Sparkes v. Morrison & Foerster Long-Term Disability Ins. Plan

United States District Court for the Northern District of New York

January 24, 2001, Decided ; January 25, 2001, Filed

98-CV-1287

Reporter

129 F. Supp. 2d 182 *; 2001 U.S. Dist. LEXIS 488 **

AUDREY SPARKES, Plaintiff, vs MORRISON & FOERSTER LONG-TERM DISABILITY INSURANCE PLAN, MORRISON & FOERSTER LLP, and THE NORTHWESTERN MUTUAL LIFE INSURANCE COMPANY, Defendants.

Disposition: [**1] Plaintiff's motion for partial summary judgment DENIED; Defendants' motion for summary judgment GRANTED in part and DENIED in part; Plaintiff's third cause of action DISMISSED.

Counsel: For Plaintiff: JEFFREY J. SHERRIN, ESQ., O'CONNELL AND ARONOWITZ, Albany, NY.

For Defendants: ARTHUR J. SIEGEL, ESQ., BOND, SCHOENECK & KING, LLP, Albany, NY.

Judges: DAVID N. HURD, United States District Judge.

Opinion by: DAVID N. HURD

Opinion

[*183] ***MEMORANDUM-DECISION AND ORDER***

I. *INTRODUCTION*

On August 7, 1998, plaintiff Audrey Sparkes ("Sparkes" or "plaintiff") commenced [*184] the instant action, asserting two causes of action pursuant to the Employee Retirement Income Security Act of 1974, 29 U.S.C. §§ 1001, *et seq*. ("ERISA"), and a third cause of action for wrongful discrimination in violation of California Insurance Code § 10401. Defendants answered the complaint. A motion for partial summary judgment dismissing the third cause of action under the California Insurance Code as preempted by ERISA was

granted. Thereafter, plaintiff filed an amended complaint adding a new third cause of action under New York Insurance Law § 4224. Defendants answered the amended complaint. [**2] These motions pursuant to Fed. R. Civ. P. 56 followed.

Plaintiff moves for partial summary judgment as to her first and second causes of action, which seek monetary and injunctive relief for the wrongful denial of benefits under Section 502(a)(3) of ERISA, 29 U.S.C. § 1132(a)(3). Defendants have moved for summary judgment dismissing all ERISA and state law causes of action. Oral argument was heard on September 8, 2000, in Utica, New York. Decision was reserved.

II. *FACTS*

This action arises out of the termination of long-term disability benefits to Sparkes by the defendant Northwestern Mutual Life Insurance Company ("Northwestern"), pursuant to a clause in the defendant Morrison & Foerster Long-Term Disability Plan (the "Plan") which limited receipt of benefits for disability due to mental illness to two years. The following are the undisputed facts in this case.

Sparkes was employed by defendant Morrison & Foerster LLP ("Morrison & Foerster"), a large international law firm, as a word processor and administrative assistant. Sparkes worked in the firm's New York office. During the relevant time period, the firm maintained a group long-term disability [**3] insurance plan with Northwestern. The Plan provided long-term disability benefits for eligible employees of the firm, subject to the terms and conditions of the Plan. As an employee of the firm, plaintiff was a participant in the Plan.

Under the terms and conditions of the Plan, an insured employee was entitled to long-term disability benefits, following a 90-day elimination period, if the insured was disabled from her own occupation for a 24-month period. After the 24-month period expired, benefits would be paid only if the employee was disabled from *all* occupations. All benefits under the Plan were subject to a mental disorder limitation which provided that "payments of [long-term disability] benefits is limited to 24 months for each period of Disability caused or contributed to by a Mental Disorder . . . . Mental Disorder means: a mental, emotional or behavioral disorder." *See* Ex. "F" to Siegel Affidavit at 8.

On December 27, 1991, Sparkes became disabled and was unable to work. She was subsequently diagnosed by her own doctors with Chronic Fatigue Syndrome ("CFS"). Following a 90-day elimination period, she began to receive benefits pursuant to the terms of the Plan [**4] effective March 28, 1992. On May 18, 1994, Northwestern notified her that it was making an exception to continue her benefits while it investigated the potential applicability of the mental health limitation to her claim.

On or about November 8, 1994, Sparkes was given a psychological examination by Dr. Jacqueline Bashkoff in regard to her application for Social Security disability benefits. Dr. Bashkoff did not attribute plaintiff's CFS symptoms to depression, or to any other mental health or personality disorder. She subsequently began to receive Social Security benefits on or about July 1, 1996.

