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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

DAVID DIFFENDERFER,  
Plaintiff,  
v.  
ALLIED SIGNAL INC., ET AL.,  
Defendants.

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No. C- 99-5056 JCS

**ORDER GRANTING DEFENDANTS LIFE  
INSURANCE COMPANY OF NORTH AMERICA  
AND CIGNA GROUP INSURANCE MOTION FOR  
SUMMARY JUDGMENT AND/OR FOR  
JUDGMENT ON THE RECORD UNDER ERISA,  
GRANTING IN PART AND DENYING IN PART  
PLAINTIFF’S MOTION FOR SUMMARY  
JUDGMENT, DENYING DEFENDANTS’ JOINT  
MOTION FOR SUMMARY JUDGMENT AND  
REMANDING FOR FURTHER PROCEEDINGS**

On Friday, July 6, 2001, at 1:30 p.m, the following motions came on for hearing: 1) Plaintiff David Diffenderfer’s Motion For Summary Judgment (“Plaintiff’s Motion”); 2) Defendants Life Insurance Company of North America and Cigna Group Insurance Motion For Summary Judgment and/or for Judgment on the Record Under ERISA (“Defendants’ Separate Motion”); and 3) Joint Motion For Summary Judgment By Defendants Allied Signal Inc. Voluntary Employee Beneficiary Association Long-Term Disability Income Plan, Cigna Group Insurance, and Life Insurance Company of North America (“Defendants’ Joint Motion”). The parties filed Supplemental Briefs on July 16, 2001. For the reasons stated below, the Court GRANTS in part and DENIES in part Plaintiff’s Motion, GRANTS Defendants’ Separate Motion, DENIES Defendants’ Joint Motion and REMANDS to the plan administrator for further proceedings.

**I. INTRODUCTION**

Plaintiff David Diffenderfer brings this action for disability benefits under 29 U.S.C. § 1132(a)(1)(B), which provides for civil actions against employee benefit plans governed by the Employee

1 Retirement Income Security Act (“ERISA”). Plaintiff alleges that he was wrongfully denied long-term  
2 disability benefits to which he was entitled under the terms of the employee benefit plan offered by his  
3 employer, the Allied Signal Inc. Voluntary Employees Beneficiary Association Long-Term Disability  
4 Income Plan (“Plan”). The Plan is governed by ERISA, 29 U.S.C. §§ 1001 *et seq.* Plaintiff has sued the  
5 Plan and the Plan administrator, Life Insurance Company of North American d/b/a Cigna Group Insurance  
6 (hereinafter referred to as “LINA”).

7 The parties have filed cross-motions for summary judgment. Plaintiff seeks an order awarding  
8 disability payments and attorneys’ fees, arguing that he is totally disabled and that denial of his application  
9 for benefits was an abuse of discretion by the Plan. Defendants assert that the decision to deny Plaintiff’s  
10 claim for benefits was not an abuse of discretion and seek an order affirming the decision of the Plan. In  
11 addition, in a separately filed motion, Defendant LINA asserts that it should be dismissed because it is not a  
12 proper defendant.

13  
14 **II. BACKGROUND**

15 **A. Facts**

16 **1. History of Plaintiff’s Disability Claim**

17 Plaintiff was employed by Allied Signal Technical Services Corporation (“Allied Signal”) as an  
18 “Electronics Technician, Level III.” Administrative Record 104 [hereinafter A.R.].<sup>1</sup> In April 1997,  
19 Plaintiff began to experience weakness and cramps in his legs. A.R. 161. He consulted his regular doctor,  
20 Dr. Brian Ecker, on April 21, 1997. A.R. 123. Dr. Ecker described Plaintiff’s condition as follows:

21 David is 61 years old, he has been having some physical problems at work, unable to keep up with  
22 some of the younger guys. . . . There is a three story building he has to climb up and down during

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23 <sup>1</sup> The administrative record is attached as Exhibit A to the Declaration of J. Richard Peterson in Support of  
24 Defendants’ Separate Motion for Summary Judgment. At oral argument, the parties stipulated that the  
25 documents attached to the Peterson Declaration constitute a complete and accurate copy of the administrative  
26 record. However, following oral argument, Plaintiff filed with the Court a page that may (or may not) have been  
27 omitted from the copy of the record provided by Defendants. In particular, Plaintiff provided the back page  
28 of a form completed by Dr. Ecker stating that Plaintiff was totally disabled. *See* Appendix A to Declaration  
of William S. Bonnheim in Support of Plaintiff’s Supplemental Brief re Plan’s Reliance on “D.O.T.” Job  
Description In Denying Claimant Benefits. The front page of this form is included in the Administrative Record  
as A.R. 182. According to Plaintiff, the back page was also provided by Defendants but was “so dark as to  
be unreadable.” However, the Court has found no document in the record that appears to be the back page  
provided by Plaintiff, readable or unreadable. Because the Court does not rely on this page, it need not resolve  
the question of whether this particular page was contained in the Administrative Record.

1 the day. He has been having some problems, some weakness in his legs, and actually had to stop  
2 wearing his safety shoes because they are a little too heavy. Also, he is having a hard time with  
3 position, having a hard time putting his feet on the stairs. . . . Other symptoms are that his legs seem  
4 to be getting progressively weaker and now cramping at night.

5 *Id.* Dr. Ecker was unsure of the cause of Plaintiff's symptoms. He concluded that Plaintiff's "[l]ower  
6 [e]xtremity [pain] and [w]eakness [] favor[ed] more of a neurologic problem than spinal stenosis" but  
7 noted, "I want to make sure we are not missing something surgical." *Id.* Dr. Ecker referred Plaintiff for an  
8 MRI and blood work. *Id.* Dr. Ecker's report concluded, "I will keep him off work as I don't want him to  
9 hurt himself as he is climbing up and down these stairs." *Id.* Plaintiff never returned to work after April 21,  
10 1997.

