IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TENNESSEE
AT WINCHESTER

PHYLLIS MYERS,	)	
Plaintiff	)	
v.	)	No. 4:03-cv-60
THE BRIDGESTONE/FIRESTONE LONG-TERM DISABILITY BENEFITS PLAN and BRIDGESTONE/ FIRESTONE AMERICAS HOLDING, INC., a subsidiary of BRIDGESTONE CORPORATION,	)	
Defendants	)	

MEMORANDUM OPINION

This is an action under the Employee Retirement Income Security Act of 1974 (ERISA) for recovery of long-term disability benefits pursuant to 29 U.S.C. § 1132(A)(1)(B). Plaintiff also claims breach of fiduciary duties pursuant to 29 U.S.C. § 1104(a), entitlement to penalties under 29 U.S.C. § 1132(c)(1) and attorneys' fees and costs under 29 U.S.C. § 1132(G)(1). Currently pending are cross motions for judgment on the administrative record [Court Files #28; #30]. For the reasons that follow, judgment will be entered in favor of the plaintiff on her claim for benefits under § 1132(A)(1)(B). Plaintiff's claims for breach of fiduciary duties and for statutory penalties will be

dismissed. Plaintiff's request for attorneys' fees and costs will be granted in part and denied in part.

I.

Factual Background

Plaintiff Phyllis Myers was previously employed as a Curing Technician by Bridgestone Corporation. She was employed at Bridgestone in early 1999 when she began experiencing frequent bouts of bloody diarrhea and abdominal pain. The symptoms were associated with cramping, nausea, vomiting, abdominal distention, and fistulas. A colonoscopy and biopsy performed on June 15, 1999, indicated active inflammatory infiltrate, possibly of infectious etiology. Ms. Myers' gastric condition was unresponsive to all treatments except Prednisone, which served to temporarily control her gastric symptoms, but did not halt the progression of the disease. A repeat colonoscopy and biopsy performed on February 15, 2000, confirmed that the disease process was still active.

On February 16, 2000, Ms. Myers began leave under the Family Medical Leave Act and was approved for FMLA/General Medical Leave with short-term disability benefits due to her ulcerative colitis and frequent diarrhea. In addition, her treating physician, Dr. William D. Daniel, from February through July 2000 completed "Personal

Doctor's Certificate of Disability" reports on a monthly basis. Those reports indicated that due to the frequency of plaintiff's diarrhea, she was unable to work, that she needed to be near a restroom to accommodate her explosive diarrhea, and that she would need a low stress position if she were to return to work, as stress aggravated her illness. He concluded that Ms. Myers' condition rendered her disabled from gainful employment, was likely to remain constant, and that remission of her illness was the only circumstance that might allow her to return to work.

In July 2000, plaintiff made a claim for benefits under the group disability plan provided to the employees of the defendant. She claimed that she was prevented from working due to ulcerative colitis and met the definition of disability on account of chronic abdominal pain and frequent diarrhea. In support of her claim, she submitted a Personal Doctor's Certificate of Disability provided by Dr. Daniel and additional medical records from Dr. Daniel and Dr. Harrison J. Shull, Jr., of Vanderbilt University Medical Center.

Based upon Bridgestone's company policy, Ms. Myers was examined by a company medical officer, Brian Chastain, M.D., on August 3, 2000. Dr. Chastain confirmed Dr. Daniel's findings that Ms. Myers was disabled by her ulcerative colitis. He further found that her symptoms and the restrictions arising therefrom were "adequate and

realistic" and "valid" and that she was unable to perform her essential job duties and would likely remain so, unless her illness went into remission.

On August 8, 2000, the Pension Administrator, Sandy Fugitt, sent an internal memorandum to Dr. Ken Bulen of Bridgestone's Medical Department, asking for a review of plaintiff's file and a determination regarding plaintiff's ability to perform her work. In response, in a handwritten note, Dr. Bulen noted the following: "8/19/00 This employee cannot do her job. Kenneth A. Bulen." On the basis of that medical review, on September 29, 2000, Bridgestone notified the plaintiff, by letter from Ms. Fugitt, that her claim for disability benefits was approved with payments effective September 1, 2000.

