

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

MICHAEL MARTORANA : CIVIL ACTION
 :
 v. :
 :
 THE BOARD OF TRUSTEES OF :
 STEAMFITTERS LOCAL UNION 420 :
 HEALTH, WELFARE AND PENSION :
 FUND and STEAMFITTERS LOCAL :
 UNION 420 : NO. 03-1029

MEMORANDUM

Dalzell, J.

December 22, 2003

Michael Martorana ("Martorana") claims that the Board of Trustees of Steamfitters Local Union 420 Health, Welfare and Pension Fund (the "Board")¹ violated the Employee Retirement Income Security Act, 29 U.S.C. §§ 1001-1461 (2003) ("ERISA") by refusing to provide him benefits according to the terms of employee benefit plans that it administers.² The Board counterclaims for unpaid contributions that Martorana allegedly owes pursuant to one of the plans. We here address the parties' cross-motions for summary judgment.³

¹ Despite some ambiguity in the caption as to whether plaintiff named Steamfitters Local Union 420 (the "Union") as a second defendant, we read Martorana's complaint as a whole, as well as the subsequent pleadings, to seek recovery only from one defendant, the Board. We also understand that the Board's members serve as trustees for the Steamfitters Local Union No. 420 Pension Fund trust and for the Steamfitters Local Union No. 420 Welfare Fund trust. See First Diviny Aff. ¶ 2. These trusts are governed, respectively, by the Union's Pension Plan and its Welfare Plan. See generally Def.'s Mot. Summ. J. Exs. B, D.

² The parties agree that the Board must comply with ERISA because it is the "administrator" of the Pension Plan and of the Welfare Plan, both of which are "employee benefit plans." See Compl. ¶ 3; Answer ¶ 3; see also 29 U.S.C. § 1002(3), (16).

³ Summary judgment is warranted if "the pleadings, depositions, answers to interrogatories, and admissions on file, (continued...)

Factual Background

Martorana joined the Union on July 27, 1972, and he worked steadily for more than two decades. Def.'s Mot. Summ. J. Ex. T. While performing work as a Union member on March 21, 1994, he sustained a serious injury. Compl. ¶ 7; Answer ¶ 7. Unable to continue working, Martorana began to collect Workers' Compensation benefits. He continued to receive those benefits at least through November of this year. Martorana Aff. ¶ 3.

Martorana applied for Social Security disability benefits on November 30, 1995, and the Social Security Administration determined that he was eligible for such benefits on December 14, 1997. Although Social Security found that

³(...continued)

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 moving party initially bears the burden of demonstrating that there is no genuine issue as to any material fact. Watson v. Eastman Kodak Co., 235 F.3d 851, 854 (3d Cir. 2000). An issue is "genuine" when "a reasonable jury, based on the evidence presented, could hold in the nonmovant's favor with regard to that issue." Schoonejongen v. Curtiss-Wright Corp., 143 F.3d 120, 129 (3d Cir. 1998). Disputes over "material" facts "might affect the outcome of the suit under the governing law." Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986).

Once the moving party has met its burden, the nonmoving party must "come forward with 'specific facts showing that there is a *genuine issue for trial*.'" Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 587 (1996) (quoting Fed. R. Civ. P. 56(e)). The Court then must determine "whether the evidence presents a sufficient disagreement to require submission to a jury or whether it is so one-sided that one party must prevail as a matter of law." Anderson, 477 U.S. at 251-52. Recognizing that "[c]redibility determinations, the weighing of the evidence, and the drawing of legitimate inferences from the facts" are within the province of the trier of fact, id. at 255, the Court must "view the facts in the light most favorable to the nonmoving party and draw all inferences in that party's favor." Ambruster v. Unisys Corp., 32 F.3d 768, 777 (3d Cir. 1994).

Martorana became disabled on March 21, 1994, it awarded benefits retroactive only to November of 1994 because federal law authorizes benefits beginning a maximum of twelve months before a claimant files an application for benefits. See Def.'s Mot. Summ. J. Ex. E.

In addition to his Workers' Compensation and Social Security benefits, Martorana requested the Disability Retirement Pension to which he was entitled under the Union's Pension Plan. Martorana first applied for his disability pension in late 1998 or early 1999. First Diviny Aff. ¶ 15. Though the Board decided that he was eligible for the pension, Martorana took issue with several aspects of its determination, including the withholding from his pension of \$100.00 per month as his contribution to the cost of Welfare Plan coverage for him and his family. See Def.'s Mot. Summ. J. Ex. F. In May, 1999, Martorana directed the Board not to continue processing his application for disability benefits until further notice. See Def.'s Mot. Summ. J. Ex. G. On several occasions between September of 1999 and May of 2000, the Board reiterated its willingness to pay disability benefits to Martorana. See Def.'s Mot. Summ. J. Exs. H, I, J. The Union sent Martorana his "retiree union card" on November 1, 1999. Pl.'s Mot. Summ. J. Ex. D.

