UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

JESSICA L.,

Plaintiff,

v.

UNUM LIFE INSURANCE COMPANY OF AMERICA,

Defendant.

Case No. 24-cv-02046-RFL

AMENDED ORDER GRANTING PLAINTIFF'S MOTION FOR JUDGMENT AND DENYING DEFENDANT'S CROSS-MOTION FOR JUDGMENT AND GRANTING MOTIONS TO SEAL

Re: Dkt. Nos. 27, 28, 29, 31, 32

Jessica L. ("Jessica")[1] filed this lawsuit against Unum Life Insurance Company of America ("Unum"), alleging that Unum improperly denied her long-term disability benefits. In the summer of 2020, Jessica began experiencing intense pressure in her head that was accompanied by visual snow, brain fog, and an electric shock-like sensation throughout her body. By January 2021, her symptoms became so constant and severe that she had to stop her work as a partner at an employment law firm. Over the next three years, Jessica saw various specialists, tried a number of different medications, injected herself with migraine-blockers, and even underwent neurosurgery in an effort to manage her symptoms. Jessica also made multiple unsuccessful attempts to return to work part-time. In March 2022, Jessica filed a long-term disability claim with Unum. Although Jessica's claim was initially approved, and she was paid benefits beginning on October 24, 2021, Unum terminated her benefits in December 2022, reinstated them in February 2023, and then terminated them again in May 2023. The parties have filed cross-motions for judgment pursuant to Federal Rule of Civil Procedure 52. For the

[1] In the interest of privacy, Plaintiff's name is partially redacted.

reasons explained below, Jessica's motion for judgment is **GRANTED** and Unum's cross-motion for judgment is **DENIED**.

I. LEGAL STANDARD

ERISA allows an individual to sue "to recover benefits due to [them] under the terms of [their] plan, to enforce [their] rights under the terms of the plan, or to clarify [their] rights to future benefits under the terms of the plan." 29 U.S.C. § 1132(a)(1)(B). This matter is before the Court on the parties' cross-motions for judgment pursuant to Federal Rule of Civil Procedure 52. The standard of review for ERISA benefits determinations is de novo.

Rule 52 motions for judgment are "bench trial[s] on the record," in which the Court "make[s] findings of fact" and "evaluate[s] the persuasiveness of conflicting testimony [to] decide which is more likely true." *Kearney v. Standard Ins. Co.*, 175 F.3d 1084, 1095 (9th Cir. 1999) (en banc); *see also id.* (the Court will ask "not whether there is a genuine issue of material fact, but instead whether [the plaintiff] is disabled within the terms of the policy").

The plaintiff bears the burden of establishing by a preponderance of the evidence that they were entitled to benefits. *Armani v. Nw. Mut. Life Ins. Co.*, 840 F.3d 1159, 1163 (9th Cir. 2016). To carry that burden, a plaintiff "must establish that [they were] more likely than not 'disabled' under the terms of the [Long-Term Disability] Policy . . . at the time [their] benefits were terminated." *Brown v. Unum Life Ins. Co. of America*, 356 F. Supp. 3d 949, 963 (C.D. Cal. 2019).

II. FINDINGS OF FACT[2]

A. Jessica's Treatment History

Jessica is a partner at a law firm specializing in employment law. In the summer of 2020, Jessica experienced episodes of an intense pressure in her head that was accompanied by visual snow, brain fog, and an electric shock-like sensation throughout her body. (AR 812.) On

[2] To the extent that any findings of fact are included in the Conclusions of Law section, they shall be deemed findings of fact, and to the extent that any conclusions of law are included in the Findings of Fact section, they shall be deemed conclusions of law.

January 20, 2021, Jessica consulted with Dr. Hwang, her primary care physician, and described her symptoms as near constant and increasingly debilitating. (AR 735-37, 2067.) She reported that in the prior week she had experienced approximately ten episodes of headaches accompanied by vertigo, difficulty reading, and chest pain. (AR 735.) Dr. Hwang ordered diagnostic tests, referred Jessica to a neurologist and a cardiologist, and took her out of work. (AR 735-37.) Jessica's cardiology work-up was unremarkable, but a February 11, 2021 brain MRI revealed a Rathke's cleft cyst on her pituitary gland. (AR 811-17.)

