IN THE UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF WISCONSIN

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RUSSELL E. FOWLER,

Plaintiff,

v.

THE WILLIAMS COMPANIES, INC.,

Defendant.

OPINION AND ORDER

04-C-752-C

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Plaintiff Russell E. Fowler brings this action against his former employer, The Williams Companies, Inc., to recover benefits that he believes defendant owes him under its long-term disability plan. Plaintiff contends that defendant violated the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. §§ 1001-1461, when it denied his application for benefits in November 2003. Jurisdiction is present. 28 U.S.C. § 1331.

Presently before the court are defendant's motion for summary judgment regarding plaintiff's entitlement to benefits, defendant's motion in limine asking the court to preclude reports and testimony of plaintiff's expert medical witnesses, plaintiff's motion for default judgment under Fed. R. Civ. P. 55 and his motion for sanctions under Fed. R. Civ. P. 11(a). Plaintiff's motion for a default judgment fails because defendant's tardiness in filing its

answers is not egregious and plaintiff has not shown that defendant's late filings prejudiced him in any way. I will grant defendant's motion for summary judgment regarding plaintiff's entitlement to benefits under its long-term disability plan because under the plan language, it was reasonable for the administrative committee to conclude that plaintiff was not a participant in the plan when he applied for benefits. With the granting of defendant's motion for summary judgment, defendant's motion in limine and plaintiff's motion for sanctions are rendered moot.

As an initial matter, I must address the parties' dispute regarding this court's procedures for submitting proposed findings of fact in support of or opposition to motions for summary judgment. First, plaintiff disputes many of defendant's proposed findings of fact on the ground that defendant failed to propose each fact in a separate, numbered paragraph. Procedures to be Followed on Motions for Summary Judgment, Rule I.B.1; Plt.'s Resp. to Dft.'s PFOF, dkt. #40, ¶¶2, 3, 5, 7, 11, 14, 16-22 and 24-29. However, plaintiff commits the same error in many of its response paragraphs. See, e.g., Plt.'s Resp. to Dft.'s PFOF, dkt. #40, ¶¶4, 11, 15, 16-19, 21 and 25; Procedures, Rule II.B. As a result, I have disregarded plaintiff's objections to defendant's proposed facts to the extent that those objections relate to defendant's violation of Rule I.B.I. In addition, I have disregarded plaintiff's dispute of defendant's proposed finding of fact #11. In response to that proposed finding of fact, plaintiff argues that the plan language quoted by defendant is ambiguous.

Plaintiff's response is a legal argument, not a factual proposition.

From the parties' proposed findings of fact and the record, I find the following facts to be material and undisputed.

UNDISPUTED FACTS

Plaintiff Russell E. Fowler worked as an operations technician for defendant The Williams Companies, Inc. for 28 years, until January 31, 2003, when defendant terminated him as part of a reduction in force. Plaintiff signed a severance and release agreement on February 12, 2003, which severed his employment effective January 31, 2003. Defendant gave plaintiff paid time off from December 27, 2002 through February 21, 2003.

On September 22, 2003, the Social Security Administration found plaintiff to have been disabled as of December 10, 2002 and awarded him social security disability benefits. On October 3, 2003, plaintiff submitted a long-term disability application to the claim administrator for defendant's plan, Kemper National Services (now known as "Broadspire"). On November 12, 2003, Broadspire wrote plaintiff to inform him that it was denying his request for long-term disability benefits because he had not sought benefits until after defendant terminated him, when he no longer had coverage as described in the plan. The claims administrator informed him that he had the right to appeal the denial of his request for benefits. On January 19, 2004, plaintiff submitted a written appeal of Kemper's decision

to deny benefits under the plan.

The administrative committee reviewed all submitted evidence and unanimously denied plaintiff's appeal on April 8, 2004, for two reasons: (1) plaintiff was not eligible for long-term disability benefits because he did not meet the definition of "eligible employee" on the date he filed his claim; and (2) plaintiff was not disabled from performing his own occupation. At the time the administrative committee determined that plaintiff was not disabled from his own occupation, additional peer-to-peer reviews were pending. After the meeting, Broadspire re-evaluated plaintiff's job duties and determined that they should be reclassified from "medium" to "heavy." Thus, the pending peer-to-peer reviews were to be conducted for a physical exertion level of "heavy." Even after the reviewing physicians evaluated plaintiff's job duties in the "heavy" category, the administrative committee found that plaintiff was not disabled from performing his own occupation. On April 22, 2004, the administrative committee wrote plaintiff, denying his appeal for the same reasons it had relied on earlier: (1) plaintiff was not an eligible employee at the time of his application for benefits; and (2) plaintiff was not "totally disabled" under the plan's definition.

