United States Court of Appeals for the Fifth Circuit

United States Court of Appeals
Fifth Circuit
FILED
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Lyle W. Cayce
Clerk

No. 20-30240

MICHAEL G. MILLER,

Plaintiff—Appellant,

versus

RELIANCE STANDARD LIFE INSURANCE COMPANY,

Defendant—Appellee.

Appeal from the United States District Court
for the Eastern District of Louisiana
USDC No. 2:18-CV-10028

Before HAYNES, DUNCAN, and ENGELHARDT, *Circuit Judges*.

STUART KYLE DUNCAN, *Circuit Judge*:

Michael Miller sued Reliance Standard Life Insurance Company for denying his long-term disability claim under a plan Reliance insures. The district court granted summary judgment to Reliance. It concluded that Miller's absence on medical leave at the time Reliance took over his group policy created a gap in Miller's coverage and rendered his complained-of disability an excluded preexisting condition. Because the district court misread the policy, we reverse and render judgment for Miller and remand for determining the amount of Miller's benefits.

I.

Miller is a ship pilot who has worked since 1989 for Lake Charles Pilots, Inc. ("LCP"), navigating ships in the Calcasieu Ship Channel connecting the Port of Lake Charles, Louisiana, to the Gulf of Mexico. Reliance insures LCP's group disability plan. The parties do not dispute the facts underlying Miller's claim, only the plan's application to those facts.

Prior to the claim disputed here, Miller had an extensive history of health problems, injuries, medical procedures, and disability leave. Crucially, he was out on short-term disability leave—and had been for almost two months—on September 1, 2015, when Reliance took over LCP's insurance plan from another insurer, Prudential. On October 23, Miller was cleared to return to work and was scheduled to work on November 4, but he suffered a fall that evening and reinjured himself. Reliance approved a claim for short-term disability benefits for this injury, which it now claims was a mistake.[1]

Miller briefly returned to work in July and August 2016 but stopped again on August 10 after nearly falling off a Jacob's ladder while boarding a ship. After that incident, believing that ailments in his wrist and knee would sideline him for some time, Miller applied to Reliance for short-term disability benefits. Reliance approved his claim, and when these benefits were exhausted, Miller, still unable to work, applied for long-term benefits.

Reliance denied this claim. It determined that Miller's coverage took effect only on the first of the month after he returned to active work: August 1, 2016. Because his date of reported disability was therefore within a year of the start of Miller's coverage, and because he had received medical treatment

[1] Miller had filed claims for this injury with both Prudential and Reliance. Prudential denied his claim because it was distinct from the previous injuries he had suffered during the term of Prudential's coverage.

for the same issues in the three months prior to the effective date, Reliance found the disability was an excluded preexisting condition.

Miller appealed Reliance's decision. He argued, *inter alia*, that Reliance was required to credit him, for purposes of the preexisting conditions limitation, for his time insured through LCP's plan by Prudential. Pointing to the Reliance policy's Transfer of Insurance Coverage Provision ("Transfer Provision"), he argued that he fulfilled all the policy's criteria for coverage from September 1, 2015, continuous with his coverage under the Prudential plan. That meant, Miller argued, that his many years on that plan should count toward satisfying the preexisting conditions limitation and, in his case, wipe it out entirely.

After Reliance failed to render a timely decision on his appeal, Miller sued in federal district court for benefits under the Employee Retirement Income Security Act ("ERISA"), 29 U.S.C. § 1132(a)(1)(B). The parties filed cross motions for summary judgment, and the district court ruled for Reliance. The court found that Miller's coverage with Reliance became effective only on August 1, 2016, when he returned to active work after Reliance's policy had taken effect. It then rejected Miller's argument that, because the policy's Transfer Provision credited him for his time insured through LCP's plan with Prudential, this would prevent the Reliance policy's preexisting condition limitation from barring his claim. The court did not apply the Transfer Provision to Miller because it found he could not fulfill two of its requirements: payment of premiums and being "Actively at Work" on the policy's original effective date (September 1, 2015). Having thus concluded that the policy's preexisting conditions limitation applied to Miller, the court found the limitation excluded his claimed disabilities, due to recent treatments he received for them. The district court therefore granted Reliance summary judgment. Miller appealed.

II.