Over the next two-and-a-half years, Jessica underwent various treatments to address her recurring symptoms and periodically attempted to return to work. Jessica has been primarily treated by Dr. Daniel Hwang, her primary care physician, Dr. Sarah Ahmad, a neurologist and headache specialist, and Dr. Lewis Blevins, a pituitary expert and neuroendocrinologist. After several failed attempts to return to work in 2021, Dr. Hwang returned Jessica to total disability status in February 2022. (AR 765.) In August of 2022, after limited success with various migraine medications, Jessica began consulting with Dr. Ahmad, who diagnosed her with vestibular migraine, chronic migraine with aura, and visual snow syndrome. (AR 1417-39.) Jessica again tried to return to work at 50% capacity in January 2023 (AR 2072), but due to her symptoms, reduced her work to 20% capacity in July 2023 and stopped work fully in August 2023 (AR 1943, 2075-76). At that point, upon her neurosurgeon's advice that 30-40% of patients with pituitary cysts may get headache relief from cyst resection, Jessica elected to undergo neurosurgery to remove her Rathke's cleft cyst. (AR 2000-04.) While Jessica experienced temporary symptom relief after her surgery, her symptoms had returned by October 2023. (AR 2613-14.)

Jessica's medical records are too voluminous to be comprehensively summarized, but the following excerpts provide a distillation of her treatment and work history:

- March 19, 2021: In his visit notes, Dr. Hwang noted that Jessica continued to suffer from headaches, fatigue, changes in mentation, cognitive deficits, irregular heartbeat, and circulation problems, and that her lack of improvement is "worrisome." (AR 741-43.) Dr. Hwang further stated that "[his] inclination is to

give her a few more months off, but she would like to go back [to work] much sooner tha[n he thought] it might be possible." (AR 743.)

- April 19, 2021: Jessica attempted to return to work. (AR 765.)
- July 22, 2021: Jessica was admitted to the emergency room with dizziness, lightheadedness, weakness, chest pains, palpitations, tingling throughout her body, pain down her left arm, episodes where she could not feel her body, fatigue, and near syncope. (AR 209-10.) Following her ER visit, Dr. Hwang took her out of work a second time. (AR 752.)
- September 29, 2021: Dr. Hwang noted that Jessica was experiencing visual changes that he opined could be due to an atypical migraine, so he prescribed her rizatriptan, a migraine abortive. (AR 755-56.) He also discussed pursuing further endocrine work-up to investigate a potential hormonal imbalance resulting from her pituitary cyst. (*Id.*)
- November 8, 2021: Jessica again attempted to return to work at 70% capacity. (AR 762.)
- January 18, 2022: Jessica was seen at the UCSF Neurology Clinic by Sandeepa Satya-Sriram Mullady, MD. Dr. Mullady prescribed nortriptyline, a migraine prophylactic, but Jessica was unable to tolerate the medication. (AR 636, 767.) Dr. Mullady also reviewed Jessica's brain MRI and noted that the pituitary cyst can at some point be further evaluated with a dedicated pituitary protocol MRI. (AR 635.)
- January 20, 2022: Dr. Hwang noted that Jessica's return to work "has been an extreme struggle," and that "she is not getting much work done at this time." (AR 762.) Jessica's work hours were reduced by 50%. (AR 765.)
- January 31, 2022: Jessica underwent a head and neck Magnetic Resonance Angiography (MRA) that was unremarkable. (AR 731-32.)
- February 11, 2022: Dr. Hwang noted that Jessica's symptoms occurred on and off all day with periods of lucidity, during which "she tries to read quickly before the next episode of cognitive dysfunction occurs." (AR 765.) Dr. Hwang returned Jessica to total disability status starting February 7, 2022. (AR 765.)
- August 18, 2022: After Jessica noted that her existing medications were not providing her with effective relief, Dr. Mullady referred her to the UCSF Headache Clinic, where she was treated by neurologist and headache specialist Sarah R. Ahmad, MD. Dr. Ahmad diagnosed Jessica with 1) vestibular migraine, 2) chronic migraine with aura, and 3) visual snow syndrome. (AR 1417-39.) Dr. Ahmad prescribed a monthly self-injection of Aimovig, a type of antibody therapy, and also recommended new migraine abortive medications. (AR 1420-22.)
- October 18, 2022: Andrea Yeung, MD, an otolaryngologist, confirmed Jessica's vestibular migraine and tinnitus diagnoses. (AR 1451-52.)
- November 10, 2022: Dr. Hwang opined that Jessica should not "[w]ork without rest for more than 30 minutes," "[r]ead large volumes of legal documents," "[r]eview legal documents," "[e]ngage in complex legal discussions," or "[h]old meetings with clients and colleagues." (AR 1095.)
- January 9, 2023: Dr. Ahmad found that while the Aimovig had somewhat reduced the severity of Jessica's symptoms, she was still experiencing visual snow,

