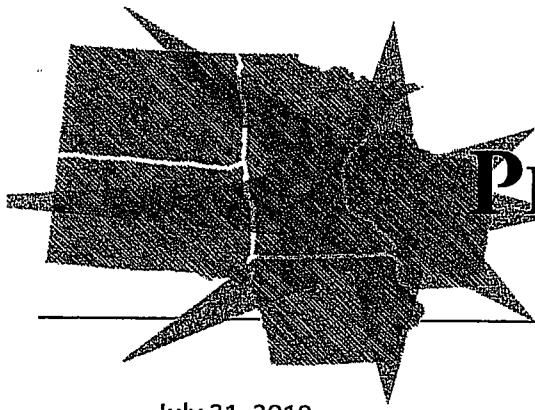




UPPER MIDWEST PENSION RIGHTS PROJECT

2365 N. MCKNIGHT RD. SUITE 3 • NORTH ST. PAUL, MN 55109

• (651) 251-5765 • (866) 783-5021 • (651) 641-8612



July 21, 2010

Appeals Committee
Sheet Metal Workers National Pension Fund
601 N. Fairfax Street – Suite 500
Alexandria, VA. 22314

RE: Appeal of Dan Schaitel

Dear Members of the Appeals Committee:

Dan Schaitel, by this submission, does hereby appeal the decision - dated January 28, 2010 - of the Sheet Metal Workers' National Pension Fund denying Schaitel's request to convert his Industry-Related Disability Pension to a Full Disability Pension. For the reasons set forth below, the Appeals Committee should overturn the prior denial, and grant Schaitel a conversion to a Full Disability Benefit.

Background

Dan Schaitel worked in covered employment in the Sheet Metal Industry and was a participant in the Sheet Metal Workers' National Pension Fund (hereinafter the "Fund") for over 26 years – from September 1979 to November 2006. However, Mr. Schaitel was forced to leave his employment in the sheet metal Industry due to a severe disability in late 2006. In June of 2007, Schaitel was informed by the Fund that - as a result of his crippling disability - he was eligible to receive an Industry-Related Disability Pension from the Fund. Schaitel completed the necessary paperwork, and in September of 2007, Schaitel began to receive an Industry-Related Disability Benefit from the Sheet Metal Workers' National Pension Fund.

Realizing that his disability would prevent him from ever returning to work, Mr. Schaitel also began the process of applying for disability insurance benefits from the U.S. Social Security Administration. Schaitel's claim for benefits from Social Security was eventually approved, with a finding that Schaitel had been disabled since June 2007. This date corresponded with the date the Fund found Schaitel disabled for his Industry-Related Disability benefits.

Schaitel received a "Notice of Decision – Fully Favorable" from the U.S. Social Security Administration (dated November 2, 2009) approving his application for disability insurance benefits from Social Security. (Attached as Exhibit 1 to this Appeal)

One month later, on or about December 1, 2009, Schaitel received a "Notice of Award" letter from the U.S. Social Security Administration confirming the prior "Notice of Decision-Fully Favorable" and awarding him disability insurance benefits from Social Security, retroactive to June 1, 2007. (Attached as Exhibit 2 to this Appeal)

Mr. Schaitel received a correspondence from the Fund, dated December 7, 2009. (Attached as Exhibit "3" to this Appeal). In this letter the Fund advised Schaitel of the following:

"According to our records, you are currently receiving an Industry-Related Disability Benefit. This is to serve as a final reminder that if you wish to request a conversion from an Industry-Related Disability Benefit to a Full Disability Benefit; you *must submit proof of approval* for Social Security Disability Insurance benefits from the U.S. Social Security Administration to the Fund Office no later than December 31, 2009." (Emphasis Added).

"To qualify from (sic) a conversion from an Industry-Related Disability Benefit to a Full Disability Benefit, you must satisfy the following conditions by December 31, 2009:

Provide proof of approval for Social Security Disability Insurance benefits from the U.S. Social Security Administration that you have been found disabled for the purposes of, and eligible to receive Social Security Disability Insurance Benefits.

Your proof of approval for Social Security Disability Insurance benefits specifies a date of disability that coincides with the date on which you became totally and permanently unable to perform work in the Sheet Metal Industry, as determined by the Trustees. In other words, Social Security must find you disabled on a date that is the same as the date on which you were found disabled for your Industry-Related Disability Benefit."

In response to this December 7th letter from the Fund, Schaitel submitted a document to the Fund - on or about December 14, 2009 - from the U.S. Social Security Administration entitled "Notice of Decision - Fully Favorable" dated November 2, 2009. However, in response to this submission, the Fund, in a letter dated January 28, 2010 (attached as Exhibit "4"), notified Schaitel - for the first time - that this "Notice of Decision - Fully Favorable" document was *not* sufficient proof of his approval for social security disability benefits, thus denying his claim for a Full Disability benefit.

Argument

1. The December 7, 2009 Letter Failed to Comply with ERISA Requirements and Fundamental Due Process

The "Notice of Decision - Fully Favorable" - from social security that Schaitel provided to the Fund *does* provide the information requested by the Fund in their December 7, 2009 letter. This "Notice of Decision - Fully Favorable" is proof that 1) the U.S. Social Security Administration has found Schaitel disabled for the purposes of, and eligible to receive, Social Security Disability Insurance benefits from the U.S. Social Security Administration; and 2) specifies the date of disability (June 1, 2007) that coincides with the date on which Schaitel became totally and permanently unable to perform work in the Sheet Metal industry.

