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3 **UNITED STATES DISTRICT COURT**
4 **NORTHERN DISTRICT OF CALIFORNIA**
5 **SAN JOSE DIVISION**

6
7 JENNIFER KOTT,
8 Plaintiff,

9 v.

10 AGILENT TECHNOLOGIES, INC.
11 DISABILITY PLAN,
12 Defendant.

Case No. 16-cv-03678-BLF

**ORDER DENYING PLAINTIFF’S
MOTION AND GRANTING
DEFENDANT’S CROSS MOTION FOR
JUDGMENT**

[Re: ECF 29]

United States District Court
Northern District of California

13 Plaintiff Jennifer Kott (“Kott”) challenges the denial of her disability claim by Sedgwick
14 Claims Management Services, Inc. (“Sedgwick”) under the Agilent Technologies, Inc. Disability
15 Plan (the “Plan”), an employee benefits plan governed by ERISA.¹ Kott sought disability claims
16 because of back pain and severe plantar fasciitis in her foot. Sedgwick, as the administrator of the
17 Plan, initially granted 52 weeks of benefits under the “own occupation standard.” Ex. 2 to Pl.
18 Mot. at 987. However, Sedgwick denied Kott’s claims of disability under the “any occupation”
19 standard so the benefits did not continue past February 2016 after 52 weeks. Ex. 7 to Pl. Mot at
20 321-23.

21 The parties have filed cross motions for judgment pursuant to Federal Rule of Civil
22 Procedure 52. Kott seeks a determination that she was disabled under the “any occupation”
23 standard and Defendant seeks a contrary determination. The Court set a “Hearing on Dispositive
24 Motions/Bench Trial” for June 15, 2017 and heard extensive oral argument of counsel on that
25 date. For the reasons discussed below, the Court DENIES Kott’s Rule 52 motion, issues Findings
26 of Fact and Conclusions of Law under Rule 52, and GRANTS Defendant’s motion.

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28 ¹ Employee Retirement Income Security Act of 1974, 29 U.S.C. § 1001 *et seq.*

United States District Court
Northern District of California

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I. LEGAL STANDARD

Federal Rule of Civil Procedure 52 provides that “[i]n an action tried on the facts without a jury . . . the court must find the facts specially and state its conclusions of law separately.” Fed. R. Civ. P. 52(a)(1). “In a Rule 52 motion, as opposed to a Rule 56 motion for summary judgment, the court does not determine whether there is an issue of material fact, but actually decides whether the plaintiff is [entitled to benefits] under the policy.” *Prado v. Allied Domecq Spirits and Wine Group Disability Income Policy*, 800 F. Supp. 2d 1077, 1094 (N.D. Cal. 2011) (citing *Kearney v. Standard Ins. Co.*, 175 F.3d 1084, 1095 (9th Cir. 1999)). In making that determination, the court must “evaluate the persuasiveness of conflicting testimony and decide which is more likely true” in order to make findings of fact that will be subject to review under a clearly erroneous standard if appealed. *Kearney*, 175 F.3d at 1095.

Where an ERISA plan confers discretionary authority upon a plan administrator to determine eligibility for benefits, the administrator’s decision to deny benefits is reviewed for abuse of discretion. *Firestone Tire and Rubber Co. v. Bruch*, 489 U.S. 101, 115 (1989); *Nolan v. Heald College*, 551 F.3d 1148, 1153 (9th Cir. 2009). Under a straightforward application of the abuse of discretion standard, “the plan administrator’s decision can be upheld if it is grounded in any reasonable basis.” *Montour v. Hartford Life & Acc. Ins. Co.*, 588 F.3d 623, 629 (9th Cir. 2009) (internal quotation marks and citation omitted) (emphasis in original).

Here, the parties do not dispute that the Plan grants discretionary authority to decide claims and appeals to Sedgwick. Pl. Mot. (“Mot.”) 14, ECF 29; Def. Cross-Mot., Opp’n 10 (“Opp’n”), ECF 30. The Court thus will apply an abuse of discretion standard of review. *See Firestone*, 489 U.S. at 110-111. Under this standard of review, the plan administrator’s decision will be upheld if it is reasonable, but the plan administrator should be found to have abused its discretion if its decision is “illogical, implausible, or without support in inferences that may be drawn from the facts in the record.” *Salomaa v. Honda Long Term Disability Plan*, 642 F.3d 666, 676 (9th Cir. 2011).

