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

PAUL FOX	:	
Plaintiff	:	
v.	:	No. 04-CV-58
	:	
PNC FINANCIAL SERVICES GROUP, INC.,	:	
PNC BANK, N.A., as Trustee for PNC	:	
FINANCIAL SERVICES GROUP, INC.	:	
PENSION PLAN and PENSION COMMITTEE	:	
OF PNC FINANCIAL SERVICES GROUP, INC.	:	
PENSION PLAN	:	

MEMORANDUM

GREEN, S.J. **March 31, 2006**

Presently pending is Defendants' Motion for Summary Judgment, Plaintiff's Motion for Partial Summary Judgment, and the parties' respective replies in opposition. For the reasons set forth below, Defendants' Motion for Summary Judgment will be granted. Plaintiff's Motion for Partial Summary Judgment will be denied.

I. BACKGROUND

The following facts are not in dispute: Plaintiff was hired by Provident National Bank ("Provident") on March 20, 1978. In September 1986 Plaintiff voluntarily terminated his employment with Provident. Plaintiff claims that in 1998 PNC Financial Services Group, Inc. ("PNC") began to actively recruit him to return to PNC, Provident's successor. During the recruitment process, Fox met on several occasions with Terry Allen ("Allen"), PNC's Chief Operating Officer, who Plaintiff claims stated that she had the authority to bind PNC with respect to all matters pertaining to Fox's rehiring. Plaintiff asserts that during negotiations regarding his prospective compensation package, he made it clear that as a condition of accepting any job offer, PNC would have to agree to make his official hiring date retroactive to his original hire date, March 20, 1978. This was so that he could be fully vested and entitled to a pension benefit based upon continuous service from 1978, as opposed to starting as a new employee, or having only a partial credit for years of prior service. Plaintiff made it clear that for pension purposes he was seeking to be treated as though he never left PNC and would thereby be entitled to 20 years of vested pension benefits plus subsequent accumulated service time. During the negotiations, PNC - through Allen - reportedly repeatedly advised Plaintiff that there would be no problem recognizing his official starting date as March 20, 1978; having been told by Plaintiff that he would then be qualified for a pension benefit based upon continuous service from 1978 and entitled to in excess of 20 years of vested pension benefits. Ultimately, Plaintiff accepted the position of Vice President of Credit Operations, Credit Card Division. Plaintiff claims that Allen again assured him that the offer included the 20 years of vested credited service under the PNC pension plan. Plaintiff did not secure any written verification of the offer insofar as it related to pension vesting.

From 1998 to 1999 John F. Ausura ("Ausura"), was the CEO of PNC Bank in Wilmington, Delaware. Allen advised Ausura that she knew Plaintiff, who enjoyed an excellent reputation in the credit card industry. Ausura confirms that Allen recommended Plaintiff very highly and also that Allen was the assigned point person for recruiting and hiring him. Ausura has a specific recollection of Allen advising him during the hiring process that Plaintiff insisted that a term of his rehire would be that his hire date for pension purposes would be 1978. Given the highly competitive job market, Ausura believed that Plaintiff's request was reasonable "since we (PNC) were the ones desperate at the time." Asura also testified that he is certain Plaintiff was granted retroactive pension credit at the time of his rehiring; however, Ausura is unable to explicitly recall whether the 12 years during which Plaintiff was not employed by PNC were included in the retroactive credit. Ausura also recalls contacting his boss regarding Plaintiff's pension vesting date. His boss subsequently referred him to Rick Joers, Vice President of Human Resources for the entire company. Mr. Joers advised Ausura that he would "take it up with the HR powers within PNC Bank in Pittsburgh." Eventually, Ausura was advised that the 1978 hiring date for pension purposes had been approved by the Pittsburgh home office executives, and that Plaintiff's record would reflect the same. While Ausura explicitly recalls that Plaintiff was granted his original hiring date of 1978, he does not recall whether this resulted in Plaintiff being granted 8 ½ years of vested pension service at his rehiring or credit for the 12 intervening years as well.