The central issues involved in this case came into clearer focus during the summer of 2000. For the first time, Martorana argued that the Board had improperly calculated his disability pension benefits because, when calculating his length of service (upon which the amount of the pension is based), it

failed to take into account the period during which he received Workers' Compensation. At its July 20, 2000 meeting, the Board rejected this claim, see Def.'s Mot. Summ. J. Ex. L, based on the Pension Plan's distinction between Credited Hours and Contribution Hours. Pension Plan members accrue Credited Hours, though not Contribution Hours, during the period when they receive Workers' Compensation, and the calculation of disability pension benefits depends on one's total Contribution Hours, not Credited Hours. See Def.'s Mot. Summ. J. Ex. C.

Martorana quickly appealed the Board's denial of additional disability pension credit for the period when he received Workers' Compensation. See Def.'s Mot. Summ. J. Ex. U. On October 27, 2000, Martorana and his attorney attended a Board meeting to make their case for the additional disability pension credit, but the Board again denied their request based on the Plan's distinction between Credited Hours and Contribution Hours. See Def.'s Mot. Summ. J. Exs. N, O.

While Martorana was claiming additional disability benefits, the Board demanded that Martorana pay \$4,400.00 in overdue contributions to the Welfare Plan for the medical coverage that he had received between October of 1994 and December of 1999, see Def.'s Mot. Summ. J. Ex. K, but Martorana denied that he owed any contributions, see Def.'s Mot. Summ. J. Ex. P. At the Board's January 25, 2001 meeting, Martorana argued that the Welfare Plan did not require him to contribute to the Welfare Plan while he was an "active" participant. The Board, however, pointed out that Martorana could not be an "active"

participant in the Welfare Plan while simultaneously receiving benefits under the Pension Plan and, on that basis, maintained its position that he must pay the past-due contributions. See Def.'s Mot. Summ. J. Ex. R. When Martorana insisted on not contributing, the Board refused to pay \$300.00 of his medical claims, and it now recognizes that such refusal reduced the amount of past-due contributions to \$4,100.00 See Def.'s Mot. Summ. J. Ex. S.

On February 5, 2003, Martorana initiated this action by filing a complaint in the Delaware County Court of Common Pleas. The complaint includes one count alleging that the Board failed to comply with the terms of the Pension Plan and the Welfare Plan and a second count requesting declaratory judgment. The Board removed the case to this Court and filed a counterclaim for \$4,100.00 in unpaid health care premiums.⁴ Martorana and the Board have each moved for summary judgment on all claims.

Analysis

A. The Board's Decisions

Martorana maintains that (1) the Pension Plan entitles him, in the calculation of his disability pension benefit, to credit for the period when he received Workers' Compensation; and (2) the Welfare Plan requires the Board to pay his medical claims. Because the Board refused to provide benefits according

⁴ Though the counterclaim originally demanded \$4,223.62 in damages, the Board's motion for summary judgment asserts entitlement only to \$4,100.00. See Def.'s Mem. Supp. Mot. Summ. J. at 18.

to these two interpretations, Martorana contends that it has not complied with the Plan's terms and invokes his ERISA right "to recover benefits due to him under the terms of his plan, to enforce his rights under the terms of the plan, or to clarify his rights to future benefits under the terms of the plan." 29 U.S.C. § 1132(a)(1)(B) (2003).

The Supreme Court has explained 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." Firestone Tire & Rubber Co. v. Bruch, 489 U.S. 101, 115 (1989). In this case, however, the Pension Plan gives the Board "the sole and absolute discretion to determine eligibility for benefits under the Plan," see Def.'s Mot. Summ. J. Ex. B ("Pension Plan") § 6.06, and the Welfare Plan makes the Board "the sole judge of . . . the application and interpretation of the Plan," see Def.'s Mot. Summ. J. Ex. D ("Welfare Plan") at 62. Under these circumstances, Firestone mandates that we inquire whether the Board's decisions were arbitrary and capricious.⁵ See Lasser v. Reliance Std. Life Ins. Co., 344 F.3d 381, 384 (3d Cir. 2003). "Under the arbitrary and capricious standard, the district court may overturn a decision of the Plan administrator only if it is

⁵ Though our Court of Appeals applies "heightened scrutiny" when the same entity is both plan administrator and funder, see Pinto v. Reliance Std. Life Ins. Co., 214 F.3d 377, 387 (3d Cir. 2000), there is no evidence that the Board funds the Plans involved here. Thus, we shall review the Board's determinations under the arbitrary and capricious standard.

without reason, unsupported by the evidence or erroneous as a matter of law." Mitchell v. Eastman Kodak Co., 113 F.3d 433, 439 (3d Cir. 1997) (quotations omitted). We turn now to the two Board decisions that Martorana challenges as arbitrary and capricious.