II. EVIDENTIARY ISSUES

Kott submitted documents outside the administrative record, including Exhibits 13, 16, and

1 17 for the Court’s consideration. Mot. 6, 13-14. The parties do not dispute that these exhibits are
2 not in the administrative record and that they are dated in March 2017, far beyond the April 26,
3 2016 date of Sedgwick’s denial of Kott’s appeal. Mot. 6 n.2; Opp’n 10. However, Kott contends
4 that that she is entitled to submit evidence outside of the record because of “procedural
5 irregularity” that affected the administrative review. Mot.6 n.2; Reply 10 n.3. Defendant objects
6 to the introduction of these exhibits because they were not before Sedgwick when it denied Kott’s
7 claims. Opp’n 10-13.

8 With respect to Exhibit 13, this exhibit includes a letter from Dr. Justin Low and an event
9 and appointment log, purportedly showing that Dr. Low has never had any communications with
10 any care managers, lawyers or administrators regarding Kott’s care or management, which is
11 contrary to evidence relied on by Sedgwick in its final denial letter. Ex. 13 to Mot. Kott claims
12 that this exhibit should be considered because Sedgwick relied on a conversation between Dr. Low
13 and Dr. Mardy-Davis for the first time on appeal in the denial letter. *Id.*; Mot. 6 n.2. Defendant
14 argues that regardless of whether the telephone call occurred, it had no impact on the rationale set
15 forth in the denial letter. *Id.* at 11-12.

16 “When determining whether the [plan administrator] abused its discretion, the Court’s
17 review is limited to the administrative record.” *Cuevas v. Peace Officers Research Ass’n of Cal.*
18 *Legal Def. Fund*, No. 14-02540-BLF, 2016 WL 2754434, at *8 (N.D. Cal. May 12, 2016) (citing
19 *Abatie v. Alta Health & Life Ins. Co.*, 458 F.3d 955, 970 (9th Cir. 2006)). “[I]n general, a district
20 court may review only the administrative record when considering whether the plan administrator
21 abused its discretion. . . .” *Abatie*, 458 F.3d at 970. The “administrative record consists of the
22 papers the [plan administrator] had when it denied the claim.” *Kearney*, 175 F.3d at 1096. “The
23 court may not consider information outside the administrative record, as it would be improper to
24 find a claims administrator abused its discretion based on evidence not before it at the time the
25 decision was made.” *Thompson v. Ins. & Benefits Trust/Comm. Peace Officers Research Ass’n of*
26 *California*, 670 F. Supp. 2d 1052, 1068 (E.D. Cal. 2009).

27 Given that the Court is applying the abuse of discretion standard here, evidence extraneous
28 to the record before Sedgwick, such as Exhibit 13, cannot be considered here. These exhibits were

1 not before Sedgwick when it denied Kott’s disability claim and are not part of the record. Relying
2 on *Abatie*, Kott attempts to characterize Sedgwick’s denial letter’s reference of the phone call
3 between Dr. Low and Dr. Mardy-Davis as a procedural error. Kott then argues that this
4 procedural error supports consideration of evidence extraneous to the record. However, this mere
5 reference in the denial letter is not the type of procedural error that warrants the introduction of
6 outside evidence in accordance with the holding in *Abatie*. In *Abatie*, an insurer denied life
7 insurance benefits to plaintiff because the decedent had not filed a waiver of premium application
8 (based on disability) and had not paid his premiums, and coverage lapsed before the decedent
9 died. *Abatie*, 458 F.3d at 960. In the initial denial, the denial of coverage was based on
10 insufficient evidence showing a waiver. *Id.* at 961. When the subsequent appeal was denied, the
11 insurer – for the first time on an administrative appeal – added a second reason: that “it was
12 denying coverage because there was insufficient evidence in the record that [the decedent] had
13 remained totally disabled from the time he left work until his death.” *Id.* The Ninth Circuit in
14 *Abatie* noted that an “administrator’s last minute reliance on a new ground for denial of benefits, []
15 afforded [the plaintiff] no opportunity to present relevant evidence in advance of the
16 administrator’s final decision.” *Id.* at 971. As such, the court held that under such circumstances,
17 the trial court “may take additional evidence” because “the irregularities have prevented full
18 development of the administrative record.” *Id.* at 973.

19 *Abatie* is not analogous to the situation here. A review of the final denial letter reveals that
20 the denial was based on the review of medical records and the summaries of all the independent
21 reviewers and a vocational specialist. The mere mention of a teleconference between Dr. Mardy-
22 Davis and Dr. Low does not present a novel ground in support of the denial. As such, Defendant’s
23 objection to Exhibit 13 is sustained.