11 On April 25, 1997, Dr. Ecker saw Plaintiff again to review the results of Plaintiff's MRI. A.R. 124.  
12 He wrote in his report that the MRI revealed "a little bit of arthritis but no real spinal stenosis." *Id.* He also  
13 referred Plaintiff to a neurologist, Dr. Oshtory "for verification and limitation of what the [patient] can and  
14 cannot do." *Id.* Once again, Dr. Ecker noted that "there will indeed be some modifications in his job  
15 description." *Id.*

16 Dr. Oshtory examined Plaintiff on May 5, 1997. A.R. 140. He described Plaintiff's symptoms as  
17 follows:

18 He was having some difficulty getting out of a deep chair and was having to use his arms to push  
19 himself up out of a chair. Since then, there has been some increase in these symptoms, which now  
20 include some degree of unsteadiness of gait. He states that he stumbles when going up steps, and  
21 he tends to lose his balance if he steps on a slightly uneven surface. He has been experiencing  
22 nocturnal cramps for the past two years, which in the last two to three months have gotten more  
23 severe, occurring two to three times a week . . .

24 *Id.* Dr. Oshtory observed in his diagnostic assessment that Plaintiff's examination showed "some mild  
25 sensory impairment in the toes bilaterally and some degree of weakness of the proximal muscles, with  
26 depressed ankle jerks bilaterally." *Id.* Dr. Oshtory noted also that Plaintiff had been scheduled for  
27 electrodiagnostic studies. *Id.*

28 On May 22, 1997, Dr. Ecker saw Plaintiff and reported that "he has had a progression of his  
neurologic symptoms with some increasing pain." He continued, "the working diagnosis is a demyelating  
neuropathy." *Id.* Later in the report, Dr. Ecker stated that Plaintiff's condition "seems to be a lot more  
progressive than what I initially felt." *Id.* Dr. Ecker extended Plaintiff's disability to July 31, 1997 but  
noted that "this is starting to look like it might be a permanent thing." *Id.*

1 On June 20, 1997, Dr. Oshtory wrote a letter referring Plaintiff to another neurologist, Dr. Layzer,  
2 of UCSF. A.R. 127. Dr. Oshtory wrote that “David does have a documented peripheral neuropathy on  
3 electrodiagnostic studies. I have called this a demyelinating neuropathy because the conduction velocities  
4 are significantly slowed, and yet the EMG study does not show denervation potentials.” *Id.*

5 Apparently, Dr. Layzer disagreed with Dr. Oshtory’s conclusion that Plaintiff’s symptoms were  
6 neurologically based. *See* A.R. 144 (9/11/97 Letter of Dr. Oshtory to Dr. Ecker stating that “Dr. Layzer  
7 did not feel that David had a significant peripheral neuropathy or myopathy and felt that patient’s symptoms  
8 were non-neurological”). However, the administrative record contains no reports of examinations by Dr.  
9 Layzer.

10 On September 11, 1997, Dr. Oshtory saw Plaintiff for a follow-up visit. *Id.* He reported that  
11 Plaintiff “has continued to complain of unsteady gait, weakness particularly of the proximal muscles of the  
12 lower extremities and some parasthesia.” *Id.* He wrote that he had “scheduled David for some  
13 strengthening exercises with physical therapy to see if this would help.” *Id.*; *see also* A.R. 66 (9/25/97  
14 report of physical therapist).

15 On September 26, 1997, Dr. Ecker saw Plaintiff. He reported that “[a]fter the consultation in San  
16 Francisco [apparently with Dr. Layzer] and nothing really being found, Dr. Oshtory is of the mind that  
17 [Plaintiff’s] symptoms may be related to some sort of depressive illness and is increasing his Prozac.” A.R.  
18 129. Dr. Ecker once again extended Plaintiff’s disability, this time to January 1998. *Id.*

19 On November 3, 1997, Plaintiff applied for long-term disability benefits from his employer. A.R.  
20 161. In the application, Plaintiff listed the reason for his disability claim as “lower extremity numbness and  
21 weakness, unknown cause.” *Id.* He stated that the first date of treatment for his disability was April 21,  
22 1997. *Id.*

23 On December 12, 1997, the benefits analyst for LINA, Scott Ramaley, wrote a letter to Dr. Ecker  
24 requesting further details concerning Plaintiff’s condition and sending him a form to be completed  
25 concerning Plaintiff’s physical capacity. A.R. 131. On January 2, 1998, Dr. Ecker responded, providing  
26 some of the information requested by Ramaley but declining to complete the form, stating that he was  
27 “unable to do” it because he was “not qualified for QME Exam/Disability Rating.” A.R. 134. Dr. Ecker  
28 described Plaintiff’s condition as “weakness and uncoordination of lower extremities.” A.R. 131. He

1 described Plaintiff's prognosis as "poor." A.R. 133.

2 On January 23, 1998, Ramaley requested further information from Dr. Oshtory. A.R. 105.  
3 Another faxed request was made to Dr. Oshtory on January 26, 1998. A.R. 115-116. The record does  
4 not reflect that Dr. Oshtory responded. However, Plaintiff's wife sent the Plan a number of medical reports  
5 by Dr. Oshtory on April 15, 1998.

6 On February 3, 1998, Ramaley referred Plaintiff's application to a registered nurse at LINA, Janet  
7 Frontera, for review. A.R. 104. In the written referral, Ramaley listed Plaintiff's job as "Electronics Tech,  
8 Maintenance III." Next to the heading entitled "Type of Work," Ramaley put a question mark next to  
9 "medium." *Id.* He circled "yes" next to the heading "job description on file." *Id.* In the section for  
10 specific questions, Ramaley wrote, "At first, they thought he had a form of demyelinating disease because  
11 his father apparently had similar symptoms at age 61. Now it seems they are shifting to depressive illness.  
12 But what would be causing the leg muscle problems?" *Id.*

13 Frontera responded with a written report stating that it "appears patient continues in the  
14 evaluation/work up process." A.R. 103. She continued, "[u]ntil all of the testing is completed, unclear the  
15 diagnosis for this patient and the medical management plan of care." *Id.* Frontera recommended that  
16 Ramaley continue to try to obtain Dr. Oshtory's notes and to consider trying to obtain reports from Dr.  
17 Layzer and Plaintiff's physical therapy provider. *Id.* She made no recommendation with respect to  
18 whether or not Plaintiff should be found to be disabled. *Id.*

19 On March 10, 1998, LINA sent Plaintiff a letter denying his application based on "lack of medical  
20 information on file to support total disability from your occupation as defined by your policy." A.R. 171.

21 The letter began by quoting the following definition of total disability under the Plan:

22 Total disability means complete inability to perform any and every duty of your regular occupation  
23 because of sickness or accident. You do not qualify if you engage in any occupation for wages or  
24 profits. After benefits have been paid for 24 months, total disability means the complete inability to  
perform the duties of any gainful occupation for which you are fitted by training, education or  
experience.