vertigo, head pressure, tremors, tinnitus, nausea, light/sound sensitivity, neck pain, occipital pain, imbalance, and cognitive issues every day. (AR 1461.) She further noted that Jessica's "symptoms are disabling, causing her to take a leave from her occupation as an attorney." (*Id.*) Dr. Ahmad adjusted Jessica's medications and ordered a pituitary-focused brain MRI to investigate Jessica's pituitary abnormality. (AR 1463, 1473.)

- January 16-18, 2023: Jessica again attempted to return to work part-time at 50% FTE. (AR 2072-75.) Jessica noted that she had been undergoing vestibular physical therapy and that it had been "helpful." (AR 1481.)
- April 12, 2023: Dr. Hwang noted that "she is not close to being 100%. She was ultimately able to return to work, although the return is only 50% FTE. She is probably billing half of the number of total hours she works, but then she is able to meet the target billing for 0.5 FTE. In order to do so, she has restarted Adderall, and she is now using twice the dose that she previously used (40 mg now, from 20 mg previously)." (AR 1596.)
- April 12, 2023: An Unum claims representative wrote that Jessica had paused vestibular therapy because her therapist informed her that participating in rehab while also working would be too overstimulating and could exacerbate her condition. (AR 1571.)
- July 12, 2023: Dr. Hwang explained that Jessica "is not even able to work at about 50% of full-time . . . she is still having 8-10 episodes of migraine per day. . . . I will have her reduce [her work capacity] to 20% for the next 4 weeks, while the pituitary lesion is being further characterized." (AR 1913-14.)
- July 26, 2023: Jessica was seen by pituitary specialist and neuroendocrinologist Lewis Blevins, MD at UCSF's California Center for Pituitary Disorders. (AR 1998-99.) Dr. Blevins reviewed the June 20, 2023 pituitary-focused MRI imaging and July 10, 2023 labs and determined that Jessica's pituitary lesion was an 8.8 mm Rathke's cleft cyst and that her growth hormone level was low. (*Id.*) Dr. Blevins opined that as a result of her pituitary lesion, Jessica was suffering from a growth hormone deficiency that might be related to her ongoing cognitive symptoms, and referred Jessica to neurosurgery. (AR 1999.)
- July 27, 2023: Jessica was seen by UCSF neurosurgeon Manish Aghi, MD, PhD, who advised that "30-40% of patients with small pituitary lesions can get headache relief after transsphenoidal resection" and recommended that Jessica undergo surgery to remove the Rathke's cleft cyst. (AR 2000-04.)
- August 14, 2023: Dr. Ahmad noted that the frequency of Jessica's migraines was "on average the same to worse," with her experiencing migraines 30 days a month with 2-8 episodes a day. (AR 1926.) Moreover, Dr. Ahmad wrote that "[w]hen she is not having [a] migraine headache, she has other symptoms like visual snow and tinnitus." (*Id.*) Dr. Ahmad wrote that Jessica's "daily and continuous symptoms are sufficient to be reasonably expected to cause disability in [] an occupation that requires daily use of high level executive functions such as in [her] work as an attorney." (AR 1927.)
- August 14, 2023: Dr. Hwang wrote that Jessica's "particularly severe vestibular migraine [] has been refractory to treatment. . . . As a result of significant cognitive impairment during these episodes, she has been unable to work . . . even

as low as 20% FTE." (AR 1941.) Due to her upcoming pituitary cyst resection surgery, Dr. Hwang took Jessica out of work completely. (AR 1943.)