24 Similarly, the Court will not consider Exhibits 16 and 17 as they were not before Sedgwick
25 when it denied her disability claim and are not part of the record. Exhibit 16 is another letter by
26 Dr. Low, providing an update with regard to Kott’s current functional status due to her back and
27 foot conditions. Ex. 16 to Mot. Exhibit 17 includes a medical record pertaining Kott’s current
28 health status regarding diagnosis and treatment for breast cancer. Ex. 17 to Mot. Kott offers these

1 exhibits as information that Sedwick must consider on remand. Mot. 13-14. For the same reason
 2 the Court sustains Defendant's objection to Exhibit 13, the objections to Exhibits 16 and 17 are
 3 also sustained.

4 **III. FINDINGS OF FACT**

5 **A. Background**

6 Kott worked as an Import Compliance Specialist at Agilent Technologies, Inc. up to the
 7 date of disability, February 11, 2015. AR 150, 570-74. Kott holds a Customhouse Broker's
 8 License, is certified as an export specialist, and has 8 or more years of "general education, college,
 9 seminars, and on the job training." AR 148.

10 At all relevant times, Kott was a participant in the Agilent Technologies, Inc. Disability
 11 Plan (the "Plan"), which is a self-funded disability plan (*i.e.* benefits are funded by Agilent
 12 Technologies, Inc. ("Agilent"), not through an insurer). ERISA § (1)(A), 29 U.S.C. § 1002(1)(A).

13 Under the terms of the Plan, a participant qualifies as "Totally Disabled" if:

14 During the first fifty-two (52) weeks following the onset of the injury or sickness,
 15 the Member is continuously unable to perform each and every duty of his or her
 Usual Occupation; and

16 After the initial fifty-two (52) week period, the Member is continuously unable to
 17 perform any occupation for which he or she is or may become qualified by reason
 of his or her education, training or experience. . . .

18 The determination of Total Disability shall be made by the Claims Administrator
 19 on the basis of objective medical evidence. "Objective medical evidence" shall
 mean that evidence establishing facts or conditions as perceived without distortion
 20 by personal feelings, prejudices or interpretations.

21 AR 8-9.²

22 Kott has suffered three coccygeal (tailbone) fractures, the most recent of which occurred in
 23 August 2014 when she slipped and fell on a cement floor in her home. AR 153-58. Kott was
 24 treated for her chronic coccyx pain with up to four coccygeal epidural injections, and when the
 25 injections no longer worked, with codeine. AR 153-58. According to her medical records, at the
 26 time of Sedgwick's final decision, Kott suffered from panic disorder, pre-diabetes, insomnia, and

27 ² Citations to the administrative record that Agilent lodged with the Court on April 14, 2017 with
 28 the Declaration of Michael Tang, ECF 27, are noted as "AR" followed by the numeric portion of
 the Bates numbered document.

1 premature ventricular beats, and testing revealed the presence of multiple pulmonary nodules. AR
2 170.

3 **B. Initial Fifty-Two Week Period: Plaintiff's "Own Occupation" Disability Claim**

4 Agilent Technologies, Inc. ("Agilent") is the company sponsor of the Plan and Sedgwick
5 CMS ("Sedgwick") is the claims administrator of the Plan. AR 6. On February 16, 2015,
6 Sedgwick sent a letter acknowledging receipt of Kott's disability claim. AR 629-38. In support of
7 Kott's claim for disability, Dr. Raymond Lai provided an "attending physician statement," dated
8 February 27, 2015, identifying Kott's disabling condition as chronic coccyx pain and
9 recommended "modifying duty" and that Kott "occasionally sit[s]" through June 5, 2015. AR
10 640. Sedgwick later determined that Kott was unable to perform her "own" occupation in a letter
11 dated March 10, 2015. AR 648-49. Sedgwick then approved Kott's disability claim under the
12 Plan's initial 52-week "own occupation" period, effective February 18, 2015 (after the required
13 seven-day waiting period), finding that Kott's injury prevented her from performing her
14 occupation due to restrictions on her ability to sit for extended periods of time. *Id.* Kott's "own
15 occupation" disability claim was re-approved on a monthly basis throughout the entire initial 52-
16 week period, and Kott received a total of \$66,150.88 in benefits. AR 1255.

17 As one of Kott's treating physicians, Dr. Lai reported in March 19, 2015, that Kott suffered
18 from chronic coccyx pain that restricted her ability to sit for long periods of time, thereby
19 preventing her from performing all of the duties of her occupation. AR 153-58. Dr. Lai
20 determined that Plaintiff could sit up to 25% of her shift, no more than 20 hours per week, and that
21 she must not sit in one position for more than 15 minutes at a time. *Id.* During this initial 52-
22 week "own occupation" disability period, Agilent offered to accommodate Kott's disability so she
23 could return to work, including providing a sit/stand desk and allowing her to attend medical
24 appointments. AR 1209-10.

