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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA  
WESTERN DIVISION

TANYA MONDOLO,  
Plaintiff,  
vs.  
UNUM LIFE INSURANCE COMPANY  
OF AMERICA,  
Defendant.

Case No. CV 11-7435 CAS(MRWx)

**FINDINGS OF FACT AND  
CONCLUSIONS OF LAW**

**I. INTRODUCTION**

Plaintiff Tanya Mondolo filed the instant action in this Court on September 9, 2011. Plaintiff’s complaint alleges that defendant Unum Life Insurance Company of America (“Unum”) wrongfully denied disability insurance benefits. Plaintiff’s complaint alleges a single claim for relief under the Employee Retirement Income Security Act, 29 U.S.C. § 1132 (“ERISA”). The relief plaintiff seeks is payment of disability benefits, a judgment clarifying plaintiff’s rights to future disability benefits, and attorneys’ fees and costs.

The parties filed opening trial briefs on November 13, 2012, and filed responsive trial briefs on November 27, 2012. Additionally, the parties submitted proposed

1 findings of fact and conclusions of law on December 4, 2012. A court trial was held on  
2 December 12, 2012, and the case was taken under submission at the conclusion of the  
3 trial. After considering the parties arguments, the Court finds and concludes as follows.

4 **II. FINDINGS OF FACT**

5 **A. The Parties**

6 1. Plaintiff Tanya Mondolo was diagnosed with Acute Lymphocytic Leukemia  
7 in November 1998. (248).<sup>1</sup> After undergoing chemotherapy for several years, her  
8 cancer went into remission, and she received an AA degree and returned to the  
9 workforce in 2004. (792, 483 – 484).

10 2. Plaintiff also suffers from depression. (72). Between 2006 and 2010, she  
11 attempted to have children and start a family. Unfortunately, each of the four times she  
12 became pregnant she experienced a miscarriage in the third trimester. (223, 727). Her  
13 fourth miscarriage, which took place in December 2009, required surgery.

14 3. As of January 2011, plaintiff has also been diagnosed with avascular  
15 necrosis (“AVN”) and fibromyaglia (“FMS”), and suffers from bone infarct (bone death)  
16 within her femurs, tibias, and left elbow. (708, 737, 745). Plaintiff’s physician believes  
17 that the bone death is a result of her chemotherapy regimen to treat her leukemia. (708).  
18 Plaintiff has difficulty walking. (708).

19 4. Defendant Unum is an insurance company. Unum insured the long term  
20 disability plan (“the LTD Plan”) maintained by plaintiff’s former employer, Jacobs  
21 Engineering. Unum insured the LTD Plan pursuant to Policy 578208001 (“the Policy”).  
22 (133 – 173), and also acts as the claims administrator under the LTD Plan.

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27 <sup>1</sup> All numerical citations refer to pages of the administrative record, dkt nos. 46 – 48.

1           **B. Plaintiff’s First Claim for Disability Benefits**

2           5. In 2005, plaintiff began working for Jacobs Engineering as a procurement  
3 clerk. Plaintiff’s job duties involved clerical and administrative work. (178 – 180, 485,  
4 772).

5           6. On July 20, 2009, plaintiff’s psychological treatment provider  
6 recommended that she stop attending work due to postpartum depression caused by  
7 plaintiff’s miscarriages, anxiety, and stress. (72 – 73).

8           7. Suffering from this depression, plaintiff stopped attending work in July  
9 2009. Additionally, she filed a disability claim under the Policy, based primarily on her  
10 mental health difficulties. (79).

11           **C. Unum’s Disability Benefits Policy**

12           8. The Policy grants Unum discretionary authority to determine a claimant’s  
13 eligibility for benefits and interpret the provisions of the policy. (144, 170).

14           9. Policy benefits are distributed after a 180-day elimination period. (137).

15           10. The Policy defines disability as:

16           “You are ‘totally disabled’ during any period covering a disability for  
17 your occupation, own occupation, normal occupation, regular  
18 occupation or usual occupation when a disability renders you unable  
19 to perform with reasonable continuity the substantial and material  
20 acts necessary to pursue your usual occupation in the usual and  
21 customary way.