- August 25, 2023: Dr. Aghi surgically removed Jessica's pituitary lesion, listing her headaches and hypopituitarism as indicating factors for the procedure. (AR 1947.) Immediately following the surgery, Jessica experienced a brief decrease in her tinnitus and vestibular migraines; however, these symptoms returned a few weeks later. (AR 2613-14.)
- September 28, 2023: Jessica was seen by Dr. Blevins, who diagnosed her with mild to moderate growth hormone deficiency ("GHD") and started her on daily hormone therapy. (AR 1950-51, 2633-35.)
- October 12, 2023: Jessica reported "persistent deep-based pain related discomfort consistent with migraine," tinnitus, dizziness, and exhaustion. (AR 2613-14.)
- October 19, 2023, Dr. Ahmad set Jessica's Aimovig dosage to 140 mg, but postponed consideration of further migraine treatment options until after her neuroendocrinology testing was completed. (AR 2616-19.)

B. Jessica's Disability Claim

Jessica filed a disability claim in March 2022. (AR 97.) Unum approved that claim with a disability date of July 26, 2021 and benefits beginning as of October 24, 2021. (AR 865-71.) Unum determined that Jessica was unable to meet the demands of her occupation as a law firm partner, which included, among other things:

> **Mental/Cognitive Demands:** along with memory, concentration, and attention the occupation requires:
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> . . .
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> GED Language level 6: Reading: Read literature, book and play reviews, scientific and technical journals, abstracts, financial reports, and legal documents. Writing: Write novels, plays, editorials journals, speeches, manuals, critiques, poetry, and songs. Speaking: Conversant in the theory, principles, and methods of effective and persuasive speaking, voice and diction, phonetics, and discussion and debate.
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> . . .
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> Directing, Controlling, or Planning Activities for Others: Involves accepting responsibility for formulating plans, designs, practices, policies, methods, regulations, and procedures for operations or projects; negotiating with individuals or groups for agreements or contracts; and supervising subordinate workers to implement plans and control activities.
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> . . .
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> Influencing People in their Opinions, Attitudes, & Judgments:

> Involves writing, demonstrating, or speaking to persuade and motivate people to change their attitudes or opinions, participate in a particular activity, or purchase a specific commodity or service. Performing a Variety of Duties: Involves frequent changes of tasks involving different aptitudes, technologies, techniques, procedures, working conditions, physical demands, or degrees of attentiveness without loss of efficiency or composure. The involvement of the worker in two or more fields may be a clue that this temperament is required.

(AR 1803-04.) On December 16, 2022, Unum terminated Jessica's claim. (AR 1307-14.) Unum pointed to surveillance footage it had taken on December 8-9, 2022, which observed Jessica driving short distances, walking her daughter to school two blocks away, grocery shopping, and visiting a healing arts spa. (AR 1289-1300.) Unum's medical consultant Rosemary Szollas, MD, an occupational medicine expert, explained that because the medical records reflected improvement in the frequency of Jessica's symptoms and the diagnostic workup has been relatively unremarkable, Jessica was not precluded from returning to work. (AR 1267-70.) When asked whether he agreed with Dr. Szollas's assessment, Dr. Hwang checked "Yes." (AR 1394.)

On February 16, 2023, Jessica appealed Unum's claim termination decision. (AR 1388-1489.) Jessica provided a letter from Dr. Hwang stating that he had not meant to check "Yes" to Dr. Szollas's question and had only done so because the question was "poorly worded and confusing." (AR 1399.) Dr. Hwang further clarified that Jessica's symptoms "preclude her from performing the high cognitive demands her job requires" and that "[a]s of 1/16/2023, I released Jessica to work at 50%." (*Id.*) On this supplemented record, Unum's medical consultant determined that Jessica was "reasonably precluded from performing [full-time] functional demands [of her occupation] . . . Given [her] symptomatology and ongoing treatment and diagnostic plan, it is reasonable to support trial of [part-time return to work] until the beginning of April." (AR 1500.) On February 27, 2023, Unum reinstated Jessica's claim. (AR 1517-20.)

However, on May 18, 2023, Unum once again terminated Jessica's benefits. (AR 1857-66.) Relying on a May 5, 2023 report by Dr. Szollas and a May 10, 2023 report by Zachary Gross, MD, an internal medicine specialist, the termination letter explained that "there are no

clinical findings present in the available records to support the degree of the claimant's self-reported impairment to support the[se] restrictions and limitations[.]" (AR 1819.) On November 10, 2023, Jessica appealed Unum's second termination of benefits. (AR 1967- 2119.) Jessica submitted additional information supporting her disability, including updated medical records and information regarding her new pituitary-related diagnoses, her declaration, and a declaration from the managing partner of her law firm stating that "despite best efforts on multiple occasions [to return to work], the migraines and related conditions have proven too debilitating and overwhelming to allow her to perform the material and substantial responsibilities of being a Partner at the firm." (*Id.*; AR 2081-82).