The plan provides that the administrative committee "shall be responsible for the administration of the Plan, with all powers and discretionary authority necessary to enable the Administrative Committee to carry out its duties in that respect." According to section 5.4.2(a) of the plan, the administrative committee has the following duties:

(2) To interpret the Plan, and to resolve ambiguities, inconsistencies and omissions in accordance with the intent of the Plan;

(3) To decide on questions concerning the Plan and the eligibility of an Employee to participate in the Plan, in accordance with the provisions of the Plan;

. . .

(8) To grant or deny claims relating to enrollment or eligibility under the Claims Review Procedure in accordance with Article IV.

Section 5.4.2 of the plan document states that:

All decisions of the Administrative Committee with respect to the Plan's administration, including, but not limited to, interpretations of the Plan, benefit determinations, claims decisions relating to eligibility or enrollment, and questions concerning the administration and application of the Plan, shall be made by the Administrative Committee (or its delegate) in its sole discretion and all such determinations and decisions shall be conclusive and binding on all persons to the maximum extent permitted by law.

Article II of the plan document states the following language regarding plan eligibility:

2.1 Eligibility. An Eligible Employee is a person who, on or after the Effective Date of the Plan, is a regular full-time employee or a regular part-time employee who works more than 20 hours per week in the service of a Participating Company and elected coverage under this Plan, but excluding any person who is:

. . .

(c) absent from work for any reason other than for Paid Time Off or on account of a short-term or long-term disability for which benefits are payable under a plan sponsored by the Company;

. . .

2.6 Cessation of Participation. Participation in the Plan shall automatically terminate on the earliest of the following dates:

(a) The date the Plan is discontinued or terminated;

(b) The date on which such Participant ceases to be an Eligible Employee for any reason whatsoever (including, but not limited to, termination of employment), unless such loss of eligibility occurs by virtue of an amendment to the Plan, in which case participation ceases as of the date specified therefore in the respective amendment;

(c) The date the Participating Company with which such Participant is employed ceases to be a subsidiary or affiliate of the Company because of a sale (of stock or assets), reorganization, cessation of operation of such affiliate or subsidiary; or

(d) The date a participating Company with which such Participant is employed ceases to be a Participating Company in the Plan.

Article I of the plan document defines "participant" as "an Eligible Employee meeting the requirements for participation in the Plan as set forth in Article II hereof." Section 3.6.5 states that "a Participant must make a claim for benefits under this Plan within twelve (12) months of such Participant becoming Totally Disabled." Section 1.23 of the plan document defines "totally disabled" as:

[D]uring both the Elimination Period and for the first twenty-four (24) months following commencement of benefits to a Participant under this Plan, the determination based upon conclusive medical evidence that a significant

> change in a Participant's physical or mental condition due to accidental injury, sickness, mental illness, substance abuse, or pregnancy prevents a participant from performing the essential functions of such Participant's regular occupation or a reasonable employment option offered to the Participant by the Company, and as a result such Participant is unable to earn more than 60% of the Participant's pre-disability Monthly Base Compensation. After such twenty-four (24) month period, "Totally Disabled" or "Total Disability" means the inability of such Participant, based upon conclusive medical evidence, to engage in any gainful occupation for which he or she is reasonably fitted by education, training or experience, as determined by the Plan Administrator.

A. Default Judgment

Plaintiff filed his complaint in this case on October 7, 2004 and served it on defendant on November 2, 2004. Under Fed. R. Civ. P. 12(a), defendant had 20 days to serve an answer to the complaint; thus, defendant should have served its answer by November 22, 2004. Plaintiff points out that defendant did not file its answer until November 23, 2004. Furthermore, plaintiff notes that according to Fed. R. Civ. P. 15(a), defendant had 10 days, or until February 16, 2005, to serve an answer to the amended complaint that he served on opposing counsel on January 28, 2005. According to plaintiff, defendant's answer to the amended complaint was not served until March 1, 2005, even though defendant's attorney certified that the answer was served by U.S. Mail on February 11, 2005.

