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Employee Benefits - Friedrich v. Intel Corp.

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EM PLOYEE BENEFITS

FRIEDRICH v. INTEL CORP.

181 F.3D 1105 (9TH CIR.1999)

I. INTRODUCTION

In Friedrich v. Intel Corporation,¹ the United States Court of Appeals for the Ninth Circuit upheld the district court's holding that Intel, by denying an employee's claim for long term disability benefits, failed to comply with the Employee Retirement Income Security Act of 1974 ("ERISA").² In applying a two-part test to determine whether Intel acted in apparent conflict with its obligations as a fiduciary to its employee, the Ninth Circuit held that the district court properly reviewed the claim for long term disability benefits de novo and did not err in finding that the employee was entitled to benefits under Intel's Long Term Disability Plan.³

¹ Friedrich v. Intel Corporation, 181 F.3d 1105 (9th Cir. 1999) (hereinafter Friedrich II.) The appeal was argued before Bright, Fletcher and Thompson, Circuit Judges. The Honorable Myron H. Bright, Senior United States Circuit Judge, Eighth Circuit Court of Appeals, sitting by designation. The Honorable Myron H. Bright authored the opinion. See id. at 1107. No dissenting opinion was filed.

² See Friedrich II, 181 F.3d at 1107. ERISA applies to "any employee benefit plan if it established or maintained (1) by any employer engaged in commerce or in any industry or activity affecting commerce; or (2) by any employee organization or organizations representing employees engaged in commerce or in any industry or activity affecting commerce; or (3) both." 29 USC § 1003.

³ See Friedrich II, 181 F.3d at 1113.
II. FACTS AND PROCEDURAL HISTORY

Joseph Friedrich worked for Intel Corporation as a managing engineer from 1971 until 1993. During Friedrich's employment, Intel maintained two disability plans: a short-term disability plan ("STD Plan") and a long-term disability plan ("LTD Plan"). As an employee of Intel, Friedrich was covered under both plans. The STD Plan is funded by employee contributions and provides up to fifty-two weeks of benefits for disabilities caused by any physical or mental illness, injury or condition. The LTD Plan is funded by Intel's general corporate assets and excludes any disability that "arises out of, relates to, is caused by or results from . . . mental, emotional or psychiatric illness or disorder of any type." Intel serves as the named fiduciary and administrator of the LTD Plan. Furthermore, under the LTD Plan, Intel has the discretion to determine benefit eligibility and construe plan terms. During Friedrich's employment, the LTD Plan was administered by Maureen Shiells, an employee in Intel's risk management department, which also manages Intel's corporate liabilities.

After suffering flu-like symptoms, which included fatigue, headache, sore throat, general shakiness and cognitive difficulties, Friedrich consulted with his primary physician, Dr. Roy

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4 See id. at 1108.
5 See id. at 1107.
7 See Friedrich II, 181 F.3d at 1107 (9th Cir. 1999).
8 See id. at 1108 (citing LTD Plan, § 4.03). Section 2.05 defines a disability as follows: "any illness or injury that is recognized by the American Medical Association, substantiated by objective medical findings and which renders a Participant incapable of performing work." Intel LTD Plan at § 2.05 (cited in Friedrich II, 181 F.3d at 1107).
9 See Friedrich II, 181 F.3d at 1107.
10 See id. at 1107. Section 4.02 of the LTD Plan gives Intel "the sole discretion to interpret the terms of the Plan and to determine eligibility for benefits." See Friedrich I, No. Civ. S-94-1613, slip op. at 1.
11 See Friedrich II, 181 F.3d at 1107.
Greenberg. Upon diagnosis that Friedrich was suffering from depression, Dr. Greenberg referred Friedrich to Dr. Charles Schaffer, a psychiatrist. On May 20, 1992, Friedrich applied for and was awarded short-term disability benefits for depression under the STD plan. Friedrich collected the full extent of his short-term benefits under the STD plan.

In June, 1992, Dr. Schaffer referred Friedrich to Dr. Monice Kwok, an internist. At this time, Friedrich discontinued his treatment with Dr. Schaffer and returned to his primary physician, Dr. Greenberg. Friedrich also began treatment with Dr. Jeffery Anderson, who identified Chronic Fatigue Syndrome ("CFS") and chemical/pesticide toxicity to be the cause of Friedrich's disability. In August 1992, three months after filing his STD application, Friedrich submitted a new diagnosis of CFS to Intel.