22           “During any period covering a disability from any occupation,  
23 any other occupation, any gainful occupation, any other gainful  
24 occupation, reasonable occupation or another occupation when a  
25 disability renders you unable to perform with reasonable continuity  
26 the substantial and material acts necessary to pursue your usual  
27 occupation in the usual and customary way and unable to engage  
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1 with reasonable continuity in another occupation in which you could  
2 reasonably be expected to perform satisfactorily in light of your age,  
3 education, training, experience, station in life, physical and mental  
4 capacity.

5 'Substantial and material acts' as used in the above definition of  
6 disability means acts that

- 7 -are normally required for the performance of your usual
- 8 occupation or another occupation, and
- 9 -cannot be reasonably omitted or modified." (134).

10 11. The Policy provides for a maximum of 12 months of benefits for a  
11 disability that prevents a claimant from performing his or her own occupation ("own  
12 occupation period"). (148).

13 12. After 12 months of benefits, the Policy requires the insured to be disabled  
14 from any gainful occupation on a part-time basis to receive further benefits. The Policy  
15 defines "gainful occupation" to mean "an occupation that is or can be expected to  
16 provide you with an income at least equal to 60% of your indexed monthly earnings  
17 within 12 months of your return to work." (134, 154, 161 – 163).

18 13. The Policy also limits benefits for disabilities primarily due to mental  
19 illness to a maximum of 12 months ("MIL"). "Mental Illness means a psychiatric or  
20 psychological condition regardless of cause such as schizophrenia, depression, manic  
21 depressive or bipolar illness, anxiety, personality disorders and/or adjustment disorders  
22 or other conditions. These conditions are usually treated by a mental health provider or  
23 other qualified provider using psychotherapy, psychotropic drugs, or other similar  
24 methods of treatment." (154, 162).

25 14. Policy payments stop, in relevant part, "after 12 months of payments, when  
26 you are able to work in any gainful occupation on a part-time basis but you choose not

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1 to,” and also stop on “the date you are no longer disabled under the terms of the plan.”  
2 (154).

3 **D. Unum’s Discovery of Plaintiff’s Potential Physical Disability.**

4 15. Pursuant to the terms of the Policy, Unum approved plaintiff’s disability  
5 claim arising from her depression, and began paying benefits on February 5, 2010. (237  
6 – 241).

7 16. Unum also conducted a claim investigation, during which it contacted Dr.  
8 Sandhya Gudapati, a psychiatrist treating plaintiff, and Dr. Gaius Steiner, a psychologist  
9 treating plaintiff. In response to Unum’s inquiries, Dr. Gudapati explained that  
10 plaintiff’s mental health problems were caused by physical health issues, and Dr. Steiner  
11 noted that plaintiff was “fragile and frail.” (596, 606). Both physicians also stated that  
12 plaintiff continued to suffer from depression.

13 17. Between October 2010 and December 2010, in-house Unum physicians  
14 reviewed plaintiff’s file and communicated with Dr. Steiner and Dr. Gudapati. Based on  
15 their review, the Unum physicians concluded that plaintiff’s mental health difficulties no  
16 longer precluded her from working in her occupation. (614 – 617, 558 – 559, 596 –  
17 610).

18 18. However, Unum’s physicians observed that plaintiff’s “physical problems  
19 may outweigh her psychiatric problems.” (616). Consequently, Unum determined that  
20 it should conduct a general medical review to determine whether plaintiff suffered from  
21 a physical disability. (614 – 617).

22 **E. Plaintiff’s AVN and FMS Diagnosis**

23 19. Pursuant to its claims investigation, Unum wrote to plaintiff on December  
24 2, 2010, stating that it was “no longer approving further disability benefits due to your  
25 psychiatric conditions.” (627). Additionally, Unum asked plaintiff to have her  
26 physician certify her physical impairment if she was unable to work due to physical  
27 health conditions. (627).

