

FILED

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MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

ELINOR OTTO, on behalf of herself and
all others similarly situated,

Plaintiff-Appellant,

v.

EMPLOYEE RETIREMENT INCOME
PLAN - HOURLY WEST, FKA
Employee Retirement Income Plan of
McDonnell Douglas Corporation-Hourly
West Plan, an ERISA pension plan,

Defendant-Appellee.

No. 15-55987

D.C. No.

2:14-cv-05426-JAK-PLA

MEMORANDUM*

Appeal from the United States District Court
for the Central District of California
John A. Kronstadt, District Judge, Presiding

Argued and Submitted July 8, 2016
Pasadena, California

Before: VANASKIE,** MURGUIA, and WATFORD, Circuit Judges.

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

** The Honorable Thomas I. Vanaskie, United States Circuit Judge for the Third Circuit, sitting by designation.

Elinor Otto appeals the district court's order granting summary judgment on her ERISA claim in favor of her Boeing pension plan, the Employee Retirement Income Plan - Hourly West (the Plan). We have jurisdiction under 28 U.S.C. § 1291, and we affirm.

The text of the Plan does not unambiguously require that active employees' minimum payments be annually increased to the product of the employees' years of service and applicable rate from the previous year. The Plan text is ambiguous as to whether the term "Accrued Benefit determined or redetermined as of the immediately preceding December 31" includes the actuarial reduction to the Accrued Benefit. The Plan's interpretation including the reduction is reasonable, and consistent with its stated purpose of providing income after retirement. *See Dolan v. U.S. Postal Serv.*, 546 U.S. 481, 486 (2006) ("Interpretation of a word or phrase depends upon reading the whole statutory text, considering the purpose and context of the statute . . ."). The Plan did not abuse its discretion in determining Otto's benefits. *See McDaniel v. Chevron Corp.*, 203 F.3d 1099, 1113 (9th Cir. 2000).

AFFIRMED.