



Spouse's Decision to Retire Does Not Support Participant's Fiduciary Breach Claim Against His Own Retirement Plan

11.17.2010

The U. S. Court of Appeals for the Third Circuit, in *Shook v. Avaya, Inc.*, 2010 U. S. App. LEXIS 22681 (3d Cir. Nov. 2, 2010), held that the retirement decision of a plan participant's spouse cannot be the basis for a claim against the participant's retirement plan fiduciaries for alleged misrepresentations to the participant, where the spouse's decision did not affect the participant's retirement plan, his benefits or his own decision to retire.

The courts have long held that plan fiduciaries, in performing their duties, may not mislead plan participants and beneficiaries about matters material to plan benefits and other duties of the plan and the fiduciaries. ERISA fiduciaries owe a statutory duty of loyalty and prudence to participants and beneficiaries. This includes not only the duty to be truthful when making affirmative representations, but also the duty to adequately disclose material information about the plan and its benefits. Where such misrepresentations or inadequate disclosures occur and the participant or beneficiary detrimentally relies upon them, the fiduciary can be liable for a breach of duty. In *Shook*, however, the court found that the plan fiduciary was not liable for the alleged injury resulting from the spouse's retirement decision.

The husband-employee was employed in 1980 by a predecessor company later acquired by Octel, and Octel was bought in 1997 by Lucent Technologies ("Lucent"). The husband was employed in Lucent's Avaya division, which became an independent company in 2000. The husband participated in the retirement plans for these companies while he was employed there.

When Lucent acquired his prior employer, the employee was told initially that his service under his prior employers would not be credited for purposes of calculating his retirement. However, in April and November 2000, he received letters from Lucent's pension service center telling him that his retirement credit would be adjusted back to 1980. Importantly, the letters stated that his supervisor would need that data to determine his eligibility under his employer's sickness and disability benefit plan.

The employee misunderstood the letters to say he had service credit for his **retirement** back to 1980 and could thus retire in 2005 with a full pension. Based on this misunderstanding, he and his spouse – who was not employed by Avaya or a designated beneficiary in Avaya's plan – jointly decided that his spouse could retire from her job at another company in 2003. After she did so, Avaya laid off the employee in 2004 and informed him that his retirement benefit was not based on credit before 1990. The employee sued Avaya for fiduciary breach based on the alleged misrepresentations in the letters in

2000, asserting that his spouse had retired early as a result.

The Third Circuit held that a decision by a plan participant or beneficiary that affects a non-employee's benefits or retirement, separate and apart from the plan, is not the type of injury for which a plan fiduciary is responsible. Though the Shooks jointly acted on the basis of the 2000 letters – by agreeing that the spouse could retire – that decision did not affect the employee's benefits under Avaya's plan, nor were the spouse's rights under that plan affected. The letters did not prompt the employee himself to retire, or to change or forgo any benefits. As a result, the fiduciary duties owed to the husband-employee had not been breached.

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