25 *Id.*<sup>2</sup>; see also Plan, § 1.15, Exh. 1 to Declaration of Robert Hollenbach in Support of Joint Motion  
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27 <sup>2</sup> This definition is taken from a summary of the Plan rather than the Plan itself. See A.R. 208. The Plan  
28 defines total disability in virtually the same terms:

1 (“Hollenbach Decl.”). The letter went on to summarize the medical information LINA had received about  
2 Plaintiff to date. *Id.* The letter described Dr. Ecker’s reports between April and September 1997  
3 concerning Plaintiff’s unsteady gait and weakness in his lower extremities. *Id.* It went on to highlight the  
4 apparent disagreement between Plaintiff’s doctors as to the cause of Plaintiff’s symptoms, noting that while  
5 Dr. Ecker had initially postulated that Plaintiff’s symptoms might indicate a neurological problem, Dr.  
6 Oshtory and Dr. Layzer apparently believed Plaintiff’s condition might be “non-neurological” and that his  
7 “condition [might] be related to a depressive illness. *Id.* The letter went on to note that LINA had not  
8 received medical records from Dr. Oshtory in response to Ramaley’s request. *Id.*

9 The March 10 letter did not address the specific requirements of Plaintiff’s job. However, the  
10 administrative record contains a job description upon which LINA apparently relied in making its  
11 determination that Plaintiff was not disabled:

12 ELECTRONICS TECHNICIAN, MAINTENANCE III

13 Applies advanced technical knowledge to solve unusually complex problems that typically cannot  
14 be solved solely by referencing manufacturers’ manuals or similar documents. Examples of such  
15 problems include determining the location and density of circuitry, evaluating electromagnetic  
16 radiation, isolating malfunctions, and incorporating engineering changes.

17 Work typically requires a detailed understanding of personal and mainframe computers and  
18 terminals; industrial, medical, measuring, and controlling equipment; satellite equipment; and  
19 industrial robotic devices. Applies technical knowledge of electronics principles in determining  
20 equipment malfunctions, and applies skill in restoring equipment.

21 A.R. 183-184. The record does not indicate the source of the definition quoted above. According to  
22 Plaintiff, this definition is taken from a Dictionary of Occupational Titles. Plaintiff’s Motion at 9.  
23 Defendants do not dispute that this is the source of the definition.

24 Plaintiff notified LINA that he wished to appeal the denial of his disability claim in a letter dated  
25 April 15, 1998. A.R. 63. A few days later, Plaintiff provided Scott Ramaley with a copy of a report by  
26 psychiatrist Dr. Richard Wagner, which had been prepared in connection with Plaintiff’s application for  
27 Social Security disability. A.R. 54 -59. Dr. Wagner’s report refers to Plaintiff’s problems with his legs,  
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“Total Disability”: For the Qualifying Period and the first twenty-four months of any continuous  
Disability for which benefits are paid, the complete inability of an Employee, who is not engaged in any  
occupation for wage or profit, to perform any and every duty of his or her regular occupation. After  
benefits have been paid for twenty-four months of any continuous Disability, then for the balance of the  
period of Disability, the complete inability of an Employee to perform any and every duty of any gainful  
occupation for which he or she is reasonably fitted by training, education, or experience.

Plan at § 1.15.

1 stating that Plaintiff “was certainly shaken by the fact that . . . he could not keep up the demanding pace [at  
2 his last job], climb stairs and produce like the younger people.” A.R. 56. However, the focus of the report  
3 is Plaintiff’s psychological condition rather than his physical condition.

4 On June 5, 1998, Dr. Reza Nazemi, a neurologist who examined Plaintiff on May 18, 1998, and  
5 May 27, 1998, faxed two reports to Ramaley addressing Plaintiff’s condition in detail. A.R. 28-33. Dr.  
6 Nazemi wrote in the May 18 report that Plaintiff suffered from “[c]hronic, painful muscle cramps and  
7 weakness of the lower extremities, with numbness of both hands . . . probably secondary to a neuropathic  
8 process, though a primary muscle disease cannot be entirely ruled out.” A.R. 33. In his May 27 report,  
9 Dr. Nazemi wrote that he performed an electromyographic examination of Plaintiff’s upper and lower  
10 extremities and that “[t]he result was compatible with mild demyelinating polyneuropathy involving both  
11 upper and lower extremities.” A.R. 29. Dr. Nazemi also completed an “Estimated Functional Capacity”  
12 form, which he faxed to Ramaley on June 15, 1998. In the functional capacity form, Dr. Nazemi indicated  
13 that Plaintiff could do the following:

14 1) sit for up to two hours at a time, not to exceed a total of four hours in a day; 2) walk for up to one hour  
15 at a time, not to exceed a total of one hour in a day; 3) stand for up to one- half hour at a time, not to  
16 exceed an hour in a day; and 4) lift, push or pull up to 10 pounds occasionally. A.R. 21. In response to  
17 the question “Can Patient now work?” Dr. Nazemi wrote, “He will not be able to resume his old  
18 occupation.” *Id.*

19 On June 5, 1998, Dr. Robert Sullivan, an orthopedist, faxed Ramaley a report of a visit on March  
20 24, 1998, by Plaintiff. A.R. 23-25. Although the purpose of the visit was to examine a knee injury, Dr.  
21 Sullivan noted in the report that Plaintiff “also has an underlying quasi neurologic disorder that was worked  
22 up before that leads to some muscle weakness, and it may be related to some polyneuropathy.” A.R. 24.

23 On June 2, 1998, Desert Orthopedic Center faxed Ramaley a completed “Estimated Functional  
24 Capacity Form.” A.R. 39.<sup>3</sup> This form stated that Plaintiff could do the following: 1) lift, push or pull up to  
25 10 pounds frequently; 2) lift, push or pull up to 35 pounds occasionally; 3) sit up to eight hours at a time; 4)  
26 stand for up to an hour at a time, for a total of no more than an hour in a day; 5) walk no more than one-  
27 half hour at a time, for a total of no more than one- half hour in a day. A.R. 39. In response to the

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28 <sup>3</sup> It is not clear which doctor completed this form.

