

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

CAROLINE SPAMPINATO,	§	
<i>Plaintiff,</i>	§	
	§	
vs.	§	CIVIL ACTION H-06-3914
	§	
HEWLETT-PACKARD COMPANY DISABILITY	§	
PLAN (FORMERLY COMPAQ COMPUTER	§	
SHORT-TERM DISABILITY PLAN),	§	
<i>Defendant.</i>	§	

MEMORANDUM AND RECOMMENDATION

Defendant Hewlett-Packard Company Disability Plan seeks summary judgment denying plaintiff Caroline Spampinato's claim for short-term and long-term disability benefits under her employer's ERISA¹ plan. Based on the parties' submissions, the administrative record,² and the oral argument heard on July 28, 2008, the court recommends³ that defendant's motion (Dkt. 16) be granted.

¹ Employee Retirement Income Security Act of 1974, 29 U.S.C. § 1001, *et seq.*

² Defendant filed the entire administrative record under seal. While medical records may properly be filed under seal, no justification has been offered for sealing the balance of the record. *See In re High Sulfur Content Gasoline Prod. Liab. Litig.*, 517 F.3d 220, 230 (5th Cir. 2008) (discretion to seal record should be used with care and only for strong justification). Nor is there any basis for denying public access to this opinion. *See In re Sealing and Non-Disclosure of Pen/Trap/2703(d) Orders*, Nos. H-08-218M, H-08-219M, 2008 WL 2315862 (S.D. Tex. May 30, 2008).

³ This case was referred to this magistrate judge for pretrial management by order of January 7, 2008 (Dkt. 14).

I. BACKGROUND

Spampinato worked as a manufacturing associate for Compaq Computer from December 6, 1996 through September 5, 2002. As a Compaq employee, she was covered by the company's Short-Term Disability Plan, as well as its separate Long-Term Disability Plan.⁴

On June 19, 2002, Spampinato suffered an electrical shock while testing a three-power supply unit. She continued to work for a few days, and then was hospitalized with a diagnosis of electrocution. She did not return to work on June 24, 2002, and on June 28, 2002 filed a claim for short-term disability (STD) benefits under Compaq's Short-Term Disability Plan. After requesting and receiving additional information, the plan administrator approved Spampinato's claim for STD benefits initially for the period June 27, 2002 through July 19, 2002. Additional extensions were granted, and benefits were approved through August 8, 2002, "subject to periodic review."⁵

⁴ Following the acquisition of Compaq by Hewlett-Packard Company in May 2002, the two Compaq plans were effectively merged into defendant Hewlett-Packard Company Disability Plan. Any covered individual who went out on disability after January 1, 2003, would be covered by HP's plan, but Compaq's STD plan still covered those individuals who were on STD status as of that date. Defendant's motion, at 6 n.5.

⁵ HP 0413, Letter from UNUM to Spampinato dated August 2, 2002. The letter advised that if she were unable to return to full-time work by 8/9/02, additional information from her doctor would be required in order to extend benefits beyond 8/8/02. The letter concluded, "If we do not receive this additional information by 08/21/02, we will assume there is no further medical data and your file will be permanently closed."

Spampinato was released to work on August 5, and came back to work that day, but only on a part-time basis. Initially she worked 6 hours a day, 3 days a week, with lifting and other limitations; on August 22, her schedule was reduced to 4 hours a day, 3 days a week to accommodate physical therapy.⁶ On September 5, 2002, she was notified of her separation of employment due to a work force restructuring. She also was notified that her participation in the Compaq STD and LTD benefit plans ended on that date.⁷ Spampinato received nine weeks of severance pay, and was terminated effective November 9, 2002.

Spampinato submitted a claim for additional STD benefits on November 14, 2002. This claim was denied by the plan administrator by letter dated December 31, 2002. Citing Article 3.8 of the Plan, under which benefits cease upon “the Employee’s notification of pending termination under a severance program,”⁸ the letter explained:

⁶ HP 0108, Spampinato March 1, 2003 letter to Unum.

⁷ It is undisputed that Spampinato was not receiving disability payments as of September 5, 2002, and that she ceased active work on that date. Hearing transcript, at pp. 12-13, 18.

