

UNITED STATES DISTRICT COURT
DISTRICT OF IDAHO

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STEVE WILSTEAD,

No. 1:19-cv-00276 WBS

Plaintiff,

v.

MEMORANDUM AND ORDER RE:
CROSS-MOTIONS FOR SUMMARY
JUDGMENT

UNITED HERITAGE LIFE INSURANCE
COMPANY,

Defendant.

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Plaintiff Steve Wilstead ("plaintiff") brought this action against defendant United Heritage Life Insurance Company ("United Heritage" or "defendant") alleging he was wrongly denied long-term disability benefits under his employer's group benefits plan in violation of the Employee Retirement Income Security Act ("ERISA"), 29 U.S.C. § 1132(a)(1)(B). (Compl. (Docket No. 1).) Both parties move for summary judgment. (Docket Nos. 27, 31.)

I. Facts & Procedural Background

Plaintiff was a Certified Registered Nurse Anesthetist

1 employed by Anesthesia Associates of Boise. (Pl.'s Statement of
 2 Undisputed Fact ("Pl.'s SUF") ¶¶ 1, 6 (Docket No. 31-2); Def.'s
 3 Statement of Undisputed Fact ("Def.'s SUF") ¶ 12 (Docket No.
 4 28).) Plaintiff suffered a shoulder injury in a motorcycle
 5 accident in August 2016, which required surgery. (Pl.'s SUF ¶ 7;
 6 Def.'s SUF ¶ 13.) Due to plaintiff's injuries, he stopped
 7 working on November 18, 2016. (Pl.'s SUF ¶ 9.) Following
 8 surgery, plaintiff was prescribed opioid pain medications and
 9 later developed an addiction to them. (Pl.'s SUF ¶ 26; Def.'s
 10 SUF ¶ 14.) Plaintiff subsequently submitted a claim for long-
 11 term disability benefits under his employer's group long-term
 12 disability benefits plan based on his shoulder injury, substance
 13 abuse, and depression. (Pl.'s SUF ¶ 12; Def.'s SUF ¶ 15.)

14 United Heritage is the claim administrator of
 15 Anesthesia Associates of Boise's long-term disability benefits
 16 plan. (Def.'s SUF ¶ 4.) To claim benefits under the plan,
 17 United Heritage requires claimants to submit a Proof of Loss
 18 providing documentation supporting the disability claim. (Admin.
 19 Rec. ("AR") at 22.) In relevant part, the policy defines
 20 "disability" as:

21 [The Claimant is] prevented from performing one
 22 or more of the Essential Duties of:

- 23 1) [The Claimant's] Occupation during the
 Elimination Period;
- 24 2) [The Claimant's] Occupation for the 24
 months following the Elimination Period, and
 as a result [The Claimant's] Current Monthly
 Earnings are less than 80% of [The
 Claimant's] Indexed Pre-disability Earnings;
 and
- 25 3) after that, Any Occupation

26 (Id. at 6.) Disability could result from, among other things,

1 substance abuse. (Id.) After plaintiff submitted his claim and
2 required records, defendant referred plaintiff's medical records
3 to an outside medical review vendor, MES Solutions. (Def.'s SUF
4 ¶ 19.) There, Dr. Roy Q. Sanders and Dr. Christopher R. Balint,
5 two independent physicians, reviewed plaintiff's claim, both
6 concluding that he did not have any long-term functional
7 impairment due to his shoulder injury, substance abuse, or
8 depression. (AR at 314-324.) Based on those reports, United
9 Heritage approved the payment of disability benefits to plaintiff
10 for a limited period, ending on April 3, 2017. (AR at 152-56.)