On September 21, 1998 Plaintiff began working as PNC's Vice President of Credit Operations, Credit Card Division. Sometime shortly thereafter, Plaintiff claims he inquired of PNC's Human Resources Department regarding his official rehire date and confirmed that PNC's records showed that the rehire date was in fact March 20, 1978. In March 1999 PNC's credit card operations were sold to MBNA America ("MBNA"). Plaintiff's position was terminated but he and many other PNC employees were offered new positions with MBNA. Plaintiff claims that when he transferred from PNC to MBNA, MBNA informed him that it had been advised by PNC that he was to be treated as an employee with over 20 years of continuous service.

Thereafter, Plaintiff received a 20-year lapel pin from MBNA in recognition of his official status as being an employee with 20 years of continuous service from 1978. However, for pension purposes only, Plaintiff asserts that he subsequently learned that under the terms of his hiring with MBNA, he only began earning service credit under MBNA's pension plan from March 1999 forward. In February 2003 Plaintiff contacted PNC's Pension Service Center in order to determine the amount of the pension benefit to which he was entitled. PNC advised him that he was not eligible for any pension benefit under the Plan due to his break in service from 1986 to 1998. Upon further inquiry Plaintiff learned that in concluding that he was not entitled to a pension, PNC did not recognize his original hiring date of March 20, 1978 nor the 20 years of vested service to which Plaintiff and PNC purportedly agreed at the time of his rehiring. Plaintiff subsequently attempted to locate PNC executives involved in his rehiring, and in March 2003 he was able to contact Asura. At that time, Ausura sent a letter to PNC confirming that his recollection was that as a term and condition of Plaintiff's re-employment with PNC, Plaintiff was granted his original hiring date of March 20, 1978 for the purpose of pension vesting under the PNC Plan. On March 22, 2003, Fox forwarded Ausura's March 13, 2003 correspondence to PNC. On May 30, 2003 PNC rejected Fox's appeal of the denial of a pension benefit. The May 30, 2003 denial letter advised Plaintiff that "the Committee's decision brings this matter to a close from the standpoint of the Plan's administrative claims process" and advised him that as a result of the final denial of his claim he could file a civil action pursuant to ERISA.

II. DISCUSSION

Plaintiff has asserted causes of action for the award of pension benefits pursuant to ERISA § 502(a)(1)(B), for breach of fiduciary duty under ERISA § 502(a)(3)(b), and has stated a claim for equitable estoppel based upon ERISA. Defendants deny liability as to each cause of action. The court will address each claim seriatim.

A. Plaintiff's Claim for Entitlement to Benefits Under the Plan

Plaintiff claims that pursuant to ERISA § 502(a)(1)(B), 29 U.S.C. § 1132(a)(1)(B), he is a participant in, and beneficiary of, the Plan. He further claims that he was wrongfully denied benefits in violation of 29 U.S.C. § 1132(a)(1)(B). Specifically, Plaintiff argues that the Summary Plan Description ("SPD") in existence at the time of his rehiring did not notify him that:

> (1) the Plan prohibited him from receiving 20 years of vested service for time when he was not an employee;

(2) Defendants lacked the authority to permit Plaintiff's official starting date to be March 20, 1978 in order for Plaintiff to received a 20 year continuous service credit under the Plan[1];

(3) the Plan precludes the accumulation of service by a former employee who returns to PNC for re-employment; and

(4) he was not eligible to receive a pension based solely upon his previous 8.5 years of service.

Plaintiff bases this claim upon his assertion that the SPD existing at the time of his rehire conflicts with the Plan. He therefore concludes that because the SPD conflicts with the Plan, the language of the SPD controls and he has a valid claim for pension benefits under the Plan. The evidence on summary judgment does not support Plaintiff's position.