In particular, the “Notice of Decision – Fully Favorable” document states in the first paragraph, “I have made a *fully favorable* decision in your case.” It goes on to state, “I found you disabled as of June 1, 2007, because of degenerative disc disease and disorders of the spine, so severe that your impairment(s) medically equals the requirements of one of the impairments listed in the Listing of Impairments.” Half-way down the first page, the document states again in bold: **“This Decision is Fully Favorable to You.”**

Any reasonable person reading this Notice would conclude that his or her claim for Social Security Disability benefits had been approved. And a reasonable and prudent person would conclude that this document would satisfy the proof requested by the Fund. This is precisely what Schaitel believed.

The Fund, however, rejected this document as sufficient proof that Schaitel had been approved for Social Security Disability Insurance benefits from the U.S. Social Security Administration – the information the Fund requested in its December 7, 2009 letter to Schaitel. This decision by the Fund is arbitrary and capricious.

It is important to point out that the December 7, 2009 letter does not advise Schaitel of any *specific* document required by the Fund that he must submit to demonstrate that he is eligible for disability benefits from the U.S. Social Security Administration. For example, the letter does not specifically request a “Notice of Award” letter from Social Security, or that any other document *purporting* to demonstrate a claimant’s eligibility for Social Security benefits from the U.S. Social Security Administration will *not* suffice and comply with the information the Fund requires.

The December 7th, 2009 letter does not caution or warn Schaitel that a “Notice of Decision-Fully Favorable” will *not* suffice, and that the claimant is required to submit a document entitled “Notice of Award.” This is noteworthy because the Fund must have been on notice and - in fact previously experienced - a situation when an individual is asked – as Schaitel was – to “provide proof of approval for disability benefits from the U.S. Social Security Administration” – and in response the claimant provides a “Notice of Decision-Fully Favorable” because in the Fund’s January 28, 2010 denial letter they admit that a “Decision - Fully Favorable” notice in the past has been appealed by the Social Security Administration and thus the claimant was ultimately found to NOT be disabled. However, the Fund did not transmit this important information to Schaitel in its initial December 7, 2009 letter requesting this information.

Also, the Fund’s January 28, 2010 letter denying his conversion to a Full Disability Benefit provides *after-the-fact* that the Fund needs *more* information than merely the information requested in the December 7, 2009 letter. Schaitel complied with the December 7, 2009 notice and provided the information originally requested in *that* notice before December 31, 2009. The January 28, 2010 letter states that the Fund *now* needs: 1) the month benefits are to commence, 2) the date the U.S. Social Security Administration found you disabled, and 3) the date you expect to receive your first payment. The December 7, 2009 letter does not mention that Schaitel needed to provide this specific *additional* information in order to convert from an Industry-Related Disability Benefit to a Full Disability Benefit! Schaitel was thus left in the untenable position of having to *guess* what evidence would satisfy the administrator. This is a violation of Schaitel’s fundamental due process rights and a violation of Section 1133 of the *Employee Retirement Income Security Act* known as ERISA.

Courts have consistently held that an elementary and fundamental requirement of due process in any proceeding which is to be accorded finality is notice reasonably calculated, under all the circumstances,

to apprise interested parties of the pendency of the action and afford them an opportunity to present their evidence, information, and objections. The notice must be of such nature as reasonably to convey the required information. See *Farrell v. Brown*, 729 P.2d 1090 (citing *Mullane v. Central Hanover Trust*, 339 U.S. 306, 314.) A notice must be clear, definite, explicit, and unambiguous. A notice is not clear unless its meaning can be apprehended without explanation or argument. *Id.*

To the extent that the Fund is going to rely on its December 7, 2009 notice as apprising Schaitel of the necessary steps he needed to complete before December 31, 2009 in order to convert from an Industry-Related Disability to a Full Disability, it fails to meet the due process standards set-forth by the courts cited above, as well as Section 1133 of ERISA.

ERISA Section 1133(a) requires the plan administrator to provide adequate notice to a plan participant whose claim for benefits is denied. That section requires the administrator to set forth the *specific* reasons for such denial, written in a manner calculated to be understood by the participant. ERISA Section 1133(b) also requires the administrator to afford a reasonable opportunity to any participant whose claim for benefits has been denied to a full and fair review process by the appropriate named fiduciary of the decision denying the claim.

Although the Fund's December 7, 2009 letter was not technically a denial of benefits, it was nevertheless intended to apprise Schaitel of important benefits and rights that he had as a participant in the Fund. Therefore, as the court stated in *Farrell*, it was notice in connection with a proceeding to be accorded finality. It was a final notice which required Schaitel to take specific affirmative action in order to exercise his rights and obtain benefits he was entitled to receive under the terms of the Plan. Therefore, such notice had to comply with both the purpose and spirit of ERISA Section 1133. Because the Fund chose to reject the information Schaitel provided in response to this notice, the Fund cannot now deny his application for a Full Disability Benefit without running afoul of Section 1133 and fundamental due process. To do so would be arbitrary and capricious.

In the case of *Schleibaum v. K-Mart Corporation*, 153 F.3d 496, the court stated that the ERISA claims process is not designed to be an endurance contest, in which the participant must continue to appeal, without knowing what information the employer requires or whether the employer will even consider an appeal from a denial of a claim.

Schaitel's case is analogous to the situation in *Schleibaum*. In *Schleibaum*, the participant's claim for benefits was denied, but the court found that the denial letter was insufficient and did not comply with ERISA Section 1133. The court held that the employer violated ERISA by failing to provide a welfare benefits plan participant with adequate information about the denial of his claim.