1. The Pension Plan

The parties agree that, under the Pension Plan, disability pension benefits increase with an employee's length of service, but they dispute when Martorana's service ceased for purposes of calculating his benefit. The Board determined that Martorana should receive a disability pension based on his service only through March 21, 1994, the date on which he became disabled. Martorana, however, insists that the Pension Plan entitles him to credit for the time since March 21, 1994 when he has collected Workers' Compensation. To decide whether the Board acted arbitrarily and capriciously in limiting Martorana's disability pension, we begin with the terms of the Pension Plan.

The Pension Plan provides special benefits payable to those people who, like Martorana, "Are Active Participants On Or After January 1, 1996." See Pension Plan art. 4. Depending on their particular circumstances, such individuals may qualify for a Normal Retirement Pension, a Disability Retirement Pension, an Early Retirement Pension, a Deferred Vested Pension, or other benefits. Id. Martorana applied for a Disability Retirement Pension as described by Section 4.02 of the Pension Plan.

The Pension Plan limits eligibility for a Disability Retirement Pension to "[e]ach Active Participant who becomes a Disabled Participant." Pension Plan § 4.02. The Pension Plan defines an "Active Participant" as a "person who on December 31, 1995 was an Active Participant under the [Pension] Plan as then in effect and who had 400 or more Credited Hours in the Plan Year then ending." Id. § 2.01. "Credited Hours" equal the sum of several types of hours, including Contribution Hours⁶ and "4.2857 hours times the number of days . . . for which [a] person received . . . Workers' Compensation." Id. § 1.07. Under the Pension Plan, a "Disabled Participant" is "[a]n Active Participant who has two or more years of Credited Service who ceases to be an Active Participant on account of a disability, the onset of which occurs when he is an Active Participant and pursuant to which he becomes entitled to receive disability benefits under the Federal Social Security Act within one year of the date of the onset of his disability." Pension Plan § 2.04.

The parties apparently agree that Martorana is an "Active Participant who bec[ame] a Disabled Participant" because only such people are entitled to the Disability Retirement Pension that they concede Martorana may receive. See Pl.'s Mot. Summ. J. Ex. B ("Martorana Aff.") ¶ 2; First Diviny Aff. ¶ 28

⁶ The Pension Plan explains that "Contribution Hours" are "the number of hours [a person] worked at Covered Employment . . . for which the contributions due the Pension Fund were made." Pension Plan § 1.05. While Contribution Hours are one component of Credited Hours, one's status as an Active Participant depends not merely upon Contribution Hours, but upon the total number of Credited Hours that he earns.

(reporting that the Board has been paying Martorana's pension). Similarly, the concession that Martorana has already become a Disabled Participant who is entitled to a Disability Retirement Pension necessarily implies that he meets the definition of a Disabled Participant. Although Martorana is both a "Disabled Participant" and an "Active Participant who bec[ame] a Disabled Participant," the question remains whether he shed his status as an Active Participant during the transformation into a Disabled Participant or whether Disabled Participants remain Active Participants.

The definitions of Active Participant and Disabled Participant offer little insight into this question, but the final sentence describing the Disability Retirement Pension provides some illumination:

If a Disabled Participant receiving a Disability Retirement Pension ceases to be a Disabled Participant prior to his 65th Birthday, his Disability Retirement Pension shall thereupon cease, and if such Disabled Participant does not again become an Active Participant he shall be entitled to the benefits he would have qualified for, if any, had he ceased to be an Active Participant other than by death or disability.

Pension Plan § 4.02, at 53 (emphasis added). The highlighted language clarifies that a Disabled Participant may "cease" being a Disabled Participant without "again" becoming an Active Participant. For the reference to "again" becoming an Active Participant to have any sensible meaning, an Active Participant must cease being an Active Participant when he becomes a Disabled Participant, though he may "again" become an Active Participant

after he ceases being a Disabled Participant. In short, one cannot simultaneously be both an Active Participant and a Disabled Participant within the meaning of the Pension Plan. Because the parties agree that Martorana is a Disabled Participant, he cannot be an Active Participant.

