



## Alerts

### Texas District Court Upholds Denial of LTD Benefits Because Claimant Did Not Prove Functional Limitations Within Benefit Waiting Period

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*The LHD/ERISA Advisor*

#### Key Takeaways

The case is important for plan administrators because it highlights the need to focus on whether a claimant has a disabling condition and not merely a diagnosis within the benefit waiting period under the Policy. While a claimant's conditions may develop within the elimination period, these conditions must result in functional limitations, not merely diagnoses. Further, the reasoning of this case provides a strong basis for a Plan to argue to the reviewing court that it can only look to a claimant's condition during the benefit waiting period, and not the claimant's condition beyond, even though it may have worsened into a disabling condition during the administrative review, but after the elimination period.

***This alert was featured in the October 2021 edition of The LHD/ERISA Advisor***

#### Complete Summary

In *Calkin v. United States Life Ins. Co.*, 2021 U.S. Dist. LEXIS 82110 (S.D. TX., April 29, 2021), a Texas district court affirmed the insurer's denial of LTD benefits, holding that while a claimant established diagnoses, he failed to establish functional limitations within the applicable benefit waiting period.

Mark Calkin, who was insured under an ERISA Plan (Plan) offered by his employer, the architectural design company American International Group, Inc. (AIG), claimed to be disabled from brachial plexopathy and pain, weakness, and swelling in his left shoulder, all following a rotator cuff repair surgery in May 2011. Calkin claimed secondary disabling diagnoses of left knee degenerative joint disease related to a September 2015 fall, right elbow lateral epicondylitis, and lumbar stenosis. He also underwent a knee arthroscopy on August 19, 2015. When he ceased working, he was 65 years old and employed in an IT position with AIG.

Pursuant to the terms of the LTD policy (Policy), in order to establish disability, Calkin was required to show he had a change in his functional capacity to work during the time he was covered under the Policy and that he was unable to

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perform all material and substantial duties of his regular occupation. The Policy had a six-month elimination period which, in Calkin's case, ran from June 24, 2014, the date he claims he was disabled, through December 24, 2014. He first applied for LTD on November 23, 2016.

Calkin's claimed diagnoses were supported by attending physician statements from one of Calkin's treaters. However, while the statements attested to multiple limitations, none of them established that Calkin was disabled continuously through the elimination period. United States Life Insurance Company in the City of New York (USLIC) determined that Calkin was capable of performing all the material and substantial duties of his regular occupation with some restrictions and thus denied him LTD benefits. On appeal, USLIC's peer reviewer opined that through the December 31, 2014, benefit waiting period, Calkin's medical records contained no documentation of work activities or restrictions. USLIC upheld its denial, and Calkin then filed a federal action under ERISA asserting a claim for benefits.

On summary judgment, Calkin asserted that from January 2016 through December 2016, he was disabled as to his regular occupation and that he was also disabled from January 2017 through April 2020 because he was unable to perform any gainful occupation. The court, applying a *de novo* standard of review, analyzed the medical evidence supporting disability during the elimination period, which the court described as "crucial." The court went through all of Calkin's medical records to determine exactly what diagnoses occurred during the elimination period and whether those supported an inability for Calkin to perform his occupation.

Specifically, the court held that the Policy required Calkin "to show a change in his functional capacity not merely the existence of certain physical conditions." The court found that Calkin's left and right shoulder and his elbow were the only diagnosed conditions within the elimination period, but that Calkin's medical providers opined in their office visit notes that his left and right shoulder were both 90% improved and resolved during that period. As to his elbow pain, the court determined that there was insufficient evidence of an impairment that prevented Calkin from performing the required functions for his job and, moreover, that his elbow pain began in September 2014, more than 30 days after the elimination period began. Also, although Calkin complained about back restrictions during the elimination period, he declined treatment during that time. Further, his left knee issues were not diagnosed until August 15 after the close of the elimination period; during the elimination period, his treaters noted his right knee was asymptomatic.

Accordingly, the court granted the USLIC's Motion for Judgment on the Administrative Record and denied Calkin's same motion.

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