NOT FOR PUBLICATION

In the
United States Court of Appeals
For the Eleventh Circuit

No. 22-13316

BRYCE DUNHAM-ZEMBERI,

Plaintiff-Appellant,

versus

LINCOLN LIFE ASSURANCE COMPANY OF BOSTON,

Defendant-Appellee.

Appeal from the United States District Court
for the Southern District of Florida
D.C. Docket No. 1:21-cv-24224-PCH

Before NEWSOM, BRANCH, and LUCK, Circuit Judges.

LUCK, Circuit Judge:

Bryce Dunham-Zemberi was covered by his employer's long-term disability insurance plan when he suffered a back injury from a skiing accident that prevented him from performing a

material and substantial duty of his job—lifting up to fifty pounds. Lincoln Life Assurance Company of Boston, the plan administrator, initially found Dunham-Zemberi disabled and paid him benefits. But, when Dunham-Zemberi could no longer provide proof of his continued disability—that he continued to be unable to lift up to fifty pounds—Lincoln ceased paying him benefits under the terms of the plan. Dunham-Zemberi sued Lincoln under the Employee Retirement Income Security Act to keep his benefits. On cross-motions for summary judgment, the district court concluded that Lincoln's decision to cease paying Dunham-Zemberi's benefits was not de novo wrong. After careful review, and with the benefit of oral argument, we agree and affirm.

FACTUAL BACKGROUND AND PROCEDURAL HISTORY

Dunham-Zemberi worked for Mattress Firm, becoming eligible for its group long-term disability insurance plan. Lincoln offered the plan and served as the plan administrator.

The plan provides that "[w]hen Lincoln receives [p]roof that a [c]overed [p]erson is [d]isabled . . . Lincoln will pay the [c]overed [p]erson a [m]onthly [b]enefit."[1] Under the plan, a person is disabled when he "is unable to perform the [m]aterial and [s]ubstantial [d]uties of his [o]wn [o]ccupation." "Material and substantial duties" are "responsibilities that are normally required to perform the

[1] The plan refers to the plan administrator as Liberty, but Liberty has since changed its name to Lincoln. For clarity, any plan language that refers to Liberty has been modified to Lincoln.

[c]overed [p]erson's [o]wn [o]ccupation, or any other occupation, and cannot be reasonably eliminated or modified." One's "own occupation" is the "occupation that he was performing when his [d]isability . . . began" and "as it is normally performed in the national economy." "Proof" is defined as:

> the evidence in support of a claim for benefits and includes, but is not limited to, the following:
>
> 1. a claim form completed and signed . . . by the [c]overed [p]erson claiming benefits;
>
> 2. an attending [p]hysician's statement . . . ; and
>
> 3. the provision by the attending [p]hysician of standard diagnosis, chart notes, lab findings, test results, x-rays and/or other forms of objective medical evidence in support of a claim for benefits.
>
> Proof must be submitted in a form or format satisfactory to Lincoln.

"[M]onthly benefit[s] will cease" on "the date the [c]overed [p]erson fails to provide [p]roof of continued [d]isability."

In November 2019, Dunham-Zemberi suffered a spinal injury during a skiing accident. After spinal fusion surgery, Dunham-Zemberi began receiving long-term disability benefits. Dunham-Zemberi had been working as a store manager where one of his material and substantial duties was lifting up to fifty pounds. After the surgery, Dunham-Zemberi returned to his orthopedic surgeon because he still had pain. After eight months of follow-up

appointments, which included four sets of x-rays and a computed tomography scan, the surgeon determined there were no complications from the surgery and rated Dunham-Zemberi five out of five for strength and reflexes in all his extremities (apart from his elbow flexion). At an appointment with his physical therapist, Dunham-Zemberi reported that he knew his "back [was] healed/stable but [he] worried that loading it [would] lead to further injury."

After the CT scan showed no obvious problem with Dunham-Zemberi's recovery, the surgeon indicated he was "perplexed" about Dunham-Zemberi's condition and referred him to a pain psychologist. The pain psychologist, in turn, reported "no pain behaviors observed" despite Dunham-Zemberi's continued complaints.

A reviewer hired by Lincoln (a physiatrist) reviewed Dunham-Zemberi's medical records and observed that, "[a]s of [January 14, 2021, they] d[id] not support any specific restrictions and limitations." The reviewer also explained that "there [was] no clinical reason to preclude full-time work capacity." "Nothing in the available medical record[s] suggest[ed] that the post-op healing ha[d] not progressed as expected or would necessitate any specific restrictions . . . ." For that reason, the reviewer concluded, Dunham-Zemberi "appear[ed] to have the strength and endurance to support unrestricted work activities."

