



Alerts

Citing Plan Ambiguity, Tenth Circuit Rules Becoming Disabled After Receiving Notice of Termination Did Not Preclude Employee From LTD Benefits

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The LHD/ERISA Advisor

In *Carlile v. Reliance Standard Life Ins. Co.*, 988 F.3d 1217 (10th Cir. 2021), the Tenth Circuit found the term "active" full-time employee ambiguous and awarded disability benefits to an employee who became disabled after receiving notice of his termination but prior to his effective termination date.

David Carlile began working for Lighthouse Resources, Inc. (LRI) in 2012. As a benefit of his employment, he was a participant in LRI's long-term disability (LTD) Plan. The Plan provided LTD benefits for Eligible Classes of employees, which was defined to mean each "active, Full-time Employee, except any person employed on a temporary or seasonal basis." The Plan further provided, in relevant part, that benefits would terminate "the last day of the Policy month in which the Insured ceases to meet the Eligibility Requirements." Finally, the Plan defined "Actively at Work" and "Active Work" to mean "actually performing on a Full-time basis the material duties pertaining to his/her job in the place where and the manner in which the job is normally performed," which excluded time off as a "result of an Injury or Sickness," and defined "Full-time" to mean working a minimum of 30 hours during an employee's regular workweek.

On March 21, 2016, LRI gave Carlile notice that his employment would terminate effective June 20, 2016. During this 90-day notice period, LRI did not require Carlile to work, but he chose to come to the office at his convenience. LRI also paid Carlile his full wages and continued paying Carlile's Plan premiums during this period. On May 31, 2016, Carlile was diagnosed with cancer and did not return to work after June 7, 2016. Carlile applied for and received short-term disability benefits from Reliance. In October 2016, Carlile submitted a claim for LTD benefits.

Reliance denied Carlile's LTD claim because it determined that as a result of LRI's notice of termination, Carlile was no longer eligible for coverage as of March 31, 2016, because he was no longer working full-time after that date. In the uphold letter on appeal, Reliance explained that to be deemed an "active" employee, Carlile must have been working a minimum of 30 hours per week.

The district court, under a *de novo* standard of review, held that the the Plan was ambiguous as it did not define what it meant to be an "active" full-time employee after coverage was established for an eligible employee. The district court construed the ambiguous Plan term in favor of Carlile and awarded LTD

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benefits. The Tenth Circuit affirmed.

In affirming the district court's judgment, the Tenth Circuit also found that the Plan was ambiguous as to the meaning of "active" Full-time employee. The Tenth Circuit reasoned that while the Plan defined "Full-time" and "Actively at Work" / "Active Work," it did not define the term "active" in the context of employees whose eligibility had already been established. The Tenth Circuit rejected Reliance's argument that the dictionary definition of the term "active" meant "actually working" and that the placement of the term "active" next to the defined term "Full-time" required that the employee be working at least 30 hours per week. The court reasoned that reasonable minds could differ when reading the term "active" to revoke coverage for an existing employee whose coverage was established and whose claim arose while still employed but during the 90-day termination notice period.

The court supported its holding with reference to the Fourth Circuit's decision in *Tester v. Reliance Standard Life Insurance Co.*, 228 F.3d 372 (4th Cir. 2000). *Tester* also involved the question of whether an employee who was on sick leave remained "active," such that benefits would continue. The Fourth Circuit deemed the term ambiguous because the Plan "d[id] not specify under what circumstances the employee must work, how frequently the employee must work, and how long the employee must be out of work before he is no longer considered 'active.'"

Finding an ambiguity and operating under a *de novo* standard of review, the Tenth Circuit applied the doctrine of *contra proferentem* and construed the ambiguous term in Carlile's favor to mean a "current employee" rather than endorsing Reliance's proposed definition of an employee "actually working" "full time." Because there was no dispute that Carlile was currently employed as of the date of his disability, which was prior to the effective date of his termination, the court affirmed the judgment of LTD benefits in Carlile's favor. Because the record also established that Reliance had acknowledged Carlile was disabled after June 7, 2016, the court also affirmed the denial of Reliance's request to remand the claim for further consideration of whether Carlile was totally disabled under the terms of the Plan.