

IN THE TRIBUNAL OF THE PENSION FUNDS ADJUDICATOR

CASE NO.:PFA/WE/28/98/LS

In the complaint between:

RICHARD GOLIATH

Complainant

and

GOLDEN ARROW DISABILITY BENEFIT FUND

Respondent

DETERMINATION IN TERMS OF SECTION 30M OF THE PENSION FUNDS ACT OF 1956

Introduction:

This is a complaint lodged with the Pension Funds Adjudicator in terms of section 30A(3) of the Pension Funds Act of 1956

No hearings were conducted and therefore in determining this matter I have relied on documentary evidence and the report by my investigator, Lisa Shrosbree.

The complainant was employed by Golden Arrow Bus Company (“the company”) as a diesel mechanic from 1983 and became a member of the Golden Arrow Disability Benefit Fund (“the fund”) on 1 April 1997.

The fund provides disability income benefits to members through insurance policies underwritten by Southern Life (Pty) Ltd. Rule A2.1.1 defines disability as follows:

A MEMBER shall be regarded as disabled if in the reasonable opinion of THE SOUTHERN, injury or illness has rendered him totally incapable of engaging in his own occupation.....

In terms of section A3.1.1, a disabled member who fulfils the requirements of disability as defined becomes entitled to received a disability income benefit in accordance with his salary and occupation on the date of disability.

On 23 April 1997, the complainant was involved in an accident at work. He accordingly

lodged a claim for disability with the fund which claim was received by Southern Life in August 1997.

However Southern Life rejected the claim in terms of rule A2.3.1 of the fund's rules which reads:

No risk benefit shall be paid as a result of a member's disablement if the member is disabled during the first twelve months of his membership and his disability, in the reasonable opinion of THE SOUTHERN based on objective medical evidence, is directly or indirectly attributable to an injury or illness in respect of which he sought medical advice, or about which he new or could reasonably been expected to have known, during the 6 month period preceding the commencement of his membership.

According to Southern Life, the complainant had been treated for his back pain in 1995 and therefore could reasonably be expected to have known about his condition during the six month period preceding the start of his membership with the fund. Therefore he fell within the ambit of the exclusion clause and was not entitled to received a disability.

Southern Life and Momentum Employee Benefits (Pty) Ltd subsequently merged and it would appear that the Momentum branch of the new company administered the fund's disability scheme.

On 18 November 1997, the complainant lodged a second claim with Momentum providing additional medical evidence. However the second claim was rejected on the same grounds as the first claim.

On 13 January 1998, the claimant received a telefax from the company requesting him to resume normal duties with the company and on 15 January 1998 he received an official notification that his application for disability benefits had been repudiated on the grounds that his condition fell within the exclusion clause of the policy.

The complainant thereafter lodged a complaint with the office of the Pension Funds Adjudicator on 18 March 1998 that his application for disability had been turned down unreasonably.

In the meantime, however, Momentum had decided to reassess the claim based on a further letter received from the complainant and called for additional medical evidence from the complainant's doctor. The result of further investigation was that the complainant's claim was admitted with payments backdated to 1 December 1997.

The disability benefit is payable every month for as long as, in the opinion of Southern Life, the complainant remains unable to perform his occupation as a diesel mechanic. In addition, in terms of the rules, the claim is reviewable in December 1999.

The complainant received his first payment and backpay in November 1998. Unable to continue with his occupation as a diesel mechanic which involves heavy manual labour and on the recommendation of the Momentum to pursue an alternative career, the complainant has recently engaged in course of study in computers.

Despite the complainant receiving his benefit, he lodged a further complaint on 13 July 1999. The complainant states that pending the admittance of his disability claim, he was unable to commence his studies and he thereby suffered what he terms a 'loss of opportunities'. He accordingly requests the fund to extend the period of payment to December 2000 in order that he may complete his computer studies before the benefit is terminated.

Momentum has refused to do so at this stage. It has also subsequently raised the point that the Golden Arrow Disability Benefit Fund is not a fund in terms of the Pension Funds Act of 1956 and accordingly this office has no jurisdiction over it.

The issue in this regard is whether the complaint relates to the administration of a *fund* or

interpretation and application of its rules. A disability benefit fund normally does not fall within the definition of a fund in terms of the Act. Accordingly, the complainant would have to show some substantive relationship between the rules of the pension fund of which he is a member and his entitlement to a benefit in terms of the rules of the benefit fund.

In any event, even if I were to find in favour of the complainant on jurisdiction, I do not think that the complainant would have been successful in his claim to have the period of payment of the disability benefit extended by a year.

It is more than evident that the complainant has received that to which he is entitled in terms of the rules.

Rule A3.1.5 reads:

The MEMBER'S right to the RISK BENEFIT and payment thereof shall commence on the first day of the second calendar month that follows the month in which the waiting period as specified in the schedule expires.....

The waiting period in terms of the rules is 6 months from the last day during which the member was at work attending to all his normal duties. In other words the right to payment of the benefit accrues 7 months after the date of disability. The complainant's injury occurred on 23 April 1997 and payments were backdated to 1 December 1997, seven months thereafter.

In terms of Rule A4.3.2, payment of the benefit is reviewable after 24 months. It reads:

Twenty four months after the payment of a MEMBER'S RISK BENEFIT has commenced, THE SOUTHERN shall also be entitled to assess whether or not the MEMBER is then capable of engaging in an alternative occupation. Should THE SOUTHERN at its sole discretion deem the MEMBER capable of engaging in an alternative occupation, whether or not the MEMBER is able to

obtain employment in an alternative occupation, the RISK BENEFIT shall be reduced and the formula in A4.1.1 shall apply.

Therefore in terms of the above rule, the complainant's disability benefit will be reconsidered on 1 December 1999. It would therefore be premature to seek to determine any additional liability prior to that date.

In addition Momentum advises that it has agreed to pay ex gratia for the complainant's computer course at a cost of R2 790.

I am therefore satisfied that the complainant has been properly paid in terms of the rules.

The complaint is accordingly dismissed.

DATED at CAPE TOWN this 15th day of JULY 1999.

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JOHN MURPHY
PENSION FUNDS ADJUDICATOR