25 In a letter dated September 18, 2015, Network Medical Review Company ("NMR")
26 informed Kott that Sedgwick requested that she undergo an independent medical examination
27 ("IME"). AR 759. Dr. Lakshmi Madireddi of NMR performed the IME on October 5, 2015. AR
28 153-58. Dr. Madireddi's IME report noted that Kott had been treated for chronic coccyx pain by

1 receiving four coccygeal epidural injections, and that she continued to have issues with prolonged
2 sitting. *Id.* At the IME, Kott was uncooperative and prevented a complete examination by Dr.
3 Madireddi by refusing to complete certain forms during the IME, and she did not participate in a
4 “straight leg raising” exercise because she refused to sit or lie down as required by the exercise.
5 *Id.* at 155-56. The coccygeal examination could not be performed because Plaintiff refused to
6 remove her clothing and get into a hospital gown. *Id.* at 156. The IME report also noted that Kott
7 suffered from pain in her caudal region, and occasionally in her left buttock. *Id.* Dr. Madireddi
8 concluded that a diagnosis of coccygeal strain was supported by the IME, and pain treatment was
9 proper. *Id.* Dr. Madireddi further opined that on a scale of one to ten (with one being not severe
10 and ten being severe), Kott’s condition was a 5 out of 10 in severity. *Id.* at 157. Dr. Madireddi
11 further stated that Kott could perform part-time work up to 20 hours per week without
12 accommodation, and that Kott could return to full-time work within six months with
13 accommodation (workstation where she could sit and stand). *Id.*

14 In October 20, 2015, Kott’s treating physician, Dr. Justin Low, agreed with Dr.
15 Madireddi’s assessment by signing a document instructing him: “The IME opinioned [sic] that
16 Ms. Kott could return to work with restrictions and limitations noted below. If you agree that Ms.
17 Kott could return to work on November 1, 2015 with these restrictions, please date and sign this
18 letter below.” AR 777. The restrictions and limitations that Dr. Low agreed with on October 20,
19 2015 included the following: “work 4 hours a day and 20 hours a week; stand 6-8 hours
20 cumulative; sit for 20 minutes at a time, with a break for 10 minutes to stand up; should be able to
21 lift 20 pounds occasionally, 10 pounds frequently; can occasionally stoop and climb steps.
22 Duration of these restrictions will be 6 months.” *Id.* Dr. Low later amended his findings by letter
23 received on October 28, 2015 to reduce Kott’s per-day working capacity to 2-3 hours, instead of 4.
24 AR 783.

25 Medical records dated October 8, 2015, and February 29, 2016, indicate that Kott also
26 suffered from left plantar fasciitis (heel pain in her left foot). AR 793-97; AR 398. There was no
27 evidence of fracture or dislocation, as Kott’s bone mineralization was shown to be normal and no
28 soft tissue abnormality was detected. *Id.* at 797. The medical opinion as of October 8, 2015 was

1 that Kott's chronic coccyx pain required her to stand for long periods of time, which placed
2 increased weight on her feet causing an issue in her left heel. AR 793-97. As of October 11,
3 2015, podiatric surgeon Dr. Gian Hong Duc Son stated that Kott's treatment would include an
4 injection and a boot for her left foot. AR 806.

5 **C. After the Initial Fifty-Two Week Period: Kott's "Any Occupation" Disability**
6 **Claim**

7 After 270 days of receiving "own occupation" disability benefits, the Plan required that
8 Kott's claim be analyzed under its "any occupation" disability definition, should Kott seek
9 benefits after the initial 52-week disability period. AR 842. Kott sought disability benefits under
10 the Plan's "any occupation" definition after the initial 52-week disability period in November
11 2015. In support of her "any occupation" disability claim, Kott completed a questionnaire in
12 which she noted chronic coccyx pain and left plantar fasciitis as the medical basis for her disability
13 claim. AR 141-49. In her application for benefits, Kott claimed that chronic coccyx pain and left
14 plantar fasciitis prevented her from prolonged sitting or standing, commuting over long distances,
15 and concentrating. AR 141-49. As part of her submission, Dr. Low's November 2015 treating
16 physician's statement noted Kott's coccyx injury, plantar fasciitis, and treatment with epidural
17 injection. AR 151-52. In the same statement, Dr. Low expects a "fundamental or marked change"
18 in the future in regard to prognosis and concluded that Kott would be sufficiently recovered to
19 return to work at her job and in any occupation in 3 to 6 months. *Id.*

