

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF KENTUCKY  
PIKEVILLE

CIVIL ACTION NO. 85-341

RUBEN HALL, PLAINTIFF,

VS: REPORT AND RECOMMENDATION

UNITED MINE WORKERS OF  
AMERICA HEALTH AND RETIREMENT  
FUNDS, ET AL., DEFENDANTS.

INTRODUCTION

The above-styled action was one brought under pertinent labor laws, seeking judicial review of the administrative denial of the plaintiff's application for a disability pension. The plaintiff was successful in his motion for summary judgment and now seeks attorney fees, pursuant to 29 U.S.C. Section 1132(g).

DISCUSSION

The detailed recitation of facts contained in the Report and Recommendation entered June 13, 1986 is hereby incorporated by reference. It suffices, for the purpose of this discussion, to say that the challenged Trust decision involved the following provision:

Any Participant who (a) has less than 10 years of signatory service prior to retirement and (b) becomes totally disabled as a result of a mine accident occurring on or after June 7, 1981, shall, upon retirement (hereinafter "Minimum Disability Retirement") be eligible for a pension while so disabled. A Participant shall be considered to be totally disabled only if by reason of such accident such Participant is subsequently determined to be eligible for Social Security Disability Insurance Benefits (DIB) under Title II of the Social Security Act or its successor.

United Mine Workers of America, 1974 Pension Plan (1981 edition), Article II, D.

The plaintiff had presented to the Trust a favorable, lower level decision of the

Social Security Administration--necessarily not involving the usual full-fledged administrative law judge decision--which cited a "disability onset date" of almost three years subsequent to the "disabling" mine accident. Further, the agency opinion made it clear that the primary basis of disability was not considered to be the physical injuries received during the accident.

The undersigned found that the Trustees' denial decision was improper, after careful analysis of the record and applicable law, although worthy of extensive discussion.

#### DISCUSSION

The section of the Employee Retirement Income Security Act (ERISA) governing the award of attorneys' fees does not provide for the automatic award of fees, but rather vests the district court with the discretion to award fees. McKnight v. Southern Life and Health Insurance Company, 758 F.2d 1566, 1571-1572 (11th Cir. 1985), citing Ironworkers Local No. 272 v. Bowen, 624 F.2d 1255 (5th Cir. 1980).

Both parties agree that the Sixth Circuit Court of Appeals' standards for awarding fees under 29 U.S.C. Sections 1132(g) are set out in Secretary of Department of Labor v. King, 775 F.2d 666 (6th Cir. 1986). According to that case, the factors to be examined by the district court in its decision are: (1) the degree of the opposing party's culpability or bad faith; (2) the opposing party's ability to satisfy an award of fees; (3) the deterrent effect of an award on other persons under similar circumstances; (4) whether the party requesting fees sought to confer a common benefit on all participants and beneficiaries of an ERISA plan or resolve significant legal questions regarding ERISA; and (5) the relative merits of the parties' positions. Id. at 669-670. None of these factors are necessarily

decisive, and some may not be apropos in a given case, but together they are the nuclei of concerns that a court should address in applying the statutory section. Iron Workers, 624 F.2d at 1266.

The plaintiff apparently concedes that bad faith and the "common benefit" factors are not present in this action. Rather, he contends that, by virtue of the other three factors, he is entitled to fees. Reviewing these remaining factors, however, the undersigned can not agree.

Although the plaintiff presented only the bare allegation that the defendant could pay the fees here involved, the Trustees essentially concede that the trust is financially able to satisfy the award. Thus, the second factor is present in the case, although--as the Trustees point out--the Trust (which holds monies to pay other innocent beneficiaries) will eventually have to bear the cost of the award, and the plaintiff has been represented by Legal Services counsel.

The deterrent factor is present in this case only in so far as it is present in most cases involving pension trust funds. Again, the undersigned feels that this is not an example of any type of egregious conduct by the Trustees, and the fact situation was so peculiar that it is unlikely to arise again. There is no evidence that an award of fees in the present case will deter further improper decisions by the Trustees.

As to the relative merits of the parties, it must be again said that the Trustees were presented with a rather unique fact situation and their decision was supported by at least some evidence of record.

#### RECOMMENDATION

Based on the foregoing discussion, it is hereby RECOMMENDED that the motion for fees be denied.

Objections to this Report and Recommendation must be filed within ten days of the date of same or further appeal is waived. Thomas v. Arn, 728 F.2d 813

(6th Cir. 1984), aff'd U.S. \_\_\_\_\_ (1984), Fed. R. Civ. P. 72.

This the \_\_\_\_\_ day of November, 1986.

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JOSEPH M. HOOD,  
UNITED STATES MAGISTRATE

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ORDER

UNITED MINE WORKERS OF  
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Currently pending is the motion for attorney fees. Accordingly,

IT IS HEREBY ORDERED that arguments on the aforesaid motion be heard at the hour of \_\_\_\_\_ on the \_\_\_\_\_ day of \_\_\_\_\_, 198\_\_ in the Courtroom of the United States Courthouse in \_\_\_\_\_, Kentucky.

This the \_\_\_\_\_ day of November, 1986.

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JOSEPH M. HOOD,  
UNITED STATES MAGISTRATE