 its initial denial of plaintiff's claim. (Id. at 57 & 70).

11 On April 24, 2002, defendant CNA denied plaintiff's request for reconsideration. (AR at 22,  
12 59-60 & 67-68). Specifically, CNA stated, in part:

13 Although[ ] Dr. Portn[o]y has stated you are disabled, there is no  
14 supporting documentation of an impairment related to an increase in heart  
15 rate or an arrhythmia that would preclude you from performing your required  
16 job duties as a Clinical Research Manager. We are unable to change our  
17 initial decision to terminate your benefits.

18 (Id. at 59 & 67). Defendant CNA also notified plaintiff that it had forwarded her claim for a formal  
19 appeal review. (Id. at 22, 60 & 68).

20 On May 29, 2002, plaintiff's appeal was denied and the decision to terminate plaintiff's  
21 benefits again was upheld. (AR at 61-62 & 64-65). In denying plaintiff's appeal, defendant CNA  
22 stated, in part:

23 The letter sent in with your appeal request from Dr. Portnoy stated you  
24 were unable to work because the stress would aggravate your conditions.  
25 He further stated it was due to "stress" that you should be considered totally  
26 disabled.

27 Please be advised that preventive measures (i.e. not working) for  
28 stress management does not qualify a person for disability benefits. This

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1 policy does not provide benefits based on the "possibility" of a disability.  
2 Your occupation involves data entry and reviewing of medical records. You  
3 have indicated that the job is in a very stressful environment. Although you  
4 have been advised to refrain from working in a stressful environment, the  
5 medical records do not support a functional impairment precluding you from  
6 working beyond the date benefits have been paid with any employer.

7 (Id. at 62 & 65). At this time, plaintiff had exhausted all administrative remedies relating to her  
8 claim; therefore, CNA stated that its decision was "final and binding." (Id.).

9 On June 19, 2002, plaintiff filed a complaint with the California DOI, seeking reevaluation  
10 of her claim by CNA. (AR at 50). Plaintiff stated in her complaint:

11 This company has denied short term disability since 3/1/02, based on  
12 the denial that I am not disabled. Both my physicians[,] i.e.,[,] internal  
13 medicine and cardiologist[,] have stated [that] I am disabled, due t[o] a  
14 diagnosis of Sick Sinus Syndrome. I have a pacemaker and tried to go back  
15 to work, but have had multiple problems with sinus tachycardia and  
16 arrhythmias. I am on medication for the problems but stress seems to create  
17 the above problems. Both denial letters do not state any physician has  
18 reviewed the issues or contacted my physicians. This policy was offered by  
19 my employer along with my additional premium to help supplement my state  
20 disability. State disability has paid all along and has stated I am disabled  
21 based on my physician[s'] information.

22 (Id.). On July 5, 2002, plaintiff sent all correspondence relating to the denial of her claim to the  
23 California DOI. (Id. at 51).

24 In response to plaintiff's complaint, the California DOI wrote to CNA on July 12, 2002,  
25 requesting that it reevaluate plaintiff's claim "and in no later than twenty-one (21) days inform  
26 [plaintiff] in writing of the results." (AR at 49). The California DOI also requested a copy of CNA's  
27 complete file relating to plaintiff's claim. (Id.). CNA responded in writing to the California DOI on  
28 July 19, 2002, stating that it would refer plaintiff's file to a medical consultant for review. (Id. at

1 44). CNA also indicated that it would reevaluate plaintiff's claim and that a decision would be  
2 made "within the time frame allotted of 21 days."<sup>17</sup> (Id.)

3 In reevaluating plaintiff's claim, CNA had Dr. Eugene Truchelut, an internist, review  
4 plaintiff's file. (AR at 42). This was the first time in its handling of plaintiff's claim that CNA sought  
5 to have plaintiff's records reviewed by a doctor. Prior to this time, defendant CNA only sought  
6 medical review from its own in-house nurses. (See, e.g., id. at 25, 56-60, 67-68 & 73-75).

7 CNA provided a summary of plaintiff's file to Dr. Truchelut on its Physician Review Form,  
8 stating only that plaintiff's "test results do not appear to be abnormal and [her] occupation includes  
9 data entry and review of medical records." (AR at 40). CNA asked Dr. Truchelet to state his  
10 opinion as to whether the findings of plaintiff's physician, including restrictions of no work due to  
11 stress, would prevent plaintiff from performing the duties of her occupation. (Id.)

12 On August 5, 2002, after reviewing plaintiff's claim, Dr. Truchelut submitted his report. (AR  
13 at 31-33). Notably, he indicated that no information was given regarding the physical demands  
14 of plaintiff's job and that the only description of plaintiff's job duties was "data entry and review of  
15 medical records." (Id. at 31). Dr. Truchelut summarized plaintiff's medical history and concluded  
16 that "the recent medical records provided [ ] do not support an inability by [plaintiff] to perform the  
17 types of work activities which you refer to, at least from the physical standpoint." (Id. at 32).  
18 Although he stated that plaintiff's "most recent Holter monitor did not show evidence of significant  
19 arrhythmias, and her pacemaker was functioning normally," he noted that "[t]he issue of  
20 psychological stress impacting on her occupational abilities is idiosyncratic, and not able to be  
21 quantified by these types of tests." (Id. at 33). Based on the medical records provided, Dr.  
22 Truchelut concluded that plaintiff would be capable of performing light duty work. (Id. at 32-33).

