UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ANGEL GONZALEZ, Plaintiff,	16 Civ. 8893 (LGS)
v.	OPINION AND ORDER
LOCAL 553 PENSION FUND, et al., Defendants.	

LORNA G. SCHOFIELD, District Judge:

Plaintiff Angel Gonzalez ("Plaintiff") commenced this action against Local 553 Pension Fund and the Trustees of the Local 553 Pension Fund (collectively, "Defendants") after Defendants allegedly improperly suspended Plaintiff's early retirement benefits for engaging in "Disqualifying Employment." Defendants filed a motion to dismiss the Complaint under Rule 12(b)(6), which the Court converted to a motion for summary judgment. For the reasons below, summary judgment is granted.

I. BACKGROUND

The facts that follow are undisputed and drawn from the First Amended Complaint (the "Complaint") and the administrative record. They are construed in the light most favorable to Plaintiff, as the non-moving party. *See Doe v. Columbia Univ.*, 831 F.3d 46, 48 (2d Cir. 2016).

Plaintiff worked for employers who had collective bargaining agreements with Local 553 International Brotherhood of Teamsters. Due to Plaintiff's employment, Plaintiff was a participant in the Local 553 Pension Fund (the "Plan"). The Plan is a multi-employer trust fund within the meaning of the Employee Retirement Income Security Act ("ERISA"), 29 U.S.C.

§ 1001, *et seq*. Defendants are the Plan and the Trustees of the Local 553 Pension Fund (the "Trustees"), who administer the Plan.

Plaintiff participated in the Plan for approximately 33 years as a "serviceman," whose job it was to "service and repair heating equipment." On May 31, 2014, Plaintiff retired and began collecting retirement benefits as an early retiree. Also in May 2014, Plaintiff began work as New York Territorial Sales Manager for Carlin Combustion Technology ("Carlin"), "a division of C. Cowles and Company, [which] manufactures and sells heating equipment to wholesalers in the heating industry."

In 2014, Defendants learned that Plaintiff was working for Carlin. At their December 12, 2014, Trustees' meeting, Defendants determined that Plaintiff was engaged in "Disqualifying Employment" under the terms of the Plan and voted to suspend his retirement benefits effective January 1, 2015. Defendants notified Plaintiff of the suspension in a letter dated December 12, 2014. The letter stated that Plaintiff's employment violated Section 7.8 of the Plan, which states, in pertinent part:

(a) Before Normal Retirement Age

> (i) The monthly benefits shall be suspended for any month in which a Participant is employed in "disqualifying employment" before he has attained Normal Retirement Age. "Disqualifying employment," for the period before Normal Retirement Age, is any type of employment with (A) any Employer who has a Collective Bargaining Agreement with any Union affiliated with the petroleum products or service of heating, ventilation or air conditioning equipment industry, (B) any trucking employer who has a Collective Bargaining Agreement with any other Local Union affiliated with petroleum products or services of heating, ventilation or air conditioning equipment industry, or (C) any other industry engaged in the installation, repair and maintenance of heating, ventilation or air conditioning equipment.

In February 2015, Plaintiff appealed Defendants' decision to suspend his benefits, arguing that "(1) he did not work in the industry covered by the Pension Plan and (2) as a

salesman of equipment, he did not 'perform any trade or craft found in the industry.'" In a letter dated May 7, 2015, Defendants notified Plaintiff that his appeal was denied, and that the Department of Labor Regulations (the "Regulations") on which Plaintiff's arguments had relied, did not apply to pre-normal retirement age pensioners.

On November 16, 2016, Plaintiff initiated this action, alleging that (1) "[t]he Trustees did not provide Mr. Gonzalez with an independent or full and fair revue [sic] of his appeal, because they reviewed their own decision to suspend the payment of Mr. Gonzalez's retirement benefit"; (2) "the Trustees were arbitrary and capricious in determining that Mr. Gonzalez was employed in the 'same industry' as defined by [29 C.F.R. § 2530.203-3(c)(2)(i)]"; and (3) "the Trustees arbitrarily and capriciously concluded that Mr. Gonzalez performed a trade or craft in the industry covered by the contributing employers to the plan and improperly suspended his retirement benefits." On April 20, 2017, Defendants filed their motion to dismiss the Complaint under Federal Rule of Civil Procedure 12(b)(6). Subsequently, the Court converted Defendants' motion to dismiss to a motion for summary judgment under Federal Rule of Civil Procedure Rule 56 and provided the parties the opportunity to submit any additional pertinent material, which they declined.