On April 27, 1993, prior to the expiration of his STD benefits, Friedrich filed a separate application for LTD benefits. Intel requested medical records and progress reports from Dr.

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12 See id. at 1108.  
13 See id.  
14 See Friedrich I, No. Civ. S-94-1613, slip op. at 1. On Friedrich's application, Dr. Schaffer provided a diagnosis of "Major Depression." Dr. Schaffer stated that he considered "major depression" to be the most appropriate diagnosis at the time. See Friedrich II, 181 F.3d at 1108.  
15 See id.  
16 See id. After examining Friedrich and performing laboratory tests, Dr. Kwok advised Dr. Schaffer that Friedrich should be treated for Chronic Fatigue Syndrome. After performing a SPECT scan, Dr. Jay Goldstein, a specialist, confirmed this diagnosis. See id.  
17 See Friedrich II, 181 F.3d at 1108.  
18 See id.  
19 See Friedrich II, 181 F.3d at 1108. The court cites Dorland's Illustrated Medical Dictionary which defines CFS as follows: "a persistent debilitating fatigue of recent onset, with reduction of physical activity to less than half of usual, accompanied by some combination of muscle weakness, sore throat, mild fever, tender lymph nodes, headaches and depression, with the symptoms not attributable to any other known causes." See Dorland's Illustrated Medical Dictionary 1627 (28th ed. 1994).  
Greenberg and Dr. Schaffer. Based on Friedrich's records, the plan administrator for Intel denied Friedrich's claim for LTD benefits on two separate grounds. First, Intel claimed that Friedrich lacked objective medical evidence that substantiated a disability. Second, Intel further alleged that Friedrich's symptoms stemmed from psychiatric disorders. Intel also notified Friedrich that his STD benefits would end on May 13, 1993.

Additionally, Ms. Shiells did not notify Friedrich of his right to present further medical evidence or the criteria used by Intel to determine LTD benefits. In March 1993, Friedrich appealed Intel's denial of benefits to Intel's Disability Appeals Committee. During the appeal, Intel selected five physicians to examine Friedrich. The physicians' reports concluded that Friedrich exhibited psychiatric health problems rather than physical health problems. Specifically, one physician claimed that CFS is not a "true physical disease." Unlike the STD Plan, the LTD Plan excludes benefits for disabilities related to "mental, emotional or psychiatric illness or disorder of any type." Therefore, Intel denied Friedrich's appeal on the cont-

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21 See id.
22 See id. On February 19, 1993, Intel denied Friedrich's application for LTD benefits, stating that "to date we have not received any objective medical evidence to support your current claim." See Friedrich I, No. Civ. S-94-1613, slip op. at 2.
23 See Friedrich II, 181 F.3d at 1108.
24 See id. The LTD Plan excludes any disability that "arises out of, relates to, is caused by or results from . . . mental, emotional or psychiatric illness or disorder of any type. . . ." LTD Plan § 4.03. (Cited it in Friedrich II, 181 F.3d at 1108.)
25 See Friedrich II, 181 F.3d at 1108.
26 See id.
27 See id. Employees can appeal adverse decisions to a Disability Appeals Board. With his appeal, Friedrich included a report from Dr. Anderson, a specialist, containing the new diagnosis that Friedrich suffered from CFS and chemical/pesticide toxicity. See id.
28 See id.
29 See id.
30 See Friedrich II, 181 F.3d at 1108-09.
Friedrich requested that Intel reconsider his claim. Intel rejected Friedrich's request claiming that the appeals process does not provide for reconsideration of a decision by the Intel Disability Appeals Committee. Subsequently, Friedrich submitted another request for reconsideration based upon a previous Social Security Disability finding of disability.

