

FILED
United States Court of Appeals
Tenth Circuit

PUBLISH

UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

September 29, 2026

Christopher M. Wolpert
Clerk of Court

THOMAS ALLEN PHILLIPS;
KEVIN D. MURPHY; MICHAEL
EGGER; WILLIAM LOFTHOUSE,
on behalf of themselves and all
others similarly situated

Plaintiffs – Appellees/Cross–
Appellants,

v.

Nos. 25-3160 & 25-3171

BOILERMAKER-BLACKSMITH
NATIONAL PENSION TRUST;
BOARD OF TRUSTEES OF THE
BOILERMAKER-BLACKSMITH
NATIONAL PENSION TRUST;
SCOTT ANDERSON; JOHN T.
FULTZ; LAWRENCE J.
MCMANAMON; LYNDAL
TURNER; MIKE HIDAS; MARK
VANDIVER,

Defendants – Appellants/
Cross–Appellees,

and

BOILERMAKERS NATIONAL
HEALTH & WELFARE PLAN;
BOARD OF TRUSTEES OF THE
BOILERMAKERS NATIONAL
HEALTH & WELFARE PLAN,

Defendants – Cross–
Appellees,

PENSION RIGHTS CENTER

Amicus Curiae.

**Appeal from the United States District Court
for the District of Kansas
(D.C. No. 2:19-CV-02402-TC)**

Gary P. Hunt of Tucker Arensberg, P.C., Pittsburgh, Pennsylvania (Neil J. Gregorio, Kathleen A. Nandan, Richard B. Tucker, III of Tucker Arensberg, P.C., Pittsburgh, Pennsylvania; and Jules L. Smith and Brian J. LaClair of Blitman & King LLP, Victor, New York, with him on the briefs), for Defendants-Appellants/Cross-Appellees.

Susan J. Martin of Martin & Bonnett, PLLC, Phoenix, Arizona (Daniel L. Bonnett, Jennifer L. Kroll, Michael M. Licata of Martin & Bonnett, PLLC, Phoenix, Arizona; and Rik N. Siro of Siro Smith Dickson PC, Kansas City, Missouri, with her on the briefs), for Plaintiffs-Appellees/Cross-Appellants.

Kevin Koelbel, Mesa, Arizona, filed an Amici Curiae Brief for Pension Rights Center in support of Plaintiffs-Appellees.

Before **TYMKOVICH, BACHARACH**, and **FEDERICO**, Circuit Judges.

BACHARACH, Circuit Judge.

This case involves early retirement benefits under a multi-employer pension plan for boilermakers. The appeal involves three issues.

The first issue involves interpretation of the plan. It says that boilermakers become eligible for early retirement benefits when they have withdrawn completely and refrained from employment in jobs that are

classified under a collective bargaining agreement or that involve supervision of workers in these jobs. Joint App'x vol. 4, at 807. The parties disagree over what it means to *withdraw completely*. The boilermakers argue that the plan requires withdrawal from only certain kinds of jobs. The defendants respond that boilermakers must *withdraw completely* by quitting all kinds of work for any company that contributes to a multi-employer pension plan.

We disagree with the defendants. The plan renders boilermakers ineligible only when they withdraw from specified jobs and supervisory positions; there's nothing that renders boilermakers ineligible just because they go to work for a company contributing to the plan.¹

The second issue involves the limitations periods when a boilermaker sues for benefits. Under the plan, the suit must be filed within two years of an adverse decision; and a regulation requires the plan administrator to

¹ The boilermakers argue that we should summarily affirm the claim for benefits because

- the district court found that the trustees had violated procedural requirements,
- the defendants haven't appealed these findings, and
- these violations would trigger the same remedies even if the plan language didn't support early-retirement benefits.

We need not resolve this argument for summary affirmance because we agree with the boilermakers' interpretation of the plan.

notify the claimant of this period. 29 C.F.R. § 2560.503–1(g)(1)(iv). But the plan administrator denied numerous claims without providing notice of the two-year period, and many of the boilermakers missed the deadline. Given the failure to provide notice of the two-year period, the defendants can't rely on timeliness.

The third issue involves the limitations period for a claim involving breach of fiduciary duty. This period of limitations starts when the claimant knows the facts underlying the claim, and there's no evidence that the claimants knew that the trustees had changed the way they were interpreting the plan. This lack of actual knowledge prevents the trustees from relying on the limitations period.