As a Disabled Participant who was eligible for benefits under the Pension Plan, Martorana was entitled to receive a Disability Retirement Pension "equal to his Accrued Monthly Pension on the date of the onset of his disability." Pension Plan § 4.02, at 52. Martorana's Accrued Monthly Pension equals "\$0.0375 per Class I Contribution Hour and \$0.0260 per Class II Contribution Hour." Id. § 3.01(c). Regardless of their "Class," Contribution Hours are "the number of hours [a person] worked at Covered Employment . . . for which the contributions due the Pension Fund were made." Id. § 1.05. Although participants do earn Credited Hours while receiving Workers' Compensation, see id. § 1.07(c), they accrue no Contribution Hours -- and thus earn no additional Disability Retirement Pension benefits -- during those periods.

Martorana's claim to disability pension credit for the time he received Workers' Compensation conflates the Pension Plan's Credited Hours and Contribution Hours. Indeed, he admits this point by arguing that "[t]here is no distinction between 'credited hours' and 'contribution hours.'" Pl.'s Mem. Supp. Mot. Summ. J. at 7 (emphasis in original). Aside from the plain language of the Pension Plan -- which clearly distinguishes between Credited Hours and Contribution Hours in Sections 1.05

and 1.07 -- the Plan's basic purpose and structure depend upon maintaining inviolate the boundary between Credited Hours and Contribution Hours. As defense counsel cogently articulates, the Pension Plan uses Credited Hours to determine which participants are "Active" and therefore eligible for benefits, while it bases its calculation of the amount of benefits on each eligible participant's Contribution Hours. See Def.'s Mem. Supp. Mot. Summ. J. at 2-4.

To reiterate, the Pension Plan differentiates between Credited Hours and Contribution Hours. While participants accrue Credited Hours for the time they receive Workers' Compensation, they do not accrue Contribution Hours during that period. Because only Contribution Hours affect a participant's Disability Retirement Pension benefit, the Board did not act arbitrarily or capriciously when it refused to include the time that Martorana received Workers' Compensation in its calculation of his disability pension.

2. The Welfare Plan

In addition to challenging the Board's denial of additional disability pension benefits, Martorana asserts that the Board has denied him "the benefit of his health coverage," Compl. ¶ 32, which we interpret as a reference to the Board's decision to apply payments on his claims for health benefits to his "outstanding balance," rather than to pay him directly,⁷ see

⁷ Martorana does not claim that the Board erroneously calculated the amount of benefits to which he was entitled.

Def.'s Mot. Summ. J. Ex. S. The Board argues that it complied with the Welfare Plan when processing Martorana's claims and that it was entitled to use the amounts due to him on those claims to offset the \$4,400 that Martorana owed as unpaid contributions to the Welfare Plan. To decide whether the Board's actions were arbitrary and capricious, we consider the Welfare Plan's terms.⁸

The Welfare Plan provides a Comprehensive Major Medical benefit⁹ to Covered Persons not eligible for Medicare.¹⁰ Welfare Plan at 35. A Covered Person is someone who "establishes and maintains eligibility under the terms of the Plan," and each Covered Person can be classified as an Active Employee, an Apprentice, a Retiree, or a Dependent. Id. at 13. Because the Welfare Plan establishes classes of Covered Persons only to distinguish between the criteria that members of each class must meet to become eligible for benefits, no individual could simultaneously be a member of more than one class.

An Active Employee is "an individual who is working, or actively seeking work, in the steamfitting trade . . . and on

⁸ Because neither party has submitted the terms of the formal Welfare Plan, we rely on the Summary Plan Description, which both parties apparently believe accurately summarizes the Welfare Plan. See Pl.'s Mot. Summ. J. Exs. A, E, F; Def.'s Mot. Summ. J. Ex. D.

⁹ For these purposes, we need not describe the Comprehensive Major Medical benefit because Martorana contests only how the benefit was paid, not the amount that was paid.

¹⁰ According to the Board's counterclaim, Martorana was not eligible for Medicare until November of 1996. Beginning in that month, Martorana was Medicare eligible. See Answer ¶¶ 67-68, at 9. Martorana never answered the counterclaim, so we consider these facts undisputed.

whose behalf contributions are required to be made to the Fund." Welfare Plan at 13. The Welfare Plan also classes as Active Employees those individuals who would "otherwise be considered . . . Active Employee[s] except for a Temporary Disability." Id. To remain eligible for Welfare Plan benefits, Active Employees "must work at least 300 hours in Covered Employment in each Work Quarter." Id. at 15. Even when not actually working, Active Employees on Temporary Disability receive credit of "3.4 hours for each day on Temporary Disability (including any period when . . . collecting . . . Workers' Compensation benefits)." ¹¹ Id. Active Employees who maintain their eligibility need not contribute to the Welfare Plan to receive benefits. ¹²

A Retiree is "an individual who retires with a Normal, Early or Disability Retirement Pension" from the Pension Plan. Welfare Plan at 13. One who becomes a Retiree after January 1, 1992 automatically qualifies for Welfare Plan benefits, but he must contribute "\$50.00 per month toward the cost of providing such coverage in order to remain covered under the Plan, until such time as [he] becomes eligible for Medicare coverage." Id. at 19. Moreover, Retirees must contribute an additional "\$50.00

¹¹ According to this formula, an individual who received Workers' Compensation while on Temporary Disability would receive credit for working approximately 100 hours per month, or 300 hours per quarter. The Welfare Plan uses this "credit" only to determine whether an Active Employee on Temporary Disability is eligible for benefits. Once deemed eligible, the precise amount of the credit has no effect on the quantum of benefits received.