⁸ Defendant’s Ex. A, HP 005, Compaq Short-Term Disability Plan, article 3.8.4. The article reads in full:

3.8 Eligibility for and payment of any Benefits under the Plan for any Employee shall cease automatically upon the first to occur of any of the following events:

* * *

3.8.4 the Employee’s notification of pending termination under a severance program, effective with the date the Employee is notified and no longer actively at work.

Information in our claim file indicates you were notified on 09/04/02 of your employment status being affected by the Compaq Restructuring Plans. As a result of your notification, your eligibility for disability coverage ceased immediately upon you being notified and no benefits are payable.⁹

Spampinato administratively appealed the STD benefit denial.¹⁰ On May 10, 2004, the HP Welfare Benefits Administrative Committee upheld the administrator's decision on the same grounds, *i.e.*, lack of eligibility under Article 3.8.¹¹ This lawsuit followed.

II. LEGAL STANDARDS

Summary judgment is appropriate only if “the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any,” when viewed in the light most favorable to the non-moving party, “show that there is no genuine issue as to any material fact.” *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 249-50 (1986). A dispute about a material fact is “genuine” if the evidence would permit a reasonable jury to return a verdict for the non-moving party. *Id.* at 248.

The court must draw all reasonable inferences in favor of the non-moving party. *Id.* at 255. To obtain summary judgment, “if the movant bears the burden of proof on an issue . . . because . . . as a defendant he is asserting an affirmative defense, he must establish

⁹ HP 0447.

¹⁰ HP 0089, Letter of December 15, 2003 from Marc Whitehead to Unum Life Insurance Company of America Benefit Determination Review Team.

¹¹ HP 0087-88.

beyond peradventure *all* of the essential elements of the . . . defense to warrant judgment in his favor.” *Fontenot v. Upjohn Co.*, 780 F.2d 1190, 1194 (5th Cir. 1986).

The appropriate standard for judicial review of benefit determinations by plan administrators or fiduciaries under ERISA § 1132(a)(1)(B) was addressed in *Firestone Tire & Rubber Co. v. Bruch*, 489 U.S. 101 (1989). *Firestone* review has been summarized as follows: (1) a court should be “guided by principles of trust law” because a benefit determination is analogous to a fiduciary act by a common law trustee; (2) trust law requires a court to review a denial of plan benefits under a *de novo* standard unless the plan provides to the contrary; (3) where the plan provides to the contrary by granting the administrator or fiduciary *discretionary* authority to determine benefit eligibility, the deferential “abuse of discretion” standard of review is appropriate; and (4) if an administrator or fiduciary with discretionary authority has a conflict of interest, that conflict must be weighed as a “factor in determining whether there is an abuse of discretion.” *Metropolitan Life Ins. Co. v. Glenn*, 128 S. Ct. 2343, 2347-48 (2008) (quoting *Firestone*, 489 U.S. at 111-115). A fiduciary conflict of interest, such as when the employer both funds the plan and evaluates claims, does not alter the standard of review or burden of proof; it is simply part of a “combination-of-factors” test, under which “any one factor will act as a tiebreaker when the other factors are closely balanced.” *Glenn*, 128 S. Ct. at 2351.¹²

¹² Spampinato does not argue that the Plan Administrator was operating under a conflict of interest here. *Cf. Wade v. Hewlett-Packard Development Company Short Term Disability Plan*, 493 F.3d 533, 538 (5th Cir. 2007) (finding no abuse of discretion even if conflict existed as plaintiff claimed).

The Fifth Circuit has held that factual determinations made by the administrator during the course of a benefits review are always subject to abuse of discretion review, “[r]egardless of the administrator’s ultimate authority to determine benefit eligibility.” *Meditrust Financial Services Corp. v. Sterling Chemicals, Inc.*, 168 F.3d 211, 213 (5th Cir. 1999); *Pierre v. Connecticut Gen. Life Ins. Co.*, 932 F.2d 1552, 1562 (5th Cir. 1991). By the same token, a plan administrator’s statutory and legal conclusions unrelated to plan interpretation are always subject to *de novo* review. *Dial v. NFL Player Supp. Disability Plan*, 174 F.3d 606, 611 (5th Cir. 1999).