11 Plaintiff appealed United Heritage's determination
12 regarding his long-term disability claim based on his substance
13 abuse. (AR 231-42; Pl.'s SUF ¶ 17; Def.'s SUF ¶ 42.) He did not
14 appeal the determinations based on his shoulder injury and
15 depression. (AR at 231-36.) United Heritage referred his
16 medical records to Exam Coordinators Network to obtain another
17 independent review of plaintiff's appeal. (Def.'s SUF ¶ 44.)
18 There, Dr. Steven I. Dyckman concluded that plaintiff was not
19 able to resume his occupation as a nurse until July 30, 2017
20 because he suffered from "severe depression and anxiety symptoms
21 including hopelessness, suicidal thoughts, and decreased
22 concentration." (AR at 226.) Consequently, United Heritage
23 revised its initial decision and extended the period of payable
24 disability benefits to July 30, 2017. (AR at 163-66; Def.'s SUF
25 ¶ 54.) However, its ultimate denial of long-term disability
26 benefits remained unchanged. (AR at 163-66.) United Heritage
27 notified plaintiff he had exhausted his administrative remedies
28 on July 17, 2018 and this suit followed. (Pl.'s SUF ¶ 23; Def.'s

1 SUF ¶ 55.)

2 **II. Discussion**

3 **A. Standard of Review**

4 In ERISA actions challenging denials of benefits under
 5 29 U.S.C. § 1132(a)(1)(B), “[d]e novo is the default standard of
 6 review.” Abatie v. Alta Heath & Life Ins. Co., 458 F.3d 955, 963
 7 (9th Cir. 2006) (en banc) (internal citations omitted); see also
 8 Kearney v. Standard Ins. Co., 175 F.3d 1084, 1089 (9th Cir. 1999)
 9 (en banc). If the plan grants the plan administrator discretion
 10 to determine eligibility for benefits and interpret the terms of
 11 the plan, a reviewing court applies an abuse of discretion
 12 standard. Jebian v. Hewlett-Packard Co. Emp. Benefits Org.
 13 Income, 349 F.3d 1098, 1102 (9th Cir. 2003); see also Abatie, 458
 14 F.3d at 963 (citing Kearney, 174 F.3d at 1090). The plan must
 15 “unambiguously” grant the administrator discretion for abuse of
 16 discretion to apply, though there is no “magic word” requirement.
 17 Abatie, 458 F.3d at 963 (citing Kearney, 175 F.3d at 1090).

18 Here, Section VIII of Anesthesia Associates of Boise’s
 19 plan confers upon United Heritage the “full discretion and
 20 authority to determine eligibility for benefits and to construe
 21 and interpret all terms and provisions of The Policy.” (AR at
 22 26.) Accordingly, the abuse of discretion standard should apply,
 23 absent state intervention which spares state policies from ERISA
 24 preemption. See, e.g. Orzechowski v. Boeing Co. Non-Union Long-
 25 Term Disability Plan, Plan No. 625, 856 F.3d 686, 689 (9th Cir.
 26 2017) (finding California’s prohibition on discretionary clauses
 27 fell within ERISA’s saving clause when the plan was funded by
 28 insurance policies and was therefore not preempted by ERISA).

1 1. Idaho's Limited Prohibition on Discretionary Clauses

2 "ERISA pre-empts a state law that has an impermissible
 3 'connection with' ERISA plans, meaning a state law that 'governs
 4 . . . a central matter of plan administration' or 'interferes
 5 with nationally uniform plan administration.'" Gobeille v.
 6 Liberty Mut. Ins. Co., 136 S. Ct. 936, 943 (2016) (quoting
 7 Egelhoff v. Egelhoff, 532 U.S. 141, 148 (2001)). However, as
 8 plaintiff notes, (Pl.'s MSJ at 3), ERISA's savings clauses spares
 9 "any law of any State which regulates insurance, banking, or
 10 securities" from preemption. Williby v. Aetna Life Insur. Co.,
 11 867 F.3d 1129, 1135 (9th Cir. 2017) (quoting 29 U.S.C. §
 12 1144(b) (2) (A)). Idaho Administrative Code 18.04.07 prohibits
 13 health insurance contracts from containing discretionary clauses
 14 while transacting insurance in Idaho. See Idaho Admin. Code r.
 15 18.04.07.011. Before reaching the question of whether ERISA's
 16 savings clause allows Idaho Administrative Code 18.04.07 to apply
 17 despite ERISA's preemptive force, as plaintiff contends, the
 18 court must consider the base question of whether Idaho
 19 Administrative Code 18.04.07 even applies to this policy.

