

*How to Fight Back and
Prove Your Claim*

DENIED Disability by UNUM



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INTRODUCTION

Unum has grown over the years through a series of mergers and acquisitions, becoming the largest disability insurer in both the U.S. and the United Kingdom.

Life altering injuries strike when we least expect them, changing our financial prospects and imposing severe restrictions on the work we can do, the activities we can enjoy, and our day-to-day level of comfort.

When this happens, most people desperately count on Unum to provide fair and full compensation for their disability. Unfortunately, this quest for fair benefits is often anything but smooth and easy.

This short eBook offers a primer that explains why companies like Unum often deny long term disability benefits. It offers insight into what might have derailed your efforts and how to **prove your Unum claim**, so that you and your family get the money you urgently need to pay your bills and regain your footing.

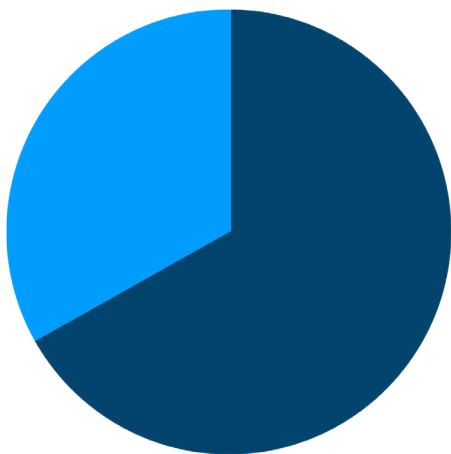
In the past, Unum faced criticism for the way it handled disability claims, especially their large number of denials. In 2004, the company signed an agreement with 48 states that required it to make revisions to its claim procedures and to re-examine some of the claim decisions it had previously denied. In 2005, the state of California fined Unum \$8 million for more than 25 violations of state law. Regulators said they had uncovered violations of state laws in almost one-third of the random sample of cases they examined.



THE DISABILITY INSURANCE INDUSTRY - AN OVERVIEW

Cause For Concern

Regulators said they had uncovered **violations** of California state laws in almost **1/3** of the random sample of cases they examined



Disability insurance was introduced in the 1980s. Insurers believed these policies would make them money, but the benefits these policies promised proved to be too extensive (and too costly).

At first, high returns on investments saved the insurers. But then disability policy customers began making more claims, and interest rates and investment returns started falling. Something had to give, so the insurance companies decided to tighten up on their claims policies and procedures. They began looking for ways to deny disability claims and to cut off those claims that they had previously approved.

This approach enabled insurers to make money, but it caused real financial hardship for those who had faithfully paid premiums and then suffered the surprising denial of disability benefits.

Why You Need an Experienced Attorney

If you're filing an administrative appeal Unum has denied your claim, you need to get help from an attorney who thoroughly understands a law called the Employee Retirement Income Security Act, also known as ERISA. If you don't retain qualified representation, you're playing with fire.

ERISA is the federal law that governs how disability claims appeals must be handled, and the law is complex and leans in favor of the insurance company. For example, many Unum claimants don't realize they need to include all the information regarding a claim – all medical records, expert opinions and supporting information – at the time of the administrative appeal.

Including all pertinent information at the administrative appeal level is crucial, since you can't add anything to the case file if the claim goes to federal court. You need to make your argument as strong as possible, since the courts usually give insurers the benefit of the doubt, i.e., they assume that the insurer made the right decision, and it's up to you – and your attorney – to prove the company wrong.

CASE STUDY #1: Arunan Sivalingam, M.D. v. Unum Life Insurance Company of America

This case, filed on April 26, 2011 with the United States District Court for the Eastern District of Pennsylvania, concerned a doctor whose medical treatment following a debilitating heart attack caused tremors that prevented him from being able to perform retinal surgeries. He sued Unum per the Employee Retirement Income Security Act (ERISA), alleging that the carrier "improperly terminated payment of long term disability benefits under an insurance policy issued to Sivalingam's employer." Unum, meanwhile, counterclaimed against the plaintiff, asking for money "to recover alleged overpayment of benefits it paid him under the policy."

