

Friday, May 27, 2016

VIA U.S. CERTIFIED MAIL

Note: Client information and several facts have been altered to preserve confidentiality.

Opposing Union
123 Fake St.
Unreal, OH 43537

Re: Appeal of Denial of Disability Pension Benefits for:
Buffy Summers
Date of Birth:
Social Security Number: XXX-XX-XXX

Dear Plan Administrator:

The Western States Pension Assistance Project is part of Legal Services of Northern California, a nonprofit law firm in Sacramento, CA. We assist individuals in accessing and understanding pension benefits. This letter is meant to be a formal appeal of the denial of pension benefits under the Opposing Union (hereinafter, “the Plan” or “OU”). This appeal is made pursuant to Section 502(a)(1)(B) of the Employee Retirement Income Security Act of 1974, as amended (ERISA) and applicable Department of Labor and Department of Treasury regulations.

I have included a release of information signed by Ms. Summers for your convenience. [Attachment A]. I have also included Ms. Summers’s application for disability retirement benefits. [Attachment B].

I. Claim summary

Ms. Summers submitted a claim for disability pension in October 2012. She was denied. [Attachment C]. The October 25, 2012 denial notice was inadequate because it did not provide additional material needed to perfect the claim and included conclusory statements making it difficult for Ms. Summers to understand why he was denied. Because the notice does not comport with appropriate law, this appeal is not time barred.

Substantively, the denial notice failed to take in to account Ms. Summers’s service in a reciprocal pension plan. Had OU properly done so, then Ms. Summers would have been entitled to disability pension benefits effective October 2012. Because Ms. Summers met all the requirements for disability pension when he applied, this appeal requests Ms. Summers’s disability pension commence effective October 2012.

II. Factual background

Ms. Summers earned 14,500 hours with OU as an Active Employee from 2003 through 2010. [Attachment C]. Ms. Summers was also a member of the Super Actors Group (hereinafter “SAG”) from approximately July 1983 until 2003. Ms. Summers has some supporting documents regarding her SAG service, but we request that OU contact SAG for her entire work history. [Attachment D]. In 2003, SAG participants began coverage under the OU. At no time did Ms. Summers work in Noncovered Employment.

Ms. Summers began receiving Social Security Disability Insurance (“SSDI”) in March 2012. Her onset date is October 18, 2010. [Attachment E]. Ms. Summers was injured at work performing a stunt. Due to complications arising from her injury, she experienced motor neuropathy consistent with amyotrophic lateral sclerosis, commonly referred to as ALS. An ALS diagnosis was established thereafter.

Ms. Summers submitted a claim for disability benefits shortly after her SSDI award, in 2012. On October 25, 2012, she received a denial letter stating in underlined text that that she had 14,500 Benefit Hours from 2003 through 2010 where 18,000 Benefit Hours are required. The denial failed to address any reciprocal hours or credit available to Ms. Summers.

The denial letter immediately continued, in the same underlined text, that he did not meet the eligibility requirements for Early Retirement Pension. The letter used a block quote to state plan language but did not explain why Ms. Summers was not eligible. There is no mention of reciprocity.

Page 1 of the denial letter concludes, in bold text, that Ms. Summers should re-apply 3 months prior to her 55th birthday. By her own account, Ms. Summers believed she was denied disability pension because she was not 55 years old. Accordingly, she contacted our office for assistance with applying for this pension benefit before turning 55 on October 10, 2015.

III. Governing Law and Regulations

A. ERISA, CFR, and Case Law

The Employee Retirement Income Security Act (ERISA) allows individuals to “recover benefits due to him under the terms of his plan.” 29 U.S.C. § 1132(a)(1)(B).

The Code of Federal Regulations provides that a benefit denial must (1) state the specific reasons for the denial, (2) refer to applicable plan provisions, (3) describe additional material needed to perfect the claim, and (4) describe appeals procedures. 29 C.F.R. §2560.503-1(f)-(g). The Ninth Circuit permits substantial compliance with these requirements, but conclusory statements do not satisfy the specificity requirement, thus making such notices inadequate. *Lee v. California Butchers’ Pension Trust Fund*, 154 F.3d 1075, 1080 (9th Cir. 1998). Where a notice is inadequate, internal pension plan statute of limitations are not triggered and subsequent denials

are not time barred. *White v. Jacobs Eng'g Grp. Long Term Disability Benefit Plan*, 896 F.2d 344, 350 (9th Cir. 1989).

