

United States District Court, Northern District of Illinois

Name of Assigned Judge or Magistrate Judge	Philip G. Reinhard	Sitting Judge if Other than Assigned Judge	
CASE NUMBER	05 C 50153	DATE	10/18/2006
CASE TITLE	Prieve vs. Ivax Corp. Plan No. 501, et al.		

DOCKET ENTRY TEXT

Defendants' motion to strike the affidavit of the plaintiff is granted. See Perlman v. Swiss Bank Corp. Comprehensive Disability Prot. Plan, 195 F.3d 975, 981-82 (7th Cir. 1999) ("when review under ERISA is deferential, courts are limited to the information submitted to the plan's administrator"). For the reasons stated below, defendants' motion for summary judgment is granted, and plaintiff's motion for summary judgment is denied. This cause is dismissed in its entirety.

Philip G. Reinhard

■ [For further details see text below.]

Electronic notices.

STATEMENT

Plaintiff, John H. Prieve, brought this action against defendants, Ivax Corporation Plan Number 501 ("Plan") and Ivax Corporation ("Ivax"), seeking recovery of long-term disability benefits under ERISA, 29 U.S.C. § 1132(a)(1)(B). Before the court are the parties' cross-motions for summary judgment.¹

Plaintiff began working as a regional sales manager for Ivax on February 10, 2003. Plaintiff was enrolled in the Plan as a benefit of his employment, and received coverage under the Plan's Group Policy. Plaintiff's coverage under the Plan became effective on March 1, 2003. Plaintiff worked through February 27, 2004.

After he stopped working, plaintiff submitted a long-term disability claim form to the Plan's claims fiduciary, Unum Life Insurance Company ("Unum").² Plaintiff claimed to be unable to work as a sales manager due to depression, anxiety disorder, and panic attacks, and claimed that this disability began on March 1, 2004. On July 2, 2004, Unum denied plaintiff's disability claim on the basis that his psychiatric condition was a pre-existing condition. Unum denied plaintiff's request for reconsideration on September 21, 2004, and denied plaintiff's appeal on June 16, 2005.

Summary judgment is proper if the evidence in the record shows that there is no genuine issue of material fact and that the moving party is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(c). The moving party bears the initial burden of demonstrating that no material issue exists for trial. Celotex Corp. v. Catrett, 477 U.S. 317, 323 (1986). Once the moving party has properly supported its motion, the nonmoving party must offer specific facts demonstrating that a material dispute exists, and must present more than a scintilla of evidence to support its position. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 251-52 (1986).

Where a plan fiduciary is given discretionary authority to determine a claimant's eligibility for benefits, the fiduciary's decision to deny benefits is reviewed under the arbitrary and capricious standard. Hackett v. Xerox Corp. Long-Term Disability Income Plan, 315 F.3d 771, 773 (7th Cir. 2003). Under this deferential standard, a decision will not be found to have been arbitrary and capricious unless the decision was "not only . . . the wrong call, but . . . a 'downright unreasonable' one." Chojnacki v. Georgia-Pac. Corp.,

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108 F.3d 810, 816 (7th Cir. 1997) (quoting Fuller v. CBT Corp., 905 F.2d 1055, 1058 (7th Cir. 1990)). Here, the Plan's Group Policy gives the fiduciary such discretionary authority, and the parties agree that the appropriate standard of review is the arbitrary and capricious standard.

Under the Group Policy, the Plan does not cover disabilities "caused by, contributed to by, or resulting from" an employee's pre-existing condition. An employee has a pre-existing condition if: (1) he or she "received medical treatment, consultation, care or services . . . in the 3 months just prior to [the employee's] effective date of coverage," and (2) the disability began in the first 12 months after the employee's effective date of coverage.

In August 2002, a psychologist in California began treating plaintiff for depression, anxiety, and other symptoms. After plaintiff moved to Illinois in late 2002, he received treatment from Brian Klaung, a clinical social worker, beginning on December 18, 2002. Plaintiff does not dispute that he received medical treatment, consultation, care, or services for his psychiatric condition during the three months prior to March 1, 2003, the effective date of coverage.

Instead, plaintiff takes issue with defendants' contention that his disability began in the twelve months following March 1, 2003. In support of this contention, defendants offer undisputed evidence that in January 2004, Klaung referred plaintiff to a primary care physician due to plaintiff's depressed mood, panic attacks, and insomnia. On February 12, 2004, plaintiff began treatment with David Wight, a psychiatrist. At that time, Wight recommended that plaintiff take a medical leave of absence from work starting on February 17, 2004.

Plaintiff argues that the fact that he had symptoms of a psychiatric disorder during the twelve months following March 1, 2003 does not mean that his disability began during that time. As plaintiff notes, under the Plan's Group Policy, an employee is considered to be "disabled" if: (1) he is limited from performing the material and substantial duties of his regular occupation due to the sickness or injury, and (2) he has "a 20% or more loss in [his] indexed monthly earnings due to the same sickness or injury." According to plaintiff, since he continued to work through the end of February 2004 and did not suffer a loss in earnings until he took medical leave in March 2004, he cannot be considered to have been disabled until March 2004.

Defendants respond that under the Group Policy, an employee is considered to be disabled during his ninety-day "elimination period" even if the employee has not had a minimum 20% loss in earnings during that time. The Group Policy expressly provides that an employee is "not required to have a 20% or more loss in [his] indexed monthly earnings due to the same injury or sickness to be considered disabled during the elimination period," as long as the employee is otherwise limited in performing his duties and is under the regular care of a physician. The policy also recognizes that an employee may elect to continue working despite being disabled: "If you are working while you are disabled, the days you are disabled will count toward your elimination period." According to defendants, the elimination period begins on the first day of disability.

Plaintiff argues that this exception to the definition of disability does not apply to his situation because his elimination period did not begin until March 1, 2004, when he began receiving short-term disability benefits, and when he did have a loss in earnings. According to plaintiff, the elimination period begins when an employee's claim for benefits begins. Plaintiff offers no support for this interpretation of the Group Policy.

Defendants' position relating to the beginning of the elimination period is supported by the language of the Group Policy. The Group Policy defines the elimination period as a ninety-day "period of continuous disability which must be satisfied before [the employee is] eligible to receive benefits." This language indicates that the elimination period begins when the disability begins, and thus plaintiff could properly have been considered disabled before he experienced a loss in earnings.

The court finds that it is reasonable to interpret the Group Policy to provide that an employee is considered to be disabled as of the date when he is limited from performing the material and substantial

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duties of his regular occupation, even if he does not have a 20% or more loss in earnings during the first ninety days after that date, and even if he continues working while disabled. It was reasonable for the fiduciary to find that plaintiff's disability had begun by February 17, 2004, and that he had previously received treatment for his psychiatric condition within the three months prior to March 1, 2003. Accordingly, the court finds that the fiduciary's decision to deny plaintiff's claim on the basis of his pre-existing condition was not arbitrary and capricious. Because of this disposition, the court will not address defendants' alternative argument.

1. Ivax disputed in its answer that it is a proper defendant in this action. However, it has not advanced an argument on this point in support of its motion for summary judgment so the court will not address this issue.

2. Unum, as the claim's fiduciary, had the discretionary authority to determine claims.