



NFL Player Benefits

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CERTIFIED/RETURN RECEIPT

May 8, 2000

Robert P. Fitzsimmons
Fitzsimmons Law Offices
1609 Warwood Avenue
Wheeling, West Virginia 26003-7110

Appeal

Re: Michael Webster
Bert Bell/Pete Rozelle NFL Player Retirement Plan

Dear Mr. Fitzsimmons:

At its meeting on April 27, 2000, the Retirement Board of the Bert Bell/Pete Rozelle NFL Player Retirement Plan ("Plan") considered Michael Webster's request for Active Football total and permanent disability ("T&P") benefits. As you know, the Retirement Board awarded Mr. Webster Football Degenerative T&P benefits at its October 28, 1999 meeting. We regret to inform you that the Retirement Board denied his request for Active Football T&P benefits.

Relevant Plan Provisions

A Vested Inactive Player, such as Mr. Webster, is totally and permanently disabled under the Plan if "he has become totally disabled to the extent that he is substantially prevented from or substantially unable to engage in any occupation or employment for remuneration or profit." Plan Section 5.2. Active Football T&P benefits are awarded "if the disability(ies) results from League football activities, arises while the Player is an Active Player, and causes the Player to be totally and permanently disabled 'shortly after' the disability(ies) first arises." Plan Section 5.1(a).

A Player who becomes totally and permanently disabled no later than six months after his disability(ies) first arises will be conclusively deemed to have become totally and permanently disabled "shortly after" his disability(ies) first arises. Plan Section 5.1. A Player who becomes totally and permanently disabled more than 12 months after his disability(ies) first arises will be conclusively deemed to not have become totally and permanently disabled "shortly after" his disability(ies) first arises. Plan Section 5.1 "In cases falling within this six- to twelve-month period, the Retirement Board will have the right and the duty to determine whether the 'shortly after' standard is satisfied." Plan Section 5.1.

Plan Section 1.1 defines Active Player to mean generally "a Player who is obligated to perform football playing services under a contract with an Employer." For purposes of Plan Section 5.1 only, "Active Player will also include a Player who is no longer obligated to perform football playing services under a contract with an Employer, but is between the period beginning when his last such contract expired or was terminated for any reason, and ending on the later of (a) the July 15 following the beginning of the period, or (b) the first day of preseason training camp."

Analysis

Mr. Webster played NFL football from 1974 to 1988 with the Pittsburgh Steelers, and in 1989 and 1990 with the Kansas City Chiefs. Mr. Webster states that he worked at two jobs after he left NFL football: first, as a coach with the Kansas City Chiefs in 1994, and second, as a commentator with Fox Sports Pittsburgh in 1998. These employment positions are detailed in Mr. Webster's affidavit dated January 31, 2000 and in Stanley Savran's undated affidavit.

When it awarded Mr. Webster Football Degenerative T&P benefits, the Retirement Board determined that Mr. Webster is currently totally and permanently disabled and that his disability arose out of League football activities. To assess whether Mr. Webster qualifies for Active Football T&P benefits, the Retirement Board focused on whether Mr. Webster's disability first arose while he was an Active Player and whether he became totally and permanently disabled "shortly after" his disability first arose. The Retirement Board reviewed these issues in light of the evidence in Mr. Webster's file, including his application materials, his medical reports, the Plan's January 24, 2000 letter to you, and your responses to that letter.

Upon consideration of the evidence, the Retirement Board concluded that Mr. Webster does not qualify for Active Football T&P benefits and reaffirmed its earlier decision that Mr. Webster qualifies for Football Degenerative T&P benefits.

The Retirement Board determined that Mr. Webster's disability arose while he was an Active Player. The medical reports in Mr. Webster's file, including the reports of neutral physician Dr. Edward Westbrook, Dr. James Vodvarka, and Dr. Jonathan Himmelhoch, indicate that his disability is the result of head injuries he suffered as a football player with the Pittsburgh Steelers and Kansas City Chiefs.

