

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

PAUL F. MCELROY	:	CIVIL ACTION
	:	
	:	
v.	:	
	:	
	:	
SMITHKLINE BEECHAM HEALTH &	:	
WELFARE BENEFITS TRUST PLAN FOR US	:	
EMPLOYEES, SMITHKLINE BEECHAM	:	
CORPORATION and UNUMPROVIDENT	:	
CORPORATION	:	NO. 01-5734

MEMORANDUM AND ORDER

HUTTON, J.

July 31, 2002

Presently before the Court are Defendants SmithKline Beecham Corporation and SmithKline Beecham Health & Welfare Benefits Trust Plan for US Employees' Motion for Summary Judgment (Docket No. 3), Defendant UnumProvident Corporation's Motion for Summary Judgment (Docket No. 12), Plaintiff Paul F. McElroy's Cross-Motion for Summary Judgment and Response to SmithKline Defendants' Motion for Summary Judgment (Docket No. 13), Defendant UnumProvident Corporation's Memorandum of Law in Opposition to Plaintiff's Cross-Motion for Summary Judgment and in Further Support of its Motion for Summary Judgment (Docket No. 16), SmithKline Defendants' Memorandum of Law in Opposition to Plaintiff's Cross-Motion for Summary Judgment and in Further

Support of its Motion for Summary Judgment (Docket No. 17), SmithKline Defendants' Exhibits in Further Support of their Motion for Summary Judgment (Docket No. 18), Plaintiff's Reply to Defendants' Motion in Opposition to Plaintiff's Cross-Motion for Summary Judgment (Docket No. 19, 20), SmithKline Defendants' Supplemental Memorandum in Support of its Motion for Summary Judgment (Docket Nos. 21, 23) and Defendant UnumProvident's Supplemental Memorandum in Support of its Motion for Summary Judgment (Docket No. 22). For the reasons discussed below, Defendants Motions for Summary Judgment are **GRANTED** and Plaintiff's Cross-Motion for Summary Judgment is **DENIED**.

I. BACKGROUND

On November, 13, 2001, Plaintiff Paul F. McElroy filed a four-count Complaint pursuant to the Employee Retirement Income Security Act ("ERISA"), 29 U.S.C. § 1132(a)(1)(B), § 1132(a)(3) against Defendants SmithKline Beecham Corporation, SmithKline Beecham Health & Welfare Benefits Trust Plan for US Employees ("SmithKline") and UnumProvident Corporation¹ (collectively,

¹ The Court questions the appropriateness of UnumProvident as a defendant in the instant action. Under ERISA, suits to recover benefits may be filed only against the Plan as an entity. See 29 U.S.C. § 1132(a)(1)(B); 1132(d). Suits for breach of fiduciary duty may be filed only against the fiduciary. See id. §§ 1109(a); 1105(a). A fiduciary is someone who exercises any discretionary authority, discretionary control or discretionary responsibility over the management, assets or administration of such plan. See 29 U.S.C. § 1002(21)(A). Under the uncontested facts of record, SmithKline is the fiduciary since it alone funded and administered the Plan. Therefore, SmithKline is the proper defendant.

"Defendants"). Specifically, Plaintiff contests the calculation of the amount of long-term disability benefits owed to him under SmithKline Beecham's Long-Term Disability Plan ("the Plan"). The factual allegations on which the Plaintiff bases his claim are as follows.

From November of 1965 until May of 1996, Plaintiff was employed with Conrail as a computer system analysis. See Pl.'s Compl. at ¶ 21. After more than thirty years, Plaintiff left Conrail and began to work for SmithKline Beecham in their Clinical Laboratories on September 9, 1996. As part of the benefits package provided by SmtihKline, Plaintiff was entitled to basic long-term disability benefits. In addition to the basic benefits, Plaintiff purchased increased long-term disability benefits. The SmithKline long-term disability policy provided that certain other disability payments received by the beneficiary may offset the SmithKline disability payment. See Defs.' Mot. Summ. J., Ex. B (SmithKline's Long-Term Disability Plan). Specifically, the offset provision permitted SmithKline to "reduced dollar for dollar" payments a beneficiary received from:

- Primary Social Security benefits (your benefit only);
- Worker's Compensation or Occupational Disease Law (including any lump sum payments);
- State disability benefits or similar government benefits; or

- Benefits received from the SmithKline Beecham Pension Plan.

