1998 WL 851605
United States District Court, S.D. New York.

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION, Plaintiff,
v.
THE CHASE MANHATTAN BANK and Unum Life Insurance Company of America, Defendants.

No. 97 Civ. 6620(WK). | Dec. 8, 1998.

**Attorneys and Law Firms**

Michael J. O'Brien, Trial Attorney, Equal Employment Opportunity Commission, New York, New York, for Plaintiff.

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**Opinion**

***MEMORANDUM and ORDER***

KNAPP, Senior J.

***1** This is an action brought by the Equal Employment Opportunity Commission ("EEOC or "plaintiff") against The Chase Manhattan Bank ("Chase"), as successor-in-interest to Chemical Bank, and the Unum Life Insurance Company of America ("Unum") alleging that the Long Term Disability Plan ("LTD Plan") available to Chase's employees violates the Americans With Disabilities Act ("ADA") because the LTD provides different disability benefits for mental and physical disabilities. Both Chase and Unum have made motions to dismiss for failure to state a claim pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure. A hearing on the motion was conducted on September 17, 1998. For the reasons that follow, we grant the defendants' motions to dismiss.

## BACKGROUND

Chemical Bank, and its successor, Chase, gives employees the option to participate-in its LTD Plan, which is funded solely through employee contributions. Participating employees periodically contribute to a trust which funds the LTD Plan. Chemical retained defendant Unum to act as "disability claims administrator," meaning Unum receives employees' claims for benefits under the LTD Plan, determines whether such claims are valid, and pays out benefits for valid claims. If a claim is denied, employees may appeal to the plan administrators, who were the members of Chemical Bank's, now Chase's, Board of Directors.

The LTD Plan pays supplementary income benefits for participating employees who are unable to work due to total disability. The LTD Plan is open to all employees, disabled and non-disabled alike, however, to be eligible for benefits, an employee must become a plan participant while still able to work. Under the LTD Plan, benefits for total physical disability may be paid out to age 65 (or later depending on the age of the employee at the onset of the total disability). Benefits for total disability due to mental or nervous disorders, however, are paid out for a maximum of two years.

In May of 1993, Joan Farina, a Chemical Bank employee, became "unable to work" due to major depression and anxiety. Initially, she was granted short-term disability benefits under the LTD Plan. Then in November of 1993, she applied for, and was granted, long term disability benefits under the LTD Plan. In accordance with § 7.2(d) of the LTD Plan, Farina's benefits ended after 18 months, on May 31, 1995.[1]

On September 8, 1997, the EEOC filed its complaint against Chase and Unum on behalf of Joan Farina and "at least" 27 other allegedly similarly situated individuals, claiming that the difference in duration between mental and physical disability benefits in the LTD Plan violated Title I of the ADA.[2]

## DISCUSSION

After our review of the massive documents submitted in this matter, we have determined that the body politic is in no great need of further discussion by a district court of the wide variety of questions presented by these various claims. We will assume all questions of law and fact in favor of the plaintiff. Nonetheless, it may not prevail because while Title I of the ADA proscribes discrimination by employers between the disabled and the non-disabled, it does not mandate equal benefits for different disabilities. In *Castellano v. City of New York,* the Second Circuit noted in dictum that the ADA is not violated so long as similarly situated ADA-covered employees and non-disabled employees are treated equally: "The ADA requires only that persons with disabilities have the opportunity to receive the same

benefits as non-disabled [employees]." (2d Cir.1998) 142 F.3d 58 at 70. Indeed, every Circuit that has addressed the question has found that although the ADA proscribes discrimination concerning the provision of benefits as between the disabled and the non-disabled, it does not prohibit the provision of different benefits for different disabilities.

***2** In the most recent of these Circuit cases, *Ford v. Schering–Plough Corp.* (3 d Cir.1998) 145 F.3d 601, the Third Circuit decided the precise issues presented here. The court ruled that although

> the defendants' insurance plan differentiated between types of disabilities, this is a far cry from a specific disabled employee facing differential treatment due to her disability. Every Schering employee had the opportunity to join the same plan with the same schedule of coverage, meaning that every Schering employee received equal treatment. So long as every employee is offered the same plan regardless of the employee's contemporary or future disability status, then no discrimination has occurred even if the plan offer different coverage for various disabilities. The ADA does not require equal coverage for every type of disability; such a requirement, if it existed, would destabilize the insurance industry in a manner definitely not intended by Congress when passing the ADA.

*Ford v. Schering–Plough Corp.* (3 d Cir.1998) 145 F.3d 601 at 608. *See also Parker v. Metropolitan Life Insurance Co.* (6 th Cir.1997) 121 F.3d 1006 (en banc), *cert den.,* (1998) 522 U.S. 1084, 118 S.Ct. 871, 139 L.Ed.2d 768; *EEOC v. CNA Insurance Co.* (7 th Cir.1996) 96 F.3d 1039; *Krauel v. Iowa Methodist Medical Center* (8 th Cir.1996) 95 F.3d 674; *Gonzales v. Garner Food Services, Inc.* (11 th Cir.1996) 89 F.3d 1523, *cert den.,* (1997) 520 U.S. 1229, 117 S.Ct. 1822, 137 L.Ed.2d 1030.[3]

It is not alleged that Joan Farina suffered discrimination as between the disabled and non-disabled with regard to the LTD Plan. It is alleged, in essence, that she has suffered discrimination because the LTD Plan differentiates between different disabilities, i.e., mental and physical, and provides unequal benefits. In light of the authorities cited, it cannot be said that a claim has been stated under Title I of the ADA.

Having found that plaintiff has failed to state a claim upon which relief may be granted under Title I of the ADA, we need not consider whether the LTD Plan falls within the "safe harbor" provisions of Title IV at 42 U.S.C. § 12201(c).

Defendants' motion to dismiss the complaint in the above-captioned matter is hereby GRANTED.

SO ORDERED.

[1] The LTD Plan has since been amended to provide benefits for total mental disability for two years.

[2] Additionally, plaintiff asserts that because the LTD Plan states that benefits cease in the event the disabled employee recovers and goes back to work, the LTD Plan confers a "right" of re-employment. On the incorrect premise that the LTD Plan confers a right of re-employment, plaintiff then argues that defendants discriminate against the mentally disabled by extending this purported right for two years, while the physically disabled retain this "right" until age 65. The LTD Plan confers no such "right." On the contrary, § 12.7 of the LTD Plan explicitly provides that "[n]othing contained in this Plan shall give any [employee] ... the right to be retained in the employment of the Company...." We find nothing in the Plan to prohibit the future employment of a former employee who has recovered after exhausting his or her LTD benefits for mental disability. We find plaintiff's argument to be without merit.

[3] The most recent case on point of which we are aware is *EEOC v. Staten Island Savings Bank* (E.D.N.Y.1998) (Raggi, J.) 97 Civ. 5142. This nearly identical case was dismissed in an order dated November 1, 1998, upon the same grounds herein stated.

**Parallel Citations**

8 A.D. Cases 1564, 14 NDLR P 70