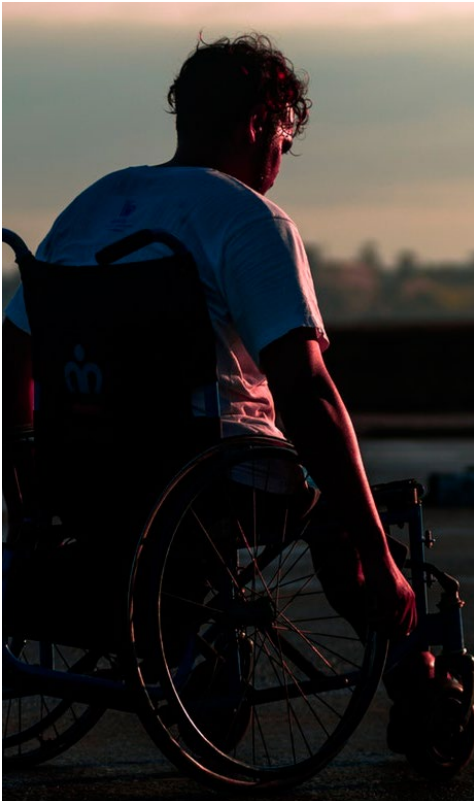
The plaintiff had a long term disability policy with Unum through his company, Ophthalmic Subspecialty Consultants (OPC), P.C. This company compensated the doctor after his heart transplant, but the manner and scale in which it did so attracted the attention of Unum. Following an anonymous tip that prompted an investigation, Unum decided that, due to the size of Sivalingam's compensation from OPC, it would stop providing benefits. Unum also launched a counterclaim to collect over \$1.4 million that Sivalingam received from his policy from 1998-2008.

Much of the legal battle focused on the nature of Unum's claims review process as well as the appropriateness (or lack thereof) of Sivalingam's compensation.

The court denied Unum's motion for summary judgment on three counts and on its counterclaim. It also granted the plaintiff's motion for summary judgment on three counts, declaring that the "defendant Unum Life Insurance Company of America acted arbitrarily and capriciously in terminating plaintiff's disability benefits."



THREE COMMON TYPES OF COVERAGE



Employers often offer and/or pay for disability insurance as an employee group benefit. Individuals can also usually buy an individual disability policy from an insurance broker. Policies differ in their language and provisions, so you need to get a copy of your own policy before making a claim or filing an appeal.

Short Term Disability (STD)

If your disability should only prevent you from working for a limited time (usually a week to six months), Short Term Disability insurance (STD) kicks in to help replace your wages. Your employer usually pays the costs of STD, so you shouldn't have as much trouble getting approved for these benefits. You'll usually have to apply for STD before you can apply for long term disability benefits.

Long Term Disability (LTD)

Long Term Disability (LTD) is designed to provide income when you've been injured or when you're sick and won't be able to work for a long time – or maybe ever again. Usually, you will have to wait up to six months before you can claim benefits under LTD, and you'll have to have used up all your STD benefits.

You will usually receive LTD benefits for 24 months if you prove that you can't work at your own job (also known as Own Occupation). After this time, you may be able to receive LTD benefits until you're age 65, but only if you can continue to prove that you are too disabled to work in any occupation.

Catastrophic

If you are so severely injured that you can't feed yourself or get dressed or shower by yourself, you could be eligible for benefits under a catastrophic policy. The benefits under such a policy might include money to pay for a home health worker to assist with basic living tasks.

HOW INSURERS PAY YOUR DISABILITY BENEFITS



Salary Percentage

Under both short term disability and long term disability, you will usually receive about 60 percent of your usual salary. Paid on commission? The insurance company has a formula to determine how much you will receive.

Partial or Residual Disability

Sometimes you can work part time or at a different job even if you can't work your regular job. If this new job pays less, you might get a partial or residual disability benefit. Your income usually has to fall 20 percent below normal for you to qualify for this benefit.