¹² We note that all Active Employees under the Welfare Plan are not necessarily Active Participants under the Pension Plan, and vice versa.

per month toward the cost of providing such coverage for non-Medicare-eligible Dependent(s) . . . in order to maintain the eligibility of such Dependents" for Welfare Plan benefits. Id. The Board may terminate a Retiree's Welfare Plan coverage if he fails to make "timely payment of the required contribution for continuation of coverage." Id. at 22.

The Board concedes that Martorana is eligible for Welfare Plan benefits, including the payment of \$300.00 in claims that he submitted. See Def. Mot. Summ. J. Ex. S. The parties dispute, however, whether Martorana is eligible for benefits as an Active Employee, whom the Plan does not require to contribute, or as a Retiree, from whom the Plan requires contributions. To be precise, this dispute concerns Martorana's status only during the period between October of 1994 and December of 1999, that is, during the time between when Martorana became eligible for a Disability Retirement Pension and when he considered himself retired.¹³

Pointing to the Welfare Plan's definition of a Retiree as "an individual who retires with a . . . Disability Retirement Pension," the Board argues that Martorana became a Retiree in October of 1994 because he then became entitled to a Disability Retirement Pension. The definition, however, fails to specify whether one retires "with" a disability pension on the date when the Board determines that a participant is eligible for a

¹³ Martorana believes that he did not retire until November 1, 1999, the date on which he received his "retiree union card." See Pl.'s Mot. Summ. J. Ex. D.

Disability Retirement Pension or on the date from which the Board agrees to pay the Disability Retirement Pension. In this case, the Board had determined, by at least December 15, 1999, that Martorana was entitled "pension benefits retroactive from and after October 1, 1994." See Def.'s Mot. Summ. J. Ex. I. Thus, the plain language of the Welfare Plan constrains the Board to find that Martorana retired "with" his pension benefit in either October, 1994, or December, 1999, but it offers no guidance in choosing between these possibilities.

In the end, the Board interpreted the Welfare Plan to mean that Martorana became a Retiree in October of 1994, and we must accept that interpretation unless "it is without reason, unsupported by the evidence or erroneous as a matter of law." Mitchell v. Eastman Kodak Co., 113 F.3d 433, 439 (3d Cir. 1997) (quotations and citations omitted).

Based on the definitions of Active Employee and Retiree, we conclude that the Board had ample reason to consider Martorana a Retiree as of October, 1994. Apart from a narrow exception for those on Temporary Disability, the Welfare Plan includes among Active Employees only those "on whose behalf contributions are required to be made to the Fund."¹⁴ Welfare

¹⁴ The Welfare Plan does not define "Temporary Disability," but we construe it to mean a disability lasting fewer than six months because the Pension Plan provides Disability Retirement Pension "beginning on the first day of the month following the sixth monthly anniversary of the onset of . . . disability." Pension Plan § 4.02, at 52. We rely on Pension Plan language in construing the term "Active Employee" under the Welfare Plan because the Welfare Plan distinguishes between Active Employees and Retirees and defines a Retiree as one who
(continued...)

Plan at 13. Because others contribute on their behalf, the Welfare Plan does not require Active Employees to contribute personally. On the other hand, the definition of "Retiree" is broad enough to include individuals on whose behalf no other person makes contributions, so the Welfare Plan requires Retirees to make their own contributions. In short, the Welfare Plan requires contributions for Active Employees and for Retirees. When no employer contributes on behalf of a former Active Employee, the Board could reasonably conclude that the individual had become a Retiree who must contribute for himself.

In this case, the Social Security Administration determined that Martorana became disabled on March 21, 1994, so we infer that, on that date, he stopped working and his former employer ceased contributing to the Welfare Plan. Because the parties agree that Martorana received Welfare Plan coverage after his former employer stopping contributing and a reasonable interpretation of the Plan requires that contributions come from either an employer or the Covered Person, we hold that the Board did not act arbitrarily or capriciously in determining that Martorana became a Retiree in October, 1994.

Despite the deference due the Board, Martorana insists that two documents establish that it acted arbitrarily and capriciously by treating him as a Retiree before December, 1999.

