

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

CHARLES R. LAZUN, JR. :
 :
 : CIVIL ACTION
 v. :
 :
 :
 :
 PRUDENTIAL DISABILITY : NO. 05-CV-00764
 MANAGEMENT SERVICE :

MEMORANDUM ORDER

And now, this 12th day of January, 2006, upon consideration of Defendant Prudential Insurance Company Of America's Motion To Dismiss Counts I, II, And IV Of Plaintiff's Complaint (Doc. No. 7), Defendant's Motion To Strike Plaintiff's Jury Demand (Doc. No. 9), and Plaintiff Charles R. Lazun, Jr.'s Motion For Clarification (Doc. No. 10), it is ORDERED as follows:

1. In accordance with Plaintiff's request in his Motion for Clarification (Doc. No. 10), Plaintiff's initial Complaint (Doc. No. 1), originally filed in the Court of Common Pleas of Lehigh County, Pennsylvania and removed to this Court on February 17, 2005, is dismissed as MOOT.
2. Plaintiff's second Complaint (Doc. No. 8), filed in this Court on May 16, 2005, will be considered the controlling pleading in this action.
3. Plaintiff's second Complaint includes only the claim in Count III of Plaintiff's original Complaint, and omits those claims in Counts I, II, and IV of the original Complaint. Therefore, Defendant's Motion to Dismiss Counts I, II, and IV of Plaintiff's Complaint (Doc. No. 7) is DISMISSED.
4. Plaintiff's second Complaint alleges only a violation of the Employee Retirement Income Security Act (ERISA). No right to a jury trial exists under ERISA's civil

enforcement provisions.¹ Accordingly, Defendant's Motion to Strike Plaintiff's Jury Demand (Doc. No. 9) is GRANTED.

IT IS SO ORDERED.

BY THE COURT:

S:/R. Barclay Surrick, Judge

¹ Plaintiff's claim is controlled by § 502(a)(1)(B) which allow an ERISA litigant "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" and § 502(a)(3), which permits the litigant to "obtain other appropriate equitable relief." 29 U.S.C. § 1132; *Parente v. Bell Atl.*, Civ. A. No. 99-5478, 2000 U.S. Dist. LEXIS 4851, at *6 (E.D. Pa. Apr. 18, 2000). Causes of action under § 502(a)(3) are "explicitly equitable" and thus carry no right to a jury trial. *Pane v. RCA Corp.*, 868 F.2d 631, 636 (3d Cir. 1989); *see also Brewer v. Reliance Standard Life Ins. Co.*, Civ. A. No. 01-CV-0047, 2001 U.S. Dist. LEXIS 24175, at *6 (E.D. Pa. Dec. 4, 2001). The right to a jury trial also fails to arise under § 502(a)(1)(B) claims, which, though "not explicitly denominated as equitable," have been found "equitable in nature." *Pane*, 868 F.2d at 636; *see also Kuestner v. Health & Welfare Fund of Phila. Bakery Employers*, 972 F. Supp. 905 (E.D. Pa. 1997).