

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
CHARLOTTESVILLE DIVISION

LEWIS JACKSON, JR.,) CIVIL ACTION NO. 3:04CV00005
)
Plaintiff,)
)
v.) **MEMORANDUM OPINION**
)
COYNE & DELANY COMPANY,)
)
Defendant.) JUDGE JAMES H. MICHAEL, JR.

The plaintiff, Lewis Jackson, Jr., has moved for the entry of a default judgment against the defendant, Coyne & Delany Company. Rules 54 and 55 of the Federal Rules of Civil Procedure provide for default judgment when the clerk has first entered default against the party which has failed to appear and the court finds that the relief for which the plaintiff prays is warranted. On March 16, 2004, the clerk certified an entry of default against the defendant. On April 15, 2004, the parties appeared before the court for a hearing on the plaintiff's motion for default judgment. After reviewing the materials submitted by the plaintiff in support of his motion for entry of default judgment, this court finds that the defendant is in default and finds that the plaintiff is entitled to judgment for a portion of the sum specified in the plaintiff's motion.

I. BACKGROUND

This action arises under the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. §§ 1001-1461, which provides that a civil action may be brought "by a participant or beneficiary ... to recover benefits due to him under the terms of his plan... or to

clarify his rights to future benefits....” 29 U.S.C. § 1132(a)(1)(B). In this case, the defendant does not dispute that the plaintiff is a valid beneficiary under the Coyne & Delany Company Pension Plan (hereinafter “the Plan”), which is governed by the terms of ERISA. This court has jurisdiction over this action under 29 U.S.C. § 1132(e).

The plaintiff was an employee of Coyne & Delany from 1976 to 2000, for twenty-four (24) years. He stopped working in 2000 due to a disability. He became entitled to retirement benefits upon his fifty-fifth (55th) birthday, on August 26, 2002. After issuing several requests for his benefits to the defendant, who is the plan administrator, the plaintiff filed suit in this court on February 4, 2004. The defendant, however, never filed a responsive pleading. To date, the plaintiff has not received any benefits, notwithstanding that Mr. Peter Delany, the president of the company, has admitted responsibility for payment to the plaintiff and to the court. In addition to the failure to pay the benefits, the defendant did not comply with the plaintiff’s December 12, 2003 request to supply a copy of the pension plan until Mr. Delany appeared before this court on April 15, 2004.

This court grants the plaintiff’s request for damages in the amount of the past retirement benefits due to him, attorney’s fees, and equitable relief requiring the defendant to pay the plaintiff the retirement benefits that he is due in the future. The court, in its discretion, also grants to the plaintiff statutory penalties of twenty-five dollars (\$25) a day for the defendant’s failure to produce a copy of the retirement plan within thirty (30) days of the plaintiff’s request. Finally, the court awards post-judgment interest, but not pre-judgment interest, to the plaintiff.

II. DISCUSSION

A. Retirement Benefits and Interest

The plaintiff is entitled to recover the total amount of past-due retirement benefits that the defendant owes to him under the Company's pension plan. Under this plan, Mr. Jackson was entitled to receive a monthly benefit payment of \$173.65 for the 22-month period from September 1, 2002 to June 1, 2004.¹ This amount totals \$3,820.30. In addition, the court agrees with the plaintiff that Coyne and Delany should be ordered to pay this monthly

¹ Jackson's monthly retirement benefit is calculated under the formula provided in paragraph 3.01 of the Plan: $(.65\%) \times (\text{Average Monthly Earnings}) \times (\text{Years of Credited Service})$.

"Average Monthly Earnings" are defined in paragraph 1.06 of the Plan as "the average of the Employee's Monthly Earnings received for the five highest consecutive calendar years of his greatest compensation in the 10 calendar-year period immediately preceding his Retirement Date..." Jackson's average monthly earnings under the Plan are \$2,562, which was calculated by averaging the earnings per month for Jackson for tax years 1993-1997.

A "Year of Credited Service" is defined in paragraph 1.07(c)-(d) of the Plan as a year in which the employee is credited with 2,080 or more "hours of service," in addition to fractional years of service for the initial year and the retirement year (provided that he has worked at least 1,000 hours in those years). Jackson has 25 years of Credited Service, based on his 24 years of employment and his cessation of work due to disability, for which he is entitled to an additional year of Credited Service under paragraph 1.15(d)-(e) of the Plan.

Therefore, Jackson's base monthly benefit is: $(0.0065) \times (\$2,562.71) \times (25 \text{ years}) = \416.44 . Under paragraph 3.03 of the Plan, this benefit must be reduced to 41.7% of the original amount because Jackson retired early at age 55. So, Jackson's reduced monthly benefit is \$173.65.

retirement benefit to the plaintiff until his death, a benefit which is due to him under the terms of the Plan.

