

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 92-3580
No. 93-3233
Summary Calendar

DAVID W. WILLIAMS,

Plaintiff-Appellant,

VERSUS

BRIDGESTONE/FIRESTONE, INC.,
LONG TERM DISABILITY BENEFITS PLAN,

Defendant-Appellee.

Appeal from the United States District Court
for the Middle District of Louisiana
CA 91 489 B M1

August 18, 1993

Before GARWOOD, SMITH, and DeMOSS, Circuit Judges.

PER CURIAM:*

David Williams filed suit under section 502(a)(1)(B) of the Employee Retirement Income Security Act of 1974 ("ERISA"), 29 U.S.C. § 1132(a)(1)(B), complaining of the denial of long term disability benefits by the pension board of his employer's long

* Local Rule 47.5.1 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 Pursuant to that rule, the court has determined that this opinion should not be published.

term disability benefits plan)) a denial stemming from the determination that Williams was not disabled under the terms of the plan. In a comprehensive ten-page order entered on May 27, 1992, the district court granted the defendant's motion for summary judgment and, in so doing, determined that the plan administrator did not abuse his discretion in denying benefits. The court noted that "the plaintiff did not submit any evidence to oppose defendant's motion for summary judgment" and sustained the pension board's finding that Williams could perform sedentary work with some limitations and thus was not totally disabled.

The court entered final judgment on the basis of its opinion. Several months later, Williams filed a motion under FED. R. CIV. P. 60(b)(2), seeking to have the judgment vacated in order to introduce a recently-obtained doctor's report. The court opined that Williams did not meet the standard of rule 60(b)(2), which requires that the newly discovered evidence be evidence that "could not have been discovered in time to move for a new trial under [FED. R. CIV. P.] 59(b)." The court found that Williams was aware of the existence of the subject report before summary judgment was entered, yet "neither moved for a continuance nor opposed the plan's motion for summary judgment."

We perceive no error and affirm both the summary judgment and the denial of relief under rule 60(b)(2). We do so essentially for the reasons set forth in the opinion entered on May 27, 1992, granting summary judgment, and the order entered March 4, 1993, denying the rule 60(b)(2) motion.

AFFIRMED.