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

ROBERT CRANE	:	CIVIL ACTION
	:	No. 95-4173
v.	:	
	:	
ASBESTOS WORKERS PHILADELPHIA PENSION PLAN	:	

O'Neill, J. August 1, 2003

MEMORANDUM

Plaintiff Robert Crane brings this action pursuant to the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. § 1132(a)(1)(B), alleging that defendant Asbestos Workers Philadelphia Pension Plan has wrongfully denied him disability benefits. Both parties have moved for summary judgment. For the reasons set forth below, plaintiff's motion will be denied and defendant's motion will be granted.

I.

The material facts of this case are not in dispute. Defendant is a multi-employer benefits plan for union workers in the Philadelphia-area insulation and asbestos-abatement industry. Plaintiff, a participant in the Plan, was involved in an automobile accident on April 8, 1987 that left him unable to work. Shortly thereafter, plaintiff applied for and obtained six months of short-term disability available under a separate union Health and Welfare Fund.

About three years later, in May, 1990, plaintiff applied to Social Security for disability insurance benefits (SSDI) based on the injuries he had sustained in the 1987 auto accident. Upon the agency's finding that he was permanently and totally disabled, plaintiff was determined to be

entitled to benefits paid retroactive to May, 1989.[1] Shortly thereafter, plaintiff applied to defendant Plan for disability pension benefits. Defendant rejected the application in a November 28, 1990 letter to plaintiff's attorney. The letter included a portion of the Plan's Summary Plan Description (SPD) setting forth the eligibility criteria for disability pensions and stated that plaintiff had failed to meet the fourth requirement:

> You are eligible for a Disability Pension if:
>
> * * * *
>
> 4. You have been deemed totally and permanently disabled in accordance with the Federal Social Security Act, provided such Social Security disability pension award was granted within one year of the onset of the disability.
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> IMPORTANT NOTE: *In the event no disability award is made under the Federal Social Security Act, because of failure of the Participant to meet non-medical requirements for such a determination under the Act, then the trustees shall be the sole judge of whether the Participant is so disabled, applying the standards of said Act, and the trustees in their sole discretion, shall seek such medical or other counsel as they may require in making such determinations.*

(Pl. Ex. F, at 17; emphasis in original).

In a subsequent letter dated December 20, 1990, defendant notified plaintiff that he failed to meet the eligibility requirement of Section 2.6 of the Plan that he "become[] entitled to receive disability under the Federal Social Security Act within one year of the date of the onset of his disability . . ."[2] (Pl. Ex. J; emphasis in original.) After several more communications between the parties, the Trustees rejected plaintiff's appeal in a "final and binding" decision of February 27, 1992.

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[1] Social Security disability may be awarded retroactively for up to one year prior to the time of the application. 20 C.F.R. § 404.621 (1990).

[2] It is undisputed that the onset of plaintiff's disability was the date of his auto accident, April 8, 1987, and that plaintiff did not become entitled to receive disability benefits under the Federal Social Security Act until May 1989.

On May 11, 1995 plaintiff instituted this action pursuant to § 1132(A)(1)(B) of ERISA, which authorizes civil actions to recover benefits due under covered plans.[3] While conceding that he did not become entitled to Social Security disability within one year of the onset of his disability (Pl. Reply B., at 3-4), plaintiff claims that he is nonetheless entitled to a disability pension pursuant to the "IMPORTANT NOTE" provision. He argues that his failure to apply for Social Security disability in a timely fashion was a "failure . . . to meet non-medical requirements" for an SSDI award and that he therefore is entitled to a determination of disability by the Trustees in lieu of a timely SSDI award to establish his entitlement to a disability pension. Because defendant has already conceded that plaintiff was totally and permanently disabled by the auto accident, plaintiff further argues that the Court should summarily order defendant to recognize his entitlement to a disability pension. Both parties now move for summary judgment on the merits of plaintiff's claim.[4]

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[3] Plaintiff has at times purported to assert claims both for wrongful denial of benefits under § 1132(A)(1)(B) and for breach of defendant's fiduciary duties under ERISA, but now concedes that he asserts no claim separate and apart from his claim for disability benefits. (Pl. Supp. B., at 8.)