"Standard summary judgment rules control in ERISA cases." *Green v. Life Ins. Co. of N. Am.*, 754 F.3d 324, 329 (5th Cir. 2014) (citation omitted). We review a summary judgment *de novo*. *In re La. Crawfish Producers*, 852 F.3d 456, 462 (5th Cir. 2017). "The court shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." FED. R. CIV. P. 56(a). "When parties file cross-motions for summary judgment, we review each party's motion independently, viewing the evidence and inferences in the light most favorable to the nonmoving party." *Green*, 754 F.3d at 329 (citation omitted).

We also review *de novo* a nondiscretionary denial of benefits challenged under ERISA, regardless of whether the denial is based on factual determinations or interpretation of the plan's language. *See generally Firestone Tire & Rubber Co. v. Bruch*, 489 U.S. 101, 115 (1989); *Ariana M. v. Humana Health Plan of Texas, Inc.*, 884 F.3d 246 (5th Cir. 2018) (en banc). In this case, Reliance's decision is subject to *de novo* review, as the district court determined.[2]

III.

Whether Miller was entitled to disability benefits depends on the meaning of the plan's Transfer Provision, which determines whether employees covered under the group's previous plan with Prudential remained continuously insured when Reliance's policy took effect. If this

[2] Although Reliance suggests an arbitrary-and-capricious standard may have been correct, *see Corry v. Liberty Life Assurance Co. of Boston*, 499 F.3d 389, 397 (5th Cir. 2007), it does not contest on appeal the district court's determination that *de novo* review applies. It also points to no language in the policy conferring discretion to award benefits.

provision applies to Miller, it makes his coverage effective on September 1 and exempts him from the policy's limitation on preexisting conditions, which Reliance invoked to deny his claim.

A.

"When construing ERISA plan provisions, courts are to give the language of an insurance contract its ordinary and generally accepted meaning if such a meaning exists." *Green*, 754 F.3d at 331 (citation omitted). We apply the rule of *contra proferentem* to ambiguous terms—construing them strictly in favor of the insured—but "[o]nly if the plan terms remain ambiguous after applying ordinary principles of contract interpretation." *Ramirez v. United of Omaha Life Ins. Co.*, 872 F.3d 721, 725 (5th Cir. 2017); *see also Todd v. AIG Life Ins. Co.*, 47 F.3d 1448, 1451–52 (5th Cir. 1995).

The Transfer Provision reads in full, with the disputed sections emphasized:

> **TRANSFER OF INSURANCE COVERAGE**
>
> If an employee was covered under any group long term disability insurance plan maintained by you prior to this Policy's Effective Date, that employee will be insured under this Policy, provided that he/she is Actively At Work and meets all of the requirements for being an Eligible Person under this Policy on its Effective Date.
>
> If an employee was covered under the prior group long term disability insurance plan maintained by you prior to this Policy's Effective Date, *but was not Actively at Work due to Injury or Sickness on the Effective Date of this Policy and would otherwise qualify as an Eligible Person,* coverage will be allowed under the following conditions:
>
> (1) The employee must have been insured with the prior carrier on the date of the transfer; and
>
> (2) *Premiums must be paid*; and

> (3) Total Disability must begin on or after this Policy's Effective Date.

The district court concluded the provision did not apply to Miller for two reasons. First, the court found Miller had not shown that his premium had been paid on the policy's effective date, as the Transfer Provision requires. Second, the court found Miller could not show he was an Eligible Person on the policy's effective date. On appeal, though, Reliance concedes the record shows that Miller's premiums were paid.[3] We therefore focus on whether the language of the Transfer Provision's second paragraph covers Miller. Concluding that it does, we resolve the appeal on that basis.

B.

The relevant Transfer Provision language allows coverage of an employee insured under the previous plan who was "not Actively at Work due to Injury or Sickness on the Effective Date of this Policy and would otherwise qualify as an Eligible Person." The parties agree that Miller was "not Actively at Work" when Reliance's policy took effect but dispute whether he "would otherwise qualify as an Eligible Person."

The term "Eligible Person" begins a string of cross-referenced definitions, provisions, and undefined terms within the policy. "Eligible Person" is defined as "a person who meets the Eligibility Requirements of this Policy." The policy defines its "Eligibility Requirements" as being "a member of an Eligible Class, as shown on the Schedule of Benefits page."

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[3] Invoices in the supplemental administrative record show Miller on a list of employees and their premiums as of September 1, 2015, along with a record of payment for all premiums. Reliance argued to the district court, but no longer maintains on appeal, that this list is from October *2016*, not 2015. The discrepancy seems to be a matter of low-quality photocopies, but the invoices in the record appear on close inspection to be from September and October 2015, not 2016. Reliance's preliminary claim notes also indicate premiums were paid.

