



[Smith v. Home Depot Welfare Bens. Plan](#)

United States District Court for the Middle District of Florida, Tampa Division

July 12, 2006, Decided ; July 12, 2006, Filed

CASE NO: 8:04-cv-1924-T-23TBM

Reporter

2006 U.S. Dist. LEXIS 47084 *; 19 Fla. L. Weekly Fed. D 779

YVETTE SMITH, Plaintiff, v. THE HOME DEPOT WELFARE BENEFITS PLAN, Defendant.

Subsequent History: Costs and fees proceeding at, Judgment entered by [Smith v. Home Depot Welfare Benefits Plan, 2006 U.S. Dist. LEXIS 71327 \(M.D. Fla., Oct. 2, 2006\)](#)

Prior History: [Smith v. Home Depot Welfare Benefits Plan, 2005 U.S. Dist. LEXIS 42916 \(M.D. Fla., Nov. 17, 2005\)](#)

Core Terms

benefits, long-term, summary judgment, argues, soft tissue, recommends, ambiguity, cervical, disability benefits, terminated, disorder, objects, report and recommendation, summary judgment motion, wrongfully terminated, decision to deny, medical expert, radiculopathy, fail to demonstrate, objective evidence, expert advice, cross-motions, conditions, determines, myelopathy, reinstate, moves

Case Summary

Procedural Posture

Pursuant to § 502(a) of the Employee Retirement Income Security Act, plaintiff employee filed suit against defendant benefit plan to recover long-term disability benefits under the plan, which was administered by an insurance company. A magistrate judge

recommended that the plan's motion for summary judgment be denied and that the employee's motion for summary judgment be granted in part. The plan objected.

Overview

As the result of a car accident, the employee suffered a back injury that prevented her working. After determining that the employee's injury qualified as a "soft tissue disorder," the plan terminated the employee's long-term disability benefits. The employee appealed the termination and argued that she suffered from cervical radiculopathy and cervical myelopathy, two conditions expressly excluded from the limitation for "soft tissue disorders." The appeal was denied, prompting the employee to file suit. The court held that (1) there was no evidence that the magistrate erroneously searched outside the record and obtained expert advice on a dispositive issue, as the magistrate's report and recommendation relied on nothing more than the parties' evidence and legal argument provided by the parties, including their conflicting interpretation of a "positive Spurling test" for radiculopathy; (2) the plan failed to demonstrate an error in the magistrate's finding of objective evidence of cervical radiculopathy; and (3) remand was not necessary because the plan had the opportunity to consider the employee's claims and evidence based on the plan's "disabled from any occupation" definition.

Outcome

The court overruled the plan's objections to the report and recommendation and adopted the report. Thus, the plan's motion for summary judgment was denied, and the employee's motion for summary judgment was granted in part. The plan was directed to reinstate the employee in the plan and to provide past due benefits from the date benefits were terminated.

Counsel: [*1] For Yvette Smith, Plaintiff:
Marcus A. Castillo, Haas & Castillo, P.A.,
Clearwater, FL.

For Home Depot Long-Term Disability Plan,
Home Depot Welfare Benefits Plan,
Defendants: Kelly J. H. Garcia, Akerman
Senterfitt, Orlando, FL.

Mary A. Lau, Mediator, Pro se, Lau, Lane,
Pieper, Conley & McCreddie, P.A., Tampa, FL.

Judges: STEVEN D. MERRYDAY, UNITED
STATES DISTRICT JUDGE.

Opinion by: STEVEN D. MERRYDAY

Opinion

ORDER

Pursuant to [section 502\(a\)](#), Employee Retirement Income Security Act ("ERISA"), Yvette Smith sues the Home Depot Welfare Benefits Plan ("Home Depot") to recover long-term disability benefits under an employee benefit plan administered by Metropolitan Life Insurance Company ("MetLife").¹ As the result of an automobile accident, Smith suffered a back injury that prevented her working. Smith applied for benefits under the Home Depot

employee benefits plan (the "plan"). MetLife granted Smith short-term and long-term benefits. However, after determining that Smith's injury qualified as a "soft tissue disorder," MetLife terminated Smith's long-term benefits. The plan limits long-term benefits to twenty-four months for "soft tissue disorders," which include any "disease [*2] or disorder of the spine or extremities and their surrounding soft tissue." The plan excludes certain conditions from the long-term benefits limitation. Smith appealed the termination and argued that she suffers from cervical radiculopathy and cervical myelopathy, two conditions expressly excluded from the limitation for "soft tissue disorders." Smith's request for unlimited long-term benefits and the appeal of the termination were denied.

Smith moves (Doc. 16) for summary judgment and argues that the plan's "soft tissue limitation" is ambiguous and that the ambiguity should be construed in her favor. Alternatively, Smith argues that the decision to deny benefits was incorrect because Smith provided objective evidence that she suffered from cervical [*3] radiculopathy and cervical myelopathy. MetLife moves (Doc. 25) for summary judgment and argues that the administrator's decision to deny Smith's request for long-term benefits was correct.

