

UNITED STATES COURT OF APPEALS
for the Fifth Circuit

No. 92-7389
Summary Calendar

CARLTON MCCLAIN,

Plaintiff-Appellant,

VERSUS

AETNA CASUALTY AND SURETY COMPANY,

Defendant-Appellee.

Appeal from the United States District Court
for the Northern District of Mississippi
(CA-DC90-G179-D-0)

(January 28, 1993)

Before JOLLY, DUHÉ, and BARKSDALE, Circuit Judges.

PER CURIAM:¹

Appellant Carlton McClain appeals the district court's grant of summary judgment in favor of Appellee Aetna Casualty and Surety Company. Finding no genuine issue of material fact, we affirm.

BACKGROUND

Appellant McClain was employed by Laudig & Cole Farms (Laudig) in Boyle, Mississippi. At the time of Appellant's employment, Laudig's workers compensation carrier was Appellee Aetna Casualty and Surety Company (Aetna). In 1981, Appellant was injured when a

¹ 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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

pole he was removing from the ground fell upon his legs. Later that day, while at home for lunch, Appellant suffered a stroke.

Appellant filed a worker's compensation claim and was required by Aetna to undergo a medical examination to determine whether a causal relationship existed between the work accident and Appellant's stroke. After Aetna received a report from the examining physician's office stating that the stroke was work related, it commenced paying disability benefits to Appellant.

Six years later, the examining physician notified Aetna that the report stating Appellant's stroke was work related had been prepared and signed by an employee without the physician's knowledge or approval. Because that report had been the sole basis for Appellant's worker's compensation claim against Aetna, Aetna terminated payment of Appellant's benefits and notified the Mississippi Worker's Compensation Commission of this termination, in accordance with Mississippi worker's compensation law. Plaintiff filed a Petition to Controvert with the Mississippi Worker's Compensation Commission in July 1990, and the matter was ultimately resolved. Appellant then filed a complaint in district court seeking punitive damages from Aetna based upon Aetna's alleged breach of contract and breach of fiduciary duties, and seeking actual damages for mental anguish and emotional distress. Aetna filed a Motion for Summary Judgment that was granted by the district court, and Appellant's complaint was dismissed. Appellant now argues that the district court erred in granting Aetna's Motion for Summary Judgment.

DISCUSSION

Standard of Review

Summary judgment is appropriate if the record discloses "that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Fed. R. Civ. P. 56(c). In reviewing the summary judgment, we apply the same standard of review as did the district court. Waltman v. International Paper Co., 875 F.2d 468, 474 (5th Cir. 1989); Moore v. Mississippi Valley State Univ., 871 F.2d 545, 548 (5th Cir. 1989). The pleadings, depositions, admissions, and answers to interrogatories, together with affidavits, must demonstrate that no genuine issue of material fact remains. Celotex Corp. v. Catrett, 477 U.S. 317 (1986). To that end we must "review the facts drawing all inferences most favorable to the party opposing the motion." Reid v. State Farm Mut. Auto. Ins. Co., 784 F.2d 577, 578 (5th Cir. 1986). If the record taken as a whole could not lead a rational trier of fact to find for the nonmoving party, there is no genuine issue for trial. Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 587 (1986); see Boeing Co. v. Shipman, 411 F.2d 365, 374-75 (5th Cir. 1969) (en banc).

Punitive Damages Claim

Appellant asserts that he is entitled to punitive damages because Aetna willfully and in bad faith breached its contract with Appellant by (1) terminating benefit payments, (2) improperly delaying payments to Appellant during the six years the payments

were made, and (3) miscalculating Appellant's benefits so as to underpay Appellant during the six years that payments were made.