Friedrich filed a lawsuit in the District Court for the Eastern District of California against Intel Corporation. Friedrich's complaint alleged improper denial of benefits and breach of fiduciary duty. On October 27, 1994, Intel moved to dismiss the complaint on grounds that Friedrich failed to state a claim under ERISA for which relief could be granted. The district court granted Intel's motion with regard to Friedrich's claim for breach of fiduciary duty on December 14, 1994. On October 5, 1995, the district court denied cross-motions for summary judgment, holding that Intel's 1991 LTD Plan grants the administrator discretionary authority to determine eligi-

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32 See Friedrich II, 181 F.3d at 1109. Intel failed to notify Friedrich that it had received these medical reports which could be made available to him for review and comment. See id.

33 See Friedrich II, 181 F.3d at 1109. Friedrich submitted additional documentation, including EEG exam results and a neuropsychological exam by an expert in testing for cognitive effects of CFS. See id.

34 See id.

35 See id. In August, 1994, Friedrich received notice that his Social Security Disability appeal had been granted and that the Secretary of the Department of Health and Human Services had determined that he was "totally disabled as a result of several conditions, both physical and psychological, to an extent which prevents him from concentrating or sustaining any work activity." See Friedrich I, No. Civ. S-94-1613, slip op. at 2. Friedrich received disability under Social Security based on a primary diagnosis of generalized anxiety disorder, chemical toxicity, immune dysregulation, chronic fatigue syndrome and depression. See Friedrich II, 181 F.3d at 1109.

36 See id.


38 See id.

39 See Friedrich II, 181 F.3d at 1109. See also, Friedrich I, Civ. No. S-94-1613, slip op. at 3.
bility for benefits and construe the terms of the LTD Plan.  

A bench trial was held on July 9, 1997, after which the district court entered judgment in favor of Friedrich. Intel timely appealed the final judgment to the Ninth Circuit.

III. THE NINTH CIRCUIT'S ANALYSIS

A. STANDARD OF REVIEW

The Ninth Circuit first addressed whether the district court properly reviewed Intel's denial of benefits using a de novo standard of review. Intel serves as the plan administrator and funds the LTD plan from its own general assets. The district court found that Intel acts as a fiduciary in apparent conflict with its beneficiaries because Intel failed to provide evidence to prove that the conflict of interest did not affect its decision to deny benefits. Therefore, the Ninth Circuit held that the district court did not err in reviewing the denial of benefits de novo.

The Ninth Circuit follows a two-part test to determine whether to invoke heightened scrutiny of benefits decisions made by fiduciaries with apparent conflicts. First, the beneficiary must provide "material, probative evidence, beyond the mere fact of the apparent conflict, tending to show that the fiduciary's self-interest caused a breach of the administrator's

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40 See Friedrich II, 181 F.3d at 1109.
41 See id.
42 See id.
43 See Friedrich II, 181 F.3d at 1109.
44 See id.
45 See id at 1109-1110.
46 See id. See also Atwood v. Newmont Gold Co., 45 F.3d 1317, 1322 (9th Cir. 1995). Generally, when an ERISA plan administrator is given discretion to determine benefits eligibility, courts must review the decision denying benefits under the deferential abuse of discretion standard. See Firestone Tire and Rubber Co. v. Bruch, 489 U.S. 101, 115 (1989).
47 See Friedrich II, 181 F.3d at 1109.
fiduciary obligation to the beneficiary.\textsuperscript{48} If the beneficiary produces such evidence, "the plan bears the burden of producing evidence to show that the conflict of interest did not affect the decision to deny benefits."\textsuperscript{49} If the plan does not meet this burden, the decision to deny benefits is reviewed de novo.\textsuperscript{50}

In Friedrich, the Ninth Circuit affirmed the district court's findings that "Friedrich presented material probative evidence beyond the mere fact of the apparent conflict, tending to show that Intel's self-interest caused a breach of its fiduciary obligations to him."\textsuperscript{51} Furthermore, the Ninth Circuit affirmed that Intel failed to provide a "full and fair" appeals procedure as required under ERISA.\textsuperscript{52} Additionally, Intel did not meet its burden to show that the conflict of interest did not affect its decision to deny benefits to Friedrich.\textsuperscript{53}

