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

BRUCE OSBORNE,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	**No. 02-2140BV**
	)	
HARTFORD LIFE AND ACCIDENT INSURANCE COMPANY,	)	
	)	
Defendant.	)	

ORDER GRANTING DEFENDANT'S MOTION FOR PROTECTIVE ORDER

This case involves the alleged wrongful termination of long-term disability benefits. The court has previously determined that the case is governeed by the Employment Retirment Security Income Act ("ERISA"), 29 U.S.C. §1132(a)(1)(B). Now before the court is defendant Hartford Life and Accident Insurance Company's June 22, 2004 motion for protective order pursuant to Rule 26(c) of the Federal Rules of Civil Procedure to prohibit the discovery sought by the plaintiff, Bruce Osborne. The motion was referred to the United States Magistrate Judge for determination.

Osborne was the owner and president of a small company, Insurex Benefits Administration, Inc. As such, he was a beneficiary and participant in the employee welfare plan issued and administered by Hartford. On May 20, 1996, Osborne was diagnosed as suffering from congestive heart failure. Hartford determined

that Osborne was unable to perform his regular duties as president of the company and provided disability benefits to Osborne for five years, from August 28, 1996 to February 29, 2001. On March 26, 2001, Hartford wrote Osborne a lengthy letter notifying him that his benefits were terminated and setting forth the basis for its determination.

Osborne alleges that Hartford's decision to terminate his disability benefits was based upon a finding that he could perform sedentary work as that term is defined by the Department of Labor and was made without considering his actual job duties and without considering medical records submitted by him. (Pl.'s Compl. at ¶¶9, 12.) According to the complaint, Osborne remains disabled. He alleges that Hartford terminated his benefits wrongfully and in contravention of its own procedures. Hartford upheld its decision to terminate benefits when Osborne appealed the decision. (Pl. Compl. at ¶11.) Hartford seeks judicial review of the plan decision to terminate his benefits and argues that a Rule 30(b)(6) deposition is necessary.

On June 15, 2004, Osborne served a Rule 30(b)(6) deposition notice on Hartford seeking to depose a corporate representative on the following topics:

> **(1) The identity of the actual administrative record used by the administrator in denying the Plaintiff's disability claim;**

(2) To determine and identify which parts of the file delivered to the Plaintiff as the "administrative record" were not used and received by the administrator in denying the plaintiff's disability claim; and

(3) To identify the basis for denying the plaintiff's disability claim and the documents that support the decision.

Hartford seeks a protective order on grounds of relevancy prohibiting Osborne from pursuing this discovery. Hartford argues that when a district court reviews a termination of benefits, its review is restricted to the administrative record that was before the plan administrator when the plan reached the final decision and that the court may not examine new evidence outside the record. Essentially, Hartford insists that any discovery in the present case would be irrelevant since it could only lead to information that was not before the plan administrator, *i.e.*, inadmissible evidence. In addition, Hartford argues that it has already filed and delivered to Osborne an exact and complete copy of the administrative record that was before the plan administrator when the decision to terminate benefits was made, and therefore no discovery is needed.

Osborne agrees that the scope of review in this type of ERISA case is normally restricted to the record reviewed by the plan administrator, but nevertheless insists that this case falls within an exception to the general rule because he has alleged that

Hartford did not afford him due process in denying his claim. He also insists that the deposition is needed to identify the correct administrative record.

Where an ERISA plan gives the plan administrator discretionary authority to determine eligibility of benefits, the decision of the administrator in denying benefits will be reviewed by the courts under a deferential arbitrary and capricious standard. *Firestone Tire & Rubber Co. v. Bruch*, 489 U.S. 101, 115 (1989). Otherwise, review is *de novo*. *Id.* Because Osborne refers to the arbitrary and capricious standard in his amended complaint, the court assumes without deciding that the arbitrary and capricious standard applies.

The Sixth Circuit is clear that in conducting either a *de novo* review or a review under the arbitrary and capricious standard, the reviewing court may only consider evidence presented to the plan administrator. *Wilkins v. Baptist Healthcare Sys., Inc.*, 150 F.3d 609, 615 (6th Cir. 1998) (noting that when conducting a *de novo* review "the district court [is] confined to the record that was before the Plan Administrator")(citing *Rowan v. Unum Life Ins. Co.*, 119 F.3d 433, 437 (6th Cir. 1997)) and *Perry v. Simplicity Eng'g*, 900 F.2d 963, 966 (6th Cir. 1990)); *Yeager v. Reliance Standard Life Ins. Co.*, 88 F.3d 376, 381 (6th Cir. 1996) (noting that "[w]hen conducting a review of an ERISA benefits denial under an

