

## Ex-NFL Player Owed Disability Benefits

By **Abby Wargo**

Law360 (June 2, 2022, 3:44 PM EDT) -- A California federal judge found that the National Football League's retirement board abused its discretion by denying a former San Diego Chargers player benefits for a spinal injury that permanently disabled him.

U.S. Magistrate Judge Jacqueline S. Corley in an **order** Wednesday granted former NFL cornerback Charles Dimry summary judgment, ruling that he was owed permanent disability benefits under the Bert Bell/Pete Rozelle NFL Player Retirement Plan.

"The retirement board abused its discretion when it denied Mr. Dimry's disability benefits application the second time and considering the evidence before the Court, Mr. Dimry is under a permanent and total disability under Section 5.2(a) of the plan and therefore is entitled to plan benefits," Judge Corley wrote in the order.

Terrence Coleman of Pillsbury & Coleman LLP, who is representing Dimry, said they are "extremely gratified" by the court's decision.

"The court's ruling noted the NFL's wrongful 'course of dealing' towards Mr. Dimry, and unfortunately, other disabled players throughout the country have experienced the same type of harsh treatment. We hope that decisions like this will encourage the NFL's retirement board to finally start acting in the interests of its disabled players," Coleman told Law360 Thursday.

Dimry retired in 2000 after 12 years in the NFL playing for the Chargers, Atlanta Falcons, Denver Broncos and Tampa Bay Buccaneers. In 2009, he began experiencing pain in his left arm and had two surgeries to repair the damage to the top of his spine, which caused him to stop working in 2012, he said.

Dimry — who suffers from cervical and lumbar spine degenerative disc disease, bilateral knee injuries, kidney disease and Crohn's disease — applied for total disability benefits from the league's plan in 2014 but was denied after the plan's doctor decided he was capable of performing light work. When he appealed, another plan-appointed doctor again found Dimry could do sedentary or desk work.

Dimry **sued the NFL** and its plan in 2016 accusing the plan of accepting the doctor's findings without performing an outside inquiry in violation of the Employee Retirement Income Security Act. In 2018, the district court ruled in Dimry's favor that the board abused its discretion when it denied his disability claims in 2015 by favoring the advice from the plan's doctor.

After the case was remanded to the board, it again denied Dimry benefits, so **he sued again** in August 2019. Judge Corley once again **sided with Dimry** in September 2020 and ordered the NFL retirement plan to reconsider his claim. After appeal, the Ninth Circuit agreed with the lower court ruling and remanded the case back to district court.

**Last month**, Dimry and the NFL and its board both filed motions for judgment, with Dimry offering up a November 2021 medical analysis with new, conflicting information supporting his permanent disability that had not been previously considered by the NFL's doctor or the court. The NFL had argued that the evidence was neither new nor significant and maintained it had properly denied Dimry benefits.

But Judge Corley said Wednesday the record clearly shows Dimry's pain renders him permanently

unable to work and that the NFL displayed "unreasonable bias" in adopting its two doctors' recommendations to deny Dimry benefits.

The judge said it "makes no sense" that one of the doctors admitted that Dimry's pain may be real and severe without objective evidence, but then concluded that his pain was not severe enough due to a lack of objective evidence.

Judge Corley also cited the Social Security Administration's 2012 findings that Dimry was permanently disabled and said that while the NFL's doctors acknowledged the agency's findings, their reasons for not taking it into account were illogical. Instead, the NFL favored its own physician's findings, she said.

"The course of dealing suggests an intent to deny Mr. Dimry's benefits application regardless of the evidence. In denying Mr. Dimry's initial application, the Retirement Board noted 'potentially conflicting medical evidence contained in the record,' but it did not resolve the conflicts by examining the evidence or delving into the record before it," Judge Corley wrote.

Counsel and a spokesperson for the NFL did not immediately respond to requests for comment Thursday.

Dimry is represented by Azin Jalali and Terrence J. Coleman of Pillsbury & Coleman LLP.

The Bert Bell/Pete Rozelle NFL Player Retirement Plan and Retirement Board are represented by Edward J. Meehan and Michael L. Junk of Groom Law Group Chtd. and Eugene Y. Mar of Farella Braun & Martel LLP.

The case is Charles Dimry v. Bert Bell/Pete Rozelle NFL Player Retirement Plan et al., case number 3:19-cv-05360, in the U.S. District Court for the Northern District of California.

--Additional reporting by Gina Kim and Craig Clough. Editing by Nick Petruncio.