

Sweeney v. Bert Bell NFL Player Retirement Plan 961 F. Supp. 1381 (S.D. Cal. 1997)

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SWEENEY

v.

BERT BELL NFL PLAYER RETIREMENT PLAN

961 F. Supp. 1381 (S.D. Cal. 1997)

INTRODUCTION

On April 21, 1997, former National Football League (“NFL”) player Walter Sweeney prevailed over the NFL Player Retirement Board (“Board”) when the Southern District Court of California held, *inter alia*, that Sweeney had proved his chronic substance abuse was caused by his employer’s policies regarding unprescribed use of controlled substances.¹ One of the controversies arising from the litigation was whether or not Sweeney’s employment-related chemical dependency made him “permanently disabled” within the plain meaning of the Employee Retirement Income Security Act of 1974 (“ERISA”) and the Bert Bell NFL Player Retirement Plan (“Old Plan”) and the Bert Bell/Pete Rozelle NFL Player Retirement Plan (“New Plan”).² The district court found that although Sweeney’s chronic substance abuse may not be permanent in the sense that there is absolutely no hope of rehabilitation, Sweeney’s drug abuse did fit into the policy of “permanent disability” as prescribed by both the Old and New Plans.

1. Sweeney v. Bert Bell NFL Player Retirement Plan, 961 F. Supp. 1381(S.D. Cal. 1997).

2. 29 U.S.C. § 1001-1461. The Bert Bell NFL Player Retirement Plan was enacted in 1962 to provide retirement, disability and related benefits to eligible former professional football athletes.

In 1994, the Pete Rozelle NFL Player Retirement Plan was merged into the Bert Bell NFL Player Retirement Plan and was renamed the Bert Bell/Pete Rozelle NFL Player Retirement Plan. The Plans are employee pension benefit plans within the meaning of 29 U.S.C. § 1002(2), and, as such, are covered under ERISA.

FACTS

For fourteen seasons, from 1963 through 1976, Plaintiff, Walter F. Sweeney, played professional football in the NFL.³ Sweeney played his first ten years with the San Diego Chargers and his final four seasons with the Washington Redskins.⁴ From the start of his NFL career, coaches and trainers with both teams recommended and supplied Sweeney with a wide range of prescription-strength controlled substances to increase his stamina and bolster both his durability and resistance to pain.⁵ The drugs recommended to Sweeney by team physicians included Dexadrine, steroids and Desbutol (a combination upper/downer).⁶ Drugs were not always a voluntary choice for Sweeney. At one point, Sweeney's refusal to take steroids resulted in the disallowance of an exhibition game check.⁷ In 1964, to alleviate Sweeney's drug-related sleeping problems, the Chargers' doctor prescribed Seconal and continued to fill the prescription without checking Sweeney's condition.⁸ This was done for a period of five years.⁹ In 1970, the Chargers began administering Desoxyn (pure speed).¹⁰ In 1971, following Sweeney's complaints to a team doctor that the drugs were making him feel depressed and suicidal, the team doctor recommended Sweeney smoke marijuana.¹¹

Following a trade to the Washington Redskins, Sweeney was exposed to more outrageous drug administration.¹² A typical drug-filled week for Sweeney included an indiscriminate administration of amphetamines by trainers before games and important practices followed by post-game barbiturates.¹³

3. *Sweeney*, 961 F. Supp. at 1384.

4. *Id.*

5. *Id.* at 1385.

6. *Id.*

7. *Id.*

8. *Id.*

9. *Id.*

10. *Sweeney*, 961 F. Supp. at 1385.

11. *Id.*

12. Players and teams, including the Chargers, were fined for their indiscriminate drug administration. *Id.*

13. *Id.*

Sweeney was given these narcotics by the medical and training departments of the NFL teams to help him get over the pain and stiffness of his injuries and to get him playing “like a 19-year-old kid.”¹⁴ Stated simply, it was the pressure to win and the injuries of professional football that necessitated this team-mandated drug abuse. Over time, the wear and tear on Sweeney’s mind and body began to take a toll. During the last game of the 1975 regular season, Sweeney severely injured his knee.¹⁵ Doctors were prevented from operating for three days because of the drugs in his system.¹⁶ Doctors were eventually able to repair the damage, but during the 1976 preseason Sweeney reinjured the knee beyond reconstruction.¹⁷ After realizing his career was over, Sweeney fired a revolver into his training camp bunk bed, and was officially cut from the Redskins roster the next day.¹⁸

Sweeney’s work history from 1976 to the present was sporadic at best. The only constant during Sweeney’s post-NFL professional life has been his chronic drug addiction. As a result of Sweeney’s drug abuse, he could not hold or maintain a job. From 1977 through 1980, Sweeney reported no income. He lived off of a \$25,000 workers’ compensation award he received from the Redskins for his knee injury, “early payment” benefit of \$14,923 from the Old Plan, sundry loans, gifts from friends and his wife’s income.¹⁹ From 1980 through 1989, Sweeney worked as a substitute teacher, a bartender and a motivational speaker lecturing on the dangers of drug addiction. In 1986 through 1989, Sweeney worked as a salesman for a hospital.²⁰ For the rest of 1989, Sweeney worked as a drug counselor, even while he continued to abuse drugs.²¹ Sweeney lost each of these jobs due to the lingering effects of his chronic and continuing addiction. In 1990, Sweeney was fired from a silk screening business.²² Borrowing \$15,000 from a friend, he tried to start his own silk screening business,

14. *Id.*

15. *Id.*

16. *Id.*

17. *Id.*

18. *Sweeney*, 961 F. Supp. at 1385.

