UNITED STATES COURT OF APPEALS
for the Fifth Circuit

No. 93-5224
Summary Calendar

CHARLES R. PEARSON,

Plaintiff-Appellant,

VERSUS

NORTHWESTERN MUTUAL LIFE INSURANCE,

Defendant-Appellee.

Appeal from the United States District Court
for the Western District of Louisiana
(6:92-CV-1912)

(February 4, 1994)

Before DAVIS, JONES and DUHÉ, Circuit Judges.

PER CURIAM:[1]

Appellant, Dr. Charles R. Pearson, challenges the district court's conclusion that he is not entitled to benefits for total disability under the policy issued to him by Northwestern Mutual Life Insurance. We agree with the district court's interpretation of the policy and affirm.

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[1]Local Rule 47.5 provides: "The publication of opinions that have no precedential value and merely decide particular cases on the basis of well-settled principles of law imposes needless expense on the public and burdens on the legal profession." Pursuant to that Rule, the Court has determined that this opinion should not be published.

I.

In December 1989, Dr. Pearson suffered an emotional breakdown and sought treatment for alcohol and drug abuse. For several years before that time, he had been engaged in the private practice of internal medicine in Abbeville, Louisiana. Following his treatment, his treating physician advised him not to return to private practice. On July 1, 1990, however, Dr. Pearson began working as an emergency room physician at Lafayette General Hospital in Lafayette, Louisiana. Pearson's earnings as an emergency room physician have exceeded the amount he earned in private practice.

Pearson was covered by a disability income policy issued by Northwestern Mutual Life (NML) in April 1982. Pearson filed a request for disability benefits in December 1989. NML paid Pearson full monthly benefits for total disability from February 1990 through July 1, 1990. NML paid Pearson a proportionate benefit for partial disability for six months from July 1990 to January 1991.

NML's policy has two classes of disability: total disability and partial disability. Section 1.2 of the policy provides that "the insured is totally disabled when he is unable to perform the principal duties of his occupation." Section 1.3 of the policy provides that "the insured is partially disabled when: he is unable to perform one or more of the principal duties of his occupation; or he is unable to spend as much time at his occupation as he did before the disability started." Moreover, after the proportionate

benefits for partial disability have been paid for six months, there is a twenty-five percent income loss requirement for continued payments.

The parties do not contest that if Dr. Pearson is correctly classified as partially disabled he is entitled to no recovery. This is because he has not demonstrated that he has lost twenty-five percent of his previous earned income. The sole question, therefore, is whether Dr. Pearson should be considered totally disabled or partially disabled.

II.

Pearson argues first that the district court erroneously assumed that he was insured generally as a physician rather than specifically as a private practitioner of internal medicine. The district court did not rule on this issue. Even assuming, however, that Pearson was insured against disability from performing the duties of an internist, he still does not qualify for total disability under the policy.

Giving the policy terms their plain meaning, we agree with the district court that total disability contemplates an insured who is unable to perform any of the principal duties of his occupation. On the other hand, an insured is partially disabled when he is unable to perform one or more of the principal duties of his occupation but can perform some of those duties or when he cannot spend as much time at his occupation. Pearson clearly falls into the second category.

In his deposition, Pearson listed a number of the routine duties he performed as an internist. These included: (l) visiting patients in the hospital; 2) seeing patients referred from general surgeons, orthopedists, OB/GYN physicians and family doctors; 3) performing procedures such as upper gastrointestinal endoscopies, bronchoscopies, insertions of cardiac pacemakers, insertions of intravenous lines, drawing excess fluids, and cardiac exercise studies, and 4) serving on medical committees. Pearson contended he could not return to private practice as an internist because of the stress involved in being on call 24 hours a day and in monitoring ICU patients. Although we accept this as accurate for our purposes, the uncontested facts nevertheless demonstrate that many of Dr. Pearson's duties as an emergency room physician closely parallel his duties as an internist. Critically, he is still called upon to make a diagnosis when a patient comes to him with complaints. He also still performs a number of the practices and procedures he performed as an internist. He inserts intravenous lines and endotracheal intubation; he sees patients with acute cardiac or respiratory distress; he sees patients with obstetric and gynecological problems. He sees patients with a variety of other problems such as soft tissue strains and sprains, digestive problems and pulmonary problems. He also performs occupational physical examinations for hospital personnel.

Dr. Pearson's previous practice as an internist was not highly specialized such as a neurosurgeon or a cardiac surgeon. Dr. Pearson still can and does perform some of the principal duties he

performed as an internist and he cannot be considered totally disabled under the terms of the policy.

For the foregoing reasons, we affirm the judgment of the district court.

AFFIRMED.