No. 23-570

In the

Supreme Court of the United States

JACQUELINE AVERY,

Petitioner,

v.

SEDGWICK CLAIMS MANAGEMENT SERVICES, INC. AND FCA US LLC LONG-TERM DISABILITY BENEFIT PLAN,

Respondents.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit

BRIEF IN OPPOSITION

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QUESTION PRESENTED

Whether a court reviewing a denial of benefits claim under the Employee Retirement Income Security Act ("ERISA") should evaluate an ERISA plan administrator's compliance with ERISA regulations for strict compliance or "substantial compliance" in determining the appropriate standard of review of the plan administrator's substantive decision regarding a participant's eligibility for ERISA benefits, where ERISA regulations have subsequently been amended to expressly eliminate the substantial compliance standard Petitioner challenges, there is no direct circuit split among the circuits that have addressed the issue, and the Sixth Circuit expressly declined to address the issue in the underlying case.

PARTIES TO THE PROCEEDINGS AND RULE 29.6 STATEMENT

There are no parties to the proceedings other than those listed in the caption.

Respondent Sedgwick Claims Management Services, Inc. is a private corporation owned by Sedgwick Global Inc. and Lightning Cayman Merger Sub, Ltd. ("the Entities"). The Entities' ultimate parent company is Sedgwick, L.P. Sedgwick, L.P.'s majority unitized partnership interest holder is CP Encore Holdings, L.P. Stone Point Capital, Onex Peppermint Limited Partnership, La Caisse de dépôt et placement du Québec (CDPQ), and certain management investors are minority unitized partnership interest holders.

Respondent FCA US LLC Long-Term Disability Benefit Plan is an ERISA plan sponsored by FCA US LLC.

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STATEMENT OF THE CASE

This is an Employee Retirement Income Security Act ("ERISA") case in which Petitioner Jacqueline Avery ("Avery") seeks to recover benefits under the terms of the FCA US LLC Long-Term Disability Benefit Plan ("LTD Plan"). Defendant FCA US LLC ("FCA") is the Plan Administrator of the LTD Plan. Defendant Sedgwick Claims Management Services, Inc. ("Sedgwick") is the Third-Party Plan Administrator that processes and administers claims and appeals under the terms of the LTD Plan. Avery was a Participant in the LTD Plan.

Avery received benefits under the terms of the LTD Plan, but Sedgwick later determined that Avery no longer qualified for LTD Plan benefits and denied appeals for such benefits. The district court and the Sixth Circuit reviewed Sedgwick's determinations under the arbitrary and capricious standard of review because the LTD Plan grants the plan administrator discretionary authority to make benefit determinations.

Avery's Petition for Writ of Certiorari contends that the Sixth Circuit improperly reviewed Sedgwick's benefit determination under the arbitrary and capricious standard of review. She argues that the Sixth Circuit should have instead found that Sedgwick failed to strictly comply with ERISA regulations and, because it allegedly failed to do so, the Sixth Circuit should have applied a *de novo* standard of review to Sedgwick's substantive determinations that Avery was ineligible for LTD Plan benefits. To that end, Avery argues that the Sixth Circuit improperly applied a "substantial compliance" test in evaluating

whether Sedgwick complied with ERISA regulations, specifically, 29 C.F.R. §2560.503-1, in processing Avery's LTD Plan benefits. The LTD Plan and Sedgwick deny both that Sedgwick's determinations failed to strictly comply with ERISA regulations and that this case is appropriate for Supreme Court review.

I. Avery was initially approved for LTD Plan benefits in 2012.

Avery was employed by Chrysler Group LLC ("Chrysler") as a Finance Specialist. AR[1] 0179-0180. Avery was first approved for LTD Plan benefits effective August 10, 2012 on the basis of "totally disabling conditions(s) of Right Lower Extremity Neuropathy & Reflex Sympathetic Dystrophy Lower Extremity." AR 01167. Sedgwick ultimately approved Avery for LTD Plan benefits through August 31, 2014. AR 01055. During the interim, Sedgwick requested updated medical information to verify her eligibility for LTD Plan Benefits.

Meanwhile, in April 2014, Chrysler Group[2]'s corporate security surveilled Avery on five occasions and reported that she was seen driving on three separate occasions, which was contrary to her treating physician's restrictions, and that they suspected she was running a business out of her home. AR 00935-00936. After receiving the information from Chrysler's corporate security, by letter dated July 8,

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[1] "AR" citations are to the Administrative Record. The Administrative Record was filed under seal in the district court as Record Entries 20 through 25.

