UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

Joseph V. Fisher v. Pension Benefit Guaranty Corporation

No. 20-7063, United States Court of Appeals for the District of Columbia Circuit (April 20, 2021)

SUMMARY

The D.C. Circuit held that the Pension Benefit Guaranty Corporation (PBGC) properly denied a lump-sum pension payment under 29 C.F.R. § 4044.3(b), which prohibits distributions made "in anticipation of plan termination." The court found the regulation to be a permissible construction of ERISA under Chevron step two, rejecting the argument that ERISA's post-notice-of-intent-to-terminate annuity requirement precluded PBGC from regulating pre-notice lump-sum distributions. The court also determined that PBGC's 2016 decision on remand was a new agency action, not an impermissible post hoc rationalization, and that PBGC's application of the regulation's factors was not arbitrary or capricious.

CASE DETAILS

COURT	United States Court of Appeals for the District of Columbia Circuit
WRITING FOR THE COURT	Rogers; Katsas; Sentelle
JURISDICTION	Federal
DECIDED	April 20, 2021
DOCKET	20-7063
DISPOSITION	affirmed
PROCEDURAL POSTURE	Appeal from the United States District Court for the District of Columbia grant of summary judgment to PBGC.
STANDARD OF REVIEW	De novo for legal questions (Chevron); arbitrary and capricious for agency application of regulation.
PRECEDENTIAL VALUE	published
PARTIES	Joseph V. Fisher v. Pension Benefit Guaranty Corporation

TOPICS

erisa · administrative law · statutory interpretation · summary judgment · appellate procedure

PRACTICE AREAS

ERISA Administrative Law Pension Benefits

QUESTIONS PRESENTED

1. Whether the district court erred in remanding to PBGC, and whether the 2016 Remand Decision is an impermissible post hoc rationalization.
2. Whether 29 C.F.R. § 4044.4(b) is consistent with ERISA under Chevron review.
3. Whether PBGC's application of § 4044.4(b) to Fisher's lump-sum request was arbitrary and capricious.

HOLDINGS

1. The district court properly remanded because the 2011 decision was inadequately explained, and the 2016 Remand Decision was a new agency action, not a post hoc rationalization, because PBGC chose to deal with the problem afresh.
2. Section 4044.4(b) is a permissible construction of ERISA under Chevron step two because ERISA is silent on pre-NOIT lump-sum distributions, and the regulation promotes ERISA's purpose by preventing abuse during the period when plan termination is anticipated.
3. PBGC's application was not arbitrary and capricious because it reasonably considered the facts and circumstances, including the deteriorating funding status, Fisher's unique benefit increase, and the fact that not all factors need to be satisfied.

KEY QUOTATIONS

> *"If an employer wishes to terminate a plan whose assets are insufficient to pay all benefits, the employer must demonstrate that it is in financial 'distress.'"* (3)

> *"29 C.F.R. § 4044.4(b) prohibits a 'distribution, transfer, or allocation of assets to a participant' that contravenes the six-category priority scheme and is 'made in anticipation of plan termination.'"* (4)

> *"Accordingly, we affirm the grant of summary judgment to PBGC."* (12)

FACTUAL BACKGROUND

Joseph V. Fisher was a former executive of The Penn Traffic Company, which filed for bankruptcy in May 2003. In August 2003, Fisher resigned and requested a lump-sum payment of his pension benefits under the company's cash balance plan. The plan's board voted to terminate the plan in September 2003, and the plan committee denied Fisher's lump-sum request due to the impending termination. PBGC received the plan's notice of intent to terminate in November 2003 and became trustee in February 2005. In December 2009, PBGC sent Fisher a benefit determination letter offering a monthly annuity. Fisher appealed in January 2010, and the PBGC Appeals Board denied his appeal in September 2011, relying on PBGC Policy 5.4-9. The district court vacated the 2011 decision and remanded. On remand in July 2016, PBGC denied the lump-sum request again, this time relying on 29 C.F.R. § 4044.4(b). The district court granted summary judgment to PBGC in 2020, and Fisher appealed.

PROCEDURAL HISTORY

Fisher requested lump-sum payment in 2003, denied by plan committee; PBGC became trustee in 2005; in 2009 PBGC determined monthly annuity; Fisher appealed; PBGC Appeals Board denied in 2011 based on Policy 5.4-9; district court vacated and remanded in 2016; on remand, PBGC relied on 29 C.F.R. § 4044.4(b) to deny again; district court granted summary judgment to PBGC in 2020; Fisher appeals.

DISPOSITION

affirmed

CASES CITED

- PBGC v. R.A. Gray & Co., 467 U.S. 717, 720 (1984)
- Nachman Corp. v. PBGC, 446 U.S. 359, 361-62 (1980)
- Davis v. PBGC, 734 F.3d 1161, 1164 (D.C. Cir. 2013)
- PBGC v. LTV Corp., 496 U.S. 633, 639 (1990)
- Lewis v. PBGC, 912 F.3d 605, 607 (D.C. Cir. 2018)
- Fla. Power & Light Co. v. Lorion, 470 U.S. 729, 744 (1985)
- SEC v. Chenery Corp., 318 U.S. 80, 94-95 (1943)
- George Hyman Const. Co. v. Brooks, 963 F.2d 1532, 1539 (D.C. Cir. 1992)
- Dep't of Homeland Sec. v. Regents of the Univ. of California, 140 S. Ct. 1891, 1907-08 (2020)
- SEC v. Chenery Corp., 332 U.S. 194, 201 (1947)
- Allied Pilots Ass'n v. PBGC, 334 F.3d 93, 97 (D.C. Cir. 2003)
- Davis v. PBGC, 571 F.3d 1288, 1293 (D.C. Cir. 2009)
- Chevron, U.S.A., Inc. v. NRDC, Inc., 467 U.S. 837, 842-43 (1984)
- Catawba Cty. v. EPA, 571 F.3d 20, 35-36 (D.C. Cir. 2009)
- Engine Mfrs. Ass'n v. S. Coast Air Quality Mgmt. Dist., 541 U.S. 246, 252 (2004)
- Cheney R. Co. v. ICC, 902 F.2d 66, 69 (D.C. Cir. 1990)
- United States v. Wilson, 290 F.3d 347, 356 (D.C. Cir. 2002)
- Vill. of Barrington v. Surface Transp. Bd., 636 F.3d 650, 667 (D.C. Cir. 2011)
- United Steel, Paper & Forestry, Rubber, Mfg., Energy, Allied Indus. & Serv. Workers Int'l Union, AFL-CIO-CLC v. PBGC, 707 F.3d 319, 323-24 (D.C. Cir. 2013)
- Fox v. Clinton, 684 F.3d 67, 74-75 (D.C. Cir. 2012)
- Fisher v. PBGC, 151 F. Supp. 3d 159 (D.D.C. 2016)
- Fisher v. PBGC, 468 F. Supp. 3d 7 (D.D.C. 2020)