



## Court Awards Retroactive Disability Benefits After Finding Denial Was Abuse of Discretion

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**T**he United States Court of Appeals for the Fourth Circuit finds that the plan administrator of a disability plan abused its discretion by improperly setting the disability onset date of a claimant and by not tolling the applicable limitations period.

The claimant was a professional football player from 1974 to 1991. The claimant's employment with the professional football team made him eligible to participate in a retirement plan and a disability plan (collectively, the plan), administered by a retirement board (the board). The plan provided four types of benefits for players who suffer a total and permanent disability as a result of football. One of the disability benefits, "active football" benefits, provided benefits if "the disability(ies) result from League football activities, arises while the Player is an Active Player, and causes the Player to be totally and permanently 'shortly after' the disability(ies) first arises." A lesser benefit, the "football degenerative" benefit, provided benefits if the "disability(ies) arises out of League football activities, and results in total and permanent disability before the later of (1) age 45, or (2) 12 years after the end of the Player's last Credited Season." Both benefits provide that an applicant "will be deemed to be totally and permanently disabled if the [Board] finds that he has become totally disabled to the extent that he is substantially unable to engage in any occupation or employment for remuneration or profit."

After his retirement, the plaintiff had several failed business ventures and stunted career attempts. He worked two preseason games as a television analyst and worked as a strength and con-

ditioning coach for a professional football team. He also had several self-owned business ventures but it is undisputed that none of these business ventures generated income. In 1995 and 1996, the claimant contacted the board five times, sometimes only days apart, each time seeking an application for filing a disability claim. However, he never completed these applications. In 1998, the claimant was diagnosed with brain damage resulting from the multiple head injuries that he incurred while playing football. In the spring of 1999, the claimant finally completed an application for disability benefits under the plan. The claimant submitted his medical records and the reports of several physicians in support of his application. The board also asked the claimant to be examined by an independent physician selected by the board. Ultimately, the board awarded the claimant football degenerative benefits but denied his application for active football benefits. In denying his application for active football benefits, the board set the onset of his total and permanent disability at September 1, 1996. In its denial, the board stated that the claimant's work as a broadcaster, his failed business ventures and his work as an assistant coach demonstrated his ability "to engage in any occupation . . . for remuneration or profit." The board also cited a medical evaluation from 1996 stating that the claimant's condition had "really deteriorated recently" as evidence that the claimant had not been mentally disabled during his 1993 visit to the same physician.

Prior to the board's denial of active football benefits, the claimant suffered a heart attack and died. The claimant's estate, the plaintiff, then appealed

the board's decision but the board upheld its decision. In upholding its denial, the board also cited for the first time a plan provision which imposes a time limitation on the onset of total and permanent disability. The provision prevents establishment of an onset date for total and permanent disability earlier than 42 months prior to the filing of the application, unless the applicant's mental incapacity substantially interfered with the filing of the claim. The plaintiff then filed an action in district court against the plan claiming that benefits were wrongfully denied. The district court ruled in favor of the plaintiff and the defendant appeals.

The court first recognizes that the plan grants the board the discretionary authority to determine benefit eligibility and interpret the plan. While this discretionary language requires the court to apply the deferential abuse of discretion standard in reviewing the board's decision, the court notes that the board's decision must be supported by substantial evidence. The court reasons that this requirement of substantial evidence is not established when "in denying benefits, [the plan administrator] ignores unanimous relevant evidence supporting the award of benefits." Similarly, the court notes that a plan administrator "abuses its discretion by crediting a doctor's earlier, incomplete evaluation but ignoring the same doctor's later, more comprehensive opinion."

Under this standard, the court considers the evidence in the record and the board's decision. The plan's first argument in support of its decision is that the claimant could not possibly have been "substantially unable to engage in any occupation or employment for remuneration or profit," because he was actually employed between 1991 and 1996." The court, however, disagrees with this assessment. The court notes that the claimant's two-game "dalliance" in sports broadcasting does not disprove that he suffered total and permanent disability "shortly after" retirement. Furthermore, the court notes that the plan specifically discounts his job as an assistant coach because it provides an exception for employment with a professional football team and employment that is provided out of "benevolence." Because the record indicates that he was employed out of benevolence, this position is not evidence of employability. Finally, the court notes that there is no evidence that he ever earned a single dollar from his various business ventures; thus, these ventures are not evidence of employability.

The court then considers the plan's argument that the medical evidence shows the claimant was "generally in good health" until 1996. The court reviews the medical evidence and disagrees with the plan's assessment. The court notes that the

claimant and his estate have always argued that the claimant was mentally disabled, not physically disabled. Yet, the medical opinions relied on by the board were written by a hematologist and oncologist and the board ignored the medical opinions regarding the claimant's mental state, including the opinion of its own medical expert. Because the board offered no relevant medical or employment evidence to contradict the unanimous medical opinion of examining experts, the court finds that the expert opinions "at least establish a presumption that [the claimant] is entitled to Active Football benefits." Accordingly, the court concludes that the board abused its discretion in denying active football benefits to the claimant.

The court then considers the plan's alternate argument that the claimant's application for active football benefits was barred by the plan's limitation provision. The court notes that the plaintiff concedes that the limitation provision applies to the claimant's application; however, the plaintiff insists that the limitation period should be tolled from March 1991 onward because of the claimant's brain damage. The plan specifically provides that the limitation period "will be tolled for any period of time during which such Player is found by the [Board] to be physically or mentally incapacitated in a manner that substantially interferes with the filing of such claim." The court notes that the board is entitled to interpret the terms "mentally incapacitated" and "substantially interferes" in any reasonable manner. However, the court also notes that the board did not define either term when considering the claimant's application. Moreover, the court finds that it would require a "delicate parsing [of the language] . . . to decide that the medical and employment evidence that supports a finding of total and permanent disability on these facts does not also support a finding of mental incapacity that substantially interfered with the filing of [the claimant's] claim." Ultimately, the court concludes that the medical evidence of the claimant's brain damage shows that the claimant was totally and permanently disabled and "mentally incapacitated in a manner that substantially interfere[d]" with the filing of his claim. Thus, the court concludes that the limitation provision should have been tolled and the board abused its discretion in applying the limitation provision to bar the claimant's application for active football benefits. Accordingly, the decision of the district court is affirmed and the plan is ordered to award the plaintiff active football benefits on behalf of the claimant.

This case is *Jani v. The Bert Bell/Pete Rozelle NFL Player Retirement Plan et al.*, No. 05-2386 (4th Cir. Dec. 13, 2006).

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