[2] The LTD Plan's sponsor name changed to FCA US LLC in 2014.

2014, Sedgwick requested that Avery attend an independent medical examination ("IME") with Dr. Joel Shavell, D.O. AR 01044; AR 00975-00979. Dr. Shavell examined Avery on July 15, 2014 and concluded that Avery was not disabled. AR 00979.

Upon receiving Dr. Shavell's report, by letter dated July 21, 2014, Sedgwick advised Avery that the results of the IME found her able to return to work. AR 00974. The letter further advised Avery that "we are requesting that you report to your plant medical department for a determination of your ability to return to work. . . . Your benefits may be suspended effective July 21, 2014 pending the outcome of the ability to work determination." AR 00974. Avery was also advised of this same information by telephone. AR 00943.

Avery reported to the medical department at her work location on July 22, 2014, where the plant doctor found her able to return to work. AR 00945-00946. That same day, Avery called Sedgwick inquiring about how to appeal the IME findings described in Sedgwick's July 21, 2014 letter. AR 00944-00945. At that point, however, Sedgwick had not issued a determination on Avery's continued eligibility for LTD Plan benefits (rather, Sedgwick had only advised her, as noted above, that she was to report to work for a determination of her ability to work). Avery nevertheless submitted an "appeal" of the IME findings described in Sedgwick's July 21, 2014 letter, which was not a benefit determination because Sedgwick had not yet rendered one. AR 00964-00972. On August 8, 2014, a Sedgwick representative called Avery to ask if she planned on

sending additional information. AR 00949. Avery said she did not. AR 00949.

II. Sedgwick terminated Avery's continued receipt of LTD Plan benefits after she is found able to work.

Sedgwick issued its determination on Avery's eligibility for continued LTD Plan benefits by letter dated August 20, 2014. AR 00954-00955. Sedgwick's letter included the LTD Plan's eligibility criteria, which include that the participant be "totally disabled because of disease or injury so as during the first 24 months of your disability to be unable to perform the duties of your occupation, and after the first 24 months of disability be unable to engage in regular employment or occupation with the Company." AR 00954. Sedgwick's letter also explained Avery's appeal rights and other rights under ERISA. AR 00954-00955.

III. Sedgwick properly denied Avery's appeal after an Independent Record Review by a neurologist.

As part of reviewing Avery's appeal of the IME findings, Sedgwick had an Independent Record Review ("IRR") performed by Dr. David Hoenig, M.D., Neurology and Pain Medicine on September 4, 2014. AR 00660-00664. Dr. Hoenig reviewed numerous medical records and tests and twice attempted, unsuccessfully, to speak with Avery's treating physician, Dr. Nounou, by telephone. AR 00660-00661. Dr. Hoenig concluded that "based on the documentation provided, and from a neurological

perspective only, the employee is not disabled from performing any work as of 7/22/2014." AR 00663.

By letter dated September 12, 2014, Sedgwick denied Avery's appeal. AR 00658-00659. Sedgwick's appeal denial letter recounted the medical documentation reviewed and Dr. Hoenig's assessment that Avery was "not disabled from performing any work as of July 22, 2014." AR 00659. The letter further recounted that "the last neurological examination in the medical record is from February 6, 2013. After your spinal cord stimulator, you have had a normal neurological examination." AR 00659. Finally, the letter explained that the "decision is the Claim Administrator's final decision" and advised Avery of her rights under ERISA. AR 00659.

IV. Sedgwick again reviewed Avery's file after Avery's attorney asked Sedgwick to reconsider its determination.

After Sedgwick's denial of Avery's appeal, Avery's attorney, Linda Drillock (a different attorney than the attorney who represented her in the district court and Sixth Circuit), wrote to Sedgwick nearly ten months later (by letter dated May 18, 2015) asking it to reinstate Avery's LTD Plan benefits. AR 00654. Avery's attorney's letter included a letter dated April 15, 2015 from one of Avery's treating physicians, Dr. Brengel. AR 00655. Dr. Brengel's letter opined that Avery remained disabled due to difficulties with her right leg. AR 00655.