20 In a letter dated January 5, 2016, Sedgwick informed Kott that it denied her disability
21 claim under the "any occupation" definition of disability. AR 321-23. Sedgwick's denial was
22 based on the medical records of Drs. Lai, Low, and Son, and an independent review of Kott's
23 medical file performed by Dr. Heidi Klingbeil (Board Certified in Physical Medicine,
24 Rehabilitation, and Pain Medication). AR 321-23. Dr. Klingbeil acknowledged that Kott suffered
25 from coccyx pain and plantar fasciitis, but concluded that these conditions did not prevent Kott
26 from performing any occupation. AR 314-17. Kott's disability benefits were denied effective
27 February 10, 2016, under the any occupation, total disability standard. AR 321-23.

28 On January 8, 2016, Kott formally appealed Sedgwick's denial, and requested copies of all

1 medical records that Sedgwick reviewed in making its determination. AR 324. Kott sent another
2 letter to Sedgwick, dated March 21, 2016, to provide additional medical documentation that she
3 claimed supported her “any occupation” disability claim. AR 365-368. In this letter, Kott argued
4 that the records submitted to Dr. Klingbeil, upon which Sedgwick based its January 5, 2016 denial
5 letter, were incomplete. *Id.* Kott also took issue with the IME, referring to the facility as
6 “shabby” and “rundown.” *Id.* Kott further explained that she could not sit due to the coccyx pain,
7 and could not stand due to the left plantar fasciitis, and was therefore unable to perform any
8 occupation. *Id.*

9 **D. Sedgwick Upheld its Disability Determination**

10 In a letter dated April 26, 2016, Sedgwick informed Kott that the denial of her disability
11 claim was upheld. AR 590-92. In this letter, Sedgwick referenced two additional peer review
12 reports completed by Dr. Woodley Mardy-Davis (Board Certified in Pain Medicine) and Dr.
13 Martin Taubman (Board Certified in Podiatry). *Id.* Based on his review of Kott’s medical records
14 (including the IME report) and Kott’s reports of chronic pain, Dr. Mardy-Davis concluded that
15 clinical findings did not support Kott’s inability to work. AR 338-41. Like Dr. Klingbeil, Dr.
16 Mardy-Davis concluded that Kott could perform her own occupation, let alone any occupation for
17 which she was qualified. *Id.* Dr. Taubman concluded that, although Kott’s plantar fasciitis
18 required that she perform limited work between February 10, 2016, and March 1, 2016, no
19 restrictions applied thereafter. AR 343-47. Dr. Taubman based his conclusion on the medical
20 evidence that was before Drs. Klingbeil and Mardy-Davis. He also noted that Dr. Son, who
21 treated Kott for her plantar fasciitis, “did not include foot specific findings that would support
22 inability to perform [Kott’s] regular job functions.” *Id.* at 346.

23 As such, Sedgwick concluded that, “[f]rom a podiatry and pain medicine perspective, the
24 medical documentation contained no substantive physical clinical findings or abnormalities to
25 support [Kott’s] inability to perform any occupation as of February 10, 2016.” AR 591.

26 Sedgwick also referred Kott’s claim for a transferrable skills analysis, to determine what, if
27 any, other occupations Kott could perform despite her medical issues. AR 572-74. The analysis
28 was based on Kott’s capacity to work, job skills, educational background, and the labor market

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1 conditions in her geographic area. *Id.* The analysis concluded that other jobs were available to
2 Kott in the geographic marketplace that would provide sufficient earning capacity, including: (1)
3 Contract Administrator: \$44.34 per hour; (2) Import Export Agent: \$36.62 per hour; and (3)
4 Program Manager: \$44.89 per hour. *Id.*

5 **E. Determination of the Social Security Administration**

6 As set forth in a letter dated May 27, 2016, the Social Security Administration (“SSA”)
7 denied Kott’s claim for Social Security disability benefits. AR 832-35. The SSA informed Kott
8 that, “[b]ased on a review of your health problems you do not qualify for benefits on this claim . . .
9 because you are not disabled under our rules.” *Id.* at 832. The SSA explained,

10 We have determined that your condition is not severe enough to keep you from
11 working. We considered the medical and other information, your age, education,
12 training, and work experience in determining how your condition affects your
13 ability to work. Your condition results in some limitations in your ability to
14 perform work related activities. However, these limitations do not prevent you
15 from performing work you have done in the past as an REDACTED as you
16 describe. We have determined that your condition is not severe enough to keep
17 you from working. We considered the medical and other information and work
18 experience in determining how your condition affects your ability to work.

19 *Id.* at 832-33.