20 Idaho Administrative Code 18.04.07.10(05) defines
 21 "Health Insurance Contract" as "any policy, contract,
 22 certificate, agreement, or other form or document providing,
 23 defining, or explaining coverage for health care services that
 24 [are] offered, delivered, issued for delivery, continued, or
 25 renewed in this state by a health carrier." Idaho Admin. Code r.
 26 18.04.07.010(05). A "Health Carrier" is defined as "[a]n entity
 27 subject to regulation under Title 41, Chapter 21" of the Idaho
 28 Code, and "Health Care Services" are defined as "[s]ervices for

1 the diagnosis, prevention, treatment, cure or relief of a health
 2 condition, illness, injury, or disease." Id. at (03)-(04).
 3 Importantly, the chapter "does not apply to health insurance
 4 contract[s] for group coverage offered by or through an employer
 5 to its employees." Idaho Admin. Code r. 18.04.07.001(02).

6 Plaintiff concedes that "the Plan, as administered by
 7 United Heritage, is not a health care contract since it does not
 8 provide health care services, as defined by the Code." (Pl.'s
 9 Reply at 2.) Nevertheless, plaintiff maintains that United
 10 Heritage is still subject to the code because it is an entity
 11 regulated by Title 41, Chapter 21 of the Idaho Code as a carrier
 12 of disability insurance. (Pl.'s Reply at 2. (citing Idaho Code §
 13 41-2101, et seq.)). While Title 41, Chapter 21 of the Idaho Code
 14 applies to disability insurance policies broadly, "any group or
 15 blanket policy," such as the one administered by United Heritage,
 16 is exempt from regulation. See Idaho Code § 41-2101(A) ("Nothing
 17 in this chapter shall apply to or affect . . . Any group or
 18 blanket policy"). Accordingly, Idaho Administrative Code
 19 18.04.07 does not apply to the policy here and does not prohibit
 20 the application of the policy's discretionary clause.¹

21 Because the provision in the Idaho Administrative Code
 22 does not apply, the court need not consider what role ERISA's
 23

24 ¹ Even if Idaho Administrative Code 18.04.07's ban on
 25 discretionary clauses were to apply to the United Heritage
 26 policy, the provision's exception for group coverage "offered by
 27 or through an employer to its employees" would exempt the policy
 28 from the ban. Id. Anesthesia Associates of Boise's group long-
 term disability plan, as a group policy offered through
 plaintiff's employer to its employees, falls squarely within the
 stated exception. See Idaho Admin. Code r. 18.04.07.010(05).

1 savings clause would have on the matter. Accordingly, the
 2 unambiguous grant of discretion to United Heritage as the plan's
 3 administrator triggers the application of the abuse of discretion
 4 standard. See Abatie, 458 F.3d at 963 (citing Kearney, 175 F.3d
 5 at 1090).

6 2. Structural Conflict of Interest

7 Under an abuse of discretion standard of review, an
 8 administrator's evaluation "will not be disturbed if reasonable."
 9 Firestone Tire & Rubber Co. v. Bruch, 489 U.S. 101, 111 (1989).
 10 Under that standard, the court is limited to a review of the
 11 administrative record. See Jebian, 349 F.3d at 1110. To find an
 12 abuse of discretion, the court must have a "definite and firm
 13 conviction that a mistake has been committed and . . . may not
 14 merely substitute [its] view for that of the fact finder."
 15 Salomaa v. Honda Long Term Disability Plan, 642 F.3d 666, 676
 16 (9th Cir. 2011). An ERISA administrator abuses its discretion
 17 only if the administrator "(1) renders a decision without
 18 explanation, (2) construes provisions of the plan in a way that
 19 conflicts with the plain language of the plan, or (3) relies on
 20 clearly erroneous findings of fact." Boyd v. Bert Bell/Pete
 21 Rozelle NFL Players Ret. Plan, 410 F.3d 1173, 1178 (9th Cir.
 22 2005).

