RENEE C. PEREZ, Plaintiff, vs. COZEN & O'CONNOR GROUP LONG TERM DISABILITY COVERAGE, an employee welfare benefit plan under ERISA, Defendant.

CASE NO. 07cv0837 DMS (AJB)

UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF CALIFORNIA

2008 U.S. Dist. LEXIS 109878

August 19, 2008, Decided
August 19, 2008, Filed

COUNSEL: [*1] For Renee C Perez, Plaintiff: Thomas M Monson, LEAD ATTORNEY, Susan Lee Horner, Miller Monson Peshel Polacek and Hoshaw, San Diego, CA.

For Cozen & O'Connor Group Long Term Disability Coverage, an employee welfare benefit plan under ERISA, Defendant: Ammon Louis Dorny, Sherida A Stroble, Wilson Elser Moskowitz Edelman and Dicker, Los Angeles, CA.

JUDGES: HON. DANA M. SABRAW, United States District Judge.

OPINION BY: DANA M. SABRAW

OPINION

ORDER GRANTING PLAINTIFF'S MOTION FOR RECONSIDERATION

[Docket No. 32]

This case comes before the Court on Plaintiff's motion for reconsideration of this Court's order denying Plaintiff's motion for prejudgment interest. Defendant has filed an opposition to the motion, and Plaintiff has filed a reply.

"Reconsideration is appropriate if the district court (1) is presented with newly discovered evidence, (2) committed clear error or the initial decision was manifestly unjust, or (3) if there is an intervening change in controlling law." *School Dist. No. 1J, Multnomah County, Oregon v. AC&S, Inc., 5 F.3d 1255, 1263 (9th Cir. 1993)*. Here, Plaintiff asserts the Court committed a clear error in denying Plaintiff's request for interest. Plaintiff specifically challenges the Court's finding [*2] that Defendant's payment of back benefits was the result of a negotiated settlement as opposed to a voluntary act on Defendant's behalf. Because the Court relied on this erroneous factual assumption, Plaintiff argues reconsideration is appropriate, and the Court should award her interest on the amount of back benefits she received. Defendant contends Plaintiff's motion is technically deficient, the Court did not commit clear error, and even if reconsideration is appropriate, the Court should not award Plaintiff interest.

Plaintiff is correct that the basis for the Court's refusal to award interest was its impression that those benefits were paid pursuant to a negotiated settlement agreement. As it now appears, that impression was wrong. There is no dispute that Defendant voluntarily paid those benefits on its own accord, not as part of a settlement with Plaintiff. Although this mistaken impression does not establish clear error, the Court agrees with Plaintiff that reconsideration is appropriate.

The parties acknowledge that the decision to award interest on the recovery of ERISA benefits is discretionary. *Blankenship v. Liberty Life Assurance Co. of Boston, 486 F.3d 620, 627-28 (9th Cir. 2007)*. [*3] The exercise of that discretion is to be guided by fairness and balancing the equities. *Shaw v. Int'l Ass'n of Machinists and Aerospace Workers Pension Plan, 750 F.2d 1458, 1465 (9th Cir. 1985)* (quoting *Wessel v. Buhler, 437 F.2d 279, 284 (9th Cir. 1971))*.

Here, the equities weigh in favor of awarding Plaintiff interest. Defendant withheld payment of $ 129,171.87 in benefits for over three years. This is not an insubstantial amount of money, especially for a parent who is unable to otherwise earn a living due to a disability. Under these circumstances, an award of interest is necessary to make Plaintiff whole. *See Peterson v. Federal Express Corp. Long Term Disability Plan, 525 F.Supp.2d 1125, 1130 (D. Ariz. 2007)* (awarding interest where damages were in liquidated sum, plaintiff would not be made whole absent an award of interest, and defendant could have avoided paying interest by paying the claim in a timely fashion).

The next issue concerns the appropriate interest rate. "Generally, 'the interest rate prescribed for post-judgment interest under *28 U.S.C. § 1961* is appropriate for fixing the rate of pre-judgment interest unless the trial judge finds, on substantial evidence, that [*4] the equities of that particular case require a different rate.'" *Blankenship, 486 F.3d at 628* (quoting *Grosz-Salomon v. Paul Revere Life Ins. Co., 237 F.3d 1154, 1164 (9th Cir. 2001))*. In this case, Plaintiff states the average applicable rate pursuant to *section 1961* is 4.22 percent. (Mem. of P. & A. in Supp. of Mot. for Interest at 4.) She claims this is insufficient, however, to cover the losses she incurred while Defendant withheld her benefits. Instead, Plaintiff asks the Court to award her interest at the rate of Prudential's profits, 21%, or to apply *California Insurance Code § 10111.2(b)*, which provides for interest at 10% per year.

To support her request for a higher interest rate, Plaintiff cites the home equity loan she was forced to obtain, which carried a variable interest rate between 7 and 8.25 percent. (*See* Decl. of Renee C. Perez in Supp. of Mot. for Interest.) In light of this evidence, the Court finds that application of the federal statutory interest rate would not fulfill the purpose of awarding interest, which is to make the plaintiff whole. *See Hawkins-Dean v. Metropolitan Life Ins. Co., 514 F.Supp.2d 1197, 1200 (C.D. Cal. 2007)* (citing *Dishman v. UNUM Life Ins. Co. of America, 269 F.3d 974, 988 (9th Cir. 2001))* [*5] (stating interest "is an element of compensation, not a penalty, and is primarily concerned with making an aggrieved party whole.") Imposition of the 21% interest rate, however, would result in a windfall to Plaintiff, which also runs afoul of the purpose of an interest award. *See Dishman, 269 F.3d at 988* ("Prejudgment interest is an element of compensation, not a penalty.") This leaves the 10% interest rate provided by the California Insurance Code. Although this rate may not correlate exactly with the rate on Plaintiff's home equity loan, it is the nearest to it, and it will ensure Plaintiff is fully compensated. Accordingly, the Court finds Plaintiff is entitled to interest on the amount of withheld benefits at the rate set out in *California Insurance Code section 10111.2(b). See Blankenship, 486 F.3d at 627-28* (affirming deviation from standard rate where plaintiff had to replace missing money with other funds).

The only remaining issue is whether Plaintiff's counsel should be awarded fees associated with the motion for interest and the present motion for reconsideration. Ms. Horner claimed she spent 4.7 hours preparing the original motion, (*see* Mot. for Interest at 6), and the [*6] records show she spent an additional two hours preparing the reply. (*See* Decl. of Thomas M. Monson in Reply to Def.'s Opp'n to Mot. for Fees and Costs, Ex. A.) The Court finds this time was reasonable, and accordingly, awards counsel fees in the amount of $ 2,680. The Court declines to award any fees associated with the present motion for reconsideration.

IT IS SO ORDERED.

DATED: August 19, 2008

/s/ Dana M. Sabraw

HON. DANA M. SABRAW

United States District Judge