1           20.     After a series of referrals, plaintiff was sent to Dr. Elizabeth Ortiz, an  
2 Assistant Professor and Rheumatologist at the University of Southern California,  
3 regarding her physical health. (674, 716, 729).

4           21.     Dr. Ortiz first saw plaintiff on January 18, 2011. During this visit, plaintiff  
5 described her symptoms as “pain in my joints, swelling, slow movement, popping,  
6 limited movement.” The pain was in her wrists, elbows, neck, right shoulder, back,  
7 knees, and ankles. (716). She was experiencing fatigue, weakness, tenderness,  
8 headaches, difficulty sleeping, anxiety, and depression. (717). Dr. Ortiz’ notes from this  
9 visit observe that plaintiff’s pain had been getting progressively worse for two years, and  
10 had become especially severe in recent months. Dr. Ortiz’ notes also state that plaintiff’s  
11 pain was not being controlled by various pain medications. (713).

12           22.     Dr. Ortiz saw plaintiff again on January 25, 2011. During this visit, Dr.  
13 Ortiz reviewed x-rays and other lab results with plaintiff. Plaintiff’s x-rays and MRIs  
14 show that plaintiff was suffering from bone death in both of her femurs and tibias, and  
15 that there was evidence that plaintiff’s left elbow had suffered from a mild collapse.  
16 (708). Dr. Ortiz believed that the bone death was likely the result of plaintiff’s cancer  
17 treatment. Dr. Ortiz felt that Ms. Mondolo’s persistent bone and joint pain was multi-  
18 factorial, including components of AVN and FMS. Lyrica was started to treat the FMS,  
19 and Flector patches with Percocet (an opioid) were continued for pain. (710).

20           23.     Also on January 25, 2011, Dr. Ortiz completed Unum’s attending  
21 physician’s statement form (“APS”). In completing the form, Dr. Ortiz listed the  
22 primary diagnosis as AVN and the secondary diagnosis as FMS. Dr. Ortiz set out  
23 restrictions and limitations (“R&Ls”) regarding plaintiff’s functional capacity via  
24 checked boxes listed on the form. The boxes Dr. Ortiz checked indicated Ms. Mondolo  
25 was able to sit “frequently” (34 – 66 % of the time), and “occasionally” (1 – 33 % of the  
26 time) stand, walk, perform fine finger movements, push/pull, reach above the shoulder,

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1 and lift/carry up to 10 lbs. (737, 745). Dr. Ortiz did not expect that plaintiff would show  
2 enough improvement to return to work for at least a year. (738).

3 24. Unum accepted the R&Ls Dr. Ortiz' submitted on January 25, 2011, and  
4 has never contested their accuracy. Based on these R&Ls, Unum conducted a vocational  
5 review and concluded that plaintiff was unable to perform her own occupation. (20, 22,  
6 750, 770 – 773). Specifically, Unum's vocational reviewer determined that plaintiff was  
7 unable to perform the fine finger movements her own occupation required. (773).

8 **F. Unum's Vocational Review Determined that Plaintiff was Able to**  
9 **Work and Denied Plaintiff Additional Benefits**

10 25. At the end of January 2011, the Policy's 12-month "own occupation"  
11 period ended. Consequently, to determine whether plaintiff still qualified for disability  
12 benefits under the Policy, it was necessary for Unum to determine whether plaintiff  
13 could work in occupations other than her own.

14 26. Unum sent plaintiff's file to one of its vocational review consultants  
15 ("VRC") to determine whether plaintiff was capable of working under the constraints of  
16 the R&Ls submitted by Dr. Ortiz. (750). The VRC concluded that, given plaintiff's  
17 skills and R&Ls, plaintiff was capable of working as an adjustment clerk, banking loan  
18 interviewer, and credit authorizer (the "alternative occupations"). (754).

19 27. The vocational review did not obtain the fingering requirements for these  
20 three alternative occupations. (750 – 755). Additionally, although the VRC's report sets  
21 out almost all of Dr. Ortiz' January 21, 2011 R&Ls, the VRC did not acknowledge the  
22 sitting limitation that Dr. Ortiz submitted with her R&Ls. (751).

