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**UNITED STATES DISTRICT COURT**  
**CENTRAL DISTRICT OF CALIFORNIA**

VICTOR DENT,

Plaintiff,

vs.

THE CANADA LIFE ASSURANCE  
COMPANY; ADEPT TECHNOLOGY,  
INC. LONG TERM DISABILITY  
PLAN; ADEPT TECHNOLOGY, INC.  
MEDICAL PLAN; ADEPT  
TECHNOLOGY, INC. LIFE  
INSURANCE PLAN; ADEPT  
TECHNOLOGY, INC. PENSION  
RETIREMENT;

Defendants.

Case No. CV 04-2916 TJH (Ex)

**PLAINTIFF VICTOR DENT'S  
MEMORANDUM OF POINTS AND  
AUTHORITIES**

**Date:**  
**Time:**  
**Court:**

Plaintiff Victor Dent hereby files his Memorandum of Points and  
Authorities in support of his request for Judgment in his favor. This Memorandum

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1 is supported by the Administrative Record, the files and records of this case, and  
2 what argument and evidence is presented at the trial of this matter.

3 Dated: July \_\_, 2005

GLENN KANTOR  
Kantor & Kantor LLP

RUSSELL G. PETTI  
The Law Offices of Russell G. Petti

7 By: \_\_\_\_\_  
8 Russell G. Petti  
9 Attorneys for Plaintiff Victor Dent

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 I. **INTRODUCTION**

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4 II. **STATEMENT OF FACTS**

5 A. **After 36 Months of Benefits, a Claimant Remains Totally**  
6 **Disabled if he is Unable to Perform an Occupation for Which He**  
7 **is Qualified through Training and Experience**

8 Under the Policy, during the first 36 months of benefits, a claimant is  
9 disabled if he is disabled from performing the material and substantial duties of his  
10 “own occupation.” (Plan at 10). However, Mr. Dent has received 36 months of  
11 benefits, so the issue before this Court is whether he is disabled from some other  
12 occupation which (1) he is medically capable of doing, and (2) is reasonable in  
13 light of Mr. Dent’s prior education, training and work experience. The specific  
14 language of the policy reads as follows:

15 After the elimination period plus the next 36 months in a continuous  
16 period of disability, the person is unable to perform with reasonable  
17 continuity the substantial and material duties of any occupation for  
18 which he is qualified in view of his age, education, training,  
19 experience, station in life, and physical and mental capacity. (Plan at  
20 10).

21 B. **Victor Dent’s Employment History**

22 Victor Dent is a man with limited education but with a remarkably steady  
23 work history, almost exclusively in the manufacturing industry. Mr. Dent  
24 graduated from High School in 1971, and went into the Air Force. He received an  
25 Honorable Discharge from the Air Force in 1974.

26 Mr. Dent completed an Electronic Assembly course in 1976, and a Tandem  
27 Computers Beginning Users Course in 1982. From 1981 through 1986 Mr. Dent  
28 worked for Tandem Computers, performing such jobs as working on assembly of  
electronic components and re-work/upgrading of finished components. (261). In  
1986 Mr. Dent began working for I.S.E.E., Inc., where his duties involved  
refurbishing chip manufacturing equipment. (259). And in 1988, Mr. Dent began

1 working for Adept Technology, as an Electrical Mechanical Technician, where his  
2 duties consisted of manufacturing sub assemblies for robotic arms. (259, 262).

3 Victor Dent's duties, as is generally the case in manufacturing jobs, involved  
4 a significant level of activity. He was required to be constantly walking and  
5 standing, was required to constantly use both hands for fine manipulation and  
6 power grasping, and was required to lift as much as 50 pounds "constantly" and  
7 occasionally as much as 100 pounds. (262-63). Mr. Dent's job was classed as  
8 "medium", which meant it involved lifting 50 pounds, with "frequent lifting and/or  
9 carrying of objects weighing up to 25 pounds." (290). Mr. Dent continued to  
10 work for Adept Technology until his injuries forced his retirement.

### 11 C. Victor Dent's History of Significant Medical Problems

#### 12 1. Mr. Dent Suffered from Severe Damage to His Hand and 13 Arm, which Two Surgeries Had Been Unable to Correct

14 Mr. Dent's hand and arm problems date back to 1990. He began suffering  
15 pain in the left elbow, and was sent by his employer to Dr. Collins. Dr. Collins  
16 treated him with steroids, which did provide some relief. There was still pain, but  
17 Mr. Dent "lived with it" until April or May of 1998. He was treated conservatively  
18 with immobility and physical therapy, which only made the condition worse. (537,  
19 588-89).

20 In June of 1998 Mr. Dent went back to Dr. Collins, who suggested that an  
21 MRI be done. (595-96). The MRI was finally done, which showed "at least a  
22 partial tear of the lateral collateral ligament". (585, 546, 537). Dr. Collins stated  
23 that he could not observe any atrophy in the left arm (585), something which  
24 would change in the near future. Dr. Collins referred Mr. Dent to Dr. Johnson, a  
25 hand surgeon. (546).

26 Dr. Johnson evaluated Mr. Dent in January of 1999. He observed marked  
27 tenderness, and a positive Tinel's sign. When Mr. Dent attempted to bend his arm  
28 against resistance it caused "marked pain", and Mr. Dent's left handed grip was

1 significantly less than the right. (538). Mr. Johnson recommended surgery,  
2 specifically a “decompression of the radial nerve of the left forearm.” (538). Dr.  
3 Collins seconded the recommendation. “Based on his current symptoms, which are  
4 quite disabling and are preventing Victor from working, I believe that he should  
5 proceed with Dr. Johnson’s recommendations . . .” (575).

6 This surgery was performed in March of 1999. (572). However, it was not  
7 effective in relieving Mr. Dent’s problems. In July of 1999 Dr. Johnson reported  
8 that Mr. Dent’s condition “continued to worsen”. He reported a “markedly  
9 positive Tinel sign” and reported that Mr. Dent “clearly has diminished sensation  
10 in the ulnar nerve distribution of the left hand.” (473). Dr. Johnson recommended  
11 “neurolysis and anterior transposition of the ulnar nerve at the elbow.” (473).

12 In August of 1999 Mr. Dent’s case was evaluated by Dr. Reginald McCoy,  
13 at the request of Kemper Insurance, which was handling Mr. Dent’s workers  
14 compensation claim. (465). Dr. McCoy stated that the prior surgery on Mr. Dent’s  
15 ulnar nerve had failed to offer relief. (466). There was numbness extending into  
16 the fingers of Mr. Dent’s left hand, as well as “marked tenderness in the inner or  
17 medial aspect of his left elbow.” (466). Dr. McCoy noted a significant loss of grip  
18 strength in Mr. Dent’s left hand, and diagnosed him with “ulnar neuropathy at the  
19 cubital tunnel for the left upper extremity.” (467). Dr. McCoy (as did Dr.  
20 Johnson) recommended an additional operation to release the ulnar nerve. (467).