Defendant admits that because of a clerical staff mistake, it failed to mail a copy of

its amended answer to plaintiff's counsel until March 1, 2005, almost two weeks after the due date. Upon notice of its mistake, defendant states that it assigned one secretary to this case so that such a mistake would not happen again.

I am not about to enter a default judgment because defendant missed the first deadline to file an answer by one day and the second deadline by 13 days. Although Fed. R. Civ. P. 55 permits entry of a default judgment for late filings, see, e.g., In re State Exchange Finance Co., 896 F.2d 1104, 1106 (7th Cir. 1990), defendant's tardiness is not egregious and plaintiff has not argued that defendant's late filings prejudiced him in any way. Id. (district court correctly entered default judgment against lawyer because he evaded service of process, allowed deadline for filing answer to pass, made frivolous request for Rule 11 sanctions, raised frivolous argument concerning personal jurisdiction and failed to cite any decisions dealing with standard for setting aside default); see also United States v. Di Mucci, 879 F.2d 1488, 1493 (7th Cir. 1989) ("District court judges are well aware that defaults should be entered only when absolutely necessary, such as where less drastic sanctions have proven unavailing.").

B. Motion for Summary Judgment

1. Standard of review

Both parties agree that the plan language provides discretionary authority to the

administrative committee. Therefore, as required by Firestone Tire & Rubber Co. v. Bruch, 489 U.S. 101 (1989), I will review the denial of benefits under the arbitrary and capricious standard. Plaintiff argues that defendant's role as both the plan administrator and insurer is a conflict of interest that requires the court to review the administrative committee's decision with "more bite." Plaintiff cites Chojnacki v. Georgia-Pacific Corp., 108 F.3d 810, 815 (7th Cir. 1997) for support of his position. In Chojnacki, the court stated that "[w]hile a conflict of interest does not change the standard of review we apply to an administrator's decision, it will cause us to give the arbitrary and capricious standard more bite." Although plaintiff does not propose any facts showing a conflict of interest between the administrative committee and the plan, he mentions in his brief that members of the committee are all employees of defendant or its subsidiaries and that the plan is self-funded. Plt.'s Br., dkt. #39, at 2 n.1. Plaintiff fails to note that in Chojnacki, 108 F.3d at 815, the United States Court of Appeals for the Seventh Circuit found no conflict of interest in the administration of a self-funded ERISA plans by a committee made up of the corporation's officers. See also Kobs v. United Wisconsin Ins. Co., 400 F.3d 1036, 1039 (7th Cir. 2005) ("[W]e presume that a fiduciary is acting neutrally unless a claimant shows by providing specific evidence of actual bias that there is a significant conflict.") (citing Mers v. Marriott Int'l Group Accidental Death & Dismemberment Plan, 144 F.3d 1014, 1020 (7th Cir. 1998)). Accordingly, I will review the administrative committee's decision using the unmodified

arbitrary and capricious standard of review.

A decision is arbitrary or capricious only when the decision maker "has relied on factors which Congress has not intended it to consider, entirely failed to consider an important aspect of the problem, offered an explanation for its decision that runs counter to the evidence . . . or is so implausible that it could not be ascribed to difference in view or the product of . . . expertise." Pokratz v. Jones Dairy Farm, 771 F.2d 206, 209 (7th Cir. 1985) (citing Motor Vehicle Manufacturers' Ass'n v. State Farm Mutual Auto. Ins. Co., 463 U.S. 29, 43 (1983)). "The arbitrary and capricious standard does not require the committee's decision to be the only sensible interpretation of a plan, so long as its decision 'offer[s] a reasoned explanation, based on the evidence, for a particular outcome.'" Krawczyk v. Harnischfeger Corp., 41 F.3d 276, 279-80 (7th Cir. 1994) (quoting Pokratz, 771 F.2d at 209). Under this standard of review, a court should consider the following factors: "the impartiality of the decisionmaking body, the complexity of the issues, the process afforded the parties, the extent to which the decisionmakers utilized the assistance of experts where necessary, and finally the soundness of the fiduciary's ratiocination." Chalmers v. Quaker Oats Co., 61 F.3d 1340, 1344 (7th Cir. 1995).