23 However, the court's deference to the administrator's
 24 decision may be tempered by a structural conflict of interest.
 25 Abatie, 458 F.3d at 965 (quoting Firestone, 489 U.S. at 115).
 26 Where, as here, an insurer acts as both the plan administrator
 27 and the funding source for benefits, there is a structural
 28 conflict of interest. See id. (citing Tremain v. Bell Indus.,

1 Inc., 196 F.3d 970, 976 (9th Cir. 1999)). If the administrator
 2 is operating under a conflict of interest, that conflict must be
 3 weighed as a “facto[r] in determining whether there is an abuse
 4 of discretion.” Firestone, 489 U.S. at 115. The court’s review
 5 of the administrator’s decision will be “tempered by skepticism”
 6 to the degree of the severity of the conflict. Abatie, 458 F.3d
 7 at 959. In order to weigh a conflict more heavily, the claimant
 8 must provide “material, probative evidence, beyond the mere fact
 9 of the apparent conflict, tending to show that the fiduciary’s
 10 self-interest caused a breach of the administrator’s fiduciary
 11 obligations to the beneficiary.” Tremain, 196 F.3d at 976; see
 12 also Abatie, 458 F.3d at 968. Conversely, a dual role capacity
 13 structural conflict “should prove less important (perhaps to the
 14 vanishing point) where the administrator has taken active steps
 15 to reduce potential bias and to promote accuracy.” Metro. Life
 16 Ins. Co. v. Glenn, 554 U.S. 105, 117 (2008).

17 Here, plaintiff did not submit any evidence to show
 18 that United Heritage’s structural conflict caused a breach of its
 19 fiduciary duty. Instead, United Heritage exhaustively explained
 20 its efforts to “wall off” claims personnel from the company’s
 21 finance department to ensure claims investigations are made
 22 separately from, and without consideration of, the financial
 23 affairs of United Heritage. (Def.’s Reply at Ex. A (Docket No.
 24 33-1).) United Heritage also represents it has a check against
 25 the arbitrary denial of claims by maintaining a separate appeals
 26 unit for the independent consideration of denied claims. (Id.)
 27 Other courts have “give[n] little weight to the [structural]
 28 conflict” following similar representations. See Baker v.

1 Hartford Life & Acc. Ins. Co., No. 4:14-cv-209 BLW, 2015 WL
 2 769962, at *5 (D. Idaho Feb. 23, 2015). Accordingly, United
 3 Heritage's evaluation "will not be disturbed if reasonable."
 4 Firestone, 489 U.S. at 111.

5 B. Analysis

6 When considering a claim for benefits, ERISA
 7 administrators have a duty to adequately investigate the claim.
 8 Booton v. Lockheed Med. Ben. Plan, 110 F.3d 1461, 1463 (9th Cir.
 9 1997). If the administrator "believes more information is needed
 10 to make a reasoned decision, they must ask for it." Id.
 11 However, "the plan administrator's decision can be upheld if it
 12 is grounded on any reasonable basis." Montour v. Hartford Life &
 13 Acc. Ins. Co., 588 F.3d 623, 629 (9th Cir. 2009) (internal
 14 citations omitted). The central question before the court is not
 15 "whose interpretation of the plan documents is most persuasive,
 16 but whether the . . . interpretation is unreasonable." Canseco
 17 v. Const. Laborers Pension Tr., 93 F.3d 600, 609 (9th Cir. 1996).
 18 The court will only find United Heritage's determination
 19 "unreasonable" if "it render[ed] a decision without an
 20 explanation, constru[ed] provisions of the plan in a way that
 21 conflicts with the plain language of the plan, or fail[ed] to
 22 develop facts necessary to its determination." Pac. Shore Hosp.
 23 v. United Behavioral Health, 764 F.3d 1030, 1042 (9th Cir. 2014).