Disability Payment Offsets

Insurers generally require you to apply for any other disability benefits for which you might qualify, including Social Security Disability (SSD), worker's compensation, retirement, retirement disability, lawsuit settlements and state disability benefits. The insurance company (e.g. Unum) **then subtracts any amount paid by these other sources from your monthly LTD check.** These subtractions are called "offsets" in industry parlance.

Even if the offset income comes out to more than the LTD disability benefit, the insurer usually pays something each month. That amount might be \$100 or up to 10 percent of what the full LTD benefit would be.

Watch Out for Overpayments

If you are disabled, you will usually apply for benefits under SSD around the same time that you apply for benefits under your LTD policy. It takes a long time to get SSD benefits, so you'll probably receive LTD benefits first. But once your SSD benefits (including back pay) come through, the insurance company is going to want you to return any money it sent you that is now covered in that back pay (i.e., the offset). You can choose to have the insurer withhold the estimated amount of your SSD benefits from your LTD checks to avoid this situation. Otherwise, you'll have to repay the insurer from the back benefit, or the insurer will withhold your LTD checks until the SSD offset amount is repaid.

CASE STUDY #2: Crespo v. Unum Life Insurance. Company of America

On December 16, 2003, the United States District Court for the Northern District of Illinois, Eastern Division, decided a case that involved a denial of summary judgment for the defendant, Unum, and a judgment entered in favor of the plaintiff, Wendy Crespo, who sought long term disability after being diagnosed with a painful condition known as fibromyalgia.

Crespo had a long-term policy through her employer, but Unum denied benefits, leading the plaintiff to charge that the carrier's assessment of her claim "was neither full nor fair." For instance, Unum never spoke to any of her doctors about her claim that she couldn't work due to the pain of her condition. Instead, Unum relied on in-house physicians "who never examined [the] plaintiff and who made no effort to discuss her condition with her treating physicians."

In Unum's motion for summary judgment, the defendant tried to compare Crespo's daily activities with the needs of a full-time job, arguing essentially that if she could do physical activities on a daily basis, then she should be able to work full time. However, "there was no evidence that plaintiff undertook her daily activities with the regularity and structure of a full-time job."

During the course of her journey through the medical system, Crespo saw a number of caregivers, including Dr. Larry Kage, a treating physician in Michigan, who "stated that Crespo would have to take off work intermittently or work less than a full schedule because of her fibromyalgia and other conditions"; Dr. Garell Natzke, a treating physician in Michigan, who "found that she suffered from a cognitive dysfunction that would render her 'slower to task and at times incapable of making complex decisions"; and Dr. David Edelberg, a treating physician in Chicago, who found that she "had 18 of 18 points positive for [fibromyalgia] ... and met the American Rheumatological criteria [for the condition]."

Despite all the medical evidence and physician's statements, Unum's Vice President and Associate Medical Director, Donna J. Carr, D.O. reviewed Crespo's files and opined that "based on the lack of specialty care, i.e. psych evaluation and rheumatological work up, the evaluation and treatment of the Insured is not adequate, and is not consistent with the stated level of pain and impairment."

The Court not only granted the Plaintiff's motion for summary judgment; but it also held Unum responsible for "all back payments due under the disability policy, plus prejudgment interest and attorney's fees and court costs."

POLICY LIMITATIONS

Pre-existing Conditions

Unum may not want to pay an LTD policy if you had certain illnesses or if you suffered your injury less than a year before you signed up for benefits. Insurers extend this exclusionary period by having a “look-back” period of three months prior to that time.

Insurers can stretch this exclusionary period in several ways. For example, suppose you were highly anxious, and the doctor prescribed medicine to calm you down. Then you hurt your back, and another doctor prescribed the same medicine as a muscle relaxant to ease your back pain. Unum could try to contort your medical history to claim that you actually had a bad back before the injury – a pre-existing condition – and refuse to pay disability benefits.

Mental Health

Most insurers will only pay disability benefits for conditions such as depression, anxiety or bipolar disorder for 24 months. Insurers try to take advantage of this by claiming that your physical disability is actually a mental disability.

