

UNPUBLISHED

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
BIG STONE GAP DIVISION**

MICHAEL G. GILLEY,)	
)	
Plaintiff,)	Case No. 2:01CV00098
)	
v.)	OPINION
)	
MICHAEL HOLLAND, TRUSTEE, ET AL.,)	By: James P. Jones
)	United States District Judge
)	
Defendants.)	

Paul L. Phipps, Lee & Phipps, P.C., Clintwood, Virginia, for Plaintiff; Charlie R. Jessee, Jessee & Read, P.C., Abingdon, Virginia, and Glenda S. Finch and Jerry Mims, Office of the General Counsel, UMWA Health & Retirement Funds, Washington, D.C., for Defendants.

In this action seeking disability pension benefits from the United Mine Workers of America 1974 Pension Trust, I find that the trustees did not abuse their discretion and affirm their decision denying the plaintiff’s claim.

I

Michael G. Gilley filed this action on August 15, 2001, challenging the final decision of the United Mine Workers of America 1974 Pension Trust (“1974 Pension Trust”) denying his claim for a disability pension under the provisions of the United

Mine Workers of America 1974 Pension Plan (“1974 Pension Plan”). The defendants (“Trustees”) are the trustees of the 1974 Pension Trust and plan administrators and fiduciaries of the 1974 Pension Plan. Gilley’s cause of action arises under the provisions of the Employee Retirement Income Security Act of 1974, 29 U.S.C.A. §§ 1001-1461 (West 1999 & Supp. 2001) (“ERISA”), and jurisdiction of this court exists pursuant to 29 U.S.C.A. § 1132(f).

The defendant Trustees have filed the record of their determination of Gilley’s claim for a pension,¹ and the parties have briefed cross-motions for summary judgment based on that record, pursuant to Federal Rule of Civil Procedure 56. The case is thus ripe for decision.²

The standard of review of a decision made by fiduciaries of an ERISA-controlled benefit plan generally is de novo. *See Firestone Tire & Rubber Co. v. Bruch*, 489 U.S. 101, 115 (1989). Where the plan gives the fiduciaries discretion to determine benefit eligibility or to construe plan terms, however, the standard of review is whether the trustees abused their discretion. *See Booth v. Wal-Mart Stores, Inc. Assocs. Health &*

¹ The plaintiff’s pension file, which is kept by the Trustees and upon which they determined his claim, is hereafter referred to as “R.” The plaintiff does not dispute the authenticity or completeness of the copy of the pension file submitted to the court.

² I will dispense with oral argument because the facts and legal contentions are adequately presented in the materials before the court and argument would not aid the decisional process.

Welfare Plan, 201 F.3d 335, 341-42 (4th Cir. 2000). In considering the reasonableness of a fiduciary's discretionary decision, the court may consider the following factors:

(1) the language of the plan; (2) the purposes and goals of the plan; (3) the adequacy of the materials considered to make the decision and the degree to which they support it; (4) whether the fiduciary's interpretation was consistent with other provisions in the plan and with earlier interpretations of the plan; (5) whether the decisionmaking process was reasoned and principled; (6) whether the decision was consistent with the procedural and substantive requirements of ERISA; (7) any external standard relevant to the exercise of discretion; and (8) the fiduciary's motives and any conflict of interest it may have.

Id. at 342-43.

The Fourth Circuit has adopted the abuse of discretion standard of review for decisions under the 1974 Pension Plan. *See Boyd v. Trustees of the United Mine Workers Health & Retirement Funds*, 873 F.2d 57, 59 (4th Cir. 1989). In exercising their discretion under the 1974 Pension Plan, the Trustees are obligated to pay legitimate claims and to guard trust assets against improper ones. *See Sargent v. Holland*, 114 F.3d 33, 35 (4th Cir. 1997). If substantial evidence supports the Trustees' decision, then the determination must be affirmed. *See Brogan v. Holland*, 105 F.3d 158, 161 (4th Cir. 1997). "Substantial evidence . . . is evidence which a reasoning mind would accept as sufficient to support a particular conclusion." *Laws v. Celebrezze*, 368 F.2d 640, 642 (4th Cir. 1966). Such evidence consists of "more

than a mere scintilla of evidence but may be somewhat less than a preponderance.”

Id.

The 1974 Pension Plan defines the relevant eligibility requirements for a disability pension and states:

A Participant who . . . becomes totally disabled as a result of a mine accident . . . shall, upon retirement . . . be eligible for a pension while so disabled. A Participant shall be considered to be totally disabled only if by reason of such accident such Participant is subsequently determined to be eligible for Social Security Disability Insurance Benefits

1974 Pension Plan, art. IIC. (Decl. of Linda W. Fritz Ex. B at 7.)

Accordingly, a claimant seeking a disability pension under the 1974 Pension Plan must establish that (1) he was involved in a mine accident, (2) he has been awarded social security disability insurance (“SSDI”) benefits, and (3) the SSDI award was based on a disability caused by the mine accident. The mine accident must have “proximately caused” or be “substantially responsible” for the disability, even though it may have acted in combination with a previous or subsequent condition. *Boyd*, 873 F.2d at 59-60; *Robertson v. Connors*, 848 F.2d 472, 475 (4th Cir. 1988).

Under the deferential standard applicable to this case, the court is limited to the evidence that was before the Trustees at the time of their decision. *See Sheppard & Enoch Pratt Hosp., Inc. v. Travelers Ins. Co.*, 32 F.3d 120, 125 (4th Cir. 1994).

