NOT FOR PUBLICATION

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UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

LESLIE HOFFMAN, Plaintiff-Appellant, v. SCREEN ACTORS GUILD PRODUCERS PENSION PLAN; BOARD OF TRUSTEES SCREEN ACTORS GUILD PENSION PLAN; DOES, 1 through 10, Defendants-Appellees.	No. 16-56663 D.C. No. 2:16-cv-01530-R-AJW MEMORANDUM*

Appeal from the United States District Court
for the Central District of California
Manuel L. Real, District Judge, Presiding

Argued and Submitted April 12, 2018
Pasadena, California

Before: BEA and MURGUIA, Circuit Judges, and BASTIAN,** District Judge.

Plaintiff-Appellant Leslie Hoffman appeals the decision of the district court, affirming the retroactive termination of her disability benefits by the Screen Actors

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

** The Honorable Stanley Allen Bastian, United States District Judge for the Eastern District of Washington, sitting by designation.

Guild-Producers Pension Plan, a defined benefit plan subject to the Employee Retirement Income Security Act ("ERISA"), 29 U.S.C. §§ 1001–1461, and the Board of Trustees Screen Actors Guild Pension Plan, the plan's administrator (collectively, "the Plans"). We have jurisdiction under 28 U.S.C. § 1291. Because we conclude that the district court erred in granting the Plans' motion for summary judgment, we reverse and remand.

The Plans manage a defined benefit plan subject to ERISA. In order to receive benefits pursuant to the terms of the plan, an individual must be "totally disabled": (1) receiving Social Security Disability Benefits; and (2) "unable to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or to continue for the individual's lifetime." Hoffman is a retired stunt actor who ceased work in May 2000 due to numerous physical injuries and severe depression. On February 20, 2004, Administrative Law Judge Robin Wright found Hoffman to be totally disabled by way of severe major depression since February 25, 2002, and awarded her Social Security Disability Benefits. In 2004, Plaintiff likewise applied for disability benefits under the plan. Based on reports of Plaintiff's treating physicians Richard Handler, M.D., Hal Rubin, M.D., Ruth Cassin, M.D., and the Plans' own medical director, Robert Shakman, M.D., who all found Plaintiff

totally disabled as a result of various physical and psychological injuries, Plaintiff received disability benefits.

In 2008, Plaintiff elected to convert her disability pension into an occupational disability pension. In 2010, the Plans wrote that Dr. Shakman had reviewed all of the medical documentation and determined Plaintiff's disability to be a result of severe major depression and not occupational in nature. The decision was affirmed on administrative appeal, and Plaintiff filed suit. *Hoffman v. Screen Actors Guild-Producers Pension Plan, et al.*, No. CV 10-0613 GAF (AJWx), 2012 WL 12887076 (C.D. Cal. May 3, 2012). The district court affirmed the denial of benefits on summary judgment and rejected Plaintiff's contention that her disability was due, in part, to physical impairments. *Id.* Plaintiff appealed, and this Court reversed the district court's grant of summary judgment in favor of the Plans for violations of ERISA claims procedures and remanded to the Plans for further proceedings. *Hoffman v. Screen Actors Guild Producers Pension Plan, et al.*, 571 Fed. Appx. 588 (9th Cir. 2014). We directed the Plans that Plaintiff was entitled to a second medical opinion on administrative appeal and a fully developed record resulting therefrom. *Id.* at 591.

On remand, the Plans again denied Hoffman's application for occupational disability benefits. This prompted a review of Hoffman's initial application for

disability benefits for which she had been receiving benefits since 2002. The Plans concluded that Hoffman had not been under a disability pursuant to the terms of the plan and terminated her regular disability pension retroactively from January 1, 2005. The Plans consequently notified Hoffman that her disability pension payments would cease effective August 1, 2015, and sought to recoup alleged overpayment of benefits in the amount of $123,827.50 plus $8,457.72 interest. The decision was upheld on administrative appeal, and Hoffman filed a second complaint under ERISA challenging the retroactive termination of her disability benefits. The district court granted the Plans' motion for summary judgment and entered judgment in their favor. *Hoffman v. Screen Actors Guild Producers Pension Plan et al.*, No. 2:16-cv-01530-R-AJW, ECF Nos. 45, 49.

Reviewing de novo, *Nolan v. Heald Coll.*, 551 F.3d 1148, 1150 (9th Cir. 2009), we conclude that the district court erred in failing to address all of Hoffman's alleged procedural defects, which should have been considered as factors that tempered the court's abuse of discretion review. *See Abatie v. Alta Health & Life Ins. Co.*, 458 F.3d 955, 968 (9th Cir. 2006) (en banc).

Here, the Plans had discretionary authority to determine Hoffman's eligibility for benefits, and it is undisputed that the Plans' denial of benefits is therefore reviewed by the district court for abuse of discretion. *See id.* at 963.

Where there are "procedural irregularities" in the claim review process, the abuse of discretion standard that is applied by the district court will be "tempered" by heightened skepticism. *Id.* at 959, 971. The district court must consider all the circumstances in determining how much weight to assign to a conflict or procedural irregularity. *Id.* at 968, 972 ("A procedural irregularity, like a conflict of interest, is a matter to be weighed in deciding whether an administrator's decision was an abuse of discretion." (citations omitted)). The nature and scope of the alleged violations will significantly affect the standard of review applied by the district court. *See id.* "[W]hen a plan administrator's actions fall so far outside the strictures of ERISA that it cannot be said that the administrator exercised the discretion that ERISA and the ERISA plan grant, no deference is warranted." *Id.* Alternatively, "[w]hen an administrator can show that it has engaged in an ongoing, good faith exchange of information between the administrator and the claimant, the court should give the administrator's decision broad deference notwithstanding a minor irregularity." *Id.* (internal quotation marks and citations omitted).