1. The claimants obtain partial summary judgment on a claim for early-retirement benefits.

The trustees offered retirement benefits under a multi-employer pension plan for boilermakers enrolled in a union (the International Brotherhood of Boilermakers). Under the plan, the boilermakers would ordinarily obtain a pension when reaching age 65. But the boilermakers also became eligible earlier if they withdrew completely and refrained from certain kinds of work.

Many of the boilermakers quit before reaching age 65 and began receiving retirement benefits. But some of the boilermakers took other

jobs. The trustees concluded that these boilermakers were no longer entitled to early-retirement benefits.

The boilermakers sued the pension plan (the Boilermaker-Blacksmith National Pension Trust), six of the trustees, and their board (the Board of Trustees of the Boilermaker-Blacksmith National Pension Trust), invoking the Employee Retirement Income Security Act (“ERISA”) for improperly denying benefits, breaching a fiduciary duty, and violating procedural requirements.

Both sides moved for summary judgment, and the district court

- granted the boilermakers’ motion for partial summary judgment on the claims involving a failure to pay benefits,
- granted partial summary judgment to some of the boilermakers on the claims for breach of a fiduciary duty, and
- granted summary judgment to the defendants on claims by other boilermakers for breach of fiduciary duty, concluding that those claims were barred by a three-year period of limitations.

The defendants appeal the grant of partial summary judgment to the boilermakers, reasoning that the district court mistakenly interpreted the plan. In response, 66 of the boilermakers cross-appeal the grant of summary judgment to the defendants on the claim involving breach of fiduciary duty, arguing that the three-year period of limitations doesn’t apply absent actual knowledge of the breaches.

2. We independently apply the standards for summary judgment and claims under ERISA.

We engage in de novo review of the district court’s rulings on summary judgment, using the same standard that applied in district court. *LaAsmar v. Phelps Dodge Corp. Life, Accidental Death & Dismemberment & Dependent Life Ins. Plan*, 605 F.3d 789, 795–96 (10th Cir. 2010).

In district court, “a distinct standard” exists when reviewing a plan administrator’s denial of benefits. *Graham v. Hartford Life & Accident Ins. Co.*, 501 F.3d 1153, 1155 n.1 (10th Cir. 2007); *see LaAsmar*, 605 F.3d at 796 (stating that when reviewing a grant of summary judgment on an ERISA claim, the court of appeals must determine the standard governing an insurer’s denial of benefits). Under that standard, the court of appeals ordinarily conducts de novo review of the plan administrator’s decision. *Firestone Tire & Rubber Co. v. Bruch*, 489 U.S. 101, 115 (1989). But when the plan confers discretion on the plan administrator, we apply the arbitrary-and-capricious standard based on the administrative record.² *See LaAsmar*, 605 F.3d at 796.

² When both sides move for summary judgment on an ERISA claim, the motions serve merely as a vehicle to decide the case; eligibility for benefits turns solely on the administrative record, and we don’t resolve inferences in favor of either party. *Ian C. v. UnitedHealthcare Ins. Co.*, 87 F.4th 1207, 1217 (10th Cir. 2023).

Such discretion exists here;³ so we must uphold the plan administrator's interpretation unless it is arbitrary and capricious. But we regard the plan administrator's interpretation as arbitrary and capricious if it conflicts with the plan's unambiguous language. *D.K. v. United Behav. Health*, 67 F.4th 1224, 1236 (10th Cir. 2023).

3. The district court didn't err in interpreting the plan.

The central issue involves the claims for retirement benefits before a boilermaker turns 65. Resolution of this issue turns on the meaning of the plan's reference to boilermakers who *completely withdraw*.

The defendants argue that

- the boilermakers are ineligible for early-retirement benefits if they perform any work for a company that contributes to a multi-employer pension plan,
- the plan language is ambiguous, and
- the court should resolve that ambiguity by ensuring tax benefits for plan participants and employers contributing to the plan.

The district court rejected these arguments for three reasons:

1. The plan unambiguously states that the boilermakers are eligible for early-retirement benefits unless they work
 - for a company that contributes to a multi-employer pension plan and

³ The plan states that “[t]he Trustees shall have complete discretion to construe, interpret, and apply all terms and provisions of this Plan document.” Joint App’x vol. 4, at 832.