23 28. Relying on the review, Unum terminated plaintiff's disability benefits on  
24 March 17, 2011. Unum's termination letter did not acknowledge plaintiff's sitting  
25 limitation, and claimed that plaintiff could work as a banking loan interviewer, credit  
26 authorizer, or adjustment clerk within her R&Ls. (762 – 769).

1           **G.     Plaintiff Appealed her Denial of Benefits**

2           29.     On April 28, 2011, plaintiff contested Unum’s denial of benefits within  
3 Unum’s appeals department. (789). In support of her appeal, plaintiff submitted letters  
4 from Dr. Ortiz and Dr. Steiner, and also submitted updated medical records from Dr.  
5 Ortiz. (791 – 793, 840 – 878). Dr. Ortiz’ notes reflect that plaintiff was taking several  
6 medications to manage her pain and other symptoms, and states that plaintiff’s pain at  
7 times prevented her from walking. (850 – 851).

8           30.     On May 16, 2011, Dr. Ortiz completed a second APS form containing  
9 updated R&Ls. (894). Dr. Ortiz explained that plaintiff was experiencing extreme  
10 difficulty walking, sitting, and standing. (See also 792 – 793, 802, 893 – 897, 900).

11           31.     To evaluate plaintiff’s appeal, Unum obtained a paper review of plaintiff’s  
12 case from Dr. Thomas Moses, an orthopedic surgeon and one of Unum’s in-house  
13 physicians. (901 – 907, 923 – 924, 933 – 939, 948). Dr. Moses disagreed with Dr.  
14 Ortiz’ increased R&Ls and her diagnosis of Fibromyalgia (905 – 906), and called Dr.  
15 Ortiz to discuss plaintiff’s claim. (907). After communicating with Dr. Ortiz, Dr. Moses  
16 concluded that her updated R&Ls were inaccurate, and submitted his own set of R&Ls.  
17 (912 – 914, 919 – 920, 923 – 924, 934 – 936, 938 – 939). Dr. Moses noted that he did,  
18 however, “basically” agree with Dr. Ortiz’ January 25, 2011 R&Ls. (913).

19           32.     Based on the disagreement between Dr. Ortiz and Dr. Moses, Unum  
20 requested that Dr. Susan Benson, an in-house Unum physician who specializes in pain  
21 management and rehabilitation, conduct a paper review of plaintiff’s case. After  
22 reviewing plaintiff’s file, Dr. Benson agreed with Dr. Moses’ R&Ls, and concluded that  
23 further medical review was unnecessary. (938 – 939, 943 – 947).

24           33.     Utilizing the R&Ls provided by Dr. Moses, Unum’s appeal VRC conducted  
25 a vocational review to determine whether plaintiff could perform her own occupation or  
26 any of the three alternative occupations. (950 – 952, 954, 773). This review did not  
27 consider the sitting and fingering limitations contained in Dr. Ortiz’ initial R&Ls.  
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1           34.     On July 6, 2011, Unum sent plaintiff a letter that upheld its denial of  
2 benefits. (954).

3           35.     To the extent necessary, each of these findings of fact may be deemed to be  
4 a conclusion of law.

5 **III. CONCLUSIONS OF LAW**

6 **A.     Applicable Standard of Review**

7           1.     Where, as here, an ERISA plan grants an administrator discretionary  
8 authority to determine a claimant’s eligibility for benefits, courts review a denial of  
9 benefits for abuse of discretion. Firestone Tire and Rubber Co. v. Bruch, 489 U.S. 101,  
10 111, 115 (1989). Under this deferential standard, a plan administrator’s decision should  
11 be upheld if it is reasonable, but overruled if it is illogical, implausible, or unsupported  
12 by inferences that can be drawn by facts in the record. Stephan v. Unum Life Ins. Co. of  
13 America, 697 F.3d 917, 929 (9th Cir. 2012).

14           2.     However, the nature of this abuse of discretion review changes slightly  
15 when the plan administrator has a structural conflict of interest due to the fact that it both  
16 pays benefits under a plan and determines whether a claimant is eligible for benefits.  
17 Firestone Tire, 489 U.S. at 115.