24 1. Initial Determination

25 In its first evaluation of plaintiff's claim, United
 26 Heritage obtained the independent reviews of Dr. Sanders and Dr.
 27 Balint through MES Solutions. (AR at 314-324.) Dr. Sanders is
 28 Board Certified in Psychiatry, with a specialty in addiction, and

1 Dr. Balint is Board Certified in Orthopedic Surgery. (Id. at
 2 314, 319.) Dr. Sanders evaluated the impact of plaintiff's
 3 opioid addiction on his ability to work, while Dr. Balint
 4 considered whether plaintiff's shoulder injury would impair his
 5 employment. (See generally id. at 314-24.)

6 Both physicians thoroughly evaluated and summarized
 7 "all medical records received," including "claimant's most recent
 8 self-reported statements of functionality." (Id. at 314, 319.)
 9 They consulted with each other about proposed physical and
 10 psychiatric limitations/restrictions following their independent
 11 reviews. (Id. at 314, 319.) Neither were able to reach
 12 plaintiff's treating physicians, Mr. Terry Miller and Dr. Daniel
 13 Reed, for further information even after multiple attempts at
 14 contact. (Id. at 314, 319.)

15 After a detailed review, Dr. Sanders and Dr. Balint
 16 eventually concluded that plaintiff was fit to return to work
 17 "with supervision." (Id. at 318.) As for plaintiff's
 18 psychological state, Dr. Sanders found plaintiff was able to
 19 "engage with patients," "take directions," "give instructions,"
 20 and "reliably perform tasks as requested and required by the
 21 employer." (Id. at 318.) Dr. Balint found that there were no
 22 physical limitations on the number of hours per day plaintiff
 23 could work, due in part to the fact that there was "no
 24 documentation of weakness, pain, or impingement that would
 25 prevent the claimant from returning to full, unrestricted work on
 26 a full time basis." (Id. at 323.)

27 Plaintiff contends the physicians' evaluations are
 28 deficient because neither doctor physically examined him, and

1 furthermore, the doctors relied upon "incomplete" medical
 2 records. (Pl.'s Resp. at 6 (Docket No. 32).) However, neither
 3 Anesthesia Associates of Boise's plan nor ERISA require a peer
 4 review physician to examine a claimant during their review. (See
 5 generally AR at 1-31.) Similarly, both doctors attested to
 6 evaluating "all medical records received," although they
 7 acknowledged recent records were "few." (Id. at 318.) Under the
 8 terms of the plan, plaintiff was required to provide proof of his
 9 disability and provide United Heritage with the records necessary
 10 to properly evaluate his claim. (Id. at 22.); see also Cady v.
 11 Hartford Life & Accidental Ins. Co., 930 F. Supp. 2d 1216, 1127
 12 (D. Idaho 2013) ("[I]f a plan participant fails to bring evidence
 13 to the attention of the administrator, the participant cannot
 14 complain of the administrator's failure to consider such
 15 evidence.").

16 From the administrative record, it is not readily
 17 apparent that United Heritage erred in denying plaintiff long-
 18 term disability benefits because United Heritage reasonably
 19 relied on medical determinations produced by Dr. Sanders and Dr.
 20 Balint after careful review of plaintiff's file. Consequently,
 21 United Heritage did not abuse its discretion and the court will
 22 not reverse its initial denial of benefits.

23 2. The Appeal

24 Similarly, United Heritage's denial of plaintiff's
 25 claim after his appeal was also reasonable. After plaintiff
 26 appealed, United Heritage obtained another independent review
 27 from Dr. Dyckman. (AR at 218-221.) Dr. Dyckman is Board
 28 Certified in General Psychiatry, although he specializes in child

1 and adolescent psychiatry. (Def.'s Reply at 15.) Plaintiff
 2 argues that the review by United Heritage and Dr. Dyckman of his
 3 appeal was deficient for three main reasons: first, Dr. Dyckman
 4 did not consider the American Association of Nurse Anesthetists
 5 Re-entry Recommendations for recovering nurses in making his
 6 recommendations; second, Dr. Dyckman did not consider the
 7 recommendations provided by plaintiff's attending counselor; and
 8 third, United Heritage did not consider whether plaintiff's risk
 9 of relapse into substance abuse rose to the level of a disability
 10 in and of itself. (See Pl.'s MSJ at 15-21.) Each will be
 11 discussed in turn.