The Retirement Board next concluded that Mr. Webster did not become totally and permanently disabled "shortly after" he ceased to play NFL football, because the medical evidence in the record does not support such a conclusion. Dr. Fred Jay Krieg's report on his November 4 and 13, 1998 evaluation of Mr. Webster indicates that Mr. Webster was self-employed from 1991 through 1994, when he began coaching, until May 1995. Although Dr. Krieg concludes that Mr. Webster is now unable to sustain any kind of work activity, he expresses no opinion as to the onset date of this condition. Dr. Westbrook's reports also express no opinion as to the onset date of Mr. Webster's total and permanent disability. Further, you have submitted voluminous medical records for Mr. Webster. These consist of team records and medical treatment records starting in 1993. These medical records do not illuminate Mr. Webster's medical condition shortly after he left NFL football. Indeed, some of these medical records from 1993 and later note that Mr. Webster was working at the time. The record also indicates that Mr. Webster was able to sustain some work activity following his football career, as documented in his affidavit.

You have pointed to two pieces of evidence in support of Mr. Webster's claim that he became totally and permanently disabled "shortly after" his disability first arose. First, you note that Dr. Vodvarka concluded that "to a reasonable degree of medical probability" Mr. Webster "was totally disabled" when he left the Pittsburgh Steelers in 1988, even though he subsequently worked as a football player for two years for the Kansas City Chiefs. Dr. Vodvarka's conclusion

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directly conflicts with the Plan's definition of total and permanent disability. If Mr. Webster were totally and permanently disabled when he left the Steelers in 1988, he could not have played with the Chiefs. Dr. Vodvarka's report also fails to describe in any material detail Mr. Webster's medical condition and activities between his retirement from football and June 7, 1993, when Mr. Webster was hospitalized at Allegheny General Hospital. Dr. Vodvarka's silence on this time period provides the Retirement Board with no basis to conclude that Mr. Webster became totally and permanently disabled "shortly after" his disability first arose.

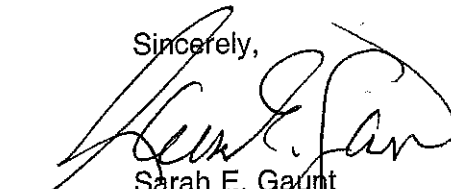
Second, you note that Dr. Westbrook wrote that Mr. Webster's disability occurred in or before March 1991. Dr. Westbrook's notation on the Physician's Report form merely indicates when Mr. Webster's disability first arose; it does not indicate when Mr. Webster became totally and permanently disabled. Nothing in Dr. Westbrook's reports supports a conclusion that Mr. Webster's total and permanent disability began during the twelve month period after he left NFL football.

To assist the Retirement Board in its evaluation of the issue, by letters dated January 24 and February 14, 2000, the Plan asked that you submit various documents and information from 1990 to the present. The Plan asked for this information because you have claimed that Mr. Webster has been totally and permanently disabled since 1990. You claim that you have completely answered the Plan's requests. However, your answers have provided the Retirement Board with no information about Mr. Webster's activities or earnings for the critical 1991 period. For example, in response to a request for tax returns and a detailed Social Security earnings history, Mr. Webster's affidavit and your letters state that he has filed no tax returns and that he has had no Social Security earnings from 1992 to the present. The Retirement Board inferred from these answers that Mr. Webster may have had taxable income and Social Security earnings in 1991, which may have resulted from work activities. In sum, your decision to provide answers to some of the Retirement Board's questions, but not to others, casts doubt on your claims.

If Mr. Webster wishes to appeal the Retirement Board's decision, you must notify the Plan's offices in writing within 60 days of your receipt of this letter. A copy of Plan Section 11.6, describing the Plan's appeal procedures, is enclosed. You should submit to the Retirement Board any evidence or argument that you believe supports Mr. Webster's request for review of the Retirement Board's denial of Active Football T&P benefits. If you appeal, you also should submit all of the information requested in the Plan's January 24 letter, including Mr. Webster's 1990 and 1991 tax returns and a detailed Social Security earnings history, available from the Social Security Administration, showing Mr. Webster's earnings from 1990 to the present.

You may contact this office if you have any questions.

Sincerely,



Sarah E. Gaunt
Plan Director

GLG:SEG:glh
Enclosure
cc: Plan Counsel