

UNITED STATES COURT OF APPEALS
for the Fifth Circuit

No. 93-2039
Summary Calendar

AUSTIN R. FREDERICK,

Plaintiff-Appellant,

VERSUS

LIFE INSURANCE COMPANY OF THE SOUTH, ET AL.,

Defendants,

HALLIBURTON COMPANY EMPLOYEES' TRUST,

Defendant-Appellee.

Appeal from the United States District Court
for the Southern District of Texas
(CA H 89 0023)

October 1, 1993

Before DAVIS, JONES, and DUHÉ, Circuit Judges.

PER CURIAM:¹

Austin Frederick appeals a district court order granting summary judgment for Halliburton Company Employees' Trust (the Trust). The district court found that there was no genuine issue of material fact with respect to whether the Trust abused its discretion in denying Frederick disability benefits. We affirm.

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

Background

In 1979, Frederick began receiving long-term disability benefits. According to the terms of his disability plan, benefits are discontinued after 24 months unless the participant is totally disabled. The plan defines total disability as complete inability to engage in any occupation for which the participant is qualified or may reasonably become qualified.

In 1985, the plan administrator reviewed Frederick's eligibility for continued benefits. Based on a report from Dr. Leffler, Frederick's orthopedic specialist, Frederick's benefits were discontinued. Frederick asked for reconsideration, and the administrator temporarily reinstated his benefits. After considering a letter from Dr. Leffler clarifying his initial report², the results of an independent medical examination, and the analysis of a certified rehabilitation counselor, the administrator terminated Frederick's benefits again. Frederick appealed this determination to the Disability Claims Review Committee (the Committee). The Committee denied reinstatement. Frederick then filed suit alleging violations of the Employment Retirement Income Security Act (ERISA). The Trust filed a motion for summary judgment asserting that the Committee did not abuse its discretion in denying reinstatement. The district court granted the motion. Frederick appeals.

² In his original report, Dr. Leffler stated that Frederick could do sedentary work. After the administrator discontinued Frederick's benefits, Dr. Leffler wrote a letter stating that Frederick could only do sedentary work for a few hours.

Discussion

Frederick contends that the district court erred in finding that there was no genuine fact issue as to whether he was "totally disabled." This contention misstates the district court's order and the issue presented. The district court did not find that the appellant was "totally disabled." Instead, the district court found no issue of fact as to whether the Committee abused its discretion in determining that Frederick was not totally disabled.

Frederick's next contention is that the district court erred in finding that there was no genuine fact issue as to whether the termination decision was an abuse of discretion. Because factual determinations under ERISA plans are reviewed under an abuse of discretion standard, a reviewing court will not interfere with a plan committee decision unless that determination does not reflect "reasonable and impartial judgment." Pierre v. Connecticut Gen. Life Ins. Co., 932 F.2d 1552, 1562 (5th Cir.), cert. denied, 112 S. Ct. 453 (1991).

The Trust submitted an affidavit of a Committee member explaining the Committee's decision making process. The affidavit indicated that the Committee considered medical reports from two orthopedic specialists, Dr. Leffler and an independent physician, concluding that Frederick can perform a sedentary or light duty occupation. The Committee also considered an occupational analysis identifying several occupations for which Frederick is qualified.

In support of his claim that the Committee abused its discretion, Frederick argues that because the letter from Dr.

Leffler clarifying his previous report was not mentioned in the Committee member's affidavit, the letter was not considered. The mere non-mention of the letter does not raise a fact question as to whether the letter was or was not considered. Frederick has not met his burden of raising a genuine issue of material fact.

Frederick also alleges that the occupational analysis was based upon incomplete medical information. Other than his conclusory assertions, he offers no evidence to support this allegation.

Frederick argues that the following facts also indicate that he is totally disabled: (1) he received long-term disability benefits from 1979 to 1985, (2) his condition has not changed since 1985, and (3) his former employer has not offered him a job. Based on the evidence presented, we find that there is no issue of material fact as to whether the Committee's judgment was reasonable and impartial. The district court's order granting summary judgment is

AFFIRMED.