



By
Frank N. Darras



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Most group disability policies are governed by the federal Employee Retirement Income Security Act of 1974. Under Erisa, the most a disabled claimant can hope to obtain is past-due benefits and possibly, at the court's discretion, attorney's fees. A recent ruling from the U.S. Supreme Court should make it easier for Erisa claimants to recover attorney fees.

In *Hardt v. Reliance Standard Life Insurance Co.*, the Supreme Court held that a claimant need not be a "prevailing party" to be eligible for attorney's fees. Rather, a court

remand, the insurer approved the claim and paid all past-due benefits. Hardt then applied to the district court for an award of attorney's fees, which the court granted after determining that Hardt was a "prevailing party."

On appeal, the insurer argued that Hardt was not a "prevailing party" and that the remand order did not constitute an "enforceable judgment on the merits." The U.S. Court of Appeals for the Fourth Circuit agreed and reversed the fee award, after determining that Hardt was not a "prevailing party" because she failed to receive an outright award of benefits.

The Supreme Court granted review. The Court first looked to the language of the Erisa statute, which provides that "the court in its discretion may allow a reason-

able attorney's fee and costs...to either party." The Court held that because the term "prevailing party" does not appear in the statute, "a fee claimant need not be a 'prevailing party' to be eligible for an attorney's fees award."

The justices then considered the circumstances under which a court may award fees under Erisa. The Court held that a fee claimant must show "some degree of success on the merits," which must be more than "trivial" or a "purely procedural victory." The Court made clear, however, that it was not deciding "whether a remand order, without more, constitutes 'some success on the merits' sufficient to make a party eligible for attorney's fees."

Under *Hardt*, claimants can argue that a remand order constitutes success in order to receive an award of attorney's fees. But the question of whether a remand order alone, without more, constitutes sufficient success on the merits to justify an award of attorney's fees remains unclear. **BR**

'Prevailing Party' Not a Requirement

The Supreme Court eases the way to collecting attorney's fees in Erisa claims.

may award fees as long as the claimant has achieved "some degree of success on the merits."

In *Hardt*, the insured sought long-term disability benefits after carpal tunnel surgery failed to alleviate her neck and shoulder pain. The insurer initially approved the claim, but terminated benefits after 24 months. Hardt sued. The district court denied both parties' motions for summary judgment, but found "compelling evidence" in the record that Hardt was totally disabled and thought it "clear that the insurer's decision to deny benefits was not based on substantial evidence."

The court remanded the case to the insurer and ordered it to review and reconsider the case. On

The justices look for "some degree of success on the merits" of Erisa challenges.

Frank N. Darras, a Best's Review columnist, is the founding partner of DarrasLaw, based in Ontario, Calif. He is a plaintiff's lawyer representing disabled insureds and can be reached at fdarras@yahoo.com.