IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
EASTERN DIVISION

WILLIE RONNIE HOLDER,	)	
	)	
Plaintiff,	)	
	)	
VS.	)	No. 00-1010
	)	
CONTINENTAL GRAIN COMPANY,	)	
	)	
Defendant.	)	

ORDER GRANTING DEFENDANT'S MOTION FOR SUMMARY JUDGMENT

The plaintiff, Willie Ronnie Holder, filed this action against Continental Grain Company[1] alleging that he was fraudulently or negligently induced to apply for long-term disability benefits, which were then wrongfully terminated. He sought restoration of his long-term disability ("LTD") benefits under the Employee Retirement Income Security Act (ERISA), 29 U.S.C. § 1132 *et seq.* Plaintiff also asserted a claim of unseaworthiness and a claim under the Jones Act, 46 U.S.C. App. § 688.

On February 15, 2001, the Court entered an order granting summary judgment to the defendant on plaintiff's Jones Act and unseaworthiness claims, on the grounds that the claims were barred by the applicable statute of limitations. Subsequently, while a motion for partial summary judgment was pending on the ERISA claim, the Court granted plaintiff

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[1] The defendant's current corporate designation is "ContiGroup Companies, Inc."

leave to file a supplemental complaint setting forth events that allegedly occurred since the filing of the complaint. In the supplemental complaint, plaintiff alleges that he remained an employee of the defendant even after his LTD benefits were terminated. He further alleges that the medical proof shows that his total disability has recurred and that he should once again be granted LTD benefits.

On June 12, 2001, the Court granted defendant's motion for partial summary judgment on the ERISA claim. The Court ruled that the termination of plaintiff's benefits under the Continental Grain Company Long-Term Disability Plan (the "Plan"), effective February 28, 1999, was not arbitrary and capricious. Defendant has now moved for summary judgment on the claims raised in the supplemental complaint.

Motions for summary judgment are governed by Fed. R. Civ. P. 56. If no genuine issue of material fact exists and the moving party is entitled to judgment as a matter of law, summary judgment is appropriate. Fed. R. Civ. P. 56(c). The moving party may support the motion for summary judgment with affidavits or other proof or by exposing the lack of evidence on an issue for which the nonmoving party will bear the burden of proof at trial. Celotex Corp. v. Catrett, 477 U.S. 317, 324 (1986). The opposing party may not rest upon the pleadings but must go beyond the pleadings and "by affidavits or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial." Fed. R. Civ. P. 56(e); see also Celotex Corp., 477 U.S. at 323.

The exhibits in the record show that in a faxed letter dated January 9, 2001, counsel

for the plaintiff, Wm. Landis Turner, requested that counsel for the defendant, Robert W. Horton, allow him to include new medical evidence as part of the administrative record in this case, to be considered by the Court. That new medical evidence allegedly establishes that plaintiff is totally disabled. In response to Mr. Turner's letter, Mr. Horton correctly stated that on judicial review of an ERISA claim, the Court could consider only the information that was in the administrative record at the time the decision was made. See Wilkins v. Baptist Healthcare Sys., Inc., 150 F.3d 609, 615 (6th Cir. 1998). On January 26, 2001, during a telephone conversation with another of defendant's attorneys, E. Spivey Gault, Mr. Turner requested that plaintiff's LTD benefits be reinstated, apparently based on the new medical evidence. Mr. Turner states in an affidavit that he advised Mr. Spivey that he would submit a written request through Mr. Horton; however, there is no evidence that Mr. Turner did so.

In early February 2001, plaintiff received a letter dated January 31, 2001, from Jessie Barsin, the defendant's Assistant Vice President of Employee Benefits and Corporate Human Resources. In the letter, Ms. Barsin stated that it had recently come to her attention that, although plaintiff's LTD benefits had been terminated effective February 28, 1999, the paperwork had never been completed officially terminating his employment with the defendant. Ms. Barsin advised plaintiff that although he had continued to receive health insurance benefits for which he was ineligible, he would not be asked to reimburse the defendant for those benefits. Ms. Barsin further advised that plaintiff's health insurance

benefits would terminate effective March 1, 2001, and that his pension benefits would be calculated using an employment termination date of February 28, 1999.