On February 26, 1996, Northwestern terminated Sparkes' benefits under the Plan on the grounds that it had determined that her disability was attributable to depression, not to CFS, and that she had already received benefits in excess of [*185] those payable under the two year mental disorder limitation of the Plan. Sparkes disagreed with this conclusion, and challenged the termination of her benefits pursuant to the internal review procedures of the plan. Following the exhaustion of these internal remedies, Sparkes commenced the instant action.

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IV. *DISCUSSION*

For the reasons set forth below, defendants' motion for summary judgment is granted as to plaintiff's state law claim, and plaintiff's and defendants' motions for summary judgment are both denied as to plaintiff's first and second causes of action under ERISA.

A. *Plaintiff's State Law Claim*

Defendants move for summary judgment as to Sparkes' third cause of action, discrimination in violation of New York Insurance Law § 4224, on the grounds that this claim is preempted by ERISA, and alternatively on the grounds that Section 4224 provides no express or implied private right of action. Although not preempted by ERISA, there is no private right of action under Section 4224, and accordingly, plaintiff's

state law claim must be dismissed.

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2. [**12] ***Implied Private Right of Action***

However, this determination does not end the inquiry on this motion. Defendants have also argued that plaintiff's state law claim must be dismissed because there is no private right of action under Section 4224. This appears to be a novel question under New York law.

In support of their argument against finding a private right of action under Section 4224, defendants rely upon several New York cases, involving other sections of the Insurance Law, which hold that there is no private right of action under the sections at issue in those cases. In opposition, plaintiff cites several state and federal cases which involved claims brought under Section 4224. The question of the existence of a private right of action under Section 4224 does not appear to have been raised in any of the cases cited by either side.

In the absence of any controlling authority, New York courts apply a three-part inquiry to determine whether or not a private right of action should be implied where the statute at issue is silent as to the existence of such a right. This test is whether (1) the plaintiff is one of the class for whose particular benefit the statute was enacted; [**13] (2) recognition of a private right of action would promote the legislative purpose; and (3) creation of such a right would be consistent with the legislative scheme. *Uhr v. East Greenbush Central Sch. Dist.*, 94 N.Y.2d 32, 38, 698 N.Y.S.2d 609, 720 N.E.2d 886 (1999).

In the instant case, it is clear that Sparkes is not a member of a class for whose *particular benefit* the statute was enacted. Section 4224 applies to discrimination in the terms and conditions of insurance plans generally, and not merely to discrimination against any particular class of individuals. *See Dornberger v. Metropolitan Life Ins. Co.*, 961 F. Supp. 506, 547-48 (S.D.N.Y. 1997) (Section 4224's prohibitions on discrimination not limited to "small, insular minority groups."). As such, it cannot be said that Section 4224 was enacted for the "particular benefit" of persons with disabilities, as the statute applies with equal force to all forms of discrimination - be it based on race, age, or gender. *Id.*

Moreover, while implying a private right of action would likely further the legislative

purpose of eliminating discrimination by insurers, such an implied right of action would not be consistent with the legislative [**14] scheme. Section 109 of the Insurance Law establishes the procedures for enforcement of various provisions of the Insurance Law by the Superintendent of Insurance. It does not provide for a private right of [*188] action. *Buccino v. Continental Assur. Co.*, 578 F. Supp. 1518, 1526 (S.D.N.Y. 1983). Where the legislature intended that a particular provision of the Insurance Law be enforced through a private right of action, it expressly so provided in the terms of the statute. *See, e.g.*, Insurance Law §§ 3420, 4226. Accordingly, because implying a private right of action would be inconsistent with two of the three prongs of the test set forth by the New York Court of Appeals in *Uhr*, no such right will be implied in this case. Plaintiff's claim under Section 4224 must be dismissed.

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IV. *CONCLUSION*

After careful consideration of the objections and submissions of the parties, the relevant parts of the record, and the applicable law, it is hereby

ORDERED that

1. Plaintiff's motion for partial summary judgment is DENIED; and

2. Defendants' motion for summary judgment is [**18] GRANTED in part and DENIED in part as follows:

a. Defendants' motion for summary judgment is DENIED as to plaintiff's first and second causes of action under ERISA;

b. Defendants' motion for summary judgment is GRANTED as to plaintiff's third cause of action under New York Insurance Law § 4224; and

3. Plaintiff's third cause of action is DISMISSED.

IT IS SO ORDERED.

David N. Hurd

United States District Judge

Dated: January 24, 2001

Utica, New York.