Despite having no obligation under the terms of the LTD Plan to do so, Sedgwick advised Avery that her file was "under re-review." AR 00651. Sedgwick

had Dr. Mark Friedman, Internal Medicine and Neurology, conduct an IRR, which included a review of Avery's medical records, tests, x-rays and other documents. AR 00599-00602; AR 00595-00596. Dr. Friedman concluded that "the employee is not disabled from performing any work as of 7/22/2014. Based on the clinical evidence provided for review, the employee does not require any restrictions on their work duties at any point during the dates of claimed disability in order to return to work." AR 00601.

After receiving Dr. Friedman's report, Sedgwick informed Avery by letter dated September 30, 2015 that she no longer satisfied the terms of the LTD Plan and that it was upholding the denial of her claim for LTD Plan benefits. AR 00592-00593. Sedgwick's September 30, 2015 letter offered Avery another opportunity to appeal, but she did not do so. AR 00592-00593.

V. Avery filed her Complaint challenging Sedgwick's determination as arbitrary and capricious.

Avery filed her federal court Complaint on July 2, 2020. Complaint, RE No. 1. The Complaint contains a single Count that alleges a claim for denial of benefits under ERISA Section 502(a)(1)(B), 29 U.S.C. § 1132(a)(1)(B). The Complaint conspicuously does not acknowledge that Avery was afforded a "re-review" in 2015 or that Sedgwick's final decision was contained in its September 30, 2015 letter. Rather, the Complaint is premised on Sedgwick's September 12, 2014 denial of Avery's appeal. Complaint, RE 1, Page ID 10.

VI. The district court granted the LTD Plan's and Sedgwick's Motion for Judgment on the Administrative Record.

In the district court, Avery filed a "Statement of Procedural Challenge," arguing that Sedgwick's July 21, 2014 letter which instructed Avery to report to plant medical department for a determination of her ability to return to work, failed to comply with ERISA regulations. In its order dated September 14, 2021, the district court declined to rule on whether the absence of certain language in the June 21 letter caused Sedgwick's benefit determinations to run afoul of ERISA regulations.

Instead, the district court held that regardless of the content of the June 21, 2014 letter, Sedgwick substantially complied with ERISA regulations because Sedgwick sent Avery a subsequent letter on August 20, 2014, which fully complied with ERISA regulations. Petition App. 83. The district court held that, while Avery's decision to file an appeal before she had received the more detailed August 20, 2014 denial letter may have caused some confusion, "it is undisputed that Sedgwick not only acted on the contents of the initial appeal but also allowed the Defendant another 'rereview' of its determination in 2015 once she had retained counsel." Petition App. 83. The district court held that Avery "could not complain that she was unaware that she had the opportunity to file a second appeal when she actually filed one." Petition App. 84. The district court accordingly denied Avery's "Statement of Procedural Challenge."

Subsequently, on September 21, 2022, the district court ruled on the parties' cross-motions for

judgment. The district court granted the LTD Plan's and Sedgwick's Motion for Judgment on the Administrative Record and denied Avery's Motion for Judgment. In so ruling, the district court declined to revisit its prior ruling on the sufficiency of Sedgwick's claim denial letters. Petition App. 56.

The district court's decision concluded that Sedgwick acted within its discretion in denying Avery's claim and subsequent appeals for benefits. The district court found that the fact that Sedgwick was willing to re-review Avery's claim, without any obligation to do so, further demonstrated that its decision was not arbitrary or capricious. Petition App. 68.

VII. The Sixth Circuit affirmed the grant of judgment to Sedgwick and the LTD Plan.

On appeal, the Sixth Circuit rejected Avery's argument that Sedgwick failed to comply with ERISA claim procedure regulations. Addressing her argument that the July 21, 2014 letter failed to include content required by regulations, the Sixth Circuit held that it "need not resolve whether Sedgwick's July 21, 2014 letter was in fact a formal benefit determination, because Sedgwick's collective communications with Avery substantially complied with ERISA's procedural requirements." Petition App. 14. The Sixth Circuit held that Sedgwick's August 20, 2014 letter corrected any deficiencies regarding required notices and made Avery aware of the reasons for the benefit denial and of her appeal rights. Petition App. 15. The Sixth Circuit concluded that Sedgwick treated Avery's July 28, 2014 letter as a proper and timely appeal and reviewed it like any

other appeal. Petition App. 15. In addition, Sedgwick provided Avery a second appeal by voluntarily re-reviewing her claim in 2015, and additionally offered Avery the opportunity to appeal its final determination in 2015, which Avery declined to do. Petition App. 15-16. In summary, the Sixth Circuit held that it "simply cannot see how Sedgwick's procedures fell short of providing Avery's claim a meaningful review." Petition App. 16.