Mr. Turner wrote to Ms. Barsin on February 9, 2001, again requesting reinstatement of the plaintiff's LTD benefits. Mr. Turner also stated his belief that Ms. Barsin's letter to plaintiff was prompted by the earlier oral request for reinstatement of benefits, which Mr. Turner surmised had been reported to her by either Mr. Gault or Mr. Horton. However, Ms. Barsin has submitted her unrefuted affidavit, in which she states that at the time she wrote the letter she had no knowledge of the request for reinstatement.

Defendant seeks summary judgment on plaintiff's supplemental claims primarily on the grounds that plaintiff has no standing to bring an ERISA claim regarding reinstatement of his LTD benefits because he is no longer a participant in the Plan. ERISA defines the term "participant" as:

> Any employee or former employee of an employer . . . who is or may become eligible to receive a benefit of any type from an employee benefit plan which covers employees of such employer . . . .

29 U.S.C. § 1002(7). Expounding on this definition, the Supreme Court has stated that "participant" means: (1) "employees in or reasonably expected to be in, currently covered employment"; or (2) former employees who have a reasonable expectation of returning to covered employment, or who have a "colorable claim" to vested benefits. Firestone Tire & Rubber Co. v. Bruch, 489 U.S. 101, 117 (1989) (citations omitted). "A former employee who has neither a reasonable expectation of returning to covered employment nor a

colorable claim to vested benefits, however, simply does not fit within the [phrase] 'may become eligible.'" Id. at 118 (quoting Saladino v. I.L.G.W.U. National Ret. Fund, 754 F.2d 473, 476 (2d Cir. 1985)).

Notwithstanding the arguments of both the plaintiff and the defendant, it is not necessary for the Court to determine whether plaintiff was an employee or a former employee on January 26, 2001, or whether he has a "colorable claim" to vested benefits. In this case, there is no evidence that plaintiff ever made a proper claim for reinstatement of his LTD benefits in accordance with the terms of the Plan.

The exhaustion of administrative remedies under an employee benefit plan is a prerequisite to filing an ERISA claim in federal court. Ravencraft v. UNUM Life Ins. Co. of Am., 212 F.3d 341, 343 (6th Cir. 2001); Weiner v. Klais & Co., 108 F.3d 86, 90 (6th Cir. 1997); Baxter v. C.A. Muer Corp., 941 F.2d 451, 453 (6th Cir. 1991). "[T]he exhaustion requirement enables plan fiduciaries to 'efficiently manage their funds; correct their errors; interpret plan provisions; and assemble a factual record which will assist a court in reviewing the fiduciaries' actions.'" Baxter, 941 F.2d at 453 (quoting Makar v. Health Care Corp. of Mid-Atl., 872 F.2d 80, 83 (4th Cir. 1989)). At the very least, a plaintiff should be required to comply with the Plan's requirements for making a claim for benefits.

The Plan in this case specifically provides that a person who believes he is entitled

to benefits is to file a written notice with the Administrative Committee or its designee[2] within thirty days after the onset of total disability or "as soon thereafter as is reasonably possible." (Plan, § 5.8; see also § 7.11) The Plan gives the Committee the sole discretion to determine eligibility for benefits. (Plan, § 7.4) The Plan also provides that if the claim is denied, the claimant has the right to appeal the decision. (Plan, § 7.12) As indicated by Mr. Turner's letter to Mr. Horton dated June 25, 2001, plaintiff did not submit a written claim for reinstatement of his benefits to the Administrative Committee. The only requests for reinstatement were made orally by plaintiff's counsel to defendant's counsel, and by letter from plaintiff's counsel to Ms. Barsin. There is no evidence that Ms. Barsin is a member or a designee of the Administrative Committee. The Court concludes that these requests by counsel do not constitute substantial compliance with the terms of the Plan.

As plaintiff never filed an actual claim for reinstatement of his LTD benefits, there is no decision denying such a claim, and no administrative record, for the Court to review. Therefore, the defendant's motion for summary judgment is GRANTED.

The Clerk of Court is directed to prepare a judgment in accordance with this order and the Court's prior orders entered December 15, 2000 (doc. #27), February 15, 2001 (doc. #42), and June 12, 2001 (doc. #62).

IT IS SO ORDERED.

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[2] The Administrative Committee's agent for administration of the Plan was formerly the Equitable Life Assurance Society of the United States. Equitable was purchased by CIGNA Corporation, and the current agent is a CIGNA subsidiary, Life Insurance Company of North America.

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JAMES D. TODD
UNITED STATES DISTRICT JUDGE

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DATE