For example, let’s say you have (understandably) become depressed because you’re in chronic pain due to a back injury. Unum may try to classify your problem as a mental health condition, so that they only have to provide payments for two years.

If you’ve been injured, and you have trouble thinking clearly as a result, or if your pain medication has side effects that impair your thinking, the insurer may also say you suffer from a mental, not physical, impairment and try to stop paying after those 24 months.

Symptoms difficult to document

Insurance companies want you to prove a disability with diagnostic test evidence – MRIs or X-rays, for example. But symptoms of some conditions, such as chronic pain, fibromyalgia and chronic fatigue syndrome, don’t show up on such tests.

Sometimes an illness or injury causes fatigue, headaches, memory loss or limits intellectual or cognitive abilities. Medication you need to take because of an illness or injury may also cause these hard-to-objectively-define-and-prove symptoms. Even if you report such symptoms, insurance companies often ignore them.

CASE STUDY #3: Smith v. Unum Life Insurance Company of America

This case, decided on March 21, 2007, by the United States District Court for the Central District of California, involved allegations from the plaintiff (Joel Smith) that Unum broke its contract and its “implied covenant of good faith and fair dealing.”

These claims arose because of two separate claim denial events for long term disability converge, one in 1995 and the other in 2005.

In 1995, Smith, a former trial lawyer, said a heart condition known as atrial fibrillation had totally disabled him and prevented him from working. Unum denied this claim, allegedly in bad faith.

10 years later, in March 2005, Smith wrote a letter to Unum, arguing that his “atrium now fibrillates constantly and permanently,” forcing him “to withdraw from his law firm and cease his involvement in litigation.” He called on Unum to reopen his case and provide him the benefits that had been denied. Unum responded that his claim had expired due to the statute of limitations, and Smith fought back, saying that his “now permanent coronary malady” has changed the situation and that “Unum’s initial denial of my claim – i.e. that I had continued to perform my occupation while my disability claim was pending – clearly can no longer be a basis for denying me benefits.”

Per the court, “based on the evidence in the record, a reasonable jury could conclude that Unum deliberately misinterpreted Smith’s 2005 letters – the content of which is not disputed – and deliberately failed to investigate his new disability claim, leaving [him] no choice but to retain counsel and file this lawsuit. It could further conclude that such behavior was despicable, and that it establishes Smith’s entitlement to punitive damages by clear and convincing evidence.”



HOW FEDERAL ERISA LAW AFFECTS YOUR DISABILITY CLAIM

! *To file claims under ERISA, you must exhaust all appeal options with Unum before you can litigate your claim.*

The way you pursue a disability claim denied by Unum depends on how you purchased your policy.

If you have an individual policy, you'll proceed according to the insurance laws of your state. You have the right to a jury trial, and you can present new evidence to support your claim. You'll also be able to cross-examine insurance company witnesses.

If you have a group policy through your employer, your appeals process comes under the federal ERISA law. Unfortunately, ERISA law contains a lot of loopholes that make it easier for insurance companies to delay or deny disability claims. Plus, under ERISA, there are no real penalties for insurers if they deny valid claims.

Filing Claims Under ERISA

ERISA regulations spell out procedures you must follow to challenge an insurance company's decision to deny your disability claim. You'll have to start by appealing to the same company that denied your claim. ***You must exhaust all appeal options with Unum before you can litigate your claim!***

Disability claims under ERISA go to federal court. This means:

- You can't sue for damages – you can only sue for what the insurer should have paid you in the first place.
- Unum can ignore your own doctor's opinion.
- The burden of proof is on you to prove that the insurer had no reasonable basis for denying your claim. (Under state law, by contrast, you only have to prove that it is more likely than not that you are disabled.)

The best outcome you can hope for under ERISA is that the judge will rule in your favor and make Unum pay the disability benefits to which you are entitled. If you're fortunate, the judge may also order the insurer to pay your attorney fees.

TIPS TO WIN DISABILITY BENEFITS ON YOUR INITIAL APPLICATION

Get ready to file for Social Security Disability . Most insurers require you to apply for Social Security Disability benefits within a year of your disability.