[4] Defendant also argues that plaintiff's suit is time-barred. I disagree. Because ERISA does not provide a statute of limitations for § 1132(A)(1)(B) actions, courts look to the law of the forum state for the most closely analogous state cause of action and apply the statute of limitations provided for that action. Gluck v. Unysis Corp., 960 F.2d 1168, 1179 (3d Cir. 1992). Since plaintiff's claim is effectively a contract action to enforce defendant's obligations to plaintiff under the Plan, Pennsylvania's four-year statute of limitations for contract actions is most appropriate to this case See Meade v. Pension Appeals & Review Committee, 966 F.2d 190, 195 (6th Cir. 1992) ("courts have uniformly characterized section 1132(a)(1)(B) claims as breach of contract claims for purposes of determining the most analogous statute of limitations under state law"); accord Cohen v. Zauman & Baum, P.C., 1993 WL 532963, *2 (E.D. Pa. 1993); Starr v. JCI Data Processing, Inc., 767 F. Supp. 633, 638 (D.N.J. 1991). Plaintiff's claim for benefits did not accrue until his application was formally denied, e.g., Tolle v. Carroll Touch, Inc., 977 F.2d 1129, 1138 (7th Cir. 1992) and he had exhausted his administrative remedies under the Plan. See Thomas v. Kemper National Ins. Co's., 1997 WL 736498, at *4-6 (E.D. Pa. 1997) (plaintiff precluded from pursuing suit where she had failed to appeal denial of benefits pursuant to procedures provided by defendant plan). Since plaintiff filed this action within four years of the rejection of his appeal by the Trustees on February 27, 1992, his claim is not time-barred.

II.

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 judgment as a matter of law." Fed. R. Civ. Proc. 56(c). The movant bears the initial burden of demonstrating the absence of a genuine issue of material fact. Celotex Corp. v. Catrett, 477 U.S. 317, 323 (1986). The non-moving party must then demonstrate the existence of a genuine issue of material fact for trial. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 255 (1986). The non-movant "may not rest upon the mere allegations or denials of the adverse party's pleading, but . . . must set forth specific facts showing that there is a genuine issue for trial." Fed. R. Civ. Proc. 56(e). In reviewing a motion for summary judgment I must resolve "all inferences, doubts and issues of credibility against the moving party." Smith v. Pittsburgh Gage & Supply Co., 464 F.2d 870, 874 (3d Cir. 1972); Adickes v. Kress & Co., 398 U.S. 144, 158-59 (1970).

III.

ERISA does not set forth the standard of review to be applied in an action under § 1132(a)(1)(B) challenging a denial of benefits by a covered plan. The Supreme Court has established, however, that such challenges should be reviewed under an arbitrary and capricious standard if the 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); see also Hullett v. Towers, Perrin, Forster & Crosby, Inc., 38 F.3d 107, 113 (3d Cir. 1994). In this case, the Plan provides that "the Trustees shall have the

sole and absolute discretion to determine eligibility for benefits under the Plan, and to construe and interpret the provisions of the Plan and the Trust Agreement; . . . and the decision of the Trustees shall be final and binding on all parties." (Pl. Ex. G, Plan Amendments effective July 1, 1989.)[5] Accordingly, the Trustees' determination to deny plaintiff disability benefits will be reviewed under the arbitrary and capricious standard. Accord, e.g., Mitchell v. Eastman Kodak Co., 113 F.3d 433, 438 (3d Cir. 1997).[6]

Under this deferential standard, I may overturn the Trustees' decision "only if it is without reason, unsupported by the evidence or erroneous as a matter of law. This scope of review is narrow, and the court is not free to substitute its own judgment for that of the [Trustees] in determining eligibility for plan benefits." Mitchell, 113 F.3d at 439 (citations and quotes omitted). If the Plan allows of only one reasonable interpretation then, of course, its plain meaning must be given effect. If, on the other hand, the Plan language is ambiguous,[7] the Trustees' interpretation must be affirmed "even if the court disagrees with it, so long as the interpretation is rationally related to a valid plan purpose and not contrary to the plain language of the plan." Gaines v. Amalgamated Ins. Fund, 753 F.2d 288, 289 (3d Cir. 1985); see also Moats v. United Mine Workers of Am. Health and Retirement Funds, 981 F.2d 685, 687-88 (3d

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[5] Plaintiff suggests that this Plan amendment might not be effective because it was not publicized to Plan participants but provides no evidence in support of this assertion.

