

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 96-30252

KENNETH B. MATHIEU,

Plaintiff-Appellant,

versus

UNUM LIFE INSURANCE COMPANY OF
AMERICA,

Defendant-Appellee.

Appeal from the United States District Court for the
Eastern District of Louisiana
(95-CV-2709-D)

October 30, 1996

Before REYNALDO G. GARZA, JOLLY, and DeMOSS, Circuit Judges.

PER CURIAM:*

Appellant Kenneth B. Mathieu ("Mathieu") sued UNUM Life Insurance Company of America ("UNUM") to recover payments that UNUM withheld to offset Social Security disability payments that Mathieu also received. According to its policy, UNUM is entitled to offset against its own payments any Social Security disability payments received by a covered employee if those payments are payable "as a result of the same disability." Mathieu insists that because the

*Pursuant to Local Rule 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in Local Rule 47.5.4.

Social Security hearing examiner considered *both* Mathieu's prior back injury and his more recent heart attack, the payments are not based on the "same disability" and UNUM may not offset. The district court concluded that Mathieu had applied for Social Security disability on the basis of his heart condition, and that the hearing examiner focused primarily upon the medical restrictions caused by the heart condition. The district court therefore found that Mathieu's heart condition was "the crux" of both awards, and granted summary judgment for UNUM. Mathieu appeals this decision.

We have reviewed the briefs and arguments and we conclude that the district court correctly assessed the facts and the terms of the insurance contract. Both the UNUM payment and the Social Security disability payment are payable "as a result of" Mathieu's heart condition. Accordingly, the judgment of the district court is

A F F I R M E D.