Defs.' Mot. Summ. J., Ex. B.

According to Plaintiff, he became disabled on February 27, 1997 due to a heart condition. See Pl.'s Cross-Mot. Summ. J. at 4; Defs.' Mot. Summ. J., Ex. C. In July of 1997, Plaintiff filed his claim for long-term disability benefits but SmithKline, citing a preexisting condition, denied Plaintiff's claim. See Defs.' Mot. Summ. J., Ex. C, D. Plaintiff then appealed SmithKline's denial of his long-term disability benefits and brought suit against SmithKline on July 30, 1999. See McElroy v. SmithKline Beecham Corp., Civ. A. No. 99-3842 (E.D. Pa. 1999). The parties settled the case in July of 2000 and Plaintiff was reinstated to the SmithKline Plan, becoming eligible for benefits effective July 13, 2000. Defs.' Mot. Summ. J., Ex. F.

Prior to filing his first lawsuit against SmithKline, Plaintiff began receiving \$2,023.15 in benefits on January 13, 1998 from the Railroad Retirement Board as a result of his prior employment with Conrail. See Pl.'s Compl. at ¶ 34; Defs.' Mot. Summ. J., Ex. E. On September 26, 2000, SmithKline informed Plaintiff that it would apply an offset to reduce Plaintiff's disability payments by the amount of disability annuity payments Plaintiff was receiving under the Railroad Retirement Act. See Defs.' Mot. Summ. J., Ex. G. Plaintiff then appealed the Plan

Administrator's determination on October 5 and October 10, 2000. See id., Ex. H. On November 10, 2000, the Plan Administrator denied Plaintiff's appeal finding that the disability annuity Plaintiff receives pursuant to the Railroad Retirement Act was a "similar government benefit" under the Plan and therefore had to be deducted from Plaintiff's SmithKline benefit payment. See id., Ex. J. Plaintiff then commenced the instant lawsuit in November of 2001 contesting the Plan Administrator's application of the offset provision to the Railroad Retirement Act benefits. SmithKline then filed the instant Motion for Summary Judgment on March 12, 2002, to which Plaintiff responded with his own Cross-Motion for Summary Judgment.

II. LEGAL STANDARD

A. Summary Judgment

Summary judgment is appropriate "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Fed. R. Civ. P. 56(c). The party moving for summary judgment has the initial burden of showing the basis for its motion. Celotex Corp. v. Catrett, 477 U.S. 317, 323, 106 S.Ct. 2548, 91 L.Ed.2d 265 (1986). Once the movant adequately supports its motion pursuant

to Rule 56(c), the burden shifts to the nonmoving party to go beyond the mere pleadings and present evidence through affidavits, depositions, or admissions on file to show that there is a genuine issue for trial. See id. at 324. A genuine issue is one in which the evidence is such that a reasonable jury could return a verdict for the nonmoving party. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248, 106 S.Ct. 2505, 91 L.Ed.2d 202 (1986).

When deciding a motion for summary judgment, a court must draw all reasonable inferences in the light most favorable to the nonmovant. Big Apple BMW, Inc. v. BMW of N. Am., Inc., 974 F.2d 1358, 1363 (3d Cir. 1992), cert. denied, 507 U.S. 912, 113 S.Ct. 1262, 122 L.Ed.2d 659 (1993). Moreover, a court may not consider the credibility or weight of the evidence in deciding a motion for summary judgment, even if the quantity of the moving party's evidence far outweighs that of its opponent. Id. Nonetheless, a party opposing summary judgment must do more than just rest upon mere allegations, general denials or vague statements. Saldana v. Kmart Corp., 260 F.3d 228, 232 (3d Cir. 2001).

III. DISCUSSION

In its Motion for Summary Judgment, SmithKline argues that the decision of the Plan Administrator to offset Plaintiff's long-term disability benefits pursuant to section 502(a)(1)(B) of

ERISA was not arbitrary or capricious. See Defs.' Mot. Summ. J. at 7. According to SmithKline, "the Plan Administrator's decision must be accorded great deference and this Court cannot upset his judgment." Id. Plaintiff counters that a heightened standard of review applies since SmithKline both funds and administers the Plan. See Pl.'s Resp. to Defs.' Mot. Summ. J. at 14. Furthermore, Plaintiff alleges that the Plan Administrator's application of the offset provision is "unreasonable and an abuse of discretion" as well as "contrary to the law of this Circuit." Id. at 8, 15. Both parties agree that there is no material fact at issue in this case. See id. at 8. Accordingly, the Court hereafter considers each claim.

