

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

MARK G. HOLOUBEK,

Plaintiff,

ORDER
06-C-121-S

v.

UNUM LIFE INSURANCE COMPANY OF AMERICA,
UNUM PROVIDENT CORPORATION and
JOHNSON CONTROLS INC.,

Defendants.

Plaintiff's notice of motion and motion to compel production came on to be heard by telephone in the above entitled matter on August 2, 2006, the plaintiff having appeared by Mansfield, Tanick & Cohen by Denise Y. Tataryn; defendants by Krass Monroe by John Harper. Honorable John C. Shabaz, District Judge, presided.

This action involves a claim for disability benefits allegedly due under an employee benefit plan governed by the Employee Retirement Income Security Act (ERISA), 29 U.S.C. § 1001 et seq. Although discovery is normally disfavored in the ERISA context, at times, additional discovery is appropriate to ensure that plan administrators have not acted arbitrarily and that conflicts of interest have not contributed to an unjustifiable denial of benefits. Semien v. Life Ins. Co. of North America, 436 F.3d 805, 814-815 (7th Cir. 2006). Limited discovery is appropriate where a claimant makes specific factual allegations of misconduct or bias (i.e. conflict of interest) in a plan administrator's review

procedures. Id. at 815 (citing Firestone Tire & Rubber Co. v. Bruch, 489 U.S. 101, 115, 109 S.Ct. 948, 957, 103 L.Ed.2d 80 (1989) (a conflict of interest is a factor to be considered when reviewing a plan administrator's denial of benefits)).

However, a claimant is not automatically entitled to discovery simply because he or she alleges that a conflict of interest exists. Rather, a claimant must demonstrate that two factors are present before limited discovery becomes appropriate. First, a claimant must identify a specific conflict of interest or instance of misconduct. Second, a claimant must make a prima facie showing that there is good cause to believe limited discovery will reveal a procedural defect in the plan administrator's determination. Id. (citation omitted). Courts must exercise their discretion and limit discovery to those cases in which it appears likely that the plan administrator committed misconduct or acted with bias. Id. at 815-816.

While plaintiff did present facts concerning factor two of the Semien test he failed to identify a specific conflict of interest as is required by factor one of the Semien test. Accordingly, plaintiff failed to meet his burden under Semien and as such permitting discovery in this action is unwarranted.

Accordingly,

ORDER

IT IS ORDERED that plaintiff's motion to compel production is partially GRANTED.

IT IS FURTHER ORDERED that plaintiff's motion to compel production is DENIED as it concerns Request for Production of Documents Number (6) and Interrogatory Number (7) and in all other respects GRANTED.

IT IS FURTHER ORDERED that defendants shall provide said discovery not later than noon Monday August 7, 2006.

Entered this 2nd day of August, 2006.

BY THE COURT:
/s/
JOHN C. SHABAZ
District Judge