

United States Court of Appeals
FOR THE EIGHTH CIRCUIT

No. 98-3127EM

Michael W. Schleeper,	*	
	*	
Plaintiff-Appellant,	*	On Appeal from the United
	*	States District Court for
v.	*	the Eastern District of
	*	Missouri.
	*	
Purina Benefits Association, a trust,	*	[To be Published.]
	*	
Defendant-Appellee.	*	

Submitted: March 11, 1999

Filed: March 24, 1999

Before RICHARD S. ARNOLD, FLOYD R. GIBSON, and HANSEN, Circuit Judges.

PER CURIAM.

In this ERISA case, the issue is whether the employee-beneficiary failed to exhaust his administrative remedies by not filing a timely intra-plan appeal. The District Court¹ held the claim barred by failure to exhaust. We affirm.

¹The Hon. Stephen N. Limbaugh, United States District Court for the Eastern and Western Districts of Missouri.

Plaintiff argues exhaustion would have been futile. But no evidence to support this claim was adduced, and we are unwilling to assume futility. Plaintiff points out that he had already obtained one level of intra-plan review, and that his failure, if any, related only to a second level of intra-plan review. The law does not forbid an intra-plan appellate structure containing two levels.

Affirmed.

A true copy.

Attest:

CLERK, U.S. COURT OF APPEALS, EIGHTH CIRCUIT.