As an initial matter, Defendants correctly state that Plaintiff can only recover from the Plan pursuant to ERISA § 502(a)(1)(B). Bixler v. Central Pennsylvania Teamsters Health & Welfare Fund, 12 F.3d 1292, 1297 (3d Cir. 1993). Plaintiff does not argue that he can recover from any Defendants other than the Plan under this section of ERISA. Therefore, summary judgment will be granted in favor of all non-Plan Defendants on this issue. However, Plaintiff maintains that he is entitled to recover pension benefits from the Plan because the SPD conflicts with the Plan. As a general rule, the Plan document controls a plaintiff's entitlement to pension benefits. Confer v. Custom Engineering Co., et al., 952 F.2d 41, 43 (3d Cir. 1991). A denial of benefits pursuant to the terms of an ERISA plan must be reviewed under the "arbitrary and capricious" standard if the benefit plan gives the administrator or fiduciary discretionary authority to determine eligibility for benefits. Firestone Tire & Rubber Co. v. Bruch, 489 U.S.

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[1] Plaintiff originally worked for Provident from March 1978 through September 1986. He was re-employed with PNC Financial Services Group in 1998. In the instant motion Plaintiff seeks a determination that he should be credited with over 20 years of continuous employment as though there was no break in service.

101, 115, 109 S.Ct. 948 (1989); Courson v. Bert Bell NFL Player Retirement Plan, 214 F.3d 136, 142 (3d Cir. 2000). Denials of benefits reviewed under the arbitrary and capricious standard may only be overturned when the decision is unreasonable, is not supported by substantial evidence in the administrative record, or is erroneous as a matter of law. See Courson, 214 F.3d at 142.

Here, the Pension Committee has the discretionary authority to determine pension benefit eligibility under terms of the Plan. Therefore, this court must review the Plan's denial of Plaintiff's request for pension benefits under the arbitrary and capricious standard.[2] The court will first determine Plaintiff's eligibility for pension benefits at the time of his initial voluntary termination of employment in 1986. The terms of the Plan documents in effect at the time of Plaintiff's initial voluntary termination determine his eligibility for pension benefits for the

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[2]Plaintiff argues that a the court should not apply the arbitrary and capricious standard when reviewing the Pension Committee's denial of his claim for benefits. In the alternative, Plaintiff argues that the court should apply a heightened arbitrary and capricious standard, utilizing a sliding scale approach where the fiduciary's determination is entitled to some deference, but the deference is lessened to the degree necessary to neutralize influence resulting from any potential conflict of interest. Relying on Pinto v. Reliance Standard Life Ins. Co., 214 F.3d 277, 378 (3d Cir. 2000), plaintiff avers that the arbitrary and capricious standard of review should not be applied when a conflict of interest exists because the provider of the funds also determines eligibility for benefits under the plan and the fiduciary has a motive for denying benefits. However, in Pinto the court specifically distinguished the standard of review to be applied when reviewing a denial of a request for benefits under an ERISA plan by an insurance company which, pursuant to a contract with an employing company, both determines eligibility for benefits, and pays those benefits out of its own funds. Id. at 378. The court distinguished the standard when an insurance company makes determinations from when the employer-administrator makes determinations because ". . . we have been highly deferential to decisions of an employer who funds and administers a benefit plan, a practice grounded in the belief that the structural incentives to deny meritorious claims are generally outweighed by the opposing incentives to grant them--such as the "incentives to avoid the loss of morale and higher wage demands that could result from denials of benefits." Id. (citing) Nazay v. Miller, 949 F.2d 1323, 1335 (3d Cir.1991).

Plaintiff also relies on Grizter v. CBS, 275 F.3d 291, 295 (3d Cir. 2002) in support of his argument for de novo review; however, in the instant matter, unlike that in Gritzer, the administrator of the plan made the determination to deny benefits. The Gritzer court did not apply the arbitrary and capricious standard because in that case the plan administrator was not exercising its discretion when the decision denying benefits was made.

period beginning with Plaintiff's initial employment date in March 1978 and ending with Plaintiff's initial departure from employment with PNC in September 1986. Under the terms of the Plan in 1986, a PNC employee was required to have 10 years of service in order to be vested for pension purposes. Plaintiff does not argue that the SPD in effect at the time of his original departure from PNC conflicts with the then-effective Plan. According to the terms of the Plan in effect in September 1986, Plaintiff - because he had less than 10 years of service - was not eligible for pension benefits based on his 8.5 years of service accrued from 1978 through 1986. A straightforward reading of the Plan requires this result. Plaintiff did not accrue enough service from 1978 through 1986 in order to be vested. Consequently, in September 1986 he was not entitled to pension benefits acquired for the years of service from 1978 through 1986.