1. Fill out forms carefully. Watch out for misleading questions. Be consistent in your statements when you are requested to provide the same information over and over. Never use absolutes to describe your limitations. Be vigilant in meeting all filing and appeal deadlines.

2. Learn how your policy works. How do your STD and LTD benefits work together? What pre-existing conditions are excluded? What income offsets will impact the amount of your disability payments? In some cases, STD and LTD benefits will have separate policies, make sure you get a copy of each policy.

3. Focus your application on medical and functional issues that aren't excluded under your Unum policy's pre-existing conditions or other limitations.

4. Prepare your doctors. Alert them to look for forms or calls from the insurer and ask them to respond promptly to meet deadlines. Provide updated contact information for your doctors, so the insurance company can't say they couldn't contact them.

5. Make sure that your description and your employer's description of your job is the same. Your doctor's explanation of your disabilities must clearly show that you can't do that job any longer.

6. Be prepared for video surveillance and unannounced home visits. Insurers spend a surprising amount of energy trying to catch disability claimants doing something they've said they can't do. If investigators from Unum make an unannounced visit, you have the right to ask them to come back at a scheduled time.

7. Work with attorneys who know ERISA law. Talk to an experienced ERISA attorney before filing your Unum application and definitely do so before you file an appeal of a denied claim.

CASE STUDY #4: Holoubek v. Unum Life Insurance Company

Decided on August 22, 2006, by the United States District Court for the Western District of Wisconsin, this matter involved allegations that Unum violated the Employee Retirement Income Security Act (ERISA) and counterclaims from the defendant, Unum, that they overpaid long term disability benefits.

According to court documents, Mark G. Holoubek, a materials manager working for a company called Johnson Controls, Inc., was diagnosed with fibromyalgia in 1993 and then in 2001, Dr. Daniel Maddox, a Mayo Clinic physician, diagnosed him "with complex head pain syndrome." A year later, after going on a company trip to Mexico, the Plaintiff's condition allegedly worsened. This claim was substantiated by reports from a neurologist at Midelfort Clinic, Dr. David Nye. In addition to qualifying for Social Security Disability Insurance (SSDI) benefits, Holoubek began collecting long term disability from Unum in 2002. However, the insurer continued to review and investigate the claim and, in 2003, Unum began active surveillance of Holoubek after they received a tip that someone had spied him "hunting."

Per this surveillance, Unum decided to suspend long term disability benefits.

Holoubek fought back, asserting that "Unum denied him a full and fair review of his claim because it operated under a conflict of interest, denied his benefits based on selective evidence, and ignored its own policies. Additionally, plaintiff argues he is entitled to summary judgment."

District Judge, John C. Shabaz, granted Plaintiff's summary judgment, denied Unum's motion for summary judgment, vacated Unum's decision to terminate payments in 2003, ordered the company to "retroactively reinstate plaintiff's long term disability benefits," and ruled against Unum's counterclaims.



WHAT DO YOU HAVE TO PROVE TO WIN YOUR DISABILITY INSURANCE CLAIM?

Your doctor's opinion isn't enough

Unum uses its own nurses or doctors to review your medical records. These in-house consultants will often disagree with your doctor's diagnosis.

Insurance companies aren't bound to follow your doctor's opinions. If you're covered under a group benefit disability plan, they only have to give those opinions great weight (according to court rulings). In private and group LTD plans, insurers only have to consider your doctor's opinion as a factor in a claims decision.

Social Security's decision isn't enough

Social Security has slightly different rules for disability, so Unum can use this excuse to ignore an SSD ruling that stated you are indeed disabled. At the same time, however, the insurance company is happy to help you obtain SSD benefits, because it means it has to pay out less money.

Watch out for insurer's vocational reviews

Unum may hire a vocational analyst to develop a list of jobs that he or she says that you could do. This analysis is supposed to be based on your residual functional capacity (RFC), which is the level of physical work you can perform.



Sedentary work – you can lift up to 10 pounds, and you sit up to six hours a day (e.g. office job).



Light work – you can occasionally lift and carry up to 20 pounds, and you can stand or walk up to six hours a day (e.g. security guard).