A. ERISA Standard of Review

First, the Court must determine what standard should be applied in reviewing SmithKline's decision to reduce Plaintiff's long-term disability benefits. In determining the appropriate standard of review under ERISA, the United States Supreme Court in Firestone Tire & Rubber Co. v. Bruch, 489 U.S. 101, 109, 109 S.Ct. 948, 103 L.Ed.2d 80 (1989) rejected the universal application of the arbitrary and capricious standard when reviewing an ERISA administrator's decision regarding benefits eligibility. Rather, applying principles of trust law, the Firestone Court held that "a denial of benefits challenged under

§ 1132(a)(1)(B) is to be reviewed under a de novo standard unless the benefit plan gives the administrator or fiduciary discretionary authority to determine eligibility for benefits or to construe the terms of the plan." Id. (emphasis added).

The Firestone holding was subsequently interpreted by the Third Circuit in Luby v. Teamsters Health, Welfare & Pension Trust Funds, 944 F.2d 1176 (3d Cir. 1991). Under Luby, where an administrator is granted discretionary authority to grant or deny benefits, the administrator's factual determinations as well as interpretations of the plan are reviewed under the arbitrary and capricious standard. See id. at 1183-84. The Third Circuit has also held that, where a conflict of interest exists, a heightened standard of review should apply. See Pinto v. Reliance Standard Life Ins. Co., 214 F.3d 377, 378 (3d Cir. 1998). The Pinto Court addressed the conflict of interest that arises when an insurer both decides claims and pays benefits from its own assets because "the fund from which the monies are paid is the same fund from which the insurance company reaps its profits . . ." Id. Therefore, in cases where "the same entity both funds and administers an ERISA plan," a "heightened standard of scrutiny" applies. Orvosh v. Program of Group Ins. for Salaried Employees of Volkswagen of Am., 222 F.3d 123, 129 n.7 (3d Cir. 2000).

1. De Novo Review

First, Plaintiff asserts that de novo review is appropriate here because, in his view, the Plan Administrator neglected his duty to interpret the Plan altogether. See Pl.'s Cross-Mot. Summ. J. at 13. "Under ERISA, the standard of review over a trustee's decision to deny benefits or the interpretation of the plan is de novo as a general rule; only when the plan gives the trustee discretion to deny benefits or construe the terms of the plan should a court employ the arbitrary and capricious standard." In re Unisys Savings Plan Litig., 173 F.3d 145, 154 (3d Cir. 1999) (emphasis in original). In the instant case, SmithKline Beecham's long-term disability Plan relegates to SmithKline "the absolute right to interpret the provisions of the . . . Plan and all welfare benefit plans, to make determinations of fact and eligibility for benefits, and to decide any dispute that may arise regarding the rights of employees, and their dependants or beneficiaries, under these plans." Defs.' Mot. Summ. J. at 9, Ex. K. Thus, the plain language of the Plan clearly designates discretionary authority to SmithKline. Accordingly, SmithKline argues that an arbitrary and capricious standard should apply. See Defs.' Mot. Summ. J. at 9.

Plaintiff, however, contends that de novo review is the appropriate standard because, according to Plaintiff, the Plan Administrator "made no independent effort, undertook no

deliberation, conducted no independent analysis to construe the Plan's terms." See Pl.'s Cross-Mot. Summ. J. at 13. In cases where the entity vested with discretion commits nonfeasance by failing to deliberate, discuss or interpret the plan, deferential review is inappropriate. Moench v. Robertson, 62 F.3d 553, 567 (3d Cir. 1995), cert. denied, 516 U.S. 1115, 116 S.Ct. 917, 133 L.Ed.2d 847 (1996). In Moench, the Third Circuit found that de novo review was appropriate "because the record [was] devoid of any evidence that the Committee construed the plan at all." Id. at 567. The Court explained that "t]he deferential standard of review of a plan interpretation 'is appropriate only when the trust instrument allows the trustee to interpret the instrument and when the trustee has in fact interpreted the instrument.'" Id. (quoting Trustees of Cent. States, Southeast & Southwest Areas Health & Welfare Fund v. State Farm Mut. Auto. Ins., 17 F.3d 1081, 1083 (7th Cir. 1994)) (citations omitted).