In *Schleibaum*, the denial letter informed the employee his claim for disability benefits was denied, and that he should "forward any additional information or medical records you wish to have considered as part of your appeal." The court found that this denial notice was conclusory only, and did not explain any specific reason for the finding that the employee was not disabled nor did it detail any *particular* information that could be submitted to cure the defect and perfect the claim. The employer merely told the participant that his claim was denied, but did not explain why, and did not tell the participant what *specific* additional information he needed to provide to perfect his claim.

The court determined that had the need for specific and particular information been communicated to the participant in the denial letter – as Section 1133 requires – he could have complied and perfected his

claim. The court declared that ERISA plan participants must have all necessary information about the denial at a time when the participant still has a meaningful opportunity for appeal and for full and fair review. By failing to provide - with specificity *and* in compliance with the tenets of ERISA Section 1133 – the information the claimant needed to provide to perfect his claim, the employer extinguished the participant’s ability to obtain the benefits he was otherwise entitled to.

Like the denial letter in *Schleibaum*, the December 7th letter Schaitel received also failed to describe with sufficient specificity the precise information the Fund needed in order for Schaitel to qualify for the Full Disability Benefit. The letter merely stated that Schaitel needed to “[p]rovide proof of approval for Social Security Disability Insurance benefits from the U.S. Social Security Administration that you have been found disabled for the purposes of, and eligible to receive Social Security Disability Insurance Benefits.” The information Schaitel supplied to the Fund – the “Notice of Decision – Fully Favorable” - *did* provide such proof.

Courts have held that to satisfy the requirement of a description of any additional material or information necessary for the claimant to perfect the claim, the letter would have to specify the kind of additional information needed. (See *Wolfe v. J.C. Penney*, 710 F.2d at 393). In *Wolfe*, a participant filed a claim for disability benefits. Wolfe received a letter denying his claim, but the letter went on to say that they would review “any additional medical information which you might wish to submit.” The Court went on to opine “[t]he only type of information which the denial letter indicated Wolfe should supply is ‘medical information.’ As Wolfe’s claim file already contained substantially all of the medical records from (his doctor’s) treatment file, Wolfe was no doubt at a loss as to what more he might submit.” The Court went on to hold that “a fiduciary (or its agent) ought to specify with some detail what type of information would help resolve these questions, and how the applicant should present such information.” *Id.*

As in *Wolfe*, the Fund here should have advised Schaitel in its December 7, 2009 letter that he needed to provide the “Notice of Award.”

In addition, the Fund received Schaitel’s “Notice of Decision-Fully Favorable” on or about December 14th, 2009. This was seventeen (17) days before the December 31, 2009 deadline. The Fund could have contacted Schaitel at that time and informed him of the problem, thus allowing Schaitel to correct the problem before the December 31, 2009 deadline had run. By not doing so, the Fund breached its fiduciary duty owed to Schaitel. This breach was within the power of the Fund to cure. The Fund owes a fiduciary duty to retirees – such as Schaitel – to assist them in all reasonable efforts to obtain benefits from the Fund that retirees are otherwise entitled to receive. Instead, the Fund waited until forty-five days after receiving Schaitel’s “Notice of Decision-Fully Favorable” – and twenty-eight days after the December 31, 2009 deadline, to notify Schaitel that the information he had supplied from the U.S. Social Security Administration was not sufficient. This is a breach of the Fund’s fiduciary duty.

2. The Fund Cannot Terminate Schaitel’s Ability to Convert to a Full Disability Benefit by Imposing the December 31, 2009 Deadline

In the Fund’s January 28, 2010 denial letter, the Fund asserts that “. . . any subsequent submission would not qualify (for a conversion to a Full Disability Benefit) as it was (sic) received after the December 31, 2009 deadline.” If the Fund means to state that Schaitel’s right to a conversion to a Full Disability is forever cut-off at this time, such a decision would violate ERISA as well as the Fund’s own plan

document. This is so because the Fund's own claims and appeals process – which is consistent with Section 1133 of ERISA - requires that Schaitel be afforded his claims and appeal rights.

First, the Fund's own denial letter of January 28, 2010 to Schaitel expressly provides (in pertinent part):

“If you believe the Fund's decision is in error, *you have the right to appeal this decision* to the Appeals Committee of the Fund's Board of Trustees. If you decide to Appeal, you must do so in writing within 180 days of your receipt of this letter. If you appeal the Plan's decision, the Appeals Committee will review your appeal at its next scheduled meeting, unless the appeal is received within 30 days of that meeting, in which case it will be reviewed at the following meeting.”

This language can also be found in the Fund's Plan Document and Summary Plan Description (“SPD”). It would be a violation of the Fund's own rules to cut-off the right for Schaitel to appeal this decision – and to prevent the Fund from complying with the ruling of the Appeal Committee – by invoking the December 31, 2009 deadline.

In addition, as set forth above, ERISA Section 1133(b) requires that the administrator of a plan afford a reasonable opportunity to any participant whose claim for benefits has been denied to a full and fair review process by the appropriate named fiduciary of the decision denying the claim. To merely provide a process for filing an appeal - but to then deny an equitable and appropriate remedy for the claimant filing the appeal - would be a violation of ERISA. In addition, to do so would be a breach of the Fund's Fiduciary duty.

The court in *Music v. Western Conference of Teamsters Pension Trust Fund*, 712 F.2d 413, stated: “When union pension trustees acting under authority of trust fund arbitrarily and capriciously deny pensions to employees, ‘structural defect’ exists because that conduct is deemed not to be for the sole and exclusive benefit of employees.” The *Music* court went on to state that a “section requiring trustees of union retirement fund to act for sole and exclusive benefit of employees imposes on trustee burden of fiduciary care as defined by equitable principles.”