- in jobs that are classified in a collective bargaining agreement or that involve supervision of workers in those jobs.
2. The defendants waited too long to raise ambiguity by asserting it for the first time in their reply brief.
 3. The tax benefits do not override the unambiguous language of the plan.

To justify reversal, the defendants must show that all of these rationales were wrong. *Bones v. Honeywell Int’l, Inc.*, 366 F.3d 869, 877 (10th Cir. 2004). The defendants haven’t made that showing.

First, the district court was right to reject the defendants’ interpretation of the plan. The plan states:

Before Normal Retirement Age. Effective July 1, 2010, to be considered retired and entitled to a pension under this Plan before he has obtained Normal Retirement Age, a Participant must withdraw completely and refrain from employment or self-employment for an employer which performs work in an industry traditionally covered by a Collective Bargaining Agreement:

- (1) where the employment or self-employment is in a job classification of the type included in a Collective Bargaining Agreement anywhere in the United States; or
- (2) where the employment or self-employment includes any direct supervision of a job classification of the type included in a Collective Bargaining Agreement anywhere in the United States in the construction industry.

Joint App’x vol. 4, at 807.

This language restricts eligibility for early-retirement benefits to boilermakers who *completely withdraw and refrain from* certain jobs. *Id.*

The defendants don’t deny that the boilermakers refrained from working in

jobs specified in the plan. But the parties disagree over whether the boilermakers have satisfied the requirement to *withdraw completely*. This disagreement turns on what the boilermakers needed to *withdraw from*.

All parties agree that *withdrawal* in this context means that the boilermaker must withdraw from something. *See 20 Oxford English Dictionary* 449 (2d ed. 1989). But from what? The boilermakers argue that they must withdraw from work in a job classified in a collective bargaining agreement or supervision of such a job; the defendants argue that the boilermakers must withdraw from any job with a company that contributes to the multi-employer pension plan.

The defendants' argument lacks any basis in the plan language, which says that the boilermaker must withdraw and refrain from particular kinds of work for particular types of employers. For example, if a boilermaker quits and joins a sporting goods store, the new job wouldn't prevent early-retirement benefits unless sporting goods stores are employers traditionally covered by a collective bargaining agreement. If the new employer engages in an industry traditionally covered by a collective bargaining agreement, the boilermaker must refrain from two kinds of work:

1. work that is of a type classified in a collective bargaining agreement and
2. work that includes direct supervision of jobs classified in a collective bargaining agreement.

Joint App’x vol. 4, at 807.

The defendants contend that these references qualify the term *refrain from* but not the term *withdraw completely*. See Appellants’ Opening Br. at 31 (arguing that “the phrases ‘withdraw completely’ and ‘refrain from’ disqualifying work must have distinct meanings”); Appellants’ Reply Br. at 17 (arguing that “the ‘withdraw completely’ requirement is additional and distinct from the requirement to refrain from disqualifying work”).⁴ But in grammar, we typically regard the verb *withdraw* as transitive, meaning that it takes a direct object. See *S. Ass’n of Colleges and Schs Comm’n on Colleges, Inc. v. Bennett Coll.*, No. 22-13289, 2023 WL 2231773, at *2 (11th Cir. Feb. 27, 2023) (unpub. op.) (interpreting *withdraw* as a transitive verb). So we would typically expect the sentence to say what someone is withdrawing from. For example, we might say that

- a soldier withdraws from battle or
- a student withdraws from school.

But if we say that the boilermakers must *completely withdraw*—without further qualification—the sentence would be meaningless because we

⁴ At oral argument, defense counsel was asked whether the prepositional phrase—“from employment or self-employment for an employer which performs work in an industry traditionally covered by a Collective Bargaining Agreement”—modified the phrase *withdraw completely*. Defense counsel answered: “No. It can’t.” Oral Arg. Tr. at 4:58–5:18.

wouldn't know what the boilermakers must withdraw from. The boilermakers thus draw on the plan language stating that they must withdraw from jobs

- that are traditionally classified in a collective bargaining agreement or
- that involve supervision of workers in those jobs.

In contrast, the defendants assert that the boilermakers must withdraw from any work for a company that contributes to the multi-employer pension plan. For this interpretation, the defendants lack any support in the plan language.