II. LEGAL STANDARD

Summary judgement should be granted where the record establishes that "there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a); *accord Proctor v. LeClaire*, 846 F.3d 597, 607 (2d Cir. 2017). There is a genuine dispute "if the evidence is such that a reasonable jury could return a verdict for the nonmoving party." *Fireman's Fund Ins. Co. v. Great Am. Ins. Co. of N.Y.*, 822 F.3d 620, 631 n.12 (2d Cir. 2016) (quoting *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986)).

"[O]nly disputes over facts that might affect the outcome of the suit under the governing law will properly preclude the entry of summary judgment." *Pippins v. KMPG, LLP*, 759 F.3d 235, 252 (2d Cir. 2014) (quoting *Demery v. Extebank Deferred Comp. Plan (B)*, 216 F.3d 283, 286 (2d Cir. 2000)). The court must construe the evidence and draw all reasonable inferences in favor of the non-moving party. *See Wright v. N.Y. Dep't of Corr.*, 831 F.3d 64, 71–72 (2d Cir. 2016).

"Although generally an administrator's decision to deny benefits is reviewed *de novo*, where, as here, written plan documents confer upon a plan administrator the discretionary authority to determine eligibility,[1] [courts] will not disturb the administrator's ultimate conclusion unless it is arbitrary and capricious." *Hobson v. Metro. Life Ins. Co.*, 574 F.3d 75, 82 (2d Cir. 2009) (internal quotation marks omitted); *accord Zeuner v. Suntrust Bank Inc.*, 181 F. Supp. 3d 214, 219 (S.D.N.Y. 2016). "[A]rbitrary and capricious means without reason, unsupported by substantial evidence or erroneous as a matter of law." *Roganti v. Metro. Life. Ins. Co.*, 768 F.3d 201, 210–11 (2d Cir. 2015) (internal quotation marks omitted). "Where both the plan administrator and a spurned claimant offer rational, though conflicting, interpretations of plan provisions, the administrator's interpretation must be allowed to control." *McCauley v. First Unum Life Ins. Co.*, 551 F.3d 126, 132 (2d Cir. 2009); *accord DeCesare v. Aetna Life. Ins. Co.*, 95 F. Supp. 458, 481 (S.D.N.Y. 2015).

De novo review is inapplicable here. "[A] plan under which an administrator both evaluates and pays benefits claims creates the kind of conflict of interest that courts must . . . weigh as a factor in determining whether there was an abuse of discretion, but does not make *de*

[1] Section 8.6 of the Plan's terms confers upon the Trustees of the Plan "sole and absolute discretion, to administer, apply and interpret the Plan and any other Plan documents and to decide all matters arising in connection with the operation or administration of the Plan."

novo review appropriate." *McCauley*, 551 F.3d at 133 (citing *Metro. Life Ins. Co. v. Glenn*, 554 U.S. 105, 111 (2008)).

De novo review also is inapplicable because, contrary to Plaintiff's assertion, Defendants' notice of suspension complied with the Department of Labor's claims-procedure regulations, 29 C.F.R. § 2560.503-1(g). *See Halo v. Yale Health Plan*, 819 F.3d 42, 45 (2d Cir. 2016) (holding that where a plan fails to comply with the Department of Labor's claims-procedure regulations, de novo review applies "unless the plan has otherwise established procedures in full conformity with the regulation and can show that its failure to comply with the regulation in the processing of a particular claim was inadvertent and harmless."). The notice of suspension stated that Plaintiff's retirement benefit was being suspended under Section 7.8 of the Plan because he was engaged in disqualifying employment as an employee of Carlin. The notice attached Sections 7.7 and 7.8 of the Plan, which pertain to retirement and the suspension of retirement benefits, as well as a form affidavit that invited Plaintiff to respond to specific questions about his reemployment. Lastly, the notice advised Plaintiff that, if he wished to appeal, he would need to explain why he was not engaged in disqualifying employment and provide supporting documentation. At Plaintiff's request but before his appeal, Defendants further specified that the suspension was pursuant to Section 7.8(a)(i)(C) of the Plan, which includes as "disqualifying employment" "any type of employment with . . . any other industry engaged in the installation, repair and maintenance of heating, ventilation or air conditioning equipment." Defendants' complied with the claims-procedure regulations by advising Plaintiff of the reason for the adverse determination and the specific plan provision at issue. *See* 29 CFR § 2560.503-1(g)(1). No additional information was necessary for Plaintiff to perfect his claim,

so none was identified. *See id*. Consequently, arbitrary and capricious -- not de novo -- review applies.

