

ERISA: Convalescence following injury/surgery was qualifying event triggering benefits regardless of date of termination... Defendants satisfied COBRA notice requirements by good-faith mailing to wrong tax form address which Plaintiff failed to correct... Molloy.

James Andersen alleges that he did not receive adequate notice of his option to purchase continued health care coverage, as required by COBRA, following his termination from Roscoe Steel. He began working for Roscoe in 6/01 as a laborer/welder. According to Judge McCarter, he was at Marshall Mountain ski area 3/16/02 when he hurt his back by sliding down an embankment (WCC 2003). Kenneth Brewington performed back surgery. Andersen pursued a comp claim, but McCarter determined that his back problem was not work-related. Following his back injury he was no longer an active employee as defined in Roscoe's ERISA plan: one who performs all duties on a full-time basis. Andersen asserts that he is entitled to benefits because he was not a terminated employee at the time of his accident and had not undergone a "qualifying event" for purposes of 29 USC 1163, rendering Defendants' COBRA notices ineffective. He also insists that he never received the COBRA notices because they were mailed to the wrong address. He contends that his coverage "should be deemed to have been in place at the time that it was needed, the week of March 17-23, 2002," and seeks the full amount of his benefits with interest, a \$100/day penalty, and attorney fees. His medicals total more than \$18,000. Defendants argue that his employment ended 3/14/02, thereby terminating coverage and triggering COBRA notice requirements, and that on 3/28/02 EBMS mailed a letter to his last known address notifying him of his benefits. Andersen's tax form stated his address as 4760 W. Riverside Dr., Missoula, whereas his actual address was 7760 W. Riverside Dr. He was given the tax form with the former address but failed to correct it. Defendants had no knowledge of the inaccuracy. They contend that although he may not have received the letter, they made a good-faith effort to comply with COBRA's notice requirements. The parties do not dispute that he had an accident followed by surgery, but disagree as to whether his last day of work was in 3/02 or 5/02. This is not significantly probative because he was no longer an active employee after 3/02 since he did not immediately return to work following his surgery, his hours were reduced during his convalescence, and by his own admission he was unable to perform full-time following the accident. His convalescence was a qualifying event triggering notice of COBRA benefits. Summary judgment therefore turns on whether Defendants satisfied COBRA notice requirements.

Under the good-faith standard that other courts have used, Defendants satisfied the notice requirements. Within 2 weeks of Andersen's last day of work they mailed an explanation of benefits worksheet to his last known address. Nearly a dozen mailings followed 3/02-7/02, all addressed to 4760 W. Riverside. EBMS mailed the employee benefit information to him at the address Roscoe had provided. Roscoe in turn relied on the address on his tax form. Andersen had received this form but never notified Defendants that

it stated an incorrect address. Defendants operated under the good-faith belief that they were sending COBRA correspondence to his proper address. Summary judgment for Defendants.

Andersen v. Roscoe Steel and Employee Benefit Management Services, 34 MFR 484, 6/22/05.

Howard Toole, Missoula, for Andersen; James Halverson (Halverson & Gilbert), Billings, for Defendants.
