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

WILLIAM M. BLUE,

Plaintiff,

v.

HARTFORD LIFE AND ACCIDENT INSURANCE CO.,

Defendant.

OPINION AND ORDER

10-cv-499-slc

In this civil action, plaintiff William Blue brought breach of contract and bad faith claims against defendant Hartford Life and Accident Insurance Co. for denying his claim for long-term disability (LTD) benefits under an employee welfare benefit plan sponsored by his former employer, the City of Madison. On June 13, 2011, I granted Hartford's unopposed motion for summary judgment on Blue's bad faith claim and found the breach of contract claim moot because Hartford since had reinstated Blue's benefits. Dkt. 58. Judgment was entered in favor of Hartford on June 14. Dkt. 59.

Now Blue has moved to amend the judgment under Fed. R. Civ. P. 59(e), arguing that it would be a manifest injustice not to allow him to be heard on his claims given Hartford raised a new issue and designated a new witness just prior to Blue's summary judgment response deadline and had asked for lengthy postponements in the briefing schedule. Dkt. 60. Blue also claims the court erred in finding his breach of contract claim moot and in making certain findings of fact.

I am denying the motion for reconsideration because Blue has not established that it was a mistake of law or fact for the court to conclude that he failed to establish the elements of a

bad-faith claim under Wisconsin law and that his breach-of-contract claim was rendered moot by Hartford's reinstatement of his benefits.

DISCUSSION

The purpose of a motion under Fed. R. Civ. P. 59(e) is to bring to the court's attention newly discovered evidence or a manifest error of law or fact. *Bordelon v. Chicago School Reform Board of Trustees*, 233 F.3d 524, 529 (7th Cir. 2000). It is not intended as an opportunity to reargue the merits of a case. *Neal v. Newspaper Holdings, Inc.*, 349 F.3d 363, 368 (7th Cir. 2003). Nor is a Rule 59 motion intended as an opportunity for a party to submit evidence that it could have presented earlier. *Dal Pozzo v. Basic Machinery Co., Inc.*, 463 F.3d 609, 615 (7th Cir. 2006) (citing *Frietsch v. Refco, Inc.*, 56 F.3d 825, 828 (7th Cir. 1995)). The movant must clearly establish the ground for relief. *Harrington v. City of Chicago*, 433 F.3d 542, 546 (7th Cir. 2006) (citations omitted).

Blue takes issue with the fact that he was denied the opportunity to respond to Hartford's motion for summary judgment on his bad faith claim. He attempts to blame his failure to file a timely response on Hartford, asserting that Hartford asked for lengthy postponements to the briefing schedule and designated a new issue and witness just prior to his response deadline in May 2011. Blue's argument is preposterous given the procedural history of this case.

Hartford initially filed a motion for partial summary judgment on the bad faith claim on January 31, 2011, the deadline for filing dispositive motions. Dkt. 10. Seven days later, Blue moved for an extension of time within which to file his own summary judgment motion, citing

a series of health and other personal events that prevented his attorney, Daniel Jardine, from being able to work on the motion. Dkt. 17. An 8-day extension was granted. Dkt. 19. Jardine filed plaintiff's motion 2 days late, on February 10, because he had scanner and printer problems. *See* dkts. 20 and 28. After Hartford reviewed Blue's motion, the parties agreed to extend their deadlines for responding to the two motions so that Hartford could investigate Blue's new argument that Hartford had used an outdated policy in denying Blue's benefits. Dkt. 30. New response deadlines were then set in mid-March for both motions.

On March 17, 2011, Hartford notified the court that it agreed with Blue that it had used an outdated policy and it was willing to reinstate Blue's benefits. Believing there was still merit to its pending motion on the bad faith claim, Hartford asked for a new round of briefing and a new trial date. Dkt. 33. On March 26, Blue responded that it would not object to postponing the trial, provided that the dates relating to settlement letters and discovery were extended accordingly. Dkt. 38. Four days later, the parties filed a stipulation to set a new briefing schedule on Hartford's motion and to extend the trial date. Dkt. 42.

Hartford filed its new opening brief in support of summary judgment on the agreed upon deadline, April 18, 2011. Dkt. 45. Blue's response was due May 9. Instead of responding, Blue's lawyer filed a letter asking for a two-day extension based on emergency circumstances. Dkt. 51. The court granted that request on the assumption that Blue's responsive materials would be filed within two days. *See* dkt. 52. As subsequently became clear, however, Blue actually wanted two more days to file a motion for a much longer deadline extension so that he could undertake additional discovery. Dkt. 53. I denied the request for a second extension, finding that Blue had failed to show good cause. Dkt. 57. Blue had had ample time to take

discovery on his bad faith claim and had been warned by the court as early as the preliminary pretrial conference that the parties would not get deadline extensions to develop such evidence in the face of a dispositive motion. *See* Sept. 30, 2010 Prelim. Pretrial Conf. Order, dkt. 9, at 3; *see also* May 19, 2011 text only order, dkt. 57.

Blue argues that his case was severely hampered by the fact that he did not have time to conduct discovery in the few weeks after Hartford filed its supplemental summary judgment brief on April 18 and before his response was due on May 9. He also claims that he could not have deposed a key witness, Bruce Luddy, because Hartford had not identified him in its initial disclosures. Blue's arguments fail for several reasons.

First, even assuming that Hartford's revised summary judgment brief raised unanticipated arguments regarding its defense to the bad faith claim, Blue waited until *after* his response was due (May 11) to notify the court of his dilemna. Second, Luddy should not have been a surprise to Blue. On March 17, 2011, in support of its motion to extend the briefing schedule and trial date, Hartford filed an affidavit from Luddy in which Luddy explained Hartford's mistake in applying the wrong disability standard in Blue's case. Dkt. 35. In doing so, Hartford alerted Blue to its bad faith defense over a month before it filed its supplemental summary judgment brief. Finally, after the conclusion of the briefing on Blue's Rule 59 motion, Blue filed a correction notice, explaining that the witness offering "new" information was not Luddy but Christopher Davis, who actually had been identified as a witness in Hartford's initial disclosures.

Blue's remaining arguments that the court erred in making factual findings and deeming his breach of contract claim moot are equally unpersuasive. Blue attempts to show through newly submitted evidence that the court was wrong to find that Hartford did not know about

the correct policy language and was justified in denying him benefits under the outdated standard. He also asserts that he never conceded that his breach of contract claim was moot. However, the time to submit such evidence and argument was in response to summary judgment. As discussed at length above, Blue missed his opportunity and has not stated good cause for doing so.

As observed by Hartford, Blue's Rule 59 motion is an attempt to paper over his own legal concessions and procedural missteps by rehashing previously rejected arguments and making arguments that he should have advanced earlier. Blue has had enough kicks at the cat in this lawsuit.

ORDER

IT IS ORDERED that plaintiff William Blue's motion to amend/correct judgment (dkt. 60) is DENIED.

Entered this 13th day of October, 2011.

BY THE COURT:

/s/

STEPHEN L. CROCKER
Magistrate Judge