21 Mr. Dent had this new surgery performed in September of 1999. (414).  
22 This was followed by additional therapy. (E.g. 409, 405). However, this did not  
23 improve Mr. Dent’s symptoms, in fact he reported they were worse. (286).

24 On February 17, 2001 his treating physician at the time, Dr. Post, wrote a  
25 “permanent and stationary” report for Mr. Dent’s arm and hand problem. (285-  
26 87). Dr. Post reported that Mr. Dent’s symptoms were marked:

27 He has continued to report lateral forearm pain which “feels numb,  
28 but burning” over the radial aspect of his forearm down toward the  
wrist with an occasional achy feeling in the back of the hand. He

1 describes sensitivity over the ulnar nerve surgery scar and severe  
2 muscle spasms over the ulnar aspect of the forearm with pins and  
3 needles sensation in the fourth and fifth digits. In general, his  
4 symptoms are constant but made worse during and after forceful or  
repetitive distal upper extremity activities and he notes that he can do  
the gripping and fine manipulation but when he does he has increasing  
symptoms.

5 (286). Mr. Dent's significant symptoms were supported by objective findings. Dr.  
6 Post observed that Mr. Dent's forearm showed evidence of atrophy, with a 29 cm  
7 measurement on the left and a 27.5 measurement on the right. (286). This atrophy  
8 was also observed by Administrative Law Judge Michard during a June 26, 2002  
9 hearing when he found Mr. Dent totally disabled from any occupation. (184).

## 10 2. Mr. Dent Also Had Significant Work Restrictions When His 11 Surgically Repaired Knee Began to Degrade

12 Victor Dent's knee problem dates back to before 1989. He suffered from a  
13 "cruciate-deficient knee", which required his physician, Dr. Collins, to perform a  
14 reconstruction of Mr. Dent's ACL. (357). While the operation went well, Mr.  
15 Dent continued to suffer from pain and lack of stability. (351). Eventually the  
16 problem became significant enough for Mr. Dent to see Dr. Collins again in  
17 September of 2001. Dr. Collins thought at the time this could have been a flare or  
18 a symptom of posttraumatic degenerative arthritis. However, he recognized the  
19 possibility that Mr. Dent might have also re-torn a meniscus (a wedge of cartilage  
20 in the knee joint). (355).

21 On January 22, 2002 Dr. Collins saw Mr. Dent again. He reported that Dent  
22 suffered from "rather high grade knee symptoms, both pain and a feeling of  
23 instability." Dr. Collins recommended an MRI to investigate the possibility of  
24 "additional meniscal pathology." (353).

25 The MRI was performed in August of 2002. It was impossible to evaluate  
26 the entire knee, given the "metal interference" from "screws used in his surgery",  
27 which "caused considerable metallic artifact." (349). However, Dr. Collins stated  
28 that, while the ACL graft he had performed still appeared to be holding, there were

1 other problems with the knee. Specifically, the MRI revealed “moderate  
2 chondromalacia or degenerative changes in the medial compartment” and “mild  
3 chondromalacia in the lateral and patellofemoral compartments.” There was also  
4 “an oblique tear and degenerative changes in the posterior horn of the medial  
5 meniscus.” (349).

6 By November of 2002, Mr. Dent’s knee was giving him significant  
7 difficulty. According to Dr. Collins, it “hurt all over” and “he had to resort to a  
8 knee sleeve pretty much continuously to combat the feeling of pain and  
9 instability.” Dr. Collins also reported that Mr. Dent’s knee problems were  
10 “creating additional stress on [his] chronic low back problem.” (349).

### 11 3. Mr. Dent Also Suffered from Continual Pain from His Back 12 Condition

13 Mr. Dent also suffers from long standing back injuries which, although not  
14 as significant as the problems with his arm and knee, should be taken into account  
15 in ascertaining his condition. Mr. Dent’s back condition arose from an injury at  
16 work which occurred in 1984. However, the earliest records of Mr. Dent’s back  
17 treatment in Canada Life’s file are from May of 2000, when he began treating with  
18 chiropractor Heather Shaw. (328). According to Dr. Shaw’s records, Mr. Dent  
19 suffered from continuous and significant pain in his lower and mid back and neck  
20 area, which he routinely rated as an 8 out of 10 in severity. (332-46). Dr. Shaw  
21 described his condition as including “severe low back pain with radicular pain in  
22 the groin and rib regions” as well as “the midback region”. (328). Dr. Shaw  
23 opined that “Mr. Dent has difficulty sitting, standing, walking and sleeping for  
24 extended periods of time due to low back pain.” (325).

25 As was the case with Mr. Dent’s left arm and his knee, Mr. Dent’s claims of  
26 severe back pain are supported by objective findings. In March of 2002 he  
27 underwent an MRI of the lumbar spine (317), which observed “mild to moderate  
28 anterior and lateral bony osteophytic change at multiple levels, focally most

1 prominent at the L2-3 level.” According to Dr. Collins (who admittedly was not  
2 treating Mr. Dent for his back) the MRI also revealed “evidence of a probable  
3 annual tear at the L4-5 level.” (351). Dr. Collins also reported that Mr. Dent was  
4 on a 17% disability—apparently a previous workers compensation finding—because  
5 of his back injury. (368).

6 **D. Victor Dent’s Claim**

7 **1. Canada Life Originally Pays Benefits, Which are Virtually  
8 Non-Existent Due to the Offsets they are Taking**

9 In August of 1998 Mr. Dent’s injuries forced him to stop working at Adept  
10 Technology. (282). In May of 1999 Mr. Dent submitted a claim for long term  
11 disability benefits. (264-65). On January 20, 2000, Canada Life initially agreed he  
12 was disabled and paid back benefits from October 27, 1998. (159).

13 Shortly thereafter, Mr. Dent attempted to return to work. On March 23,  
14 2000 he informed Canada Life that he had been in a work hardening program, that  
15 he had about 50% use of his arm back, and that he hoped to be able to return to  
16 work in May. Mr. Dent did work two days in May, but injured his arm again and  
17 was forced to stop. (119).