The plaintiff has also asked for an award of both pre- and post-judgment interest. “ERISA does not specifically provide for pre-judgment interest, and absent a statutory mandate the award of pre-judgment interest is discretionary with the trial court.” *Quesinberry v. Life Insurance Co. of North America*, 987 F.2d 1017, 1030 (4th Cir. 1993) (en banc). This court declines to award pre-judgment interest in this case because the other awards included in this judgment will adequately compensate the plaintiff.

“In contrast to the district court’s discretion in the awarding of prejudgment interest, federal law mandates the awarding of post-judgment interest.” *Id.* at 1031. The Fourth Circuit has interpreted the general federal post-judgment interest statute, 28 U.S.C. § 1961, as applicable to ERISA cases. *Id.* Therefore, post-judgment interest is awarded to the plaintiff in this case at the rate specified in 28 U.S.C. § 1961.²

B. Statutory Penalties

ERISA gives the court discretion to impose statutory penalties of up to \$100 a day if the plan administrator does not provide the beneficiary with plan documentation within thirty (30) days of a request. 29 U.S.C. §1132(c)(1). In this case, the plaintiff requested documents in writing on December 12, 2003. Thus, the penalty period commenced on January 13, 2004.

² “Such interest shall be calculated from the date of the entry of the judgment, at a rate equal to the weekly average 1-year constant maturity Treasury yield, as published by the Board of Governors of the Federal Reserve System, for the calendar week preceding the date of judgment.” 28 U.S.C. § 1961(a).

The defendant furnished the plaintiff with the documents on April 15, 2004, which the plaintiff calculates as ninety-three (93) days late. Therefore, the court could award a penalty up to \$9,300.00. The court, however, believes that a statutory penalty in this amount would be excessive, since it would dwarf the size of the plaintiff's damages recovery.

The court agrees that some measure of statutory penalty should be imposed on the defendant "to punish [it's] noncompliance with ERISA," and "to provide [it] with an incentive to meet requests for information in a timely fashion." *Faircloth v. Lundy Packing Co.*, 91 F.3d 648, 659 (4th Cir. 1996); *Davis v. Featherstone*, 97 F.3d 734, 738 (4th Cir. 1996). Several factors are relevant, but not dispositive, to the inquiry of whether to impose a penalty, including: (1) whether there is prejudice to the party requesting the information, and (2) whether the administrator acted in bad faith. *Faircloth*, 91 F.3d at 659. In short, "frustration, trouble, and expense are relevant factors for a district court to consider." *Davis*, 97 F.3d at 738. In *Davis*, the Fourth Circuit found it relevant that the plaintiff had to "go to the trouble and expense of engaging an attorney to obtain the [employer's] plan." *Id.* at 738-739.

In this case, as in *Davis*, the plaintiff is a man of modest means who was forced to go to the expense of hiring an attorney to get a copy of his employer's pension plan. Even after the plaintiff hired an attorney, the defendant ignored both his written request and a subpoena for the Plan. Only when the president of the company was subpoenaed to appear as a witness at the April 15, 2004 hearing did he produce a copy of the Plan. In addition, the plaintiff has been prejudiced by the defendant's failure to produce a copy of the Plan because it has caused

further delay in his ability to obtain the benefits that he is due. The defendant also was put on notice that it might have to pay this penalty in the plaintiff's letter dated December 12, 2003. Finally, the president of the company indicated in the April 15 hearing that he did not produce a copy of the Plan because the company was switching insurance carriers. While this excuse could be considered proof that the defendant was not acting in bad faith, the court believes this factor is outweighed by the other factors explained above.

For the foregoing reasons, the court believes that imposing a statutory penalty of twenty-five dollars (\$25) a day for a period of ninety-three (93) days, totaling \$2,325.00, is warranted by the facts of this case. In addition, this penalty will provide a deterrent against future ERISA violations by the defendant.

C. Attorney's Fees

Finally, the court, in its discretion, "may allow a reasonable attorney's fee and costs of action to either party." 29 U.S.C. § 1132(g). The plaintiff asks the court to exercise its discretion and award him attorney's fees, especially considering that he is a man of modest means.

To determine whether an award of attorney's fees under ERISA is appropriate, a plaintiff must first establish that he is the prevailing party in the action, as the plaintiff here has clearly done. *See Martin v. Blue Cross & Blue Shield*, 115 F.3d 1201, 1210 (4th Cir. 1997). In addition, a court should take into account:

- (1) [the] degree of opposing parties' culpability or bad faith;
- (2) [the] ability of opposing parties to satisfy an award of attorneys' fees;
- (3) whether an award of attorneys' fees against the opposing parties would deter other

persons acting under similar circumstances;

(4) whether the parties requesting attorneys' fees sought to benefit all participants and beneficiaries of an ERISA plan or to resolve a significant legal question regarding ERISA itself; and

(5) the relative merits of the parties' positions.