The Fund's own SPD recognizes this fiduciary responsibility. The SPD provides, “In addition to creating rights for participants, ERISA imposes duties upon the people who are responsible for the operation of the Pension Fund. The people who operate your plan, called ‘fiduciaries’ have a duty to do so prudently and in the interest of you (participants) and other plan participants and beneficiaries.”

For the Fund to cut-off Schaitel's right to a conversion to a Full Disability Benefit because its own claims and appeals procedure – as correctly applied in this case – would extend the time for a final resolution beyond the December 31, 2009 deadline would clearly not be prudent or in the sole and exclusive interests of participants and beneficiaries. It would be a violation of the Fund's fiduciary duty – a duty imposed upon the Fund by ERISA.

Finally, the principle of “Equitable Tolling” also mandates that the Fund not allow the December 31, 2009 deadline to forever foreclose Schaitel's right to conversion to a Full Disability Benefit. Courts have recognized the principle of equitable tolling in situations where a defendant withholds information which has the effect of denying and/or concealing from the plaintiff information he otherwise needed to know and should have been provided so that he can exercise his rights to fairly pursue his claim. (See *Veltri v. Building Service 32B-J Pension Fund*, 393 F.3d 318 (2d. Cir. 2004).

Statutes of Limitation are generally subject to equitable tolling where necessary to prevent unfairness to a plaintiff who is not at fault. (See *Veltri*). Equitable tolling is an extraordinary measure that applies only when the plaintiff is prevented from filing an action despite exercising that level of diligence which could reasonably be expected in the circumstances. (*Irwin v. Department of Veterans Affairs*, 498 U.S. 89). For example, equitable tolling has been held appropriate where plaintiff filed and served defective papers before the expiration of the statutory period. (See *American Pipe & Construction Co. v. Utah*, 414 U.S. 538). In *American Pipe*, the court held that by filing the papers, the statutory limitations period was tolled, allowing the plaintiff in the case to re-file corrected pleadings. Equitable tolling permits a plaintiff to avoid the bar of the statute of limitations if despite all due diligence he is unable to obtain vital information bearing on the existence of his claim. (See *Central States Southeast & Southwest Areas Pension Fund v. Navco*, 3 F.3d 167, citing *Cada v. Baxter Healthcare Corp*, 920 F.2d 446). Finally, courts have held that a finding of *fraudulent* concealment is not necessary in order for the doctrine of equitable tolling to be applicable. (See *Valdez v. United States of America*, 518 F.3d 173).

In *Veltri*, the plaintiff had filed a claim with the pension plan which was ultimately denied. However, in the notice of denial, the defendant pension plan failed to include a statement that Veltri had the right to appeal, and the right to bring an action in federal court if his appeal was ultimately unsuccessful. The pension plan, however, did provide to Veltri a sixty-five page booklet which had a few pages discussing such rights; but the denial letter failed to reference those pages. Because the notice failed to include language - mandated by ERISA and Department of Labor regulations - advising Veltri of his right to appeal the initial determination, and his right to file suit in court, the six-year statute of limitations in which to file suit passed. (See ERISA Section 1133; and 29 C.F.R. §2560-503-1(g)(1)).

Veltri did eventually retain counsel and filed an action in court after the limitations period had run. The Court rejected the argument of defendant pension plan that the Court lacked jurisdiction to hear the case because the statute of limitations had long since passed. In its reasoning, the Court stated that Veltri was entitled to "equitable tolling" because the defendant had concealed from Veltri his right to appeal the initial denial and to bring an action in court. *Id.*

The court in *Veltri* also found that the defendant's act in providing the sixty-five page booklet did not relieve it of its obligation (under ERISA) to provide *specific* language in the notice itself about Veltri's appeal rights. The Court held that the lack of substantial compliance by the pension plan allowed the statute of limitations period to be equitably tolled. The Court determined that equitable tolling is appropriate where the pension plan fails to comply with the regulatory requirement that they provide notice to beneficiaries of the right to bring an action challenging the denial of benefits. *Id.*

In Schaitel's case, the December 31, 2009 deadline for conversion to a Full Disability benefit is a *de facto* statute of limitations. However, because the Fund's December 7th 2009 notice concealed from Schaitel the precise information it required him to submit in order to make the conversion, Schaitel is entitled to equitable tolling of the December 31, 2009 deadline.

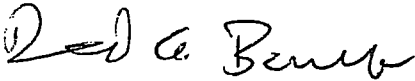
Like *Veltri*, the Fund was in possession of information that was necessary for Schaitel to have in order that he might comply with the December 7, 2009 notice in a timely fashion. Namely, that the Fund required Schaitel to submit a "Notice of Award" from Social Security, and that a "Notice of Decision-Fully Favorable" would not be acceptable proof of his award of social security disability benefits. The December 7, 2009 notice simply stated the Scheitel needed to "[p]rovide proof of approval for Social Security Disability Insurance benefits from the U.S. Social Security Administration that you have been

found disabled for the purposes of, and eligible to receive Social Security Disability Insurance Benefits." In response, Schaitel substantially complied and acted with due diligence and in good faith by provide the "Notice of Decision-Fully Favorable" to the Fund prior to the December 31, 2009 deadline. The Fund knew that this information would not suffice, but failed to advise Schaitel of this fact in their December 7, 2009 notice. This is deception by omission. As a result, the December 31, 2009 deadline must be equitably tolled.