18 Canada Life’s initial decision to pay benefits did not involve much of a  
19 financial burden. While Mr. Dent should have been entitled to \$1997.84 a month  
20 in benefits, Canada Life was able to offset the \$2123.33 in workers compensation  
21 benefits Mr. Dent was receiving. As such, Canada Life was able to limit its  
22 payment to the \$50.00 “minimum benefit”, and paid Mr. Dent the princely sum of  
23 \$756.67 for this 14 month period of disability. (159).

24 However, the claim soon got more expensive for Canada Life, as Mr. Dent  
25 was declared permanent and stationary on his workers claim (269), which resulted  
26 in the cessation of temporary disability payments and, eventually, a final  
27 settlement. (089). As a result, on February 7, 2001 Canada Life was forced to  
28 increase Mr. Dent’s benefits to \$1998 per month. (130).

1                   2.     **Canada Life Prepares to Review Mr. Dent’s Claim under**  
2                                   **the “Any Occupation” Standard**

3                   Fortunately for Canada Life, the 36 month “own occupation” period of the  
4 policy was coming to an end, and now that his claim was significantly more  
5 expensive, it had a chance to find Mr. Dent no longer disabled under the “any  
6 occupation” standard. On April 10, 2001 Canada Life informed Mr. Dent that it  
7 would be evaluating his claim under this “any occupation” standard, so that it  
8 could learn whether it needed to pay benefits beyond October of 2001. (155).

9                   To that end, Canada Life sent out requests for additional information from  
10 Mr. Dent, his employer, and his medical providers (151-54). Remarkably, at this  
11 time Canada Life did not seek an opinion by a medical professional, even one of its  
12 staff nurses.<sup>1</sup> Rather, Canada Life turned to a vocational evaluator of uncertain  
13 skill and experience to ascertain Mr. Dent’s work abilities and determine whether  
14 he was disabled. (116). As shown below (section \_\_\_), this evaluation had  
15 numerous and substantial flaws.

16                   In September of 2001 Mr. Dent submitted a “Daily Living Questionnaire” to  
17 Canada Life. (253-56). Mr. Dent stated that he had pain in his left arm, left knee  
18 and lower back that prevented him from doing “just about everything”. (254). Mr.  
19 Dent informed the insurer that the pain caused significant difficulty sleeping,  
20 limiting him to 4-5 hours a night. (253).

21                   Mr. Dent was asked about his work performance. He informed the insurer  
22 that he was always on time for work, but that he missed days because of his knee,  
23 his lower back, and his arm pain. He also stated that he would take short breaks, if  
24 the pace of the work allowed, to help alleviate his pain. (254). Mr. Dent stated  
25 that while at work he got pain all different times, which would cause him to “drop  
26 things”. (255). The pain also caused him to have difficulty concentrating. (255).

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27  
28                   <sup>1</sup> At least none is mentioned in the denial letter (145), and counsel has been  
unable to locate a pre-denial medical review in the file.

1 Mr. Dent stated that he took codeine for his pain, which he complained was  
2 “like taking LSD”. (256). And he was asked if there were any recent changes.  
3 Mr. Dent responded that the “muscles in left arm going away because on-able [sic]  
4 to exercise it.” (256).

5 **3. Canada Life Relied on a Vocational Evaluation Which was**  
6 **Markedly (in Fact, Remarkably) Flawed**

7 **a. Canada Life Obtains an Updated Physical Capacities**  
8 **Assessment from Dr. Collins**

9 In deciding that Mr. Dent was not disabled from any occupation, Canada  
10 Life did not even bother to get a medical evaluation. Instead, as its denial letter  
11 makes clear, it relied almost exclusively on a vocational report and a transferrable  
12 skills evaluation. This evaluation was remarkably flawed in several very  
13 significant aspects.

14 The evaluation was apparently first assigned to Larry Underwood, who, on  
15 May 4, 2001, noted that the “marked” restrictions and limitations for Mr. Dent’s  
16 left hand were a year old, and might have changed. He asked the adjuster to  
17 contact the attending physician to complete a “Physical R&L’s form” in order to  
18 obtain current restrictions on Mr. Dent’s left arm. (116). The adjuster complied on  
19 August 24, 2001, sending out “Physical Capacities Assessment” form for Mr. Dent  
20 to give to his “treating physician(s)”. (372). Mr. Dent wasn’t informed that  
21 Canada Life needed restrictions regarding his elbow, so he gave the form to Dr.  
22 Collins, who was treating him for his knee, rather than Dr. Post, who was  
23 providing treatment for the elbow. (373).

24 The form, which Dr. Collins returned on November 5, 2001, made it clear  
25 that pain and restrictions from Mr. Dent’s knee made it impossible for him to hold  
26 down a regular job. Specifically, Dr. Collins was asked for how long Mr. Dent  
27 could stand in an eight hour work day, and he responded “0-2” hours. He was  
28 asked how long Mr. Dent could walk in an eight hour workday, and he responded,  
again, “0-2” hours. And he gave the same answer, “0-2” hours, to how long Mr.

1 Dent could sit during an eight hour workday. (373). This, of course, does not add  
2 up to eight hours, so Dr. Collins was entirely clear that restrictions to Mr. Dent’s  
3 knee would prevent him from performing even sedentary work.

4                   b.       **The Evaluator Determined, Based on a Flawed  
5                                   Review of the Medical Evidence, that Mr. Dent has  
6                                   Work Capacity**

6           Ms. [REDACTED], who called herself a “Vocational Rehabilitation  
7 Specialist”, took over the evaluation. There is no indication in the file what her  
8 level of expertise was in either medical or vocational matters. She drafted a  
9 vocational evaluation report, dated October 7, 2001.<sup>2</sup>

10           Ms. [REDACTED] purported to evaluate the medical evidence,  
11 and—apparently—determined that Mr. Dent was capable of work which did not  
12 require him to “lift over 10 lbs” or “perform fine manipulation or pushing and  
13 pulling with the left extremity”. Ms. [REDACTED] based these restrictions on Dr. Post’s  
14 February 17, 2001 “permanent and stationary” report on Mr. Dent’s elbow.

15           What Ms. [REDACTED] apparently did not realize is that this report was written to  
16 Mr. Dent’s workers compensation carrier, for the purpose of evaluating the impact  
17 of the industrial injury to Mr. Dent’s arm. As such, it was not purporting to  
18 provide a total review of Mr. Dent’s limitations, instead it only provided  
19 restrictions and limitations (and future medical care required) resulting from the  
20 injury to Mr. Dent’s arm. (285-287). By focusing almost exclusively on this one  
21 report written to evaluate Mr. Dent’s elbow, Ms. [REDACTED] was able to ignore any  
22 restrictions stemming from Mr. Dent’s back and knee injuries.