\textsuperscript{48} See Friedrich II, 181 F.3d at 1109 (quoting Atwood, 45 F.3d at 1322).
\textsuperscript{49} See id.
\textsuperscript{50} See id.
\textsuperscript{51} See Friedrich II, 181 F.3d at 1109-1110. The record reflected the following: "(1) Intel failed to follow its internal procedure of providing a LTD claim packet that would have given Friedrich notice that he must apply for benefits and the criteria for benefits determinations; (2) Friedrich did not know that Intel was reviewing his LTD claim and did not submit anything regarding his LTD claim until Intel had already denied his claim; (3) Intel provided Friedrich with insufficient notice of the denial of his claim, an unfair review procedure and inadequate dialogue regarding his claim; and (4) LTD Plan claims administrator Shiells administered Friedrich's claim as an adversary 'bent on denying his claim' and 'oblivious to her fiduciary obligations as administrator of the LTD Plan." See id. at 1110.
\textsuperscript{52} See Friedrich II, 181 F.3d at 1110. The appeal committee had access to disorganized and unexplained raw data from Friedrich's physicians while Intel's selected physicians submitted carefully drafted opinions. See id. These typed reports specifically addressed the objective medical illness exclusion of the LTD Plan, while Friedrich's medical reports were often incomprehensible and illegible. See id.
\textsuperscript{53} See id. The court rejected Intel's argument that it acted in the interests of LTD Plan participants by objectively reviewing Friedrich's claim. The court found the evidence supported the findings of the district court. See Friedrich II, 181 F.3d at 1110.
B. ADMISSION OF NEW EVIDENCE

The Ninth Circuit next addressed whether the district court properly admitted new evidence from Friedrich while refusing to admit new evidence from Intel. The court may admit additional evidence when exercising a de novo review of a denial of benefits claim when "circumstances clearly establish that additional evidence is necessary to conduct an adequate de novo review of the benefit decision." The Ninth Circuit found that the detailed written reports submitted by Intel's experts already addressed whether objective medical evidence supported a diagnosis of CFS. Thus, it was unnecessary for the district court to hear additional testimony from Intel's experts. Therefore, the district court concluded there was a complete record to make an adequate, independent de novo review of the benefits decision.

C. FRIEDRICH'S ENTITLEMENT TO LONG-TERM DISABILITY BENEFITS

Intel alleged the district court erred by concluding that Friedrich had CFS and was eligible for benefits under the LTD Plan. The district court heard testimony from Dr. Sheila Bastien describing neuropsychological tests she performed on Friedrich. Friedrich also introduced testimony by Dr. Isaac Silberman explaining that CFS was found in Friedrich's medi-

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54 See id. at 1111.
55 See id.
56 Friedrich II, 181 F.3d 1111.
57 See id. Furthermore, the court found that Friedrich's additional evidence did not raise any new theories not presented to Intel during the claims process. See id.
58 See id.
59 See id.
60 Friedrich II, 181 F.3d at 1111. These tests were specifically designed to measure cognitive functions and produced results consistent with both immune deficiencies and CFS. Dr. Bastian also criticized tests performed by Intel's doctors because they did not include testing motor functioning. In examining for CFS and multiple chemical sensitivities, Dr. Bastian stated that the doctor should test motor functioning. See id.
Intel alleged that Friedrich did not present objective medical evidence to support his claim under the LTD Plan. The Ninth Circuit disagreed with Intel, finding that Friedrich did introduce objective medical evidence supporting his treating physician's diagnosis of CFS.

The Ninth Circuit also rejected Intel's argument that Friedrich's claim was barred by three exclusions contained in the LTD Plan. These exclusions include: (1) the psychiatric exclusion; (2) the controlled substance exclusion; and (3)

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61 See id. Tests performed on Friedrich included, blood tests called ANA (antinuclear antibody) readings, and liver enzyme tests called GGT which indicated liver dysfunction and a physical health problem that correlated with the symptoms reported by Friedrich. Dr. Silberman also explained that Friedrich's abnormal Epstein-Barr tests reflected an inflammatory response. He also discussed an abnormal SPECT scan study which Friedrich's treating physician had previously concluded was a characteristic finding in patients with CFS. See id.

62 See Friedrich II, 181 F.3d. at 1108. The LTD Plan also defines objective medical evidence as follows: "a measurable abnormality which is evidenced by one or more standard medical diagnostic procedures including laboratory tests, physical examination findings, X-rays, MRI's, EEG's, ECG's, 'Catscans' or similar tests. Objective medical findings do not include physicians' opinions or other third party opinions based solely on the acceptance of subjective complaints. See id. at 1109.

