

STATE OF NORTH CAROLINA
COUNTY OF DAVIDSON

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
11 DST 12958

James A Layton Petitioner, v. Department of State Treasurer Respondent.	DECISION AND ORDER GRANTING SUMMARY JUDGMENT
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THIS MATTER coming on to be heard before Administrative Law Judge J. Randall May, on September 24, 2012 in High Point, North Carolina; Petitioner, being represented by counsel David McDonald; and the North Carolina Department of State Treasurer, Retirement Systems Division, Teachers' and State Employees' Retirement System (TSERS) (hereinafter "the System"), being represented by Attorney General Roy Cooper through Susannah Holloway.

The undersigned, after reviewing the Petition; the parties' Pre-Hearing Statements; the Respondent's Motion for Summary Judgment with all attachments thereto; the Petitioner's Response to the Respondent's Motion for Summary Judgment with Attachments A, B, D, E, F, and G of the Petitioner's attachments thereto, but not considering the Petitioner's Attachment C which the undersigned determined, sustaining the Respondent's objection, was not an affidavit and was not properly submitted for a ruling on summary judgment, and the Petitioner's Attachment D only being considered based on the representation by counsel for the Petitioner that a verification by the Petitioner's wife would be submitted for Attachment D, and allowing the Petitioner to amend Attachment D to add his wife's verification (ALJ's Note: As of the date of this Order, this verification has not been received); the Respondent's Reply to the Response to Motion for Summary Judgment, with Exhibit A attached; and the arguments of counsel, makes the following:

FINDINGS OF FACT

There is no genuine issue of material fact: It is undisputed, and this Court finds as fact that the Petitioner has not yet applied for long-term disability benefits and has, therefore, not applied for long-term disability benefits within the time limits set forth in the statute governing the long-term disability benefits under the Disability Income Plan of North Carolina, N.C.G.S. § 135-106. In this case, the 180 day application period was from March 22, 2007 to September 17, 2007 and the Petitioner did not make inquiries regarding applying for disability benefits until March 2011.

BASED ON THE foregoing FINDINGS OF FACT, the undersigned makes the following:

CONCLUSIONS OF LAW

1. The time limit for making an application for long-term disability benefits is set forth in N.C.G.S. § 135-106, which states in pertinent part:

Upon the application of a beneficiary or participant or of his legal representative or any person deemed by the Board of Trustees to represent the participant or beneficiary, any beneficiary or participant who has had five or more years of membership service may receive long-term disability benefits from the Plan upon approval by the Board of Trustees, . . . provided the beneficiary or participant makes application for such benefit within 180 days after the short-term disability period ceases, after salary continuation payments cease, or after monthly payments for Workers' Compensation cease, whichever is later[.] . . . The Board of Trustees may extend this 180-day filing requirement upon receipt of clear and convincing evidence that application was delayed through no fault of the disabled beneficiary or participant and was delayed due to the employers' miscalculation of the end of the 180-day filing period. However, in no instance shall the filing period be extended beyond an additional 180 days.

N.C.G.S. § 135-106.

2. Because of the express statutory provisions setting out the strict time limits for filing an application for long-term disability benefits under the Disability Income Plan, this forum lacks the authority to disregard the express provisions of the statute in order to craft any remedy for the Petitioner which would contravene these express statutory provisions and furthermore this forum has no authority to determine the constitutionality of N.C.G.S. § 135-106.

ACKNOWLEDGMENT

It is acknowledged that whenever, in this document, reference is made to the Undersigned, the undersigned Judge, or the Court, reference is being made to the undersigned Administrative Law Judge with the Office of Administrative hearings.

DECISION

Based on the foregoing UNDISPUTED MATERIAL FACT and the CONCLUSIONS OF LAW, the undersigned hereby ORDERS, ADJUDGES, and DECREES AS FOLLOWS:

Summary Judgment is granted in favor of the Respondent on the grounds that there is no genuine issue of material fact; that the Petitioner has not applied for long-term disability benefits within the time limits set by statute; and, therefore, is not eligible for long-term disability benefits under the Disability Income Plan of North Carolina.

NOTICE

The decision of the Administrative Law Judge in this contested case will be reviewed by the agency making the final decision according to the standards found in G.S. 150B-36(b), (b1), and (b2). The agency making the final decision is required to give each party an opportunity to file exceptions to the decision of the Administrative Law Judge and to present written arguments to those in the agency who will make the final decision. G.S. 150B-36(a). The agency that will make the final decision in this contested case is the North Carolina Department of State Treasurer.

This the 10th day of May, 2013.

J. Randall May
Administrative Law Judge