On December 8, 2023, Unum enclosed documents generated during its appeal review and asked Jessica to respond by December 26, 2023. (AR 4869-4922.) The documents included a report by Neal Greenstein, MD, another internal medicine specialist, who opined that Jessica's self-reported symptoms were disproportionate to the medical evidence because her medical exams were clinically unremarkable and she was "able to perform" when she returned to work on a part-time basis. (AR 4909-13.) Dr. Greenstein also stated that "if the claimant's hypopituitarism and GHD precluded her from performing the outlined occupational demands on a full-time basis as of 05/19/2023, I would have expected at least one documented face-to-face evaluation by Dr. Blevins and his opining of R&Ls." (AR 4912.)

Unum also provided Jessica letters from Unum's medical consultant and occupational medicine specialist Scott Norris, MD to Dr. Hwang and Dr. Ahmad, asking whether they agreed with his opinion that Jessica was not disabled. (AR 4879-87.) Dr. Hwang responded that Jessica was incapable of full-time work because "[h]er vestibular migraines are occurring multiple times daily and they are debilitating with vertigo, cognitive changes, and autonomic dysfunction. She is getting treated by a headache specialist at UCSF with CGRP antagonist for both abortive [and] preventive purposes with only partial response." (AR 4897.) Dr. Norris also asked whether there was any additional information that he should consider, and Dr. Hwang noted in response that Jessica had recently underwent a pituitary surgery and had been diagnosed with a pituitary

tumor. Dr. Ahmad did not respond.

On December 20, 2023, Jessica requested a 3-week extension to respond to Unum's review because her physicians had limited availability to respond due to the holidays. (AR 4923.) Unum refused to extend its deadline, claiming that it had already considered the opinions of Jessica's providers. (AR 4924.) Jessica responded on December 26, 2023, with a rebuttal letter from Dr. Hwang, but was unable to secure replies from Jessica's other providers in advance of Unum's deadline. (AR 4861-67, 4927-28.) On January 2, 2024, Unum upheld its termination of benefits, stating that "the available clinical findings (including physical examinations and diagnostic testing), level of treatment she receives, and noted activities are not consistent with a condition severe enough to limit her from performing the full-time demands of her regular occupation as of May 19, 2023." (AR 4950-58.) The letter further explained that Jessica's comorbid conditions, including hypopituitarism and GHD, are "controlled and/or stable and there are no physicians documenting restrictions related to these conditions." (*Id.* at 4953.)

In her Rule 52 motion for judgment, Jessica attaches three additional documents that were not a part of the administrative record detailing her medical condition since January 2, 2024. The documents show multiple recurrences of her Rathke's cleft cyst (Dkt. No. 29-5) and an additional pituitary surgery in November 2024 (Dkt. No. 29-4). The materials also include a January 2025 letter from Dr. Blevins—a pituitary specialist and neuroendocrinologist—explaining how her pituitary condition is linked to her symptoms and that he believes the condition will prevent her from being able to practice law in the future:

> [Jessica]'s Rathke's Cleft Cyst (currently measuring 6 x 15 x 7 mm) is significantly compressing her pituitary and probably impacting her pituitary stalk. This has led to near constant head pressure/headaches, and reduced pituitary functioning, presenting as a growth hormone deficiency and suboptimal levels of other pituitary hormones (a fall in her thyroxine levels) which we continue to treat and monitor.
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> . . .
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> While [Jessica] is on growth hormone replacement for a confirmed diagnosis of growth hormone deficiency, her dosage was recently raised to hopefully improve her IGF-1 levels and overall sense of

> well-being. Unfortunately, however, she will not likely recover [in] full and experience[] resolution of all her symptoms. . . . Hormone imbalances often contribute to or cause a variety of other conditions including migraines and dizziness.
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> . . .
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> While it has been over a year and a half since her initial diagnosis, due to [the] lesion's persistence/recurrence, we still do not have an adequate picture of [] how [Jessica]'s symptoms will improve once she is lesion free . . . I do not believe she is presently capable of the practice of law, and I seriously doubt that she would be able to do so in the future.