23           Even more remarkably, even though Canada Life had specifically requested  
24 Dr. Collins’ Physical Capacities Assessment for the vocational evaluation, Ms.  
25 [REDACTED] fails to address Dr. Collins’ opinion on that very form that Mr. Dent would

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27  
28                   <sup>2</sup> This date must be a mistake, as the report incorporates Dr. Collins’  
November 5, 2001 evaluation. (190).

1 only be able to sit and stand for 0-2 hours during a workday. Ms. [REDACTED] clearly  
2 had this report as it is referenced in her assessment (190). However, she  
3 completely ignores the sitting/standing limitation, even while she utilizes  
4 information from the precise page where this opinion occurs. (190, 373). By  
5 ignoring evidence that doesn't fit the conclusion she was looking for, Ms. [REDACTED] is  
6 able to find work capacity in Mr. Dent where his treating physician explicitly says  
7 it doesn't exist.

8 c. **The Evaluation Found Sedentary Jobs that Did Not**  
9 **Exist or For Which Mr. Dent Was Not Qualified**

10 The most flawed part of Ms. [REDACTED]'s analysis is where she purports to  
11 identify Mr. Dent's "transferrable skills" and finds jobs that he can do given those  
12 skills and his (supposed) medical condition. Specifically, Ms. [REDACTED] locates a  
13 number of "sedentary" jobs that Mr. Dent is able to do, but these are either outside  
14 his prior experience or not available in the local job market. So the "job market  
15 analysis" she performs are all on "light duty" jobs similar (or identical) to Mr.  
16 Dent's manufacturing work, which he is physically incapable of performing.

17 Ms. [REDACTED] begins her analysis by categorizing Mr. Dent's prior  
18 manufacturing jobs, taken from his resume (259), as they would be listed in the  
19 Dictionary of Occupational Titles. She comes up with the following titles for the  
20 jobs that Mr. Dent had previously held:

- 21 ● Assembler and Tester, Electronics, referring to the job Mr. Dent had  
22 held for 12 years (with Adept), and which was listed as a "light duty"  
23 occupation;
- 24 ● Electronics Specialist, referring to the job Mr. Dent held for 1 year  
25 (the job Mr. Dent held from 1986-87 with I.S.E.E.), which was  
26 characterized as a "medium duty" occupation;
- 27 ● Bench Inspector, referring to the later position Mr. Dent held with  
28 Tandem for 2 and a half years, classed as a "light duty" occupation;  
and
- Group Leader, Printed Circuit Board Assembly, in reference to the  
year and a half Mr. Dent spent rebuilding and upgrading electronic  
components. This job is also classified as "light duty".

1 (192, 259). This is clearly a list of Mr. Dent's prior manufacturing jobs, and not  
2 just because it expressly states it is the "Work History" for "dent, victor" (192).  
3 The Court should compare the list of titles in the Record at 192 with Mr. Dent's  
4 resume (at 259), to see that the job descriptions and the time periods Mr. Dent held  
5 the jobs match up.

6 Ms. [REDACTED] then attempted to find other jobs that Mr. Dent could do with the  
7 skills he learned at the above jobs. This was done with something called the  
8 "OASYS software program" which automatically searched for jobs with "closest"  
9 or "good" matches to the skills from Mr. Dent's prior occupations (190). The  
10 result of this analysis is the list of jobs titled "DOT OCCUPATION MATCHES"  
11 in the Record at 193-97.

12 But, here Ms. [REDACTED] had another difficulty. Given that Mr. Dent's prior  
13 jobs had been (at least) light duty manufacturing, the vast majority of jobs which  
14 were "matched" by Canada Life's computer were also labeled as "L" for light duty.  
15 So Ms. [REDACTED] hunted down the list of jobs for those with a listing of "S" for  
16 sedentary duty. She clearly went through the OCCUPATION MATCHES list, and  
17 listed those jobs with "S" codes in her report (at 191). These are:

- 18 ● An Inspector, Type, for a manufacturer of typewriters (DOT Match at  
19 193, position description at 198);
- 20 ● A "Claims Clerk," to evaluate automobile damage claims (DOT  
21 Match at 195, position description at 201);
- 22 ● An "Inspector, Dials," for a manufacturer of watches (DOT Match at  
23 195, position description at 204);
- 24 ● A "Matrix Inspector," which inspects metal dies for defects (DOT  
25 Match at 195, position description at 209); and
- 26 ● A "Plate Gauger," which "examines and repairs engraved printing  
27 plates" (DOT Match at 196, position description at 213).

28 All except for the first job of type writer inspector are only "good" matches. This  
means, according to the DOT match sheet, that Mr. Dent would require additional  
training in "Tools and/or Materials" to do these jobs (193) which he hadn't

1 received and which Canada Life hadn't offered.

2 More significantly, just to look at this list of alternative occupations shows  
3 how absurd it is. Take the job of evaluating automobile repair claims. There is  
4 nothing in Mr. Dent's work history which shows that he has any experience at all  
5 at handling claims. And the only mention at all of automobiles in his history is Dr.  
6 Collins assertion that he is not disabled from driving one. It is a mystery why  
7 Canada Life thinks that a company that evaluates the costs of an automobile repair  
8 would hire Mr. Dent rather than someone who—for instance—had actually worked  
9 with automobiles, or who had actually handled claims, at some point in his career.

10 Other jobs which were listed are even more absurd, as they clearly no longer  
11 exist in the California job market. For example, does Canada Life actually think  
12 that Mr. Dent can find a job as a type inspector at a typewriter factory? Or that  
13 watches are manufactured anywhere in California?

14 d. **Canada Life Mistakenly Performed Its Job Market**  
15 **Survey only on Light Duty Occupations that It was**  
16 **Aware Mr. Dent Could not Do**

16 Of course, the traditional way to finalize a vocational report like this is to  
17 perform a labor market study to see if the listed jobs are available in the market.  
18 And here is where Ms. [REDACTED] made her most significant blunder. She did conduct  
19 a labor market study, but she didn't conduct it on the typewriter inspector or watch  
20 dial inspector jobs that her computer had identified as sedentary jobs. Rather, she  
21 conducted the survey on light duty manufacturing jobs that were—essentially—the  
22 same as Mr. Dent's prior jobs that he was disabled from performing.

23 Specifically, according to Ms. [REDACTED]'s report (at 191) the labor market study  
24 was conducted on the following jobs:

- 25 ● Assembler;
- 26 ● Assembler and Tester;
- 27 ● Technician;
- 28 ● Inspector; and
- Electrical Technician.