III. DISCUSSION

The Complaint is styled as pleading three separate claims, but each is more properly construed as an argument that Defendants acted arbitrarily and capriciously than as an independent cause of action. These arguments are addressed below. Summary judgment is granted because, for the reasons that follow, no reasonable factfinder could find that Defendants' decision to deny Plaintiff's appeal of the suspension of his retirement benefits was arbitrary and capricious.

A. Defendants' Conflict of Interest

As a threshold matter, the Complaint alleges that Defendants labored under a conflict of interest that caused Plaintiff to be deprived of "a full and fair review by the appropriate named fiduciary of the decision denying the claim," as required under 29 U.S.C. § 1133(2). Plaintiff is correct that "[a]n ERISA-fund administrator that 'both evaluates claims for benefits and pays benefits claims' is conflicted," and that Defendants' conflict must be considered "as a factor in [the Court's arbitrary and capricious] analysis." *Zeuner*, 181 F. Supp. 3d at 219–20 (quoting *Durakovic v. Bldg. Serv. 32 BJ Pension Fund*, 609 F.3d 133, 138 (2d Cir. 2010)); *accord Glenn*, 554 U.S. at 112. As Plaintiff has failed to proffer evidence that Defendants' conflict actually affected their decision, however, Defendants' conflict is not entitled to any weight. *Zeuner*, 181 F. Supp. 3d at 219–20 ("The significance of the conflict in the Court's analysis will vary with the circumstances, but '[n]o weight is given to a conflict in the absence of any evidence that the conflict actually affected the administrator's decision.'") (quoting *Durakovic*, 609 F.3d at 140); *accord Roganti*, 786 F.3d at 218–19.

Plaintiff's assertion that Defendants' conflict of interest affected their decision is unpersuasive because Plaintiff offers no evidence to support it. "Evidence that a conflict affected a decision may be categorical (such as 'a history of biased claims administration') or case specific (such as an administrator's deceptive or unreasonable conduct), and may have bearing also on whether a particular decision is arbitrary and capricious." *Durakovic*, 609 F.3d at 140 (citing *Glenn*, 554 U.S. at 117–18); *see also Andrews v. Realogy Corp. Severance Pay Plan for Officers*, No. 13 Civ. 8210, 2015 WL 736117, at *7 (S.D.N.Y. Feb. 20, 2015) (summarizing cases where courts have found that a conflict actually affected the plan administrator's decision-making). Plaintiff does not proffer any such evidence. Plaintiff's statements that Defendants' application of the Plan's language "was not done in good faith" and that "the entire process was slanted to deny [Plaintiff's] claim" are not evidence, but conclusory statements, neither of which is supported by the administrative record. Likewise, Plaintiff's unsubstantiated statements that Defendants failed to review any evidence other than Mr. Gonzalez's business card, to provide Plaintiff "relevant information," and to "properly investigate his appeal" do not evidence a "pattern to deny Mr. Gonzalez a full and fair review."

B. Arbitrary and Capricious Analysis

Because the administrative record and the Plan's plain language support Defendants' interpretation of the Plan and undermine Plaintiff's, no reasonable factfinder could conclude that Defendants' denial of Plaintiff's appeal was arbitrary and capricious.

Section 8.6 of the Plan confers upon Defendants "sole and absolute discretion, to administer, apply and interpret the Plan and any other Plan documents and to decide all matters arising in connection with the operation or administration of the Plan." The relevant provisions of the Plan are Sections 7.7 and 7.8. In Section 7.7, the definition of "Retirement before Normal

Retirement Age" includes "complete withdrawal from the trucking industry and any other industry engaged in the installation, repair and maintenance of oil heating, refrigeration, air-conditioning or similar equipment or any employer engaged in such activities." Section 7.8 of the Plan, which governs the suspension of retirement benefits, similarly includes in the definition of "disqualifying employment" (before normal retirement age) as "any type of employment with . . . (C) any other industry engaged in the installation, repair and maintenance of heating, ventilation or air conditioning equipment."