[6] Plaintiff asserts that the arbitrary and capricious standard applies because Section 2.6 of the Plan and the corresponding provision in the SPD give the Trustees "sole discretion" to determine whether applicants who have failed to obtain Social Security disability for non-medical reasons are totally and permanently disabled. However, these provisions plainly concern only the specified factual determination of medical disability, not the Trustees' discretion in interpreting the Plan's eligibility criteria. It is the provision set forth above that gives the Trustees discretion in the latter regard.

[7] Whether the Plan is ambiguous is a matter of law. Taylor v. Continental Group, 933 F.2d 1227, 1232 (3d Cir. 1991).

Cir. 1992).

IV.

The central issue in this case is whether defendant reasonably interpreted the Plan's eligibility criteria for disability pensions to bar plaintiff's claim for benefits. Section 2.6 of the Pension Plan sets forth the eligibility criteria for disability benefits as follows (emphasis added):

> 2.6 Disabled Participant. An Active Participant 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 under the Federal Social Security Act within one year of the date of the onset of his disability, shall become a disabled participant . . . . In the event no medical determination of disability is made under the Federal Social Security Act, because of the failure of the participant to meet non-medical requirements for such a determination under the Act, then the Trustees shall be the sole judge of whether the participant is so disabled, applying the standards of said Act . . . .

(Pl. Ex. G, at 4.)[8]

I think this language is unambiguous on its face and plainly disqualifies plaintiff from receiving a disability pension. The structure and substance of Section 2.6 make plain that

[8] The parties focus their arguments on the language of defendant's summary plan description (SPD) rather than on the Plan's governing document ("Pension Plan"). It is, however, clearly established in this Circuit that claims for benefits brought under § 1132(a)(1)(B), which authorizes actions to recover benefits due "under the terms of [a] plan", are ordinarily governed by a plan's formal governing instrument rather than its summary plan description. See, e.g., Gridley v. Cleveland Pneumatic Co., 924 F.2d 1310, 1316 (3d Cir. 1991) (summary plan description is not a "plan" within the meaning of § 1132(a)(1)(B)). Language in an SPD may be given effect over conflicting language in a plan only if a plaintiff can establish a claim for equitable estoppel based on his reliance on misleading language in the SPD and, even then, a plaintiff must demonstrate "extraordinary circumstances" to recover benefits on such a claim. Id. at 1319. In this case, plaintiff has not even noted distinctions in the language of the two documents, much less alleged the elements of a claim for equitable estoppel. Accordingly, while the SDP might conceivably serve as extrinsic evidence of the meaning of the Plan language should the latter prove ambiguous, it is irrelevant to plaintiff's entitlement to disability benefits. Id. at 1318; see also Hozier v. Midwest Fasteners, Inc., 908 F.2d 1155, 1170 (3d Cir. 1990) (holding that "defendants' reporting and disclosure violations [of ERISA] are irrelevant in determining plaintiffs' entitlement to benefits under the terms of the . . . plan").

consideration by the Trustees is provided as an alternative means for obtaining a determination of medical disability only for the exceptional case in which a participant cannot obtain such a determination from Social Security.[9] Recourse to the Trustees' determination is clearly premised on the assumption that the participant has applied for Social Security disability but been rejected for non-medical reasons prior to obtaining a determination of disability.[10] In other words, the first provision of Section 2.6 establishes a general rule that participants must demonstrate their entitlement to a disability pension by obtaining an award of SSDI; the second provision provides a "safety net" for exceptional cases in which reliance on a determination of disability by Social Security is not possible.

This interpretation finds further support in the implausibility of plaintiff's proffered alternative. He argues that his failure to apply for Social Security disability was merely a "failure . . . to meet non-medical requirements for such a determination [of disability] under the Act," triggering the Trustees's duty to make their own evaluation of his disability. In other words, according to plaintiff the second provision of Section 2.6 creates an independent, alternative route for participants to establish their disability by recourse to the Trustees rather

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[9] Whereas the Pension Plan calls upon the Trustees to make a determination of disability "[i]n the event no medical determination of disability is made under the Federal Social Security Act, because of failure of the Participant to meet non-medical requirements for such a determination under the Act," the SPD requires the Trustees to make disability determinations "[i]n the event no disability award is made under the Federal Social Security Act . . . " (emphases added). At most, the SPD language presents some imprecision that is clarified in the Pension Plan language; as with the Plan language, it still unmistakably implies that the Plan participant has applied to Social Security but been rejected for procedural reasons prior to determination of whether or not he is disabled.