REASONS FOR DENYING THE WRIT

The Court should deny the Petition for a Writ of Certiorari because this case does not present any of the circumstances upon which the Court grants certiorari. Under ordinary circumstances, the Supreme Court does not grant a petition for certiorari unless (1) there is conflict among the circuits, (2) the case is one of general importance, or (3) the lower courts' decisions are wrong in light of Supreme Court precedent. *See Hubbard v. U.S.*, 514 U.S. 695, 699 (1995) (granting the petition for certiorari when there was a split in the federal circuits); *Arkansas Educ. Television Com'n v. Forbes*, 523 U.S. 666, 672 (1998) (granting the petition for certiorari when considering the "manifest importance of the case"); *Spears v. U.S.*, 129 S. Ct. 840, 842 (2009) (granting the petition for certiorari where the Eighth Circuit's decision on remand conflicted with a recent Supreme Court decision on issue).

This case is not appropriate for Supreme Court review. Avery contends that the Sixth Circuit improperly applied a "substantial compliance" test in evaluating whether Sedgwick's claim procedures complied with ERISA regulations, and that it should

have not afforded Sedgwick's substantive benefit determinations any deferential review because Sedgwick allegedly failed to strictly comply with ERISA regulations. Avery argues that this Court should review the Sixth Circuit's decision because there is an alleged circuit split on whether an ERISA plan administrator needs to only substantially comply or whether it should strictly comply with ERISA regulations in order to receive the benefit of a deferential review of its substantive benefit determinations under the arbitrary and capricious standard.

Avery's arguments do not warrant this Court's review because the ERISA regulations upon which Avery relies have been amended since those which governed the Sixth Circuit's review of Sedgwick's determinations. Current regulations regarding ERISA disability claims expressly address the consequences of an ERISA plan's failure to comply with ERISA regulations, including adopting the standard Avery proffers, thereby mooting Avery's arguments that there is a need for this Court's review of this case. In addition, Avery's arguments ignore the actual analyses of the cases alleged to create a circuit split, the Sixth Circuit's actual holding in this case, and the fact that there has been no finding that Sedgwick failed to strictly comply with ERISA regulations. Thus, this case does not present any of the circumstances which would warrant this Court's grant of certiorari.

I. Amendments to ERISA regulations moot Avery's argument as to what standard should apply to an ERISA plan administrator's benefit determination in the absence of strict compliance with ERISA regulations.

Avery argues that the Sixth Circuit should have followed the Second Circuit's analysis in *Halo v. Yale Health Plan*, 819 F.3d 42 (2d Cir. 2016) in determining the standard of review to apply to the court's review of Sedgwick's 2014 determination that Avery was no longer disabled under the terms of the LTD Plan. Avery's substantive claim is an ERISA denial of benefits claim under 29 U.S.C. § 1132(a)(1)(B). Such claims are reviewed under a *de novo* standard unless, like here, the benefit plan gives the administrator or fiduciary discretionary authority to determine eligibility for benefits or to construe the terms of the plan. *Firestone Tire and Rubber Co. v. Bruch*, 489 U.S. 101, 115 (1989). When an ERISA plan provides administrators discretionary authority, the administrator's decision to deny benefits must be reviewed under the arbitrary and capricious standard of review.

In *Halo v. Yale Health Plan*, 819 F.3d 42 (2d Cir. 2016), the Second Circuit analyzed the procedural remedy for a plan administrator's technical violation of the November 21, 2000 version of the ERISA claims procedure regulation, 29 C.F.R. § 2560.503-1(l); 65 Fed. Reg. 70246 (Nov. 21, 2000). The 2000 version of the regulation provided that, in the case of the failure to establish or follow claims procedures consistent with the regulation, the participant was deemed to

have exhausted administrative remedies and was entitled to pursue an ERISA civil claim on the basis that the plan failed to provide a reasonable claims procedure that would yield a decision on the merits. 29 C.F.R. § 2560.503-1(l); 65 Fed. Reg. 70246, 70271 (Nov. 21, 2000). The regulation did not provide any remedy in the form of alteration of the court's standard of review of the plan administrator's benefit determination.

Expanding on the limited remedy expressly provided by the regulation, the Second Circuit held that "a plan's failure to comply with the Department of Labor's claims-procedure regulation, 29 C.F.R. § 2560.503-1, will result in that claim being reviewed *de novo* in federal court, unless the plan has otherwise established procedures in full conformity with the regulation and can show that its failure to comply with the claims-procedure regulation in the processing of a particular claim was inadvertent and harmless. *Halo,* 819 F.3d at 58.