(Dkt. No. 29-3 at 3-4.)

III. CONCLUSIONS OF LAW

Jessica has established by a preponderance of the evidence that, on the date that her benefits were terminated, she was more likely than not "disabled" under the meaning of Unum's long-term disability policy. Under the terms of the policy, Jessica must show that she was "limited from performing the material and substantial duties of [her] regular occupation due to [her] sickness or injury"—that is, as partner at an employment law firm. (AR 138.) She has carried this burden. The administrative record supports the conclusion that Jessica's condition is caused at least in part by the Rathke's cleft cyst on her pituitary gland and that this condition is disabling.

As detailed above, Jessica consistently experiences debilitating migraine episodes. Her treating physicians, Dr. Hwang and Dr. Ahmad, have personally examined Jessica and have created years of medical records corroborating her ongoing migraines, tinnitus, vertigo, and visual changes. There is evidence that Jessica's symptoms—which could consist of 8-10 migraines a day—occurred almost every day and severely impeded her ability to perform the cognitive demands required by her job as law firm partner. (*See* AR 1461, 1926-27 (Dr. Ahmad noting that Jessica was experiencing issues "30 days out of the month" and that her "daily and continuous symptoms are sufficient to be reasonably expected to cause disability in [ ] an occupation that requires daily use of high level executive functions such as in [her] work as an attorney."); AR 1095 (Dr. Hwang noting that it was difficult for Jessica to read documents or

hold meeting with clients).) To attempt to alleviate her symptoms, Jessica tried a number of different medications, injected herself with migraine-blockers, and even underwent neurosurgery that only had a 30-40% chance of easing her symptoms. While these methods sometimes provided temporary relief, as they did in early 2023 and after her pituitary surgery in August 2023, the record demonstrates that her symptoms persistently returned to a degree that significantly interfered with her ability to work.

Unum's medical experts opine that the lack of clinical findings, the surveillance footage, the failure to continue with vestibular treatments, and Jessica's multiple attempts to return to work preclude a finding of disability. None of these rationales are persuasive. First, because there are often few clinical findings associated with migraine pain,[3] courts do not require such a showing in order to conclude that certain types of migraines are debilitating. *See Valdez v. AT&T Umbrella Benefit Plan No. 1*, 371 F. Supp. 3d 754, 766-68 (S.D. Cal. 2019) (finding that even without significant physical exam findings, ER visit and medication adjustments supported severity of headaches). Moreover, the fact that Jessica seemed generally "well-oriented" and "alert" during her medical examinations has little bearing on her ability to consistently perform the cognitive duties associated with being a litigation partner. Second, the evidence demonstrates that Jessica's symptoms are "episodic" such that she is able to perform everyday activities like walking, grocery shopping, and childcare when she is not experiencing or recovering from a migraine, but has limited ability to engage in them when her migraine episodes are active. (AR 4928 (Dr. Hwang's letter).) That Unum's surveillance footage—which was taken over a period of only two days—showed Jessica doing these activities therefore does not contradict her claimed disability. Third, while Jessica did attempt to return to part-time work on several occasions, the fact that these attempts failed are strong evidence of her credibility in claiming disability, which is further corroborated by the managing partner of her firm. *See Monroe v. Metro. Life Ins. Co.*, 611 F. Supp. 3d 967, 998-99 (E.D. Cal. 2020). Lastly, the record

[3] Moreover, Jessica's tests revealed a pituitary lesion, which (as explained further below) appears to be a source of her symptoms.

shows that Jessica chose to discontinue vestibular rehabilitation therapy because her therapist believed it would worsen her symptoms as she returned to work, not because she experienced significant relief in her symptoms.