1 question, “Can patient now work?” the form stated “with some limitation.” *Id.*

2 On July 26, 1998, Plaintiff’s disability appeal was rejected. A.R. 179-181. The reason for the  
3 rejection was that while “[t]he medical information on file does document care and treatment for pain and  
4 weakness in your lower extremities and depression, it does not provide that your functional level would be  
5 affected to the degree that you would be unable to perform your regular occupation for the entire period for  
6 which you have not been at work.” A.R. 179. Plaintiff’s request for reconsideration was rejected on  
7 August 28, 1998. A.R. 1-2. In that letter, LINA cited to medical evidence in the record that Plaintiff could  
8 work with “some limitations.” *Id.*

9  
10 **2. Institutional Structure**

11 Plaintiff is covered by the Allied Signal Technical Services Corporation Long-Term Disability Plan.  
12 *See* Exh. 1, Declaration of Robert Hollenbach (“Hollenbach Decl.”). The Plan is funded by employee  
13 contributions. Marcotte Decl. at 2. Neither Allied Signal nor the Plan administrator fund the Plan. *Id.*  
14 Authority to administer the Plan is vested in a benefits committee (the “Committee”), which has full  
15 discretion in Plan administration. Plan § 7.4, Exh. 1 to Hollenbach Decl.

16 In January 1994, the Committee delegated Plan administration to Connecticut General Life  
17 Insurance Company (Connecticut General), as permitted by the Plan. Administrative Services Agreement,  
18 Exh. B to Hollenbach Decl. A separate company, LINA, in turn administers claims for Connecticut  
19 General. Decl. of J. Richard Petersen at 2. Connecticut General and LINA are wholly owned, indirect  
20 subsidiaries of CIGNA Corporation. Cigna Group Insurance (“CGI”) is an operating division of CIGNA  
21 Corporation and is not a legal entity. *Id.*

22  
23 **B. Procedural Background**

24 Plaintiff initiated this lawsuit on October 15, 1999, when he filed a complaint in the Superior Court  
25 of California for the County of Alameda. On November 24, 1999, Defendants removed to the United  
26 States District Court for the Northern District of California on the basis of both federal question and  
27 diversity jurisdiction. On February 11, 2000, Plaintiff voluntarily dismissed Defendant Allied Signal.

28 On April 20, 2000, Plaintiff filed his First Amended Complaint For Benefits (“FAC”). The

1 amended complaint named the Plan, LINA, and CGI as defendants. Plaintiff asserted a single cause of  
2 action under 29 U.S.C. § 1132(a)(1)(B) for wrongful denial of long-term disability benefits. Plaintiff  
3 requested the following relief: (a) a declaration by the Court that Defendants violated the Plan and  
4 Plaintiff's rights thereunder by failing to pay benefits; (b) an order requiring that Defendants pay Plaintiff's  
5 benefits through the date of judgment, together with prejudgment interest on each and every monthly  
6 payment through the date of judgment; (c) a declaration by the Court that Plaintiff is entitled to receive  
7 future disability payments; and (d) award Plaintiff reasonable attorney's fees. FAC at 4.

8 On April 13, 2001, all Defendants filed a joint motion for summary judgment and Defendants LINA  
9 and CGI filed a separate motion for summary judgment. On April 16, 2001, Plaintiff filed a motion for  
10 summary judgment.

11 In Plaintiff's Motion, Plaintiff asserts that he is totally disabled and that denial of his benefits was an  
12 abuse of discretion. In their Separate Motion, Defendants LINA and CGI argue that they should be  
13 dismissed because § 1132(a)(1)(B) allows for suits only against the Plan itself and neither LINA nor CGI is  
14 the Plan. LINA and CGI further assert that the denial of benefits should be affirmed because it was not an  
15 abuse of discretion. The Plan, LINA, and CGI argue in their joint motion that the denial of disability  
16 benefits to Plaintiff was not an abuse of discretion.

17 **III. ANALYSIS**

18 **A. Proper Defendant Under § 1132(a)(1)(B)**

19 In their Separate Motion, Defendants LINA and CGI argue that they should be dismissed because  
20 the single claim in Plaintiff's action, brought under § 1132(a)(1)(B), may be asserted against the Plan only,  
21 and not the Plan administrator. *See Gelardi v. Pertec Computer Corporation* 761 F.2d 1323 (9th Cir.  
22 1985) (holding that plaintiff who was denied long-term disability benefits could not sue her employer or  
23 Plan administrator because neither were the Plan or the fiduciary). At oral argument, Plaintiff conceded that  
24 the Plan is the only proper defendant in an action under 29 U.S.C. §§ 1132(a)(1)(B) for disability benefits  
25 and, therefore, that LINA and CGI are not proper defendants in this action.

26 Therefore, Defendants LINA and CGI are DISMISSED from this action with prejudice.

27  
28 **B. Standard of Review**

1 “A denial of benefits challenged under [29 U.S.C.] § 1132(a)(1)(B) is to be reviewed under a *de*  
2 *novus* standard unless the benefit Plan gives the administrator or fiduciary discretionary authority to  
3 determine eligibility for benefits or to construe the terms of the Plan.” *Firestone Tire and Rubber*  
4 *Company v. Bruch* that 489 U.S. 101 (1989); *see also Kearney v. Standard Insurance Company*, 175  
5 F.3d 1084, 1089 (9th Cir. 1999) (en banc) (holding that “the default is that the administrator has no  
6 discretion, and the administrator has to show that the Plan gives it discretionary authority in order to get any  
7 judicial deference to its decision.”).

8 The Allied Signal Plan designates the Benefits Committee as the Plan administrator and  
9 unambiguously gives it or its designee, full discretionary authority:

10 The Benefits Committee, or any individual or entity designated by the Benefits Committee  
11 or the Company to carry out such administrative duties, shall have the exclusive right to  
12 interpret the Plan, including full discretionary authority to interpret and construe the terms of  
the Plan, to determine eligibility for Plan benefits, to compromise claims, to decide any and  
all matters arising thereunder or in connection with the administrator of the Plan . . .