29 C.F.R. § 2560.503-1 was amended effective January 18, 2017, to provide additional judicial scrutiny for the failure to establish and follow reasonable claims procedures for plans providing disability benefits. 29 C.F.R. § 2560.503-1(l); 81 Fed. Reg. 92,316 (Jan. 18, 2017). As with the 2000 version of the regulation, the 2017 amendment provided that a participant is entitled to pursue an ERISA civil claim on the basis that the plan failed to provide a reasonable claims procedure that would yield a decision on the merits when the plan fails to establish or follow reasonable claims procedures. 29 C.F.R. § 2560.503-1(l)(1); 81 Fed. Reg. 92,316, 92,342. In the

case of plans providing disability benefits, however, the 2017 amendment provided that a participant's ERISA civil claim is "deemed denied on review without the exercise of discretion by an appropriate fiduciary," if the plan administrator fails to "strictly adhere" to the regulation's requirements. 29 C.F.R. § 2560.503-1(2)(i); 81 Fed. Reg. 92,316, 92,342. The 2017 amendment eliminates the newer heightened scrutiny of disability claim reviews in the case of *de minimis* violations that do not cause prejudice to the claimant, so long as the plan administrator demonstrates the violation was for good cause and that the violation occurred in the course of the good faith exchange of information between the plan and the participant. 29 C.F.R. § 2560.503-1(2)(ii); 81 Fed. Reg. 92,316, 92,342. The 2017 amendment is effective as to claims for disability benefits filed under a plan on or after April 1, 2018, long after Avery's claim here. 29 C.F.R. § 2560.503-1(p)(3); 81 Fed. Reg. 92,316, 92,342.

Thus, for disability benefits claims filed with a plan on or after April 1, 2018, a plan's failure to strictly comply with the claim procedure regulation will deprive it of the deferential, arbitrary and capricious standard of review – because the regulations provide that the determination is deemed denied without the exercise of discretion – and the reviewing court will apply a *de novo* standard of review of the benefit determination, unless the plan administrator makes the required showing described in the 2017 amendment. The amended regulation, accordingly, adopts a judicial standard of review that very closely tracks the Second Circuit's analysis in *Halo*. Avery's arguments that the Sixth Circuit should

have applied the Second Circuit's *Halo* standard are therefore moot, because the ERISA regulation would now require the Sixth Circuit to apply a nearly identical standard to cases filed with an ERISA plan after April 1, 2018. This Court's review of this single case that would have no lasting judicial effect is therefore unwarranted.

II. This case does not present a direct circuit split between the Sixth and Second Circuits.

Avery alleges that the Sixth Circuit decision in this case demonstrates a circuit split between the Sixth Circuit (*Kent v. United of Omaha Life Ins. Co,* 96 F.3d 803 (6th Cir. 1996)) and Second Circuit (*Halo v. Yale Health Plan*, 819 F.3d 42 (2d Cir. 2016)). Avery's argument, however, ignores the legal distinctions between the *Kent* and *Halo* decisions, the Sixth Circuit's actual ruling in this case relative to *Halo*, and the factual distinctions between this case and both of those cases.

The *Halo* and *Kent* decisions analyzed the applicability of different remedies for violations of ERISA regulations by plan administrators. *Halo* reviewed whether a plan administrator's technical violation of ERISA regulations should result in the loss of "the benefit of the great deference afforded by the arbitrary and capricious standard" of review of the plan administrator's benefit denial. *Halo,* 819 F.3d at 56.

Kent, however, reviewed whether a plan administrator's technical failure to comply with ERISA regulations should require a substantive

remedy, such as reversal of the plan administrator's benefit determination. *Kent*, 96 F.3d at 807. *Kent* did not opine on whether a different standard of review of the administrator's denial of benefits decision should apply when there is a violation of ERISA regulations, technical or otherwise.[3]