12 First, plaintiff criticizes Dr. Dyckman's conclusion
 13 that "there is no guideline . . . [that] claimant should be
 14 abstinent for at least a year before returning to work [as a
 15 nurse anesthetist]." (AR at 227.) Plaintiff argues this
 16 conclusion amounts to a blatant disregard of the American
 17 Association of Nurse Anesthetists Re-entry Recommendations ("the
 18 Guidelines"). (Pl.'s MSJ at 15-16.) While Dr. Dyckman did not
 19 expressly consider the Guidelines during his limited review of
 20 the "psychiatric and/or cognitive restrictions and limitations"
 21 the other doctors had recommended, (AR at 226-27), United
 22 Heritage considered the Guidelines when evaluating plaintiff's
 23 appeal. (AR at 165.) The Guidelines provide, in part, nurses
 24 "may" return to work "in a supervised setting" following
 25 treatment for addiction, although recognizing "more time away
 26 from the workplace may be needed to reduce risk of relapse."
 27 (Pl.'s MSJ at 8 n. 2 (quoting Opioid Abuse Among Nurse
 28 Anesthetist and Anesthesiologists, AANA Journal, April 2012 at

1 120, 125).) The Guideline's recommendation that recovering
 2 nurses may practice under supervision mirrors the recommendations
 3 both Dr. Dyckman and Dr. Sanders gave for plaintiff's return to
 4 work. (See AR at 227, 318.)

5 Second, plaintiff argues that Dr. Dyckman's conclusions
 6 should be disregarded because he did not consider the
 7 recommendations provided by plaintiff's attending therapist, Mr.
 8 Terry Miller. (Pl.'s MSJ at 15-16.) On appeal, plaintiff was
 9 offered the opportunity to submit updated clinical records or new
 10 information to substantiate his disability claim. (AR at 159-
 11 60.) Instead of submitting additional medical records, plaintiff
 12 submitted, inter alia, a May 2018 letter written by Mr. Miller.
 13 (AR at 237.) In that letter, Mr. Miller stated he felt plaintiff
 14 could not return to work until he had completed "at least one
 15 year of abstinence" and continued treatment through regular
 16 attendance at a 12-step support group because "handling the
 17 medications that led to his addition crisis" at work could pose a
 18 substantial threat of relapse. (AR at 237.) However, contrary
 19 to plaintiff's representations that Dr. Dyckman did not review
 20 the letter, (Pl.'s MSJ at 16), Dr. Dyckman thoroughly explained
 21 why he disagreed with Mr. Miller's conclusions in his review of
 22 plaintiff's file. (See AR 227.) Agreeing with Dr. Sanders, Dr.
 23 Dyckman found "claimant would be able to return to work as long
 24 as there were proper guidelines in place and the claimant
 25 continued to receive outpatient therapy." (Id.)

26 Further, United Heritage was not bound by Mr. Miller's
 27 recommendations. "[P]lan administrators are not obliged to
 28 accord special deference to the opinions of treating physicians."

1 Black & Decker Disability Plan v. Nord, 538 U.S. 822, 825 (2003).
 2 Although Mr. Miller and Dr. Dyckman offered different
 3 conclusions, the administrative record reveals that, when
 4 plaintiff's benefits ended on July 30, 2017, he was physically
 5 and mentally capable of performing his occupational duties. (See
 6 AR at 227, 318.) The reviewing physicians' reports thoroughly
 7 summarize the pertinent medical records and provide a careful
 8 analysis of plaintiff's physical and psychiatric capabilities.
 9 United Heritage denied plaintiff's claim based on the facts in
 10 the record and adequately explained why in letters to plaintiff.
 11 (See AR at 163-166.); see also Pac. Shore Hosp., 764 F.3d at
 12 1042.