Medium work – you can lift up to 50 pounds, and you're on your feet all day (e.g. nurse).



Heavy work – you can lift up to 100 pounds (e.g. construction).



Very heavy work – lift more than 100 pounds. (construction)

DETERMINING YOUR RESIDUAL FUNCTIONAL CAPACITY (RFC)

! *Unum is allowed to define disability, interpret its own definition and decide whether or not you should receive disability benefits. You are not wrong if you see this as a financial conflict of interest.*

As outlined above, your RFC is whatever remaining ability you have to work full time at a job (40 hours a week) in a typical work setting.

To determine your RFC, Unum has to look at how the disability has affected both your mental and physical abilities. The carrier needs to consider:

- Any pain you're having.
- Any mental impairment that you suffer because of your disability and how that impairment can affect your ability to function in a work setting. Can you understand, remember and carry out directions? Can you respond appropriately to supervisors and coworkers?
- Your medical history and physicians' observations and findings.
- Information about your abilities obtained from social workers and family members.
- How much work time you'd miss because of treatments related to the disability.
- Your skill levels – what you're capable of doing.

Understanding the "Own Occupation" Standard

During the first 24 months you're receiving LTD benefits – or during a time period defined in your policy – you'll receive monthly LTD payments if you can't do your own occupation. Suppose you're a nurse and you've injured your back so you can't lift more than 10 pounds. Since nursing falls into the RFC medium job category and requires the ability to lift 50 pounds, you wouldn't be able to work, because you couldn't meet that requirement.

However, after 24 months, you will have to prove that you can't perform any job compatible with your education, background and skills. To discontinue benefits, Unum would have to find you a job that paid at least 80 percent of your pre-disability salary.

The insurance company will usually pay you benefits up to retirement age (65). If you are disabled after age 60, your disability policy will have a schedule of the maximum number of months you can receive disability benefits.

CASE STUDY #5: Keyser v. Unum Life Insurance Company of America

The United States District Court for the Southern District of Ohio, Eastern Division decided on this case on September 12, 2005. Howard Keyser, the plaintiff, suffered an injury at work on July 27, 1998 while using a forklift for his company, Town Air Freight. A collision threw him off the vehicle, and he hit the ground hard, hurting his neck and back. Medical analysis later revealed he herniated his lumbar disc and developed radiculopathy. At the time, Keyser also worked for the Franklin County Board of Mental Retardation and Developmental Disabilities (MROD), teaching and training special needs individuals, and he had a group disability policy from Unum through MROD.

Among other medical evaluations, an April 1999 assessment at the Pain Management Center of the Cleveland Clinic determined that Keyser's constant, albeit fluctuating, headaches and "blacking out" made him "unable to work due to pain and stress, or chronic anticoagulation."

Unum, however, discontinued his benefits in 2001, arguing that "there is no objective evidence to indicate a structural or metabolic etiology for [Keyser's] spell" and insisting that his pseudoseizures and other ailments were "psychiatric in nature."

Keyser appealed this denial, citing reports from Dr. Mark J. Stillman, who evaluated him and said that the patient has "basilar migrant POTS syndrome [which] explains his syncope and mental status changes," and Dr. Fouard-Tarazi, who "submitted [Keyser] to a tilt table test which resulted in a gradual rise or blood pressure and resting sinus tachycardia."

The court ultimately denied Unum's motion for summary judgment.



UNUM'S TACTICS FOR DENYING CLAIMS

If Unum denies your claim, it sends you a denial letter that will state the reasons for denial, list the evidence the company reviewed when making its decision, and list who (e.g. nurse manager, physician, claims person) reviewed that evidence.

Here are some common tactics Unum uses to deny claims:

Dividing up your claim

If you suffer from more than a single medical impairment, Unum will send out the information on each impairment to a different doctor. None of the doctors see the totality of the disability, so they don't get a true picture of your actual condition.

Video and investigator surveillance

Unum will sometimes videotape people receiving LTD benefits or hire private investigators to follow them around. They hope to catch claimants doing something that they shouldn't do. They may then try to claim that everyday activities, like going to the doctor, show you're capable of more activity than originally reported.