"Under Mississippi law punitive damages are not recoverable for breach of contract unless the breach is attended by an intentional wrong, insult, abuse, or such gross negligence as to constitute an independent tort." Gorman v. Southeastern Fidelity Ins. Co., 775 F.2d 655, 658 (5th Cir. 1985); See Consolidated American Life Ins. Co. v. Toche, 410 So.2d 1303, 1304 (Miss. 1982). Mississippi law also requires that the party claiming punitive damages against his insurer must prove by a preponderance of the evidence either (1) that the insurer acted with malice or (2) that the insurer acted with gross negligence or reckless disregard for the rights of others. Sharpe v. Employer's Mut. Cas. Co., 808 F.2d 1110, 1113 (5th Cir. 1987); Aetna Casualty and Surety Co. v. Day, 487 So.2d 830, 832 (Miss. 1986). Punitive damages may not be assessed if the insurance company has a legitimate or arguable reason for failing to pay benefits, delaying payment of benefits, or paying an incorrect amount of benefits. Standard Life Ins. Co. v. Veal, 354 So.2d 239, 248 (Miss. 1977). Therefore, summary judgment in favor of Aetna is not appropriate in this case if a trier of fact could conclude that Aetna terminated, delayed, or miscalculated Appellant's disability benefits without a legitimate or arguable reason, or acted with malice or gross negligence. We find that a trier of fact could not reach this conclusion.

1. Termination of benefits

Aetna originally based its payment of benefits to Appellant solely upon the letter received from Appellant's examining physician, stating that a causal relationship existed between Appellant's work injury and his stroke. The record indicates that Aetna later learned that the examining physician disclaimed responsibility for the contents of that letter, and terminated Appellant's benefit payments. Aetna also complied with Mississippi law by notifying the Mississippi Worker's Compensation Commission of the termination of benefit payments. See Miss. Code Ann. § 71-3-37. Because the examining physician's original report was Aetna's only basis for paying benefits to Appellant, we conclude that no trier of fact could find that Aetna acted without a legitimate reason by terminating these benefits after learning the physician's report was false. Summary judgment in favor of Aetna on this issue is proper.

2. Delayed payments

In support of his contention that Aetna delayed payments, Appellant offers no record evidence. Summary judgment in favor of Aetna on this issue is proper.

3. Miscalculation of benefits

Appellant contends that Aetna miscalculated his worker's compensation benefits by failing to include payment for housing and electricity that Appellant received as part of his employment

compensation. Aetna responds that when it originally calculated Appellant's benefits, it was unaware that Appellant's compensation included housing and electricity and therefore had inadvertently underestimated the benefit payments. Aetna further contends that it learned of this omission upon the filing of Appellant's Petition to Controvert, and thereafter stipulated at the Mississippi Worker's Compensation Commission hearing to a higher weekly wage, one that included the previously omitted benefits. Aetna also offered a settlement to Appellant that included back-payments for housing and electricity. Aetna's contentions are supported by the record. We conclude that no trier of fact could find Aetna's actions constituted malice or gross negligence. Summary judgment on this issue is proper.

Appellant's claims of mental anguish and emotional distress

Appellant argues that even if we find no independent intentional tort separate from the breach of contract so as to warrant a punitive damage award, he is nevertheless entitled to recover reasonably foreseeable damages of mental anguish and emotional distress under Universal Life Insurance Co. v. Veasley, No. 07-CA-59316 (Miss. Feb. 19, 1992).

In Universal, the Mississippi Supreme Court affirmed an award for actual damages for mental anxiety and emotional distress stemming from an insurance company's breach of contract in spite of the fact that such damages had traditionally been unavailable without a finding of an independent intentional tort separate from

the breach of contract. Because we find that the only potential breach of contract by Aetna stems from its miscalculation of benefits, which has since been remedied, and because the record offers no evidence that Appellant suffered mental anxiety or emotional distress as a result of this potential breach, we conclude that summary judgment in favor of Aetna on this issue is proper.

CONCLUSION

Finding no genuine issue of material fact regarding whether (1) Aetna improperly terminated worker's compensation benefits, (2) Aetna improperly delayed such payments, (3) Aetna miscalculated such benefits, or (4) Appellant is entitled to actual damages for mental anguish and emotional distress, we AFFIRM the district court's grant of summary judgment in favor of Aetna.