UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 94-30010
SUMMARY CALENDAR

BETTY LEBLANC,

Plaintiff-Appellant,

versus

BELLSOUTH SICKNESS AND ACCIDENT
DISABILITY BENEFIT PLANT,

Defendant-Appellee.

Appeal from the United States District Court
for the Eastern District of Louisiana
(CA-93-3211-D)

(May 19, 1994)

Before GOLDBERG, GARWOOD, and DAVIS, Circuit Judges.

PER CURIAM[1]:

Appellant Betty LeBlanc contests the district court's refusal to disturb BellSouth Telecommunication's ("BellSouth") decision to

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

deny her disability benefits under its sickness and accident plan.[2] The district court granted summary judgement in favor of the defendant BellSouth after considering the plan administrator's decision under an arbitrary and capricious standard of review. Because LeBlanc has failed to show why this decision was erroneous, we affirm the summary judgment granted by the district court.

I. Facts

Betty LeBlanc worked as a Maintenance Administrator with BellSouth. BellSouth provided the BellSouth Sickness and Accident Disability Benefit Plan ("Plan") to cover employees who become sick or are injured while working for BellSouth. On March 24, 1992, because of physical disabilities that her physician, Dr. Essam Elmorshidy, diagnosed as congenital hip dysplasia and possible lumbar disc syndrome, LeBlanc began a leave of absence.

On March 31, the Plan's case manager authorized payment of disability benefits to LeBlanc. The benefits were to continue through April 20. On April 23, Dr. Elmorshidy sent a letter to the Plan administrator stating that Leblanc could work if she avoided prolonged standing, sitting, or walking. The case manager determined that BellSouth would retain her services by modifying LeBlanc's duties to accommodate her disabilities.

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[2] This plan is governed by the Employees' Retirement Income Security Act, 29 U.S.C. § 1001 et seq.. The Act provides a cause of action under 29 U.S.C. § 1132 (a)(1)(B) "to recover benefits due to [a participant] under the terms of his plan . . ."

A medical consultant retained by BellSouth, Dr. Lakey Tolbert, reviewed LeBlanc's records and concurred in Dr. Elmorshidy's April 23 assessment. However, on May 6, Dr. Elmorshidy reported that due to deterioration in her condition, Leblanc was totally disabled and was completely unable to work. The case manager then arranged for Dr. Robert Steiner to conduct an independent medical examination of LeBlanc. Dr. Steiner concluded that LeBlanc was capable of working in a limited capacity.

The Case Manager advised LeBlanc that although she was not eligible for total disability payments, BellSouth would accommodate her work restrictions. On July 28, 1992, the Plan's Employee's Benefit Committee reviewed her claim for disability benefits and notified her of its decision to terminate these benefits as of April 20. The Benefit Committee reasoned that the Plan requires denial of benefits where the employee is able to perform some work, even restricted duty work.[3] LeBlanc appealed to the Employee's Claim Review Committee. On September 10, 1992, the Review Committee affirmed the denial of her claim.

LeBlanc then filed suit against the Plan on September 8, 1993 in a Louisiana state court. The Plan removed to federal court, claiming that jurisdiction was proper under ERISA.[4] On November 9,

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[3] Section 4.1 of the Plan provides that participants in the Plan shall "be qualified to receive payments under the Plan on account of physical disability to work . . . [and] payments shall terminate when disability ceases."

[4] Congress mandated that ERISA "shall supersede any and all State laws insofar as they may now or hereafter relate to any employee benefit plan" covered by the statute. 29 U.S.C. § 1144 (a). The Supreme Court has held that "the express pre-emption

1993, the court granted BellSouth's motion for summary judgment reasoning that the Plan's decision was not an abuse of discretion.[5] LeBlanc appeals.

II. Analysis

A grant of summary judgment must be affirmed when, in viewing the evidence in the light most favorable to the opposing party, no genuine issues of material fact remain to be tried and the movant is entitled to a judgment as a matter of law. Fed. R. Civ. P. 56 (c); see Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 247, 106 S. Ct. 2505, 2509-10, 91 L. Ed. 2d 202 (1986). As a result, summary judgment is proper "unless there is sufficient evidence favoring the nonmoving party for a jury to return a verdict for that party. If the evidence is merely colorable, or is not significantly probative, summary judgment may be granted." Id. at 249-50 (citations omitted).

An appellate court reviews a grant of summary judgment under the same standard as the district court. The standard of review applied to claims under section 1132 (a)(1)(B) depends on the

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provisions of ERISA are deliberately expansive, and designed to `establish pension plan regulation as exclusively a federal concern.'" Pilot Live Ins. Co. v. Dedeaux, 481 U.S. 41, 45-46, 107 S. Ct. 1549, 1552, 95 L. Ed. 2d 39 (1987) (quoting Alessi v. Raybestos-Manhattan, Inc., 451 U.S. 504, 523, 101 S. Ct. 1895, 1906, 68 L. Ed. 2d 402 (1981)).

