



Issue Date: 08 January 2018

CASE NO.: 2017-ERA-00008

In the Matter of:

VI TRAN,
Complainant,

vs.

**SOUTHERN CALIFORNIA
EDISON,**
Respondent.

ORDER GRANTING SUMMARY DECISION

This is a claim arising under employee-protection provisions of the Energy Reorganization Act of 1974, 42 U.S.C. §5851, and the implementing regulations (29 C.F.R. Part 24) (“ERA”). It is currently set for hearing in Long Beach, California, on February 28, 2018.

Respondent moves the court for an order dismissing this action on two grounds: 1) that the Complainant’s request for hearing was untimely under 42 U.S.C. § 5051(b)(1), and 2) that the Complaint is subject to the exclusive jurisdiction of the United States District Court under 29 U.S.C. §1132(e). The Complainant opposes the Motion, contending certain officials of Respondent misled him with respect to the facts of his claim.

On November 28, 2017, the court held a telephonic conference with the Complainant, Mr. Tran, and with counsel for the Respondent. That same day, the court issued an Order indicating it would treat the Motion for Dismiss as a Motion for Summary Decision under 29 C.F.R. § 18.72. Because Mr. Tran’s opposition to the Motion to Dismiss did not meet the standards set forth at 29 C.F.R. § 18.72, subsection (c), the court allowed him another opportunity to file opposition to the Motion. He has done so, and the court has carefully considered his arguments.

On a motion for summary decision, the court must determine, after viewing the evidence in the light most favorable to the non-moving party, whether there are

any genuine issues of material fact, and whether the moving party is entitled to summary decision as a matter of law. 29 C.F.R. §18.72, subsection (a); *O'Hara v. Weeks Marine, Inc.*, 294 F.3d 55 (2d Cir. 2002); *Brockington v. Certified Electric, Inc.*, 903 F.2d 1523 (11th Cir. 1990), *cert den* 498 U.S. 1026 (1991); 29 C.F.R. §1978.107; 29 C.F.R. §§ 18.40(c), 18.41(a). The court must look at the record as a whole, and determine whether a fact-finder could rule in the non-moving party's favor. *Matsushita Elec. Industrial Co. v. Zenith Radio Corp.*, 475 U.S. 574, 587 (1986). "The evidence of the non-movant is to be believed, and all justifiable inferences are to be drawn in his favor." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 255 (1986). The court does not weigh the evidence or determine the truth of the matters asserted, but merely determines whether any genuine issue of material fact exists. *Johnsen v. Houston Nana, Inc., JV*, ARB No. 00-064, ALJ No. 99-TSC-4, slip op. at 4 (ARB Feb. 10, 2003).

In this case, I find in favor of Respondent for two reasons.

First, there is no question of fact with respect to the untimeliness of Mr. Tran's complaint in this matter under 42 U.S.C. section 5851, subsection (b)(1). The undisputed evidence before the court shows Respondent notified Mr. Tran on March 1, 2004, that his long-term disability benefits would be paid at 50% of his salary (Declaration of John Smolk, ¶ 3; Exhibit "B"). Mr. Tran appealed this determination and was notified on June 2, 2004, that Respondent rejected his appeal (Declaration of John Smolk, ¶5, Exhibit "T"). Mr. Tran should have filed a complaint under the Energy Reorganization Act within 180 days of June 2, 2004, but the undisputed evidence shows he did not do so until July 6, 2017 (Declaration of Jacob W. Daniels, ¶ 2, Exhibit "A").

Second, there is no question of fact with respect to this court's lack of jurisdiction over this matter. The undisputed evidence shows Mr. Tran's claim is a claim for benefits under Respondent's employee welfare benefit plan. Jurisdiction over such a claim, under the Employee Retirement Income Security Act (ERISA), is vested in the United States District Court. 29 U.S.C. § 1132, subsection (e). Nothing in

Mr. Tran's opposition raises any question of fact with respect to this jurisdictional issue.