19. *Id.* at 1386.

20. *Id.*

21. *Id.*

22. *Id.*

which failed.²³ Sweeney's drug abuse was so severe during the early nineties that he was unable to cope in any kind of professional environment. He often felt that people were out to get him and spent much of his time in a disorganized, paranoid delusion.²⁴

Sweeney was unable to stay off drugs for any prolonged period following his NFL career. He was unable to stop using cocaine, marijuana, alcohol, amphetamines, Quaaludes and nearly any other type of drug he could obtain.²⁵ As a result of his incessant drug abuse, he could not provide support to his family, causing them both distress and embarrassment.²⁶

PROCEDURAL HISTORY

In 1989, without legal representation, Sweeney filed a disability application with the Board, claiming that his knee injury left him permanently disabled.²⁷ The Board considered, but ultimately denied this claim.²⁸ Sweeney's appeal to the Board was also denied.²⁹ During this initial application, neither party mentioned Sweeney's drug addiction.

In 1993, Sweeney, represented by legal counsel, filed the application at issue in the present action. Under the New Plan, Sweeney alleged that the NFL was responsible for causing his substance abuse and, in turn, his total and permanent disability.³⁰ The application differed from the first in that Sweeney supplied the Board with reports about his drug addiction and resulting psychological state.³¹

23. *Id.*

24. *Id.*

25. *Id. at 1387.*

26. *Id.*

27. *Id.*

28. *Id.*

29. *Id.*

30. *Sweeney*, 961 F. Supp. at 1387.

31. *Id.*

After tabling Sweeney's action on three different occasions, the Board denied his claim in 1994.³² The Board stated that if Sweeney wished to appeal his claim again, he would have to submit evidence of his work history, tax returns, social security earnings reports and any other medical records.³³ Instead of exhausting his administrative appeal, on August 12, 1994, Sweeney filed the instant action in state superior court for disability benefits wrongly denied to him pursuant to ERISA.³⁴ The defendants removed the case to federal district court on September 16, 1994. The court stayed the action on March 9, 1995, to permit Sweeney an exhaustion of all administrative appeals.³⁵ On April 27, 1995, as part of this appeal, Sweeney submitted the requested doctors statements, including psychiatric evaluations and psychological examinations, work and drug rehabilitation chronologies and requisite earning reports.³⁶

On May 3, 1995, the Board issued its decision on administrative appeal and once again denied Sweeney's claim. However, the Board announced that upon reviewing Sweeney's employment history and other evidence, it had determined that Sweeney became totally disabled as of January 1, 1990.³⁷ The Board further determined that Sweeney would be awarded \$1,827 per month, retroactive to that date under the terms of the New Plan. Since Sweeney had earned a significant amount of money during the period of January 1, 1984 to January 1, 1990, the Board found Sweeney not to have been permanently and totally disabled during

32. *Id.* The Retirement Board is the named fiduciary and administrator of the Plans. In this capacity, the Board has full power, authority and discretion to interpret the Plans and decide claims for benefits under the Plans.

33. *Id.*

34. 29 U.S.C. § 1001-1461.

35. Sweeney, 961 F. Supp. at 1387.

36. *Id.* at 1388. Sweeney filed a report from the Plans' doctor, dated May 20, 1994 that stated he had a chronic substance abuse problem for multiple years and he suffered from a poly-substance abuse drug addiction as a direct result of the indiscriminate administration of highly addictive drugs. The report concluded that Sweeney is totally and permanently disabled, that such condition has existed since 1976 and directly resulted from and arose out of the NFL's drug administration. In addition to the Plans' doctor's report, Sweeney filed a report from his own doctors which came to substantially similar conclusions to that of the Plans' doctor. *Id.*

37. *Id.*

this time period.³⁸ In making this determination, the Board appeared to give little weight to Sweeney's medical assessments. Having exhausted all administrative options and aggrieved by the final order from the Board, Sweeney sought review in court.