Hoffman advanced new evidence of multiple procedural irregularities in the Plans' review of her application for benefits, including the Plans' failure to consider all relevant evidence, such as tax records, and to make available evidence

relevant to the Plans' decision, such as the administrative record from prior proceedings, audio recordings of meetings, and a medical report by the Plans' medical director. Although the district court concluded that there was sufficient evidence of a procedural conflict to merit a heightened abuse of discretion review, it only referenced, without explanation, one of these alleged irregularities—the Plans' failure to disclose the administrative record to Plaintiff during the course of the appeal. The district court went on to conclude, again without explanation, that there was no evidence of malice, self-dealing, or a parsimonious claims-granting history on the part of the Plans, and that its level of skepticism was, accordingly, not extremely high. The findings of fact entered by the district court, which were adopted verbatim from the Plans' proposed findings and conclusions, similarly do not include findings about any of the alleged procedural defects.[1] The district court's failure to consider all of the alleged procedural defects before determining the level of skepticism was error. *See Abatie*, 458 F.3d at 969.

Moreover, because the alleged procedural defects involved disputed issues of material fact, the district court's grant of summary judgment was improper.

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[1] Although it is not error for the district court to state the *undisputed* facts in the form of findings of fact and conclusions of law, *see Fromberg, Inc. v. Gross Mfg. Co.*, 328 F.2d 803, 806 (9th Cir. 1964), in reality, "there is no such thing as . . . findings of fact, on a summary judgment motion." *Kearney v. Standard Ins. Co.*, 175 F.3d 1084, 1095 (9th Cir. 1999) (quoting *Thompson v. Mahre*, 110 F.3d 716, 719 (9th Cir. 1997)).

Ordinarily, where abuse of discretion review is appropriate, the district court's review is limited to the administrative record and the traditional rules of summary judgment do not apply. *Nolan*, 551 F.3d at 1154. In such cases "a motion for summary judgment is merely the conduit to bring the legal question before the district court . . . ." *Id.* (citing *Bendixen v. Standard Ins. Co.*, 185 F.3d 939, 942 (9th Cir. 1999), *abrogated on other grounds by Abatie*, 458 F.3d at 963). Where, as here, however, the claimant seeks to admit extrinsic evidence in order to prove the existence of procedural irregularities, then the court may review the additional evidence under the traditional summary judgment standards. *Id.* at 1150; *see* Fed. R. Civ. P. 56(c). The new evidence is reviewed de novo in the light most favorable to plaintiff. *Nolan*, 551 F.3d at 1150.

The record here reveals numerous factual disputes not addressed by the district court in either the summary judgment order or the court's findings of fact.[2] For example, although the Plans repeatedly requested that Hoffman provide all of her tax records to the Board of Trustees, the Plans later claimed that they only reviewed a "summary" of these records, and retroactively denied Hoffman's benefits in part on the basis that Hoffman was holding herself out to be available to

[2] The adoption of the proposed findings of facts on summary judgment, in and of itself, may be suggestive of factual disputes. *See U. S. for Use & Benefit of Austin v. W. Elec. Co.*, 337 F.2d 568, 572 (9th Cir. 1964); *Trowler v. Phillips*, 260 F.2d 924, 926 (9th Cir. 1958).

work. Similarly, the Plans relied on a report from the Plans' new medical director, who reviewed the record and determined that Hoffman was not disabled. That report was inadvertently omitted from the Rule 26, Fed. R. Civ. P., disclosure of the Administrative Record, though it was later supplemented at an unspecified date. Yet, there is nothing in the record showing that Hoffman received that report prior to the decision. In contrast, Hoffman provided voluminous tax records to the Plans to show she had not been paid for work since her disability began. The Plans acknowledged receiving these, but did not include them in the administrative record, suggesting that the Plans did not review them. Similarly, the Plans claimed they did not record Hoffman's hearing on appeal and denied Hoffman's request to provide any such recordings. However, the Plans later filed a motion for attorneys' fees for 3.8 hours for drafting memorandum regarding duty to disclose recording at trustees' meetings. Finally, we note that the court's findings of fact do not explain the basis for the district court's conclusion that there was no evidence of malice, self-dealing, or a parsimonious claims-granting history on the part of the Plans.

On remand, the district court must address these outstanding factual questions, which will bear upon the degree of skepticism with which the district judge reviews the Plans' decision to deny Hoffman's claim for benefits. *Abatie*, 458 F.3d at 959. To the extent there are factual disputes, the district court must

resolve those through a bench trial under Rule 52(a), Fed. R. Civ. P., before granting judgment on Hoffman's claim for wrongful termination of benefits under ERISA section 502, 29 U.S.C. § 1132(a)(l)(B). *Nolan*, 551 F.3d at 1154. Viewing new evidence through the lens of a bench trial is not merely a matter of form; it may lead the judge to a wholly different conclusion about the merits of the case. *See Kearney*, 175 F.3d at 1095 ("The process of finding the facts 'specially,' as that rule requires, sometimes leads a judge to a different conclusion from the one he would reach on a more holistic approach.").

Because the district court erred in its denial of summary judgment on Hoffman's section 502 claim, the district court also erred in summarily denying Hoffman's claims that the Plans failed to provide full and fair review under ERISA section 503, 29 U.S.C. § 1133(2). *See Johnson v. Buckley*, 356 F.3d 1067, 1077 (9th Cir. 2004) ("In order to challenge a benefit plan's failure to comply with ERISA's disclosure requirements, the employees must 'have a colorable claim that (1) [they] will prevail in a suit for benefits, or that (2) eligibility requirements will be fulfilled in the future.'"). We accordingly remand to the district court for further proceedings consistent with this disposition.

REVERSED and REMANDED.