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5 UNITED STATES DISTRICT COURT
6 WESTERN DISTRICT OF WASHINGTON
7 AT TACOMA

8 PAUL AMOROSO,

9 Plaintiff,

v.

10 SUN LIFE ASSURANCE COMPANY
11 OF CANADA,

12 Defendant.

CASE NO. C20-5887 BHS

ORDER DENYING DEFENDANT
SUN LIFE'S MOTION FOR
ATTORNEYS' FEES

13 THIS MATTER is before the Court on Defendant Sun Life Insurance Co.'s
14 Motion for Attorneys' Fees, Dkt. 30. Plaintiff Amoroso sought long term benefits under
15 his Sun Life ERISA long term disability insurance policy. The parties filed cross motions
16 for judgment under Federal Rule of Civil Procedure 52, Dkts. 18 and 19.

17 The Court determined and held that Amoroso had not met his burden of
18 demonstrating that he had satisfied the policy's "Elimination Period," and therefore
19 granted Sun Life's motion and denied Amoroso's. Dkt. 28. It entered judgment in Sun
20 Life's favor. Dkt. 29. Amoroso appealed, and the case is now at the Ninth Circuit. Dkt.
21 33.
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1 In the meantime, Sun Life seeks almost \$66,000 in attorneys' fees it incurred in
2 successfully defending Amoroso's claim coverage under ERISA's discretionary fee-
3 shifting provision, 29 U.S.C. § 1132(g)(1).

4 Sun Life argues that ERISA "unambiguously gives the District Court discretion to
5 award fees to either party," provided that party achieved some measure of success on the
6 merits. Dkt. 30 at 2 (citing 29 U.S.C. § 1132(g); *Hardt v. Reliance Standard Life Ins. Co.*,
7 560 U.S. 242, 255 (2010)).

8 It concedes that in the Ninth Circuit, the Court exercises this discretion with
9 reference to five factors: "(1) the degree of the opposing parties' culpability or bad faith;
10 (2) the ability of the opposing parties to satisfy an award of fees; (3) whether an award of
11 fees against the opposing parties would deter others from acting under similar
12 circumstances; (4) whether the party requesting fees sought to benefit all participants and
13 beneficiaries of an ERISA plan or to resolve a significant legal question regarding
14 ERISA; and (5) the relative merits of the parties' positions." Dkt. 30 at 2 (citing *Hummell*
15 *v. S.E. Rykoff & Co.*, 634 F.2d 446, 452–53 (9th Cir. 1980)).

16 Sun Life accurately asserts that it "completely prevailed on the merits" and argues
17 that the Court can and should award reasonable fees on that basis, alone. *Id.* at 3–4 (citing
18 *Hardt*, 560 U.S. at 255). It also argues that each of the five *Hummell* factors support an
19 award of fees, and that the fees it seeks are reasonable. *Id.* at 4–9. It correctly points out
20 that none of the five factors is necessarily determinative. *Id.* at 4.

21 Amoroso argues the Court should not award fees under the five *Hummell* factors,
22 which are discussed in turn.

1 **A. Amoroso’s Culpability or Bad Faith in Asserting an ERISA Claim.**

2 Sun Life argues that Amoroso was “culpable,” even if he did not act in bad faith,
3 based on the fact he revised his onset of disability date, and that he articulated two
4 different reasons for his resignation. It argues that these facts demonstrate that Amoroso
5 “misrepresented” his status. Dkt. 30 at 4–5.

6 As Amoroso accurately responds, the record does not reflect that Sun Life relied
7 on either of these bases during its administrative handling of his claim, and its technical
8 and ultimately successful “elimination period” argument appeared first in this litigation.
9 Dkt. 36 at 3–5. He also correctly points out that the Court’s Order did not suggest that he
10 acted in bad faith or even “culpably” in asserting a claim under his policy. *Id.*

11 The Court agrees. There is nothing approaching “bad faith” in the record, and
12 Amoroso has explained the onset date discrepancy. Dkts. 36-1 and 38. The Court did not
13 conclude that Amoroso “misrepresented” anything; it primarily determined¹ that
14 Amoroso did not satisfy the policy’s Elimination Period. It did not and does not conclude
15 that he was “culpable,” or that his claim was asserted in bad faith. As Amoroso argues,
16 the Ninth Circuit has recognized that the *Hummell* factors “very frequently suggest that
17 attorneys’ fees should not be charged against ERISA plaintiffs.” Dkt. 36 at 3 (citing
18 *Jackson v. Wilson, Sonsini, Goodrich & Rosati Long Term Disability Plan*, 768 F. Supp.

