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Former NFL Player Sues Disability Benefits Plan Over Denial

By **Fola Akinnibi**

Law360, New York (March 24, 2016, 2:37 PM ET) -- A former National Football League player who suffered a neck injury during his playing career filed suit against the league's retirement plan Wednesday, telling a California federal judge that the plan repeatedly denied his application for total disability benefits despite his own doctors' diagnoses.

Charles Dimry, a 12-year NFL veteran who played cornerback for five teams, said the Bert Bell and Pete Rozelle NFL Player Retirement Plan and the NFL Supplemental Disability Plan violated the Employee Retirement Income Security Act when they denied him total and permanent disability benefits for a neck injury that he suffered playing football, according to the complaint.

He submitted two separate applications, and two appeals, all of which were denied by the plan. The neck injuries suffered during his playing days required multiple surgeries and he eventually had to stop work entirely, the complaint said. However, the plan did not listen to the opinions of his personal doctors and instead took the guidance of a "neutral physician" who had no knowledge of Dimry's work history, it continued.

"The plan's actions are contrary to the written terms of the plan, and its conclusions have no reliable evidentiary support," the Wednesday complaint said. "In affirming its prior denial of benefits, the plan ignored the definition of T&P disability. The plan's actions are contrary to the reports and assessments of the doctors who have evaluated and treated plaintiff."

After suffering two major neck injuries, while trying to make a tackle in 1997 and 1999, Dimry learned that he had a protruding spinal disc. He had surgery in 2000, but was still experiencing neck pain, the complaint said.

In 2008, he was deemed eligible for line of duty disability benefits due to his neck pain, which was increasing in severity. By 2011, he could no longer stand or sit for extended periods and could no longer work. After a second surgery, he applied for the total and permanent disability benefit, which was denied, according to the complaint.

However, during his final appeal in 2015, his fourth attempt at the total and permanent disability benefit, the league's retirement plan assigned James Chen, a "neutral physician," to examine Dimry. Chen ultimately decided that it was possible for Dimry to continue work, the complaint said.

"With no relevant vocational information or training, Dr. Chen improperly provided his opinion that plaintiff 'is not totally disabled … he could do desk or sedentary work," the complaint said. "The

plan adopted Dr. Chen's untrained opinion wholesale without exercising any discretion at all, and in wholesale disregard of the evaluations, opinions and conclusions of plaintiff's training physicians."

Terrence Coleman of Pillsbury & Coleman LLP, Dimry's counsel, said that the NFL's disability plan has been "hiding behind a network of supposed neutral physicians," who are set up to rule against the former players and deny benefits. He added that the former players' physicians are often experts in their field.

Representatives for the NFL benefit plans did not immediately respond Thursday to requests for comment.

Dimry seeks a recovery of benefits he claims he is owed, along with equitable relief and the turnover of plan documents he requested, the complaint said.

He is represented by Terrence J. Coleman and Michael J. Quirk of Pillsbury & Coleman LLP.

Counsel information for the NFL benefit plans was not immediately available.

The case is Charles Dimry v. The Bert Bell/Pete Rozelle NFL Player Retirement Plan et al., case number 3:16-cv-01413, in the U.S. District Court for the Northern District of California.

--Editing by Patricia K. Cole.

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