Defendants interpret these provisions as precluding any employment in the petroleum products or heating industry. This interpretation is reasonable and consistent with the Plan's plain language. *See McCauley*, 551 F.3d at 132 ("Where both the plan administrator and a spurned claimant offer rational, though conflicting, interpretations of plan provisions, the administrator's interpretation must be allowed to control.").

Plaintiff does not dispute that he is employed as New York Territorial Sales Manager at Carlin, which, according to the Complaint, "manufacturers and sells heating equipment to wholesalers in the heating industry." Plaintiff instead argues that the Plan's decision was "based on the preconceived and undocumented notions that Mr. Gonzalez was 'engaged in the installation, repair and maintenance of heating . . . equipment.'" In support of this argument, Plaintiff asserts that "[t]he Fund did not have any records of the tasks performed or the skills required by the employees" and that "[t]he relevant information to compare the work done by the mechanics and the work done by Mr. Gonzalez as a salesman was readily available to the Trustees, but they elected not to access it." Plaintiff further asserts that, "[i]f the Fund wanted to restrict work to all employment related to the heating industry, the plan provision should have

read: 'any type of employment in: C) any industry engaged in heating ventilation or air conditioning.'"

Plaintiff's argument that disqualifying employment "is not any or all employment in the heating industry," and that Defendants should have compared his responsibilities to those of mechanics, flatly contradicts the Plan's plain language. Sections 7.7 and 7.8 of the Plan are clear that "retirement" requires complete withdrawal from the relevant industry, and that "disqualifying employment" includes any type of employment in the relevant industry. Plaintiff's interpretation ignores these requirements. Under the Plan's plain language, if Plaintiff was engaged in the relevant industry -- as Defendants determined that he was -- the nature of his job is irrelevant. Defendants' interpretation of Section 7.8 as prohibiting reemployment in the heating industry, likewise, is a reasonable construction of the Plan's relevant provisions, and is consistent with the definition of "industry" in Section 7.8(b)(iv) the Plan documents. *See Anthony v. Local 295/Local 851 – IBT Emp'r Grp. Pension Trust Fund Bd. of Trs.*, No. 13 Civ. 5730, 2016 WL 5314654, at *6 (E.D.N.Y. Sept. 22, 2016) (finding that a plan administrator's decision to deny disability benefits was not arbitrary and capricious, in part, because it was "reasonable and consistent with the plain language of the Plan").

Defendants' conclusion that Plaintiff is employed in the heating industry and, therefore, that he is engaged in disqualifying employment was supported by substantial evidence. In denying Plaintiff's appeal, Defendants stated that, "based on the facts and circumstances of this case, . . . [Plaintiff's] employment . . . constitutes work in an industry engaged in the installation, repair and maintenance of heating, ventilation, or air conditioning equipment." The administrative record reflects that Plaintiff repeatedly described Carlin as a manufacturer of products "for the heating industry," and that Plaintiff's job responsibilities include "sell[ing]

heating equipment products to wholesalers who sell heating equipment" and conducting "diagnostic testing of boiler equipment, as well as sales of similar services and products[] as he performed when he was employed by Local 553 employers." The Complaint also acknowledges that Plaintiff's role at Carlin required him to perform diagnostic testing of boiler equipment, albeit infrequently.[2] Based on these facts and evidence, which include Plaintiff's own statements, Defendants' determination that Plaintiff is employed in the heating industry, and therefore, that he is engaged in disqualifying employment under the Plan is not arbitrary or capricious. *See Cirincione v. Plumbers Local Union No. 200 Pension Fund*, No. 07 Civ. 2207, 2009 WL 3063056, at *4 (E.D.N.Y. Sept. 24, 2009) (concluding that the plan administrator did not act arbitrarily or capriciously in determining that plaintiff was engaged in prohibited reemployment, in part, based on the plaintiff's own statements that he was employed in the industry), *aff'd*, 404 F. App'x 524 (2d Cir. 2010) (summary order).