On February 3, 2021, Lincoln informed Dunham-Zemberi that his benefits were being terminated because he was no longer

disabled under the terms of the plan. Dunham-Zemberi appealed the decision, and attached to his appeal a March 2021 residual functional capacity evaluation performed by a physical therapist and a letter from his primary care physician. The evaluation determined that Dunham-Zemberi could carry fifteen pounds for thirty feet using both his hands, which "represent[ed] his maximal, occasional, material handling ability." Dunham-Zemberi's primary care physician explained the capacity evaluation in a letter, and concluded Dunham-Zemberi could not work full time because he could carry only fifteen pounds.

As part of its internal appeal process, Lincoln commissioned a second reviewer (another physiatrist) to review Dunham-Zemberi's medical records. The second reviewer concluded Dunham-Zemberi could work full time without restriction: "[t]he records d[id] not indicate there had been any post-operative complications" and "no specific restrictions/limitations from a [p]hysical [m]edicine & [r]ehabilitation perspective were supported." Based on the medical records and the file reviews, Lincoln determined that Dunham-Zemberi failed to provide proof of his continued disability under the plan and thus was no longer entitled to benefits.

Dunham-Zemberi sued Lincoln, claiming he remained entitled to long-term disability benefits under ERISA. The parties cross-moved for summary judgment. The district court granted Lincoln's motion and denied Dunham-Zemberi's because he "did not meet his burden of showing . . . that he [was] disabled." Dunham-Zemberi appeals the judgment for Lincoln.

STANDARD OF REVIEW

We "review de novo a district court's ruling affirming or reversing a plan administrator's ERISA benefits decision, applying the same legal standards that governed the district court's decision." *Blankenship v. Metro. Life Ins. Co.*, 644 F.3d 1350, 1354 (11th Cir. 2011) (citation modified). We use the framework from *Williams v. BellSouth Telecommunications, Inc.*, 373 F.3d 1132 (11th Cir. 2004), as a "multi-step framework to guide [us] in reviewing an ERISA plan administrator's benefits decisions." *Blankenship*, 644 F.3d at 1354. The *Williams* framework instructs that we, first, "[a]pply the de novo standard to determine whether the [plan] administrator's benefits-denial decision is 'wrong.'" *Id.* at 1355 (citation modified). If the decision was not de novo wrong, we "end the inquiry and affirm the decision." *Id.* (citation modified).

DISCUSSION

ERISA permits employees to challenge the decisions of plan administrators. 29 U.S.C. § 1132(a)(1)(B). It requires that "[e]very employee benefit plan shall be established and maintained pursuant to a written instrument." *Id.* § 1102(a)(1). "[O]nce a plan is established, the [plan] administrator's duty is to see that the plan is maintained pursuant to [that] written instrument." *Heimeshoff v. Hartford Life & Accident Ins. Co.*, 571 U.S. 99, 108 (2013) (citation modified).

Here, the written instrument—the plan—provides that Dunham-Zemberi was not entitled to benefits until Lincoln "receive[d] [p]roof" that he was disabled. And to be disabled under

the plan, he had to show that he was "unable to perform the [m]aterial and [s]ubstantial [d]uties of his [o]wn [o]ccupation." The parties agree that being able to lift up to fifty pounds was a material and substantial duty of Dunham-Zemberi's occupation.

Under the plan, Dunham-Zemberi's benefits terminate when he "fails to provide [p]roof of continued [d]isability." The "[p]roof" must include: (1) a signed claim form; (2) an attending physician's statement; and (3) a "standard diagnosis, chart notes, lab findings, test results, x-rays and/or other forms of objective medical evidence in support of a claim for benefits." The "[p]roof must be submitted in a form or format satisfactory to Lincoln."

Lincoln terminated Dunham-Zemberi's benefits because, under the plan, he failed to provide proof of his continued inability to lift up to fifty pounds as required by his occupation. The question for us (as it was for the district court) is "[w]hether [Lincoln]'s decision was . . . de novo correct," which "under this Circuit's *Williams* framework is a question of law." *See Blankenship*, 644 F.3d at 1354 (citation modified). We agree with the district court that Lincoln's evaluation was de novo correct because Dunham-Zemberi did not provide proof in the form of objective medical evidence, as required by the plan, that he continued to be unable to lift up to fifty pounds as his job required.

The objective medical evidence showed the opposite—that he was able to perform the duties his job required. Dunham-Zemberi's orthopedic surgeon observed as early as eight months post-surgery that the medical imaging from the CT scan showed no

complications and that Dunham-Zemberi's strength had returned. From the CT scan, the surgeon concluded that any possible lingering issue was better handled by a pain psychologist, who in turn said that he did not observe any pain behaviors.

