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

PETER T. JULKA

Plaintiff,

v.

STANDARD INSURANCE COMPANY,

Defendant.

OPINION and ORDER

09-cv-534-slc

Plaintiff Peter Julka filed suit against defendant Standard Insurance Company under the Employment Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. §§ 1001-1461, contending that defendant violated ERISA when it refused to pay him long-term disability benefits under the disability insurance policy it issued to plaintiff's employer.

Now before the court is defendant's motion for summary judgment, dkt. 41, in which it contends that plaintiff's claims are time barred and even if they were not, defendant's decision rejecting plaintiff's disability claim was not arbitrary or capricious. Because I conclude that plaintiff's claim is barred by the limitations period established by the disability insurance plan, I am granting defendant's motion.

I note at the outset that plaintiff did not file a response to defendant's motion for summary judgment or proposed findings of fact, nor did plaintiff file any proposed facts of his own. The court has granted plaintiff numerous extensions throughout the course of this lawsuit, including multiple extensions of time in which to respond to defendant's motion for summary judgment; but however much time the court gave plaintiff, it seemed he always needed a bit more. The court cannot grant extensions of time indefinitely because the court has an obligation to defendant and other litigants to move this case forward. Thus, I am addressing the merits of defendant's motion despite having received no response from plaintiff. To the same effect,

because plaintiff did not respond to defendant's proposed facts, I am accepting defendant's properly proposed facts as undisputed. *See Procedures to be Followed on Motions for Summary Judgment*, II.C and *Helpful Tips for Filing a Summary Judgment Motion in Cases Assigned to Magistrate Judge Crocker*, no. 3, attached to preliminary pretrial conference order at dkt. 16 ("A fact properly proposed by one side will be accepted by the court as undisputed unless the other side properly responds to the proposed fact and establishes that it is in dispute"); *Hendrich v. Board of Regents of the University of Wisconsin System*, 274 F.3d 1174, 1177-78 (7th Cir. 2001) (upholding this court's local rules adopting moving party's proposed findings of fact when non-moving party fails to respond properly).

From defendant's proposed findings of fact, I find the following to be material and undisputed:

UNDISPUTED FACTS

A. Disability Insurance Policy

Until April 2004, plaintiff Peter Julka was a partner at the Stafford Rosenbaum LLP law firm in Wisconsin. In 1997, defendant Standard Insurance Company issued a Group Policy Long Term Disability Plan to Stafford Rosenbaum. The Plan grants discretionary authority to defendant to interpret the Plan's terms, to decide benefit eligibility and to determine the amount and sufficiency of the evidence required to determine entitlement to benefits. Plaintiff was entitled to coverage under the Plan.

Under the Plan, a claimant is required to submit a disability claim, otherwise known as a "proof of loss," no later than 180 days after disability begins (90 days after the 90-day "benefit

waiting period"). The Plan establishes a three-year time limit on legal actions. Specifically, the Plan states that:

> No action at law or in equity may be brought until 60 days after you have given us Proof of Loss. No such action may be brought more than three years after the earlier of:
>
> 1. The date we receive Proof of Loss; and
>
> 2. The end of the period within which Proof of Loss is required to be given.

Dkt. 44-1, at 27.

B. Plaintiff's Application for Benefits

On January 2, 2003, plaintiff submitted a long-term disability claim to defendant, claiming to be partially disabled since July 1, 2002 due to several medical conditions, including fibromyalgia, migraine headaches, floaters in his eyes and a possibility of Parkinson's disease.

Defendant obtained and reviewed plaintiff's medical records and consulted with Dr. Shirley Ingram, a Board-certified rheumatologist, who evaluated plaintiff's medical records. Defendant concluded that plaintiff did not have a medical condition that would limit him from performing his occupation as an attorney.

On April 28, 2003, defendant informed plaintiff by letter that he did not satisfy the Plan's definition of disability and that his claim was denied. Defendant told plaintiff he had a right to appeal its administrative determination and that an appeal must be submitted in writing within 180 days of receipt of the April 28, 2003 letter. Defendant also advised plaintiff of the medical evidence he needed to submit to support an administrative appeal.

On May 12, 2003, plaintiff notified defendant of his intent to appeal. However, plaintiff did not submit an appeal to defendant within the 180-day period established by the plan. On April 30, 2004, plaintiff telephoned defendant and stated that he was no longer working for Stafford Rosenbaum and therefore considered his claim to be a total disability claim. That same day, plaintiff sent a letter by fascimile to defendant stating that it was his last day working for Stafford Rosenbaum, that he believed his "pending partial disability claim" had become a claim for total disability and that he would "be in contact with [defendant] about the review of [his] claim."

By a letter dated May 7, 2004, defendant told plaintiff that his "April 30, 2004 fascimile does not perfect a claim for total disability," and that defendant was unable to review his claim because "the time to request a review has expired by a significant period prejudicing our ability to conduct a full and fair review." Defendant informed plaintiff that his request for review was "untimely" and that "the administrative claim file is closed with this letter."