The Court declines to apply a de novo standard of review in the instant case. Contrary to Plaintiff's contention that the Plan Administrator "completely ignored the ambiguities in the Plan language," the Court finds that the Plan Administrator personally undertook the inquiry as to whether to offset Plaintiff's benefits based on the "similar government benefit" language of the Plan. The evidence of record shows that the Plan

Administer looked to outside sources to aid him in his interpretation and analyzed and distinguished case law presented by Plaintiff. See Defs.' Mot. Summ. J., Ex. J. Since there is no support for Plaintiff's contention that the Plan Administrator acted "without knowledge of or inquiry into the relevant circumstances and merely as a result of his arbitrary decision or whim," Plaintiff's request to apply de novo review is denied.

2. Heightened Arbitrary and Capricious Standard

Next, Plaintiff asserts that, even if this Court declines to apply de novo review to the Plan Administrator's decision, a heightened arbitrary and capricious standard should apply because SmithKline both funds and administers the Plan. See Pl.'s Resp. to Defs.' Mot. Summ. J. at 14. SmithKline, however, retorts that there is no conflict of interest warranting departure from Firestone's arbitrary and capricious standard because, "a finding of a conflict only arises where, unlike here, an insurance company both funds and administers an employee benefits plan, and does not arise when an employer takes on those dual roles." Defs.' Mem. of Law in Opp'n to Pl.'s Cross-Mot. Summ. J. at 17 (emphasis in original).

As noted above, the Third Circuit has held that, where a conflict of interest exists, a heightened standard of review should apply. See Pinto v. Reliance Standard Life Ins. Co., 214

F.3d 377, 378 (3d Cir. 1998). The Pinto Court addressed the conflict of interest that arises when an insurer both decides claims and pays benefits from its own assets because "the fund from which the monies are paid is the same fund from which the insurance company reaps its profits" Id. It is uncontested, as SmithKline indicates, that the Third Circuit's ruling in Pinto dealt exclusively with the situation where an insurance company both administers and funds the plan. See Pinto, 214 F.3d at 378. However, other district courts in this Circuit have recognized that the heightened arbitrary and capricious standard is not regulated solely to cases involving an insurance company, but may apply to employer funded and administered plans as well. See e.g., Frieberg v. First Union Bank of Del., No. Civ. A. 99-571-JJF, 2001 WL 826549, at *3 (D. Del. July 18, 2001); see also Rendulic v. Kaiser Aluminum & Chem. Co., 166 F.Supp.2d 326, 336 (W.D. Pa. 2001) (finding Frieberg "persuasive relative to the appropriate standard of review, and agree that Pinto's heightened standard is not limited solely to plans that are funded and administered by insurance companies").

In Frieberg, the district court applied the Pinto heightened standard of review to a case in which an employer both funded and administered the plan and the benefits paid were taken directly out of the employer's operating funds. See Frieberg, 2001 WL

826549, at *4. In support of its decision to apply Pinto to an employer administered and funded plan, the court cited recent language from the Third Circuit that indicated Pinto's heightened standard of review applies more broadly to "entities" that both fund and administer plans, rather than to insurance companies alone. See Orvosh v. Program of Group Ins. for Salaried Employees of Volkswagen of Am., 222 F.3d 123, 129 n.7 (3d Cir. 2000) (explaining that in cases where "the same entity both funds and administers an ERISA plan," a "heightened standard of scrutiny" applies) (emphasis added); see also Rendulic, 166 F.Supp.2d at 336; Frieberg, 2001 WL 826549, at *3. Moreover, Pinto recognized that "variations" of a plans "administration, interpretation, and funding . . ." "might affect a district court's assessment of the incentives of an administrator/insurer and therefore affect the nature of its review." Pinto, 214 F.3d at 383 & n.7; see also Frieberg, 2001 WL 826549, at *3.

Here, SmithKline concedes that "that it alone funds and administers the [long-term disability] Plan, the source of the sought after benefits." Defs.' Supp. Mem. in Supp. of Mot. for Summ. J. at 2. Moreover, SmithKline pays disability benefits "with corporate assets."² Defs.' Ex. in Further Supp. of Mot.