28 It is clear from the titles, as well as the detailed job search reports (at 215-249) that

1 these are all manufacturing jobs. In fact, to the extent that these jobs show up on  
2 the DOT OCCUPATIONAL MATCHES list, they are listed as “L” for light duty.  
3 See Assembler (at 195); Assembler and Tester (at 193); and Inspector (at 193). In  
4 fact, if the Court compares this list of jobs to Mr. Dent’s prior work in  
5 manufacturing, it is obvious that Ms. [REDACTED] performed her job survey using the  
6 manufacturing jobs that Mr. Dent had performed prior to his disabilities, which no  
7 one—including herself—believed that Mr. Dent was capable of.

8 So, after finding a list of sedentary jobs that perhaps Mr. Dent could do (but  
9 only if you ignored the medical evidence), and recognizing that these jobs either  
10 don’t exist or that there is no rational reason to believe that Mr. Dent was qualified  
11 for them, Canada Life switched in a bunch of light duty manufacturing jobs that  
12 Mr. Dent had work experience for (in fact he had been doing them, prior to his  
13 disability) for its job market survey.

14 That the job market survey was performed on the precise jobs that Mr. Dent  
15 had been doing prior to his disability is clear from the denial letter. After agreeing  
16 that Mr. Dent could perform some sedentary work—through ignoring Dr. Collins’  
17 opinion that he could not, without benefit of any medical opinion showing why Dr.  
18 Collins was wrong—Canada Life listed the jobs that Mr. Dent could perform under  
19 its “any occupation” analysis. These jobs:

- 20 ● Assembler and Tester, Electronics;
- 21 ● Electronics Specialist;
- 22 ● Bench Inspector; and
- 23 ● Group Leader, Printed Circuit Board Assembly;

24 were not the sedentary jobs that Canada Life’s computer indicated fitted with Mr.  
25 Dent’s work skills. Rather, if the Court looks at Mr. Dent’s “Work History” (192),  
26 these were the very same light duty manufacturing jobs that Mr. Dent had been  
27 doing, and which everyone—including Canada Life—agrees he was no longer able to  
28 do. In other words, while Canada Life was pretending to evaluate Mr. Dent based  
on the “any occupation” standard, the jobs it found for him were actually in his

1 “own occupation”.

2 **4. Mr. Dent Provides Significant New Evidence on Appeal,**  
3 **Which Canada Life Essentially Ignores**

4 **a. The Social Security Administration Decision**

5 Mr. Dent appealed this decision (138), and in the course of the appeal he and  
6 his physicians provided additional information. Perhaps most significant was the  
7 granting of Social Security Disability benefits. (182-186). This decision is  
8 important, first, in that an independent agency following basically the same  
9 standard had no difficulty finding Mr. Dent disabled from any possible occupation.  
10 And the Court should note the care taken in analyzing and weighing the evidence  
11 by the Administrative Law Judge, which stands in marked contrast to the sloppy  
12 and ill-informed rush to judgment conducted by Canada Life.

13 Judge Michaud conducted a review of the medical evidence and the history  
14 of Mr. Dent’s claim. In particular, where Canada Life’s vocational reviewer had  
15 read Dr. Post as claiming Mr. Dent had sedentary work capacity, by focusing on a  
16 single report about Mr. Dent’s elbow, Judge Michaud’s more complete review  
17 showed that Dr. Post did not believe Mr. Dent had sedentary work capacity. Judge  
18 Michaud stated that “[i]n a November 9, 2000 report, Dr. Post affirmed his prior  
19 diagnoses and assessment for less than sedentary work”. (184).<sup>3</sup>

20 Judge Michaud also saw and heard from Mr. Dent, something which Canada  
21 Life never bothered to do. Judge Michaud stated that Mr. Dent’s complaints of  
22 pain were credible and were well supported by physical and medical evidence.  
23 And Judge Michaud himself observed the atrophied state of Mr. Dent’s left arm.  
24 (184). Based on all of this, Judge Michard concluded that Mr. Dent “has the  
25 residual functional capacity to perform less than a full range of sedentary work.”  
26 (184).

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27  
28 <sup>3</sup> In fairness to Canada Life, this report is not in its file. However, if it doubted  
Judge Michaud’s analysis of the report, Canada Life was free to obtain its own copy.

1 Perhaps of greatest significance, Judge Michaud heard from a vocational  
2 evaluator who was more competent (or perhaps more honest) than Ms. [REDACTED] The  
3 evaluator, Mr. Beeman, testified as follows:

4 The vocational expert, Mr. Beeman, testified that the claimant's past  
5 work as an electronics assembler was a medium, semi-skilled job. Mr.  
6 Beeman further stated that the claimant did not have many  
7 transferable skills to semi-skilled work. Mr. Beeman was asked to  
8 consider a hypothetical question assuming an individual of the  
9 claimant's age, education, vocational background with the limitations  
10 noted above. Mr Beeman stated that there were no jobs existing in  
11 significant numbers in the local and national economy that the  
12 hypothetical individual could perform. I accept this testimony.

13 (184). As such, Judge Michaud found Mr. Dent totally disabled from any possible  
14 work since August of 1998. (185).

15 **b. The Reports by Mr. Dent's Treating Physicians Were**  
16 **Discounted through a Nurse's File Review**

17 Canada Life was also provided with strong statements by Mr. Dent's current  
18 medical providers. One of those weighing in was Dr. Heather Shaw, his  
19 chiropractor. In a March 17, 2002 letter she—echoing Dr. Collins—stated that Mr.  
20 Dent “is unable to sustain being in one position for prolonged periods of time” and  
21 that “[r]epetitive movements would cause irritation to his injured areas.” (369).

22 As such, Dr. Shaw opined that:

23 [W]hen considering the number of injuries, the location of injuries,  
24 the duration since occurrence and the progression of symptoms, it is  
25 my opinion that Mr. Dent has an injury of a permanent nature and  
26 would be unable to perform in any work related capacity. (325).

27 Canada Life also received the opinion of another chiropractor, Dr. Shaw.  
28 On May 22, 2002 Dr. Shaw issued the opinion that, because of his numerous  
29 medical problems, “Mr. [D]ent is permanently disabled.”

30 On January 22, 2002 Dr. Collins also wrote in support of Mr. Dent's claim.  
31 He noted, first, that it would have been a mistake for Canada Life to rely on the  
32 Physical Capacities Assessment he had sent, as he was only treating him for his  
33 knee problem, and Mr. Dent also had disabling injuries to his back and elbow:

1 I furnished you with a Physical Capacities Assessment, a one page  
2 check-off sheet, which I feel is totally inadequate in assessing the  
3 physical capabilities of this patient, in as much as I am familiar mostly  
4 with his knee problem and Mr. Dent has permanent disabilities  
5 regarding back, elbow and knee.