20 The SSA applies a standard different from the “any occupation” standard under the Plan,
21 which is whether Kott is unable to perform “substantial work.” *Id.* at 833. The SSA found that
22 Kott’s medical conditions, although present, did not render her totally disabled. *Id.* at 832-33.

23 **IV. CONCLUSIONS OF LAW**

24 Kott brings this action pursuant to ERISA’s civil enforcement provisions. ERISA §
25 502(a)(1)(B), 29 U.S.C. § 1132(a)(1)(B). Kott’s complaint states a single claim for relief for
26 payment of benefits under the Plan. ECF 1; ERISA § 502(a)(1)(B), 29 U.S.C. § 1132(a)(1)(B).
27 As noted above, “[u]nder a straightforward application of the abuse of discretion standard of
28 review, the plan administrator’s decision can be upheld if it is grounded in *any* reasonable basis.”
Cuevas, 2016 WL 2754434, at *4 (quoting *Montour v. Hartford Life & Acc. Ins. Co.*, 588 F.3d
623, 629 (9th Cir. 2009)) (internal quotation marks omitted) (emphasis in original). For reasons

1 set forth below, the record does not support the conclusion that Sedgwick rendered its decision
2 “without any explanation, construed provisions of the [P]lan in a way that conflicts with the plain
3 language of the [P]lan, fail[ed] to develop necessary facts for its determination,” or relied on
4 “clearly erroneous findings of fact in making benefit determinations.” *Pac. Shores Hosp. v.*
5 *United Behavioral Health*, 764 F.3d 1030, 1042 (9th Cir. 2014) (citations omitted).

6 Sedgwick’s decision to deny Kott’s disability claim was based on the findings of: (1)
7 three board-certified medical practitioners, Dr. Heidi Klingbeil (Board Certified in Physical
8 Medicine, Rehabilitation, and Pain Medication), Dr. Woodley Mardy-Davis (Board Certified in
9 Pain Medicine), and Dr. Martin Taubman (Board Certified in Podiatry), AR 321-23; 590-92; (2)
10 an independent medical examiner, Dr. Lakshmi Madireddi, AR 153-58; (3) Kott’s treating
11 physicians, including Dr. Justin Low, who authored the treating physician’s statements that Kott
12 submitted with her disability claims, AR 151, 777; and (4) a vocational expert who reviewed
13 Kott’s medical file and capacity to work, and determined that Kott could perform any occupation,
14 AR 570-74.

15 Sedgwick’s initial denial letter states that although a medical condition may exist, Kott was
16 required to present evidence of disability that entitled her to benefits under the “any occupation”
17 standard, which she had not done. AR 321-23. Likewise, Sedgwick’s April 26, 2016 final
18 determination letter again recited the definition of total disability under the Plan’s “any
19 occupation” standard and addressed Kott’s failure to demonstrate total disability based on the
20 effects of her chronic coccyx pain and left plantar fasciitis. AR 590-91.

21 Specifically, Sedgwick’s April 2016 letter referenced two peer review reports authored by
22 Drs. Mardy-Davis and Taubman. *Id.* Sedgwick’s letter explained that Dr. Mardy-Davis
23 concluded that the clinical findings did not support Kott’s inability to work. AR 590-92. As to
24 Dr. Taubman, Dr. Taubman concluded that, although Kott’s plantar fasciitis required that she
25 perform seated-only work between February 10, 2016 and March 1, 2016, no restrictions were
26 indicated thereafter. *Id.* at 346, 591. Sedgwick explained its conclusion that, “[f]rom a podiatry
27 and pain medicine perspective . . . the medical documentation contained no substantive physical
28 clinical findings or abnormalities to support [Kott’s] inability to perform any occupation as of

1 February 10, 2016.” *Id.* at 591. Although these physicians acknowledged that Kott suffered from
2 medical ailments, they concluded that these ailments did not render Kott unable to perform any
3 occupation. Accordingly, Drs. Mardy-Davis and Taubman agreed that Kott was not disabled
4 under the Plan’s “any occupation” standard. *Id.* at 338-41, 343-47, 365-368, 590-92; *see also* AR
5 314-17 (Dr. Klingbeil’s report). Kott attacks these doctors’ reports because Sedgwick’s letter
6 represented that the report relied on a call with Dr. Justin Low, one of Kott’s treating physicians,
7 where Dr. Mardy-Davis states that Dr. Low stated he had little information because he had only
8 provided an injection. Kott claims that the call or attempt to call never occurred. Pl.’s Mot. 6, 7.
9 However, the telephone conversation, whether or not it occurred,³ did not form the sole basis for
10 the opinions of Drs. Mardy-Davis and Taubman as other reliable evidence supports the denial of
11 the claim. Kott also fails to explain how the ultimate conclusion that Kott could return to work
12 without restrictions after the period of February 10, 2016 and March 1, 2016 was an abuse of
13 discretion.