Summary judgment is appropriate where there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. *See* Fed. R. Civ. P. 56(c). Where the court must decide the case on the basis of an administrative record, the summary judgment motion “stands in a somewhat unusual light, in that the administrative record provides the complete factual predicate for the court’s review.” *Krichbaum v. Kelley*, 844 F. Supp. 1107, 1110 (W.D. Va. 1994), *aff’d*, No. 94-1496, 1995 WL 449668 (4th Cir. July 31, 1995) (unpublished). Because the factual record is closed, the “plaintiff’s burden on summary judgment is not materially different from his ultimate burden on the merits.” *Id.* “To survive summary judgment, then, plaintiff must point to facts in the administrative record—or to factual failings in that record—which can support his claims under the governing legal standard.” *Id.*

III

Gilley worked as an underground coal miner for Westmoreland Coal Company from 1970 until July 31, 1995, when he was laid off for economic reasons. (R. at 213, 245, 247.) He thereafter worked as a truck driver. In 1999, he was awarded SSDI benefits effective August 7, 1998. The Social Security Administration found that he suffered from chronic neck and back pain, osteoarthritis of the left knee and right foot,

and depression. (R. at 63.) These impairments were found in combination to prevent him from performing a significant range of even sedentary work. In addition, and alternatively, he was found to meet listing 12.05C of the social security regulations, relating to mental retardation.³

After his award of SSDI, Gilley sought a disability pension from the 1974 Pension Trust. Following a review of the relevant documents, the Trustees denied his claim on the ground that there was insufficient nexus between the several mine accidents that he had suffered during his work as a coal miner and his current disability. In particular, the Trustees found that his osteoarthritis was degenerative, caused as part of “the normal aging process” in combination with his years of strenuous manual labor in the mines. (R. at 6.) His disease was thus not as a result of a mine accident under the terms of the 1974 Pension Plan as construed by the Trustees. (Id.)

While Gilley had mine accidents in 1989, 1992, and 1995, the only one involving lost time from work was that occurring on June 5, 1989, when he struck his left knee on a rock after jumping out of a runaway mine vehicle. Gilley was treated conservatively, with physical therapy. He improved over time, and returned to work

³ Listing 12.05C compels a finding of disability where the social security claimant has an IQ of 60 through 70 and a physical impairment imposing an additional and significant work-related limitation of function. *See* 20 C.F.R. pt. 404, subpt. P, app. 1 (2001). Gilley was shown to have an IQ of 70.

on September 6, 1989. He was diagnosed by his treating orthopedist, Dr. Strang, with “probable sprain, left knee, with pes bursitis” (R. at 154) and was last seen for the condition on May 14, 1990. At that time Dr. Strang found that for state workers’ compensation purposes, Gilley had a ten percent disability as a result of his left knee condition. (R. at 21.)

At the request of his attorney, Gilley’s family practitioner, Dr. Williams, wrote in regard to Gilley’s left knee arthritis :

It is my medical opinion, within a reasonable degree of medical certainty, that Mr. Gilley’s osteoarthritis of the left knee was caused by his mining accident of June 5th, 1989 It is not uncommon after significant knee trauma for degenerative arthritis to develop several years later Mr. Gilley does have more arthritic problems of his left knee than the right knee. I do not think this is mere coincidence.

(R. at 35.)

The Trustees have adopted interpretative rules for the 1974 Plan, which take the form of questions and answers. *See Vance v. Holland*, 22 F. Supp. 2d 529, 532 (W.D. Va. 1998), *aff’d*, No. 98-2637, 1999 WL 176469 (4th Cir. Mar. 31, 1999) (unpublished). Question and answer numbered 252 (“Q & A 252”) provides that:

The disability must be traceable to a definite time, place and occasion which occurred within the course of the mine worker’s employment. A progressive disease does not meet this test and therefore cannot be a disability that resulted from a mine accident.

. . . .

As indicated above . . . miners who become disabled by progressive diseases or conditions such as black lung, silicosis, tuberculous, arthritis, rheumatism, etc., cannot be considered “disabled as the result of a mine accident” under the test stated above.

(Decl. of Linda W. Fritz Ex. C.)

In spite of Dr. Williams’ opinion, I find that the Trustees’ decision was based on substantial evidence. Osteoarthritis, or degenerative joint disease, is common in older persons. *See* The Merck Manual of Diagnosis and Therapy § 5, ch. 52 (2001), <http://www.merck.com/mmanual>. While it may result from injury, it is a progressive disease, as pointed out by the Trustees, and onset is gradual. *See id.* Many years passed between Gilley’s accident and the disability, and the Trustees were justified in considering that fact in determining causation. *See Hurley v. Holland*, 929 F. Supp. 977, 979-80 (S.D. W. Va. 1996) (“The onset date is entitled to ‘great weight’ in this circuit.”).

Moreover, the Trustees’ interpretation of the 1974 Plan, as evidenced by Q & A 252, is entitled to deference. *See Vance v. Holland*, 22 F. Supp. 2d 529, 533 (W.D. Va. 1998).

Finally, the other medical evidence, which the Trustees carefully reviewed, supports the decision that none of Gilley’s remaining disabling impairments, such as his depression, was caused by a mine accident.

Based on these facts, I cannot say that the Trustees' decision was arbitrary and not based on substantial evidence.

IV

For the foregoing reasons, the defendants' motion for summary judgment will be granted and final judgment entered in their favor.

DATED: February 27, 2002

United States District Judge