[5] We note that the arbitrary and capricious and the abuse of discretion standards employed by this circuit in the ERISA context refer to the same deferential standard of review. The difference is merely semantic. Wildbur v. Arco Chemical Co., 974 F.2d 631, 635 n.7 (5th Cir. 1992).

discretion granted by the Plan to those making the eligibility determinations. Firestone Tire and Rubber Co. v. Bruch, 489 U.S. 101, 108-15, 109 S. Ct. 948, 953-57, 103 L. Ed. 2d 80 (1989). Where the plan confers discretionary authority on the plan administrator, judicial review of eligibility determinations is confined to the arbitrary and capricious standard. Id. at 115, 109 S. Ct. at 957; Haubold v. Intermedics, Inc., 11 F.3d 1333, 1336-37 (5th Cir. 1994); Cathey v. Dow Chemical Co. Medical Care Program, 907 F.2d 554 (5th Cir. 1990), cert. denied, 498 U.S. 1087, 111 S. Ct. 964, 112 L. Ed. 2d 1051 (1991).

To begin our analysis, we must determine whether the administrators of the BellSouth Plan had the discretionary authority to determine eligibility of employees to disability benefits. "Discretionary authority cannot be implied; an administrator has no discretion to determine eligibility or interpret the plan unless the plan language expressly confers such authority on the administrator." Wildbur, 974 at 636 (citing Cathey, 907 F.2d at 558). However, this does not mean that we have "imposed a linguistic template; we read a plan as a whole to determine if, in our judgment, it satisfies the Firestone criteria." Id. at 636-37.

Our review of the Plan documents reveals that Section 3.4 confers discretionary authority upon the plan administrator. Section 3.4 states that, "The Employees' Benefit Committee, or the Review Committee when it reviews a denial of a claim, . . . shall determine conclusively for all parties all questions arising in the

administration of the Plan, and any decision of such Committee . . . shall not be subject to further review."

Previous decisions have interpreted language similar to this to provide an administrator with sufficient discretion to justify the use of the arbitrary and capricious standard of review. In Duhon v. Texaco, Inc., 15 F.3d 1302 (5th Cir. 1994), we held that the more deferential standard of review applied where the language granting discretionary authority provided that "[t]he decisions of the Plan administrator shall be final and conclusive with respect to every question which may arise relating to either the interpretation or administration of this Plan." Where, as in the instant case, a plan grants conclusive authority to answer all questions relating to the administration of the plan, the administrator has sufficient discretion to trigger the arbitrary and capricious standard of review. See also Lowry v. Bankers Life and Casualty Retirement Plan, 871 F.2d 522, 524 (5th Cir.), cert. denied, 493 U.S. 852, 110 S. Ct. 152, 107 L. Ed. 2d 111 (1989) (power to "interpret and construe" the Plan and to "determine all questions arising" in the administration of the plan was sufficient to invoke the arbitrary and capricious standard of review). We find, therefore, that the district court's application of the abuse of discretion standard was proper.[6] Moreover, under that standard,

[6] Plaintiffs argue that where the Plan pays benefits as an operating expense of the company and thereby creates a potential conflict between the interests of the Plan administrators as fiduciaries for its participants and the interests of administrators as officers of the company, the de novo standard of review should apply. This court recently determined that "we will follow the Supreme Court's direction in Bruch and weigh this

we find no reason to believe that the district court erred in dismissing LeBlanc's case.

LeBlanc makes two other contentions, neither of which merit reversal. She argues that because of her illness, she was on restricted duty at the time she stopped working for BellSouth and that therefore a genuine issue of material fact exists as to whether BellSouth had any more restrictive work that she could perform. However, the fact that she was already performing restricted duty work does not raise a genuine issue of material fact regarding whether BellSouth offered her work to accommodate the medical limitations described by the doctors reviewing her case. If anything, this fact suggests BellSouth's willingness to make accommodations to her disabilities. Therefore, the district court properly granted summary judgment in BellSouth's favor as a matter of law. See Rodriguez v. Pacificare of Tex., Inc., 980 F.2d 1014, 1019 (5th Cir.), cert. denied, 113 S. Ct. 2456, 124 L. Ed. 2d 671 (1993).

Finally, Appellant argues that a successful determination of LeBlanc's eligibility for Social Security Disability Benefits should have been considered by the district court in evaluating whether the Plan administrator's decision denying her disability benefits was arbitrary or capricious. This contention is without

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possible conflict as a factor in our determination of whether the plan administrator abused his discretion, instead of adopting ex cathedra [the participant's] suggestion of altering the applicable standard of review." Duhon, 15 F.3d at 1306. Plaintiff's argument regarding de novo review, therefore, carries no weight.

merit. The Plan administrator could not have considered the award of Social Security benefits because this determination occurred subsequent to the administrator's decision to terminate her disability benefits under the BellSouth Plan. Moreover, even if this evidence were considered, LeBlanc offers no showing of how the Social Security determination proves that the Plan administrator's decision to deny her disability benefits was an abuse of discretion.

In sum, we find no basis for error in the district court's grant of summary judgement. We therefore AFFIRM.