III. ANALYSIS

The Plan asserts three grounds for summary judgment: (1) Spampinato waived all benefit claims by signing a release in connection with her severance agreement; 2) the LTD benefit claim is not properly before the court because Spampinato has not exhausted administrative remedies for that claim; and (3) the Plan did not abuse its discretion in denying STD benefits based on article 3.8 of the Plan. Each will be considered in turn.

A. Waiver and Release

While an employee’s rights under an ERISA welfare benefit plan¹³ are protected by federal statute, a waiver or release of claims under such a plan is enforceable as a matter of federal common law. *Chaplin v. NationsCredit Corp.*, 307 F.3d 368, 372 (5th Cir. 2002)

¹³ Because pension benefits are given greater protection under ERISA’s vesting and anti-assignment provisions, a waiver of such claims may conflict with the statute and thus be unenforceable. *See Kennedy v. Plan Administrator for Dupont Sav. & Inv. Plan*, 497 F.3d 426, 429-31 (5th Cir. 2007), *cert. granted in part* 128 S. Ct. 1225 (2008).

(upholding release of disputed severance pay claim given in exchange for lesser severance amount than plaintiffs might have received had they prevailed at trial). To prevail on this affirmative defense, the Plan bears the burden to prove that the plaintiff “signed a release that addresses the claims at issue, received adequate consideration, and breached the release” by suing. *Id.*

Here, Spampinato executed a severance agreement with the following release:

I Caroline Dearing Spampinato (“Employee”), for myself, my heirs, successors, and assigns do hereby irrevocably and unconditionally release, acquit, and forever discharge Compaq Computer Corporation and Hewlett-Packard Company (“Companies”) and their . . . benefit plans (and all administrators, fiduciaries, and trustees of such benefit plans), . . . from any and all claims, complaints, obligations, demands, and causes of action, whether known or unknown, I now have, or may have had at any time, or may in the future have, of any nature whatsoever, arising from or relating to events or omissions occurring from the beginning of time to the date of execution of this Release. I understand that I am waiving and giving up all rights, claims, and causes of action of any and every kind, including, without limitation, any claims for:

* * *

(j) violation of any provision of . . . the Employee Retirement Income Security Act . . .¹⁴

There is no dispute that this release purports to address the type of claims asserted in this case, or that the Plan is one of the released parties. Spampinato does dispute whether the release was supported by adequate consideration.

¹⁴ HP 0014-15, Release and Waiver of All Claims..

The Plan argues that the release was given in exchange for severance benefits she would not otherwise have received. However, the release was signed on November 12, 2002, three days after her effective termination date, and after she had already received nine weeks severance pay.¹⁵ If in fact the only consideration for the release was severance pay she had already received, then Spampinato is correct that the contract was without consideration and therefore illusory. *See McCallum Highlands, Ltd. v. Washington Capital Dus, Inc.*, 66 F.3d 89, 93 (5th Cir. 1995) (“Consideration is a present exchange bargained for in return for a promise.”); *Franks v. Brookshire Bros., Inc.*, 986 S.W. 2d 375, 378 (Tex. App. – Beaumont 1999, no pet.) (previously paid benefits constitute past consideration that does not support a subsequent promise).

At oral argument, counsel for the Plan argued that by signing the agreement Spampinato became entitled to three weeks *additional* severance pay, besides the nine weeks severance already paid her. However, the summary judgment record contains no reference to an additional three weeks severance pay. The “Release and Waiver of All Claims” recites that “to receive the severance benefits specified in the Compaq Computer Corporation Severance Plan (‘Severance Plan’), I [Spampinato] must execute this Release and Waiver of All Claims.”¹⁶ The release does not specify the number of weeks of severance pay that Spampinato was to receive under the severance plan. Presumably the severance plan to

¹⁵ HP 0098, WBAC time-line.

¹⁶ HP 0014.

which the release was attached would have answered the question, but the summary judgment record does not contain that plan. A time-line summary of the claim in the Plan's administrative file states that on 11/09/2002 Spampinato was "terminated after nine-weeks of severance,"¹⁷ but this does not negate the possibility that she received three weeks additional severance after termination, as the Plan now contends.