13 Plan § 7.4. This discretionary authority, is, in turn, delegated to Connecticut General and then to LINA,  
14 which administers claims for Connecticut General. Administrative Services Agreement, Exh. 2 to  
15 Hollenbach Decl.; Petersen Decl. at 2. Therefore, this Court may review the denial of Plaintiff’s benefits  
16 only for an abuse of discretion.<sup>4</sup>

17 Plaintiff, however, argues that a heightened abuse of discretion standard – or even a *de novo*  
18 standard – should be applied because there is a conflict of interest with respect to the Plan administrator.  
19 Where the Plan administrator has a conflict of interest, courts afford less deference to the determination of  
20 the Plan administrator. *See Lang v. Long-Term Disability Plan of Sponsor Applied Remote*  
21 *Technology, Inc.*, 125 F.3d 794, 797 (9<sup>th</sup> Cir. 1997) (holding that less deference was warranted where  
22 insurance company was both administrator and funding source for Plan, creating conflict of interest);  
23 *Tremain v. Bell Industries, Inc.*, 196 F.3d 970, 976 (9th Cir. 1999). As the Ninth Circuit explained in  
24 *Tremain*:

25  
26  
27 <sup>4</sup> An abuse of discretion review is synonymous with an arbitrary and capricious standard of review. *See*  
28 *Atwood v. Newmont Gold Co., Inc.*, 45 F.3d 1317, 1321 n. 1 (9th Cir. 1995) (noting that “[s]ome of our  
cases state that an ‘arbitrary and capricious’ standard is applied, while others uses the term ‘abuse of  
discretion’ . . . The standards differ in name only . . . [and we will use] the ‘abuse of discretion’ terminology”).

1 If . . . the Plan administrator is also the insurer ‘that conflict [of interest] must be weighed as  
2 a ‘facto[r] in determining whether there is an abuse of discretion.’” Our review in such a  
3 circumstance, although still for abuse of discretion, is ‘less deferential.’ If however, the  
4 program participant presents ‘material, probative evidence, beyond the mere fact of the  
5 apparent conflict, tending to show that the fiduciary’s self interest caused a breach of the  
6 administrator’s fiduciary obligations to the beneficiary,’ a rebuttable presumption arises in  
7 favor of the participant. The Plan then ‘bears the burden of rebutting the presumption by  
8 producing evidence to show that the conflict of interest did not affect its decision to deny or  
9 terminate benefits.’ If the Plan fails to carry this burden of rebutting the presumption, we  
10 review de novo its decision to deny benefits.

11 *Tremain*, 196 F.3d at 976.

12 Plaintiff asserts that Defendant has a conflict of interest but has presented no evidence of any kind in  
13 support of this assertion. Moreover, Defendants have presented evidence that there is no conflict of  
14 interest. In particular, they have presented a declaration stating that the Plan in this case is self-funded by  
15 the employees who are covered by the Plan and not by LINA (or any other entity). Marcotte Decl. at 2.<sup>5</sup>  
16 The declaration further states that LINA administers claims based on a flat rate; that is, LINA is paid the  
17 same amount for each claim administered regardless of whether or not the claim is accepted or rejected.  
18 *Id.* In the absence of any evidence supporting Plaintiff’s assertion that there is a conflict of interest, the  
19 Court reviews Defendants’ denial of benefits for an abuse of discretion and does not apply the heightened  
20 abuse of discretion standard applied in cases involving apparent conflicts of interest.<sup>6</sup>

21 **C. Materials Outside the Administrative Record**

22 Plaintiff submits the following materials in support of his motion that are not contained in the  
23 administrative record: 1) a declaration by Dr. Nazemi, with medical records attached; 2) a declaration by  
24 Plaintiff; and 3) a letter from Dr. Nazemi to Ann Reilly at CIGNA, dated August 4, 1998. Plaintiff argues  
25 that the Court may consider these documents because they provide evidence of the Plan’s conflict of  
26 interest. Motion at 12. Plaintiff also suggests that these documents may be considered because they

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27 <sup>5</sup> As discussed below, under the abuse of discretion standard, the court is generally limited to evidence in the  
28 administrative record. *Taft v. Equitable Life Assurance Society*, 9 F.3d 1469, 1472 (9th Cir. 1994).  
However, the holding of *Taft* does not preclude the court from considering evidence outside of the record  
relating to threshold issues such as whether the Plan had a conflict of interest. *Tremain*, 196 F.3d at 976-977.

<sup>6</sup> Because an abuse of discretion standard is applied, “the usual tests of summary judgment, such as whether  
a genuine dispute of material fact exists, do not apply.” *Bendixen v. Standard Insurance Company*, 185 F.3d  
939, 942 (9th Cir. 1999). Rather, “[w]here the decision to grant or deny benefits is reviewed for abuse of  
discretion, a motion for summary judgment is merely the conduit to bring the legal question before the district  
court.” *Id.*

1 merely summarize the documents contained in the administrative record. Reply at 2. Defendants assert that  
2 the Court may not consider these materials.

3 It is well established that in determining whether a Plan abused its discretion in rejecting a claim for  
4 disability benefits, generally only information in the administrative record should be considered. *Snow v.*  
5 *Standard Insurance Company*, 87 F.3d 327, 332 (9th Cir. 1996) (*overruled on other grounds,*  
6 *Kearney*, 175 F.3d 1084); *see also Taft v. Equitable Life Assurance Society*, 9 F.3d 1469, 1472  
7 (holding that “[p]ermitting a district court to examine evidence outside the administrative record would open  
8 the door to the anomalous conclusion that a Plan administrator abused its discretion by failing to consider  
9 evidence not before it”); *cf. Mongeluzo v. Baxter Travenol Long-Term Disability Benefit Plan*, 46 F.3d  
10 938, 943-944 (9th Cir. 1995) (quoting *Quesinberry v. Life Insurance Company of North America*, 987  
11 F.2d 1017, 1025) (4th Cir. 1993)) (holding that under a *de novo* review a district court in its discretion  
12 may consider evidence that was not before the Plan administrator “only when circumstances clearly  
13 establish that additional evidence is necessary to conduct an adequate *de novo* review of the benefit  
14 decision”). However, documents outside the administrative record may be considered where they relate to  
15 the threshold issue of the appropriate standard or review to be applied. *Tremain*, 196 F.3d at 976-977.  
16 Thus, the court in *Tremain* held that documents outside of the administrative record could be considered in  
17 determining whether or not the Plan had a conflict of interest, which, in turn, would give rise to a more  
18 rigorous review of the administrator’s decision. *Id.*

19 While Plaintiff is correct that the Court may consider documents that are not contained in the  
20 administrative record in order to determine whether there is a conflict of interest, however, the Court does  
21 not find that any of the documents provide evidence of a conflict of interest. The Court also disagrees with  
22 the Plaintiff’s assertion that it may consider these documents as they relate to the merits of his claim because  
23 they merely summarize the administrative record. To the contrary, these documents include medical  
24 records and other evidence that is not included in the Administrative Record. Therefore, the Court does  
25 not consider the documents outside of the Administrative Record that were submitted by Plaintiff in support  
26 of his Motion.