6 (354). Dr. Collins need not have worried; in fact his form made it clear that Mr.  
7 Dent was disabled from sedentary work, as being unable to sit for more than two  
8 hours a day. So, of course, Canada Life completely ignored it.

9 Dr. Collins than stated that if Canada Life wanted to actually learn a true  
10 picture of Mr. Dent's disability, it needed to engage a qualified medical examiner:

11 [F]rom a treating orthopedist's standpoint, I feel strongly that this  
12 gentleman should be assessed by a qualified medical examiner  
13 qualified and competent with physical capacity evaluation so that you  
14 can more accurately assess his need or lack of need for long-term  
15 disability benefits.

16 (354). But of course, Canada Life wasn't interested in a true picture of Mr. Dent's  
17 disabilities, it was only looking for an excuse to deny the claim. So rather than get  
18 an independent examiner Canada Life turned to one of its tame staff nurses who  
19 felt competent, in spite of the fact that she had never examined Mr. Dent, or spoke  
20 to him or spoke to any of his treating physicians, to contradict the opinions of  
21 numerous physician specialists based on a paper file review.

22 Specifically, in an undated note, which by context is after the appeal was  
23 filed, the file is referred for a medical review, the very first by Canada Life in the  
24 entire history of this file. (103). The review was conducted by Anne Grafton,  
25 whose title was "DNS" (which presumably indicates that she has a degree in  
26 "Nursing Sciences"). (316).

27 In the course of her review, Nurse Grafton ignored Dr. Collins statement that  
28 Mr. Dent could only sit for—at maximum—two hours in an eight hour day. She also  
29 ignored the statement by Dr. Post—as quoted by Judge Michaud—that Mr. Dent had  
30 less than full sedentary work capacity. And she ignored the statement by both  
31 chiropractors, Dr. Shaw and Dr. Smith, that Mr. Dent was disabled from any work.  
32 She took from the fact that Dr. Collins did not recommend further surgery

1 (sometimes this is because further surgery does not help) and that the back pain did  
2 not appear to be getting worse, to mean that Mr. Dent had sedentary work capacity.  
3 “There is no physical indication that EE could not perform sedentary work  
4 regarding his knee problem.” (316).

5 Nurse Grafton noted that “[a] labor market survey identified at least 10  
6 potential occupations identified within a reasonable geographic area that EE could  
7 perform.” (316). As shown above (section \_\_) this was not correct, there were  
8 five sedentary occupations (such as typewriter inspector) that were identified, but  
9 there was no labor market study conducted on them. The occupations on which a  
10 labor market study was conducted were all light duty occupations, and by her own  
11 (skewed and misleading) review of the record, Nurse Grafton admitted, by limiting  
12 Mr. Dent to sedentary work, that he could not do these jobs.

13 Based on this medical review, on December 9, 2002 Canada Life upheld its  
14 earlier denial. Based on its review by its staff nurse, Canada Life said it could  
15 “find no reason you would be restricted from sitting or engaging in sedentary (desk  
16 type) work.” (135). Of course, Dr. Collins’ statement that Mr. Dent could not sit  
17 for more than two hours wasn’t considered a “reason” why Mr. Dent could not do  
18 sedentary desk work because Canada Life and its employees continued to ignore it.

19 Canada Life’s adjuster went on to state that the occupations identified in its  
20 “research” “were all identified as sedentary”. (136). Whether the adjuster knew it,  
21 or not, this was blatantly untrue. Canada Life continued to opine (incorrectly) that  
22 Mr. Dent had sedentary work capacity, but the only jobs it identified that were  
23 actually available and which had transferrable skills were all light duty  
24 manufacturing jobs. Canada Life’s review made no mention of the observed  
25 atrophy of Mr. Dent’s left forearm, his complaints of disabling pain (all based on  
26 objectively determined medical problems), the November, 2000 report when Dr.  
27 Post opined that Mr. Dent did not have sedentary work capacity, or Judge  
28 Michaud’s opinion that Mr. Dent was disabled.

1 The present litigation followed.

2 **III. THE STANDARD OF REVIEW SHOULD BE DE NOVO**

3 The only language which could conceivably be used to grant discretion in  
4 this matter is the statement that claims will be paid “[w]hen we receive satisfactory  
5 proof of claim.” (Plan at 38). In *Kearney v. Standard Ins. Co.*, 175 F.3d 1084,  
6 1089 (9<sup>th</sup> Cir. 1999) (en banc), the Ninth Circuit held that policy language  
7 requiring that “a claimant provide ‘satisfactory written proof’ of disability” did not  
8 create discretionary authority. As such, this Court should conduct a de novo  
9 review of whether Canada Life properly denied Mr. Dent’s claim.

10 **IV. THERE IS OVERWHELMING EVIDENCE OF MR. DENT’S  
11 DISABILITY**

12 **A. Canada Life’s Determination that Mr. Dent Had the Capacity for  
13 Sedentary Work is Flawed and Contrary to the Evidence**

14 Canada Life’s determination that Mr. Dent had sedentary work capacity is  
15 significantly flawed in the following respects:

- 16 ● It’s use of a nurse to review Mr. Dent’s complicated medical history,  
17 and to use her opinions as a basis to reject the opinions of Mr. Dent’s  
18 treating specialists;
- 19 ● Canada Life Improperly Ignored Judge Michaud’s determination,  
20 based on expert testimony, that Mr. Dent was disabled;
- 21 ● Canada Life improperly ignored the opinions of Mr. Dent’s treating  
22 physicians that did not support its goal of denying Mr. Dent’s claim;  
23 and
- 24 ● Canada Life improperly ignored Mr. Dent’s claims of disabling pain,  
25 in spite of the fact that they were objectively supported by significant  
26 medical evidence.

27 **1. Canada Life’s Use of a File Review by a Nurse is an  
28 Insufficient Basis to Reject the Opinions of Mr. Dent’s  
Treating Physicians**

Numerous courts have rejected what Canada Life did here, which was to use  
an unqualified medical reviewer to discount the opinions of a claimant’s treating  
specialists. For example, in *White v. Airline Pilots Ass’n, Intern.*, 364 F.Supp.2d  
747, 766 (N.D.Ill.,2005) the Court criticized the insurer for its “careless and

1 superficial review” of claim, in large part because it used “nurse consultants” of  
2 uncertain “background or qualifications for the internal MetLife reviewers”.

