



Sixth Circuit Refuses to Allow Eight-Year-Old ERISA Claim to Proceed

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BY: MARK S. THOMAS

The U. S. Court of Appeals for the Sixth Circuit has held that a plaintiff could not pursue a claim for disability benefits in federal district court eight years after his claims were denied by the plan. In *Engleson v. Unum Life Insurance Company of America*, No. 12-4049 (6th Cir. July 3, 2013), plaintiff Jerry Engleson brought suit in 2009 for disability benefits to which he contended he was entitled under ERISA in 2001. Ruling that Engleson's claims were time-barred, the Sixth Circuit's decision highlights the importance of plan provisions governing the timeliness of claims for ERISA benefits, and is a reminder that the U. S. Supreme Court is reviewing the enforceability of such limitations provisions in its upcoming term.

For health reasons, Engleson stepped down from his position at the Seibert-Keck Insurance Agency in 2001 and filed a claim for long-term disability benefits under the agency's group disability plan managed by the Unum Life Insurance Company of America ("Unum"). Unum denied his claim in 2001 on the basis that Engleson was not "continuously disabled." Engleson appealed twice through Unum's internal appeals process. Unum denied both appeals, with the second denial occurring on November 29, 2001. Engleson did not file suit in federal court to enforce his benefit claim. The plan contained a provision requiring participants to file a suit to enforce an ERISA claim within "3 years after the time proof of claim is required". In Engleson's case, that clock began before Unum's final administrative claims denial, and, after applying all plan terms and provisions, his three-year period expired in March 2005.

Engleson eventually returned to employment at the Seibert-Keck Insurance Agency, but again filed for disability benefits on August 1, 2008. This time, Unum granted his claim with the date of disability set as August 5, 2008. Engleson objected on the basis that the disability benefits should have accrued beginning in 2001. Unum invited Engleson to submit evidence that his disability period began earlier, but rejected his claim to benefits beginning in 2001. Engleson filed suit in federal district court, contending that his first date of disability should be 2001. The district court, after an evidentiary hearing, determined that the three-year contractual limitations period in the plan rendered Engleson's suit untimely and dismissed his case.

Engleson appealed, raising three main arguments against enforcement of the plan's three-year contractual limitations period. First, he contended that federal regulations (see 29 C.F.R. § 2560.503-1(f), 29 C.F.R. § 2520.102-3) required Unum to inform him when it denied his claims in 2001 that he had a right to judicial review in federal district court. The Sixth Circuit disagreed that these regulations included such a requirement, finding that the regulations in effect *in 2001* only required notice of rights of appeal within the plan. The court noted that the regulations changed *in 2002* to require notice of a right to pursue a civil action for ERISA benefits.

Second, Engleson contended that Unum waived its contractual limitation defense in 2008 correspondence concerning the 2008 benefits claim, based on Unum's invitation for Engleson to submit additional information to support an earlier date of disability. The court held that Unum's invitation to submit such information did not constitute a waiver of the plan's limitations period or its earlier denial of the 2001 benefit claim.

Third, Engleson contended that he had an equitable right to toll the application of the plan's limitations period. Engleson based his argument in part on the Supreme Court's decision in *CIGNA Corp. v. Amara*, 131 S. Ct. 1866 (2011), which has generally broadened the scope of equitable relief in ERISA cases. However, the Sixth Circuit held that the *Amara* case did not address equitable tolling as a remedy, and that, moreover, because Engleson "was not diligent in pursuing his rights," he did not meet the test for equitable tolling of the plan's limitations period.

In reading *Engleson*, it is important to remember that the U.S. Supreme Court has granted certiorari in *Heimeshoff v. Hartford Life and Accident Insurance Co.*, No. 12-729 (U.S.), to review the question of whether a plan can enforce a plan's limitations period that commences *before* a claimant has exhausted administrative remedies under the plan and may file suit in federal court. The federal circuit courts have split on that question, with the Fourth Circuit adopting a different position from other circuits and holding that such contractual limitations are not enforceable. See *White v. Sun Life Assurance Co. of Canada*, 488 F.3d 240 (4th Cir. 2007). (The Fourth Circuit also addressed the statute of limitations recently in *David v. Alphin*, No. 11-2181 (4th Cir. 2013). For more on *David v. Alphin*, [see the authors' discussion of the case here.](#))

Plan administrators should watch closely the Supreme Court's upcoming decision in *Heimeshoff* in the Court's next term and evaluate whether that decision will affect the enforceability of any contractual limitations period in their plan documents. Likewise, *Engleson* provides useful guidance for plan administrators' administration of claims appeals and how they may best protect the enforceability of plan terms and provisions, especially any contractual limitation in a plan that determines the time in which a plan participant may file a benefits claim in federal court.

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