13 Third, plaintiff argues that United Heritage erred in
 14 determining that he was not currently disabled and maintains that
 15 his risk of relapse into substance abuse constitutes a disability
 16 in and of itself. (See Pl.'s MSJ at 17-21.) Plaintiff relies on
 17 Colby v. Union Security Insurance Co. & Management Co. for
 18 Merrimack Anesthesia Associates Long Term Disability Plan., 705
 19 F.3d 58, 60 (1st Cir. 2013) to support this proposition. In
 20 Colby, the plaintiff was an anesthesiologist, who, like
 21 plaintiff, self-administered opioids on the job and became
 22 addicted. See Colby, 705 F.3d at 60. However, the plaintiff in
 23 Colby is readily distinguishable from plaintiff here; she had
 24 unique characteristics which made her risk of relapse
 25 particularly severe, including disabling back pain, an extremely
 26 turbulent personal life, various mental health disorders
 27 including obsessive-compulsive personality traits, and previous
 28 instances of relapse. Id. at 63. Plaintiff does not appear to

1 have any of those characteristics.

2 Moreover, the Colby court makes clear that their
3 holding is "narrow . . . pivot[ing] on a fusion of the plain
4 language of the plan and [defendant]'s all-or-nothing approach to
5 its benefits determination." Id., at 67. The defendant in Colby
6 categorically denied that risk of relapse or future disability
7 could be considered a current disability for which benefits are
8 available, despite the particularly high-risk factors for the
9 plaintiff. See id. at 61. Here, in contrast, United Heritage
10 issued no such categorical denial, but rather found that the AANA
11 Guidelines which recommend "[a] minimum of one year in recovery
12 before returning to the clinical anesthesia arena", (AR 238),
13 "alone [do not] constitute disability." (See AR at 165.) This
14 court therefore agrees with the Fourth Circuit in Stanford v.
15 Continental Casualty Co., 514 F.3d 354 (4th Cir. 2008), abrogated
16 on other grounds in Champion v. Black & Decker (U.S.) Inc., 550
17 F.3d 353 (4th Cir. 2008), that there is widespread, thoughtful,
18 and reasonable disagreement among the courts "as to whether the
19 risk of relapse renders an addict unable to perform the material
20 and substantial duties of his work." See Stanford, 514 F.3d at
21 359-60 (affirming determination made by insurance company finding
22 that plaintiff's risk of relapse did not constitute a disability
23 in of itself notwithstanding plaintiff's opiate addition and
24 instance of relapse after returning to work was not unreasonable
25 under an abuse of discretion standard.) Accordingly, the
26 decision of United Heritage to deny plaintiff long-term
27 disability benefits based on the risk of relapse into substance
28 abuse cannot "be termed unreasonable" under an abuse of

1 discretion standard of review. Id. at 360. Consequently, United
2 Heritage reasonably denied plaintiff's claim for long-term
3 disability benefits after July 30, 2017.

4 For the foregoing reasons, the court finds that United
5 Heritage did not abuse its discretion in determining that
6 plaintiff was not disabled under the policy's definition of
7 "disability" after July 30, 2017.

8 IT IS THEREFORE ORDERED that defendant's motion for
9 summary judgment (Docket No. 27) be, and the same hereby is,
10 GRANTED, and that plaintiff's motion for summary judgment (Docket
11 No. 31) be, and the same hereby is, DENIED. The Clerk of the
12 Court is instructed to enter judgment in favor of defendant
13 United Heritage Life Insurance Company and against plaintiff
14 Steve Wilstead.

15 Dated: September 9, 2020



16 **WILLIAM B. SHUBB**
17 **UNITED STATES DISTRICT JUDGE**

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