

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WISCONSIN

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JAMES H. OATES,

Plaintiff,

v.

CENTRAL STATES, SOUTHEAST AND  
SOUTHWEST AREAS HEALTH AND  
WELFARE FUND, and BOARD OF  
TRUSTEES as PLAN ADMINISTRATOR,

Defendants.  
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ORDER

06-C-0139-C

In an order entered on September 27, 2006, I granted summary judgment in favor of plaintiff James H. Oates and remanded this case to defendant Central States, Southeast and Southwest Areas Health and Welfare Fund to undertake a fresh review of plaintiff's request for an Agreement to Reimburse and Loss of Time benefits under the second paragraph of Art. IV, § 4.03 and Art. XI, § 11.15 of the Fund's Employee Welfare Benefit Plan. Defendants have now moved to alter or amend the order granting summary judgment to clarify (1) whether the court intended its decision to be a final judgment, so as to start the running of the time for appeal; (2) whether the order directed defendants to grant plaintiff

the specific relief he was seeking; or (3) whether defendants are required only to re-examine plaintiff's claim for benefits. Plaintiff joins in the motion to clarify but argues that the court should simply grant him the relief he is seeking because the relationship among the parties is so tainted with hostility that defendants could not give his request a fair review.

Although defendants have labeled their motion as one to alter or amend a judgment, no judgment has been entered in the case. I will construe the motion as one for clarification of an order.

To avoid any further confusion for the parties, I will amend the order to require defendant to undertake the fresh review and report the results to the court within a specific time period, as I did in Mennenoh v. UNUM Life Ins. Co. of America, 302 F. Supp. 2d 982, 991 (W.D. Wis. 2003), and Winters v. UNUM Life Ins. Co. of America, 232 F. Supp. 2d 918, 933 (W.D. Wis. 2002). The extent of the relief ordered remains as stated in the September 27 order: defendants are to give plaintiff's claim a fresh review based upon an accurate understanding of the nature of his claim and of their responsibility to consider every aspect of the claim. As I found in the September 27 order, it appeared from the language of the opinions issued by defendants denying plaintiff's claim that defendants misunderstood the basis for plaintiff's appeals. As a result, the explanation that defendants gave for their decisions was not "satisfactory in light of the relevant facts," Herman v. Central States, Southeast and Southwest Areas Pension Fund, 423 F.3d 684, 692-93 (7th Cir. 2005), and

therefore not entitled to the usual deference that courts must give decisions of ERISA fiduciaries who have been granted discretion to interpret the terms of the plans they administer.

I did not say and did not intend to say that defendants were to grant plaintiff's claim for relief. They may decide to do so, after reviewing his claim free of the misapprehensions under which they labored the first time, but they are not required to do so by this court's order. I am unpersuaded by plaintiff's assertions that defendants cannot be trusted to give his request a fair review. As to whether defendants must give plaintiff an opportunity to re-submit his request or may merely re-examine the administrative record as it stood, defendants are free to take either action. If they wish to allow plaintiff a new opportunity to submit his request, they may do so but they are not required to. They may confine their review to the administrative record that was before them originally.

#### ORDER

IT IS ORDERED that the motion to alter or amend judgment filed by defendants Central States, Southwest and Southeast Areas Health and Welfare Fund and Board of Trustees, as Plan Administrator (and construed as a motion for clarification of the court's September 27, 2006 order) is GRANTED. The order entered on September 27, 2006 is AMENDED to add the following language to the end of the order:

Defendants may have until December 1, 2006, in which to conduct the fresh review of plaintiff's claim and report to the court the result of the review. Plaintiff may have until December 15, 2006, in which to advise the court whether he objects to the review process or the benefit determination and why.

Entered this 18th day of October, 2006.

BY THE COURT:

/s/

BARBARA B. CRABB

District Judge