IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF IOWA
CENTRAL DIVISION

ELIZABETH J. CARROLL, Plaintiff, vs. CITIGROUP, INC. and PLANS ADMINISTRATION COMMITTEE OF CITIGROUP, INC., Defendants.	No. 4:07-cv-0165-JAJ **ORDER**

This matter comes before the court pursuant to plaintiff's April 15, 2008 motion for partial summary judgment [dkt. 11]. Defendants resisted plaintiff's motion on May 22, 2008 [dkt. 16]. To date, no reply has been filed. This matter is fully submitted. As set forth below, the court grants in part and denies in part plaintiff's motion for partial summary judgment.

I. SUMMARY OF THE ARGUMENTS

Plaintiff alleges that defendants violated ERISA by failing to pay her severance benefits in accordance with its Separation Pay Plan (hereinafter referred to as "the Plan") and by failing to provide her with documents regarding the Plan and other relevant documents. Plaintiff seeks summary judgment on her claim that defendants failed to provide her the documentation she requested, which defendants were required to produce pursuant to ERISA. Additionally, plaintiff requests an award of damages in the amount of $100 per day that the defendants have been delinquent in providing the requested information, plus attorney's fees and costs.

Defendants resist plaintiff's motion, arguing that Citigroup Inc. is not a proper party to a claim based on an alleged failure to provide documents as it is not the administrator of the Plan. Further, defendants argue that the plaintiff was provided all of the requested

and required information prior to her claim for benefits and was provided with any additional required and requested information under ERISA in a timely manner. Thus, defendants contend, plaintiff is not entitled to any damages.

II. SUMMARY JUDGMENT

A motion for summary judgment may be granted only if, after examining all of the evidence in the light most favorable to the nonmoving party, the court finds that no genuine issues of material fact exist and that the moving party is entitled to judgment as a matter of law. Kegel v. Runnels, 793 F.2d 924, 926 (8th Cir. 1986). Once the movant has properly supported its motion, the nonmovant "may not rest upon the mere allegations or denials of [its] pleading, but . . . must set forth specific facts showing that there is a genuine issue for trial." Fed. R. Civ. P. 56(e). "To preclude the entry of summary judgment, the nonmovant must show that, on an element essential to [its] case and on which it will bear the burden of proof at trial, there are genuine issues of material fact." Noll v. Petrovsky, 828 F.2d 461, 462 (8th Cir. 1987) (citing Celotex Corp. v. Catrett, 477 U.S. 317 (1986)). Although "direct proof is not required to create a jury question, . . . to avoid summary judgment, 'the facts and circumstances relied upon must attain the dignity of substantial evidence and must not be such as merely to create a suspicion.'" Metge v. Baehler, 762 F.2d 621, 625 (8th Cir. 1985) (quoting Impro Prod., Inc. v. Herrick, 715 F.2d 1267, 1272 (8th Cir. 1983)).

The nonmoving party is entitled to all reasonable inferences that can be drawn from the evidence without resort to speculation. Sprenger v. Fed. Home Loan Bank of Des Moines, 253 F.3d 1106, 1110 (8th Cir. 2001). The mere existence of a scintilla of evidence in support of the plaintiff's position will be insufficient; there must be evidence on which the jury could reasonably find for the plaintiff. Id.

III. STATEMENT OF MATERIAL FACTS

The plaintiff was employed at Citigroup's West Des Moines, Iowa office from 1988 until February 15, 2006. On March 23, 2006 the plaintiff, through counsel, made a written claim for benefits under the "Citigroup Separation Pay Plan." Specifically, plaintiff's request provides, in pertinent part:

> This letter is Ms. Carroll's written claim for benefits under the Citigroup Separation Pay Plan for the United States Consumer Group Employees, EIN 52-1568099, Plan #526 (the "Plan"), and/or request to have her benefit coverage reviewed . . . As you are aware, ERISA provides that all Plan participants shall be entitled to: examine all Plan documents and copies of all documents filed by the Plan with the U.S. Department of Labor, such as annual reports and Plan descriptions; receive copies of all Plan documents and other Plan information upon written request to the Plan Administrator; and receive a summary of the Plan's annual financial report, which is furnished by law. To that end, Ms. Carroll requests all "information that's relevant" to her case, including but not limited to:
>
> a. Copies of any amendments, modifications, suspensions, or terminations, in whole or in part, of the Plan since October 15, 2003.
>
> b. Copies of the plan document, procedures, formulas, methodologies, guidelines, schedules, protocols and other guidelines;
>
> c. All documents which the plan reviewed, or could have reviewed, in deny [sic] Ms. Carroll's claim;
>
> d. Consultant or service provider reports;
>
> e. A complete copy of the entire claim file;

f. A written decision from the Plan Administrator including specific reasons for the decision and references to the provision in the Plan on which the decision was based; and

g. A copy of the procedures for filing an appeal of an adverse decision.