² Among its exhibits in support of its Motion for Summary Judgment, SmithKline includes a case from the Western District of Pennsylvania that concluded a heightened arbitrary and capricious standard did not apply to SmithKline because, even though SmithKline "sponsors and administers the Plan,

Summ. J., Ex. T. Therefore, given that the long-term disability Plan is both funded and administered by SmithKline, and that the benefits paid to the plan beneficiaries are derived not from a separate fund but from the general corporate assets, the concerns that prompted the Third Circuit to implement a heightened standard of review in Pinto are present here. Under the facts as presented, SmithKline has "a financial incentive to deny borderline claims" because it will "incur[] a direct expense by paying benefits." Frieberg, 2001 WL 826549, at *4. While this Court finds Frieberg's reasoning persuasive, the heightened arbitrary and capricious standard of review has relatively little impact upon the Court's review of the case at bar.

a. Sliding Scale

The sliding scale approach developed in Pinto requires the Court to determine the extent to which an alleged conflict impacted the administrator's decision based upon "procedural abnormalities" including "(1) the insurer's reversal of its original determination without the examination of additional evidence; (2) a self-serving selectivity in the use of evidence;

benefits are paid from the Smithkline Employee Benefits Trust, not from its own funds." Cefalo v. SmithKline Corp., Civ. A. No. 00-172, at 5 n.3 (W.D. Pa. Oct. 20, 2000) (emphasis added). In the instant case, SmithKline has not presented to this Court that the benefits are derived from a trust. If the benefits were paid from a separate trust account, this Court could easily conclude that the highly deferential arbitrary and capricious standard applies. See Abnathya v. Hoffmann-LaRoche, Inc., 2 F.3d 40, 45 n.5 (3d Cir. 1993).

and (3) a bias in decision-making to the benefit of the insurer." Russell v. Paul Revere Life Ins. Co., 148 F.Supp.2d 392, 405 (D. Del. 2001) (citing Pinto, 214 F.3d at 393-94). Thus, the heightened arbitrary and capricious review requires the court to engage in a two-part analysis which examines not only the merits of the Plan Administrator's decision, but also the process by which the Administrator arrived at the decision. Pinto, 214 F.3d at 393; see also Frieberg, 2001 WL 826549, at * 5.

In the instant case, the record is devoid of any evidence of the "Pinto-type 'procedural anomalies' which would necessitate a particularly 'heightened' standard of review." Russell, 148 F.Supp.2d at 406. In a letter dated September 26, 2000, the Plan Administrator provided Plaintiff with the calculations for his long-term disability benefits from SmithKline. See Defs.' Mot. Summ. J., Ex. G. This letter indicated that the monthly SmithKline disability payment would be offset by Plaintiff's monthly Railroad benefit. See id. In letters dated October 5, 2000 and October 10, 2000, Plaintiff appealed the Plan Administrator's calculation. See id., Exs. H, I. The Plan Administrator responded on November 10, 2000 and informed Plaintiff that his "long term disability ("LTD") benefit was calculated in accordance with the terms of SmithKline Beecham's Long Term Disability Plan" and that "[u]nder the terms of the

Plan, any LTD payment is to be reduced by any payments received from 'state disability or similar government benefits.'" Id., Ex. J. The Plan Administrator went on to explain to Plaintiff that, in accordance with the findings of the Railroad Retirement Board Bureau of Law, the Administrator construed "similar government benefits" to include Plaintiff's Railroad benefit. Id. Moreover, the Administrator used additional evidence in making his determination and also distinguished the case law cited by Plaintiff in support of his argument. Id.

Thus, based on the above review of the procedure followed in the instant case, the Court finds that there is no inconsistent treatment of the same facts by the Plan Administrator with regards to the offset of benefits. Nor is there is there any evidence that the Plan Administrator was self-serving in his reliance on certain evidence. The record shows that he interpreted the plain language of the Plan and sought outside evidence to aid him in his interpretation. He considered the case law provided by Plaintiff and distinguished it from the facts of Plaintiff's claim. Moreover, there is no indication that the Plan procedures were not followed in Plaintiff's challenge to the offset of benefits. Therefore, even under the heightened arbitrary and capricious standard of review, the scale would not slide far away from the deferential standard.

