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DETERMINATION IN TERMS OF SECTION 30M OF THE PENSION FUNDS ACT 24 of 1956 (“the Act”): B (“the complainant”) v Corporate Selection Retirement Fund (“the first respondent”) and Bluff National Park Golf Club (“the second respondent”) and Liberty Group Limited (“the insurer”)

1. Introduction

- 1.1 The complaint concerns the first respondent’s failure to pay the complainant a disability benefit.
- 1.2 The complaint was received by this office on 24 February 2006. A letter acknowledging receipt thereof was sent to the complainant on 8 March 2006. On the same date a letter was dispatched to the first respondent giving it until 29 March 2006 to file its response to the complaint. Another letter was dispatched to the second respondent on 20 June 2007 giving it until 5 July 2007 to file its response to the complaint. A response was received from the first respondent on 30 March 2006 and after requesting an extension, from the second respondent on 30 July 2007. These responses were forwarded to the complainant on 3 October 2006 and 1 August 2007 respectively. The complainant however omitted to reply, but was requested for further information in a telephonic discussion with this office on 4 September 2007. Further information was received from the first respondent on 11 October 2007.

M Mohlala (Adjudicator), C Nkuhlu (Snr Assistant Adjudicator), Z Camroodien (Snr Assistant Adjudicator), F Mtayi (Snr Assistant Adjudicator), K MacKenzie (Snr Assistant Adjudicator), R Maharaj (Snr Assistant Adjudicator), M Ndaba (Snr Assistant Adjudicator), M Daki (Snr Assistant Adjudicator), E de la Rey (Snr Assistant Adjudicator), N van Coller (Assistant Adjudicator), L Mbalo (Assistant Adjudicator), S Gcelu (Assistant Adjudicator), M Ramabulana (Assistant Adjudicator), N Sihlali (Assistant Adjudicator), S Mothupi (Assistant Adjudicator), P Mphephu (Assistant Adjudicator), C Seabela (Assistant Adjudicator), M Qhali (Assistant Adjudicator),

Office Manager: L Manuel, Senior Accountant: F Mantsho

- 1.3 After reviewing the written submissions before me, it is considered unnecessary to hold a hearing in this matter. My determination and reasons therefor appear below.

2. Complaint

- 2.1 The complainant states that he was employed by the second respondent from 1985 until 1 July 2003. He left the employer as a result of "total and permanent disablement". He is dissatisfied that he received his fund share amounting to R15 400.24 only and asserts that he should have received the disability benefit of R57 503.10 as indicated in his benefit statements.
- 2.2 The complainant states that while he was employed he was advised (he does not state by whom) that he had to undergo an HIV/AIDS test but he refused to do so.

3. The first respondent's response

- 3.1 The first respondent states that it received a notification of voluntary resignation and at no time did the complainant submit medical evidence in support of his claim for disability. Accordingly the complainant was entitled to his fund share, being the total of the employer's retirement funding contributions plus the members' contributions, plus interest. The net amount paid was R 14 743.33 after tax of R656.91 was deducted.
- 3.2 The first respondent further states that the insurance policy in terms of which the insured disability benefit is paid, requires notification of the cause of the disability within 30 days of the event giving rise to the disability. Clearly, it argues, this was not done, and it still does not know after more than three years what caused the disability. It would not be able to assess the existence of disability retrospectively to 2003.
- 3.3 On 2 October 2007 this office requested a further response from the first respondent after the complainant submitted copies of documents he alleges that he had submitted previously in support of his disability claim. The first respondent confirms that in fact the documents now received were duplicates of those received previously for the assessment in 2004 and again did not support a claim for permanent incapacitation. It states that the additional medical evidence that it required and previously requested, but never received, included further medical reports and records, file notes, test results, x-ray reports, a job description questionnaire and the original copies of a number of other documents, including a continuous disability statement.

- 3.4 In response to the complainant's claim that he was disabled due to pulmonary T B, non-insulin dependent diabetes mellitus and arthritis, the first respondent contends that these impairments are treatable and controllable and do not necessarily prevent a person from following an occupation. It adds that the additional medical evidence that was requested to assess the degree of impairment and the treatment regime was not forthcoming. Further, the first respondent states that it is not possible for the assessor to determine the outcome of the claim based on the evidence submitted. It concludes that it believes that the claim was correctly dealt with in line with the rules of the fund and the policy documents.

4. The second respondent's response

- 4.1 The second respondent states that initially it submitted a disability claim on behalf of the complainant to the first respondent, but the latter requested further information and evidence to support the claim which the complainant failed to provide, regardless of several communications to him. The complainant subsequently withdrew from the first respondent after his resignation.
- 4.2 The second respondent states that it contributed on behalf of the complainant up to October 2004 but as the complainant did not attend work nor submit the information and documents required by the first respondent, it was decided to abandon the disability claim and the withdrawal was back-dated to June 2003.

5. Determination and reasons therefor

- 5.1 In terms of rule 8.1 if a member becomes ill or is injured as a result of which he is caused to be permanently absent from work, a disability benefit will be paid to him, subject to certain provisions set out in the relevant section. (The definition of disability is specified in the underlying insurance policy.)
- 5.2 In terms of the Special Rules, applicable to the second respondent, the disability benefit comprises an "investment portion" and an "insured portion". The "investment portion" is equal to the benefit payable to a member on withdrawal. The complainant received a withdrawal benefit from the fund albeit on the basis that he had resigned and not on the basis that he had become disabled.
- 5.3 The "insured portion" is defined in the Special Rules as an amount equal to twice Fund Salary. Had the complainant succeeded in a claim for disability, he would have received this "insured portion" (in addition to the

withdrawal benefit (“investment portion”) from Liberty Life, the insurer. In effect, the complainant is seeking payment of this insured portion.

- 5.4 According to the respondents the complainant did not respond to the request for the submission of additional medical evidence that the insurer required.
- 5.5 This office requested the complainant for his reply to the assertion that he failed to submit the said *additional* medical evidence. The complainant’s representative advised this office on 24 October 2007 that in all likelihood the complainant had not sought the additional medical evidence and that the matter may be determined on the documents submitted to date.
- 5.6 The question for determination is whether the trustees of the first respondent complied with their fiduciary duties by accepting the insurer’s repudiation of the complainant’s claim.
- 5.7 The evidence shows that despite numerous requests for additional medical evidence, the complainant failed to provide same. It was on the basis that the complainant failed to meet the insurer’s requirements of additional medical evidence that the insurer declined the claim. In terms of rule 12.2, the provision of any insured benefits is subject to the requirements imposed by the insurer. I am therefore satisfied that the trustees were not in any breach of their fiduciary duties in accepting the insurer’s repudiation accordingly.

6. Relief

- 6.1 The complaint is dismissed.

Dated at Cape Town on this the day of 2008.

Yours faithfully

Mamodupi Mohlala
Pension Funds Adjudicator