Conclusion

For the reasons set forth above, the Appeals Committee of the Steel Workers' National Pension Fund should overturn the previous January 28, 2010 decision, and convert Dan Scheitel's Industry-Related Disability benefit to a Full Disability benefit.

Respectfully Submitted

A handwritten signature in cursive script, appearing to read "David A. Bonello".

David A. Bonello, Esq.
Upper Midwest Pension Rights Project
Attorney for Dan Schaitel



SOCIAL SECURITY ADMINISTRATION

Refer To: 388-72-5567

Office of Disability Adjudication and Review
Room 650
330 S. 2nd Ave.
Minneapolis, MN 55401-2200

Date: November 2, 2009

Danny Lee Schaitel
19502 Cty Hwy Aa
Sparta, WI 54656

NOTICE OF DECISION — FULLY FAVORABLE

I have made a fully favorable decision in your case. My decision is based on your period of disability and disability insurance benefits application filed on August 13, 2007.

I announced the basis for my decision at the hearing held on October 22, 2009. I adopt here those findings of fact and reasons.

To summarize briefly, I found you disabled as of June 1, 2007, because of degenerative disc disease and disorders of the spine, so severe that your impairment(s) medically equals the requirements of one of the impairments listed in the Listing of Impairments.

If you want more information about my decision, you or your representative should file a written request for this information at any local Social Security office or a hearing office. Please include the Social Security number shown above on your request. If you ask for it, we will provide you with a record of my oral decision at the hearing.

This Decision is Fully Favorable To You

Another office will process the decision and send you a letter about your benefits. Your local Social Security office or another office may first ask you for more information. If you do not hear anything for 60 days, contact your local office.

The Appeals Council May Review The Decision On Its Own

The Appeals Council may decide to review my decision even though you do not ask it to do so. To do that, the Council must mail you a notice about its review within 60 days from the date shown above. Review at the Council's own motion could make the decision less favorable or unfavorable to you.

If You Disagree With The Decision

If you believe my decision is not fully favorable to you, or if you disagree with it for any reason, you may file an appeal with the Appeals Council.

How To File An Appeal

To file an appeal you or your representative must request the Appeals Council to review the decision. You must make the request in writing. You may use our Request for Review form, HA-520, or write a letter.

You may file your request at any local Social Security office or a hearing office. You may also mail your request right to the Appeals Council, Office of Disability Adjudication and Review, 5107 Leesburg Pike, Falls Church, VA 22041-3255. Please put the Social Security number shown above on any appeal you file.

Time To File An Appeal

To file an appeal, you must file your request for review within 60 days from the date you get this notice.

The Appeals Council assumes you got the notice 5 days after the date shown above unless you show you did not get it within the 5-day period. The Council will dismiss a late request unless you show you had a good reason for not filing it on time.

Time To Submit New Evidence

~~You should submit any new evidence you wish to the Appeals Council to consider with your~~ request for review.

How An Appeal Works

Our regulations state the rules the Appeals Council applies to decide when and how to review a case. These rules appear in the Code of Federal Regulations, Title 20, Chapter III, Part 404 (Subpart J) and Part 416 (Subpart N).

If you file an appeal, the Council will consider all of my decision, even the parts with which you agree. The Council may review your case for any reason. It will review your case if one of the reasons for review listed in our regulations exists. Section 404.970 and 416.1470 of the regulation list these reasons.

Requesting review places the entire record of your case before the Council. Review can make any part of my decision more or less favorable or unfavorable to you.

On review, the Council may itself consider the issues and decide your case. The Council may also send it back to an Administrative Law Judge for a new decision.

If No Appeal And No Appeals Council Review

If you do not appeal and the Council does not review my decision on its own motion, you will not have a right to court review. My decision will be a final decision that can be changed only under special rules.

If You Have Any Questions

If you have any questions, you may call, write or visit any Social Security office. If you visit an office, please bring this notice and decision with you. The telephone number of the local office that serves your area is (507)289-1667. Its address is Social Security, 2443 Clare Ln Ne, Suite 100, Rochester, MN 55906-8419.

/s/ *Leonard A. Nelson*

Leonard A. Nelson
Administrative Law Judge

November 2, 2009

Date

Enclosures:

Form HA-L15 (Fee Agreement Approval)

cc: Jennifer G. Mrozik
1781 W County Rd B
P O Box 130938
Roseville, MN 55113

SOCIAL SECURITY ADMINISTRATION
Office of Disability Adjudication and Review

ORDER OF ADMINISTRATIVE LAW JUDGE

IN THE CASE OF

Danny Lee Schaitel
(Claimant)

(Wage Earner)

CLAIM FOR

Period of Disability and Disability Insurance
Benefits

388-72-5567

(Social Security Number)

I approve the fee agreement between the claimant and his representative subject to the condition that the claim results in past-due benefits. My determination is limited to whether the fee agreement meets the statutory conditions for approval and is not otherwise excepted. I neither approve nor disapprove any other aspect of the agreement.

YOU MAY REQUEST A REVIEW OF THIS ORDER AS INDICATED BELOW

Fee Agreement Approval: You may ask us to review the approval of the fee agreement. If so, write us within 15 days from the day you get this order. Tell us that you disagree with the approval of the agreement and give your reasons. Your representative also has 15 days to write us if he or she does not agree with the approval of the fee agreement. Send your request to this address:

Paul C. Lillios
Regional Chief Administrative Law Judge
SSA ODAR Regional Ofc
Suite 2901
200 W Adams Street
Chicago, IL 60606

Fee Agreement Amount: You may also ask for a review of the amount of the fee due to the representative under this approved fee agreement. If so, please write directly to me as the deciding Administrative Law Judge within 15 days of the day you are notified of the amount of the fee due to the representative. Your representative also has 15 days to write me if he/she does not agree with the fee amount under the approved agreement.