14 The opinions of another doctor, Dr. Madireddi, further support the finding that Kott could
15 return to full time work with accommodation after certain time period. AR 314-17; 332-36; 338-
16 41, and 343-47. Specifically, Dr. Madireddi opined in October 2015 that Kott could perform part-
17 time work up to 20 hours per week without accommodation, and that she could return to full-time
18 work at her occupation within six months with accommodation. AR 157. Dr. Madireddi thus
19 estimated that Kott could return to full-time work before or by April 2016. *See id.* at 152 (report
20 with a date of examination on October 5, 2015).

21 Kott disputes that the opinions of Dr. Madireddi are sound, claiming that the report did not
22 take into account her plantar fasciitis. AR 157; Pl.’s Mot. 10, ECF 19. Relatedly, Kott also
23 contends Dr. Taubman’s finding that Kott can perform “seated duties” conflicts with the opinions
24 of Dr. Madireddi. AR 580; Pl.’s Mot. 16.

25 Even assuming that the reports of these doctors might be lacking in some respects,

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28 ³ The Court agrees with Kott that Dr. Mardy-Davis’ reference to a call to Dr. Low must be an error
because the statement attributed to Dr. Low is completely inconsistent with the record of Dr.
Low’s treatment of Kott. The Court has reviewed the denial letter with this in mind.

1 Sedgwick’s reliance on their overall opinions that Kott was not disabled under the “any
2 occupation” standard is not “illogical, implausible, or without support in inferences that may be
3 drawn from the facts in the record.” *Salomaa*, 642 F.3d at 676. Among all the doctors’ reports in
4 the record, the statements from her treating physician, Dr. Justin Low, is the most salient and
5 demonstrate how the reports and examinations conducted by other doctors are consistent with his
6 opinions. Dr. Justin Low was Kott’s treating physician and treated Kott at least once a month
7 during the relevant time period. AR 151. In a statement dated November 23, 2015, Dr. Low
8 opined that he expected a “fundamental or marked change” in the future, and expected that Kott
9 would recover sufficiently to perform her duties in three to six months. *Id.* at 152. In other words,
10 Dr. Low was of the opinion that Kott would be able to perform her duties as early as February 23,
11 2016 or as late as May 23, 2016. This is consistent with the conclusion of Dr. Taubman that Kott
12 could return to work without restrictions after the period of February 10, 2016 and March 1, 2016
13 and also consistent with the opinion of Dr. Madireddi that Kott could return to full-time work
14 before or by April 2016. Based on Dr. Low’s opinions in combination with other doctors’ reports
15 and examinations, it is not “illogical, implausible, or without support in inferences” that may be
16 drawn from the record for Sedgwick to conclude that Kott was not disabled under the “any
17 occupation” standard.

18 Based on the doctors’ opinions that Kott could return to work within a few months, and as
19 early as February 23, 2016, in accordance with Dr. Low’s opinions, the Court concludes that
20 Defendant did not abuse its discretion when it denied Kott’s disability claim. *See Cuevas*, 2016
21 WL 2754434, at *9 (finding that an administrator did not abuse its discretion in denying a
22 disability claim where it provided the claimant with a recitation of plan language,
23 acknowledgement of specific arguments made in the claimant’s appeal, a reasonable basis for the
24 denial, and an explanation for its conclusion).

25 The parties further dispute whether Kott’s ability to work part-time precludes her
26 entitlement to benefits under the “any occupation” standard. Although Kott acknowledges that she
27 can work part-time, albeit with certain restrictions, she contends that she should still be considered
28 disabled under the “any occupation” standard. *E.g.*, *Mot.* 2, 5-6. Kott further contends that

1 Defendant's interpretation of total disability under the "any occupation" standard to preclude any
2 participant with the ability to work part-time is erroneous. Reply 4-5. Defendant argues that
3 inability to perform full-time work is not determinative of whether the Plan participant is totally
4 disabled. Opp'n 13. According to Defendant, if the participant can work part-time and with
5 certain restrictions, he would not be considered to be "continuously unable to perform any
6 occupation," and would not qualify for benefits under the "any occupation" standard. *Id.* at 14-15
7 (citing *Graeber v. Hewlett Packard Co. Employee Benefits Org. Income Prot. Plan*, 421 F. Supp.
8 2d 1246, 1249 (N.D. Cal. 2006)). Defendant then concludes that Kott is not totally disabled under
9 the "any occupation" standard because she could work part-time. Opp'n 16.

