

1 UNITED STATES COURT OF APPEALS  
2 FOR THE SECOND CIRCUIT

3 **SUMMARY ORDER**

4 **THIS SUMMARY ORDER WILL NOT BE PUBLISHED IN THE FEDERAL REPORTER**  
5 **AND MAY NOT BE CITED AS PRECEDENTIAL AUTHORITY TO THIS OR ANY OTHER**  
6 **COURT, BUT MAY BE CALLED TO THE ATTENTION OF THIS OR ANY OTHER**  
7 **COURT IN A SUBSEQUENT STAGE OF THIS CASE, IN A RELATED CASE, OR IN**  
8 **ANY CASE FOR PURPOSES OF COLLATERAL ESTOPPEL OR RES JUDICATA.**

9 At a stated term of the United States Court of Appeals for the  
10 Second Circuit, held at the Daniel Patrick Moynihan United States  
11 Courthouse, 500 Pearl Street, in the City of New York, on the  
12 10th day of August, two thousand and six.

13 PRESENT:

14 HON. ROBERT D. SACK,  
15 HON. ROBERT A KATZMANN,  
16 Circuit Judges,

17  
18 HON. J. GARVAN MURTHA,\*  
19 District Judge.

20 -----  
21 MARK PASTORE,

22 Plaintiff-Appellant,

23 - v -

No. 05-4157

24 WITCO CORPORATION SEVERANCE PLAN and EMPLOYEE BENEFITS COMMITTEE  
25 OF THE WITCO CORPORATION SEVERANCE PLAN, in capacity as Plan  
26 Administrator,

27 Defendants-Appellees.

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29 Appearing for Appellant: LAURENT S. DROGIN, Tarter Krinsky &  
30 Drogin LLP (David S. Rich, of  
31 counsel), New York, NY.

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\* Of the United States District Court for the District of Vermont, sitting by designation.



1 Pastore, through counsel, requested severance benefits from  
2 Witco pursuant to the Plan. Witco responded that Pastore was  
3 ineligible for the benefits because he had been offered the  
4 option of working from home and therefore had not been "required  
5 to relocate." Pastore then submitted a formal request for  
6 benefits to the Committee. He argued that he was eligible for  
7 benefits notwithstanding Witco's offer of a "home office,"  
8 because (1) according to the offer, Pastore would still be  
9 required to report to Middlebury an average of four days per  
10 month; (2) Witco had failed to determine whether Pastore had  
11 enough physical space in his home to set up a home office; and  
12 (3) Pastore thought that it would be impossible for him to  
13 "successfully perform his duties and responsibilities as a  
14 'telecommuter.'"

15 The Committee discussed Pastore's claim in a meeting of  
16 February 14, 2001, attended by all its members. By letter dated  
17 February 15, 2001, the Committee denied Pastore's claim. The  
18 letter said, "Mr. Pastore was not required to relocate to an  
19 office more than 50 miles from his principal residence or his  
20 prior work location" because he "was permitted to work from his  
21 home," in that Witco had offered to set up, at its expense, a  
22 "home office . . . for use as his 'base of operations.'"  
23 (Emphasis deleted).

24 Pastore began this action against the Committee and the Plan  
25 in the United States District Court for the Southern District of  
26 New York on April 19, 2001. He asserts principally that the  
27 defendants wrongfully denied him employee benefits to which he  
28 was entitled in violation of section 502(a)(1)(B) of the Employee  
29 Retirement Insurance Security Act ("ERISA"), 29 U.S.C.  
30 § 1132(a)(1)(B). On June 27, 2005, the district court, rejecting  
31 the recommendations of a magistrate judge, granted the  
32 defendants' motion for summary judgment. See Pastore v. Witco  
33 Corporation Severance Plan, 388 F. Supp. 2d 212 (S.D.N.Y. 2005).

34 When, as here, an ERISA plan grants discretion to a plan  
35 administrator such as the Committee, federal courts review its  
36 decisions regarding plan benefits under the "arbitrary and  
37 capricious" standard. See, e.g., Garcia Ramos v. 1199 Health  
38 Care Employees Pension Fund, 413 F.3d 234, 237 (2d Cir. 2005).  
39 Denials of benefits "may be overturned as arbitrary and  
40 capricious only if the decision is without reason, unsupported by  
41 substantial evidence or erroneous as a matter of law." Fay v.  
42 Oxford Health Plan, 287 F.3d 96, 104 (2d Cir. 2002) (internal  
43 quotation marks and citations omitted).