The court grants summary decision in favor of Respondent.

SO ORDERED.

CHRISTOPHER LARSEN
Administrative Law Judge

NOTICE OF APPEAL RIGHTS: This Decision and Order will become the final order of the Secretary of Labor unless a written petition for review is filed with the Administrative Review Board ("the Board") within 10 business days of the date of this decision. The Board's address is: Administrative Review Board, U.S. Department of Labor, Suite S-5220, 200 Constitution Avenue, NW, Washington DC 20210, for traditional paper filing. Alternatively, the Board offers an Electronic File and Service Request (EFSR) system. The EFSR for electronic filing (eFile) permits the submission of forms and documents to the Board through the Internet instead of using postal mail and fax. The EFSR portal allows parties to file new appeals electronically, receive electronic service of Board issuances, file briefs and motions electronically, and check the status of existing appeals via a web-based interface accessible 24 hours every day. No paper copies need be filed.

An e-Filer must register as a user, by filing an online registration form. To register, the e-Filer must have a valid e-mail address. The Board must validate the e-Filer before he or she may file any e-Filed document. After the Board has accepted an e-Filing, it is handled just as it would be had it been filed in a more traditional manner. e-Filers will also have access to electronic service (eService), which is simply a way to receive documents, issued by the Board, through the Internet instead of mailing paper notices/documents.

Information regarding registration for access to the EFSR system, as well as a step by step user guide and FAQs can be found at: <https://dol-appeals.entellitrak.com>. If you have any questions or comments, please contact: Boards-EFSR-Help@dol.gov

The date of the postmark, facsimile transmittal, or e-filing will be considered to be the date of filing. If the petition is filed in person, by hand-delivery or other means, the petition is considered filed upon receipt. The petition for review must specifically identify the findings, conclusions or orders to which exception is taken. Any exception not specifically urged ordinarily will be deemed to have been waived by the parties.

At the same time that you file your petition with the Board, you must serve a copy of the petition on (1) all parties, (2) the Chief Administrative Law Judge, U.S. Dept. of Labor, Office of Administrative Law Judges, 800 K Street, NW, Suite 400-North, Washington, DC 20001-8001, (3) the Assistant Secretary, Occupational Safety and Health Administration, and (4) the Associate Solicitor, Division of Fair Labor Standards. Addresses for the parties, the Assistant Secretary for OSHA, and the Associate Solicitor are found on the service sheet accompanying this Decision and Order.

If filing paper copies, you must file an original and four copies of the petition for review with the Board, together with one copy of this decision. In addition, within 30 calendar days of filing the petition for review you must file with the Board an original and four copies of a supporting legal brief of points and authorities, not to exceed thirty double-spaced typed pages, and you may file an appendix (one copy only) consisting of relevant excerpts of the record of the proceedings from which the appeal is taken, upon which you rely in support of your petition for review. If you e-File your petition and opening brief, only one copy need be uploaded.

Any response in opposition to a petition for review must be filed with the Board within 30 calendar days from the date of filing of the petitioning party's supporting legal brief of points and authorities. The response in opposition to the petition for review must include an original and four copies of the responding party's legal brief of points and authorities in opposition to the petition, not to exceed thirty double-spaced typed pages, and may include an appendix (one copy only) consisting of relevant excerpts of the record of the proceedings from which appeal has been taken, upon which the responding party relies. If you e-File your responsive brief, only one copy need be uploaded.

Upon receipt of a legal brief filed in opposition to a petition for review, the petitioning party may file a reply brief (original and four copies), not to exceed ten double-spaced typed pages, within such time period as may be ordered by the Board. If you e-File your reply brief, only one copy need be uploaded.

If a timely petition for review is not filed, or the Board denies review, this Decision and Order will become the final order of the Secretary of Labor. *See* 29 C.F.R. §§ 24.109(e) and 24.110.