Dunham-Zemberi's physical therapist also reported that Dunham-Zemberi knew his "back [was] healed/stable but worried that loading it [would] lead to further injury." A doctor reviewed the medical records in Dunham-Zemberi's file and found the records "d[id] not support any specific restrictions and limitations." The reviewer added that a patient would typically be expected to recover from the type of surgery Dunham-Zemberi had in three to four months, and would be back to pre-surgery levels of functionality "no more than [six] months post-op." The reviewer concluded that Dunham-Zemberi's post-surgical healing had "progressed as expected" and that he "appear[ed] to have the strength and endurance to support unrestricted work activities." A second reviewer examined Dunham-Zemberi's medical records and agreed that there had been no "post-operative complications or issues," that no specific restrictions were warranted, and that Dunham-Zemberi "ha[d] the ability to sustain full time capacity."

In response, Dunham-Zemberi argues that Lincoln misapplied the plan in two ways. First, he contends that Lincoln incorrectly read the plan to require objective medical evidence to show continued disability. But Lincoln's reading was correct. The plan provides that benefits "cease" when the employee "fails to provide [p]roof of continued [d]isability." Under the plan, that "[p]roof"

must include (among other things) "standard diagnosis, chart notes, lab findings, test results, x-rays and/or other form of objective medical evidence in support of a claim for benefits." *Cf. Doyle v. Liberty Life Assurance Co. of Bos.*, 542 F.3d 1352, 1358 (11th Cir. 2008) (finding on reasonableness review of identical plan language that the plan administrator reasonably "rel[ied] only on objective medical evidence supporting [the] claim"). Dunham-Zemberi did not provide any form of objective medical evidence that he continued to be unable to lift up to fifty pounds.

Second, Dunham-Zemberi asserts that the plan required Lincoln to follow up with his medical provider if Lincoln believed he didn't provide objective medical evidence of his continued disability. His physical therapist, for example, wrote in her evaluation that she was available to answer questions. The plan, Dunham-Zemberi continues, put the burden on Lincoln to follow up. But the plan put the burden on Dunham-Zemberi to submit the required proof of his continued disability. We reviewed a similar plan in *Melech v. Life Insurance Co. of North America*, 739 F.3d 663 (11th Cir. 2014). There, the plan called for the employee to "provide the [i]nsurance [c]ompany . . . satisfactory proof of [d]isability before benefits [would] be paid." *Id.* at 673 n.15. This language, we explained, put the burden on the employee "of proving her entitlement to disability benefits under the [p]olicy." *Id.* at 673. The plan administrator did not have to "ferret out evidence" that the employee did not provide. *See id.* And neither did Lincoln.

Pivoting, Dunham-Zemberi contends that even if the plan required some form of objective medical evidence, and even if the burden was on him to provide it, he did. He cites three pieces of evidence in support. First, he points to the capacity evaluation, which he says showed his maximum lifting capacity was fifteen pounds and not up to fifty as required by his job. The capacity evaluation was objective medical evidence, he says, because his physical therapist monitored his heart rate while performing the test. But the therapist didn't. The capacity evaluation measured Dunham-Zemberi's heart rate before any lifting occurred. The capacity evaluation did not report Dunham-Zemberi's heart rate during the lifting test, so we have no objective measure of Dunham-Zemberi's heart rate as he lifted the fifteen pounds.

Second, Dunham-Zemberi relies on the letter from his primary care physician explaining that he could not lift up to fifty pounds. But the letter has the same problem as the other evidence. It merely explained the information from the capacity evaluation that also lacked an objective measure of Dunham-Zemberi's maximum lifting capacity. The letter provided no additional basis for its conclusion. So while it may be a good fit for the plan's requirement to provide a "physician's statement," the letter was not a form of objective medical evidence supporting Dunham-Zemberi's claim that he could not lift fifty pounds.

And third, Dunham-Zemberi cites an earlier medical review Lincoln commissioned, but that review was done in September 2020. As Dunham-Zemberi concedes, the earlier review did not

give an opinion about his maximum lifting capacity after December 4, 2020. For that reason, the earlier review did not and could not speak to whether Dunham-Zemberi remained disabled in January 2021, when Lincoln ceased paying benefits.

CONCLUSION

Lincoln was not de novo wrong that, by not providing any form of objective medical evidence as the plan required, Dunham-Zemberi failed to prove that he continued to be disabled. Like the district court, we affirm Lincoln's decision.

AFFIRMED.