23 On August 12, 2002, CNA received two letters, dated May 15, 2002 and August 1, 2002,  
24  
25

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26  
27 <sup>17</sup> Subsequently, 21 days passed, and the California DOI wrote to defendant CNA on August  
28 9, 2002, stating that it had not yet received the "anticipated follow up" to CNA's July 19, 2002  
letter. (AR at 38). At that time, the California DOI again requested a copy of CNA's complete  
claim file. (Id.)

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1 written by plaintiff's cardiologist Dr. Hess and submitted by plaintiff to be used in reevaluating her  
2 claim.<sup>18</sup> (AR at 35-37). In the May 15, 2002, letter, Dr. Hess stated, in part:

3           Unfortunately, [plaintiff's cardiac] rhythms have been very difficult to manage  
4 in spite of the combination of pacemaker and medication therapy. She  
5 continued to have breakthroughs in cardiac rhythm abnormality in spite of  
6 multiple medication changes. The paperwork from all her office visits and  
7 pacemaker checks has been enclosed. It became fairly clear that the burden  
8 of long hours and stressful work situations complicated her rhythm  
9 management in that returns to work have been associated with exacerbation  
10 in cardiac arrhythmias.

11           She remains in intermittent control of cardiac arrhythmias on a  
12 combination of Toprol XL, 25 mg b.i.d., Synthroid, 0.088 mg, Micronase, 10  
13 b.i.d., Avandia, 8 q.d., Glucophage, 500 q.d. and Hyzaar, 50 mg/12.5 q.d.

14           On physical examination, at last visit her . . . diagnosis remained sick  
15 sinus syndrome with paroxysmal atrial fibrillation. There is a strong stress  
16 component to this rhythm abnormality. Her prognosis is related to future  
17 rhythm control and to the need for anticoagulation therapy. This rhythm  
18 abnormality will likely be present for life.

19 (Id. at 35). In his August 1, 2002, letter, Dr. Hess provided:

20           I have been involved with [plaintiff's] care since before February of  
21 2001. Initially, she was seen for problems of palpitations. Over time, these  
22 rhythm disturbances grew much worse, requiring multiple medications and  
23 pacemaker implantation. Stress seemed to complicate the rhythm issues  
24 and absences from work resulted in some improvement in the rhythm  
25 abnormalities with greater ease in their management. Heavy caseloads of  
26

27 <sup>18</sup> Defendants do not rebut plaintiff's argument that CNA did not provide these letters to Dr.  
28 Truchelut for his review, and the court cannot find any indication in the record indicating that Dr.  
Truchelut did, in fact, review the letters.



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1 work with difficulty in dealing with clients all contributed to worsening of the  
2 rhythm problems. For that reason, it was recommended that she will remain  
3 off work permanently so that we might better manage these difficult-to-  
4 control cardiac rhythm abnormalities.

5 (Id. at 36).

6 On August 12, 2002, the same day CNA received Dr. Hess' letters, CNA denied plaintiff's  
7 claim and upheld its previous decision to terminate plaintiff's benefits. (AR at 42-43). CNA  
8 indicated that it had received Dr. Hess' letters, but rejected them, stating that they did not "effect  
9 the outcome of [CNA's] decision since there were no findings included that would conclude you  
10 were unable to work." (Id. at 42). In denying plaintiff's claim, CNA stated, in relevant part:

11 The medical consultant concluded that the medical records provided  
12 do not support your inability to perform the duties of your occupation based  
13 on any physician findings. The negative Bruce protocol treadmill test  
14 completed December 19, 2001 did not suggest ischemic heart disease. It  
15 was also noted that you were able to exercise well into stage II, which  
16 correlates with the ability to perform light level exercise. Also the latest  
17 Holter Monitor test did not show any evidence of significant arrhythmias and  
18 the pacemaker was functioning well.

19 The letters from Dr. Hess still reiterate[ ] that working/stress would  
20 worsen the problems. Dr. Hess also stated that your rhythm abnormality  
21 would likely be present [for] life. Again we do not have any medical  
22 documentation that would confirm your inability to perform the duties of your  
23 occupation.

24 As stated previously, preventive measures (i.e. not working) for stress  
25 management does not qualify a person for disability benefits. The policy  
26 does not provide benefits based on the "possibility" of a disability. The fact  
27 that your job may be stressful is not a disability.

28 (Id. at 42-43). CNA copied the California DOI in its denial letter to plaintiff. (Id. at 43).