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21 ¹ The Court held that “Amoroso has not met his burden of proving that he was disabled
22 for 90 consecutive days while he was insured, or that he was unable to perform the material and
substantial aspects of his position on either of his claimed disability dates.” Dkt. 28 at 9. It did
not conclude that Amoroso did not suffer the mental health conditions he claimed.

1 2d 1015, 1021–22 (N.D. Cal. Feb. 11, 2011) (citing *Tingey v. Pixley-Richards W., Inc.*,
2 958 F.2d 908, 909 (9th Cir. 1992))).

3 This first *Hummell* factor does not persuade the Court to impose a discretionary
4 attorneys’ fee award on an unsuccessful ERISA plaintiff who asserted his claim in good
5 faith.

6 **B. Amoroso’s Ability to Pay Fees.**

7 Sun Life argues that Amoroso is able to pay its attorneys’ fees, citing that he lives
8 in a home it claims is valued at \$1.1 million, that he still owns a company, and that he
9 maintains his medical license. Dkt. 30 at 6–7.

10 Amoroso counters that the value of his home is no indication of his equity in it,
11 and the existence of either a company or a medical license has nothing to do with his
12 assets or his ability to pay \$65,000 in attorneys’ fees. Dkt. 36 at 6–7.

13 The Court agrees with Amoroso. Sun Life has not provided sufficient information
14 to demonstrate that Amoroso has the ability to pay a discretionary fee award, and even if
15 it were inclined to make such an award (and it is not), this factor weighs strongly against
16 it.

17 **C. The Deterrent Effect of a Fee Award.**

18 Sun Life urges the Court to force Amoroso to pay its fees to deter future ERISA insureds
19 from suing unsuccessfully, which it claims will advance ERISA’s goals of efficiency and low
20 cost. That may be the case, but it is of no moment. In the absence of culpability, bad faith,
21 malice, or misrepresentation, the Court has no interest in deterring disabled insureds from
22 seeking benefits under their long-term ERISA policies. That is not the policy behind ERISA or

1 its fee-shifting provision, and it is not good public policy. This factor too weighs against any fee
2 award.

3 **D. Whether a fee award would benefit all participants of the ERISA Plan
4 or whether the litigation resolved a significant legal question.**

5 Sun Life claims that Amoroso’s unsuccessful lawsuit against it “provided a
6 general benefit to all plan participants” and helped resolve important ERISA questions.
7 Dkt. 30 at 8–9. This is unpersuasive. It is obviously true that if Sun Life pays fewer
8 disability claims, its plan participants will pay lower premiums than if it does pay claims.
9 But awarding fees to an insurer whenever an insured unsuccessfully but in good faith
10 seeks benefits under its policy would deter insureds from seeking such benefits at all, and
11 it would only embolden insurers in denying claims at the administrative level. That would
12 not benefit ERISA plan participants.

13 Sun Life’s claim that Amoroso should pay Sun Life’s fees because this case
14 “reaffirmed ERISA case laws under the de novo standard,” Dkt. 30 at 8, is similarly
15 unpersuasive. This *Hummell* factor does not weigh in favor of a discretionary fee award.

16 **E. The relative merits of the parties’ positions.**

17 Sun Life argues that its position was plainly more meritorious than Amoroso’s, as
18 demonstrated by the fact it won and he lost. *Id.* at 9. Indeed, it argues that under *Hardt*,
19 the fact that it prevailed alone is enough to warrant a fee award. *Id.* at 4. The Court does
20 not agree. The Court will not exercise its discretion to force a losing ERISA plaintiff to
21 pay an insurer’s attorneys’ fees based solely on the fact that he lost. Such an award would
22 not be consistent with ERISA, the better-reasoned cases decided under it, equity, or

1 common sense. This is not the unusual case where a fee award against a losing ERISA
2 plaintiff is the correct outcome.

3 There is nothing in the record or the briefing to suggest that the Court should
4 exercise its discretion and award the prevailing insurer its fees, and it declines to do so.
5 Sun Life's Motion for Attorneys' Fees, Dkt. 30, is **DENIED**.

6 This matter remains closed.

7 IT IS SO ORDERED.

8 Dated this 3rd day of December, 2021.

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BENJAMIN H. SETTLE
United States District Judge