On July 6, 2006, plaintiff made the following inquiry regarding the status of her claim and request for documents:

> In a letter dated March 23, 2006, Ms. Carroll submitted a written claim for benefits under the Citigroup Separation Pay Plan for the United States Consumer Group Employees, EIN 52-1568099, Plan # 562 (the "Plan"), and/or request to have her benefit coverage reviewed. Pursuant to the procedures outlined by the Plan, the Plan Administrator was required to issue a written decision regarding the claim within sixty (60) days after it was filed. It has now been more than one-hundred (100) days since the claim was filed, and the Plan Administrator has failed to issue a decision or even respond to Ms. Carroll's request.

Plaintiff also reiterated her previous request for documentation.

On July 12, 2006, defendant responded to plaintiff's letter of March 23, 2006 by enclosing a copy of the Plan that was amended and restated effective January 1, 2005 and a required Claims and Appeals form. Plaintiff responded on July 27, 2006, again requesting the documents enumerated in her March 23, 2006 request and stating:

> To date I have received only a copy of the current summary plan and plan document. While I appreciate that you have provided me with the current documents and a claim form, I renew my request for all relevant documents and would appreciate a response from you as soon as possible.

Plaintiff again renewed her request for documents on September 1, 2006, stating:

> Also, on two occasions I have requested copies of all relevant ERISA documents (*see* letters dated March 23, 2006 and July

> 27, 2006); however, I have received only a copy of the current summary plan and plan document. As such, I renew my request for all relevant documents and would appreciate a response as soon as possible.

Plaintiff's claim for severance benefits was denied via a letter dated September 6, 2006. On September 26, 2006, Plaintiff appealed this decision and reiterated her request for documents. Plaintiff again requested "all relevant ERISA documents" via a letter dated January 10, 2007, stating:

> As you know, Ms. Carroll has the right to examine all Plan documents and copies of all documents filed by the Plan with the U.S. Department of Labor, such as annual reports and Plan descriptions. This information includes, but is not limited to: (a) copies of any amendments, modifications, suspensions, or terminations, in whole or in part, of the Plan since October 15, 2003; (b) copies of the plan documents, procedures, formulas, methodologies, guidelines, schedules, protocols and other guidelines; (c) all documents which the plan reviewed, or could have reviewed, in deny [sic] Ms. Carroll's claim; (d) consultant or service provider reports; (e) annual financial reports; and (f) a complete copy of the entire claim file.

Defendants responded as follows on February 6, 2007:

> As further noted in my letter dated October 30, 2006, in accordance with Section 503 of the Employee Retirement Income Security Act of 1974, as amended ("ERISA"), and relevant regulations, the claims procedures of a plan shall be deemed to provide a claimant with a reasonable opportunity for a full and fair review of an adverse benefit determination if the claimant is provided, upon request and free of charge, reasonable access to, and copies of, all documents, records and other information relevant to her claim for benefits. A document, record, or other information shall be considered relevant if: (1) it was relied upon in making the benefit determination, (2) it was submitted, considered, or generated in the course of making the benefit determination, regardless if it was relied upon in making the benefit determination, or (3) it demonstrates compliance with the administrative process

> designed to ensure and to verify benefit claim determinations are made in accordance with plan documents and applied consistently with respect to similarly situated claimants. In addition to the plan document and summary plan description previously provided to you on July 12, 2006, we enclosed with my letter dated October 30, 2006 a complete copy of Ms. Carroll's claim file to date, and to our belief, all the relevant documents within the meaning of the regulations . . . Prior to your letter dated January 10, 2007, you had not previously requested a copy of the annual financial report. In response to your most recent request, enclosed herewith is a copy of the Plan's most recent Form 5500 filing.