18           3.     In MetLife v. Glenn, 554 U.S. 105 (2008), the Supreme Court explained  
19 that the existence of a conflict of interest should be “weighed as a factor in determining  
20 whether there is an abuse of discretion,” and that the significance of a conflict of interest  
21 varies from case to case. MetLife, 554 U.S. at 115, 117.

22           4.     Applying MetLife, the Ninth Circuit explained that if the facts and  
23 circumstances in a particular case indicate that a conflict of interest may have “tainted  
24 the entire administrative decisionmaking process,” then a reviewing court should review  
25 the articulated basis for a denial of benefits with “enhanced skepticism.” Montour v.

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1 Hartford Life & Acc. Ins. Co., 588 F.3d 623, 631 (9th Cir. 2009) (following Abatie v.  
2 Alta Health & Life Ins. Co., 458 F.3d 955, 969 (9th Cir. 2006)).<sup>2</sup>

3 5. The Ninth Circuit has highlighted several factors that can demonstrate a  
4 structural conflict significant enough to warrant enhanced skepticism. These factors  
5 include offering inconsistent reasons for denying benefits, failing to adequately  
6 investigate a claim, and deciding to conduct a “pure paper” review instead of an in  
7 person review where there is reason to believe that the paper-reviewing physician did not  
8 receive all relevant evidence. See Saffon v. Wells Fargo, 522 F.3d 863, 868 (9th Cir.  
9 2008); Montour, 588 F.3d at 635. Additionally, irrational decisionmaking or illogical  
10 reasoning can also support an inference of bias. Stephan v. Unum Life Ins. Co. of  
11 America, 698 F.3d at 934 – 939. Finally, the Supreme Court has explained that a  
12 “conflict of interest . . . should prove more important (perhaps of great importance) . . .  
13 where an insurance company administrator has a history of biased claims  
14 administration.” MetLife, 554 U.S. at 117.

15 6. Conversely, the Supreme Court has delineated circumstances in which a  
16 structural conflict of interest should be deemed relatively unimportant. In MetLife, the  
17 Court explained that a conflict is less relevant where “the administrator has taken active  
18 steps to reduce potential bias and to promote accuracy, for example, by walling off  
19 claims administrators from those interest in firm finances, or by imposing management  
20 checks that penalize inaccurate decisionmaking irrespective of whom the inaccuracy  
21 benefits.” MetLife, 489 U.S. at 117.

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24 <sup>2</sup> Nonetheless, the Ninth Circuit in Montour made clear that the standard of review  
25 itself does not shift in proportion to the seriousness of a conflict of interest, but instead  
26 explained that reviewing an administrator’s stated basis for a decision with enhanced  
27 skepticism is “functionally equivalent to assigning greater weight to the conflict of interest  
28 as a factor in the overall analysis of whether an abuse of discretion occurred.” Montour,  
588 F.3d at 631.

1           **B. Factors Warranting Enhanced Skepticism are Present in this Case**

2           7. Because Unum both pays benefits claims and determines whether claimants  
3 qualify for benefits, Unum has a structural conflict of interest.

4           8. Several factors are present in this case suggesting that this structural  
5 conflict of interest should cause the Court to review Unum’s decision with enhanced  
6 skepticism.

7           9. First, there is evidence that Unum failed to adequately investigate plaintiff’s  
8 claim. As explained in more detail below, Unum failed to determine how much sitting  
9 plaintiff could tolerate without suffering significant pain, nor did it investigate whether  
10 the alternative jobs it found appropriate for plaintiff involved fingering requirements  
11 within plaintiff’s capacity. (Conclusions of Law, ¶¶ 14 – 17, *infra*).

12           10. Second, Unum’s physicians conducted a “pure paper” review as part of its  
13 internal appeals process, and as explained in more detail below, it appears that the paper  
14 review physicians did not consider relevant evidence about plaintiff’s mental health due  
15 to Unum’s unreasonable interpretation of the Policy. (Conclusions of Law, ¶¶ 23 – 26,  
16 *infra*). The failure to consider this relevant evidence provides an additional reason to  
17 apply enhanced skepticism. *Montour*, 588 F.3d at 634.