10 The *Graeber* court considered this issue and concluded that a claimant capable of working
11 20 hours per week is not unable to work in "any occupation" and thus not entitled to disability
12 benefits beyond the "own occupation" benefit. *Graeber*, 421 F. Supp. 2d at 1254-55. In
13 construing language nearly identical to the language at issue here, the court reasoned that language
14 requiring a claimant to be unable to work at any occupation means that a claimant "must not be
15 able to work at all, not even part time." *Id.* at 1254. *Graeber* expressly rejected the argument that
16 disability eligibility turns on the ability to perform full-time work: "The Court rejects plaintiff's
17 assertion that a Plan Member is entitled to long-term disability benefits unless [s]he can work full
18 time in any occupation. Plaintiff's argument is belied by the plain meaning of the 'any
19 occupation' standard and the case law." *Id.* at 1256; *see also Shane v. Albertson's Inc. Employees'*
20 *Disability Plan*, 381 F. Supp. 2d 1196, 1206 (C.D. Cal. 2005) (finding that employee who could
21 work part time was not totally disabled).

22 The Ninth Circuit has not addressed the part-time issue beyond Judge Robart's
23 unpublished dissent in *Moore v. Bert Bell/Pete Rozelle NFL Player Ret. Plan*, 282 Fed. Appx. 599,
24 604 (9th Cir. 2008), in which Judge Robart concluded that a claimant is not entitled to "any
25 occupation" benefits if she can perform part-time work. While the Ninth Circuit has not finally
26 decided the issue, most if not all other circuits are in accord. *E.g.*, *McClain v. Eaton Corp.*
27 *Disability Plan*, 740 F.3d 1059, 1067-68 (6th Cir. 2014) ("It is reasonable to conclude that an
28 ability to do some work means one is not unable to do 'any work.'"); *Cooper v. Hewlett-Packard*

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1 Co., 592 F.3d 645, 655–57 (5th Cir. 2009) (finding the fact that the plaintiff was working part time
2 supported a determination that she was not unable to perform “any occupation”); *Brigham v. Sun*
3 *Life Can.*, 317 F.3d 72, 83-84 (1st Cir. 2003) (holding that paraplegic was not “totally disabled,
4 i.e., physically unable to work on even a part-time basis”); *Bond v. Cerner Corp.*, 309 F.3d 1064,
5 1067–68 (8th Cir. 2002) (recognizing that “total disability” precluded a claimant who was able to
6 work part time); *Ladd v. ITT Corp.*, 148 F.3d 753,754 (7th Cir. 1998) (claimant who was able to
7 work part-time not totally disabled under policy requiring her to be “unable to engage in any and
8 every duty pertaining to any occupation or employment for wage for which you are qualified”).

9 Regardless, the Court need not reach the part-time work issue in this case because there is
10 evidence in the record showing that Kott could return to full-time work as early as February 2016.⁴
11 Such evidence includes not only opinions of the peer review doctors but also those of Kott’s
12 treating physician, Dr. Low, as discussed above. As such, the Court finds that the denial of
13 benefits was not an abuse of discretion.

14 Based on these findings of fact and conclusions of law, made pursuant to Rule 52(a)(1),
15 Kott is not entitled to disability benefits under the Plan. Judgment shall be entered in favor of
16 Defendant Agilent Technologies, Inc. Disability Plan, and against Kott.

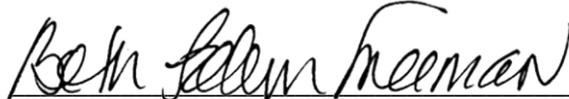
17 **V. ORDER**

18 For the foregoing reasons, IT IS HEREBY ORDERED that:

- 19 1. Defendant’s Rule 52 motion is GRANTED; and
20 2. Kott’s Rule 52 motion is DENIED.

21

22 Dated: July 7, 2017

23 
24 BETH LABSON FREEMAN
25 United States District Judge

26

27 ⁴ The Court further notes that Kott thought she only had to prove that she could not work full time
28 to qualify for disability under the “any occupation standard.” Sedgwick’s initial denial letter and
subsequent appeal denial letter do not anywhere suggest that the phrase “any occupation” was
understood to include working a half-time schedule with accommodated job duties. Nonetheless,
Sedgwick’s denial of benefit relied on the fact that Kott could perform her regular occupation at
least as of February 2016, based on Drs. Mardy-Davis and Dr. Taubman’s opinions. AR 340, 363.