

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

DANNY M. SKINNER,)
)
 Plaintiff,)
)
 v.) Civil Action No. 92-147-SLR
)
 E.I. DU PONT DE NEMOURS AND)
 COMPANY, INC., et al.,)
)
 Defendants.)

MEMORANDUM ORDER

At Wilmington this 3rd day of September, 2002, having reviewed the various pending motions in the above-captioned case;

IT IS ORDERED that plaintiff's motion for reconsideration (D.I. 199) is denied as moot. (D.I. 209 at 1; D.I. 213)

IT IS FURTHER ORDERED that plaintiff's motion to alter or amend judgment and for attorney's fees (D.I. 208) is denied, for the reasons that follow:

1. Plaintiff was employed by defendant E.I. DuPont de Nemours and Company, Inc. ("DuPont") from June 1973 until March 1989. In 1988, plaintiff suffered an on-the-job back injury. Although given six months of disability benefits under DuPont's short term disability plan, plaintiff was denied long term disability benefits under both DuPont's Pension and Retirement Plan and DuPont's Total and Permanent Disability Income Plan.

Plaintiff filed suit in February 1992 in state court, asserting that defendants improperly failed to grant long term disability benefits and alleging that defendants breached various fiduciary duties in so denying said benefits. Defendants removed the lawsuit to this court, where it was assigned to another judicial officer.

2. A review of the record confirms the fact that, within months of the commencement of the lawsuit (August 4, 1992), defendants formally offered plaintiff the long term disability benefits sought in this litigation.¹ (D.I. 16) Plaintiff rejected this offer on August 12, 1992. (D.I. 18)

3. For the remainder of the decade, the parties litigated this case. It was reassigned to this judicial officer in August 1999. By March 2000, the case had been narrowed to the question of whether DuPont had improperly denied plaintiff his long term disability benefits under ERISA. A bench trial was held and the court issued its decision in October 2001. Although the court concluded that DuPont should have awarded plaintiff the long term disability benefits, the court further concluded that

¹According to defendants' offer of judgment, defendants offered plaintiff an incapability pension retroactively effective to April 1, 1989, benefits under a variety of other welfare benefit plans, reimbursement for past medical insurance premiums, a lump sum payment for past pension payments, and payment for legal fees and costs accrued through the date of the offer.

plaintiff's lawsuit was time barred by the applicable one-year statute of limitations. (D.I. 198)

4. By letter dated December 31, 2001, DuPont informed plaintiff that the Board of Benefits and Pensions had reconsidered and approved his request for incapability retirement benefits. As a result of the above decision, plaintiff also would be eligible to participate in DuPont's post-retirement medical, dental and life insurance plans. (D.I. 210 at A-1; see also id. at A-4, A-5)

5. Based on the above decision, plaintiff filed on February 8, 2002 his motion to alter or amend judgment. (D.I. 208) In his supporting brief, plaintiff summarizes his request for relief as follows:

DuPont Company, through its Board of Benefits and Pensions has granted Plaintiff Skinner his pension status and other benefits consistent with his Incapability Retirement qualification. This action of granting benefits was the result of litigation and as his status benefits includes most if not all of the Defendant parties herein, he has now been granted the relief he sought via litigation and filing his law suit. He is a "prevailing party" and is now entitled to submit a petition for fees and costs, based on the successful pursuit of litigation. Such fees and costs are allowed, in the discretion of the District Court, under ERISA Section 502(g), 29 U.S.C. Section 1132(g), as against an "offending party" if certain factors have been met.

(D.I. 209 at 2)

6. In determining whether to make an award of fees under ERISA, the Third Circuit requires a district court to analyze the following five factors:

a. The offending parties' culpability or bad faith;

b. The ability of the offending parties to satisfy an award of attorneys' fees;

c. The deterrent effect of an award of attorneys' fees against the offending parties;

d. The benefit conferred on members of the pension plan as a whole; and

e. The relative merits of the parties' positions. See Ursic v. Bethlehem Mines, 719 F.2d 670, 673 (3d Cir. 1983).

7. Although plaintiff arguably prevailed as a result of the instant litigation, the court must ask: At what cost? A full review of the record reveals that, years before this judicial officer had any responsibility for this case, plaintiff was offered the opportunity to settle the litigation for essentially the same terms as DuPont has offered in the wake of the court's October 29, 2001 opinion. (Compare D.I. 16 with D.I. 210 at A-1, A-4, A-5) The history of the case includes an extensive motion practice and a bench trial. The ultimate result is that plaintiff's recovery has been delayed by a decade while the parties and the court have invested countless hours in

litigation that did not increase the benefits for plaintiff, nor was a benefit conferred on members of the pension plan as a whole. Thus, while the court recognizes the equitable result obtained,² and while defendants could satisfy an award of attorneys' fees, to award attorneys' fees under the circumstances at bar would promote unnecessary litigation at great cost to the judicial system as a whole.³

Sue L. Robinson
United States District Judge

²In other words, although defendants won the legal battle, plaintiff won the equitable battle.

³The court also notes that plaintiff's motion was filed untimely, pursuant to either Fed. R. Civ. P. 59(e) or 54(d) (2) (B).