¹⁴(...continued)
receives benefits under the Pension Plan. See Welfare Plan at 13. It is undisputed that Martorana's disability lasted longer than six months, so the Welfare Plan's inclusion of the temporarily disabled among Active Employees is not relevant here.

First, Martorana relies on his Annual Pension Statement (the "Statement"), which shows 100 hours of "Disability Credit" for the months of April, May, and June of 1994. See Pl.'s Mot. Summ. J. Ex. G. Because only Active Employees receive such credit under the Welfare Plan, see supra note 11, Martorana characterizes the Statement as an "admission" that he was an Active Employee at least during the second quarter of 1994. See Pl.'s Mem. Supp. Mot. Summ. J. at 8. Even if the Board considered Martorana an Active Employee until June, 1994,¹⁵ that classification would not render arbitrary and capricious its decision that he became a Retiree in October of 1994.

¹⁵ Rather than admit that it considered Martorana an Active Employee until June of 1994, the Board attributes the Statement's mention of "Disability Credit" to a "clerical error" that affected "many members of the Plan," but was "never considered in calculating any pension amounts for any Pension Fund beneficiary." Second Diviny Aff. ¶¶ 3, 4. As an alternative reason for not relying on the Statement, we hold that no reasonable fact-finder could refuse to accept the Board's explanation of "clerical error." First, the Statement purports to concern benefits under the Pension Plan, but no provision of the Pension Plan provides "Disability Credit" of 100 hours per month while a participant receives Workers' Compensation. To be sure, participants in the Pension Plan receive 4.2857 Credited Hours for each day that they receive Workers' Compensation, see Pension Plan § 1.07(c), but such "credit" averages about 130 hours per month. Moreover, Credited Hours affect a participant's eligibility for Pension Plan benefits. They are not used to calculate the amount of a participant's Pension Plan benefit, and they have no relevance whatsoever to the Welfare Plan. In short, a reasonable finder of fact would conclude that the references to "Disability Credit" on the Statement resulted from a clerk's erroneous reliance on the Welfare Plan's terms when generating Pension Plan statements. This type of error affects neither the Disability Retirement Pension benefit to which Martorana is entitled under the Pension Plan nor the class of Covered Person to which the Board's interpretation of the Welfare Plan assigns him.

In addition to the Statement, Martorana relies upon a November 1, 1999 letter with which he received his "retiree union card." See Pl.'s Mot. Summ. J. Ex. D. This letter allegedly proves that he did not become a Retiree until at least November, 1999. Classification as an "Active Employee" under the Welfare Plan does not, however, depend upon whether an individual has received his retiree union card. Moreover, Martorana received his retiree union card directly from the Union, not from the Board, and Martorana fails to explain how the Union's correspondence demonstrates that the Board interpreted the Welfare Plan's use of "Retiree" arbitrarily and capriciously.

Because he was a Retiree, the Plan required Martorana to make \$4,400.00 in contributions between October of 1994 and December of 1999. When he failed to make the required contributions, the Board could have terminated his benefits. See Welfare Plan at 21-22. Instead, it chose to continue providing benefits, but to apply any payments due under the Welfare Plan toward reducing the outstanding balance. See Def.'s Mot. Summ. J. Ex. S. Though the Welfare Plan does not explicitly authorize the Board to withhold payments to offset past-due contributions, it was not arbitrary and capricious to retain the payments because Martorana had refused earlier demands for the overdue contributions, leaving offsets and costly litigation as the only available collection strategies.

The Board did not act arbitrarily and capriciously in calculating Martorana's Disability Retirement Pension benefit or in using the payments due under the Welfare Plan to offset

contributions that he owed. Therefore, we shall enter summary judgment on Martorana's claims in favor of the Board.

B. The Board's Counterclaim

The Board also seeks summary judgment on its counterclaim against Martorana for the remaining \$4,100.00 that he still owes in contributions to the Welfare Plan, after adjusting for the claims on which the Board validly withheld payment. Although the Board does not specify a legal theory upon which it bases its counterclaim, we read its pleading as a quantum meruit claim.¹⁶ Thus, we treat the Board's counterclaim as though it had alleged specifically that allowing Martorana to remain covered under the Welfare Plan without making the required contributions would unjustly enrich him.

