IN THE UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF WISCONSIN

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JAMES H. OATES,

Plaintiff,

OPINION AND ORDER

v.

06-C-139-C

CENTRAL STATES, SOUTHWEST AND SOUTHEAST AREAS HEALTH AND WELFARE FUND and BOARD OF TRUSTEES, as Plan Administrator,

Defendants.

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This is a civil suit for monetary and injunctive relief arising under the Employee Income Retirement Security Act (ERISA), 29 U.S.C. §§ 1001-1461, in which plaintiff James H. Oates contends that defendant Board of Trustees (1) breached its fiduciary duty under 29 U.S.C. § 1104(a)(1); and (2) violated 29 U.S.C. § 1132(a)(1)(B) when it denied plaintiff disability benefits. Subject matter jurisdiction is present. 28 U.S.C. § 1331.

Plaintiff filed this case originally in the Circuit Court for Green County; defendants removed it to this court. The case is presently before the court on two motions: defendant Board of Trustees's motion to dismiss plaintiff's claim that the board breached its fiduciary

duty and defendant's motion to strike plaintiff's request for a jury trial and for extracontractual damages. For the reasons explained below, I will grant the board's motions.

In considering a motion to dismiss for failure to state a claim, the court must accept as true the well-pleaded factual allegations in the complaint, drawing all reasonable inferences in favor of the plaintiff. Hishon v. King & Spalding, 467 U.S. 69, 72 (1984); Yeksigian v. Nappi, 900 F.2d 101, 102 (7th Cir. 1990). The court may dismiss a complaint for failure to state a claim under Fed. R. Civ. P. 12(b)(6) only if "'it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief.'" Strauss v. City of Chicago, 760 F.2d 765, 767 (7th Cir. 1985) (quoting Conley v. Gibson, 355 U.S. 41, 45-46 (1957)). Although all reasonable inferences must be drawn in favor of the plaintiff, the complaint must set forth factual allegations sufficient to establish the elements that are crucial to recovery under plaintiff's claim. Sutliff, Inc. v. Donovan Cos., 727 F.2d 648, 654 (7th Cir. 1984) (citing Daves v. Hawaiian Dredging Co., 114 F. Supp. 643, 645 (D. Haw. 1953)). For the sole purpose of deciding this motion, I accept as true the allegations in the complaint.

ALLEGATIONS OF FACT

Plaintiff James H. Oates is an adult resident of Green County, Wisconsin. Defendant Central States, Southwest and Southeast Areas Health and Welfare Fund is an employee

benefits plan subject to the provisions of the ERISA. Defendant Board of Trustees is the entity that serves as plan administrator for the benefits plan. For simplicity, I will refer to these defendants as the Benefits Plan and the Board, respectively.

Plaintiff has been a beneficiary of the Benefits Plan since 1990. Since 2000 he has held the position of union president for the International Brotherhood of Teamsters Dairy Employees Union Local 754. On September 5, 2000, plaintiff injured his back on the job. On June 16, 2004, the Benefits Plan offered to allow plaintiff to collect short term disability benefits while his worker's compensation claim was pending, contingent on plaintiff's signing a document entitled "Agreement to Reimburse Central States Health and Welfare Fund" (the subrogation agreement).[1] The purpose of a subrogation agreement is to allow beneficiaries with pending worker's compensation claims to receive disability benefits while their worker's compensation case is litigated. The subrogation agreement proposed by the Benefits Plan was subject to approval by the Central States Worker's Compensation Subrogation Committee.

The Benefits Plan asked plaintiff to provide a copy of his worker's compensation application and denial, proof that the claim was pending before the worker's compensation commission and an executed subrogation agreement. On August 17, 2004, plaintiff

[1] Plaintiff wrote "2005" in the complaint but it is clear that he meant June 16, 2004.

submitted the executed subrogation agreement to the Benefits Plan. On August 25, 2004, the Benefits Plan contacted plaintiff's attorney to request additional documentation, which the lawyer sent to the Benefits Plan on October 18, 2004.

The Plan Subrogation Committee denied plaintiff's application for benefits. On October 27, 2004, the Benefits Plan asked plaintiff to file a "Loss of Time" form, together with medical documentation. On October 29, plaintiff appealed the denial of benefits. On December 1, 2004, the worker's compensation/subrogation committee denied plaintiff's request for a subrogation agreement. On December 10, 2004, plaintiff appealed the denial of the subrogation agreement, explaining that his worker's compensation claim had been denied and if he did not prevail on his appeal he would be eligible for loss of time benefits. Plaintiff's appeal was denied in February 2005 (plaintiff does not make it clear in the complaint which appeal he was referring to, but it appears he was referring to the December 10, 2004, appeal) and on July 29, 2005, he filed another appeal because he believed he was entitled to relief pursuant to language in the benefits plan (Article IV, Section 4.03), which stated:

> In the event that a covered individual is awaiting disposition of a worker's compensation claim (or a similar claim arising as a result of an on-the-job injury) and coverage for the illness or injury is disputed the Covered Individual may be eligible to receive some benefits if the Covered Individual agrees to reimburse the fund for any benefits advanced in the event he settles or receives award from any Employer or Insurance Company relating to his on-the-job injury.

On September 19, 2005, plaintiff was notified that his latest appeal had been denied.