The defendants instead suggest that the term *withdraw completely* is modified only by the phrase “from employment or self-employment for any employer which performs work in an industry traditionally covered by a Collective Bargaining Agreement.” Appellants’ Opening Br. at 29 (arguing that the plan “provides that an early retiree may not collect his pension benefit during months in which he performs Boilermaker work (*i.e.*, Covered Work) for *any* employer in a traditional Boilermaker industry”). But that suggestion ignores sections (1) and (2), which describe job classifications and supervisory roles that disqualify a boilermaker from receiving early-retirement benefits. *See Van Steen v. Life Ins. Co. of N. Am.*, 878 F.3d 994, 1000 (10th Cir. 2018) (stating that discretion afforded to a plan administrator does not allow the court to disregard the

plan language). Given sections (1) and (2), the defendants' interpretation of the plan isn't just unsupported; it's also impossible to reconcile with the provision as a whole.

Despite the lack of textual support for their interpretation, the defendants argue that the plan language is ambiguous. This argument surfaced in district court when the defendants filed a reply brief, and the district court regarded the reply brief as too late for a new argument. For this ruling, we would ordinarily defer to the district court. *See Donner v. Nicklaus*, 778 F.3d 857, 864 (10th Cir. 2015) (considering the defendants' reliance on timeliness as waived when they presented the argument for the first time in a reply brief); *see also Mondaine v. Am. Drug Stores, Inc.*, 408 F. Supp. 2d 1169, 1203 (D. Kan. 2000) ("The Court will not consider new arguments in a party's reply brief.").

But the defendants criticize the district court's reasoning, arguing that interpretation of the plan language had dominated the summary-judgment briefing. Certainly, interpretation of the plan wasn't a new issue surfacing for the first time in the defendants' reply brief. Until then, however, the defendants hadn't characterized the plan language as ambiguous. So the district court didn't err in concluding that the defendants had raised ambiguity too late by injecting it in the reply brief.

The district court relied not only on timeliness but also on the lack of ambiguity in the plan language. The defendants insist that the plan language is ambiguous because

- the plan states that it should be construed in a way that preserves qualification for tax benefits and
- these benefits prevent early-retirement benefits for boilermakers who continue working for employers contributing to the plan.

This argument lacks any textual basis in the plan itself, and the defendants acknowledge that we can consider the requirement of tax qualification only if the plan language is ambiguous. Oral Arg. at 2:44–3:55. But the language isn’t ambiguous. To the contrary, it unequivocally restricts early-retirement benefits for boilermakers only when they have withdrawn and refrained from jobs traditionally classified in a collective bargaining agreement or supervision of workers in those jobs. So we conclude that the boilermakers have correctly interpreted the plan.

4. The claims for benefits are not time-barred.

The defendants argue in the alternative that many of the claims are time-barred. This argument requires consideration of the two stages of review under the plan.

In the first stage, a boilermaker applies for benefits. Upon getting an application, the plan administrator must make an initial decision. *See* Joint

App’x vol. 4, at 829–30. In the second stage, a boilermaker may appeal the denial of benefits. *See id.* at 830–32. When an appeal is submitted, the plan administrator must issue a written decision. *Id.* at 831–32.

Both stages are governed by federal regulations that require “notification of any adverse benefit determination.” 29 C.F.R. § 2560.503–1(g)(1). The term *adverse benefit determination* includes “a denial” of benefits. 29 C.F.R. § 2560.503–1(m)(4)(iv). So the notice requirement applies to the decisions at both stages.

The resulting issue is what the plan administrator needed to disclose. That disclosure needed to include “the time limits” for the “plan’s review procedures.” 29 C.F.R. § 2560.503–1(g)(1)(iv); *see* pp. 3–4, above. The term *procedures* includes the “right to bring a civil action” challenging the denial of benefits. 29 C.F.R. § 2560.503–1(g)(1)(iv). With this language, every circuit to address the issue has required the plan administrator to tell participants how long they have to sue following a denial of benefits. *See Santana-Diaz v. Metro. Life Ins. Co.*, 816 F.3d 172, 180 (1st Cir. 2016) (concluding that the regulations require the plan administrator to notify the participant of the deadline to bring a civil action when denying benefits); *Mirza v. Ins. Adm’r of Am. Inc.*, 800 F.3d 129, 136 (3d Cir. 2015) (stating that “29 C.F.R. § 2560.503–1(g)(1)(iv) requires that adverse benefit determinations set forth any plan-imposed time limit for seeking judicial review”); *Moyer v. Metro. Life Ins. Co.*, 762 F.3d 503, 505 (6th Cir. 2014)

(“The claimant’s right to bring a civil action is expressly included as a part of those procedures for which applicable time limits must be provided.”).