Quesinberry, 987 F.2d at 1029. This inquiry is not a rigid test and is meant to provide “general guidelines for the district court” in this area. *Id.*

In this case, an award of attorney's fees is justified under this five-factor inquiry. First, the defendant bears a large degree of culpability since its president, Peter Delany, was notified multiple times of its obligation to pay retirement benefits to the plaintiff and did not even dispute the fact that the plaintiff was entitled to these benefits. Although the defendant offered the excuse that it changed insurance carriers, this does not excuse its repeated disregard of the plaintiff's request for benefits and for a copy of the retirement Plan, which the defendant was statutorily obligated to provide. Applying the second factor, no evidence has been presented by either party as to the defendant's ability to pay the plaintiff's attorney's fees. Because the defendant failed to submit any arguments or evidence to the court on this or any other issue, the court will presume its ability to pay. Under the third factor, an award of attorney's fees seems likely to deter future violators. Under the fifth factor, the plaintiff's suit is overwhelmingly meritorious because he is clearly due benefits under this Plan, which the defendant does not dispute, while the defendant offers no legal justification to defend its own actions. The defendant's failure to pay benefits to the plaintiff was not the result of a mistaken belief that it did not owe those benefits to the plaintiff, but was rather the result of gross negligence. The fourth factor is the only one that weighs against an award of attorney's fees

here because it does not appear that the plaintiff is seeking to benefit other beneficiaries of this Plan by bringing this suit, other than the ancillary benefit of deterrence that would result. In addition, this suit does not resolve any significant legal question about ERISA. However, because four out of the five factors weigh heavily in favor of awarding attorney's fees to the plaintiff, this court grants the plaintiff his reasonable attorney's fees.

While ERISA gives the court discretion to award attorney's fees, those fees must be reasonable. 29 U.S.C. § 1132(g)(1). "[When] . . . the applicant for a fee has carried his burden of showing that the claimed rate and number of hours are reasonable, the resulting product is presumed to be the reasonable fee to which counsel is entitled." *Pennsylvania v. Delaware Valley Citizens' Council for Clean Air*, 478 U.S. 546, 564 (1986) (internal citation and quotation omitted). In this case, the total amount of attorney's fees incurred by the plaintiff is \$5,058.03. This is supported by several bills and affidavits from the plaintiff's attorney, David B. Franzen. The court has carefully reviewed those bills and has determined that the amount of attorney's fees expended on this case was reasonable. Thus, the plaintiff has carried his burden and the court awards the plaintiff \$5,058.03 in attorney's fees and costs.

The Clerk of the Court hereby is directed to send a certified copy of this Opinion to all counsel of record.

ENTERED: _____

Senior United States District Judge

Date

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
CHARLOTTESVILLE DIVISION

LEWIS JACKSON, JR.,)	CIVIL ACTION NO. 3:04CV00005
)	
Plaintiff,)	
)	
v.)	<u>FINAL ORDER</u>
)	
COYNE & DELANY COMPANY,))	
)	
Defendant.)	JUDGE JAMES H. MICHAEL, JR.

For the reasons stated in the accompanying Memorandum Opinion, it is this day

ADJUDGED, ORDERED, AND DECREED

as follows:

1. That the plaintiff's Motion for Entry of Judgment by Default, filed February 26, 2004, shall be, and it hereby is, GRANTED;
2. That the defendant, Coyne & Delany Company, shall pay Three Thousand Eight Hundred Twenty and 30/100 Dollars (\$3,820.30) in damages, plus post-judgment interest, to the plaintiff, Lewis Jackson, Jr.;

3. That the defendant, Coyne & Delany Company, shall pay One Hundred Seventy-Three and 65/100 Dollars (\$173.65), the amount of the plaintiff's monthly retirement benefit due under the Company's Pension Plan, to the plaintiff, Lewis Jackson, Jr., on or before the first day of each month, from the date of the Court's Order until Jackson's death;
4. That the defendant, Coyne & Delany Company, shall pay a statutory penalty of Two Thousand Three Hundred and Twenty-Five Dollars (\$2,325.00) to the plaintiff, Lewis Jackson, Jr.;
5. That the defendant, Coyne & Delany Company, shall pay the plaintiff's reasonable attorney's fees and costs in the amount of Five Thousand Fifty-Eight and 3/100 Dollars (\$5,058.03) to the plaintiff, Lewis Jackson, Jr.

The Clerk of the Court is hereby directed to strike this case from the docket of the court, and to send a certified copy of this Order to all counsel of record and to the defendant, Coyne and Delany Company.

Judge

ENTERED: _____
Senior United States District

Date