3 Similarly, in *Zavora v. Paul Revere Life Ins. Co.*, 145 F.3d 1118, 1121  
4 -1123 (9<sup>th</sup> Cir. 1998) the Ninth Circuit held that the insurer’s use of non-specialists  
5 to overrule the opinion of specialist treating physicians was an abuse of discretion.  
6 And in *Wertheim v. Hartford Life Ins. Co.*, 268 F.Supp.2d 643, 665  
7 (E.D.Va.,2003), the Court recognized that the insurer “is not required to accord  
8 special deference to the opinions of plaintiff’s treating physicians” but that where  
9 “the treating physicians are specialists in the relevant areas of medicine and the  
10 plan’s medical consultants are a nurse and a family practitioner, a plan  
11 administrator should not lightly reject the opinions of the treating physicians.”  
12 Also, *Edgerton v. CNA Ins., Co.*, 215 F.Supp.2d 541, 550 (E.D.Pa.,2002) (review  
13 of a claimant’s medical records by registered nurse inappropriate where there was  
14 “strong evidence pertaining to disability” from the treating physician).<sup>4</sup>

15 Canada Life’s actions here are more egregious than any of these cases.  
16 According to orthopedic surgeon Dr. Post, Mr. Dent had less than sedentary work  
17 capacity. Dr. Collins opined that Mr. Dent could not sit for more than two hours a  
18 day. The chiropractors Dr. Shaw and Dr. Smith both opined that Mr. Dent was  
19 totally disabled. Canada Life attempts to discount all of these opinions, all made  
20 by physicians who were actually treating Mr. Dent, with the paper file review done  
21 by a nurse of unknown qualifications who never even met Mr. Dent.

## 22 **2. Canada Life Improperly Ignored the Opinions of Mr. 23 Dent’s Treating Physicians Which Did Not Support It’s 24 Denial**

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25 <sup>4</sup> The Court should also note that the current DOL claims handling regulations  
26 specifically require a fiduciary to insure that, in any decision “based in whole or in part on a  
27 medical judgment”, the fiduciary “shall consult with a health care professional who has  
28 appropriate training and experience in the field of medicine involved in the medical judgment.”  
29 CFR 2560.503-1(h)(3)(iii) (made applicable to disability plans through 29 CFR § 2560.503-  
1(h)(4)). Canada Life would be in violation of these regulations, were it not for the fortuitous  
(for Canada Life) fact that Mr. Dent’s claim was filed before January 1, 2001.

1           The Court should also note the manner in which Canada Life managed to  
2 disregard the opinions of Dr. Collins, Dr. Post, Dr. Shaw and Dr. Smith. In the  
3 course of her file review, for example, Nurse Grafton does not state that Dr.  
4 Collins' opinion that Mr. Dent cannot sit for more than two hours a day is contrary  
5 to other medical evidence, or even that it is unsupported by medical evidence.  
6 Rather, she completely ignores this opinion, as does Phaen Stone in the uphold  
7 letter, and Ms. Andrews in the denial letter. For all that can be seen from all of  
8 Canada Life's various evaluations of this file, Dr. Collins might well have never  
9 given this opinion. And Canada Life ignored this opinion in spite of the fact that it  
10 appeared on a Canada Life form, filled out at Canada Life's specific request.

11           Likewise, Canada Life ignores Dr. Post's November 9, 2000 opinion that  
12 Mr. Dent had less than sedentary work capacity,<sup>5</sup> as well as the opinions of Dr.  
13 Shaw and Dr. Smith. In *Black & Decker Disability Plan v. Nord*, 123 S. Ct. 1965,  
14 1970-1972 (2003), the Supreme Court held that while a plan fiduciary need not  
15 accord "special deference" to the treating physician's opinion, it could not  
16 "arbitrarily refuse to credit a claimant's reliable evidence, including the opinions of  
17 a treating physician." Similarly, in *Jordan v. Northrop Grumman Corp. Welfare*  
18 *Benefit Plan*, 370 F.3d 869, 879 (C.A.9 (Cal.),2004), the Ninth Circuit held that,  
19 "where the administrator arbitrarily refuses to credit a claimant's reliable evidence,  
20 the administrator's decision fails the fair review requirement of the statute."  
21 *Jordan*, 370 F.3d 869 (9<sup>th</sup> Cir. 2004). *E.g.* *Giroux v. Fortis Benefits Ins. Co.* 353  
22 F.Supp.2d 45, \*53 (D.Me.,2005) (*Nord* opinion "does not allow an insurer to  
23 disregard the opinion of a treating physician in the absence of medical evidence  
24 contrary to the treating physician's opinion"); *Jebian v. Hewlett-Packard Co.*  
25 *Employee Benefits Organization Income Protection Plan*, 349 F.3d 1098, 1109,  
26

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27           <sup>5</sup> Canada Life did not have this report, but it did have Judge Michaud's  
28 interpretation of it. And had Canada Life any questions about the report, it certainly  
could have obtained a copy.

1 note 8 (9<sup>th</sup> Cir. ,2003) ("plan administrators may not arbitrarily refuse to credit a  
2 claimant's reliable evidence, including the opinions of a treating physician").

3 As such, Canada Life might be able to disagree with the opinions of Dr.  
4 Collins, Dr. Post, Dr. Shaw and Dr. Smith, but it cannot simply ignore them.

### 5 **3. Canada Life Improperly Ignored the Social Security 6 Finding of Disability**

7 Plaintiff concedes that the Social Security decision is not binding on Canada  
8 Life, and also that Canada Life may legitimately come to a different conclusion.  
9 However, the Courts recognize that an SSA determination is evidence of a  
10 claimant's disability, *Kirwan v. Marriott Corp.*, 10 F.3d 784, 790, n. 32 (11<sup>th</sup> Cir.  
11 1994) (Social Security disability determination, with other evidence, sufficient to  
12 create issue of material fact, reversing summary judgment for Plan); *Wible v.*  
13 *Aetna Life Ins. Co.*, \_\_\_ F. Supp. 2<sup>nd</sup> \_\_\_ (C.D.Cal.,2005) ("an SSA determination  
14 is evidence of a claimant's disability"). So while Canada Life did not have to  
15 follow Judge Michaud's decision, it cannot simply ignore the fact that the SSA  
16 considered Ms. Wible totally disabled.