18           11. Third, as the Ninth Circuit has recently affirmed, Unum has a history of  
19 biased claims administration. *Stephan*, 697 F.3d at 934. This history provides a reason  
20 to assign greater weight to the conflict of interest. *MetLife*, 554 U.S. at 117.

21           12. Unum argues that it has taken steps to prevent its structural conflict of  
22 interest from skewing its decisionmaking. In support of this argument, Unum submitted  
23 a declaration from Stephanie LeSieur – the Unum officer who oversaw plaintiff’s appeal  
24 – stating factors that purport to show the impartiality of Unum’s appellate process.  
25 LeSieur explains that she was never discouraged from allowing legitimate claims to be  
26 paid, that her compensation does not depend on the number of claim denials she  
27 upholds, that she does not consider the financial impact of her decisions on Unum, and  
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1 generally states that she conducts the appellate process fairly. LeSieur Decl. ¶¶ 8 – 10,  
2 18, 19. Additionally, she states that financial personnel do not communicate with or  
3 advise Unum’s appeals unit, that the appeals unit has no role in managing or reporting  
4 Unum’s finances, and that Unum’s appeals unit is “completely separate” from its finance  
5 department. LeSieur Decl. ¶¶ 16 – 18.

6 13. The Court finds that LeSieur’s declaration does not set out compelling  
7 reasons to find that Unum’s conflict of interest is unimportant. First, LeSieur has not  
8 described any “management checks that penalize inaccurate decisionmaking irrespective  
9 of whom the inaccuracy benefits.” MetLife, 554 U.S. at 117. Second, based on  
10 LeSieur’s declaration, it does not appear that Unum has “walled off” its claims  
11 administrators from its financial personnel in the manner contemplated by the Supreme  
12 Court in MetLife. When the Supreme Court in MetLife observed that walling off claims  
13 administrators from financial personnel could blunt the effects of a conflict of interest, it  
14 cited to an article setting out the features of an effective “information wall.” See  
15 MetLife, 554 U.S. at 118 (citing Herzel & Colling, The Chinese Wall and Conflict of  
16 Interest in Banks, 34 Bus. Law 73 (1978)). This article recommended several strategies  
17 that should be used to construct an effective information wall, which included: (1) a  
18 policy statement, (2) education programs, (3) restrictions on access to files, (4)  
19 prohibitions on frequent transfers of personnel between units, (5) restrictions on  
20 committee membership, and (6) physical separation of units. Herzel & Colling, 34 Bus.  
21 Law at 88 – 91. The article places special emphasis on the need for a policy statement.  
22 *Id.* at 88. LeSieur’s declaration does not state that any of these strategies have been used  
23 at Unum. Crucially, her declaration does not describe any policy statement setting out a  
24 commitment by Unum’s top management that claims should be adjudicated fairly  
25 regardless of their impact on Unum’s finances. Consequently, the factors set out in  
26 LeSieur’s declaration do not lead the Court to find that the structural conflict of interest  
27 is relatively unimportant in this case.

1           **C.       Unum Acted Illogically and Irrationally by Failing to Apply Dr. Ortiz’**  
2           **R&Ls in its Vocational Review**

3           14.       Unum initially denied plaintiff benefits on the basis of a vocational review  
4 conducted on February 28, 2011. (750 – 769). The vocational reviewer acknowledged  
5 that she was using the R&Ls submitted by Dr. Ortiz for purposes of the vocational  
6 review. (750). However, the reviewer does not acknowledge the fact that under Dr.  
7 Ortiz’ R&Ls, plaintiff is unable to sit “continuously” (for over two-thirds of a work  
8 interval), but instead can only sit “frequently” (between one-third and two-thirds of a  
9 work interval). (Compare 737, 750). Additionally, the reviewer does not give a reason  
10 for not using Dr. Ortiz’ sitting limitation. Therefore, it was illogical for the reviewer not  
11 to consider Dr. Ortiz’ sitting limitation despite accepting her other R&Ls.