On March 6, 2001, Ms. Fugitt sent a letter to the plaintiff requesting updated proof of continuing disability. Dr. Daniel completed another Personal Doctor's Certificate of Disability form on March 13, 2001, with updated medical records, reiterating the findings from his previous assessment and again opining that Ms. Myers was incapable of performing even sedentary work. Her file was again submitted by Ms. Fugitt to the Bridgestone Medical Department for review and once again Dr. Bulen's response was a handwritten note: "4/2/01 Ms. Myers remains eligible for LTD."

As a result of progressively worsening symptoms of ischemic colitis and Crohn's Disease that were unresponsive to treatment, Ms. Myers underwent a total

proctocolectomy and ileostomy at Vanderbilt University Hospital on June 28, 2001. Pathology reports of the excised bowel confirmed that it was severely diseased.

On March 20, 2002, Ms. Fugitt again submitted a request to the plaintiff for updated evidence of her disability, citing language from the disability plan regarding a change in the definition of "total disability" following 24 months of benefits and indicating that a Independent Medical Examination might be ordered. Crohn's Disease assessment forms completed by Dr. Daniel on October 25, 2001, and Dr. Shull on November 26, 2001, were provided to Ms. Fugitt, along with updated medical records and another Personal Doctor's Certificate of Disability completed by Dr. Daniel on April 3, 2002. Both Dr. Daniel and Dr. Shull provided a detailed analysis of plaintiff's restrictions and limitations arising from her condition and opined that she would be incapable of performing even sedentary activity on a sustained basis due to her inability to lift more than 10 pounds and her need to avoid stress.

Another letter was submitted by Ms. Fugitt to the plaintiff dated May 14, 2002, requesting all available medical records and citing the plan administrator's right to order an examination of the covered employee. Additional medical records were sent and Ms. Myers' file at Bridgestone was once again sent for an "internal" medical review by Dr. Gregory Moten of Bridgestone's Medical Department. An anonymous written note at the bottom of the memorandum stated, "We need to know if she has SSDI [sic] which

is required to get benefits beyond two yrs. [sic]. Hold for award letter." On June 24, 2002, Ms. Fugitt notified Ms. Myers that a copy of the notice of award of Social Security benefits was necessary for Bridgestone benefits to continue beyond two years. Plaintiff's then attorney on the Social Security disability claim sent a copy of a partially-favorable decision via facsimile to Ms. Fugitt on July 17, 2002.

On August 6, 2002, Ms. Fugitt once against submitted plaintiff's claim for review to Dr. Jan Hawkins of the Bridgestone Medical Department via internal memorandum. An anonymous handwritten note was placed on the memorandum stating, "Dr. Moten does not feel Ms. Myers meets the requirements for continued benefits. No physical dis [sic]. Mental?" This was followed by a second typed memorandum indicating that the Disability Committee had denied Ms. Myers' claim at the two-year review. This memorandum was initialed by Ms. Fugitt and three other unidentified individuals. On August 9, 2002, Ms. Fugitt notified plaintiff on behalf of Bridgestone that the Disability Committee had determined that her Crohn's Disease no longer met the definition of disability. On September 5, 2002, plaintiff appealed Bridgestone's termination of her benefits and on October 15, 2002, Bridgestone advised her that the Pension Board had determined that termination was appropriate.

At the time of the adverse determination, no review of plaintiff's claim had ever been performed by a qualified gastroenterologist, no attempt was made to clarify

plaintiff's restrictions in light of the reports of her treating physicians, and Bridgestone did not order an independent medical examination. Other than two handwritten conclusory notes attributed to Dr. Moten, there is no medical evidence in the record indicating how plaintiff can return to even sedentary work given her chronic Crohn's Disease. Moreover, there is no evidence to dispute the opinions of plaintiff's treating physicians that her Crohn's Disease is chronic or that it has gone into remission for any longer than a temporary basis.

II.