The Plan effective in September 1986 also provided, in relevant part, that:

> (c) For purposes of determining a Participant's total number of years of Credited Service at any date of reference, all years of Credited Service shall be aggregated, except that if a Participant who is not vested to any extent in his Accrued Benefit incurs a Break in Service equal to or longer than the greater of (i) his Credited Service prior to the Break in Service, or (ii) five years, Credited Service Prior to the Break in Service shall not be counted.

(First Amendment to the PNC Financial Corp Pension Plan). Even in 1986, the Plan did not provide that Plaintiff could be credited with any prior years of service if his break in service was longer than five years or longer than the years of prior service. Plaintiff's Break in Service was twelve years, clearly longer than 5 years or his 8.5 years of prior service. Again, Plaintiff does not argue that any SPD conflicted with the terms of the Plan in 1986. Therefore, the court concludes that the terms of the Plan effective in 1986 control, and also concludes that Plaintiff is not entitled to pension benefits under the terms of the Plan for his years of service from 1978 through 1986.

Plaintiff now urges this court to conclude that there is a conflict between the SPD in existence at the time of Plaintiff's rehiring (the October 1997 SPD) and the Plan in effect at that time. Relying on Burstein v. Retirement Account Plan for Employees of Allegheny Helath and Research Foundation, 334 F.3d 365, 378 (3d Cir. 2003), Plaintiff argues that the alleged conflict between the SPD and the Plan must be resolved in his favor. However, although the terms of an SPD will control over conflicting terms in a Plan, there is no evidence to support Plaintiff's argument that there is a conflict between the 1997 SPD and the Plan in effect at the time of Plaintiff's rehire in 1998. Plaintiff notes that the 1997 SPD is silent regarding an employee in Plaintiff's situation, who has a break in service which is longer than his years of prior service, upon rehire. The SPD's silence does not, despite Plaintiff's assertions to the contrary, create a conflict between it and the Plan. Plaintiff repeatedly notes that neither the 1997 SPD nor the 1999 SPD affirmatively address Plaintiff's entitlement to pension benefits. The SPDs failure to address the specific situation in which a former employee accrued years of service - but was not vested at the time of his departure - experiences a break in service longer than his years of original service, and is later rehired, cannot be considered an inherent conflict between the SPDs and the Plan. Although ERISA requires that the summary plan description be accurate and sufficiently comprehensive to reasonably apprise plan participants of their rights and obligations under the plan, 29 U.S.C. §1022(a), ERISA does not require an otherwise reasonably sufficient SPD to provide a summary of entitlements to benefits for every conceivable employment circumstance to be encountered by any employee. Compare, Burstein, 334 F3d at 375-77. Plaintiff's employment and subsequent re-employment circumstances were unique in that he was initially employed for a significant period of time, had a break in service that was substantially longer than his prior service, and was later re-employed. Nothing in ERISA requires an SPD to address every possible employment scenario. Instead, 29 U.S.C. § 1022(a) simply requires that an SPD contain a sufficiently comprehensive summary of employee rights and obligations thereunder. See, Burstein, 334 F3d at 379. Both the 1997 and 1999 SPDs are sufficiently comprehensive and, contrary to Plaintiff's assertions, neither conflict with the Plan. Moreover, Plaintiff's claim for pension benefits was denied pursuant to an Amendment to Paragraph 2.3(c) of Section II of the Plan which provides:

> (c) For purposes of determining total number years of Vesting Service at any date of service, all years of Vesting Service shall be aggregated, except that if a Participant who is not vested to any extent in his Accrued Benefits incurs a Break in Service equal or longer than the greater of (i) his Vesting Service prior to the Break in Service, or (ii) five years, Vesting Service prior to the Break in Service shall not be counted.