Given the state of the summary judgment record, a confident ruling on the validity of the release is not possible. There is a genuine issue of material fact whether the release is supported by valid consideration. Because the Plan bears the burden of establishing each element of this affirmative defense as a matter of law, it is not entitled to summary judgment on this ground. *See Fontenot v. Upjohn Co.*, 780 F.2d 1190, 1194 (5th Cir. 1986).

B. LTD Benefits Claim

Exhaustion of administrative remedies is not a jurisdictional prerequisite for a suit to recover ERISA benefits. *See Crowell v. Shell Oil Co.*, No. 07-20270, 2008 WL 3485331, *9 (5th Cir., Aug. 14, 2008); *Hager v. NationsBank N.A.*, 167 F.3d 245, 248 n.3 (5th Cir. 1999). Nevertheless, the exhaustion doctrine is a common-law defense "uniformly imposed by the courts in keeping with Congress' intent in enacting ERISA." *Hall v. National Gypsum Co.*, 105 F.3d 225, 231 (5th Cir. 1997). Exhaustion serves several important functions, such as minimizing frivolous suits, promoting consistent treatment of benefit claims, providing

¹⁷ HP 0098.

a non-adversarial dispute resolution process, reducing delay and expense, and generating a clear administrative record for judicial review. *Id.*

Compaq's Long Term Disability Plan¹⁸ provides a benefit claims procedure which requires that a written claim for benefits be submitted to the Plan Administrator. While Spampinato's complaint asserts a claim for LTD benefits, it is undisputed that she made no administrative claim for LTD benefits to the LTD Plan or its administrator. She cannot make such a claim for the first time in federal court. *Meza v. General Battery Corp.*, 908 F.2d 1262, 1279 (5th Cir. 1990); *Denton v. First Nat'l Bank*, 765 F.2d 1295, 1303 (5th Cir. 1985). Spampinato's claim for LTD benefits should be dismissed without prejudice.¹⁹ *See Meza*, 908 F.2d at 1278-80 (affirming district court's dismissal without prejudice based on lack of exhaustion).

C. STD Benefits Claim

Because the Short Term Disability Plan confers upon the Plan administrator the discretionary authority to determine benefit eligibility and interpret the Plan, the court reviews the decision to deny STD benefits to Spampinato under an abuse of discretion standard.²⁰

¹⁸ This plan is one of several benefit plans comprising the Compaq Computer Corporation Insured Welfare Benefits Plan. Dkt. 24, Ex. B.

¹⁹ Moreover, neither the LTD Plan itself nor the LTD Plan administrator are parties to this suit.

²⁰ HP0007-10, Compaq Computer Corporation Short-Term Disability Plan. Plaintiff appears to concede this point. *See Response* (Dkt. 18), at 4-5.

The Fifth Circuit applies a two-prong test when reviewing an administrator's denial of benefits. First, the court determines the legally correct interpretation of the plan. *Wildbur v. ARCO Chem. Co.*, 974 F.2d 631, 637-38 (5th Cir. 1992). In ascertaining the legally correct interpretation of the plan, the court considers (1) whether the administrator has given the plan a uniform construction; (2) whether the interpretation is consistent with a fair reading of the plan; and (3) any unanticipated costs resulting from different interpretations. *Id.* The second factor is most important. *Gosselink v. Am. Tel. & Tel., Inc.*, 272 F.3d 722, 727 (5th Cir. 2001).

If the administrator failed to give the plan the legally correct interpretation, the court next determines whether the administrator's decision was an abuse of discretion. *Wildbur*, 974 F.2d at 638. In this regard the court considers: (1) the internal consistency of the plan under the administrator's interpretation; (2) any relevant regulations promulgated by administrative agencies; (3) the factual background of the determination; and (4) any inferences of bad faith. *Id.*; *Gosselink*, 272 F.3d at 727.

The Plan's decision rests on article 3.8 of the STD Plan.²¹ Standing alone, it is difficult to construe this passage in any manner other than the Plan Administrator did: once an employee is notified of termination under a severance program, STD benefits "cease automatically." There is no dispute that Spampinato received notice of separation under a severance program on September 5, 2002, which was also her last day of active

²¹ Article 3.8 is set forth in pertinent part *supra* at 3, n.8.

employment.²² There can be little question that the denial of STD benefits to Spampinato was consistent with a fair reading of article 3.8 of the Plan.