When surveillance costs you benefits, watch the film to determine whether it's been unfairly edited, and read reports to identify an investigator's biased wording. Determine whether the claims person actually watched the video or just read the investigators' reports when denying your claim.

Functional Capacity Exam

Many insurance companies will write policies that require you to undergo a Functional Capacity Exam (FCE). This is a series of physical tests given to determine your RFC. If the tests aren't done right, the FCE can produce unreliable data that can actually be used against you.

Malingering

Unum may argue that you're only pretending to have a disability because you want to get the monthly payment.

Non-Compliance

If you refuse treatment or fail to use medication as your doctors direct, Unum could argue that you are being non-compliant. The insurer fails to take into account that you may have reasonable and valid grounds for refusing certain treatments, such as bad side effects to certain medications.

Other Work Problems

Unum could ask you whether you had problems at work with your supervisor or co-workers before you filed a disability claim, then claim that your symptoms are from job stress and not from a covered disability.

APPEALING YOUR UNUM DENIAL

Did you know?

It can take as long as a year before you get the final word on whether or not Unum will approve your claim this time or once again deny it.

Your denial letter from Unum will also include information about how to file an appeal, letting you know where you have to send it and the date by which Unum must receive it.

Under ERISA law, appeals procedure can take up to a year:

- Insurers have 45 days to decide on your application for LTD benefits. They can have two 30-day extensions under certain circumstances.
- The insurer gets 45 days to decide if you appeal, with one possible 45-day extension.
- If your claim is denied, your policy will define how long you have to file a lawsuit. This limit may be anywhere from less than a year to three years.

Why You Need an ERISA Attorney To Guide You Through This Complex Process

A lawyer familiar with ERISA will improve your chances of winning your appeal against Unum because he or she understands how to:

- Gather all necessary documentation.
- Prepare and file an appeal that answers each point the carrier makes in its denial.
- Consult with and obtain opinions from vocational and medical experts.
- Load the case record with evidence to document your disability (e.g. medical records, medical literature, doctor's opinions, letters from friends and employers, photographs and more).*
- Carefully examine the claims file, which contains a comprehensive list of what's transpired between you and the insurer, to see whether Unum followed the proper claim handling procedures.
- Rebut Unum's distortion of the evidence you've presented and dispute the in-house medical reviews offered.
- Use available medical and scientific tools to help you build a better case.

The administrative appeal to Unum is the last opportunity you have to submit any new evidence – if the case goes to court later, no new evidence to support your disability claim will be allowed. It is critical to build a solid case with appeal, and for that you need an attorney who is well versed in ERISA law.

LOST YOUR ADMINISTRATIVE APPEAL? HERE'S HOW TO FILE A LAWSUIT

Statistically speaking, with a qualified lawyer, you effectively double your chances of winning a disability claim.

If you believe that you've been unfairly denied LTD benefits under a group benefit plan, you can sue in federal court. But you may sue only to recover the benefits you'd normally be due. No punitive or compensatory damages are permitted.

You must meet the filing deadline, and you can't file a lawsuit before you exhaust all administrative appeals. Skip this step or miss deadlines, and you lose the right to sue.

To win your lawsuit, you must prove that Unum unjustly denied your disability claim based on the evidence in your case.

There are no jury trials under ERISA, only a trial before a judge. If a judge rules in your favor, he or she only has the power to order the insurance company to pay you back benefits and to start your monthly benefits from that point forward. But the insurance company could conceivably cut you off again in the future if you can't prove to the company's satisfaction that you remain disabled.

How to File If You're Covered by An Individual Disability Policy

If you have an individual disability insurance policy, there are different procedures to follow, which are governed by state law. ERISA doesn't apply here.

In these cases, you do have the right to seek punitive damages, mental anguish, attorney fees and more. You are allowed a trial by jury; and you may bring in new evidence and cross-examine any witnesses Unum uses to testify against you.

