

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION

FILED

MAR 18 2004

No. 5:02-CV-40-BO

KENNETH R. BURSELL,)
Plaintiff,)
)
v.)
)
GENERAL ELECTRIC COMPANY,)
Defendant.)
_____)

, CLERK
US DISTRICT COURT
E. DIST. N. CAROLINA

MEMORANDUM AND OPINION

This matter came before the Court on April 8, 2003 for a bench trial in Raleigh, North Carolina. On December 17, 2001, Plaintiff Kenneth R. Bursell ("Bursell") filed a complaint in the Superior Court of Wake County, North Carolina, alleging failure to pay benefits, breach of contract, and violation of the North Carolina Wage and Hour Act ("NCWHA"). On January 18, 2002, Defendant filed a Notice of Removal to this Court, arguing that Plaintiff's claims were governed by the Employee Retirement Income Security Act of 1974 ("ERISA"). Plaintiff now contends that Defendant's denial of disability benefits violated § 502(a)(1)(B) of ERISA, 29 U.S.C. § 1132(a)(1)(B). On October 31, 2002, Plaintiff filed a motion for summary judgment. On November 1, 2002, Defendant filed its motion for summary judgment. The Court entered an order on January 31, 2003 denying Plaintiff's motion. The Court granted partial summary judgment in favor of Defendant with respect to Plaintiff's state law claims and jury demand, but denied summary judgment with respect to Plaintiff's claims for short-term disability, long-term disability, and disability pension benefits.

Based upon the evidence and testimony presented at trial, the Court makes the findings of fact and conclusions of law described below. Fed. R. Civ. P. 52(a).

MAR 18 2004

FINDINGS OF FACT

Based upon a full examination of the evidence presented, the Court finds that:

Plaintiff Kenneth R. Bursell's claim for benefits is based on mental health problems. The problems originated from incidents that occurred at work during 1999 and 2000. Plaintiff began his employment at Defendant General Electric Company ("GE") on March 5, 1979. In October of 1999, Plaintiff was assigned to work for the shipping department of the GE Aircraft Engines Business Operations in Wilmington, North Carolina. On October 26, 1999, Defendant was taken from his work station to a conference room and questioned regarding two laptop computers that had disappeared during a shift when Plaintiff had been working. Andrea Hughes ("Hughes"), a GE human resources employee, questioned Plaintiff that day. Plaintiff was suspended from work pending Defendant's investigation of the missing laptop computers.

On November 4, 1999, Hughes met with Plaintiff and informed him that he was being placed on Decision Making Leave ("DML") in accordance with Defendant's discipline process. Hughes gave Plaintiff a DML letter. On November 12, 1999, Plaintiff appealed his placement on DML pursuant to Defendant's peer review process. The peer review panel issued a written determination on November 19, 1999 and reduced Plaintiff's discipline to a written warning. Plaintiff returned to work to the same job with no reduction in pay.

Plaintiff first sought medical treatment for his mental health on December 14, 1999. His primary care physician, Dr. Wortman, prescribed the anti-depressant Wellbutrin. Plaintiff first saw a psychiatrist for these mental problems, Dr. William Koff, on January 14, 2000. Dr. Koff was a service provider through Defendant's Employee Assistance Program. According to Dr. Koff's notes, Plaintiff felt "devastated" and "anxious in public." Dr. Koff prescribed Remeron,

another anti-depressant. On February 14, 2000, Plaintiff bid on and was awarded a lateral transfer within Defendant's Nuclear Energy Business Operations.

On May 3, 2000, Plaintiff saw Dr. Robert H. Weinstein, a psychiatrist, who diagnosed Plaintiff's condition as major depression with obsessions. Dr. Weinstein prescribed medication and supportive therapy to treat grief and rejection. On July 7, 2000, while he was at work, Plaintiff saw Hughes from a distance. Plaintiff became extremely angry and thought about grabbing Hughes and choking her. He was fearful that he would become violent and left work immediately. The following Monday, July 10, 2000, Plaintiff filed for early retirement to begin on August 1, 2000. Plaintiff did not return to work after July 10, 2000.