The Administrative Review of Plaintiff's Claim for Long-Term Disability Benefits

In July 2000, plaintiff applied for and was awarded benefits under the Bridgestone/Firestone, Inc. Long Term Disability Benefits Plan for Salaried Employees, an ERISA-qualified plan for employees who became "disabled." The plan vested Bridgestone's "pension board" with "the sole and absolute discretion to interpret where necessary the provisions of the Plan." There are two different eligibility standards for employees seeking benefits under the Plan. To be "disabled," and thus eligible to receive benefits during the Initial Duration (24 months), an employee "[d]ue to sickness (including mental or emotional disease or disorder) ... must be completely unable to perform any and every duty pertaining to his occupation with the Company." In order to qualify for long-term benefits beyond two years, the employee must prove that he or she is completely

"unable to perform the essential duties of any occupation for which [he or she] is or may become reasonably suited by education, training or experience and, ... has been approved for Social Security disability benefits on or before the end of the initial duration."

Under the terms of the Plan, the Disability Committee of the Pension Board initially determines eligibility for long-term benefits. Once a claimant submits all information in support of his or her claim, Bridgestone sends an administrative record to the medical advisor for the Disability Committee, who reviews the file and makes an oral presentation of his or her finding at the Disability Committee meeting. Based upon the information in the administrative record and the recommendation by the medical advisor, the Disability Committee determines whether an employee is eligible for long-term disability benefits. If the Disability Committee terminates or denies an employee's long-term disability benefits, the employee may appeal the Disability Committee's decision to the Pension Board, which makes the final determination. Before the Pension Board makes it decision, the employee may submit any additional evidence he or she chooses in support of the claim. Once a claimant's time period to submit additional information has passed, the Pension Board and its medical advisor review the administrative record and determine eligibility. Defendant contends that although the verbal reports by the medical advisors are not reduced to writing and included in the administrative record, the reasons for denying a claim are set forth in writing to the claimant.

In this case, on September 7, 2000, plaintiff was approved for long-term disability benefits for the Initial Duration. On March 20, 2002, Bridgestone sent plaintiff a letter requesting medical records in preparation for her two-year review. Plaintiff submitted the records from her treating physicians. Dr. Gregory Moten, the Disability Committee's medical advisor, reviewed plaintiff's medical records. At its meeting to determine whether plaintiff met the definition of "disabled" after the Initial Duration, the Disability Committee reviewed the documentation provided to it, considered Dr. Moten's oral discussion of the medical proof, and determined that plaintiff was no longer disabled. No written record of the contents of Dr. Moten's oral presentation to the Committee was made. The Disability Committee notified the plaintiff in a conclusory fashion that she was not "disabled" because of her Crohn's Disease because it did not preclude her from working, nor was she "disabled" because of her mental impairments because she was not confined in an institution for the treatment of mental or emotional disorders. The denial letter did notify plaintiff of her appeal rights and her opportunity to submit additional documents.

Plaintiff appealed to the Pension Board and requested "all documents, records, or other information relative to [her] claim" and the identity of "any medical or vocational experts who were consulted in connection with [the Disability Committee's] decision." Bridgestone provided a copy of the Administrative Record to plaintiff's

counsel on September 17, 2002. Plaintiff was informed that Dr. Moten had reviewed her file in connection with the Disability Committee's decision.

Based upon its review of the Administrative Record, which included additional information submitted by plaintiff and her counsel, the Pension Board denied plaintiff's appeal and affirmed the decision of the Disability Committee in October 2002.

III.

Analysis

When an ERISA plan vests a plan administrator with discretionary authority to determine benefit eligibility questions, this court will review a decision to deny benefits under the "highly deferential arbitrary and capricious standard of review." *Bagsby v. Central States*, 162 F.3d 424, 428 (6th Cir. 1998). In this case, the LTD Plan vests the Pension Board with the "sole and absolute discretion" to interpret the Plan provisions. Accordingly, the application of the arbitrary and capricious standard of review is appropriate.