Plaintiff's argument (framed as causes of action) that he was not engaged in the same "industry, trade or craft" as his former employer, as defined by the Regulations implementing ERISA, is unavailing because neither ERISA nor the Regulations apply to the suspension of benefits before age 65. Section 203(a) of ERISA states, in relevant part, "Each pension plan shall provide that an employee's right to his normal retirement benefit is nonforfeitable upon the attainment of normal retirement age." 29 U.S.C. § 1053. ERISA, therefore, "gives [P]laintiff no vested right to receive benefits until he reaches" age 65. *Chambless v. Masters, Mates & Pilots Pension Plan*, 571 F. Supp. 1430, 1440 (S.D.N.Y. 1983) (quoting *Riley v. MEBA Pension Trust*,

[2] The Complaint does not specifically identify performing diagnostic testing of boiler equipment, but admits that Plaintiff performs "one task" that is "the same type of work as [that of] plan participants." Such diagnostic testing is the only task that is specifically referenced in the Trustees' meeting minutes. Plaintiff's admission arises in the context of a discussion of those meeting minutes.

452 F. Supp. 117, 120 (S.D.N.Y. 1978), *aff'd*, 586 F.2d 968 (2d Cir. 1978)); *accord DeVito v. Local 553 Pension Fund*, No. 02 Civ. 4686, 2005 WL 167590, at *5 (S.D.N.Y. Jan. 26, 2005) ("The only limit on the suspension of benefits, therefore, is that the retiree must receive his normal retirement benefits at the normal retirement age."). The Regulations, in turn, provide that "[a] plan may provide for the suspension of pension benefits which commence prior to the attainment of normal retirement age . . . for any reemployment and without regard to [Section 203(a)] and [the DOL's implementing] regulation." 29 C.F.R. § 2530.203-3(a). As Plaintiff does not allege that Defendants withheld his normal age retirement benefits, Defendants' interpretation of the Plan's relevant terms is permitted to differ from the Regulations' definitions.

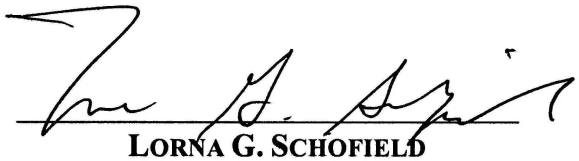
Plaintiff's argument (also styled as a cause of action) that Defendants failed adequately to investigate his claim fails as well. Plaintiff does not identify any evidence in the administrative record that Defendants failed to consider or that they rejected without due consideration. Instead, Plaintiff argues that Defendants should have obtained the "written protocols or tune-up procedures for their servicemen and mechanics" or reviewed the "O/NET . . .[,] a computer based collection of job description [sic] in the national economy." Contrary to Plaintiff's assertion, Defendants were not required to supplement the administrative record with evidence to bolster Plaintiff's claim. *S.M. v. Oxford Health Plans (N.Y.), Inc.*, 94 F. Supp. 3d 481, 502 n.24 (S.D.N.Y. 2015) ("The Second Circuit has never found that ERISA fid uciaries have a duty to gather information."), *aff'd sub nom. S.M. v. Oxford Health Plans (N.Y.)*, 644 F. App'x 81 (2d Cir. 2016) (summary order); *accord Topalian v. Hartford Life Ins. Co.*, 945 F. Supp. 2d 294, 352 (E.D.N.Y. 2013); *Young v. Hartford Life & Acc. Ins. Co.*, No. 09 Civ. 9811, 2011 WL 4430859, at *11 (S.D.N.Y. Sept. 23, 2011), *aff'd*, 506 F. App'x 27 (2d Cir.2012) (summary order).

Plaintiff's reliance on the Second Circuit's decision in *Roganti v. Metropolitan Life Insurance Co.* is misplaced. *See* 786 F.3d at 213. In *Roganti*, the Second Circuit held that "[n]othing . . . requires plan administrators to scour the countryside in search of evidence to bolster a petitioner's case." *Id.* (internal quotation marks omitted and alterations in original). Although the Court noted that "under certain circumstances, it may be arbitrary and capricious . . . to reject a claimant's evidence . . . without making a reasonable effort to develop the record further," it also stated that "a claimant's evidence may simply be insufficient to establish his entitlement to benefits, even in the absence of evidence tending to refute his theory of entitlement." *Id.* (internal citations omitted). Here, Plaintiff has failed to proffer sufficient evidence from which a reasonable factfinder could conclude that Defendants' denial of his benefits claim was arbitrary and capricious.

IV. CONCLUSION

For the reasons herein, summary judgment is GRANTED. The parties' joint motion for oral argument, Docket No. 28, is DENIED as moot. The Clerk of Court is directed to close the motions at Docket No. 17 and 28, and close the case.

Dated: July 28, 2017
New York, New York



LORNA G. SCHOFIELD
UNITED STATES DISTRICT JUDGE