Award of Long-Term Disability Benefits to Chemical Operator to Be Paid by Hartford Upheld

The Fifth Circuit Court of Appeals, which reviews decisions of the Federal trial courts in Texas, Louisiana, and Mississippi, recently upheld the decision to award long-term disability benefits to a Chemical Operator for CF Industries.

Kelvin Schexnayder suffered from severe leg and back pain caused by spinal stenosis, chronic degenerative disc disease, and carpal tunnel syndrome, and stopped working in June 2003 as a result. He applied for long-term disability benefits through his group long-term disability policy provided by Hartford through his employer. Hartford agreed that he was unable to perform his own occupation and paid him during the initial 24-month "own occupation" period of disability. During this period the Social Security Administration determined that Mr. Schexnayder was totally disabled and unable to work in *any* occupation. Mr. Schexnayder promptly paid Hartford the money that had then been overpaid on his claim, in accordance with the reimbursement agreement he had signed.

In November 2004, Hartford informed Mr. Schexnayder that he was not disabled from any occupation as defined by Hartford's policy, and that no more benefits would be paid after November 2005. Mr. Schexnayder provided additional information to dispute Hartford's determination. Hartford continued to pay Mr. Schexnayder during its investigation, but ceased paying benefits at the end of January 2006, claiming that his subjective complaints of pain were not consistent with his objective medical evidence. Mr. Schexnayder appealed, and Hartford upheld its decision in June 2006 to deny benefits. Mr. Schexnayder subsequently filed suit.

The trial court determined that Hartford had abused its discretion in denying Mr. Schexnayder his benefits, ordering that Hartford pay all past due benefits with interest and awarded attorneys' fees as well. Hartford appealed this decision.

On appeal, the Fifth Circuit noted that Hartford administered & paid for the plan, creating a conflict of interest. The court also noted that the circumstances suggested "procedural unreasonableness" and that "Hartford's financial bias may have played a part in its decision." In upholding the award of benefits, the court noted that Hartford had failed to address how it could have come to the decision that Mr. Schexnayder was not disabled from any occupation, when the Social Security Administration had. Having benefitted financially from the Social Security award by collecting the "overpayment" from Mr. Schexnayder, it then failed to address the Social Security Administration's decision. The court stated: "Failure to address a contrary SSA award can suggest 'procedural unreasonableness' in a plan administrator's decision." However, the court reversed the award of attorneys' fees granted by the trial court.

We can learn several things from this decision. One, insurance companies continue to use the lack of objective medical evidence of pain as a reason to deny benefits. This is appalling. Until science invents a "pain-o-meter" to measure someone's pain, there is no way to provide objective medical evidence of pain. Fortunately, we have plenty of experience in dealing with this situation.

Two, at least in the Fifth Circuit, the conflict of interest noted by the Supreme Court in *Glenn* means something. This is good news for those clients who we end up representing.

Three, attorneys fees are not automatically warranted. Even though Mr. Schexnayder was awarded his benefits, the insurance company did not end up paying his fees.