Under the arbitrary and capricious standard, "an administrator's decisions on eligibility for benefits are not arbitrary and capricious if they are rational in light of the Plan's provisions." *Elliott v. Lockheed Martin Energy Systems*, 61 F. Supp. 745, 751 (E.D.

Tenn. 1999). When it is possible to offer a reasonable explanation, based on the evidence, for a particular outcome, that outcome is not arbitrary or capricious. *Davis v. Kentucky Finance Company's Retirement Plan*, 887 F.2d 689, 693 (6th Cir. 1989). However, the plan administrator "may not arbitrarily refuse to credit a claimant's reliable evidence, including the opinions of a treating physician." *Black & Decker v. Nord*, 538 U.S. 822, 834 (2003). At a minimum, the plan administrator must perform "some review of the quality and quantity of the medical evidence and the opinions on both sides of the issues." *McDonald v. Western-Southern Life Insurance Company*, 347 F.3d 161, 172 (6th Cir. 2003).

In this case, the court finds that the defendants' decision to terminate plaintiff's disability benefits was arbitrary and capricious. Plaintiff submitted extensive medical records and opinions from her treating physicians indicating that she was disabled from all employment because of her Crohn's Disease. There is no written evidence indicating that her condition is not chronic or that there is any employment that plaintiff could perform with chronic Crohn's Disease and the resulting incontinence.

Dr. Moten's report to the Disability Committee is extremely suspect. He has never treated or examined the plaintiff, nor was she ever examined by an independent medical examiner. Dr. Moten is not a gastroenterologist. Most importantly, there is no written record of what Dr. Moten said to the Disability Committee, and it was apparently

Dr. Moten's opinion upon which the Committee based entirely its determination. To conclude that Dr. Moten's oral presentation constitutes substantial evidence to support the defendants' determination would make that determination essentially unreviewable. Because defendants' determination that plaintiff is no longer disabled is without any written support, the court finds that that determination is arbitrary and capricious.

In light of the foregoing, plaintiff is entitled to an award of past due benefits. The court notes that the Plan provides that the defendant may set off any Social Security benefits which a claimant receives, and the plaintiff has received Social Security benefits in this case. Accordingly, defendant is entitled to set off the amount of Social Security benefits plaintiff has received against the past due benefits.

IV.

Plaintiff's Breach of Fiduciary Duty Claim

Count two of plaintiff's complaint seeks damages for alleged breach of defendant's fiduciary duties to plaintiff. The court finds no proof that defendant breached any of its fiduciary duties.

V.

Defendant's Failure to Provide Documents

Count three of plaintiff's complaint alleges that Bridgestone violated 29 U.S.C. § 1132(C)(1) by failing to provide necessary documents to the plaintiff.

Under 29 U.S.C. § 1132(C), ERISA imposes a penalty of $110 per day on an administrator that "fails or refuses to comply with a request for any information which such administrator is required by this subchapter to furnish to a participant or beneficiary." On September 17, 2002, Bridgestone provided a copy of the administrative record to plaintiff's prior counsel. Although it contained no written record of Dr. Moten's oral report to the Committee, it did inform plaintiff that Dr. Moten had reviewed her file in connection with the Committee's decision. There was simply no written record of his report to supply. The court finds that the plaintiff has failed to demonstrate her entitlement to any statutory penalties under § 1132(C).

VI.

Attorney Fees

Count four of the complaint seeks an award of attorneys' fees and costs pursuant to 29 U.S.C. § 1132(G)(1). Under 29 U.S.C. § 1132(G), the court in its discretion may allow reasonable attorneys' fees and costs of the action to either party.

Given the complete lack of written medical opinion to support the defendants' decision to terminate plaintiff's benefits, I find that an award of a reasonable attorney's fee and costs in favor of the plaintiff is appropriate. However, that award will not include amounts expended in pursuing claims upon which the plaintiff was unsuccessful. For example, it will not include amounts expended in taking depositions and other discovery related to plaintiff's breach of fiduciary claim.

VII.