At the time of Plaintiff's initial voluntary termination from PNC in 1986 he was not vested in his Accrued Benefits. Upon Plaintiff's rehire in 1998 the Plan still provided that because Plaintiff incurred a break in service longer than his vesting service before the break, Plaintiff's total number of years of vesting service cannot be aggregated. Therefore, at the time he made a claim to the Plan for pension benefits, it was correctly determined the Plaintiff was not entitled to pension benefits pursuant to the terms of the Plan. Consequently, Defendants' motion for summary judgment on Count I of Plaintiff's Complaint for pension benefits pursuant to ERISA § 502(a)(1)(B) will be granted as a matter of law. It is clear that absent a conflict between the SPDs and Plan, the denial of benefits is not arbitrary nor capricious under even a heightened standard of review. Plaintiff's motion for summary judgment on Count I will be denied. .

B. Plaintiff's Claims for Breach of Fiduciary Duty and for Equitable Estoppel Under ERISA § 502(a)(3)

In moving for summary judgment on Counts II and III of Plaintiff's Complaint, the claims for breach of fiduciary duty and equitable estoppel, respectively, Defendants first argue that summary judgment should be granted in their favor because Plaintiff may not maintain a cause of action under ERISA §502(a)(3) where appropriate relief is available under ERISA §§502(a)(1)(B). However, in Varity Corp. v. Howe, 516 U.S. 489, 515, 116 S.Ct. 1065, (1996) the Supreme Court held that plaintiffs may simultaneously seek relief under both ERISA §§ 502(a)(1)(B) and 502(a)(3)(B) where the claim for equitable relief is appropriate. The Varity holding supports the conclusion that a determination regarding whether or not Plaintiff is entitled to equitable relief should be deferred pending determination of the availability of legal relief. Having considered Plaintiff's claim for legal relief and determined that no such relief is available to Plaintiff pursuant to ERISA §502(a)(1)(B), the court concludes that under the circumstances it is appropriate to consider Plaintiff's claim for equitable relief under ERISA § 502(a)(3).[3]

1. Breach of Fiduciary Duty

In order to prove a claim for breach of fiduciary duty, Plaintiff must demonstrate: (1) Defendant(s)' status as an ERISA fiduciary acting as a fiduciary; (2) a misrepresentation on the part of Defendant(s); (3) the materiality of the misrepresentation; and (4) detrimental reliance by Plaintiff on the misrepresentation. Daniels v. Thomas & Betts Corp., 263 F.3d 66, 73 (3d Cir. 2001); In re Unysis Corp. Retiree Medical Ben. ERISA Litigation, 57 F.3d 1255 (3d Cir. 1995). The court concludes that any Defendant who made representations to Plaintiff were not fiduciaries acting in a fiduciary capacity. It is well established that in order to be considered a fiduciary over a plan, one must exercise discretionary authority and control over the Plan.

[3] The court does not conclude that it is always appropriate to consider breach of duty and estoppel claims when legal relief is not available. However, in light of the evidence that at least some PNC officials, but no member of the Pension Committee, may have made representations regarding Plaintiff's eligibility for pension benefits, and also considering evidence that Plaintiff was given a 20 service pin, this court concludes that under those circumstances, it is appropriate to delve into the possibility of equitable relief.

> ERISA ... defines 'fiduciary' not in terms of formal trusteeship, but in *functional* terms of control and authority over the plan." Mertens v. Hewitt Associates, 508 U.S. 248, 262, 113 S.Ct. 2063 (1993). As the district court properly noted, "[f]iduciary duties 'attach not just to particular persons, but to particular persons performing particular functions.' " Burstein, 263 F.Supp.2d 949, 2002 WL 31319407, at *15 (quoting Hozier v. Midwest Fasteners, Inc., 908 F.2d 1155, 1158 (3d Cir.1990)). "[U]nder ERISA, a person 'is a fiduciary with respect to a plan' only 'to the extent' that 'he has any discretionary authority or discretionary responsibility in the administration of such plan.' " Varity Corp., 516 U.S. at 527, 116 S.Ct. 1065 (quoting 29 U.S.C. § 1002(21)(A)(iii)); see also Confer v. Custom Eng'g Co.,952 F.2d 34, 36 (3d Cir.1991) ("In determining who is a fiduciary under ERISA, courts consider whether a party has exercised discretionary authority or control over a plan's management, assets, or administration.").