Accordingly, the Court will review the Plan Administrator's decision to offset the disability payment with the Railroad benefit under the arbitrary and capricious standard of review, granting the appropriate deference to the Administrator, but with the slight modification that the deference paid "is not absolute." See Russell, 148 F.Supp.2d at 406.

B. The Merits of Plaintiff's Claim

Once the Court has determined the appropriate standard of review under ERISA, then the Court may review the merits of Plaintiff's claim. The crux of Plaintiff's complaint is that SmithKline's Plan Administrator wrongfully applied the Plan's offset provision to benefits Plaintiff received under the Railroad Retirement Act. The offset provision at issue in this case reads as follows:

The benefits you receive from the LTD Plan will be reduced dollar for dollar by any other payments you are eligible to receive from:

- Primary Social Security benefits (your benefit only);
- Worker's Compensation or Occupational Disease Law (including any lump sum payments);
- State disability benefits or similar government benefits; or
- Benefits received from the SmithKline Beecham Pension Plan.

Benefits from individual disability policies are not considered for LTD purposes.

Defs.' Mot. Summ. J., Ex. B. In the instant case, Plaintiff began receiving \$2,023.15 in disability benefits on January 13, 1998 from the Railroad Retirement Board as a result of his prior

employment with Conrail. See Defs.' Mot. Summ. J., Ex. E. When Plaintiff was reinstated to the SmithKline Plan on July 13, 2000, the Plan Administrator, who was vested with the authority to interpret the Plan, determined that Plaintiff's Railroad benefits constituted "similar government benefits" under the SmithKline Plan's offset provision and deducted that amount, "dollar for dollar," from Plaintiff's SmithKline benefits. See id., Exs. G, J. Plaintiff contests the Plan Administrator's determination and asserts that the Administrator's conclusion that Railroad benefits offset SmithKline benefits is "so unreasonable as to require reversal under any standard of review." Pl.'s Cross-Mot. Summ. J. at 15.

At the outset, the Court notes the offset provision included in the SmithKline Plan does not violate ERISA and is enforceable by federal law. See Alessi v. Raybestos-Manhattan, Inc., 451 U.S. 504, 521, 101 S.Ct. 1895, 1095, 68 L.Ed.2d 402 (1981). The Alessi decision recognized the legitimate purpose of setoff provisions to enable an employer to reduce its cost for the pension plan by combining pension funds with other available income sources to maintain the established benefit level of retired or disabled employees. 451 U.S. at 525. Moreover, courts have repeatedly upheld the practice of deducting Social Security benefits from disability payments against a variety of

challenges. See, e.g., Lamb v. Connecticut Gen. Life Ins. Co., 643 F.2d 108 (3d Cir. 1981), cert. denied, 454 U.S. 836, 102 S.Ct. 139, 70 L.Ed.2d 116 (1981); see also Godwin v. Sun Life Assurance Co., 980 F.2d 323, 327 (5th Cir. 1992) ("[A]s a general rule, Social Security old age income may be offset against monthly disability payments."). Furthermore, the Railroad Retirement Act replaces the Social Security Act for employment in the railroad industry. See Hisquierdo v. Hisquierdo, 439 U.S. 572, 590, 99 S.Ct. 802, 59 L.Ed.2d 1 (1979).

With regards to the offset provision at issue in the instant case, the Court finds, and neither party disputes, that since "similar government benefits" is reasonably susceptible to more than one interpretation, the phrase at issue is ambiguous. See Taylor v. Continental Group Change in Control Severance Pay Plan, 933 F.2d 1227, 1232 (3d Cir. 1991). Thus, the Court's inquiry turns to whether the Plan Administrator's interpretation of the phrase "similar government benefits" was reasonable. Under the arbitrary and capricious standard, "the district court may overturn a decision of the Plan administrator only if it is 'without reason, unsupported by the evidence or erroneous as a matter of law.'" Abnathya v. Hoffmann-LaRoche, Inc., 2 F.3d 40, 45 (3d Cir. 1993).

As noted above, the SmithKline policy includes an offset provision by allowing a deduction for Primary Social Security benefits, Worker's Compensation and "State disability benefits or similar government benefits." See Defs.' Mot. Summ. J., Ex. B. The Plan Administrator interpreted "State disability benefits or similar government benefits" to require that the SmithKline disability payments be offset by the full amount of the Railroad Retirement benefits. The evidence of record shows that in making this determination, the Plan Administrator interpreted the relevant Plan terms. Moreover, the Plan Administrator conducted a factual inquiry into the nature of the disability payment Plaintiff received from the Railroad. See id., Ex. N.

