

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION**

CATHLEEN KENNEDY,)
)
Plaintiff,)
)
vs.) **Cause No. 1:13-cv-1103-WTL-TAB**
)
THE LILLY EXTENDED DISABILITY PLAN,)
)
Defendant.)

ENTRY REGARDING CALCULATION OF DAMAGES

After the Court granted summary judgment in favor of the Plaintiff in this case and determined that the Plaintiff was entitled to reinstatement of her benefits, the Court remanded the case to the Plan Administrator for an initial calculation of the benefits that are owed the Plaintiff pursuant to the Court's ruling. The Court further retained jurisdiction and withheld the entry of final judgment until that issue was resolved. The Plan Administrator has concluded its calculation and the parties have briefed the Plaintiff's objections thereto. The Court, being duly advised, now resolves those objections as set forth below.

There are two areas of disagreement between the parties. First, the Defendant argues that it is entitled to offset the amount it owes the Plaintiff by the amount that the Plaintiff received during the months of December 2012, January 2013, and February 2013. These were the first three months following the termination of the Plaintiff's disability benefits; the Plaintiff was placed on active employment status for these months. Although she did not perform any work during that time period, she was paid regular pay in the amount of \$76,419.67 and vacation pay in the amount of \$2,856.78. She also received a bonus of \$30,152.14 as a result of being on active status for those three months; that was paid in March 2014. All in all, she received a total

of \$109,428.59 that she would not have received had she remained on disabled status. The Plaintiff disputes that the Defendant is entitled to an offset for this amount, arguing instead that while the Defendant should not be required to pay her disability benefits for that time, because she was on active status, she is entitled to retain the amounts she was paid.

The Court agrees with the Defendant on this issue. The Court has ruled that the Plaintiff's benefits are to be reinstated from the date that they were terminated. As of that date, the Plaintiff should have continued to receive her disability benefit payments; had that occurred, she would not have received the \$109,428.59 she received when she was improperly taken out of disability status and placed in active status. To allow her to retain that amount would amount to a windfall to her. Accordingly, the Defendant shall pay the Plaintiff her disability payments for those three months, and it is entitled to an offset for the amounts she was paid during that time.¹

The other area of disagreement between the parties is whether the Plaintiff is entitled to prejudgment interest. The Defendant argues that it should not be required to pay prejudgment interest because it did not act in bad faith. However, "'bad faith' is not the sole criterion when considering whether an award of prejudgment interest is appropriate" in an ERISA case.

Fritcher v. Health Case Serv. Corp., 301 F.3d 811, 820 (7th Cir. 2002). Instead, there is a presumption in favor of awarding prejudgment interest in this type of case, because "'[w]ithout it, compensation of the plaintiff is incomplete and the defendant has an incentive to delay.'" *Id.* (quoting *Gorenstein Enters., Inc. v. Quality Care-USA, Inc.*, 874 F.2d 431, 436 (7th Cir. 1989)). Although whether to award prejudgment interest is discretionary, *id.*, the Court sees no reason in

¹The Court notes that the Defendant Plan is self-funded by Eli Lilly and Company; as a practical matter, then, it is Lilly that already has paid the \$109,428.59 and Lilly who will be paying the judgment in this case. *Cf.* Dkt. No. 36 at 36 (Plaintiff arguing in summary judgment context that "[b]y terminating her [disability] benefits, Lilly has made approximately \$2,500,000").

this case to deviate from the presumptive course of action, which is to award prejudgment interest at the prime rate of 3.25%. See *Gorenstein Enterprises, Inc. v. Quality Care-USA, Inc.*, 874 F.2d 431, 436 (7th Cir. 1989) (“[W]e suggest that district judges use the prime rate for fixing prejudgment interest where there is no statutory interest rate.”) (cited in *Fritcher*, 301 F.3d at 820). While the Plaintiff’s calculations of the amount she believes she is due include interest compounded monthly, she provides no explanation regarding why this is appropriate in this case and, in the absence of any evidence to the contrary, the Court determines that an award of simple interest is sufficient to compensate the Plaintiff in this case. Accordingly, the Plaintiff is awarded damages as follows:

EDL Benefits 12/12-4/16	\$14,077.03 x 41 months	\$577,158.23
EDL Plus Benefits 12/12-4/16	\$4,895.41 x 41 months	\$200,711.81
Total Unpaid Benefits		\$777,870.04

Offset for amounts paid due to active status		\$109,428.59
Offset for retirement benefits paid	\$5,087.15 x 27 months + \$10,174.30 for 1 month	\$147,527.35
Total offset		\$256,955.94

Unpaid benefits – offset	\$777,870.04 - \$256,955.94	\$520,914.10
Prejudgment interest	\$520,914.10 x 3.25%	\$16,929.71
Total judgment		\$537,843.81

Judgment will be entered accordingly.

SO ORDERED: 5/2/16



William T. Lawrence

Hon. William T. Lawrence, Judge
United States District Court
Southern District of Indiana

Copies to all counsel of record via electronic communication