27  
28 **D. Abuse of Discretion**

1 “It is an abuse of discretion for an ERISA Plan administrator to make a decision (1) without any  
2 explanation, or (2) in a way that conflicts with the plain language of the Plan, or (3) that is based on clearly  
3 erroneous findings of fact.” *Atwood v. Newmont Gold Co.*, 45 F.3d 1317, 1323-24 (9th Cir. 1995)  
4 (citing *Taft*, 9 F.3d at 1472-73). Plaintiff asserts that the Plan abused its discretion because: (1) its  
5 rejection of Plaintiff’s claim conflicts with the plain language of the Plan, and (2) its determination is based  
6 on clearly erroneous findings of fact. The Court finds that the Plan administrator construed the Plan in a  
7 manner that is inconsistent with the plain language of the Plan and thereby abused its discretion. In  
8 particular, the Plan abused its discretion by: 1) construing the term “total disability” as requiring Plaintiff  
9 establish that he could not perform his regular job, *even* with accommodation; and 2) relying on a generic  
10 definition from the Dictionary of Occupational Titles (“D.O.T.”) to determine the requirements of Plaintiff’s  
11 job, even though there was evidence in the administrative record which indicated that the D.O.T. definition  
12 did not completely and/or accurately describe Plaintiff’s job duties.

13  
14 **1. Definition of “Total Disability”**

15 In its final letter to Plaintiff rejecting his claim, LINA explained that Plaintiff was not disabled as  
16 defined under the Plan because the medical evidence showed he could work “with some limitations.” *See*  
17 A.R. 1 (final rejection letter stating that Plaintiff was not disabled and noting that both Dr. Nazemi and the  
18 Desert Medical Center had said that Plaintiff could perform his job with “some limitations”). LINA’s  
19 reasoning is based upon an interpretation of the term “total disability” that requires the claimant to  
20 demonstrate for the first 24-month period of his alleged disability not only that he cannot perform the duties  
21 of his job but also, that he could not perform the tasks of some modified job (assuming one existed) that  
22 would accommodate his “limitations.” The Ninth Circuit has expressly rejected such an interpretation in a  
23 case involving a plan that is very similar to the Plan here. *See Saffle v. Sierra Pacific Power Company*,  
24 85 F.3d 455, 459 (9th Cir. 1996).

25 In *Saffle*, the plaintiff worked as a customer services clerk, a clerical job which involved using the  
26 telephone, the computer and various office machines and interacting with customers. *Id.* at 457. Plaintiff  
27 sought disability benefits after she developed a foot condition that required her to keep her foot elevated at  
28 all times. *Id.* Like the Plan in this case, the employee-benefits Plan in *Saffle* defined “total disability” during

1 the first 24 months after the initial qualifying period as the inability to perform the duties of the claimant’s  
2 regular occupation, whereas “total disability” after the initial 24-month period was defined as the inability to  
3 perform the duties of *any* job for which the claimant was qualified. *Id.* at 459. The Plan defined disability  
4 from one’s regular occupation as being “completely unable to perform each and every duty of [the  
5 employee’s] regular occupation.” *Id.* at 457. The Plan denied the plaintiff’s disability claim on the basis  
6 that she could perform some portion of her job with modifications and that her employer had offered her a  
7 job that would have allowed her to keep her feet elevated, thus accommodating her disability. *Id.* at 457.

8 The Ninth Circuit in *Saffle* began its analysis by looking to the definition of “total disability” for the  
9 first 24-month period, that is, the period during which disability is determined with reference to the  
10 claimant’s regular occupation. The Court noted that the definition could, if read literally, be construed in  
11 two different ways, neither of which would be “wholly sensible.” *Id.* at 459. The court stated:

12 Reading “each and every” literally could mean either that the claimant is not totally disabled if she  
13 can perform any single duty of her job, no matter how trivial – or that a claimant is totally disabled if  
she cannot perform any single duty, no matter how trivial.

14 *Id.* at 458. The court concluded that the plan would not abuse its discretion by declining to adopt either  
15 interpretation of this language and instead construing the provision as requiring that a claimant demonstrate  
16 an inability to perform “all of the substantial and material duties of [the employee’s] regular occupation.” *Id.*

17  
18 However, the *Saffle* court rejected the Plan’s argument that the term “completely unable” meant  
19 the claimant was required to demonstrate that she could not perform all of the substantial and material  
20 duties of her job *even with accommodation*. *Id.* The court noted that the definition of total disability did  
21 “not talk in terms of accommodation at all.” *Id.* The court continued:

22 Total disability for purposes of occupational benefits depends on whether the participant can  
23 perform the duties of her “regular occupation.” . . . [T]he Committee construed “regular  
24 occupation” as “work available for which she is qualified that would have allowed her to work with  
25 her feet elevated” and to remain sedentary virtually always. This construction is inconsistent with  
the plain language of the Plan, and is inconsistent with the Plan’s two-tiered disability structure  
because it collapses the threshold for occupational disability into the standard for general, or  
permanent disability.

26 *Id.* Having concluded that the Plan administrator had misconstrued the plain language of the Plan, the court  
27 remanded to the Plan administrator in order to allow the Plan to reevaluate the claim based on a proper  
28 construction of the Plan. *Id.* at 460-461.

1 Here, the Plan requires that a claimant demonstrate a “complete inability . . . to perform any and  
2 every duty of his or her regular occupation” in order to establish entitlement to disability payments for the  
3 first 24-month period. Plan at § 1.15. This provision – which is very similar to the provision in *Saffle* –  
4 does not talk in terms of accommodation. Nor is it reasonable to interpret this definition as requiring that a  
5 claimant demonstrate not only that he cannot perform his own job but also, that he cannot perform the  
6 duties of some hypothetical job that would have accommodated his limitations.<sup>7</sup> As the court explained in  
7 *Saffle*, such an interpretation of the term “total disability” for the first 24-month period conflicts with the  
8 plain language of the Plan by collapsing the threshold requirement for occupational disability into the  
9 standard for general disability. *Saffle*, 85 F.3d at 459. In adopting this interpretation of the term “total  
10 disability,” the Plan abused its discretion.