Spampinato does not directly challenge this reading of article 3.8, but resists summary judgment by arguing that (1) Spampinato is “currently approved” for Social Security disability benefits;²³ and (2) that her STD claim was a “live claim” at the time of her termination.²⁴ Neither contention is persuasive.

In the first place, the denial of benefits was not premised upon a determination of Spampinato’s disability status. Even if it were, the standard for entitlement to Social Security disability benefits is neither controlling nor particularly relevant to ERISA benefit claims. *See Black & Decker Disability Plan v. Nord*, 538 U.S. 822, 832-22 (2003) (“[C]ritical differences between the Social Security disability program and ERISA benefit plans caution against importing a treating physician rule from the former area into the latter.”). As the Supreme Court observed in *Lockheed Corp. v. Spink*: “Nothing in ERISA requires employers to establish employee benefit plans. Nor does ERISA mandate what kind of benefits employers must provide if they choose to have such a plan.” 517 U.S. 882, 887 (1996). Thus, an employer is free to disregard Social Security standards in defining a “disability” under its own ERISA plan.

²² Hearing transcript at p. 12.

²³ *Id.* at 16.

²⁴ *Id.* at 17.

Spampinato’s “live claim” argument, on the other hand, does have a flicker of support on this record, although not enough to alter the outcome. A company document dated 07/2002 purporting to describe “benefit provisions if you leave under the pre-merger Compaq severance program” contains the following sentence:

Your eligibility for Short-Term Disability and Long-Term Disability benefits (*except payments for any current period of disability*) ends upon your notification of severance, prior to your termination of employment.²⁵

The Plan contends that Spampinato’s return to active work means that she was no longer in a “current period of disability,” but another plan provision appears to contemplate that disability benefits may be payable even after a return to active employment. Article 3.9 entitled “Rehabilitative Employment” provides that an eligible employee who returns to work on a part-time rehabilitative basis is entitled to prorated benefits “for unworked hours in addition to pay received for time at work in a rehabilitative capacity.”²⁶ In other words, the Plan does authorize payment of prorated disability benefits to disabled employees who return to work on a modified schedule.

These provisions do not assist Spampinato, for at least two reasons. First, nothing in the summary judgment record shows that she was receiving prorated benefits under the Rehabilitative Employment clause. Even though she was in fact working a modified

²⁵ HP 0104 (emphasis supplied). The context of this document is not explained in the record. It obviously relates to the Compaq merger agreement, but it is unclear whether it purports to describe provisions of the severance plan (not in the record) or the STD plan itself.

²⁶ HP 0005.

schedule upon her return to work in August 2002, her counsel conceded at oral argument that she was no longer receiving STD pay at that time.²⁷ As a factual matter, therefore, Spampinato did not have a “live” STD claim at the time she received notice of separation on September 5, 2002.

More important, even if she were receiving benefits at the time, the sweeping language of article 3.8 logically precludes any “live claim” exception: “*Eligibility for and payment of any Benefits . . . shall cease automatically . . . upon the Employee’s notification of pending termination under a severance program.*” By its own terms, prorated benefits under article 3.9 are available only to an “Eligible Employee.” Because the terminating events listed in article 3.8 effectively strip away the employee’s eligibility status, Spampinato is not entitled to continued STD benefits regardless of her disability status on the date she was notified of her separation.

In short, the Plan’s decision was based on a legally correct interpretation of the Plan language. For that reason, the court has no basis to find that the denial of STD benefits to Spampinato was an abuse of discretion. The Plan is entitled to summary judgment on this claim.

²⁷ Hearing transcript at pp. 13-14, 18.

VI. CONCLUSION AND RECOMMENDATION

The court recommends that defendant's motion for summary judgment (Dkt. 16) be granted. Plaintiff's STD benefits claim should be dismissed with prejudice and plaintiff's LTD benefits claim should be dismissed without prejudice.

The parties have ten days from service of this Memorandum and Recommendation to file written objections. Failure to file timely objections will preclude appellate review of factual findings or legal conclusions, except for plain error. *See* FED. R. CIV. P. 72.

Signed at Houston, Texas on August 19, 2008.



Stephen Wm Smith
United States Magistrate Judge