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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

PATRICK J. BERGIN,

Plaintiff,

v.

WESTERN STATES INSULATORS
AND ALLIED WORKERS' PENSION
PLAN,

Defendant.

No. 2:14-CV-0408-SMJ

**ORDER DENYING PLAINTIFF'S
MOTION FOR SUMMARY
JUDGMENT AND GRANTING
DEFENDANT'S MOTION FOR
SUMMARY JUDGMENT**

On April 11, 2016, this Court heard argument on the parties' motions for summary judgment, ECF No. 25 (Defendant's) and ECF No. 31 (Plaintiff's), and Plaintiff's motion to strike, ECF No. 34.

The issue presented is whether the trustees of the Defendant pension plan abused their discretion by concluding that Bergin is ineligible for benefits because he is not retired and because he made a material misrepresentation on his pension application. This Order memorializes and supplements the Court's oral ruling that the trustees did not abuse their discretion in so finding.

1 **I. Factual background**

2 Plaintiff Patrick J. Bergin was employed as an insulation installer in
3 Spokane, Washington from 1970 to 1987. ECF No. 59 at ¶ 3. He was a member
4 of the Local No. 82 of the International Association of Heat and Frost Insulators
5 and Asbestos Worker’s Union. ECF No. 59 at ¶ 3. As an insulation installer,
6 Bergin installed various types of insulation including manual application of
7 materials like fiberglass, foam, asbestos, and coatings. ECF No. 59 at ¶ 4.
8 Through his job, Bergin was a member of Defendant’s pension plan. ECF No. 59
9 at ¶ 5. Bergin was a participant in the plan from 1970 to 1987 and became fully
10 vested in 1979. ECF No. 59 at ¶ 5.

11 From 1987 until late 2001, Bergin owned a company called Ber-Wood—a
12 Spokane-area insulation contractor. ECF No. 59 at ¶ 6.

13 In March 2002, Bergin began working as a part-time estimator for
14 Insulation Specialists, Inc.—another insulation contractor based in Spokane. ECF
15 No. 59 at ¶ 7. Bergin estimates he works about 25 hours per week or about 100
16 hours per month. ECF No. 59 at ¶ 17. As an estimator, Bergin measures items and
17 footages from blueprints for jobs that Insulation Specialists intends to bid on. ECF
18 No. 59 at ¶ 9. Bergin then applies mathematical formulas to these numbers to
19 come up with a time estimate for the labor required. ECF No. 59 at ¶ 9. From this
20 information, Bergin prepares a bid and gives it to the owner to finalize. ECF No.

1 59 at ¶ 10. Bergin received no significant training to become an estimator. ECF
2 No. 59 at ¶ 12.

3 Under the plan, the normal retirement age is 62 years old. ECF No. 59 at ¶
4 24. On August 8, 2011, he submitted an application for pension benefits. ECF
5 No. 59 at ¶ 23. In his application, he listed his retirement date as May 14, 2011—
6 his 62nd birthday. ECF No. 59 at ¶ 23. Bergin thought that because he was no
7 longer employed as an insulation installer he was retired even though he was still
8 working in another capacity. Administrative record at 89.

9 His application was approved and he began to receive pension benefits in
10 January 2012, retroactive to June 2011. ECF No. 59 at ¶ 26.

11 On December 10, 2013, the plan learned that Bergin was employed by
12 Insulation Specialists. ECF No. 59 at ¶ 27.

13 On April 3, 2014, the plan's law firm sent a letter to Bergin's attorney
14 notifying Bergin that he was ineligible for a pension because (1) he never retired
15 from the industry and (2) because he made a material misrepresentation on his
16 pension application. ECF No. 59 at ¶ 28.

17 On June 5, 2014, Bergin submitted a petition for review of the plan's
18 determination of ineligibility. ECF No. 59 at ¶ 29. The plan denied his petition for
19 review on June 27, 2014. ECF No. 59 at ¶ 31.

1 On December 22, 2014, Bergin filed suit in this court claiming Defendant's
2 actions violated the Employee Retirement Income Security Act (ERISA), 29
3 U.S.C. § 1132(e)(1).

4 The parties filed cross motions for summary judgment now before the
5 Court.

6 **II. Standard of Review**

7 A court shall grant summary judgment if the movant shows that there is no
8 genuine dispute as to any material fact and the movant is entitled to judgment as a
9 matter of law. Rule 56(a).