12           15.       Consequently, the vocational reviewer did not consider whether plaintiff’s  
13 sitting restriction would prevent her from performing any of the three alternative jobs.  
14 Moreover, it appears that this illogical error caused the vocational reviewer to reach an  
15 incorrect result. The reviewer described each of the three occupations as “sedentary,”  
16 and noted that “sedentary work involves sitting most of the time, but may involve  
17 walking or standing for brief periods of time.” (753 – 754). Since plaintiff could only  
18 sit between one-third and two-thirds of a work interval, she would not be able to perform  
19 work that requires sitting for most of the day. Additionally, even if the reviewer had  
20 considered the sitting limitation, it would have been unreasonable for the reviewer to  
21 conclude that plaintiff was capable of performing a “sedentary” occupation without  
22 determining precisely how long plaintiff was able to sit each day, i.e. whether she could  
23 sit for an interval closer to one-third of a work period or closer to two-thirds of a work  
24 period.

25           16.       The February 28, 2011 vocational review by Unum contains another  
26 significant problem. Although the vocational reviewer acknowledged that Dr. Ortiz’  
27 R&Ls only allowed plaintiff to engage in “bilateral fine finger movements”  
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1 occasionally, the reviewer did not consider what fingering requirements any of the  
2 alternative occupations imposed. The failure to consider the fingering requirements of  
3 the alternative occupations is notable because Unum had already concluded that plaintiff  
4 could not perform her own occupation due to its fingering demands.

5 17. Consequently, Unum’s vocational review was illogical, and failed to  
6 develop facts material to the review involving plaintiff’s sitting capacity and the  
7 alternative occupations’ fingering requirements. Therefore, Unum’s initial decision to  
8 terminate her benefits was an abuse of discretion.

9 **D. Unum Acted Illogically When its Appellate Division Affirmed its**  
10 **Termination of Benefits**

11 18. In the course of evaluating plaintiff’s appeal, Unum conducted a new  
12 appellate vocational review to determine whether plaintiff was capable of performing the  
13 alternative occupations. (950). Based on the review’s conclusion that plaintiff was  
14 capable of performing the alternative occupations, Unum affirmed its decision to deny  
15 plaintiff benefits. (956).

16 19. In the course of its review, Unum determined that Dr. Ortiz’ updated R&Ls  
17 were not supported by medical evidence, but nonetheless concluded that her original  
18 January 25, 2011 R&Ls were reasonable. (956). Unum did not, however, use Dr. Ortiz’  
19 January 25, 2011 R&Ls when conducting its appellate vocational review. Instead,  
20 Unum utilized new R&Ls provided by its paper review physician Dr. Moses. (913 –  
21 914, 950). These R&Ls provide that plaintiff “can perform full-time activity with  
22 sedentary capacity.” (914).

23 20. Therefore, Dr. Moses’ R&Ls appear to effectively reject Dr. Ortiz’ sitting  
24 limitation. However, Dr. Moses never justified rejecting the sitting limitation. Instead,  
25 Dr. Moses stated that he “basically” agreed with Dr. Ortiz’ original R&Ls, and Dr.  
26 Benson, Unum’s other review physician, also noted that Dr. Ortiz’ original R&Ls were  
27 “reasonable.” (913, 946).

1           21.     When Unum conducted its appellate vocational review, it set out Dr.  
2 Moses' R&Ls, and concluded that plaintiff could perform the alternative occupations,  
3 even though "[t]hese occupations are primarily performed in a seated posture." (951).  
4 However, since Unum never gave a reason for abandoning Dr. Ortiz' sitting restriction,  
5 its failure to consider that restriction in its appellate vocational review was illogical.  
6 Moreover, for the reasons explained above, it would have been irrational for Unum to  
7 conclude that plaintiff could have performed the alternative occupations despite the  
8 sitting restriction. (Conclusions of Law, supra, ¶¶ 14 – 17).