That page, in turn, lists only the following Eligible Class: "Each *active, Full-time Employee*, except any person employed on a temporary or seasonal basis" (emphasis added). That definition contains one more defined term: "Full-time" means "working . . . for a minimum of 30 hours during a person's regular work week." Notably, "active" is not a defined term. On the other hand, the policy does define "Actively at Work," as used in the Transfer Provision, to mean "actually performing on a Full-time basis the material duties pertaining to his/her job," with allowance for "approved time off such as vacation, jury duty and funeral leave, but . . . not . . . time off as a result of an Injury or Sickness."[4]

Stitching these provisions together, Miller must show that he was an "active" employee in every respect other than actually performing his duties as of the policy's effective date. He must also show that he was a "Full-time" employee, working at least thirty hours during his "regular work week." The parties dispute exactly what this requires, especially with respect to the terms "active" and (to a lesser extent) "regular work week." In Miller's view, the policy only requires him to be a current employee of LCP, as opposed to retired, and full-time as opposed to a merely seasonal or part-time hire. Reliance, however, argues that to be an "active" employee, Miller would have to be actually working, and to be "full-time," he would have to have an actual "regular work week" around the transfer date.

The Sixth Circuit recently interpreted this same language—also in a Reliance policy—in the insured's favor. *See Wallace v. Oakwood Healthcare, Inc.*, 954 F.3d 879 (6th Cir. 2020). Reading an identical Transfer Provision, the court held that "active," as used in the policy, was ambiguous. "'Active'

[4] "Injury" and "Sickness" both refer to conditions resulting in "Total Disability," *i.e.* a condition eligible for long-term disability benefits.

could mean that a party is able and available to work, but not present on that day. . . . 'Active' could also mean non-retired." *Id.* at 893–94. The court noted that "non-retired" was a plausible reading especially because plans under ERISA often cover a policyholder "both during the years of the employee's active service and in his or her retirement years." *Id.* at 894 (quoting *Boggs v. Boggs*, 520 U.S. 833, 839 (1997)). The court also found the definition of "Full-time" and its reference to a "regular work week" ambiguous: "This provision could be reasonably interpreted to mean that a person must currently work thirty hours a week, but it could also be reasonably interpreted to mean that a person's job description requires that person to work thirty hours a week." *Ibid.*[5] Faced with competing reasonable interpretations, the court therefore held that both terms must be interpreted in favor of the insured according to the rule of *contra proferentem*. *Ibid.* Noting the "nearly identical" facts in his case and *Wallace*, Miller urges the same result here.

We agree with the Sixth Circuit that, in the context of the Transfer Provision, the phrase "active, full-time" employees must be construed in the insured's favor to include those who, on the relevant date, are current employees even if not actually working. We also agree that the term "regular work week" must be construed to refer to an employee's job description, or to his typical workload when on duty. To hold otherwise, as Reliance urges, would render the second paragraph of the Transfer Provision virtually

[5] *See also Carlile v. Reliance Standard Life Ins. Co.*, 988 F.3d 1217, 1224 (10th Cir. 2021) ("We . . . reject Reliance's argument that the dictionary definition of 'active' unambiguously means 'actually working.'"). *Carlile* concerned the same language in a Reliance plan as here. *Id.* at 1222. Although it considered how long existing coverage continued in light of an employee's impending termination, *id.* at 1219–20, 1223, its reading of "active" is still instructive on the issue of when coverage becomes effective. *Carlile* also rejected the argument that the plan's definition of "Full-time" required an employee to be working an hourly minimum at a particular, relevant time. *Id.* at 1226–27 & nn. 7–8.

redundant with the first. On Reliance's reading, the paragraph would cover employees who actually maintain a full-time work schedule at the time of transfer. But this is barely different, if at all, from the previous paragraph's provision for employees who at the time are "Actively at Work," defined to mean "*actually performing* on a Full-time basis the material duties pertaining to his/her job" (emphasis added). Effectively, Reliance's reading is that the second paragraph covers employees who are not "actually performing" work duties but are "otherwise" actually working. We reject this convoluted construction as the unambiguous meaning of the provision.

C.

Reliance unpersuasively tries to distinguish *Wallace*. Mainly it argues *Wallace* does not help Miller because there the court did not make a finding on eligibility but remanded for additional fact-finding. But the Sixth Circuit listed the six points on which further factfinding was needed in that case, *see* 954 F.3d at 898, and no similar fact issues are disputed here. In particular, the record is clear, and Reliance does not dispute, that Miller worked full-time for LCP when healthy and on the job. That the Sixth Circuit did not have enough facts to make an eligibility determination does not distinguish the legal question in *Wallace* from the one in this case.

