

**UNITED STATES DISTRICT COURT
DISTRICT OF MAINE**

BARBARA JOHNSON,)	
)	
Plaintiff)	
)	
v.)	
)	
UNUM LIFE INSURANCE)	
COMPANY OF AMERICA)	Docket No. 03-CV-68-P-S
)	
and)	
)	
UNUMPROVIDENT)	
CORPORATION,)	
)	
Defendants.)	

ORDER

SINGAL, Chief District Judge.

Before the Court is Plaintiff’s Motion to Alter or Amend Judgment Pursuant to Fed. R. Civ. P. 59(e) (Docket # 74). The Court has reviewed the submissions of both parties in connection with the motion as well as the First Circuit’s decision in Glista v. Unum Life Ins. Co., 378 F.3d 113 (1st Cir. 2004).

In its August 10, 2004 Order, this Court held that Unum’s conclusion that Johnson could perform sedentary work was essentially reasonable and “supported by substantial evidence.” (Order (Docket # 72) at 13.) In short, Glista does not provide any basis for altering this holding. After announcing this holding, the Court’s Order granting summary judgment to Defendants went on to state two alternative bases for its decision.¹ Undeniably, the First Circuit’s approach

¹ See Order (Docket # 72) at 14 (concluding that the record substantially supported finding that Johnson was able to do sedentary work on a part-time basis), 16-17 & n.9 (concluding based on de novo review that Unum’s decision to

in Glista might be read to affect these alternative holdings since Johnson's ability to work in sedentary occupations on a part-time basis was arguably "not articulated to the claimant during its internal review."² Glista, 378 F.3d at 130. However, the Glista decision clearly acknowledges "no single answer fits all cases" and that "[c]ourts have adopted a variety of remedies." Id. Upon further reflection, the Court believes that its de novo findings³ with respect to the alternative "non-articulated" basis for denying Johnson's benefits are the appropriate answer for the facts presented by this case. See id. at 130-131 (acknowledging that "[s]ome courts have simply engaged in de novo, non-deferential review of the previously unarticulated reason.")

Ultimately, the Court finds no reason to amend or alter the judgment in this case or the August 10, 2004 Order that explained its basis for awarding summary judgment to Defendants. Therefore, the Court DENIES Plaintiff's Motion to Alter or Amend Judgment.

SO ORDERED.

/s/ George Z. Singal
Chief U.S. District Judge

Dated this 20th day of October 2004.

terminate benefits was correct since Johnson "had at least some sedentary work capacity as well as transferable skills that would have allowed her to work in gainful sedentary occupations" on at least a part-time basis).

² In fact, Unum's letter denying Johnson's final internal appeal (UACL 839-841) did include a reference to the part-time work provision. However, it is not clear that "a reasonable participant" would have read the entire series of denial letters from Unum to be relying on the part-time work provision as a basis for its decision to terminate Johnson's benefits. Glista, 378 F.3d at 129.

³ See Order (Docket # 72) at 16-17 & n.9.

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