B. Disability Pension under OU

Participants in the OU are eligible if:

1. The participant is an Active Employee at onset of “total and permanent disability”,
2. Onset occurs prior to age 65,
3. Participant has at least 18,000 Benefit Hours before onset,
4. Participant has at least 1,800 Benefit Hours based on actual Employer contributions,
5. Participant has at least 1,000 hours in Covered Employment in the 2 years prior to onset, and
6. Participant has never worked in Noncovered Employment.

Total and permanent disability is based on the onset date of the Social Security Administration’s adjudication of total and permanent disability benefits. See 2006 OU Summary Plan Description (hereinafter “OU SPD”) page 25.

C. Reciprocity between OU and SAG

The OU SPD states that SAG participates in the reciprocal agreement with OU. OU SPD page 76.

To be eligible for a reciprocal pension, participants must have one year of vesting service credit with OU and the reciprocal plan. OU SPD page 29. “Vesting status and retirement eligibility will be based on the service credit earned under this Plan combined with the service under other OU reciprocal plans.” *Id.* Further, the OU SPD states that while the pension will be based on the hours earned in the OU plan, “you will be eligible to choose any form of benefit for which you qualify for under this Plan, based on your combined pension credits with all reciprocal plans.” *Ibid.*

IV. Discussion

A. *Appeal is not time barred because defective notice waives a pension plan’s internal statute of limitations.*

Ordinarily, for an appeal to be considered on the original claim, it must be filed in accordance with a pension plan’s statute of limitations. However, where a notice is defective, that limitation period is waived. In *Lee v. California Butchers*, the pension fund issued a denial letter solely stating that no more benefits had to be paid and quoted plan language. *Lee v. California Butchers’ Pension Trust Fund*, 154 F.3d 1075, 1080 (9th Cir. 1998). The court found Lee’s denial “conclusory,” thus making “it impossible for Ms. Lee to know exactly what was at issue between himself and the plan, and to obtain timely internal review.” *Id.*

In *Chuck v. Hewlett Packard Co.*, the Ninth Circuit examined a denial letter stating that a participant's "vested interest has been changed due to the fact from September, 1872 to August, 1974 [Participant was] not an HP employee." 455 F.3d 1026, 1032 (9th Cir. 2006). This letter complied with the specificity requirement, but did not comply with the plan provision, additional information, and appeal rights requirements in the CFR, and was thus defective. *Id.*

In *White v. Jacobs Eng'g Grp.*, the Ninth Circuit held that, where a denial letter offers conclusory reasoning denying benefits, the internal 60-day time bar to appeal to the board is not triggered. *White v. Jacobs Eng'g Grp.*, 896 F.2d 344, 350 (9th Cir. 1989).

Similar to the notice in *Chuck*, OU's denial of Ms. Summers's disability benefits stated she did not have the requisite work history; here there were allegedly not enough hours for disability benefits. OU's notice failed to provide any information on what could cure this denial as required by the Code of Federal Regulations. Had OU done so, by perhaps requesting Ms. Summers provide evidence of additional work hours or eligibility for reciprocal credit, then she may have understood how to pursue an appeal in 2012.

Further, the denial letter immediately and confusingly moves to discussing early retirement. Like the notice in *Lee*, the OU denial quotes plan language and provides a conclusory statement that Ms. Summers is ineligible for early retirement. It then invites him to reapply at age 55. This portion clearly does not comply with either the specificity requirement or the additional evidence requirement.

The Plan's action here obscured the specificity requirement for the disability pension denial. While participants certainly appreciate Plan efforts to evaluate alternative benefits in face of a denial, by her own account Ms. Summers believed she was ineligible for disability retirement benefits because he was not age 55. Rationally, she concluded that an age restriction on disability retirement benefits is incurable except with time, so she did not pursue an appeal. Further obscuring the disability denial rational is that 18,000 Benefit Hours are also required for early retirement, yet the early retirement denial mentioned nothing about the hours requirement, leading Ms. Summers to believe her disability denial was about age, not hours. Had the notice been more clearly worded, she would have pursued an appeal at the time.