1 We think that the Committee's decision to deny benefits to  
2 Pastore was arbitrary and capricious in that it was rendered, in  
3 effect, "without reason." Id. In denying Pastore's benefits  
4 request, the Committee stated only that Pastore was not "required  
5 to relocate" because he was "permitted to work from his home."  
6 It is undisputed, however, that Pastore would have been required  
7 to continue to participate in a work group that was located in  
8 Middlebury and to report to Middlebury an average of four times  
9 per month. The question was whether such an arrangement  
10 constituted a requirement to relocate. The Committee did not  
11 address this question; instead it stated in a conclusory fashion  
12 that Pastore had been "permitted to work from his home." This  
13 explanation was insufficient. See 29 U.S.C. § 1133(1) (plan  
14 administrators must "provide adequate notice in writing to any  
15 participant or beneficiary whose claim for benefits under the  
16 plan has been denied, setting forth the specific reasons for such  
17 denial, written in a manner calculated to be understood by the  
18 participant").

19 We think, moreover, that the Committee acted arbitrarily and  
20 capriciously in failing to consider whether Pastore had enough  
21 space in his home for an office or whether he could "successfully  
22 perform his duties and responsibilities as a 'telecommuter.'" See  
23 Zervos v. Verizon New York, Inc., 277 F.3d 635, 647 (2d Cir.  
24 2002) (claims process was arbitrary and capricious when, among  
25 other things, administrator failed to give proper consideration  
26 to testimonial evidence); Gaither v. Aetna Life Ins. Co., 388  
27 F.3d 759, 773 (10th Cir. 2004) ("[F]iduciaries cannot shut their  
28 eyes to readily available information when the evidence in the  
29 record suggests that the information might confirm the  
30 beneficiary's theory of entitlement and when they have little or  
31 no evidence in the record to refute that theory."). The  
32 defendants admit that the Committee reviewed only the  
33 correspondence between Pastore and Witco and did not investigate  
34 the dimensions of Pastore's home or the effects of working from  
35 home on Pastore's job performance. It was required to consider  
36 Pastore's arguments and evidence. See Zuckerbrod v. Phoenix Mut.  
37 Life Ins. Co., 78 F.3d 46, 49 (2d Cir. 1996) (decision to deny  
38 benefits must be "based on a consideration of the relevant  
39 factors" (internal quotation marks and citations omitted)).

40 When a plan administrator "fails to provide an adequate  
41 reasoning, the proper remedy in an ERISA case . . . is to remand  
42 for further findings or explanations, unless it is so clear cut  
43 that it would be unreasonable for the plan administrator to deny  
44 the application for benefits on any ground." Quinn v. Blue Cross  
45 and Blue Shield Ass'n, 161 F.3d 472, 477 (7th Cir. 1998)  
46 (internal quotation marks and citations omitted). Similarly,

1 when an administrator fails to consider relevant evidence, we  
2 "remand to the [administrator] with instructions to consider  
3 additional evidence unless no new evidence could produce a  
4 reasonable conclusion permitting denial of the claim or remand  
5 would otherwise be a useless formality." Miller v. United  
6 Welfare Fund, 72 F.3d 1066, 1071 (2d Cir. 1995) (internal  
7 quotation marks and citations omitted). We think a remand to the  
8 Committee is the appropriate remedy in this case. In so  
9 concluding, we neither express nor mean to imply any opinion as  
10 to whether denial of severance benefits to Pastore, after proper  
11 explanation and investigation, would be reasonable.

12 We have considered Pastore's remaining arguments on appeal  
13 with respect to other matters and find them to be without merit.  
14 The district court's judgment as to those issues will be  
15 affirmed.

16 For the foregoing reasons, the judgment of the district  
17 court is hereby AFFIRMED in part and VACATED in part, and the  
18 case is REMANDED for further proceedings.

19 FOR THE COURT:

20 ROSEANN B. MACKECHNIE, Clerk

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22 By: