

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

TAMI HEGGER,

No. C 11-04229 WHA

Plaintiff,

v.

**ORDER DENYING FEE
REQUEST, CONFIRMING
COSTS, AND VACATING
HEARING**

UNUM LIFE INSURANCE COMPANY
OF AMERICA, et al.,

Defendants.

A bench trial in this ERISA denial-of-disability benefits action entered judgment in favor of defendants. Defendants now move for an award of attorney’s fees and costs under 29 U.S.C. 1132(g)(1), which provides a court with discretion to award attorney’s fees and costs in an ERISA action. Defendants’ motion is **GRANTED IN PART AND DENIED IN PART**. The May 2 hearing is **VACATED**.

Defendants seek \$83,632.50 in attorney’s fees plus unspecified supplemental fees and costs incurred in connection with the instant motion. When a prevailing party can point to “some degree of success on the merits,” our court of appeals has set forth a five-factor test to determine whether a court should award discretionary fees under Section 1132(g)(1).

- (1) the degree of the opposing parties’ culpability or bad faith; (2) the ability of the opposing parties to satisfy an award of fees; (3) whether an award of fees against the opposing parties would deter others from acting under similar circumstances; (4) whether the parties requesting fees sought to benefit all participants and beneficiaries of an ERISA plan or to resolve a significant legal question regarding ERISA; and (5) the relative merits of the parties’ positions.

1 *Simonia v. Glendale Nissan/Infiniti Disability Plan*, 608 F.3d 1118, 1121 (9th Cir. 2010).

2 After due consideration of all the attendant facts and circumstances, this order concludes
3 that an award of attorney’s fees to defendants is not warranted. Defendants’ repeated assertions
4 that plaintiff’s suit was “meritless” are incorrect. Plaintiff’s arguments at trial had some merit,
5 although defendants ultimately prevailed. The trial record does contain some evidence of bad
6 faith on the part of plaintiff, but this point was not definitively established. These factors cancel
7 each other out. As a result, it is not clear that a fee award would have the effect of deterring non-
8 meritorious suits any more than meritorious ones.


9 As for the remaining factors, the present record does not establish that plaintiff — to
10 whom defendants voluntarily paid disability benefits for five years and who has recently been
11 approved for Social Security benefits — would be able to satisfy a fee award. It is also clear that
12 the fee request is unrelated to benefitting other ERISA plan participants, and the judgment did
13 not resolve a significant legal question regarding ERISA.

14 Accordingly, defendants’ request for attorney’s fees (and unspecified supplemental fees)
15 is **DENIED**. Defendants’ request for *non-taxable* costs of \$2,837.79 is likewise **DENIED**.
16 Plaintiff argues that the above factors should preclude an award of *taxable* costs as well. This
17 order disagrees, and the default rule that the losing party pays costs shall be applied. This order
18 therefore **CONFIRMS** the bill of costs already entered by the Clerk in favor of defendants for a
19 total sum of \$1,181.20 (Dkt. No. 73).

20 The May 2 hearing is **VACATED**. The stipulation to continue the hearing date (Dkt.
21 No. 74) is **DENIED AS MOOT**.

22
23 **IT IS SO ORDERED.**

24
25 Dated: April 8, 2013.

26 
27 _____
28 WILLIAM ALSUP
UNITED STATES DISTRICT JUDGE