Broadly, the Ninth Circuit requires that the notice explain the rational for a denial and give a participant information and opportunity to appeal. Taken as a whole, the format and text of the denial are clearly confusing, where language pertaining to the denial of his disability pension is placed in underlined text in the middle of the page. The end of the page states in bolded text that she should reapply at age 55. Upon review, Ms. Summers was led astray by the format and content of the denial letter, making it difficult, if not impossible, to know the precise reason for his denial which would inform his decision to obtain timely review.

Because the denial letter failed to provide what additional material would be needed to perfect Ms. Summers's disability claim for benefits, it should be considered defective and thus this appeal should not be time barred. The denial notice is made further inadequate because the specificity requirement for disability pension is obfuscated by the bold language surrounding the early retirement denial. Ms. Summers could not clearly determine why he was denied a disability

pension in 2012, so this appeal should not be time barred and should be considered on the merits of the underlying valid claim for disability pension.

B. Reciprocal hours from SAG should be used for disability pension eligibility purposes.

Ms. Summers meets all substantive requirements for an OU disability pension: (1) she was Active at disability onset in October 2010, (2) onset occurred prior to age 65, (3) she had the requisite benefit hours when reciprocal service is considered, (4) at least 1,800 Benefit Hours are based on actual Employer contributions to OU, (5) she has 1000 hours in Covered Employment in 2 years prior to onset, and (6) she never worked in Noncovered Employment. [See Attachments C, D, and E]. Indeed, according to the October 2012 denial, the sole substantive issue is the consideration of Ms. Summers's reciprocal service in determining his eligibility for disability pension.

Ms. Summers has more than one vesting year of service with each SAG and the OU. The OU SPD states that service credit from reciprocal plans will be used to determine eligibility for any benefit under the OU. Hours earned under the OU will only be used to determine the benefit administered by OU. OU did not consider Ms. Summers's reciprocal pension plan with SAG when denying his claim in 2012. Ms. Summers has evidence of substantial service credit from SAG as indicated in Attachment D, and further service credit can be found by contacting SAG. Ms. Summers respectfully requests that his reciprocal time with SAG be considered so that he will have the requisite time to commence a disability pension.

Based on the plain language of the OU SPD, the Plan should commence Ms. Summers's disability pension effective to when he first applied in 2012.

V. Conclusion

We recognize a Plan's fiduciary duty to administer benefits in accordance with the Plan Document. Here, Ms. Summers was reasonably confused by the October 2012 denial because it did not provide all of the information required by law in an easily understandable way. The Ninth Circuit has clarified that such notices do not trigger internal statute of limitations, giving participants the opportunity to be heard and Plans the opportunity to correct a mistake.

Throughout the entire process, Ms. Summers has carried the burden of ALS, causing her body to deteriorate. She was exhausted having fought for SSDI and, upon receiving a confusing denial notice from OU, she took it at face value and set about her recovery. When she was able, Ms. Summers was a hard worker who earned a disability pension based on his entire work history with SAG and the OU. Here, the OU has the opportunity to reexamine Ms. Summers's eligibility for disability benefits and to do so in accordance with the plan document and the law.

I respectfully request that you accept Ms. Summers's enclosed application for disability pension along with this appeal letter and process his benefit for disability retirement, retroactive to when he would have received benefits in 2012. You may direct correspondence to me at:

Western States Pension Assistance Project
505 12th St.
Sacramento, CA 95814
Attn: Attonrey

Please copy Ms. Summers on these materials. You may direct mail to Ms. Summers at the following address:

Buffy Summers
456 Slayer Blvd.
Sunnyvale, CA 91234

Should you have any questions or concerns regarding this claim for benefits, please direct them to me at PHONE.

Sincerely,

Attorney
Staff Attorney, Western States Pension Assistance Project

Exhibits: Attachment A – Release of Information
Attachment B – Application Materials for Disability Retirement Benefits
Attachment C – October 2012 OU Disability Pension Denial
Attachment D – SAG Incomplete Work History
Attachment E – SSDI Award Letter

CC: Ms. Buffy Summers