In a letter dated August 22, 2000, the General Attorney for the Railroad Retirement Board informed the Plan Administrator that "Disability benefits paid by the Railroad Retirement Board are paid under the provisions of th Railroad Retirement Act. In general, the Railroad Retirement Act replaces the Social Security Act for employment in the railroad industry" Id., Ex. N. The General Attorney concluded that "the entire disability benefit paid under the Railroad Retirement Act is a government disability benefit" Id. Moreover, Plaintiff's Railroad Retirement Award Notice, dated December 12, 1997, classified Plaintiff's Railroad payments as a "disability annuity," and not

as a pension. See id., Ex. Q. Based on this factual inquiry into the nature of the disability benefit under the Railroad Retirement Act and his own interpretation of the Plan language, SmithKline's Plan Administrator concluded that the offset provision for "state disability or similar government benefits" included Plaintiff's Railroad disability benefit. See id. at 10. Therefore, based upon the undisputed evidence of record, the Court cannot say that SmithKline's Plan Administrator acted capriciously in deciding that the phrase "similar government benefits" includes benefits paid under the Railroad Retirement Act.

In Sum, the Court finds that SmithKline's decision was not unreasonable, and that no unfairness or procedural abnormalities marred SmithKline's decision-making abilities. Therefore, the Court affirms the Plan Administrator's decision. Accordingly, Defendants' Motions for Summary Judgment is granted and Plaintiff's Cross-Motion for Summary Judgment is denied.

An appropriate Order follows.

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

PAUL F. MCELROY	:	CIVIL ACTION
	:	
	:	
v.	:	
	:	
	:	
SMITHKLINE BEECHAM HEALTH &	:	
WELFARE BENEFITS TRUST PLAN FOR US	:	
EMPLOYEES, SMITHKLINE BEECHAM	:	
CORPORATION and UNUM PROVIDENT	:	
CORPORATION	:	NO. 01-5734

O R D E R

AND NOW, this 31st day of July, 2002, upon consideration of Defendants SmithKline Beecham Corporation and SmithKline Beecham Health & Welfare Benefits Trust Plan for US Employees' Motion for Summary Judgment (Docket No. 3), Defendant UnumProvident Corporation's Motion for Summary Judgment (Docket No. 12), Plaintiff Paul F. McElroy's Cross-Motion for Summary Judgment and Response to SmithKline Defendants' Motion for Summary Judgment (Docket No. 13), Defendant UnumProvident Corporation's Memorandum of Law in Opposition to Plaintiff's Cross-Motion for Summary Judgment and in Further Support of its Motion for Summary Judgment (Docket No. 16), SmithKline Defendants' Memorandum of Law in Opposition to Plaintiff's Cross-Motion for Summary Judgment and in Further Support of its Motion for Summary Judgment (Docket No. 17), SmithKline Defendants'

Exhibits in Further Support of their Motion for Summary Judgment (Docket No. 18), Plaintiff's Reply to Defendants' Motion in Opposition to Plaintiff's Cross-Motion for Summary Judgment (Docket No. 19, 20), SmithKline Defendants' Supplemental Memorandum in Support of its Motion for Summary Judgment (Docket Nos. 21, 23) and Defendant UnumProvident's Supplemental Memorandum in Support of its Motion for Summary Judgment (Docket No. 22), IT IS HEREBY ORDERED that

(1) Defendants SmithKline Beecham Corporation, SmithKline Beecham Health & Welfare Benefits Trust Plan for US Employees' Motion for Summary Judgment is **GRANTED**;

(2) Defendant UnumProvident Corporation's Motion for Summary Judgment is **GRANTED**;

(3) Plaintiff Paul F. McElroy's Cross-Motion for Summary Judgment is **DENIED**.

IT IS FURTHER ORDERED that Judgment is entered in favor of Defendants SmithKline Beecham Corporation, SmithKline Beecham Health & Welfare Benefits Trust Plan for US Employees and UnumProvident Corporation against Plaintiff Paul F. McElroy.

BY THE COURT:

HERBERT J. HUTTON, J.