[10] Whether an applicant could obtain a determination from the Trustees without making application to Social Security by showing that such application would be futile need not be determined here. Plaintiff makes no allegation that a timely application by him would have been futile and, indeed, the record would not support such an allegation. To the contrary, the evidence suggests that, had he applied, plaintiff could have obtained such a determination

than by application to Social Security. This interpretation renders superfluous the qualifying term "medical" in "In the event no medical determination of disability . . ." and requires one to ignore the natural implication of this provision -- that an application has been made to Social Security but found inadequate prior to a determination of medical disability by the agency. Finally and most important, plaintiff's interpretation of the second provision as providing an independent, alternative mechanism to establish disability at the option of the applicant is inconsistent with the structure of the two provisions and the language of the second (especially the "In the event that . . ." clause). Together, these provisions make plain that the second provision qualifies the first by providing for the exceptional cases of participants who would otherwise be unfairly excluded from obtaining disability pensions by a blanket requirement that SSDI be obtained to qualify for a disability pension.[11]

In light of the plain meaning of Section 2.6, plaintiff did not qualify for disability benefits

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[11] Because I find Section 2.6's eligibility requirements unambiguous, I need not resort to extrinsic evidence to discern their meaning. See In re Unisys Corp. Long-Term Disability Plan ERISA Litigation, 97 F.3d 710, 715-716 (3d Cir. 1996); Epright v. Envtl. Resources Management, Inc. Health and Welfare Plan, 81 f.3d 335, 339 (3d Cir. 1996). Nonetheless, I note that my interpretation of these provisions is consistent with the purposes defendant offers to explain them. According to the Plan's administrator, requiring participants to seek Social Security awards in the first instance is central to the Plan's scheme, allowing the Plan both to take advantage of the perceived objectivity of Social Security determinations of disability and to avoid the costs of having to make determinations of disability itself. (Devine Aff. ¶ 14.) Thus, the Trustees are called upon to make determinations of disability only as a back-up mechanism in the cases of workers who cannot obtain a determination of disability from Social Security because they fail to meet substantive, non-medical threshold criteria for SSDI. Such criteria include, for example, the requirement that an applicant be fully "insured," which is a function of the age at which he suffers the disability and the number and timing of "quarters of coverage" he had previously earned. See 20 C.F.R. § 404.130 - .145 (1990). Thus, the Plan's disability criteria have a funneling effect which enable the Plan to rely upon Social Security determinations of disability in the first instance and whenever possible.

If given effect, plaintiff's interpretation would defeat the efficiencies and evenhandedness served by the disability criteria by allowing applicants to choose at their option between applying to Social Security and seeking a determination of disability from the Trustees. Plaintiff's interpretation would also have the anomalous effect of creating one route to a disability pension (obtaining SSDI) governed by a strict time limit, and another (recourse to the Trustees) without any time limit whatsoever.

under the Plan. He neither applied for SSDI in time to "become[] entitled to receive [SSDI] within one year of the date of the onset of his disability,"[12] nor established that Social Security would not make a medical determination of disability because of his failure to meet non-medical requirements for such a determination. Accordingly, plaintiff has failed to meet the eligibility criteria for a disability pension as required by the plain language of the Pension Plan. A fortiori, the Trustees' determination that plaintiff did not qualify for disability benefits was not arbitrary and capricious.

Because plaintiff's remaining claims for certain other benefits could only "accrue as a consequence of [his] entitlement to" disability benefits (Comp., ¶ 7), these claims fail also. Defendant therefore will be granted summary judgement as to all plaintiff's claims.

[12] As already noted, plaintiff concedes he did not become entitled to Social Security within one year of the onset of his disability. Because SSDI awards may be made retroactive up to one year prior to the application date if the applicant was eligible for SSDI at that earlier time, plaintiff would have had to apply for SSDI within two years of onset of his auto accident in order to become entitled to SSDI within one year of the onset of disability. See 20 C.F.R. § 404.621 (1990).