The parties' cross-motions for summary judgment (Docs. 16, 25) were referred to United States Magistrate Judge Thomas B. McCoun, III, who issues (Doc. 37) a report that recommends granting in part Smith's motion for summary judgment and denying MetLife's motion for summary judgment. Magistrate Judge McCoun recommends denying Smith's motion on the issue of ambiguity and neither party objects. Accordingly, the Magistrate Judge's recommendation on the issue of ambiguity is **ADOPTED**. Smith's motion for summary judgment on the issue of ambiguity is **DENIED**. Magistrate Judge McCoun

¹Although Smith improperly fails to name MetLife as a defendant, MetLife's counsel at a hearing before Magistrate Judge McCoun stated that MetLife will not seek relief from an adverse judgment on the ground that Smith failed to properly name MetLife as a defendant.

recommends granting Smith's motion on the issue of whether MetLife wrongfully terminated Smith's long-term disability benefits. Judge McCoun reviews the administrative record and determines that the administrator's decision to deny benefits was wrong but reasonable.² However, because the administrator's decision advances a conflicting interest at Smith's expense, Judge McCoun determines that the decision was arbitrary [*4] and capricious. MetLife objects (Doc. 39) to the recommendation and argues that the Magistrate Judge erred (1) by interpreting a medical report in the improper role of a "medical expert or claims administrator," (2) by finding that the administrative decision to deny benefits was unsupported, (3) by "going outside the record and obtaining its own expert information," and (4) by concluding that Smith should receive past benefits.

MetLife argues that the Magistrate Judge erroneously searched "outside the record and obtain[ed] expert advice on a dispositive issue" and, by relying on the advice, "stepped into the role of claims examiner or medical [*5] expert." Specifically, MetLife objects to the Magistrate Judge's providing a definition of "Spurling test" from the website of "University of Florida's College of Medicine Center for Musculoskeletal Pain Research." The definition demonstrates neither that the Magistrate Judge inappropriately sought expert advice nor that the Magistrate Judge acted as anything but an impartial judicial officer. The Magistrate Judge merely provides a footnote containing a definition of a medical term included in Smith's pertinent medical

² Judge McCoun determines that objective evidence exists to demonstrate that Smith suffers from cervical radiculopathy. However, Judge McCoun determines that no objective evidence of myelopathy exists "to satisfy the exclusion to the limitation for soft tissue disorders." No party objects to the Magistrate Judge's finding and the finding as to myelopathy is **ADOPTED**.

records.³ [*6] The record contains no evidence that the Magistrate Judge improperly acted as either a "medical expert" or "claims administrator." The Magistrate Judge's report and recommendation relies on nothing more than the parties' evidence and legal argument provided by the cross-motions for summary judgment, including the parties' conflicting interpretation of a "positive Spurling test."⁴ Further, MetLife fails to demonstrate an error in the Magistrate Judge's finding of objective evidence of cervical radiculopathy.

MetLife objects to the Magistrate Judge's "reinstatement of benefits" and argues that remand is the appropriate remedy because "MetLife has not yet had the opportunity to consider [Smith's] claims based on the plan's 'any occupation' definition." However, the record reveals that although MetLife opted not to consider the complete question of whether Smith qualified for long-term benefits, Smith presented evidence of her disability and presented MetLife with "ample opportunity to obtain evidence for the record" to rebut her claims [*Levinson v. Reliance Standard Life Ins. Co.*, 245 F.3d 1321, 1327 \(11th Cir. 2001\)](#).

Accordingly, MetLife [*7] fails to demonstrate any error in the report and recommendation and the objections (Doc. 39) are **OVERRULED**. The Magistrate Judge's report and recommendation (Doc. 37) is **ADOPTED**. MetLife's motion (Doc. 25) for summary judgment is **DENIED**. Smith's motion (Doc. 16) for summary judgment is **GRANTED IN PART**.

³ MetLife fails to challenge the accuracy of the definition and concedes that the University of Florida website qualifies as a reliable source.

⁴ Smith's motion for summary judgment provides a definition of radiculopathy that includes "the irritation of a nerve root at any level of the spine" and argues that a "positive Spurling test eliciting shoulder pain or arm pain is indicative of cervical nerve root compression." MetLife's motion for summary judgment counters that a "positive Spurling test" indicates "possible" cervical nerve root compression but does not provide a diagnosis.

MetLife wrongfully terminated Smith's long-term disability benefits. MetLife is directed to reinstate Smith in the plan and to provide past due benefits from the date benefits were terminated. The Clerk is directed to enter judgment in favor of Smith and against MetLife on the issue of whether MetLife wrongfully terminated Smith's long-term disability benefits. The Court retains jurisdiction to resolve any dispute over the amount of benefits owed and any motion for fees and costs.

ORDERED in Tampa, Florida, on July 12, 2006.

STEVEN D. MERRYDAY

UNITED STATES DISTRICT JUDGE

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