9           22.     Consequently, the Court concludes that Unum acted illogically when it  
10 affirmed its termination of plaintiff's benefits, and therefore also finds that its decision to  
11 affirm the denial of benefits was an abuse of discretion.

12           **E.     Unum Failed to Consider Psychological Evidence**

13           23.     The reasons set out directly above show that Unum abused its discretion  
14 when it terminated plaintiff's disability benefits. Here, the Court briefly discusses other  
15 evidence in the record that supports reviewing Unum's decision with enhanced  
16 skepticism.

17           24.     While evaluating plaintiff's appeal, Unum and its reviewing physician Dr.  
18 Moses stated that they would not consider plaintiff's psychological condition. The  
19 reason Unum gave for refusing to consider this evidence was that plaintiff had already  
20 been paid the maximum allowed benefits for disabilities primarily due to mental illness.  
21 (924, 957). Therefore, Unum appears to have assumed that the provision in the Policy  
22 limiting the availability of benefits for disabilities primarily due to mental illness also  
23 operated to limit the evidence that could be considered when evaluating a disability  
24 primarily due to physical condition. This assumption is plainly unfounded. The fact that  
25 Unum had no obligation under the policy to cover a disability primarily due to mental  
26 illness provides no reason to fail to consider relevant psychological evidence when  
27 evaluating the capabilities of a claimant with a disability primarily due to physical  
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1 conditions. See Perryman v. Provident Life and Accident Ins. Co., 690 F.Supp.2d 917,  
2 955 (D. Ariz. 2010) (finding that an analogous limit on benefits for disabilities caused by  
3 mental illness was inapplicable to mental impairments that are secondary to a physical  
4 impairment).

5 25. Such an unfounded interpretation of the Policy terms provides a reason to  
6 give Unum’s structural conflict of interest extra weight in this case. Stephan, 617 F.3d  
7 at 936.

8 26. Additionally, because Unum took the position that evidence of plaintiff’s  
9 psychological condition was irrelevant under the policy, Unum’s reviewing physicians  
10 likely did not consider all relevant evidence. (See 924, letter from Dr. Moses to Dr.  
11 Ortiz (“Ms. Mondolo has already met her maximum for her mental and nervous portion  
12 of her policy. Therefore, we must only consider her physical impairments when  
13 evaluating her functional abilities.”)). Because it appears that Unum’s paper review  
14 physicians did not consider all relevant aspects of plaintiff’s health due to Unum’s  
15 flawed interpretation of the Policy, Unum’s choice to conduct a pure paper review  
16 “raises questions about the thoroughness and accuracy of the benefits determination.”  
17 Montour, 588 F.3d at 634.<sup>3</sup>

18 27. To the extent necessary, each of these conclusions of law may be deemed to  
19 be a finding of fact.

#### 20 **IV. CONCLUSIONS**

21 Based on the above Findings of Fact and Conclusions of Law, the Court finds that  
22 Unum abused its discretion in terminating Ms. Mondolo’s disability benefits. Thus, the  
23 Court finds in favor of Plaintiff, reinstates her to the Plan, and awards her retroactive  
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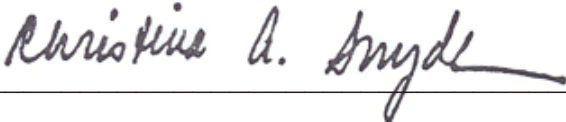
25  
26 <sup>3</sup> Additionally, every physician who personally examined plaintiff concluded that she  
27 was disabled and could not work. Only paper reviewers disagreed with this conclusion.  
28 This provides another reason to find that Unum’s decision was unreasonable. Salomaa v.  
Honda Long Term Disability Plan, 642 F.3d 666, 676 (9th Cir. 2011).



1 benefits, plus interest, from the date her benefits were terminated to the date of this  
2 Order. Further, Plaintiff may make a motion for attorneys' fees and costs.

3 IT IS SO ORDERED.

4 Dated: January 16, 2013

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7 CHRISTINA A. SNYDER  
8 United States District Judge  
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