You should include the social security number(s) shown on this order on any papers that you send us.

/s/ *Leonard A. Nelson*

Leonard A. Nelson
Administrative Law Judge

November 2, 2009
Date

cc: Jennifer G. Mrozik
1781 W County Rd B
P O Box 130938
Roseville, MN 55113

Social Security Administration
Retirement, Survivors and Disability Insurance
Notice of Award

Office of Central Operations
1500 Woodlawn Drive
Baltimore, Maryland 21241-1500
Date: December 1, 2009
Claim Number: 388-72-5567HA

001055 MCSM77 N3 2.740

DANNY L SCHAFFEL
19502 COUNTY HWY AA
SPARTA, WI 54656-8165

You are entitled to monthly disability benefits beginning November 2007.

The Date You Became Disabled

We found that you became disabled under our rules on June 1, 2007.

However, you have to be disabled for 5 full calendar months in a row before you can be entitled to benefits. For these reasons, your first month of entitlement to benefits is November 2007.

What We Will Pay And When

- You will receive \$39,514.00 around December 7, 2009.
- This is the money you are due for November 2007 through November 2009.
- Your next payment of \$1,787.00, which is for December 2009, will be received on or about the third Wednesday of January 2010.
- After that you will receive \$1,787.00 on or about the third Wednesday of each month.
- These and any future payments will go to the financial institution you selected. Please let us know if you change your mailing address, so we can send you letters directly.
- Later in this letter, we will show you how we figured these amounts.

The day we make payments on this record is based on your date of birth.

Enclosure(s):
Pub 05-10153
Pub 05-10058
Return Envelope
Form CMS-2690



Your Benefits

The following chart shows your benefit amount(s) before any deductions or rounding. The amount you actually receive(s) may differ from your full benefit amount. When we figure how much to pay you, we must deduct certain amounts, such as Medicare premiums. We must also round down to the nearest dollar.

Beginning Date		Benefit Amount	Reason
November	2007	\$1,740.90	Entitlement began
December	2007	\$1,780.90	Cost-of-living adjustment
December	2008	\$1,884.10	Cost-of-living adjustment

Information About Medicare

You are entitled to medicare hospital and medical insurance beginning November 2009.

We will send you a Medicare card. You should take this card with you when you need medical care. If you need medical care before receiving the card and your coverage has already begun, use this letter as proof that you are covered by Medicare.

IMPORTANT: A new law changes how premiums for Medicare Part B are calculated for some higher income beneficiaries, ~~generally individuals with incomes higher than \$85,000 and couples with incomes higher than \$170,000.~~ Social Security will be contacting the Internal Revenue Service, and if we determine that you have to pay a higher premium, we will send you a notice explaining our decision, and the higher amount will be effective November 2009. For more information, visit www.socialsecurity.gov on the Internet or call us toll-free at 1-800-772-1213 (TTY 1-800-325-0778).

If you do not want medical insurance, please complete the enclosed card and return it to us in the envelope we have provided. You will need to do this by the date shown on the card. If you decide you do not want the insurance, we will return any premiums that you have paid.

Medicare Prescription Drug Plan Enrollment

Now that you are eligible for Medicare, you can enroll in a Medicare prescription drug plan (Part D).

To learn more about the Medicare prescription drug plans and when you can enroll, visit www.medicare.gov or call 1-800-MEDICARE (1-800-633-4227; TTY 1-877-486-2048). Medicare also can tell you about agencies in your area that can help you choose your prescription drug coverage.

If you have limited income and resources, we encourage you to apply for the extra help that is available to assist with Medicare prescription drug costs. The extra help can pay the monthly premiums, annual deductibles and prescription co-payments. To learn more or apply, please visit www.socialsecurity.gov call 1-800-772-1213 (TTY 1-800-325-0778) or visit the nearest Social Security office.

Information About Representative's Fees

We have approved the fee agreement between you and your representative.

Your past-due benefits are \$43,823.40 for November 2007 through October 2009. Under the fee agreement, the representative cannot charge you more than \$6,000.00 for his or her work. The amount of the fee does not include any out-of-pocket expenses (for example, costs to get copies of doctors' or hospitals' reports). This is a matter between you and the representative.

How To Ask Us To Review The Determination On The Fee Amount

You, the representative or the person who decided your case can ask us to review the amount of the fee we say the representative can charge.

If you think the amount of the fee is too high, write us within 15 days from the day you get this letter. Tell us that you disagree with the amount of the fee and give your reasons. Send your request to this address:

Social Security Administration
Office of Disability Adjudication and Review
Attorney Fee Branch
5107 Leesburg Pike
Falls Church, Virginia 22041-3255

The representative also has 15 days to write us if he or she thinks the amount of the fee is too low.

If we do not hear from you or the representative, we will assume you both agree with the amount of the fee shown.

Information About Past-Due Benefits Withheld To Pay A Representative

We are paying the representative from the benefits we withheld. Therefore, we must collect a service charge from him or her. The service charge is 6.3 percent of the fee amount we pay, but not more than \$83, which is the most we can collect in each case under the law. We will subtract the service charge from the amount payable to the representative.