To recover for unjust enrichment, a claimant must prove that (1) the claimant conferred benefits on the other party; (2) the recipient appreciated such benefits; and (3) the recipient accepted and retained the benefits under such circumstances that

¹⁶ "Quantum meruit is a quasi-contractual remedy in which a contract is implied-in-law under a theory of unjust enrichment; the contract is one that is implied in law, and 'not an actual contract at all.'" Hershey Foods Corp. v. Ralph Chapek, Inc., 828 F.2d 989, 998 (3d Cir. 1987) (quoting Ragnar Benson, Inc. v. Bethel Mart Associates, 454 A.2d 599, 603 (Pa. Super. Ct. 1982)). The counterclaim could not proceed on a breach-of-contract theory because Martorana never agreed to make the "required" contributions. The Welfare Plan imposes obligations upon the Board, and the Plan's requirements of Covered Persons limit the Board's obligations. Still, the requirements are not independently enforceable against Covered Persons. The Board could have terminated Martorana's coverage for failure to make the required contributions, see Welfare Plan at 21-22, but his failure to contribute does not constitute a breach of contract.

it would be inequitable or unjust for the recipient to retain the benefits without payment of value. See Allegheny Gen. Hosp. v. Philip Morris, Inc., 228 F.3d 429, 447 (3d Cir. 2000). Here, the Board conferred on Martorana the benefit of Welfare Plan coverage to which he was not entitled without making the required contributions. Martorana clearly appreciated this benefit because he submitted claims for reimbursement of medical expenses pursuant to the Welfare Plan. See Def.'s Mot. Summ. J. Ex. S. Finally, it would be inequitable and unjust for Martorana to receive Welfare Plan coverage without making the contributions that the Plan requires all Retirees to make.¹⁷ Thus, we shall grant summary judgment in favor of the Board on its quantum meruit counterclaim.

C. Attorney's Fees and Costs

Martorana and the Board have both requested that we award attorney's fees under 29 U.S.C. § 1132(g)(1). See Compl. ¶ 29; Answer at 5. Under that statute, "the court in its discretion may allow a reasonable attorney's fee and costs of action to either party." See also Skretvedt v. E.I. Dupont De Nemours & Co., 268 F.3d 167, 185 (3d Cir. 2001) (emphasizing the district court's discretion). When considering requests for attorney's fees and costs under § 1132(g)(1), we must consider the following factors: "(1) the offending parties' culpability or bad faith; (2) the ability of the offending parties to satisfy an

¹⁷ There is no dispute that the Board properly calculated the amount due, \$4,100.00.

award of attorneys' fees; (3) the deterrent effect of an award of attorneys' fees against the offending parties; (4) the benefit conferred on members of the pension plan as a whole; and (5) the relative merits of the parties' position." McPherson v. Employees' Pension Plan of Am. Re-Insurance Co., 33 F.3d 253, 254 (3d Cir. 1994).

At the outset, we note that the Board prevailed on all claims involved in this litigation. As the prevailing party, it cannot be liable to Martorana for attorney's fees and costs. Whether Martorana is liable to the Board depends on a careful balancing of the five McPherson factors.

Although Martorana failed to prove his case, we hold that he did not act in bad faith because "bad faith normally connotes an ulterior motive or sinister purpose." McPherson, 33 F.3d at 256; see also Ford v. Temple Hospital, 790 F.2d 342, 347 (3d Cir. 1986) (using "harassment or delay" as examples of ulterior motives). Martorana brought this lawsuit for legitimate purposes -- to recover benefits that he believed the Board owed him, not to harass the Board or for some other sinister purpose. See Martorana Aff. ¶¶ 3-5 (describing the "firm" beliefs that Martorana reached after reading the Plans).

The record does not contain sufficient evidence for us to evaluate whether Martorana could pay an award of reasonable attorney's fees and costs. We simply do not know Martorana's precise financial condition, and we cannot speculate on the attorney's fees and costs that the Board incurred during this litigation. From the record now before us, it appears that the

parties engaged in very limited discovery, so the Board probably incurred most of its attorney's fees and costs in preparing its motion for summary judgment and its response to Martorana's motion for summary judgment. It seems likely that these fees and costs are not large and that the Board could recoup them by reducing Martorana's monthly Disability Retirement Pension by an affordable amount for a few years.¹⁸ Our hunches notwithstanding, we will not make a final finding as to Martorana's ability to pay at this time.

The third factor that we must consider is the deterrent effect of an award of attorney's fees in a case like this one. Two issues complicate our consideration of this factor. First, the technical legal language contained in complicated employee benefit plans may often confound the lay person. Second, Martorana asserted claims under both the Pension Plan and the Welfare Plan.

We believe that Martorana, who is untrained in the law, could reasonably believe that the Pension Plan entitled him to additional disability pension benefits based on the time when he received Workers' Compensation. While plain to a lawyer reading the Pension Plan's definitions, the distinction between Credited Hours and Contribution Hours would not be obvious to most lay persons. Thus, we do not fault Martorana for pursuing his appeals to the Board. The Board, however, repeatedly explained

¹⁸ Martorana currently receives \$1,579.27 per month, or \$18,951.24 per year, for his Disability Retirement Pension. First Diviny Aff. ¶ 27.

its interpretation of the Pension Plan to Martorana in writing. See Def.'s Mot. Summ. J. Ex. C, O. These letters put Martorana on notice of the critical distinction between Credited Hours and Contribution Hours, even if he had not noticed the difference on his own.