10 Where the terms of a benefit plan give the administrator or fiduciary
11 discretionary authority to determine eligibility for benefits or construe the terms of
12 the plan, a district court reviews a challenge to the denial of benefits de novo for
13 abuse of discretion. *Saffon v. Wells Fargo & Co. Long Term Disability Plan*, 422
14 F.3d 863, 866 (9th Cir. 2008). The 9th Circuit has equated the abuse of discretion
15 standard with arbitrary and capricious review under these circumstances. *Watkins*
16 *v. Westinghouse Hanford Co.*, 12 F.3d 1517, 1524 (9th Cir. 1993).

17 **III. Discussion**

18 The Court must look to the plain language of the plan to determine whether
19 the Trustees' interpretation of that plan is arbitrary and capricious. Trustees abuse
20 their discretion if they construe provisions of a plan in a way that clearly conflicts

1 with the plain language of the plan. *Johnson v. Trustees of the Western Conf. of*
2 *Teamsters Pension Trust Fund*, 879 F.2d 651, 654 (9th Cir.1989) (citation
3 omitted). The question to ask in resolving this dispute is not whose interpretation
4 of the plan documents is most persuasive, but whether the Trustees’ interpretation
5 is unreasonable. *Canseco v. Construction Laborers Pension Trust for S. Cal.*, 93
6 F.3d 600, 606 (9th Cir. 1996).

7 The plan document states that employees eligible to receive benefits render
8 themselves ineligible for each month in which the employee performs 40 or more
9 hours of “work in the industry”.

10 [A]n employee who is eligible to receive or who is receiving pension
11 benefits under this Plan shall lose the benefit otherwise payable for
12 each month in which the employee performs forty (40) or more hours
13 of work in the Industry.

14 ECF No. 59 at ¶ 33. Work in the industry is further defined as employment in the
15 geographic area covered by the plan for an entity that performs work of the type
16 covered by the collective bargaining agreement between the Western States
17 Conference of Asbestos Workers and the Western Insulation Contractors
18 Association. ECF No. 59 at ¶ 33.

19 Based on this language, the trustees concluded that Bergin is ineligible for
20 benefits since he works approximately 100 hours per month at Insulation
Specialists—well over the 40 hours per month necessary to render a person
ineligible.

1 Bergin first argues that the use of the phrase “work in the industry” in this
2 section is ambiguous because it refers to the work of the employer and in all other
3 sections the plan document refers to the work of the employee.

4 All other provisions of the Plan focus almost exclusively on the
5 “work” performed by the employees which entitles them to be
6 members of the union and participants in the Plan. But in the
7 definition of “work in the industry” an employee’s “work”—the tasks
8 the employee performs—is subsumed into the “work” the union
9 employer performs. It thus renders an employee’s “work” as
nugatory. In other words, the Defendant’s interpretation of this
ambiguous definition illogically reduces the definition to a
description of the activity of the union employer, without
consideration of the tasks an employee participant performed for the
union employer.

10 ECF No. 31 at 7. Bergin is mistaken. There is nothing ambiguous about the
11 plan’s use of the phrase “work in the industry” or illogical about the trustee’s
12 interpretation of it. This section unambiguously defines “work in the industry” as
13 the work done by the employer, not the employee.

14 Second, Bergin argues that there is no support in the administrative record
15 for the trustees’ conclusion that, as an estimator, he necessarily draws on the
16 training and experience he received while working as an insulator. Defendant
17 identifies no factual support for this finding in its reply. But Plaintiff fails to
18 explain why such a conclusion is relevant to whether he qualifies for benefits. The
19 trustees’ conclusion that Bergin works for a company that performs work covered
20

1 by the collective bargaining agreement is sufficient to support the denial of
2 benefits.

3 Third, Bergin argues that the Defendant's conclusion that Bergin made a
4 material misrepresentation lacks factual support because he did not intend to lie.
5 But Bergin cites no authority requiring that a material misrepresentation be
6 knowing.

7 Defendant's motion for summary judgment is granted. Because the Court
8 did not consider any evidence outside the administrative record, the Plaintiff's
9 motion to strike any such evidence is denied as moot.

10 **IV. Conclusion**

11 The trustees did not abuse their discretion when they denied Bergin's
12 petition for review. The Court declines to exercise its discretion to order either
13 party to pay the other's attorney fees and costs under 29 U.S.C. § 1132(g)(1).

14 Accordingly, **IT IS HEREBY ORDERED:**

- 15 **1. Defendant's Motion for Summary Judgment, ECF No. 25, is**
16 **GRANTED.**
- 17 **2. Plaintiff's Motion for Summary Judgment, ECF No. 31, is DENIED.**
- 18 **3. Plaintiff's Motion to Strike, ECF No. 34, is DENIED as moot.**
- 19 **4. The Clerk's Office is directed to enter JUDGMENT in favor of**
20 **Defendant and CLOSE the file.**

