IN THE UNITED STATES OF APPEALS

FOR THE FIFTH CIRCUIT

No. 92-5296

LINUS ALLISON,

Plaintiff-Appellant,

versus

COASTAL CORPORATION,

Defendant-Appellee.

Appeal from the United States District Court for the
Western District of Louisiana
(91 CV 1159)

(August 16, 1993)

Before POLITZ, Chief Judge, GARZA, and JOLLY, Circuit Judges.

PER CURIAM:[*]

After due consideration of the briefs submitted in this case, the oral arguments of able counsel for both parties, and the record, we find that the district court did not err in granting summary judgment in favor of appellee Coastal Corporation. The judgment of the district court is therefore affirmed.

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[*]Local Rule 47.5 provides: "The publication of opinions that have no precedential value and merely decide particular cases on the basis of well-settled principles of law imposes needless expense on the public and burdens on the legal profession." Pursuant to that Rule, the court has determined that this opinion should not be published.

The plaintiff's primary argument, in brief and before the court, is that the district court erred in deferring to the plan administrator's strict interpretation of the terms of the policy, and instead should have applied a more lenient standard of interpretation based upon the "public policy" behind ERISA. The thrust of Allison's argument is that the "federal common law" being fashioned in other circuits adopts a review standard that takes into account "the reasonable expectations of the parties to the contract." Such is not the law of this circuit. When an ERISA plan gives the administrator discretionary authority to determine eligibility for benefits or construe the terms of the plan, as both parties admit the plan in this case does, the reviewing court applies an abuse of discretion or "arbitrary and capricious" standard. Firestone Tire & Rubber Co. v. Bruch, 489 U.S. 101, 115, 109 S.Ct. 948, 956 (1989). Thus, neither the district court nor we are at liberty to adopt the "lenient" standard of review advocated by the plaintiff. Under the abuse of discretion standard, it is clear--as indeed Allison's argument virtually acknowledges--that we cannot say that the plan administrator's interpretation should be rejected.

In the same vein, the plaintiff also argues that the district court erred in finding that his work at the barbecue stand was "substantial gainful employment activity productive in nature" so as to disqualify him from eligibility for long-term disability benefits under Section 5(A)(ii) of the plan. Again, the district

court correctly found that the plan administrator's decision that Allison was engaged in "substantial gainful employment activity" was not an abuse of discretion or arbitrary and capricious. Allison is a self-employed entrepreneur operating his own restaurant; he waits on customers, acts as cashier, and lights the barbecue pit each morning. Such a job certainly qualifies as "substantial gainful employment activity," and furthermore easily rises to the level of dignity imparted by his former job, that of a mechanic at Coastal Corporation.

In sum, although the plaintiff in this case is disabled from returning to his former job, he is not disabled from engaging in "substantial gainful employment activity productive in nature," and in fact is earning a livelihood as an entrepreneur. The district court correctly granted summary judgment in favor of appellee Coastal Corporation in this case based upon the clear terms of the disability plan. The judgment of the district court is therefore

A F F I R M E D.