63 Because the district court was in the best position for determining the credibility and persuasiveness of the doctors, it did not clearly err in finding that Friedrich presented objective medical evidence to support a finding of disability as a result of CFS. See id.

64 See Friedrich II, 181 F.3d at 1112.

65 See id. The LTD plan excludes any disability that "arises out of, relates to, is caused by or results from . . . mental, emotional or psychiatric illness or disorder of any type." See Friedrich II, 181 F.3d at 1108 (quoting LTD Plan § 4.03.) Intel claimed, based on it physicians' reports and Friedrich's medical records, that Friedrich suffered from a psychiatric condition, not a physical disability. See id. at 1112. However, the Ninth Circuit found that the record reflected that Friedrich's physical problems of CFS caused his psychiatric symptoms in 1992, which differed from previous psychiatric symptoms he exhibited in 1987. See Id.

66 See Friedrich II, 181 F.3d at 1112. Section 4.03 of Intel's LTD Plan excludes any disability that "arises out of, relates to, is caused by or results from . . . conditions arising from the use of or dependency upon a . . . controlled substance." See id. Intel argued that Friedrich's symptoms resulted from anti-depressants prescribed by his doctors.
nonconventional methods exclusion. If Friedrich's symptoms could be classified in any of the three exclusions, Intel would not have to honor Friedrich's claim.

Based on medical examiners' reports, Intel argued that Friedrich suffered from a psychiatric condition, and not a physical disability. Intel's Disability Appeals Committee stated that "Mr. Friedrich's medical records indicate ongoing psychiatric problems since 1987 and that the medical findings are not indicative of any physical disability." However, the Ninth Circuit concluded that the administrative and trial records supported the finding that Friedrich's psychiatric problem was caused by CFS.

Intel's assertion that Friedrich's disability qualified within the narcotics exclusion was also rejected by the Ninth Circuit. Intel argued that Friedrich's symptoms were a result of his use of anti-depressants. Instead, the court concluded that the CFS was treated, not caused by, the medications prescribed by Friedrich's doctors.

Finally, the court rejected Intel's allegation that Friedrich's condition was diagnosed using non-conventional methods not generally accepted by the American Medical Association. The court held that Friedrich's doctors utilized diagnostic methods

67 See Friedrich II, 181 F.3d at 1112. Intel argued that Friedrich's condition fell under this exclusion because it was diagnosed using non-conventional methods not generally accepted by the American Medical Association. See id.

68 See id.

69 See id.


71 See Friedrich II, 181 F.3d at 1112. These symptoms differed from previous psychiatric symptoms suffered in 1987. See id.

72 See Friedrich II, 181 F.3d at 1112.

73 See id.

74 See id. Additionally, Friedrich's treating physicians and consultants considered Friedrich's prescription medication when diagnosing his condition. See id.

75 See Friedrich II, 181 F.3d at 1112.
considered standard for CFS. Therefore, the court concluded that the administrative and trial record supported the district court's finding that Friedrich deserved benefits under Intel's LTD Plan.

Although Intel included specific language in the LTD Plan, Intel was unable to show that its self-interest did not cause a breach of the fiduciary obligation to the employee. Therefore, the Ninth Circuit held that the district court did not err in reviewing Friedrich's claim de novo and in finding that Friedrich was entitled to benefits under the LTD Plan.

IV. IMPLICATIONS OF THE DECISION

Generally, when an ERISA Plan Administrator is given discretion to determine an employee's eligibility benefits, the courts must review the denial of the benefits under the abuse of discretion standard. Friedrich demonstrates, however, that employers who fund their own plan will not necessarily avoid a de novo review simply by including language in their plan which gives them discretion to review and deny benefits.

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76 See id. As a relatively new disease, CFS does not have a generally accepted "dip-stick" test. Friedrich's doctors used the standard diagnosis technique for CFS accepted by the American Medical Association which included various blood tests, motor testing, and EEGs. See id.

77 See id. at 1112-1113.

78 See Friedrich II, 181 F.3d at 1110.

79 See id.


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