11  
12 **2. Reliance on D.O.T. Definition**

13 In rendering its decision, LINA relied on a Dictionary of Occupation Titles definition of “Electronics  
14 Technician, Maintenance III” to determine Plaintiff’s regular occupation. The definition describes Plaintiff’s  
15 job as follows:

16 ELECTRONICS TECHNICIAN, MAINTENANCE III

17 Applies advanced technical knowledge to solve unusually complex problems that typically cannot  
18 be solved solely by referencing manufacturers’ manuals or similar documents. Examples of such  
19 problems include determining the location and density of circuitry, evaluating electromagnetic  
radiation, isolating malfunctions, and incorporating engineering changes.

20 Work typically requires a detailed understanding of personal and mainframe computers and  
21 terminals; industrial, medical, measuring, and controlling equipment; satellite equipment; and  
industrial robotic devices. Applies technical knowledge of electronics principles in determining  
equipment malfunctions, and applies skill in restoring equipment.

22 A.R. 183-184. Plaintiff argues that LINA “should be required to use the job description for the work that  
23 Plaintiff was actually performing in determining whether Plaintiff could perform ‘any and every duty of [his]  
24

25 \_\_\_\_\_  
26 <sup>7</sup> In contrast to *Saffle*, where the plan pointed to evidence in the record that the claimant’s employer was  
27 aware of her specific physical limitation (the need to work with her feet elevated) and had offered the plaintiff  
28 a job that would accommodate that limitation, there is no indication here that the Plan was aware of either: 1) Plaintiff’s specific needs and limitations; or 2) the availability of a job that would have accommodated those needs. Indeed, as will be discussed below, the administrative record indicates that the Plan administrator had very little information about what Plaintiff’s actual job duties were or how his physical limitations might affect his ability to perform the duties of his job.

1 regular occupation,”” and that the evidence demonstrates that LINA rendered its decision with an incorrect,  
2 or at least, incomplete, understanding of the duties of Plaintiff’s “regular occupation.” Plaintiff’s Motion at  
3 10 (quoting Plan § 1.15). The Court agrees.

4 A Plan administrator construes a term of the Plan inconsistently with the plain language of the Plan  
5 where it relies on a generic definition of a claimant’s regular occupation that does not accurately describe  
6 the claimant’s actual job duties. *Mizzell v. Paul Revere Life Insurance Co.*, 118 F. Supp. 2d 1016, 1022  
7 (C.D. Cal. 2000). In *Mizzell*, the plaintiff’s job title was Vice-President/ General Manager. *Id.* at 1020.  
8 Plaintiff sought disability benefits from an ERISA-governed benefits Plan following a heart attack. *Id.* at  
9 117-118. The Plan defined “totally disabled” as “unable to perform the important duties of his own  
10 occupation on a full-time or part-time basis because of an [i]njury or [s]ickness that started while insured  
11 under this Policy.” *Id.* at 1019. The Plan denied the plaintiff’s application for benefits, explaining the basis  
12 for the denial of benefits as follows:

13 According to the Dictionary of Occupational Titles, which is based upon Department of Labor  
14 statistics, your occupation as a vice president/general manager is considered to be sedentary. Both  
15 positions require negotiating, coordinating and handling; these positions require complex decision  
16 making, multiple activity Planning, coordinating, supervision, and staff management. These duties  
17 are not considered to be of a physical nature. It should be noted that we insured you for a loss of  
18 income due to disability which prevented you from performing the duties of your occupation. We  
19 did not insure your inability to perform job duties specific to your place of employment.

20 *Id.*

21 The plaintiff in *Mizzell* brought an action for benefits in federal district court, asserting that the Plan  
22 misconstrued the definition of “total disability.” *Id.* at 1020. In particular, the plaintiff argued that  
23 regardless of the definition contained in the Dictionary of Occupational Titles, his actual job duties were not  
24 sedentary and involved traveling up to two days a week. *Id.* Thus, the issue was whether “plaintiff needed  
25 to be disabled from his “general occupation” or from his actual job or “own occupation.” *Id.* Relying on  
26 *Saffle* and a number of district court cases following *Saffle*, the court concluded that the Plan administrator  
27 had acted contrary to the terms of the Plan in construing the Plan as allowing it to rely on the Dictionary of  
28 Occupational Titles definition of Plaintiff’s job rather than examining Plaintiff’s actual job duties. *Id.* at  
1022. As in *Saffle*, the court remanded to the Plan administrator to consider the merits of the plaintiff’s  
claim consistent with the court’s opinion.

1 Here, as in *Mizzell*, the Plan administrator relied on a generic description of Plaintiff’s job from the  
2 Dictionary of Occupational Titles. That description did not explicitly describe any physical duties. See  
3 A.R. 183-184. However, the medical evidence in the administrative record clearly indicated that Plaintiff’s  
4 actual job included physical duties that were difficult for Plaintiff to perform. In particular, Dr. Ecker wrote  
5 in his April 21, 1997 report that Plaintiff:

6 has been having some physical problems at work, unable to keep up with some of the younger  
7 guys. . . . There is a three story building he has to climb up and down during the day. He has been  
8 having some problems, some weakness in his legs, and actually had to stop wearing his safety shoes  
because they are a little too heavy. Also, he is having a hard time with position, having a hard time  
putting his feet on the stairs. . . .

9 A.R. 123; see also A.R. 124 (notes of Dr. Ecker stating that “there will indeed be some modifications in his  
10 job description”). Similarly, in response to the question “Can Patient now work?” on the residual functional  
11 capacity form submitted by Dr. Nazemi, Dr. Nazemi wrote, “He will not be able to resume his old  
12 occupation.” *Id.* A.R. 21. The residual functional capacity form submitted in the summer of 1998 by the  
13 Desert Medical Center expresses the same opinion, namely that Plaintiff would be able to work only “with  
14 limitations.” A.R. 39.

15 Notwithstanding the medical reports stating that Plaintiff could not perform the duties of his job,  
16 LINA rejected Plaintiff’s claim, apparently concluding that Plaintiff could perform all of the tasks described  
17 in the generic D.O.T. description of his job, rather than examining the actual requirements of Plaintiff’s job.  
18 To the extent that LINA relied on the D.O.T. definition rather than considering Plaintiff’s actual job duties,  
19 it abused its discretion in denying benefits. See *Mizzell*, 118 F. Supp. 2d at 1022.