OPINION

A. Breach of Fiduciary Duty

The Employee Retirement Income Security Act applies to "any plan, fund or program which was heretofore and hereinafter established or maintained by an employer or employer organization or both." 29 U.S.C. § 1002(1). The parties agree that the Benefits Plan is governed by ERISA. Plaintiff has raised two claims against the Board, arising from the same occurrence: the Board's decision not to extend a subrogation agreement to plaintiff and to deny him disability benefits. Plaintiff contends that these actions by the Board constituted a wrongful denial of benefits and a breach of fiduciary duty. Plaintiff argues that the Board breached its fiduciary duty under 29 U.S.C. § 1104(a)(1), which states that "a fiduciary shall discharge his duties with respect to a plan solely in the interest of the participants and beneficiaries . . . ." However, 29 U.S.C. § 1104(a)(1) merely spells out the duties owed by a plan fiduciary; it does not authorize relief for a breach of those duties. To obtain relief for violations of ERISA, plan participants must bring an action under 29 U.S.C. § 1132, ERISA's civil enforcement provision. Therefore, plaintiff is entitled to relief for the alleged breach of fiduciary duty only if such a claim may be raised under one of the subparts of 29

U.S.C. § 1132.

The subparts of 29 U.S.C. § 1132 that allow recovery by plan participants are §§ 1132(a)(1)-(4). Section 1132(a)(1)(A) is concerned only with a plan's failure to provide plan documents upon request by a participant. Section 1132(a)(1)(B) allows a participant "to recover benefits due to him under the terms of his plan, to enforce his rights under the terms of the plan, or to clarify his rights to future benefits under the terms of the plan." Section 1132(a)(1)(B) does not include claims of breach of fiduciary duty.

Section 1132(a)(2) allows claims of breach of fiduciary duty, but only when the damages being claimed are due to the plan, not to individuals. Its purpose is "to make good to such plan any losses to the plan resulting from each such breach, and to restore to such plans any profits . . . ." See also Massachusetts Mutual Life Insurance Co. v. Russell, 473 U.S. 134, 140 (1985) (recovery for a violation remedied by Section 1132(a)(2) inures to the plan as a whole). Section 1132(a)(4) is concerned only with a plan's failure to provide benefits statements to participants. Therefore, § 1132(a)(3) is the only subpart under which plaintiff could raise a breach of fiduciary duty claim. This section allows participants to raise claims:

> (A) to enjoin any act or practice which violates any provision of this title or the terms of the plan, or (B) to obtain other appropriate equitable relief (i) to redress such violations or (ii) to enforce any provisions of this title or the terms of the plan.

The board argues that because relief may be available to plaintiff under § 1132(a)(1)(B) (and plaintiff has brought such a claim), plaintiff cannot avail himself of § 1132(a)(3) and his breach of fiduciary duty claim should be dismissed. I agree. Section 1132(a)(3) is not an option for plaintiff. That provision is a "safety net" offering appropriate equitable relief for injuries that § 1132 would not otherwise redress. Varity Corp. v. Howe, 516 U.S. 489, 512 (1996). In Varity, the Court observed that "where Congress elsewhere provided adequate relief for a beneficiary's injury, there will likely be no need for further equitable relief, in which case such relief normally would not be 'appropriate.'" Id. at 515. Because adequate relief is available to plaintiff under § 1132(a)(1)(B) for the denial of benefits (should plaintiff prevail on his claim that the denial was wrongful), allowing plaintiff to proceed under § 1132(a)(3) would not be appropriate. Id.; see also Herman v. Central States, Southeast and Southwest Areas Pension Fund, 423 F.3d 684, 695 (7th Cir. 2005) ("We also note that the Supreme Court has cautioned against using the action for breach of fiduciary duty under ERISA to litigate 'ordinary benefit claims.'") (quoting Varity, 516 U.S. at 514-15)); Wyluda v. Fleet Financial Group, 112 F. Supp. 2d 827, 832 (E.D. Wis. 2000); Borisch v. Treat All Metals, Inc., 21 F.Supp.2d 890, 893 (E.D. Wis. 1998); Clarke v. Ford Motor Co., 343 F. Supp. 2d 714, 726 (E.D. Wis. 2004).

In his brief, plaintiff contends that "ERISA envisioned a situation where a denial of

plan benefits can rise to the level of a breach of fiduciary duties where the plan administrator acted in bad faith in denying the benefits." Plt.'s Opp. Br., dkt. #13 at 9. Not surprisingly, plaintiff did not cite any authority to support this proposition. The cases plaintiff cited in his brief miss the mark; the cases discuss the arbitrary and capricious standard of review for ERISA claims, but do not address the fact that plaintiff is not entitled to bring a claim of breach of fiduciary duty under § 1132(a)(3) because he is entitled to seek relief under § 1132(a)(1)(B). The Board's motion to dismiss plaintiff's claim that the Board breached its fiduciary duty under 29 U.S.C. § 1104(a)(1) will be granted.

C. Motion to Strike

The Board's motion to strike plaintiff's request for a jury trial will be granted because, as plaintiff concedes in his brief, dkt. #13 at 10, jury trials are not available in actions brought under § 1132(a)(1)(B), which is the only remaining claim in this case. See, e.g., Bugher v. Feightner, 722 F.2d 1356 (7th Cir. 1983); Wardle v. Central States, Southeast and Southwest Areas Pension Fund, 627 F.2d 820 (7th Cir. 1980). The Board's motion to strike plaintiff's request for compensatory damages will be granted as well. As plaintiff acknowledged in his brief, dkt. #13 at 10, he is not entitled to damages other than payments to which he may be entitled under the benefits plan. See, e.g., Harsch v. Eisenberg, 956 F.2d 651, 655 (7th Cir. 1992) (compensatory and punitive damages not available under §

1132(a)(1)(B)).

ORDER

IT IS ORDERED that

1. Defendant Board of Trustees' motion to dismiss plaintiff James H. Oates's claim that the Board breached its fiduciary duty is GRANTED.

2. Defendant Board of Trustees' motion to strike plaintiff's request for a jury trial and plaintiff's request for compensatory damages is GRANTED.

Entered this 1st day of June, 2006.

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