Burstein 334 F.3d at 385. Here, the Plan clearly dictates that only the Pension Committee has the discretion and authority to make benefits decisions under the Plan. The parties have not provided the court with evidence that any member of the Pension Committee informed Plaintiff that he would be entitled to credit for his years of prior service and credit for his break in service. Instead of providing evidence that the Pension Committee or any of its members made misrepresentations to Plaintiff, Plaintiff baldly asserts that:

> Here, it is clear that the highest-ranking officers of PNC were at the very least acting as though they were fiduciaries able to speak on behalf of the Plan and that they had checked with the appropriate PNC authorities, who served as fiduciaries to the Plan. It would certainly be fair to conclude that even if these executives were not fiduciaries, they must have consulted with fiduciaries before making unequivocal representations to plaintiff regarding the Plan.

Pl. Mot. Summ J. at 19, 20. Plaintiff has only made assumptions regarding whether the officers of PNC consulted with fiduciaries, or the Pension Committee, before advising him that his rehire date would revert back to March 1978. The evidence produced on summary judgment does not support a finding that a fiduciary of the Plan was involved in the representations. Because only the Pension Committee has the authority and discretion to make decisions concerning pension benefits, only the Committee, or a member thereof can be liable for a breach of fiduciary duty claim under ERISA. Since there is no evidence that any member of the Committee made the statements relied upon by Plaintiff regarding Plaintiff's eligibility for pensions benefits, the court must grant summary judgment in Defendants' favor on Plaintiff's claim for breach of fiduciary duty.

2. Equitable Estoppel

To establish a claim for equitable estoppel under ERISA, a plaintiff must prove: (1) a material representation, (2) reasonable and detrimental reliance upon the representation, and (3) extraordinary circumstances. Curcio v. John Hancock Mut. Life Ins. Co., 33 F.3d 226, 235 (3d Cir.1994); Smith v. Hartford Ins. Group, 6 F3d 131, 137 (3d Cir. 1993). The determination of an equitable estoppel claim is a mixed question of law and fact. Curcio, 33 F.3d at 236 (citing Fischer v. Philadelphia Elec. Co., 994 F.2d 130, 135 (3d Cir.1993)). Plaintiff alleges that there was a material misrepresentation upon which he reasonably relied to his detriment, and also argues that extraordinary circumstances exist and require that he be awarded pension benefits. For all of the reasons stated above, there is no evidence that a fiduciary of the Plan made a representation to Plaintiff and thus this claim, too, must fail. Moreover, the court also concludes that extraordinary circumstances do not exist. In support of his argument that extraordinary circumstances exists, Plaintiff claims that ". . . the actions of defendants in their dealings with plaintiff constitute 'extraordinary circumstances' in the form of affirmative acts of bad faith, concealment, fraud and/or similar inequitable conduct." Pl.'s Mot Summ. J. at 23. Plaintiff has not provided the court with any evidence of bad faith, concealment, or fraud on Defendants' part. Plaintiff relies, in different degrees, on the reasoning of the following cases in support of his contention that this court should find that extraordinary circumstances exist such that his pension benefits should be awarded: Curcio and Smith, *supra*, and Pell v. E.I. duPont de Nemours & Co. Inc. 2003 WL 22466196 (D.Del.,2003). However, the court finds each of the cases distinguishable from the facts and evidence presented herein. In both the Curcio and Smith cases, the representations upon which plaintiffs detrimentally relied were made by plan administrators and/or fiduciaries. The fiduciaries also provided the plaintiffs therein with written summaries or other documents containing descriptions of the benefits plaintiffs expected to receive. In the Smith case, the employer switched to a self-funded health care plan. After the switch the Personnel Director conducted seminars to help employees determine whether to enroll in the new voluntary plan. During the seminars the Personnel Director provided employees with a document that summarized changes in the plan. The Personnel Director inaccurately advised plaintiff's spouse that her benefits would remain the same under the new plan. Relying on this information, plaintiff therein switched plans and was subsequently denied coverage. The Smith court specifically noted that the employer acted as a fiduciary of the plan and it was in its capacity as a fiduciary that the court found that the employer could be liable on an equitable estoppel claim. Smith, 6 F.3d at 141. In the instant matter, with the exception of the Pension Committee, none of the Defendants are fiduciaries of the Plan. Moreover, as discussed above, Plaintiff cannot attribute any of the representations to a Pension Committee member. Finally, unlike the plaintiffs in both the Smith and Curcio cases, Plaintiff was never provided with any written documents contrary to the Plan, stating that he was eligible for pension benefits.

