

CASE LAW

Scott Fallo; Kasey Fallo v. Piccadilly Cafeterias, Inc.

(United States Court of Appeals for the Fifth Circuit, LEXIS 10719)

Scott Fallo terminated his employment with Piccadilly Cafeterias (Piccadilly) in February 1992. The termination triggered a COBRA Qualifying Event providing the Fallos the opportunity to elect continuation coverage. The Fallos elected COBRA. Kasey, who became pregnant in January 1993, was diabetic and experienced complications during her pregnancy. Her 18 month continuation coverage period was scheduled to end August 25, 1993. On August 23, 1993, Scott Fallo's father informed Piccadilly, by certified mail, that Kasey was disabled by her pregnancy and that due to her disability, wished to extend her COBRA coverage for an additional 11 months. Piccadilly informed the Fallos that it would not extend coverage unless Kasey obtained a determination of disability from the Social Security Administration (SSA) within 60 days of August 25, 1993. Piccadilly eventually denied Kasey Fallo the extension of coverage.

The Fallos sued Piccadilly for violations under ERISA, as amended by COBRA, for not allowing the 11-month disability extension of continuation coverage. While the district court case was pending, Kasey Fallo applied to the SSA for the determination of disability.

DISTRICT COURT RULING

June 14, 1994, the district court ruled in favor of Piccadilly, finding that the Fallos were not entitled to the extension of COBRA. The court noted that in order for the Fallos to receive the extension, the Fallos needed to initiate the SSA disability proceedings within the initial 18 months of COBRA coverage.

The Fallos appealed the district court's decision.

In November of 1994, the SSA deemed Kasey Fallo disabled for the period of time between March 1993 and October 1994.

APPELLATE COURT RULING

Piccadilly continued to argue that the determination of disability did not fall within the guidelines listed in the COBRA statute. The Fallos argued that they relied upon the guidelines that were in the Summary Plan Description (SPD). Piccadilly's SPD described the right to the disability extension as *"the eighteen (18) month period may be extended for an extra eleven months (to twenty-nine [29] months if a person is determined to be disabled for Social Security disability purposes) and the Employer is notified of that determination within sixty (60) days."*

The Court of Appeals reversed the district court's decision finding that the Fallos had complied with the requirements as they were listed in the SPD.

This case reinforces the importance of specific information in COBRA notices. If the Fallo's had COBRA notices that were accurate and understandable, this litigation may have been avoided by both parties. Reliance on an SPD for COBRA notification may be risky for employers. Although COBRA information is required in an SPD, separate COBRA notices are also required to provide documentation of compliance.