In this case, the Sixth Circuit simply declined to decide whether a plan administrator should lose the deference afforded by the arbitrary and capricious standard of review when there is a technical violation of ERISA regulations. Petition App. 9, no.2. Addressing Avery's suggestion that it apply the Second Circuit's *Halo* standard, the Sixth Circuit merely stated "this circuit has yet to adopt such a rule, and we decline to do so here." *Id.* The Sixth Circuit held that "it need not resolve whether Sedgwick's July 21, 2014 letter was in fact a formal benefit determination," because Sedgwick's subsequent August 20, 2014 letter contained all required notices, made Avery aware of the reasons for the benefit denial and of her appeal rights, and Avery actually pursued an additional appeal. Petition App. 145. Thus, there is not a direct conflict between *Kent* and *Halo*, and the Sixth Circuit's decision in this case did nothing to

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[3] Avery's reliance on *Fessenden v. Reliance Standard Life Ins. Co.*, 927 F.3d 998, 1003 (7th Cir. 2019) is misplaced. *Fessenden* holds that a plan administrator's decision is subject to *de novo* review if it fails to strictly comply with ERISA regulatory deadlines, but a plan administrator does not lose its deferential standard of review if it substantially complies with other regulatory requirements. This case does not involve a plan administrator's alleged failure to comply with ERISA regulatory deadlines.

adopt any standard regarding the issue the Petition for Writ of Certiorari presents.

In addition, this case is factually dissimilar from *Kent* and *Halo.* In *Kent,* the Sixth Circuit based its ruling on "procedures that were technically deficient." *Kent,* 96 F.3d at 807. Similarly, in *Halo*, the Second Circuit based its ruling on "claim denials [that] were not ideal (and in some instances failed to comply with ERISA regulations)." *Halo,* 819 F.3d at 47. In this case, however, there has been no finding that Sedgwick failed to strictly comply with ERISA regulations. These legal and factual distinctions likewise make the Court's review of this case unwarranted.

III. Sedgwick's determinations strictly complied with ERISA.

Avery's arguments ignore the facts in the record of this case. There has been no finding that Sedgwick's processing of Avery's claim failed to comply with ERISA regulations.

It is undisputed that Dr. Shavell examined Avery on July 15, 2014 and concluded that Avery was not disabled. AR 00979. It is undisputed that Sedgwick issued its determination concerning Avery's eligibility for continued LTD Plan benefits by letter dated August 20, 2014. AR 00954-00955. Sedgwick's letter included the LTD Plan's eligibility criteria, which include that the participant be "totally disabled because of disease or injury so as during the first 24 months of your disability to be unable to perform the duties of your occupation, and after the first 24

months of disability be unable to engage in regular employment or occupation with the Company." *Id.*

It is undisputed that by letter dated September 12, 2014, Sedgwick denied Avery's appeal. AR 00658-00659. Sedgwick's appeal denial letter recounted the medical documentation reviewed and basis for appeal denial. AR 00659. Finally, the letter explained that the "decision is the Claim Administrator's final decision" and advised Avery of her rights under ERISA. AR 00659.

It is undisputed that nearly ten months after Sedgwick's denial of Avery's appeal, Avery's attorney wrote to Sedgwick (by letter dated May 18, 2015) asking it to reinstate Avery's LTD Plan benefits. AR 00654. Despite having no obligation under the terms of the LTD Plan to do so, Sedgwick advised Avery that her file was "under re-review" in 2015. AR 00651. After receiving Dr. Friedman's report, Sedgwick informed Avery by letter dated September 30, 2015 that she no longer satisfied the terms of the LTD Plan and that it was upholding the denial of her claim for LTD Plan benefits. AR 00592-00593. Sedgwick's September 30, 2015 letter offered Avery another opportunity to appeal, but she did not do so. AR 00592-00593.

At each review, Sedgwick had Avery's file reviewed by medical reviewers with qualifications that complied with ERISA regulations. Avery has not and cannot point to any aspect of the foregoing Sedgwick communications that violated ERISA regulations. To the extent that there is any confusion in this case, it is that Avery "appealed" a July 21, 2014 letter that instructed her to report to the plant medical

department, a letter that issued before Sedgwick issued its formal claim denial letter on August 20, 2014. As the Sixth Circuit recognized, however, Sedgwick treated Avery's appeal letter as proper and timely and reviewed it as it would any other appeal. Petition App. 15. Moreover, Sedgwick voluntarily afforded Avery a re-review, an opportunity to submit additional information and an additional appeal which Avery declined to pursue. Avery simply cannot show how Sedgwick violated ERISA regulations in processing her claim or appeals. This Court's review of this case is therefore unwarranted.

CONCLUSION

For all of the foregoing reasons, this Court should deny Avery's Petition for Writ of Certiorari.

Respectfully submitted,

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