In Curcio, the employer provided inaccurate summaries of the life and accident insurance benefits available to its employees. The Court of Appeals for the Third Circuit determined that the employer was a fiduciary because in its employee benefits booklet the employer labeled itself as the plan administrator, and also because the employer provided documentation to the employees stating that it could modify or amend the plan at any time at its sole discretion. Curcio at 234-235. In both Smith and Curcio, before the court found that extraordinary circumstances existed, the court first determined that the employer acted in a fiduciary capacity. This court also notes that the employers acted in their capacities as fiduciaries when they made inaccurate representations to the beneficiaries. Such is not the case here. There is no evidence that the plan administrator or any other plan fiduciary made representations to Plaintiff regarding his pension benefits.

This case is also distinguishable from Pell v. E.I. duPont de Nemours & Co. Inc. 2003 WL 22466196 (D.Del.,2003) which Plaintiff cites in support of his position. On a motion for judgment on the pleadings the court in Pell found that plaintiff was diligent in attempting to obtain accurate information regarding his service date for pension calculation purposes. Plaintiff received both oral and written representations that his total combined service (when he transferred employment from one employer to another) would be counted for vesting purposes. However, less than two weeks before his retirement, the employer informed plaintiff he would not be given credit for the combined years of service. The court permitted plaintiff's estoppel claim to proceed and to provide the parties with an opportunity to conduct discovery on the claim. This court notes, again, that unlike any of the cases upon which Plaintiff relies, he has not provided the court with any evidence that he received written representation regarding his pension eligibility.

Considering all of the above, the court cannot conclude that extraordinary circumstances existed such that Defendants should be estopped from denying Plaintiff's claim for pension benefits. In granting summary judgment to Defendants and against Plaintiff, the court has considered the administrative ERISA record and the full record submitted on summary judgment in finding that there is no cause of action established under ERISA. The court decides only the causes of action in the Complaint and does not decide whether non-ERISA causes of action arise out of statements made to Plaintiff by officers of entities connected with PNC, but not the Pension Committee, in regard to any statements made to Plaintiff prior to his re-hire.

IV. CONCLUSION

The court concludes that all of Plaintiff's claims must be dismissed on summary judgment. Plaintiff is not entitled to benefits under ERISA § 502(a)(1)(B). Furthermore, because no representations regarding his eligibility for pension benefits were made by a plan fiduciary, Plaintiffs breach of fiduciary duty claim pursuant to ERISA § 502(a)(3) will be dismissed. Finally, because plaintiff has not provided evidence that representations were made by a plan fiduciary and also because no extraordinary circumstances exist, Plaintiff's equitable estoppel claim will also be dismissed. Summary judgment will be granted in Defendants favor on all claims. Plaintiff's motion for partial summary judgment will be denied.

An appropriate order follows.

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

PAUL FOX Plaintiff v. PNC FINANCIAL SERVICES GROUP, INC., PNC BANK, N.A., as Trustee for PNC FINANCIAL SERVICES GROUP, INC. PENSION PLAN and PENSION COMMITTEE OF PNC FINANCIAL SERVICES GROUP, INC. PENSION PLAN	: : : : : : : : : :	No. 04-CV-58

ORDER

Presently pending are Plaintiff's Motion for Partial Summary Judgment, Defendants' Motion for Summary Judgment, and the parties respective replies in opposition thereto. Upon careful consideration of the motions and upon the evidentiary record, **AND NOW** this day of March 2006, **IT IS HEREBY ORDERED** that:

1. Defendant's Motion to for Summary Judgment is **GRANTED**.

2: Plaintiff's Partial Motion for Summary Judgment is **DENIED**.

BY THE COURT:

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Clifford Scott Green, S.J.