Why you want an attorney experienced with disability law

Whether you're pursuing a state or federal lawsuit, bringing in an experienced attorney early will help you develop a strong case and improve your chances of a successful outcome.

Experienced attorneys understand all the typical tactics Unum uses to turn down claims during the administrative appeal process. They know how to cite case law to persuade the judge that Unum made the wrong decision in turning down your claim. They also understand the strengths and weaknesses of a case, and they may be able to negotiate a cash settlement for you before the case goes before a judge.

QUESTIONS YOU SHOULD ASK BEFORE HIRING A DISABILITY ATTORNEY

! You don't get a chance to add to your case after your administrative appeal has been filed. Don't leave anything out!

It's easy to make mistakes when you need to file or appeal a disability claim. Your life has already been disrupted by accident or illness, and now you must deal with Unum searching for a reason to deny you a disability payment. Retaining a qualified attorney is critical, especially when you're dealing with an administrative appeal.

A one-page letter stating that you appeal the insurers' decision won't do it. You need a fact-filled, evidence-based case that you can take to court if Unum decides against you in an appeal – the kind of case that experienced ERISA attorney Marc Whitehead can prepare.

Choosing the right attorney is key to a successful outcome in your case. Here's what you should find out before hiring anyone to assist you with your disability claim:

Is he or she actually an attorney?

There are some people – not attorneys – who claim to be ERISA experts and who will handle your administrative appeal for a fee. But if you have to file a lawsuit, they will not be able to represent you in federal court. Why not start with an attorney in the first place?

What's his or her experience in handling ERISA disability claims?

How long has this been a practice area? Does the attorney have a track record of success?

Is disability law and ERISA the main focus of the law practice?

Don't hire someone who only dabbles in this area. ERISA claims are complex; your attorney should demonstrate deep knowledge of the technical elements of ERISA cases.

Has the attorney produced any papers or articles on the subject?

Ask to read what he or she has written about disability claims and ERISA. This analysis will give you a good understanding of the attorney's capabilities, philosophy and approach.

Has he or she received any honors or special recognition from peers for work in this area?

Lawyers' peers usually can gauge their colleagues' capabilities effectively.

Other ways to check an attorney's reputation and qualifications:

- Check for ratings and comments on Google, Yahoo or Yelp. Don't focus on occasional negative remarks but look at the consensus opinion.
- Martindale.com rates lawyers based on anonymous peer review surveys.
- Avvo.com assigns attorneys a rating on a 10-point scale, basing it on their case experience and their industry recognition and reputation.
- Super Lawyers recognizes high achievers in various areas of law.

ABOUT MARC WHITEHEAD

Marc Whitehead & Associates, Attorneys at Law

is a disability law firm based in Houston, Texas, that serves clients across the nation.



Marc Stanley Whitehead is the founding partner of Marc Whitehead & Associates, Attorneys at Law, LLP which was established in 1992 in Houston, Texas.

Born in Memphis, Tennessee, Marc was raised in Normangee, Texas. He graduated in 1985 from Normangee High School as class valedictorian. Marc attended Texas A&M University where he graduated in 1989 with a Bachelor of Business Administration in Finance.

Marc attended the University of Houston Law Center and received his law degree (J.D.) in 1992, graduating in the top quarter of his class. He was admitted to the State Bar of Texas in 1992. He is also admitted to practice before all U.S. Federal District Courts in Texas, the U.S. Court of Appeals-Fifth Circuit and the U.S. Court of Appeals for Veterans Claims.

Marc's areas of practice include personal injury and wrongful death, Social Security disability, long term disability insurance denials, employee benefit denials, ERISA litigation and insurance claims and pharmaceutical and medical device litigation.

He is also a former adjunct professor of Law at the University of Houston Law Center teaching Civil Trial Advocacy. He has been an instructor for the National Institute of Trial Advocacy teaching Civil Trial Advocacy and an instructor for the National Business Institute teaching Social Security Disability Law.

Marc is double board certified in both Personal Injury Trial Law by the Texas Board of Legal Specialization and in Social Security Disability Law by the National Board of Social Security Disability Advocacy.

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