Ensure Conveying Discretionary Authority in Plan When Outsourcing Appeals

June 28, 2015

The FedEx long-term disability plan provided that FedEx would appoint an appeal committee to review appeals and grant this committee with discretionary authority. FedEx claimed that Aetna was appointed as the appeal committee because the FedEx board of directors disbanded the prior appeal committee when the board decided to outsource appeals to Aetna, and FedEx and Aetna amended their service agreement accordingly. The plan did not contain a process for appointing the appeal committee, and the court found that, in order to comply with the plan, the board needed to actually designate Aetna as the appeal committee and there was no evidence of this. Accordingly, the U.S. Court of Appeals for the Fourth Circuit affirmed the district court's decision to review the denial of long-term disability benefits *de novo* because the participant's claim was not reviewed and denied by an entity with discretionary authority over appeals. *Bilheimer v. Fed. Express Corp. Long Term Disability Plan,* No. 13-1859 (4th Cir. May 5, 2015).