The representative cannot ask you to pay for the service charge. If the representative disagrees with the amount of the service charge, he or she must write to the address shown at the top of this letter. The representative must tell us why he or she disagrees within 15 days from the day he or she gets this letter.

Other Social Security Benefits

The benefit described in this letter is the only one you can receive from Social Security. If you think that you might qualify for another kind of Social Security benefit in the future, you will have to file another application.

Your Responsibilities

The decisions we made on your claim are based on information you gave us. If this information changes, it could affect your benefits. For this reason, it is important that you report changes to us right away.

We have enclosed a pamphlet, "What You Need To Know When You Get Social Security Disability Benefits". It will tell you what must be reported and how to report. Please be sure to read the parts of the pamphlet which explain what to do if you go to work or if your health improves.

A provider of employment or vocational rehabilitation services may contact you about getting help to go to work. The provider may be a State vocational rehabilitation agency or a provider under contract with the Social Security Administration.

If you go to work, special rules allow us to continue your cash payments and health care coverage. For more information about how work and earnings affect disability benefits, call or visit any Social Security office and ask for the following publications:

- Social Security - Working While Disabled...How We Can Help (SSA Publication No. 05-10095).
- Social Security - If You Are Blind-How We Can Help (SSA Publication No. 05-10052).

Other Information

We are sending a copy of this notice to JENNIFER GAIL MROZIK.

Do You Disagree With The Decision?

You have already been notified of your appeal rights regarding the decision made by the Administrative Law Judge and what you must do to have that decision reexamined. If you believe that any other determination made by us in carrying out the Administrative Law Judge decision is incorrect, you may also request that part of your case be reexamined.

If you want this reconsideration, you may request it through any Social Security office. If additional evidence is available, you should submit it with your request. We will review your case and consider any new facts you have. A person who did not make the first decision will decide your case. We will correct any mistakes. We will review those parts of the decision which you believe are wrong and will look at any new facts you have. We may also review those parts which you believe are correct and may make them unfavorable or less favorable to you.

- You have 60 days to ask for an appeal.
- The 60 days start the day after you get this letter. We assume you got this letter 5 days after the date on it unless you show us that you did not get it within the 5-day period.
- You must have a good reason for waiting more than 60 days to ask for an appeal.
- You have to ask for an appeal in writing. We will ask you to sign a Form SSA-561-U2, called "Request for Reconsideration". Contact one of our offices if you want help.

Please read the enclosed pamphlet, "Your Right to Question the Decision Made on Your Social Security Claim". It contains more information about the appeal.

Things To Remember For The Future

The doctors and other trained personnel, who decided that you are disabled expect your health to improve. Therefore, we will review your case in November 2016. We will send you a letter before we start the review. Based on that review, your benefits will continue if you are still disabled, but will end if you are no longer disabled.

Please tell us if there is a change in the mailing address and/or direct deposit information. We need this information to make sure payments are deposited timely and important notices regarding your payments reach you.



If You Have Any Questions

We invite you to visit our website at www.socialsecurity.gov on the Internet to find general information about Social Security. If you have any specific questions, you may call us toll-free at 1-800-772-1213, or call your local Social Security office at 1-608-784-5605. We can answer most questions over the phone. If you are deaf or hard of hearing, you may call our TTY number, 1-800-325-0778. You can also write or visit any Social Security office. The office that serves your area is located at:

SOCIAL SECURITY
STE 100
210 7TH ST S
LA CROSSE WI 54601

If you do call or visit an office, please have this letter with you. It will help us answer your questions. Also, if you plan to visit an office, you may call ahead to make an appointment. This will help us serve you more quickly when you arrive at the office.



Michael J. Astrue
Commissioner
of Social Security

PAYMENT SUMMARY

Your Payment Of \$39,514.00

Here is how we figured your first payment:

Benefits due for November 2007
through November 2009
including any cost of living increase,
less monthly rounding of benefits\$45,803.20

Amounts we subtracted because of:

- premiums for medical insurance
through November 2009\$ 192.80
- additional premium due
one month in advance 96.40
- money to pay
your representative 6,000.00
- Total subtractions 6,289.20

This equals the amount of
your first payment\$39,514.00

Your Regular Monthly Payment

Here is how we figured your regular monthly payment effective December 2009:

You are entitled to a monthly benefit of\$ 1,884.10

Amounts we subtracted because of:

- premiums for medical insurance 96.50

This equals 1,787.60

- rounding (we must round down to
a whole dollar)60

This equals the amount of
your regular monthly payment\$ 1,787.00





Sheet Metal Workers'
National Pension Fund

December 7, 2009

DANNY SCHAITEL
19502 COUNTY HIGHWAY AA
SPARTA, WI 54656-8165

RE: Industry-Related Disability Benefit

DEAR MR. SCHAITEL:

According to our records, you are currently receiving an Industry-Related Disability Benefit. This is to serve as a final reminder that if you wish to request a conversion from an Industry-Related Disability Benefit to a Full Disability Benefit; you must submit proof of approval for Social Security Disability Insurance benefits from the U.S. Social Security Administration to the Fund Office no later than **December 31, 2009**.

To qualify from a conversion from an Industry-Related Disability Benefit to a Full Disability Benefit, you must satisfy the following conditions by **December 31, 2009**:

- Provide proof of approval for Social Security Disability Insurance benefits from the U.S. Social Security Administration that you have been found disabled for the purposes of, and eligible to receive Social Security Disability Insurance benefits;
- Your proof of approval for Social Security Disability Insurance benefits specifies a date of disability that coincides with the date on which you became totally and permanently unable to perform work in the Sheet Metal Industry, as determined by the Trustees. In other words, Social Security must find you disabled on a date that is the same as the date on which you were found disabled for your Industry-Related Disability Benefit;
- You worked in Covered Employment for at least 435-hours in the 24-month period that immediately preceded the date that you were found to be disabled by the U.S. Social Security Administration;
- You have not worked in Disqualifying Employment since receiving your Industry-Related Disability Benefit.