Conclusion

Accordingly, judgment will be entered in favor of the plaintiff in the amount of her past due benefits less Social Security benefits received. Further, reasonable attorneys' fees and costs will be awarded in favor of the plaintiff in an amount reflecting the issues upon which plaintiff was successful. The parties will be afforded thirty (30) days within which to reach an agreement upon the amount of these awards. If they are unable to reach such an agreement, the parties should notify the court and a hearing will be scheduled.

Order accordingly.

s/ James H. Jarvis
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TENNESSEE
WINCHESTER DIVISION

PHYLLIS MYERS,	)	
	)	
Plaintiff,	)	
	)	
v.	)	No. 03-CV-60
	)	
THE BRIDGESTONE/FIRESTONE LONG-TERM DISABILITY BENEFITS PLAN AND BRIDGESTONE/ FIRESTONE AMERICAS HOLDING, INC., A SUBSIDIARY OF BRIDGESTONE CORPORATION,	)	Judge James H. Jarvis
	)	
Defendants.	)	

AGREED ORDER ON JUDGMENT AMOUNT

The parties, by and through counsel, have agreed upon amounts, as set out below and pursuant to the Court's Order dated April 1, 2005 (Docket Entry No. 52) and consent to the issuance of a final judgment by this Court including the amount and terms set forth herein.

Plaintiff shall receive $30,642.90 in past long term disability ("LTD") benefits for the period of September 1, 2000, to March 1, 2005, which includes any applicable offsets including Social Security Disability Insurance ("SSDI") benefits and short term disability ("A&S") benefits received during the same period plus August 2000; $6,077.56 in prejudgment interest; $25.42 in post judgment interest; and $80,000.00 in attorneys' fees and expenses. Defendants shall pay the above amounts to

Plaintiff no later than May 31, 2005, or post judgment interest shall continue to accrue.

Dated: April 29, 2005

s/ James H. Jarvis

UNITED STATES DISTRICT JUDGE

AGREED TO AND APPROVED FOR ENTRY:

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FOR THE EASTERN DISTRICT OF TENNESSEE
AT WINCHESTER

PHYLLIS MYERS,	)	
Plaintiff	)	
v.	)	No. 4:03-cv-60
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Defendants	)	

MEMORANDUM AND ORDER

This matter is before the court on plaintiff's emergency motion requesting an order of contempt, finding of willful disobedience, and imposition of sanctions [Court File #62] based upon the failure of the defendant to continue to pay plaintiff's on-going disability benefits for 13 months between July 2005 and August 2006. Following the filing of this motion, defendants submitted the allegedly due benefits to the plaintiff.

Upon reviewing the record and hearing the arguments of counsel, the court finds that plaintiff has failed to demonstrate that a finding of contempt is in order and that defendants' conduct did not violate either this court's order and memorandum opinion of March 1, 2005, or the agreed order on judgment entered on May 12, 2005. Quite simply, those orders dealt only with plaintiff's entitlement to benefits for an earlier period.

However, the court finds that defendants violated the provision of the Plan beginning in September 2005 and continuing until August 2006, or a period of 11 months, by discontinuing plaintiff's benefits under the Plan. I find that plaintiff is entitled to an award of damages and attorney fees for that violation of the Plan. The court fixes plaintiff's damages at $1,000 per month, or $11,000, and $500 per month in attorney fees, or $5,500.

With respect to the continuation of benefits under the Plan, the parties are DIRECTED as follows:

(1) The correct amount of plaintiff's monthly benefit under the Plan is fixed at $1,444.90. This amount reflects inclusion of a set-off for the plaintiff's monthly Social Security benefit of $803.90.

(2) Plaintiff will make all appropriate submissions of updated medical reports as required quarterly under the Plan.

(3) Judgment will be entered in favor of the plaintiff in the amount of Eleven Thousand Dollars ($11,000.00) in compensatory damages and Five Thousand, Five Hundred Dollars ($5,500.00) in attorney fees.

Defendants will be afforded ten (10) days from the date of the entry of this order to submit any objection to the entry of judgment. Plaintiff be afforded ten (10) days thereafter to respond.

ENTER:

s/ James H. Jarvis
UNITED STATES DISTRICT JUDGE