Plaintiff contacted Defendant's Disability Benefits Center (the "Center") on July 14, 2000 and filed a Short-Term Disability ("STD") claim. Defendant's STD plan document states that an employee is entitled to STD benefits if he becomes totally disabled. *See* GE Life, Disability, and Medical Plan at 16. The STD plan itself does not define total disability. The GE employee benefits handbook, "Your GE Benefits Handbook" (the "Handbook"), states that an employee is disabled for STD purposes if he is unable to perform the regular duties of the employee's "own job." Handbook at 179, 182. Further, an employee claiming STD benefits must be under the care of a doctor and the doctor's certification of disability must be approved by the Center. *Id.* at 186. Defendant is identified as the Plan Administrator of the STD plan.¹ *Id.* at 420.

After Plaintiff filed for STD benefits, the Center sent a functional capacity survey form to

¹Regarding the role of the Plan Administrator, the Handbook states: "The plan administrator has authority to control and manage the operation and administration of each of the plans in this handbook and is the agent for service of legal process...Legal process also may be served on any trustee responsible for the administration for any applicable trust." Handbook at 420.

Dr. Weinstein. On July 21, 2000, Dr. Weinstein faxed a note to the Center claiming that as of July 10, 2000, Plaintiff was disabled due to depression and obsession caused by work stress. Dr. Weinstein also faxed the completed functional capacity survey form to the Center on July 21, 2000. On July 21, 2000, Defendant denied Plaintiff's claim for STD benefits because he had not been seen by a physician or assessed as disabled since the time he filed for benefits. On July 26, 2000, Plaintiff contacted Defendant and informed Defendant that he had seen Dr. Weinstein that day. The Center notified Dr. Weinstein that it needed any information gathered during the July 26 appointment to support Plaintiff's disability claim.

On August 1, 2000, the Center received Plaintiff's appeal of the denial of his claim, along with a new functional capacity survey from Dr. Weinstein dated August 1, 2000. This survey diagnosed Bursell with depression, described his symptoms as "rage and homicidal [sic] thoughts on the job," and stated that his functioning was "OK unless at work." The Center had Dr. Dorothy Dugger conduct an independent physician advisor (PA) review of Plaintiff's claim, during which she reviewed the medical evidence and conferred with Dr. Weinstein. Dr. Dugger recommended that Plaintiff's claim be denied because he was not "psychiatrically incapable of performing job functions" and was capable of performing his job duties for another employer. The Center denied Plaintiff's STD claim and sent Plaintiff a letter on August 7, 2000 explaining that "based on the medical and clinical information provided, the PA has determined that there is no medical necessity to substantiate continued absence from work beyond 07/09/2000."

Plaintiff filed administrative appeal forms dated August 11 and 18, 2000. According to Plaintiff, Defendant requested medical records from Dr. Weinstein and Dr. Wortman on August 21, 2000. On September 6, 2000, the Center had Dr. William Hague perform a PA review. After

21, 2000. On September 6, 2000, the Center had Dr. William Hague perform a PA review. After reviewing the medical data, Dr. Hague recommended that the denial be upheld, finding that Plaintiff's problem was "not a psychiatric disability" but rather a reaction to a human resources problem and a refusal to work things out. In a letter dated September 20, 2000, the Center upheld its denial of Plaintiff's STD claim.

In addition to STD benefits, Defendant provides Long-Term Disability Income ("LTDI") benefits for its employees under a plan insured by Metropolitan Life Insurance Company ("MetLife"). The "GE Long Term Disability Income Plan for Hourly Employees" (the "LTDI Plan") defines "total disability:"

"Total Disability" means that an employee is, because of illness or injury, unable to engage in any gainful occupation for which he is reasonably fitted by education, training or experience and is under the care of a physician or psychologist, if necessary, because of disability,...the employee will be considered totally disabled if he is unable, because of illness or injury, to perform any and every duty of his occupation held prior to his date of disability, lay off or leave of absence.

LTDI Plan at 1074. The Handbook explains that the employee applying for benefits must be unable to "[p]erform the duties of any job—whether for the Company or any other employer—for which you are reasonably suited by education, training or experience after 12 months of disability." Handbook at 179.

On March 13, 2001, Plaintiff appealed again. Defendant responded on March 15, 2001, stating that its prior decision had been based on a PA review and the decision of Defendant's appeals board. The letter informed Plaintiff that he was not eligible for LTDI benefits until he received 26 weeks of STD benefits. The letter also indicated that Plaintiff would need to submit new medical information to support his claim of disability.