If you do not meet all of the conditions described above, any future request for a conversion will be denied in accordance with Plan Section 16.08. If you have any questions, please contact the Fund Office at the toll free number below.

Fund Office

cc: Local Union 010

Sheet Metal National Pension Fund
601 N. Fairfax Street Suite 500
Alexandria, VA 22314
1-800-231-4622



Sheet Metal Workers' National Pension Fund

January 28, 2010

Mr. Danny L. Schaitel
19502 County Highway AA
Sparta, WI 54656-8165

Re: NPF Application #. 97196- LU# 10
SS# XXX-XX-5567

Dear Mr. Schaitel:

Our office received your request for a conversion from an Industry-Related Disability Benefit to a Full Disability Benefit on December 14, 2009. We regret to inform you that we must deny your request as the information submitted at this time does not constitute "proof of approval" as described below.

Plan Section 16.08 provides that a recipient of an Industry-Related Disability Benefit may elect, before January 1, 2010, to convert to a Full Disability Benefit if, and only if, he meets the requirements of (1) and (2) below on or before November 30, 2007, and the requirements of (3) below before January 1, 2010.

- (1) his proof of approval for Social Security Disability Insurance benefits from the Social Security Administration specifies a date of disability that coincides with the date on which the Participant became totally and permanently unable to perform work in the Sheet Metal Industry as a result of a physical or mental health impairment, as determined by the Trustees;
- (2) he worked in Covered Employment for at least 435 hours in the 24-month period that immediately preceded the date that he was found to be disabled by the Social Security Administration; and
- (3) proof of approval for Social Security Disability Insurance benefits from the U.S. Social Security Administration is provided to the Fund Office prior to the conversion.

The Fund Office is in receipt of correspondence dated December 18, 2009 from the Social Security Administration indicating "NOTICE OF DECISION – FULLY FAVORABLE." Please be advised that the Fund Office cannot accept this documentation as we have had instances in the past where benefit payments are withheld and/or suspended by the Social Security Administration due to a variety of reasons. It is for that reason that we can only accept a "Notice of Award" from this agency which provides the following information:

- the month benefits are to commence,
- the date the U.S. Social Security Administration found you disabled,
- and the date you can expect to receive your first payment.

Sheet Metal National Pension Fund
601 N. Fairfax Street Suite 500
Alexandria, VA 22314

In light of this, we regret to inform you that you do not qualify for a conversion at this time and that any subsequent submission would not qualify as it was received after the December 31, 2009 deadline.

If you believe the Fund's decision is in error, you have the right to appeal this decision to the Appeals Committee of the Fund's Board of Trustees. If you decide to appeal, you must do so in writing within 180 days of your receipt of this letter. If you appeal the Plan's decision, the Appeals Committee will review your appeal at its next scheduled meeting, unless the appeal is received within 30 days of that meeting, in which case it will be reviewed at the following meeting. If circumstances require more time for a decision, you will be notified in writing. The notice will describe the reason for the delay and the approximate date a decision will be made. The decision will be made no later than the third meeting following the date the Fund receives your appeal.

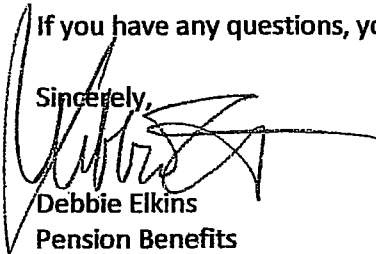
Please understand that the Appeals Committee has full discretion to interpret the Plan, and its decision is final and binding. Also, neither the Appeals Committee nor the full Board of Trustees has the power to waive the applicable Plan provisions. Therefore, your appeal must demonstrate that the Fund's decision is erroneous based on the applicable terms of the Plan. In your appeal, you must assert each and every reason why you believe a decision is in error, or your claim, if later brought in court, may be barred. It is your obligation in any appeal to provide the Appeals Committee with any and all evidence, or other information, supporting your position.

You are entitled to receive, upon request and free of charge, reasonable access to, and copies of, all documents, records, and other information relevant to your claim for benefits. You also must submit any additional written comments, documents, records, and other information that you believe supports your position on appeal. The Appeals Committee's review will take into account all information you submit relating to your claim. You will not have another opportunity to submit additional information after the Appeals Committee conducts its review. To perfect your appeal and otherwise determine your eligibility for benefits and the amount of those benefits, you must provide all information required by the Fund. Refusing or failing to provide any necessary information can result in the denial of benefits.

The Fund will send you written notice of the Appeals Committee's decision no later than five (5) days after the decision is made. In the event your appeal is denied, you have the right to bring a civil action under Section 502(a) of the Employee Retirement Income Security Act. If your appeal is denied and you decide to bring a court action, you must do so before the 91st day after the claim is denied or deemed to be denied by the Appeals Committee, or your claim will be barred.

If you have any questions, you may contact the Fund Office at our toll free number listed below.

Sincerely,


Debbie Elkins
Pension Benefits

cc: LU# 10

Ext 7038

Sheet Metal National Pension Fund
601 N. Fairfax Street Suite 500
Alexandria, VA 22314