20 Further, the Court rejects Defendants’ argument that the plan administrator did not have a duty to  
21 learn Plaintiffs’ actual job duties because the claimant bears the burden of proof that he is entitled to long-  
22 term disability. See July 11, 2001 Supp. Letter Brief of Defendants LINA and Cigna. The cases relied  
23 upon by Defendants are distinguishable because they involve claimants who failed to provide adequate  
24 medical documentation of their alleged disability after being asked by the Plan to do so. See, e.g., *Bali v.*  
25 *Blue Cross and Blue Shield Ass’n*, 873 F.2d 1043 (7th Cir. 1989) (affirming denial of benefits on basis  
26 that claimant had failed to provide specific medical records that were repeatedly requested by the plan).  
27 Here, in contrast, the Plan never informed the Plaintiff that it needed an accurate description of his job  
28 duties, even though reports by Plaintiff’s doctors put LINA on notice that Plaintiff’s job involved tasks that

1 were not included in the D.O.T. definition, as discussed above. Indeed, the claims administrator  
2 acknowledged in his referral to an RN at LINA that he did not know the nature of Plaintiff’s job duties,  
3 placing a question mark next to the entry for “Type of Work.” See A.R. 104. Still, the Plan made no effort  
4 to obtain an accurate description of Plaintiff’s job. The Plan’s failure to make any effort to determine the  
5 actual requirements of Plaintiff’s job was an abuse of discretion. See *Kunin v. Benefit Trust Life Ins. Co.*,  
6 910 F.2d 534, 538 (9th Cir. 1990) (holding that Plan abused its discretion where its conclusion that autism  
7 was not a “mental illness” under the Plan was based on inadequate investigation and was contrary to the  
8 plain and ordinary meaning of that term); *Booton v. Lockheed Medical Benefits Plan*, 110 F.3d 1461,  
9 1464 (9th Cir. 1997) (holding that denial of benefits was abuse of discretion where plan administrator made  
10 decision without necessary and easily obtainable information and holding that “if the plan administrators  
11 believe that more information is needed to make a reasoned decision, they must ask for it”).

12  
13 **E. Remedy**

14 “[W]here an ERISA Plan administrator, with discretion to apply a Plan, has misconstrued the Plan  
15 and applied a wrong standard to a benefits determination . . . remand for reevaluation of the merits of a  
16 claim is the correct course to follow.” *Saffle*, 85 F.3d at 461. Because the Plan administrator construed  
17 the Plan in a manner that is inconsistent with the plain language of the Plan, Plaintiff’s claim must be  
18 remanded to the Plan administrator to address the merits of Plaintiff’s claim, consistent with this opinion.  
19 On remand, Plaintiff will be permitted to present additional evidence of his disability and the Plan will be  
20 permitted to conduct additional investigation of Plaintiff’s claims if it wishes to do so, as was stipulated by  
21 the parties at oral argument. See also *Henry v. Home Ins. Corp.*, 907 F.Supp. 1392, 1399 n. 8 (C.D.  
22 Cal. 1995) (holding that plan’s denial of benefits was abuse of discretion because its interpretation of plan  
23 terms was unreasonable and noting that on remand, the claimant was to be allowed to supplement the  
24 record because “the present administrative record was made under a misapprehension of the applicable  
25 Plan provisions”).<sup>8</sup> In addition, on remand the Plan should conduct sufficient investigation concerning the  
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27 <sup>8</sup> The Court does not resolve the question of when the six-month qualifying period for Plaintiff’s disability  
28 commenced. This issue was raised by the Court at oral argument and addressed in Defendants’ supplemental  
brief. Because the Plan administrator has not yet addressed this question, it is inappropriate for the Court to  
do so at this time. Similarly, the Court does not reach the question of whether Plaintiff may satisfy the

1 nature of Plaintiff's actual job duties to allow it to make a reasonable determination concerning Plaintiff's  
2 disability claim.

3  
4 **IV. CONCLUSION**

5 For the reasons stated above, Defendants Separate Motion (Docket No. 40) is GRANTED and  
6 Defendants Life Insurance of North America and Cigna Group Insurance are DISMISSED from this action  
7 with prejudice. Plaintiff's Motion (Docket No. 44) is DENIED as to Defendants Life Insurance of North  
8 America and Cigna Group Insurance. Plaintiff's Motion (Docket No. 44) is GRANTED with respect to  
9 Defendant Allied Signal Inc. Voluntary Employee Beneficiary Association Long-Term Disability Income  
10 Plan to the extent that he seeks reversal of the denial of disability benefits. Plaintiff's Motion (Docket No.  
11 44) is DENIED with respect to Defendant Allied Signal Inc. Voluntary Employee Beneficiary Association  
12 Long-Term Disability Income Plan to the extent that he seeks an award of benefits. Plaintiff's claim is  
13 REMANDED to the Plan administrator for further consideration of Plaintiff's claim consistent with this  
14 opinion. Defendants' Joint Motion (Docket No. 39) is DENIED. This Order disposes of all of Plaintiff's  
15 claims. Therefore, the Clerk of the Court is ordered to issue judgment and close the file in this case.

16 Within fourteen (14) days of the date of this order, the parties shall meet and confer regarding  
17 Plaintiff's request for attorneys' fees. If the parties are unable to reach agreement, Plaintiff shall submit  
18 within fourteen (14) days of the meet-and-confer an application for attorneys' fees addressing the following  
19 issues:

- 20 1) Plaintiff's entitlement to attorneys' fees and costs; and
- 21 2) The appropriate amount to be awarded, detailing attorney hours spent and costs incurred.

22 The Defendants shall file an opposition, if any, within ten (10) days of receipt of Plaintiff's application.

23 Plaintiff shall have seven (7) days to reply. Upon completion of briefing, the Court will advise the parties  
24 whether oral arguments will be heard on Plaintiff's application for attorneys' fees and costs.

25 IT IS SO ORDERED.

26  
27 requirements for general disability because the Plan administrator has not yet reached that question. The  
28 Defendants represented in their supplemental brief, however, that if LINA were to determine that Plaintiff had  
satisfied the requirements for occupational disability, it would, as part of its ongoing duties in administering the  
Plan, reach the question of whether Plaintiff has a general disability.

**United States District Court**  
For the Northern District of California

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Dated: August 2, 2001

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JOSEPH C. SPERO  
United States Magistrate Judge