

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

KENNETH L. MYERS, <i>et al.</i> ,	:	
Plaintiffs,		
v.	:	Case No. 3:13-cv-75
BRICKLAYERS AND MASONS LOCAL 22 PENSION PLAN, <i>et</i>		JUDGE WALTER H. RICE
<i>al.</i> ,	:	
Defendants.		

ORDER REGARDING CROSS-MOTIONS FOR SUMMARY JUDGMENT
(DOCS. ##41 AND 43); OBJECTIONS TO PROPOSED PROCEDURE
TO BE FILED WITHIN SEVEN DAYS

Plaintiffs Kenneth L. Myers and Kim Myers, and Defendants Bricklayers and Masons Local 22 Pension Plan and the Board of Trustees of the Bricklayers and Masons Local 22 Pension Plan, have each filed a "Motion for Summary Judgment." Docs. #41, 43.

In *Wilkins v. Baptist Healthcare System, Inc.*, 150 F.3d 609 (6th Cir. 1998), however, the Sixth Circuit held that, in adjudicating ERISA actions involving claims for benefits, summary judgment procedures should not be used. Rather, a court must "conduct a *de novo* review based solely upon the administrative record, and render findings of fact and conclusions of law accordingly." *Id.* at 619 (Gilman, J., concurring in the judgment and delivering the opinion of the Court on the summary judgment issue). In so doing, the court cannot consider evidence that was not

available to the plan administrator at the time the adverse benefit determination was made unless the plaintiff alleges a due process violation or bias on the part of the plan administrator. *Id.*

Here, despite filing “motions for summary judgment,” the parties do not seek summary judgment in the traditional sense, *i.e.*, on the ground that “there is no genuine dispute as to any material fact.” Fed. R. Civ. P. 56(a). Instead, they ask the Court to review the administrative record to determine if Defendants properly denied Myers’s claim for disability retirement benefits. The substance of these motions is consistent with the procedure set forth in *Wilkins*. Plaintiffs’ counsel explained at oral argument that he filed a “motion for summary judgment” only because Plaintiffs have alleged a procedural due process violation and are asking the Court to consider evidence outside the administrative record, in the form of short-term disability benefits received by Myers. *Wilkins*, however, makes it clear that, even when the court considers evidence outside the administrative record, summary judgment procedures are inapplicable. 150 F.3d at 619.

Pursuant to the holding in *Wilkins*, the Court intends to treat the cross-motions for summary judgment as cross-motions for judgment on the administrative record. Any objections to this procedure shall be filed within seven (7) days of the date of this Order.

Date: June 26, 2014



WALTER H. RICE
UNITED STATES DISTRICT JUDGE