

Proving the Unprovable: Evaluating Disability Claims Based Upon Subjective Conditions

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I. IS THE DISABILITY CLAIM GOVERNED BY THE EMPLOYEE RETIREMENT SECURITY ACT (“ERISA”)?

- A. Applicability of ERISA.** ERISA applies to any “employee benefit plan” established or maintained by an employer or an employee organization representing employees, or both.¹ ERISA does not apply to (1) government plans; (2) church plans; (3) plans maintained solely for the purpose of complying with workers compensation, unemployment compensation, or disability insurance laws; (4) plans maintained outside of the United States primarily for the benefit of persons who are nonresident aliens; and (5) unfunded excess benefit plans.² Most private employee disability plans, however, are governed by ERISA and thus a working knowledge of the statute and regulations is required to successfully prosecute and defend against ERISA-governed disability claims.
- B. ERISA’s Civil-Enforcement Provision.** Under ERISA, a plan participant or beneficiary may bring an action “to recover benefits due to him under the terms of the plan, to enforce his rights under the terms of the plan, or to clarify his rights to future benefits under the terms of the plan.”³ This is the *exclusive* method for a participant or beneficiary to recover disability benefits under an ERISA-governed plan. As described in more detail below, to the extent state law or procedural remedies conflict with ERISA’s civil-enforcement provision, they are preempted.
- C. Exhaustion of Administrative Remedies.** Before a plan participant or beneficiary can bring a lawsuit under ERISA’s civil-enforcement provision, he must first exhaust his administrative remedies with the plan. In the Eighth Circuit, exhaustion is a precondition to federal jurisdiction.⁴ A claimant will exhaust his administrative remedies if he has completed the administrative process provided for by the particular ERISA plan.

TT PRACTICE TIP: Generally, an ERISA plan will only provide the procedure for administratively appealing an initial adverse benefit determination and will usually not *explicitly require* exhaustion. Similarly, an initial adverse benefit determination probably will not inform the claimant of the judicially created exhaustion requirement. The Eighth Circuit, however, has held that a claimant must exhaust his administrative remedies regardless of whether or not (1) the plan specifically requires

¹ 29 U.S.C. § 1003(a) (2004).

² 29 U.S.C. § 1003(b)(1)-(5) (2004).

³ 29 U.S.C. § 1132(a)(1)(B) (2004).

⁴ See Kinkead v. S.W. Bell Corp., 111 F.3d 67, 68 (8th Cir. 1999) (a plaintiff “must exhaust the review procedures mandated by [ERISA] before bringing claims for wrongful denial to court”); see also Galman v. Prudential Ins. Co. of Am., 254 F.3d 768, 770 (8th Cir. 2001).

exhaustion; and (2) the claimant is informed of the exhaustion requirement. Galman v. Prudential Ins. Co. of Am., 254 F.3d 768, 770 (8th Cir. 2001).

- D. Federal Forum.** Although both federal and state courts have jurisdiction to adjudicate ERISA benefit claims, 29 U.S.C. § 1132(e)(1), the Supreme Court has concluded that a claim under ERISA’s civil-enforcement provision is a claim that “arise[s] under the laws of the United States.”⁵ Consequently, a defendant has an absolute right to remove an action seeking the recovery of ERISA-governed disability benefits to federal court. A petition for removal will automatically divest the state court of jurisdiction to proceed further even if the removal is later found by the federal court to have been improper.⁶ Thus, most, if not all, ERISA-governed disability lawsuits brought in Minnesota will be removed to the United States District Court for the District of Minnesota.

△ PRACTICE TIP: When removing an ERISA lawsuit to federal court, a defendant should also allege, if possible, diversity jurisdiction as an alternative basis for jurisdiction. If the court later determines that the lawsuit is not governed by ERISA, and, consequently, that federal-question jurisdiction is lacking, the defendant will probably not be able to amend its notice of removal to allege alternatively diversity jurisdiction. See generally Uppal v. Elec. Data Sys., 316 F. Supp. 2d 531, 535 (E.D. Mich. 2004).

- E. Preemption of State-Law Claims.** When enacting ERISA, Congress provided that it “shall supersede any and all State laws insofar as they may now or hereafter relate to any employee benefit plan.”⁷ Because ERISA’s civil-enforcement provision (quoted above) “affords plan participants . . . a federal cause of action to recover plan benefits or to otherwise enforce the plan,” this federal remedy generally preempts “state common law tort and contract actions asserting improper processing of a claim for benefits’ under an ERISA plan.”⁸ State-law

⁵ Metro. Life Ins. Co. v. Taylor, 481 U.S. 58, 66 (1987).

⁶ Ward v. Resolution Trust Corp., 972 F.2d 196, 198 (8th Cir. 1992).

⁷ 29 U.S.C. § 1144(a).

⁸ Thompson v. Gencare Health Sys., Inc., 202 F.3d 1072, 1073 (8th Cir. 2000) (quoting Pilot Life Ins. Co. v. Dedeaux, 481 U.S. 41, 43 (1981)). In the Eighth Circuit, numerous state-law claims are preempted to the extent the claims seek recovery of ERISA-governed employee benefits: **Breach of contract:** Taylor, 481 U.S. at 62-63; Stock v. Share, 18 F.3d 1419, 1422 (8th Cir. 1994); Walker v. National City Bank of Minneapolis, 18 F.3d 630, 634 (8th Cir. 1994); Howard v. Coventry Health Care of Iowa, Inc., 293 F.3d 442, 444-57 (8th Cir. 2002); Glenn v. Life Ins. Co. of N. Am., 240 F.3d 679, 681 (8th Cir. 2001); Bd. of Trustees, W. Lake Superior Piping Indus. Pension Fund v. Am. Benefit Plan Adm’rs, Inc., 925 F. Supp. 1424, 1427 n.1 (D. Minn. 1996). **Bad faith:** Dedeaux, 481 U.S. at 48; Howard, 293 F.3d at 444-57; Glenn, 240 F.3d at 681; In re Life Ins. Co. of N. Am., 857 F.2d 1190, 1195 (8th Cir. 1988). **Declaratory Relief:** See Lister v. Stark, 890 F.2d 941, 942 (7th Cir. 1989) (claim for “declaration” that plaintiff was entitled to pension benefits preempted). **Punitive damages:** Howard, 293 F.3d at 444-57.

