

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

OCT 22 2007

BERNADETTE SERENO,

Plaintiff - Appellant,

v.

VPA, INC., as Contract Administrator of
the Long-Term Disability Plan of
Albertson's Inc.; ALBERTSON'S
EMPLOYEES HEALTH AND
WELFARE PLAN; ALBERTSON'S
EMPLOYEES' HEALTH AND
WELFARE TRUST BOARD OF
TRUSTEES; ALBERTSON'S, INC.;
ALBERTSON'S INC. EMPLOYEES'
DISABILITY BENEFITS PLAN,

Defendants - Appellees.

No. 05-16893

CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS

D.C. No. CV-03-02095-JWS

MEMORANDUM*

Appeal from the United States District Court
for the District of Arizona
John W. Sedwick, District Judge, Presiding

Submitted October 18, 2007**
San Francisco, California

* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

** The panel unanimously finds this case suitable for decision without oral argument. Fed. R. App. P. 34(a)(2).

Before: TROTT and GRABER, Circuit Judges, and SHADUR,^{***} Senior District Judge.

Plaintiff Bernadette Sereno appeals the district court's grant of summary judgment to Defendants VPA, Inc., and Albertson's, and the district court's denial of Plaintiff's discovery request. Defendants denied long-term disability benefits to Plaintiff under the relevant disability-benefits plan, and Plaintiff brought suit under the Employee Retirement Income Security Act of 1974, 29 U.S.C. § 1132(a)(1)(B). In applying abuse of discretion review and ruling that discovery beyond the administrative record was unavailable, the district court faithfully applied the relevant law at the time. That law has since been overruled by Abatie v. Alta Health & Life Insurance Co., 458 F.3d 955 (9th Cir. 2006) (en banc). We therefore vacate the judgment and remand to the district court for reconsideration in the light of Abatie and, if appropriate, for the receipt of additional evidence.

VACATED and REMANDED. The parties shall bear their own costs on appeal.

^{***} The Honorable Milton I. Shadur, Senior United States District Judge for the Northern District of Illinois, sitting by designation.