

EBIA Weekly Archives

Plan Administrator Cannot Consider Motivation for Participants' Divorces When Determining Status of QDRO

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[*Brown v. Continental Airlines, Inc.*, 2009 WL 3365911 (S.D. Tex. 2009)]

In this case, a plan administrator sought to recover lump sum benefits that a pension plan paid pursuant to QDROs that the administrator claimed were the result of "sham" divorces. According to the administrator, the plan participants—pilots who were concerned about the financial health of their plan—obtained divorces for the specific purpose of withdrawing their pensions early. At the time, all were still employed by the plan's sponsor and ineligible for distributions. Nearly all of the orders called for a distribution of the participant's entire benefit (resulting in payments in some cases of up to \$900,000). After their divorces, all continued to live as if their divorces had never happened. (Many remarried their ex-spouses soon after the distributions were made.) The administrator did not seek to have the divorces invalidated, and did not claim that the divorces were invalid under state law. Instead, the administrator claimed that the orders should not have qualified as QDROs because they were "sham transactions," and asked the court for equitable relief to recover the amounts erroneously paid.

In the trial court's view, the essential question was whether a plan administrator could use any criteria other than those enumerated in the statute to disqualify a domestic relations order. Without condoning the actions of the pilots, the trial court concluded that the answer to this question was no, ERISA allows administrators to set procedures for determining the status of an order, but it does not allow administrators to set criteria that determine an order's status. An order may be rejected only for reasons enumerated in the statute. Because ERISA does not authorize administrators to make their qualification determination based on the "motivation or good faith" of a participant's divorce, that criterion could not be used to retroactively disqualify the orders.

EBIA Comment: Plan administrators generally are not required to analyze whether a divorce order is valid under state domestic relations law. However, according to a prior DOL advisory opinion (also addressing allegedly sham divorces by pilots), if there is credible evidence that the order has been procured through fraud, plan administrators should take appropriate steps to resolve the validity of the order. Those steps will depend on the facts and circumstances, and could include relaying the evidence of fraud to the court or agency that issued the order. But if requested guidance from the court or agency is not received within a reasonable time, the plan administrator must proceed with determining the validity of the order (in other words, the plan administrator may not independently determine that the order is not valid under state law). Because these issues can be complex and fact-specific, plan administrators faced with potentially fraudulent QDROs may wish to seek the advice of experienced legal counsel. For more information, see EBIA's 401(k) Plans manual at Section XXIII.C ("State Domestic Relations Law Applies to Underlying Determinations").

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