The plan administrator denied the initial claims of 69 boilermakers without telling them how long they had to bring a civil action. Those omissions would ordinarily prevent the defendants from relying on the limitations period. *See Mirza v. Ins. Adm’r of Am. Inc.*, 800 F.3d 129, 136 (3d Cir. 2015) (setting aside the ERISA plan’s period of limitations because the plan administrators’ letters denying benefits hadn’t notified the claimants of the time-limits to bring civil actions); *Moyer v. Metro. Life Ins. Co.*, 762 F.3d 503, 507 (6th Cir. 2014) (concluding that omission of the time limit to sue in a letter denying benefits prevents application of the plan’s period of limitations).

The defendants argue that they cured the omissions in the initial denial notices by telling the boilermakers about the two-year period of limitations when denying the administrative appeals. The boilermakers respond that the denials contained other deficiencies. For example, the boilermakers point out that the trustees needed to state the specific reasons for denial and identify the pertinent evidence. *See* 29 U.S.C. § 1133(1) (reasons); *Ian C. v. UnitedHealthcare Ins. Co.*, 87 F.4th 1207, 1226 (10th Cir. 2023) (pertinent evidence). But the plan administrator denied the appeals without identifying the pertinent section of the plan (§ 8.08). Given this omission, the district court concluded that the plan

administrator hadn't adequately disclosed its reasons for denying the administrative appeals. Joint App'x vol. 11, at 2648. Pointing to the district court's conclusions, the boilermakers argue that defective explanations in the administrative appeals couldn't cure defects in the earlier decisions.

The defendants filed a reply brief here, but they didn't address the boilermakers' reliance on defects in the decisions denying the administrative appeals. Given the defendants' failure to address this argument, we consider only whether it bears an obvious flaw. *In re Syngenta AG MIR 1162 Corn Litig. (Hossley-Embry Grp. II)*, 111 F.4th 1095, 1110 n.15 (10th Cir. 2024). We see no obvious flaw: The district court found that the letters denying the administrative appeals were themselves defective, and the defendants don't challenge that finding. Absent such a challenge, defective denials of administrative appeals wouldn't obviously cure defects in the earlier decisions.⁵

⁵ The trustees assert that notification of the two-year period could mislead boilermakers by suggesting a right to sue without exhausting administrative remedies. But we can't disregard the Department of Labor's regulations just because we might disagree with them. *See Montaro-Vega v. Holder*, 721 F.3d 1175, 1178 (10th Cir. 2013) ("We do not . . . undo administrative regulations just because they may not be to a litigant's liking or our own.").

5. Because the boilermakers correctly interpret the plan, we need not address the defendants’ other challenges.

The defendants argue that

- they didn’t violate statutory provisions barring reductions in benefits already earned and requiring notice of plan amendments that reduce future benefits, 29 U.S.C. § 1054(g) (barring reductions in earned benefits); 29 U.S.C. § 1054(h) (requiring notice for amendments reducing benefits) and
- the district court erroneously restricted the amounts that could be recouped from boilermakers who had been overpaid, 29 U.S.C. § 1056(h)(2)(B).

We need not address these arguments.

As the district court explained, the ERISA provisions governing reductions in earned benefits and notice of amendments reducing benefits generally “work in separate time spaces.” Joint App’x vol. 11, at 2641–42 (explaining that one provision addresses earned benefits while the other addresses “promised benefits in the future”). But here, the boilermakers grouped the provisions when making related claims. *See* Joint App’x vol. 2, at 459 (contending in the final pretrial order that “Defendants . . . through their changed interpretation amended and retroactively implemented more restrictive eligibility requirements for early-retirement benefits”). In claiming a right to benefits, the boilermakers sought and obtained the same relief for (1) reductions in earned benefits and (2) deficiencies in the notice of these reductions. *See id.* at 468–69 (final pretrial order); vol. 11, at 2799–2801 (judgment); *Phillips v. Boilermaker-*

Blacksmith National Pension Trust, No. 2:19-cv-02402-TC, doc. 437–1 (D. Kan. Aug. 15, 2025) (plan of allocation adopted by the judgment).

