THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM ADMINISTRATIVE LAW COURT

Deborah Brooks Durden, S.C. Administrative Law Judge

Case No. 16-ALJ-30-0293-AP

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SC Court of Appeals

L'Tonya Scott,. . . . . Appellant,

v.

South Carolina Public Employee Benefit Authority,
Employee Insurance Program, ... Respondent.

APPELLANT'S REPLY BRIEF

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES:

STATUTES:

LAW AND ARGUMENT

I. Scott's award of Social Security Disability benefits is considered "reliable, probative, and substantial evidence" and, as such, should have been considered by PEBA when reviewing her long term disability appeal.

Scott's award of Social Security Disability benefits is considered "reliable, probative, and substantial evidence" (S.C. Code Ann. § 1-23-380(A)(5)) and, as such, should have been considered by PEBA when reviewing her long term disability appeal. Scott readily acknowledges that, unlike the Social Security Administration, PEBA does not recognize the "treating physician rule." Further, in her brief Scott acknowledges on several occasions that an award of Social Security Disability benefits is not binding on PEBA, nor is PEBA required to give deference to such an award. Initial Brief of Appellant, p. 6, 7, 9. Scott's argument is centrally based on the fact that PEBA was required to, at the very least, consider the award of Social Security Disability benefits, not that it is bound by such a decision or required to give it deference.

Additionally, Scott agrees with Respondent's citation of the *Eaddy* and *Baker* cases in that Social Security Disability law has no bearing on cases such as the matter *sub judice*. Initial Brief of Respondent, p. 23. Scott is not asserting that it does. Rather, Scott's argument is that there may have been useful medical information contained in the Social Security Disability file that was different than what Respondent considered. Therefore, Scott most certainly did "identif[y] any medical record that PEBA failed to consider," i.e., any information that was contained in the Social Security Administration file. Id., p. 22.

Scott cited to the *Wilson* case to illustrate how such award of benefits has been treated in the past. In fact, in the *Wilson* case, the "Appeals Committee reconsidered the case in light of the finding of disability by the Social Security Administration." *Wilson v. State Budget and*

Control Board, Employee Insurance Program, 374 S.C. 300, 304, 648 S.E. 2d 310 (Ct. App. 2007). Clearly, even though Respondent is not bound by or required to show deference to an award of Social Security Disability benefits, such an award has substantive value to a long term disability claim

In its brief, Respondent, when discussing the *Colter* order states that "SCRS relied on medical records that the SSA relied on in making a disability determination." Initial Brief of Respondent, p. 24. Scott respectfully submits that this is exactly the point she was trying to make in her brief. In the *Colter* opinion, SCRS apparently "obtained additional medical evidence...including, most notably, medical records relied upon by the Social Security Administration..." Initial Brief of Appellant, p. 6, citing *Colter v. S.C. Budget and Control Bd., S.C. Retirement Systems*, No. 08-ALJ-0551-CC, pg. 102 (1999). Certainly, if Respondent had actually taken the time to consider Scott's award of Social Security Disability benefits it could have asked Scott for further information, as it had a history of doing. However, Respondent states that in order to do so it would have to "undertake the time and expense to attempt to locate medical records..." Initial Brief of Respondent, p. 24. Apparently such has been done before, as demonstrated by the *Colter* order and Respondent's own admission that "Standard did a very thorough job of obtaining medical records from all of [Scott's] health care providers." Id. p. 20.

Therefore, Scott respectfully submits that to obtain such records would certainly not have been a "fishing expedition." Id. p. 24. While Scott certainly readily acknowledges that it is her burden to provide sufficient Proof of Loss under the long term disability policy, she respectfully submits that all that was required of Respondent was to either request a copy of the file from the Social Security Administration or ask Scott for the information. Rather than doing so, however, it appears as of Respondent chose to ignore the Social Security Disability award.

Further, Scott disagrees with Respondent's argument that it was not required to consider the Social Security Administration decision because it had considered "hundred of pages of cotemporaneous medical records and opinions." Id. p. 22. Scott submits that such is not dispositive as it does not matter whether the "reliable, probative, and substantial evidence" (S.C. Code Ann. § 1-23-380(A)(5)) is only two pages compared to hundreds, it still should be considered by Respondent as relevant to her claim. Further, Respondent has put forth no argument that the medical records gathered by the Social Security Administration were duplicative of the medical records that it had already considered. In fact, Respondent could not make such an argument as it did not make any attempt to contact Scott to procure the Social Security Disability file or request a copy of the same directly from the Social Security Administration.

Finally, Scott's argument centers around the fact that Respondent was put on notice of her Social Security Disability award and blatantly ignored it, and she is not attempting to argue to this Court that "PEBA should substitute the SSA's discretion for its own discretion with considering Plan claims." Id. p. 25. Scott knows and acknowledges that the qualification standards for the two benefits are not the same. Rather, Scott's argument is that the Social Security Administration award was important evidence that Respondent should have considered when reviewing her appeal, but did not.

II. Scott acknowledges that ERISA cases are not binding on the Administrative Law Court, however, the Administrative Law Court has a history of looking to ERISA cases for guidance.

Scott is arguing and asserting that the Administrative Law Court is not bound by ERISA cases, however, the Administrative Law Court has a history of looking to ERISA cases for guidance. Several times in her brief Scott references the fact that ERISA cases are, in fact, not

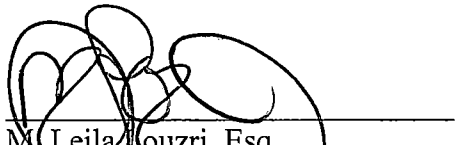
controlling law to the Administrative Law Court. Initial Brief of Appellant, p. 5, 7. Scott's argument is, instead, based on the Administrative Law Court's history of citing to ERISA cases, a fact that Respondent also acknowledges. Initial Brief of Respondent, p. 18.

Scott's argument focused around the fact that the Administrative Law Court has a history of looking to ERISA and equitable principles for guidance and, pursuant to relevant ERISA law, a disability provider must at least consider the fact that a claimant has been awarded Social Security Disability benefits when reviewing a claim. Initial Brief of Appellant, p. 7-8.

Finally, as stated above, Scott respectfully submits that even if the Administrative Law Court did not have a history of consulting ERISA cases, pursuant to S.C. Code Ann 1-23-380 Respondent was required to, at least, consider Scott's Social Security Disability award as it constituted "reliable, probative, and substantial evidence." (S.C. Code Ann. § 1-23-380(A)(5))

CONCLUSION

Consequently, Scott respectfully requests that this Court find that the Administrative Law Court erred in finding that Respondent was not required to consider Scott's award of Social Security Disability benefits when reviewing her long term disability appeal.



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Date: August 4, 2017

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CERTIFICATE OF SERVICE

This is to certify that the undersigned attorney for the Appellant did cause the Appellant's Reply to be served upon the attorneys for Respondent, via United States Mail, proper postage affixed thereto, on the **4th** day of **August 2017.**

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August 4, 2017

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RE: *L'Tonya L. Scott vs. South Carolina Public Employee Benefit Authority, Employee Insurance Program*
Appellate Case No.: 2017-000780

Dear Ms. Kitchings:

Please find enclosed the original and one copy of Appellant's Reply Brief in the above case. Please file and return the stamped copies to me in the enclosed return envelope. Thank you for your consideration in this matter, and please do not hesitate to contact me should you have any questions or concerns.

With kind regards, I remain,

Yours very truly,

M. Leila Louzri

/mll
Encl.
cc: James Hedgepath, Esq.
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