Following Jessica's submission of additional evidence upon appeal, Unum's medical expert Dr. Norris concluded that "it was unlikely that [the pituitary lesion] was causing her headaches" and that her treatment intensity was "stable." (AR 4201.) This conclusion is not supported by the record, even without considering the extra-record materials Jessica submitted as part of her Rule 52 motion. Dr. Aghi, Jessica's neurosurgeon, stated that "30-40% of patients with small pituitary lesions can get headache relief after transsphenoidal resection." (AR 2000-04.) While Jessica's primary care physician did not think the pituitary lesion could be the cause of her symptoms, his opinion is afforded less weight because he is not a specialist in pituitary conditions—nor, for that matter, are any of Unum's four medical experts who reviewed Jessica's case. Moreover, the evidence shows that Jessica experienced a temporary but significant reduction in her symptoms following her August 2023 resection surgery, which supports the inference that there was a connection between the pituitary lesion and her condition. And because Jessica's symptoms eventually returned a few weeks later, necessitating further modifications to her drug dosage levels, her treatment does not appear to be "stable" as Dr. Norris describes.

While it is not necessary to consider Jessica's extra-record submissions to reach this conclusion, the materials—which provide even stronger evidence of ongoing disability—are properly within the scope of the Court's consideration. Evidence outside of the administrative record may be considered in "circumstances in which there is relevant evidence that the claimant could not have presented in the administrative process." *Quesinberry v. Life Ins. Co. of North America*, 987 F.2d 1017, 1026-27 (4th Cir. 1993). Unum did not give Jessica and her providers a reasonable timeline to respond to Unum's reports by setting a response deadline of December 26, 2023—peak holiday season—and refusing to further extend the deadline. Because of this, Dr. Ahmad, a treating physician and the only headache specialist to review Jessica's record, was

unable to provide a response and thus denied the opportunity to refute Unum's conclusions about Jessica's pituitary condition.

Unum points out that while Jessica claimed Dr. Ahmad would not be able to complete her response by the deadline (AR 4404), she never raised that she needed more time to submit a response from Dr. Blevins. But this does not preclude consideration of a later submission by Dr. Blevins, as Unum should have extended the deadline for all responsive materials. Unum also complains that the additional materials were submitted over a year after the administrative record closed. Jessica could not, however, reasonably have submitted these materials until the present motions came before this Court, as the administrative appeal was denied and the case closed.

Lastly, Unum contends that the law does not permit the Court to retroactively reinstate Jessica's benefits and instead must remand any benefits determination beyond December 2023 to Unum. But *Grosz-Salomon v. Paul Revere Life Ins. Co.*, 237 F.3d 1154, 1163 (9th Cir. 2001), counsels otherwise:

> [The] retroactive reinstatement of benefits is appropriate in ERISA cases where, as here, "but for [the insurer's] arbitrary and capricious conduct, [the insured] would have continued to receive the benefits" or where "there [was] no evidence in the record to support a termination or denial of benefits." In other words, a plan administrator will not get a second bite at the apple when its first decision was simply contrary to the facts.

Id. The Ninth Circuit then explained that where the plan does not confer discretion on the ERISA plan administrator to apply a plan and the administrator applied the correct standard to evaluate the plaintiff's claim but came to the wrong conclusion, remand is not justified. *Id.* That is exactly the case here. There is no dispute that the plan does not confer discretion on Unum to apply the plan, and even if it did, Unum's error was in the reaching the wrong conclusion in light of the facts, not in applying an incorrect disability definition.

Unum argues that even if retroactive reinstatement may be proper in some circumstances, it is not appropriate here because there is basis to believe Jessica's situation improved throughout 2024 and 2025 and that she returned to work in a significant capacity. This contention is not supported by the administrative record, which does not contain any records beyond January

2024, or any other evidence in the case. In fact, at oral argument, the parties confirmed that Jessica worked only for a few days in all of 2024, and that Unum's principal basis for referring to Jessica's return to work was its counsel's inappropriate reliance on confidential settlement communications. The extra-record materials Jessica provided, which show that she underwent brain surgery again in November 2024, are further evidence of Jessica's continuing disability due to her pituitary condition. Therefore, retroactive reinstatement of benefits through the date of judgment is proper.

Accordingly, based on the evidence in the record, the Court concludes that it is more likely than not that Jessica meets the definition of total disability under Unum's long-term disability policy. Therefore, Jessica's motion for judgment is granted and Unum's cross-motion for judgment is denied. Jessica's requests to seal the administrative record and extra-record materials (Dkt. Nos. 27, 29, 31) are granted.

The Clerk of the Court is directed to enter judgment in favor of Plaintiff, Jessica L., and against Defendant, Unum Life Insurance Company of America, and to close the case.

IT IS SO ORDERED.

Dated: June 24, 2025

RITA F. LIN
United States District Judge