On March 30, 2001, Plaintiff submitted additional medical records indicating that he had been treated by Dr. Kevin Etter on September 1, 2000, October 27, 2000, and March 16, 2001. Dr. Etter's diagnosis was "Major Depressive Episode-Partial Remission" on September 1, 2000. The Center had Dr. Hague conduct another PA review. After reviewing Plaintiff's records and speaking to Dr. Weinstein, Dr. Hague concluded that Plaintiff did not have a psychiatric disability and recommended that the denial be upheld. In a letter dated May 10, 2001, the Center denied Plaintiff's appeal, claiming that the new medical data did not indicate that he was disabled from July 10 to July 31, 2000.

On June 4, 2001, Dr. Weinstein sent a letter to the Center clarifying that Plaintiff's diagnosis on July 10, 2000 was "Major Depression with Panic and Obsessions." The Center had Dr. Craig Coenson perform another PA review on June 24, 2001. On June 29, 2001, Dr. Coenson concluded that Plaintiff's functional capacity was not impaired, and the Center informed Bursell that the PA review did not support a finding of disability.

On July 20, 2001, the Center received a note from Dr. Weinstein dated July 17, 2001. The letter stated that, though Dr. Weinstein had not seen Plaintiff for "quite some time," Plaintiff and his wife had visited him that day for medication and "to obtain this letter." Dr. Weinstein stated that Plaintiff was disabled from all occupations, and he changed Plaintiff's diagnosis to possible post-traumatic stress disorder. After receiving this letter, the Center had Dr. Hague perform another PA review. Dr. Hague reviewed the medical file and spoke to Dr. Weinstein. Based on this review, he concluded that "[t]his data does not indicate disability in July of last year or subsequently [through] prior reviews that we had with Dr. Weinstein (5/01, and 6/01), but seems to indicate increased [symptoms] at visit with [Dr.] Weinstein and in recent past."

On November 11, 2001, Plaintiff submitted additional documents to the Center, including a note dated October 24, 2001 from Dr. Weinstein and notes from Plaintiff's visits to Dr. Koff, indicating a diagnosis of "Adjustment Disorder with Mixed Features" in January 2000. Dr. Hague reviewed Plaintiff's records again and concluded that there was no new or relevant data that would alter the prior disability determinations. Accordingly, the Center denied Plaintiff's final administrative appeal on November 29, 2001.

In addition to the STD and LTDI benefits plans, Defendant also sponsors the GE Pension Plan, under which employees are entitled to disability pension benefits. The Handbook states that in order to be eligible for disability pension benefits, an employee must have fulfilled a fifteen-year service requirement plus be "permanently impaired." Handbook at 179. The Handbook explains that an employee must be "unable to perform your present job or any other available Company job for which you are reasonably suited by education, training or experience." *Id.*

CONCLUSIONS OF LAW

As this action falls under ERISA, 29 U.S.C. § 1132(a)(1)(B), the Court has jurisdiction of the matter pursuant to 28 U.S.C. § 1331. In a prior Order, the Court previously determined that the proper standard for reviewing Defendant's denial of Plaintiff's claim for benefits is *de novo*. See Order dated Jan. 31, 2003 at 10-13.² At trial, the Court ruled that additional evidence beyond

²The United States Supreme Court has held that "a denial of benefits challenged under § 1132(a)(1)(B) is to be reviewed under a *de novo* standard unless the benefit plan gives the administrator or fiduciary discretionary authority to determine eligibility for benefits or to construe the terms of the plan." *Firestone Tire & Rubber Co. v. Bruch*, 489 U.S. 101, 115 (1989).

the administrative record was necessary to decide this case. *See* Tr. Dated Apr. 8, 2003 at 2-5.³

Both parties agreed to the admission of this additional evidence.

On April 21, 2003, Defendant moved to introduce into evidence the opinion and award of the North Carolina Industrial Commission (“NCIC”) regarding Plaintiff’s workers’ compensation claim against Defendant. Defendant argues that the NCIC’s opinion and award are necessary to assist the Court’s *de novo* review of Plaintiff’s ERISA claim. Plaintiff opposes Defendant’s motion, arguing that the conclusions reached by the NCIC are grounded in workers’ compensation law and are therefore not probative. The Court agrees with Plaintiff. Defendant’s motion to introduce new evidence is DENIED.