On April 29, 2009, plaintiff filed a complaint in the Circuit Court for Dane County, which defendant removed to this court.

OPINION

ERISA does not contain a statute of limitations for claims brought under its civil enforcement provision, 29 U.S.C. § 1132(a)(1)(B). Generally, courts borrow the most analogous state statute of limitations. *Abena v. Metropolitan Life Ins. Co.*, 544 F.3d 880, 883 (7th Cir. 2008); *Meade v. Pension Appeals & Review Committee*, 966 F.2d 190, 195 (6th Cir. 1992). However, a limitations period set forth in an ERISA plan is enforceable, regardless of state law, so long as

the time allowed for filing suit is reasonable. *Abena*, 544 F.3d at 883; *Doe v. Blue Cross & Blue Shield United of Wisconsin*, 112 F.3d 869, 873-74 (7th Cir. 1997). Plan-imposed limitations periods that end before claims accrue or do not allow a claimant a meaningful opportunity to file suit in the wake of protracted internal appeals processes may be unreasonable. *Abena*, 544 F.3d at 883.

The limitations period set out in the Plan provides straightforward deadlines. A participant must file a lawsuit no later than three years from the earlier of either the time when written proof of disability is required to be filed or the date proof of loss is actually received by defendant. The Plan requires written proof of disability to be filed no later than 180 days after disability begins. Plaintiff claimed that his disability began on July 1, 2002, so proof of loss for his disability was required by January 1, 2003. Defendant received plaintiff's proof of loss on January 2, 2003. Plaintiff was required to commence this lawsuit, then, by January 2, 2006, three years after he submitted his proof of loss. Instead, he initiated his suit much later, on April 29, 2009. So, if the three-year contractual limitation period is applied, plaintiff's benefits claim is time-barred.

The only way for plaintiff to avoid that result is to establish that the Plan's limitation period was unreasonable. However, a review of the record and case law establishes that the period was reasonable. The ERISA plans in *Doe* and *Abena* established three-year limitations periods in which to file suit, measured from the date proof of loss was required to be given. *Abena*, 544 F.3d at 883-84; *Doe*, 112 F.3d at 872-73. In both cases, the Seventh Circuit held that the three-year limitation period was a reasonable limitation period for ERISA claims:

> A suit under ERISA, following as it does upon the completion of an ERISA-required internal appeals process, is the equivalent of a

> suit to set aside an administrative decision, and ordinarily no more than 30 or 60 days is allowed within which to file such a suit. Like a suit to challenge an administrative decision, a suit under ERISA is a review proceeding, not an evidentiary proceeding. It is like an appeal, which in the federal courts must be filed within 10, 30, or 60 days of the judgment appealed from.

Doe, 112 F.3d at 875 (internal citations omitted); *see also Abena*, 544 F.3d at 884; *Grammar v. Aetna Life Ins. Co.,* 286 Fed. Appx. 947, 949 (7th Cir. 2008) (unpublished) (holding that three-year limitation period measured from date proof of loss was required to be submitted was reasonable time limit for filing ERISA claim); *Morrison v. Marsh & McLennan Companies, Inc.*, 439 F.3d 295, 302 (6th Cir. 2006) (upholding three-year contractual limitations period as reasonable).

Like the plaintiffs in *Abena* and *Doe*, the three-year limitations period gave plaintiff more than the typical period allowed to file an appeal of an administrative decision. Plaintiff had over two and a half years after his claim was denied on April 28, 2003 within which to exhaust the Plan's internal administrative remedies and file lawsuit based on his claim for benefits. Because plaintiff made no effort to exhaust the Plan's administrative procedures, defendant's decision denying benefits became final on May 7, 2004. A contractual limitations period that leaves a claimant 20 months to file his or her ERISA claims after they have been administratively denied is reasonable. *Abena*, 544 F.3d at 884 (contractual limitations leaving claimant seven months to file his federal claim after internal administrative remedies were exhausted was reasonable); *Doe*, 112 F.3d at 875 (same conclusion when claimant was left seventeen months to file). Unfortunately for plaintiff, he failed to file an internal appeal and failed to file this action within the reasonable time limits set by the plan. Therefore, plaintiff's claim for benefits under ERISA

is time barred and must be dismissed. There is no need to determine whether defendant's decision rejecting plaintiff's disability claim was arbitrary or capricious.

ORDER

It is ORDERED that:

(1) Defendant Standard Insurance Company's motion for summary judgment, dkt. 41, is GRANTED.

(2) The clerk of court is directed to enter judgment for defendant and close this case.

Entered this 19th day of November, 2010.

BY THE COURT:

/s/

STEPHEN L. CROCKER
Magistrate Judge