After Martorana's attorney became involved in this case, he surely should have read the Pension Plan before filing the complaint. Even a cursory review would have disclosed that the Plan explicitly distinguishes between Contribution Hours and Credited Hours. Compare Pension Plan § 1.05 with Pension Plan § 1.07. Despite the clarity, plaintiff's counsel inexplicably insists that "**[t]here is no distinction between 'credited hours' and 'contribution hours.'**" Pl.'s Mem. Supp. Mot. Summ. J. at 7 (emphasis in original). Moreover, the lawyer should have realized that the arbitrary and capricious standard of review required Martorana to make a particularly strong showing, one which he could not reasonably expect to make given the clarity of the Pension Plan language. We believe that awarding the attorney's fees and costs incurred in defending Martorana's claim for additional disability pension benefits serves the socially useful purpose of deterring similar unfounded claims that consume courts' limited resources.

Though we also rejected Martorana's argument that the Welfare Plan did not require him to make contributions for the period between October, 1994 and December, 1999, his Welfare Plan claims were not as patently frivolous as his Pension Plan claims.

We, therefore, conclude that there is no need to deter claims like the ones that Martorana raised based on the Welfare Plan.

McPherson's fourth factor looks to the benefit that awarding attorney's fees and costs would confer on all members of the employee benefit plan. We infer that the Board pays its attorney's fees and costs from the funds that it administers, so -- to the extent that it can recoup these expenses -- it could provide additional benefits or reduce the contributions that it requires from Covered Persons. These benefits, though perhaps modest, counsel in favor of awarding attorney's fees and costs to the Board.

As the fifth factor, we consider the relative merits of the parties' positions in the litigation. Having already noted that the Board prevailed on all counts and that Martorana's Pension Plan claims were without merit, we find without hesitation that this factor weighs in favor of granting the Board its attorney's fees and costs.

Although Martorana did not act in bad faith, we believe that the deterrent effect of an award, the benefit of an award to other Plan members, and the relative merits of the parties' positions outweigh the absence of bad faith. Thus, we shall award to the Board the reasonable attorney's fees and costs associated with defending Martorana's Pension Plan claims. To arrive at the precise figure, we shall require the Board to submit evidence of the attorney's fees and costs that it incurred in this litigation. After determining which of these expenses are reasonable, we shall enter judgment for fifty percent of the

reasonable attorney's fees and costs because approximately half of this case involved Martorana's Pension Plan claims.

Conclusion

Because the Board did not act arbitrarily or capriciously in denying the benefits that Martorana requested under the Pension and Welfare Plans, we shall grant the Board's motion for summary judgment and deny Martorana's motion for summary judgment. We shall also grant summary judgment to the Board on its counterclaim for quantum meruit. Finally, we shall award to the Board one-half of the reasonable attorney's fees and costs that it incurred during this litigation.

An Order follows.

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

MICHAEL MARTORANA : CIVIL ACTION
:
v. :
:
THE BOARD OF TRUSTEES OF :
STEAMFITTERS LOCAL UNION 420 :
HEALTH, WELFARE AND PENSION :
FUND and STEAMFITTERS LOCAL :
UNION 420 : NO. 03-1029

ORDER

AND NOW, this 22nd day of December, 2003, upon consideration of defendant's motion for summary judgment (docket entry # 8), plaintiff's motion for summary judgment (docket entry # 11), and defendant's response, and in accordance with the accompanying Memorandum, it is hereby ORDERED that:

1. Defendant's motion is GRANTED;
2. Plaintiff's motion is DENIED;
3. As to all counts in the complaint, JUDGMENT IS ENTERED in favor of defendant The Board of Trustees of Steamfitters Local Union 420 Health, Welfare, and Pension Fund

and Steamfitters Local Union 420 and against plaintiff Michael Martorana in the amount of one-half of defendant's reasonable attorney's fees and costs, as the Court shall determine by future Order;

4. As to the counterclaim, JUDGMENT IS ENTERED in favor of defendant The Board of Trustees of Steamfitters Local Union 420 Health, Welfare, and Pension Fund and Steamfitters Local Union 420 and against plaintiff Michael Martorana in the amount of \$4,100.00;

5. By January 5, 2004, defendant shall FILE a motion for reasonable attorney's fees and costs;

6. Plaintiff may FILE objections to defendant's motion for reasonable attorney's fees and costs by January 20, 2004; and

7. Defendant may FILE a response to plaintiff's objections by January 27, 2004.

BY THE COURT:

Stewart Dalzell, J.