IV. PERTINENT ERISA PROVISIONS

Title 29, United States Code, Section 1024(b)(4) provides, in pertinent part, that "[t]he administrator shall, upon written request of any participant or beneficiary, furnish a copy of the latest updated summary, plan description, and the latest annual report, any terminal report, the bargaining agreement, trust agreement, contract, or other instruments under which the plan is established or operated." This obligation to provide Plan documents does not requires that the plan administrator produce "any document relating to a plan," but rather "only formal documents that establish or govern the plan." Brown v. American Life Holdings, Inc., 190 F.3d 856, 861 (8th Cir. 1999).

Title 29, United States Code, Section 1132(c)(1)(B) provides, in pertinent part:

> Any administrator who fails or refuses to comply with a request for any information which such administrator is required by this subchapter to furnish to a participant or beneficiary (unless such failure or refusal results from matters reasonably beyond the control of the administrator) by mailing the material requested to the last known address of the requesting participant or beneficiary within 30 days after such request may in the court's discretion be personally liable to such participant or beneficiary in the amount of up to $100 a day from the date of such failure or refusal, and the court may in its discretion order such other relief as it deems proper.

V. ANALYSIS

The Plans Administration Committee of Citigroup, Inc. is the plan administrator, a fact asserted by the defendants which the plaintiff does not dispute. Defendant Citigroup, Inc. is not the plan administrator. Section 502(c) of ERISA allows the district court to impose a discretionary fine of $100 per day against a "plan administrator" who fails to provide copies of certain plan documents to beneficiaries. As Citigroup, Inc. is not a plan administrator, plaintiff's motion for summary judgment against Citigroup, Inc. based upon its alleged failure to provide documents is denied.

As set forth above, on March 23, 2006, plaintiff requested "[c]opies of any amendments, modifications, suspensions, or terminations, in whole or in part, of the Plan since October 15, 2003" and "[c]opies of the plan document, procedures, formulas, methodologies, guidelines, schedules, protocols and other guidelines." Having received no response, the plaintiff reiterated her request on July 6, 2006. Defendant Plans Administration Committee of Citigroup, Inc. responded on July 12, 2006 by providing the Summary Plan Description and Plan, which included the guidelines for severance pay and outlined the procedure for appealing an adverse decision. On January 10, 2007, plaintiff requested defendant's annual financial reports, which were produced on February 6, 2007. Thus, at issue are the following requested documents, which defendants contend do not fall under the purview of 29 U.S.C. §1024(b)(4):

- All documents which the Plan reviewed, or could have reviewed, in denying Ms. Carroll's claim.
- Consultant or service provider reports.
- A complete copy of the entire claim file.
- A written decision from the Plan Administrator including specific reasons for the decision and references to the provision in the Plan on which the decision was based.

The court agrees with the defendant and finds that the document requests at issue are not enumerated in 29 U.S.C. § 1024(b)(4) and do not constitute "other instruments under which the plan is established or operated." Rather, they were requests for documents specific to the plaintiff's claim for severance benefits. As such, defendant's failure to produce them within 30 days of plaintiff's request cannot form the basis for statutory penalties pursuant to 29 U.S.C. § 1132(c)(1)(B). Defendant was, however, approximately 80 days tardy in producing the Plan and the Summary Plan Description. Defendant has provided no explanation for this delay. As such, plaintiff's partial motion for summary judgment is granted insofar as the court finds that defendant Plans Administration Committee of Citigroup, Inc. violated 29 U.S.C. § 1024(b)(4) by failing to produce the documents covered by the statute within 30 days of plaintiff's March 23, 2006 request, which subjects defendant to the monetary penalty pursuant to 29 U.S.C. § 1132(c)(1)(B). The court will determine the appropriate penalty at the time that final judgment is entered on all of plaintiff's claims. See Fed. R. Civ. P. 54(b).[1] Once judgment is entered, the court will entertain a motion for attorney's fees. See Fed. R. Civ. P. 54(d)(2)(B).

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[1]Rule 54(b) provides, in pertinent part:

> When more than one claim for relief is presented in an action . . . the court may direct the entry of a final judgment as to one or more but fewer than all of the claims or parties only upon an express determination that there is no just reason for delay and upon express direction for the entry of judgment.

Upon the foregoing,

IT IS ORDERED that plaintiff's motion for partial summary judgment [dkt. 11] is granted in part and denied in part, consistent with this opinion.

DATED this 9th day of June, 2008.

JOHN A. JARVEY
UNITED STATES DISTRICT JUDGE
SOUTHERN DISTRICT OF IOWA