arbitrary and capricious standard, [the court is] required to consider only the facts known to the plan administrator at the time he made his decision")(citing *Miller*, 925 F.2d at 986)). *Accord Perlman v. Swiss Bank Comprehensive Disability Protection Plan*, 195 F.3d 975, 982 (7th Cir. 1999) (holding that "when review under ERISA is deferential, courts are limited to the information submitted to the plan's administrator")(citing *Wilkins*, 150 F.3d at 617-20; *DeFelice v. Am. Int'l Life Assurance Co.*, 112 F.3d 61, 63 (2d Cir. 1997); *Donatelli v. Home Ins. Co.*, 992 F.2d 763, 765 (8th Cir. 1993); *Quesinberry v. Life Ins. Co. of North Am.*, 987 F.2d 1017, 1021-27 (4th Cir. 1993) (en banc); *Sandoval v. Aetna Life & Cas. Ins. Co.*, 967 F.2d 377, 380 (10th Cir. 1992); *Luby v. Teamsters Health, Welfare, and Pension Trust Funds*, 944 F.2d 1176, 1184-85 (3d Cir. 1991)). As a general rule, discovery is not allowed in ERISA cases. *Wilkins*, 150 F.3d at 618.

Plaintiff urges that discovery is proper in this case because of an exception to the general rule. In a concurring opinion in *Wilkins*, Judge Gilman recognized the exception: "The only exception to the . . . principle of not receiving new evidence at the district court level arises when consideration of that evidence is necessary to resolve an ERISA claimant's procedural challenge to the administrator's decision, such as an alleged lack of due process afforded by the administrator or alleged bias on its part"

and that "any prehearing discovery at the district court level should be limited to such procedural challenges." *Wilkins*, 150 F.3d at 618-19 (Gilman, J., concurring) (citing *VanderKlok v. Provident Life and Accident Ins. Co., Inc.*, 956 F.2d 610, 617 (6th Cir. 1992)). Although *Wilkins* dealt with a *de novo* review, the rationale is equally applicable in analyzing discovery issues in a review of a denial of ERISA benefits under the arbitrary and capricious standard.

Here, Osborne argues that he seeks discovery "to challenge the administrator's decision on a procedural basis in that the administrator did not afford Osborne due process in denying his claim." (Mem. in Resp. to Def.'s Mot. for Prot. Order at 2.) In his response to the motion for protective order, Osborne states that he "alleges that Hartford did not properly review or consider the opinions and reports of Osborne's attending physicians and/or expert physician in this matter," and "in failing, to consider this medical evidence, Hartford denied Osborne due process." Osborne also asserts in his response that the adminstrator's falure to interview him about his job duties is another incident of denial of due process. (*Id.* at 4.)

The court has carefully reviewed Osborne's first amended complaint filed February 12, 2004, and does not find any allegation of denial of due process. Rather, Osborne alleges that "Hartford's

refusal to use or consider medical records and the proper definition and description of his job was arbitrary and capricious." (First Am. Compl. at ¶12.) This allegation does not fall within the exceptions noted in *Wilkins* and its progeny. Osborne also alleges, however, that "Hartford pays disability benefits out of its own funds and therefore has a conflict of interest in determining whether a participant is entitled to disability benefits." (First Am. Compl. at ¶13.) Bias or conflict of interest is a procedural challenge that falls within the *Wilkins* exception.

Mere allegations of a conflict of interest, however, is not enough to justify limited discovery. *Lucas v. The Challenge Mach. Co.*, No. 1:00cv121, 2000 Lexis 13942 (S.D. Mich., Sept. 21, 2000). Discovery in ERISA cases should rarely be allowed. Osborne fails to point to any other evidence that would support his allegations of denial of due process and conflict of interest. Osborne's allegation of conflict of interest, without more, does not warrant additional discovery. Indeed, the defendant points to information in the administrative record which directly contradicts Osborne's assertions of bias and denial of due process. Osborne's claim that the administrator did not consider the opinions of his treating physicians is contradicted by information in the record which shows Hartford considered records of Dr. Newman, Osborne's treating

physician, and discussed Osborne's condition with Dr. Newman. (R. at HFD0072 - 74, 0078, 0086, and 0100). The record also reflects that Osborne discussed his specific job duties with Fred Diggle of Hartford and that Osborne provided Hartford a job description. (R. at HFD0074, 0159-160, and 0166).

Nor is the court persuaded that a Rule 30(b)(6) deposition is necessary to identify the record and/or to purge the duplicates from the administrative file. Hartford has repeatedly represented to the court that the administrative record includes all matters considered by the plan administrator.

Accordingly, Hartford's motion for protective order is granted. Osborne may not pursue the discovery set forth in the Rule 30(b)(6) deposition notice by deposition or otherwise.

IT IS SO ORDERED this 29th day of July, 2004.

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DIANE K. VESCOVO
UNITED STATES MAGISTRATE JUDGE