2. Participation in the plan

Section 5.4.2(a)(2) of the plan gives the administrative committee discretion to

interpret the plan language. Under the arbitrary and capricious standard of review, a court should not overturn the administrative committee's interpretation of the plan language unless it defies all common sense. Dabertin v. HCR Manor Care, Inc., 373 F.3d 822, 828 (7th Cir. 2004) (arbitrary and capricious standard gives great deference to decision of committee which cannot be overturned unless committee's decision was downright unreasonable).

Plaintiff believes that because the Social Security Administration determined that he was totally disabled on December 10, 2002, he had until December 10, 2003 to apply for benefits under section 3.6.5 of the plan, which provides that participants have 12 months from the time they become "totally disabled" to file a claim for benefits. Plaintiff applied for benefits under the plan on October 3, 2003. According to plaintiff, the plan language is ambiguous because it does not specify whether an individual must be an eligible employee when he becomes disabled or when he applies for benefits. Plaintiff contends that one could reasonably interpret section 2.1(c) of the plan to read that one is eligible for plan benefits if they are absent from work for any reason *other than* for paid time off or on account of a short-term or long-term disability for which benefits are payable under the plan. Because plaintiff applied for benefits when he was absent from work for reasons other than paid time of or on account of short-term or long-term disability for which he was receiving benefits, plaintiff argues that he was eligible for benefits. Plaintiff points out that he has an above

average intelligence. Plt.'s Br., dkt. #39, at 11.

Plaintiff's argument is unpersuasive. Regardless of plaintiff's intelligence level, the administrative committee's interpretation of the plan language regarding participation in the plan is more than reasonable. Under the plan, participation terminates automatically on the earliest of the following dates: "The date on which such Participant ceases to be an Eligible Employee for any reason whatsoever (including, but not limited to, termination of employment)." It is undisputed that plaintiff signed a severance and release agreement on February 12, 2003, which severed his employment effective January 31, 2003. Although defendant paid plaintiff for paid time off from December 27, 2002 through February 21, 2003 and plaintiff would have been eligible for benefits during that time because section 2.1 of the plan considers employees with paid time off "eligible employees," plaintiff did not apply for benefits until well after his paid time off ended. Section 3.6.5 of the plan allows claims for benefits within twelve months of becoming totally disabled, but only for *participants* making a claim for benefits. According to the administrative committee, in October 2003, plaintiff was no longer a participant in the plan. Therefore, he was not eligible to apply for benefits. Because the administrative committee's denial of benefits was reasonable because of plaintiff's status as a non-participant in the plan, it is unnecessary to consider its other ground for denial, that is, whether plaintiff met the definition of "totally disabled" under the plan. I will grant defendant's motion for summary judgment.

C. Defendant's Motion in Limine and Plaintiff's Motion for Sanctions

Defendant has submitted a motion in limine to preclude plaintiff from calling five doctors to challenge the administrative committee's determination that plaintiff was not totally disabled. In addition, plaintiff has moved for sanctions under Fed. R. Civ. P. 11(a) asking the court to strike defendant's answer to the amended complaint because it was not signed by an attorney of record. Because the sole issue of this case is whether plaintiff is entitled to benefits under defendant's long-term disability plan, the decision to grant defendant's motion for summary judgment on that issue renders moot defendant's motion in limine and plaintiff's motion for sanctions.

ORDER

IT IS ORDERED that

1. Plaintiff Russell E. Fowler's motion for a default judgment under Fed. R. Civ. P. 55 is DENIED;

2. Defendant The Williams Companies, Inc.'s motion for summary judgment is GRANTED as to plaintiff's claim that he is entitled to benefits under defendant's long-term disability plan;

3. Defendant's motion in limine is DENIED as moot;

4. Plaintiff's motion for sanctions pursuant to Fed. R. Civ. P. 11(a) is DENIED as

moot;

5. The clerk of court is directed to enter judgment in favor of defendant and close this case.

Entered this 24th day of June, 2005.

BY THE COURT:
/s/
BARBARA B. CRABB
District Judge