The boilermakers concede that our approval of their interpretation of the plan would moot the claim involving reductions in earned benefits. Oral Arg. at 36:54–37:38.⁶ Given the identical allegations and request for relief, the concession applies equally to the claim for inadequate notice. *See Romero v. Allstate Corp.*, 404 F.3d 212, 221 (3d Cir. 2005) (observing that the statutory requirements for notice and protections against cutbacks in benefits “appear to be intrinsically tied together”); *see also Stahl v. Sun Microsystems, Inc.*, 19 F.3d 533, 537 n.1 (10th Cir. 1994) (declining to consider arguments addressing a tort claim because the damages that would have been awarded on that claim “were identical to the damages awarded on the breach of contract claim”). So we need not address the parties’ disagreements involving the challenges involving reduction in earned benefits and the adequacy of the defendants’ notice.

Moreover, the trustees acknowledge that we don’t need to decide how much they could recoup if we conclude that the boilermakers are entitled to early-retirement benefits. Because we have concluded that the boilermakers

⁶ The boilermakers qualified this concession by stating that they considered the defendants’ argument “dangerous” by relying on a definition different from the one that has always been applied. Oral Arg. at 36:54–37:38. But the boilermakers haven’t said how they’re affected by the defendants’ assertion of a dangerous argument.

are entitled to early-retirement benefits, we need not address the disagreement over the amounts that the trustees can recoup when they overpay.

6. The district court erred in applying a time-bar to some of the claims for breach of fiduciary duty.

Despite finding a right to benefits, the district court concluded that some of the claims for breach of fiduciary duty were time-barred. The boilermakers challenge this conclusion in a cross-appeal.

For these claims, a three-year period of limitations exists. 29 U.S.C. § 1113(2). The district court concluded that the boilermakers had missed this deadline by suing for breach of fiduciary duty more than three years after the trustees had denied the claims. For this conclusion, the court erred by treating the denial of benefits as the start of the limitations period.

The statute of limitations provides that the three-year period doesn't start until the plaintiff has "actual knowledge of the breach or violation."

Id. The alleged violation involved not only the denial of benefits, but also

- "a series of misleading statements that hid the fact that [the plan administrators] were imposing a new unwritten requirement [for receiving early-retirement benefits]" and
- fraudulent concealment of the fact that the new restrictions on early-retirement benefits hadn't appeared in the plan documents.

Phillips v. Boilermaker-Blacksmith National Pension Trust, No. 2:19-cv-02402-TC, Doc. 331, at 36 (D. Kan. Aug. 15, 2025) (memorandum of the boilermakers in support of their motion for partial summary judgment). The administrative record doesn't contain evidence showing when the boilermakers knew of the alleged misconduct. *See Intel Corp. Inv. Pol'y Comm. v. Sulyma*, 589 U.S. 178, 184–87 (2020) (concluding that the statute of limitations for ERISA claims involving breach of fiduciary duty doesn't begin to run until the participant is actually aware of the breach).

The defendants argue that the boilermakers could have learned everything they needed to know more than three years before they sued. But the three-year period of limitations is triggered by actual knowledge, not the ability to discover something. *Id.* at 186; *see also Su v. Johnson*, 68 F.4th 345, 356–57 (7th Cir. 2023) (concluding that disclosure of a violation hadn't shown actual knowledge as required to trigger the three-year period of limitations). The district court thus erred in granting summary judgment to the defendants on the claims by 66 of the boilermakers for breach of fiduciary duty.⁷

* * *

⁷ The boilermakers also argue that the district court should have applied an exception for fraud or misrepresentation. We need not address that argument.

In Appeal No. 25-3160, we affirm the grant of summary judgment to the boilermakers on their claims for benefits and the timeliness of the claims. In Appeal No. 25-3171, we reverse the grant of summary judgment to the defendants on the claims by 66 of the boilermakers for breach of fiduciary duty. We remand to the district court for further proceedings consistent with this opinion.