

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 03-1969

STEVE LEAGON,

Plaintiff - Appellant,

versus

EATON CORPORATION,

Defendant - Appellee,

and

KEMPER NATIONAL INSURANCE COMPANIES, d/b/a
Eaton Appeals Coordinator,

Defendant.

Appeal from the United States District Court for the District of
South Carolina, at Spartanburg. Henry M. Herlong, Jr., District
Judge. (CA-02-898-20)

Submitted: February 19, 2004

Decided: March 9, 2004

Before WIDENER, WILKINSON, and KING, Circuit Judges.

Affirmed by unpublished per curiam opinion.

Charles J. Hodge, HODGE LAW FIRM, Spartanburg, South Carolina, for Appellant. Jeffrey D. Zimon, BENESCH, FRIEDLANDER, COPLAN & ARONOFF, LLP, Cleveland, Ohio, for Appellee.

Unpublished opinions are not binding precedent in this circuit. See Local Rule 36(c).

PER CURIAM:

In this suit arising under the Employee Retirement Income Security Act, Steve Leagon appeals from the district court's order affirming Defendants' decision to deny Leagon long-term disability benefits. We have reviewed the briefs and joint appendix and find no reversible error. Accordingly, we affirm for the reasons stated by the district court. See Leagon v. Eaton Corp., No. CA-02-898-20 (D.S.C. filed July 18, 2003 & entered July 21, 2003).

In addition, we note that Leagon relies on statements in his affidavit attacking the Labor Market Survey submitted by Eaton. However, the affidavit was not presented to Eaton, and we can only consider evidence that was before the Plan Administrator when the claim was denied. See Elliot v. Sarah Lee Corp., 190 F.3d 601, 608-09 (4th Cir. 1999); Krizek v. Cigna Group Ins., 345 F.3d 91, 97 (2d Cir. 2003) (new evidence may be considered in district court only where "good cause" is shown). Further, Leagon contends that Dr. DuPuy's report was given too much weight, considering it relied on a functional assessment which was never completed. However, the record reflects that DuPuy properly relied on another physician's estimated assessment, as well as a physical exam.

We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before the court and argument would not aid the decisional process.

AFFIRMED