Reliance also attempts to rebut *Wallace* with other sister-circuit cases, all of which differ from this case in crucial respects. In one, the plan defined "active, full-time employee" more strictly, as one "actively at work an average of 40 or more hours per week." *See Fendler v. CNA Grp. Life Assurance Co.*, 247 F. App'x 754, 759 (6th Cir. 2007). In another, the policy provided that for employees not "actively at work" on the date coverage became effective, insurance "will become effective on the date the employee returns to active work." *Turner v. SafeCo Life Ins. Co.*, 17 F.3d 141, 143 (6th Cir. 1994). Another is a one-page summary calendar opinion which does not

divulge its reasoning at all. *See Lewis v. Life Ins. Co. of N. Am.*, 578 F. App'x 176, 177 (4th Cir. 2014). Finally, a Tenth Circuit case cited by Reliance suggested—but did not in fact decide—that an "active" requirement in a plan's effective-date provisions would have excluded an employee who went on medical leave, if such a requirement had applied. *Bartlett v. Martin Marietta Operations Support, Inc. Life Ins. Plan*, 38 F.3d 514, 517–18 (10th Cir. 1994). But the plan in that case had no such requirement at the relevant time, so the court held the plan covered an employee on leave without having to consider whether an "active" requirement would have commanded a different outcome. *Id.* at 519.[6] None of these cases undermines our conclusion about the policy language before us.[7]

Finally, Reliance argues the Transfer Provision's second paragraph is narrow by design: it is meant to protect employees who are "regularly working but are out of work on the transfer date," not employees who are on a lengthy disability leave. We disagree. The first paragraph of the provision already includes just such an allowance for regularly working employees, so

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[6] The case also appears to have used "active" and "actively at work" interchangeably, *see id.* at 517–18, a construction the Transfer Provision here forecloses.

[7] Reliance also cites decisions by two district courts in this circuit, neither of which supports its narrow construction of the term "active." The first considered a policy under which only "full-time active employees" were eligible, but the *pro se* plaintiff had been terminated *before* suffering his alleged disability and failed to offer any evidence of his eligibility. *Ferguson v. Dynamic Indus., Inc.*, No. 2:10-CV-316, 2011 WL 1113545, at *1 (W.D. La. Mar. 24, 2011). In the second, the court did suggest that the absence of the word "active" from the policy's definition of eligible employees prevented the insurer from excluding an employee on disability leave. That might seem to help Reliance here, but the district court went on to indicate that even a policy with the term "active" would have been ambiguous. *Patton v. Jacobs Eng'g Grp.*, No. 3:05-CV-1282, 2009 WL 89699, at *4–6 (M.D. La. Jan. 13, 2009); *see also Campbell v. Unum Life Ins. Co.*, No. 2:03-CV-1445, 2004 WL 1497712, at *14 (E.D. La. July 2, 2004) (holding "that the 'active employment' provision in [a contested] Policy is ambiguous as a matter of law").

there is no reason to adopt Reliance's cramped reading of the second paragraph. The policy defines "Actively at Work"—the key operative term in the first paragraph—to include not only employees who are physically present on a particular day, but also all those who are "actually performing on a Full-time basis [at least thirty hours per week] the material duties pertaining to his/her job." This definition reasonably includes an employee who is on a full-time schedule at the relevant time, even if not physically present on a specific day. Furthermore, it makes allowance for any "approved time off such as vacation, jury duty and funeral leave." Thus, the first paragraph already covers most situations in which an employee might be "regularly working" but "out of work on the transfer date" on some short but ill-timed absence. We see no reason to read the second paragraph, as Reliance urges, to make it largely duplicative of the first. At the very least, the Transfer Provision does not require such a construction, and we therefore construe it in favor of the insured.

IV.

In sum, we hold that the Transfer Provision applies to Miller. The plan therefore covered Miller when it took effect on September 1, 2015, during his leave, and so Reliance wrongly denied his disability claim. The district court erred by concluding otherwise.[8] We therefore REVERSE the district court's summary judgment for Reliance; RENDER judgment for Miller; and REMAND the case to the district court to determine the amount of benefits to award to Miller, consistent with this opinion.

[8] Because reversal is warranted on this basis alone, we do not address the other issues the parties dispute, including other injuries Miller raises as disabling.