### 17 **4. Canada Life Ignored Mr. Dent's Medically Established 18 Claims of Pain**

19 Besides ignoring the opinions of Mr. Dent's treating physicians, and the  
20 Social Security Determination, Canada Life also ignored Mr. Dent's claims of pain  
21 and disability. This is in spite of the fact that Mr. Dent's previous claims of pain  
22 have always been substantiated by medical evidence. In fact, rather than being a  
23 man who makes excessive complaints of pain or tends to exaggerates  
24 the level of his pain, the record suggests that Mr. Dent is the type of man who is  
25 overly willing to just "live with" his pain rather than seek medical attention.

26 For example, there is Mr. Dent's elbow and forearm, his original injury  
27 occurred at or around 1990. Mr. Dent was treated with steroids, and returned to  
28 work. He continued to work in spite of having significant pain for eight years.  
This was in spite of the fact that the pain and lack of capacity was causing him

1 problems at work.

2 When the pain finally became too significant to permit continued working,  
3 Mr. Dent finally saw Dr. Collins. It turned out that his pain was not imagined or  
4 exaggerated, rather Mr. Dent had serious nerve damage that two surgeries failed to  
5 correct. And now, should anyone doubt that Mr. Dent's complaints of pain were  
6 real, they need only look at the muscles of his left forearm, which are wasting away  
7 from lack of use.

8 A similar story could be told of Mr. Dent's knee and back. Mr. Dent's  
9 medical records show that, after Dr. Collins' reconstructive surgery in 1989, he  
10 lived with pain in his knee until it became too intense. When he finally saw Dr.  
11 Collins again, after ten years of just living with the pain, Mr. Dent was sent for an  
12 MRI which showed that Mr. Dent's knee had numerous observable problems,  
13 including an oblique tear in the medial meniscus and significant degenerative  
14 changes. Similarly, Mr. Dent complained of back pain, and when he was finally  
15 sent for an MRI of his lower back the reason for the pain was documented by  
16 objective spinal problems.

17 Given all of this, the Court may well wonder on what evidence Canada Life  
18 relies in discounting Mr. Dent's claims, now, that his pain in his arm, back and  
19 knee are so severe that he is unable to do "just about everything". Canada Life  
20 doesn't point to any inconsistencies in Mr. Dent's claim, or produce surveillance  
21 showing him acting contrary to his claims, or even point to medical evidence  
22 showing that his claims are not objectively verified or might be exaggerated.

23 In fact, Canada Life does nothing about Mr. Dent's claims of pain other than  
24 completely ignore them. Its vocational reviewer, Ms. [REDACTED] doesn't take them  
25 into account in deciding—contrary to Mr. Dent's physicians—that he had sedentary  
26 work capacity. And when Canada Life finally sent Mr. Dent's claim for medical  
27 review—only after its first denial—its nurse completely disregards the complaints of  
28 pain, saying—for example—that there was no "physical indication" that Mr. Dent

1 “could not perform sedentary work regarding his knee problem.” (316). In other  
2 words, Nurse Grafton was taking the position that the physical evidence of damage  
3 to Mr. Dent’s knee was not enough to prove that he couldn’t work on it, and she  
4 was not about to care that he claimed that it hurt too much.

5 Numerous courts have held that an insurer cannot just dismiss a claimant’s  
6 report of his symptoms. For example, in *Stith v. Prudential Ins. Co. of America*,  
7 356 F.Supp.2d 431, 440 (D.N.J.,2005) the Court held it was improper for a  
8 reviewing physician, who had never even met the claimant, to assume without  
9 evidence that she was being less than honest in her claims:

10 It is apparently Dr. Buttarazzi's hunch that Plaintiff is fabricating her  
11 chronic complaints of severe pain even though he has not examined  
12 her and disregards the impressions of the specialists who have actually  
13 treated her over a period of several years. This hunch, even by a  
specialist, does not rise to the level of substantial medical evidence  
and it is insufficient to support Defendant's termination of disability  
benefits at the time the decision was made.

14 *Stith v. Prudential Ins. Co. of America*, 356 F.Supp.2d 431, 440 (D.N.J.,2005).

15 Similarly, in *Willis v. Baxter Intern., Inc.*, 175 F.Supp.2d 819, 833  
16 (W.D.N.C.,2001), the Court held that a Plan could not fail to credit a claimant’s  
17 statements without at least some evidence:

18 The plan administrator does not reference any specific, relevant  
19 evidence that would support not fully crediting plaintiff. Based upon  
20 the record that is before this court and was before the administrator,  
there is no reason to believe that plaintiff has exaggerated her claim or  
has been untruthful with anyone.

21 *Willis v. Baxter Intern., Inc.*,175 F.Supp.2d 819, 833 (W.D.N.C.,2001).

22 If Canada Life has no objective reason to doubt Mr. Dent’s reports of his  
23 pain and immobility it cannot just ignore them. But that is just what it did here.

24 **B. Even Presuming that Mr. Dent Has Sedentary Work Capacity,  
25 Canada Life’s Flawed Vocational Analysis Did Not Identify a  
Single Alternative Job He Could Perform**

26 Even assuming that Canada Life was correct that Mr. Dent had sedentary  
27 work capacity, it has the additional obligation to show that there were sedentary  
28 jobs he could perform, that he was qualified for through “education, experience

1 [and] training”. (Plan at 10). Canada Life’s determination that such jobs existed is  
2 terribly flawed.

3 As noted above, Canada Life’s vocational review started out by asking for a  
4 Physical Capacities assessment. But, when Dr. Collins provided one, Canada Life  
5 ignored it. Through that, and focusing on a workers compensation report which  
6 only provided restrictions to Mr. Dent’s elbow, the vocational review was able to  
7 manufacture sedentary work capacity where none existed.

8 Then Canada Life’s computer came up with a list of sedentary jobs which,  
9 on their face, were jobs which either no longer existed or which Mr. Dent had no  
10 capacity to perform (or perhaps both). For example, the computer generated the  
11 job of automobile repair claims clerk, when Mr. Dent had no experience with either  
12 claims or automobiles. And the list generated a type inspector at a typewriter  
13 factory, a job which clearly has not existed (at least in California) for many years.

14 Canada Life got around this problem by performing a job market survey on  
15 an entirely different set of jobs. These jobs, such as Assembler and Electrical  
16 Technician, were jobs which Mr. Dent did have the experience to perform.  
17 However, as shown in Canada Life’s own analysis, they were also “light duty” jobs  
18 that no one—not even Canada Life’s own tame nurse reviewer—believed Mr. Dent  
19 had the capacity to perform.

20 **V. CONCLUSION**

21 For the reasons given above, Plaintiff respectfully requests this Court to  
22 enter judgment in his favor.

23  
24 Dated: July \_\_, 2005

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