Short-Term Disability and Disability Pension Benefits

GE funded and managed the short-term disability and disability pension plans. GE had absolute control over the plans and the determination of eligibility of benefits. GE took on the responsibility of interacting with Plaintiff and making the decisions about short-term disability and disability pension. Therefore, GE is liable for denial of Plaintiff’s STD and disability pension benefits.

Regarding Plaintiff’s STD benefits, the facts show Plaintiff was disabled under the terms of Defendant’s STD plan. Plaintiff was unable to return to work and perform his “own job” as required by the plan. Dr. Dorothy Dugger conducted a review of Plaintiff’s claim and recommended that Plaintiff’s claim be denied because he was not “psychiatrically incapable of performing job functions” and was capable of performing his job duties for another employer.

³Under the standard of *Quisinberry v. Life Ins. Co. of N. Am.*, 987 F.2d 1017, 1025 (4th Cir. 1993), the trial Court has the discretion to determine whether additional evidence beyond the administrative record is necessary to decide the case.

However, the STD plan only requires that Plaintiff be unable to perform his “own job” at GE. Medical evidence in the facts support the conclusion that Plaintiff was unable to perform his own job. Defendant’s denial of STD benefits to Plaintiff was in error.

Regarding Plaintiff’s Disability Pension benefits, the facts show Plaintiff is not eligible for disability retirement benefits. The plan requires that Plaintiff be unable to perform any GE job for which he is suited. Plaintiff has not proven that he was medically unable to perform any GE job. This finding of ineligibility will only affect the period until Plaintiff becomes eligible for his actual retirement. This finding does not affect Plaintiff’s eligibility to receive his regular GE retirement when he reaches the age threshold to receive those benefits.

Accordingly, Plaintiff’s claim for short-term disability benefits is granted. Plaintiff’s claim for disability pension benefits is denied.

Long-Term Disability Benefits

Regarding Plaintiff’s claim for long-term disability income benefits, the proper parties were not named as parties to this lawsuit. GE is not the proper party for Plaintiff’s LTDI benefits claim. MetLife is the obligor for the long-term disability benefits income program and also operates the program. Furthermore, Plaintiff has never submitted his claim for benefits to MetLife, and Plaintiff has never received a denial of benefits from MetLife. Until the plan administrator, in this instance MetLife, denies benefits, there is nothing for the Court to review. Accordingly, Plaintiff’s claim for LTDI benefits is dismissed without prejudice.⁴

⁴Plaintiff has made a claim for reimbursement of monthly payments made in the amount of \$29.18 for his Blue Cross/Blue Shield medical insurance coverage. Plaintiff states that he “is entitled to reimbursement of the amount of these payments if he is found to be entitled to long-term disability benefits.” Pl.’s Proposed Findings of Fact & Conclusions of Law at 10. Since the Court has found Plaintiff is not entitled to LTDI benefits, Plaintiff is therefore not entitled to

Attorney's Fees

Under Section 1132(g)(1) of Title 29 of the United States Code,⁵ the Court in its discretion may award attorney's fees and costs to either party. In this case, the Court awards attorney's fees and costs to Plaintiff for the short-term disability benefits claim only, as Plaintiff prevailed on that claim.


CONCLUSION

Defendant's Motion to introduce new evidence is DENIED.

In accordance with the above findings of fact and conclusions of law, Plaintiff's claim for short-term disability benefits from Defendant is GRANTED. Plaintiff's claim for disability pension benefits from Defendant is DENIED. Plaintiff's claim for long-term disability benefits is DISMISSED WITHOUT PREJUDICE. An Order and Judgment in accordance with this memorandum opinion shall be entered contemporaneously herewith. Fed. R. Civ. P. 58.⁶

SO ORDERED.

This 13 day of March, 2004.


TERRENCE W. BOYLE
CHIEF UNITED STATES DISTRICT JUDGE

reimbursement of these payments.

⁵Section 1132 of Title 29 of the United States Code provides, in relevant part: "(g)(1) In any action under this subchapter...by a participant, beneficiary, or fiduciary, the court in its discretion may allow a reasonable attorney's fee and costs of action to either party."

⁶With the entry of this final judgment, all outstanding motions are hereby rendered MOOT.