LEGAL ANALYSIS

Initially, the court examined the steps taken by Sweeney toward an administrative remedy. The court found that Sweeney had taken the appropriate steps, including, but not limited to, applying for total and permanent disability benefits under the Plans, appealing the Board's denial of such benefits, and submitting to any and all medical examinations required under the Plans.³⁹

Within the abuse of discretion standard, the court examined the Board's findings in light of the statutory purpose of ERISA.⁴⁰ The legislative purpose of ERISA, the court determined, is remedial in nature and, as such, should be construed in favor of protecting participants in employee benefit plans.⁴¹ The court believed that those responsible for addicting Sweeney to drugs, even though they may not have known he was particularly susceptible to addiction, must be held responsible for those actions.⁴² In the court's words, "one takes one's victim as one finds him."⁴³

In light of these conclusions, the court then examined the meaning of "total and permanent disability" and denied equating chronic substance abuse with permanence "beyond any hope of rehabilitation."⁴⁴ Following this logic, the court held that neither the Old Plan nor the New Plan could support anything other than a temporal definition of "permanently disabled."⁴⁵ The court agreed with and adopted the definition of "permanently disabled" given at

38. *Id.* Under the New Plan, an eligible player is found to be totally and permanently disabled if he can no longer engage in activity for remuneration or profit. *Id.*

39. Sweeney, 961 F. Supp. at 1389.

40. *Id.* at 1390.

41. *Id.*

42. *Id.*

43. *Id.*

44. *Id.* at 1391.

45. *Id.*

oral hearing by the Defendant.⁴⁶ Defendant’s counsel stated: “Permanent is a slippery term in this context... The word is in there to distinguish between those situations where someone is temporarily disabled, and it’s likely that it is only temporary, as opposed to those situations where it is likely to be permanent, but likely isn’t certain.”⁴⁷ Counsel thereupon defined permanent as “not likely that he’s likely to get better.”⁴⁸

The court found that, in the context of the Plans, a player who is no longer “totally and permanently disabled” means at that point he is no longer in a condition which warrants the continued receipt of total disability payments.⁴⁹ Nothing in either the Old Plan or the New Plan purports to preclude such a person from relapsing back into “total and permanent disability” and, therefore, a return to a receipt of benefits.⁵⁰ The court felt the defendant’s interpretation, that a player would never be eligible for benefits once a player’s disability subsides, was not only medically unsound, but also a violation of ERISA.⁵¹

The court found that the weight of Sweeney’s evidence convincingly demonstrated the requisite lack of any likelihood of recovery. Sweeney’s own statement, his wife’s statement, as well as some of his doctors’ reports before the Board, supported a finding that his disability arose from drugs taken during his time in the NFL. Based on this evidence, the court felt that the Board’s finding that Sweeney’s disability was not caused by football-related activity was unreasonable.⁵² Thus, the Board abused its discretion by failing to find that Sweeney was entitled to football disability benefits from the date of his release from the NFL in 1976 to January 1, 1984. However, the court held that the Board did not abuse its discretion in finding that the Plaintiff was totally and permanently disabled from 1990 to the present.⁵³ The court compared the evidence during the two time periods and concluded that because the evidence of a disability during the period from

46. *Id.*

47. *Id.*

48. *Id.*

49. *Sweeney*, 961 F. Supp. at 1391.

50. *Id.*

51. *Id.*

52. *Id.*

53. *Id.* at 1392.

1976 to 1984 was substantially similar, and even more persuasive than the evidence of disability during the period from January 1, 1990 to the present, the Board's ruling between 1976 and 1984 was sufficiently arbitrary and unsupported by substantial evidence to be considered an abuse of the Board's discretion.⁵⁴

The court found the doctor's reports to be dispositive of Sweeney's total and permanent disability.⁵⁵ The onset of Sweeney's disability was concurrent with his eviction from the NFL. At the time of his release by the Redskins, Sweeney demonstrated his inability to cope with reality when he shot his revolver into his bunk.⁵⁶ The practice of giving drugs to players creates a risk knowingly assumed by NFL teams. When the risk proves harmful, the NFL creates a tragedy such as that shown by substantial evidence in this case. The Board may not reasonably turn its back on the player who has been injured in such a way.⁵⁷

CONCLUSION

Ultimately, the court found "the drug administration by NFL teams was an assault on the Plaintiff's body which caused damage to him."⁵⁸ Finding this causal connection, the court classified the injury as "Active Football" within the meaning of the New Plan and "football" classification within the Old Plan.⁵⁹ The court found that Sweeney was entitled to maximum retroactive benefits for the period of his release from the NFL in 1976 to the present, plus prejudgment interest thereon as of December 13, 1993.⁶⁰ In addition, the court awarded Sweeney attorney's fees of \$185,452.⁶¹ However, the court declined to find an abuse of discretion by the Board's determination that Sweeney was not disabled from 1984

54. *Id.*

55. *Id.*

56. *Id.*

57. *Id.*

58. *Id.* at 1392.

59. *Id.* at 1394.

60. *Id.*

61. *Id.* at 1394.

through 1989.⁶² While contrary to the court's finding, the Board's determination that Sweeney was not disabled during this time period was supported by substantial evidence, and as such was not an abuse of discretion.⁶³ Even if Sweeney was not disabled during that period, however, the court held he did not suffer a new disability in 1990. Rather, because there were no new intervening causes the court concluded that Sweeney relapsed back into his original disability.⁶⁴

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62. *Id.* at 1393.

63. *Id.*

64. *Id.*

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