

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

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IN RE: NATIONAL FOOTBALL	:	No. 2:12-MD-02323
LEAGUE PLAYERS' CONCUSSION	:	
INJURY LITIGATION	:	Appeal 2026-17
	:	
	:	SPID 100000683
THIS DOCUMENT RELATES TO:	:	
APPEAL OF SETTLEMENT CLASS	:	
MEMBER ██████████	:	
REGARDING DENIAL OF	:	
MONETARY AWARD	:	
	:	

On November 18, 2024, ██████████, a Retired NFL Football Player, filed a Claim for benefits based on a Qualifying Diagnosis of Level 1.5 Neurocognitive Impairment. The Claims Administrator denied Mr. ██████████'s Claim solely because his test scores did not sufficiently evidence impairment consistent with his asserted Diagnosis.

Mr. ██████████, appealing, admits that under the Settlement's normal approach to estimating injury, which uses the results of the Test of Premorbid Functioning Reading Standard Score (TOPF) to contextualize neuropsychological test scores, he did not offer sufficient evidence of Neurocognitive Impairment sufficient to justify an Award. However, he argues, it should have been permissible for his neuropsychologist to avoid using the TOPF because he had a demonstrated history of a "serious" learning disability, making the test a bad measure of his abilities and his Claim an exception to the TOPF's ordinary use.

The Settlement's use of the TOPF was modified significantly by the Norming Agreement, which Mr. ██████████' counsel helped to draft. As of 2021, the Settlement states that neuropsychologists "should ordinarily" use the TOPF to establish reading level unless:

[T]he examiner has a strong indication from the Retired Player's history, behavioral observations, and other language test results suggesting that an acquired language disorder or severe learning disability is present, or if English was learned as a second language in adulthood. If a clinician documents a Retired Player's reading score to be fundamentally inaccurate and not representative of his longstanding reading ability, that Retired Player could be classified as having "Average Reading Level" for purposes of using the impairment criteria set out in this document."¹

¹ See Exhibit A-2, Section 3, to the Motion of the NFL Parties and Class Counsel to Approve Modification to the NFL Concussion Settlement Agreement Pursuant to Section 6.6, https://www.nflconcussionsettlement.com/ViewDoc.aspx?dp=motion_settlement_agreement_modifications.pdf

The associated Norming Group Report filed with this passage explains that having “poor reading skills, or a possible mild learning disability, is not a rationale for classifying a person in a higher reading level (i.e., from Below Average to Average Reading Level). However, a clinician can use clinical judgement in cases of severe language-based learning disability (i.e., severe dyslexia) to use the Average Reading Level algorithms.”²

Essentially, Mr. [REDACTED]’ neuropsychologist concluded that he met this severity bar, and Mr. [REDACTED], joined by Class Counsel, says that the Program ought to have deferred to that finding. Thus, his Appeal in some ways looks like an ordinary dispute contesting the limits of the Settlement’s “layered deference” framework.

But the briefs exposed some confusion about what the TOPF test is doing in the Settlement and why. I therefore convened a consensus group of the Appeals Advisory Panel Consultants (AAPC), consisting of four eminent neuropsychologists. I asked them to review both Mr. [REDACTED]’ Claim as well as the Settlement’s practices, to ensure that the Program is reviewing like cases alike, while faithfully applying the revised diagnostic criteria. As I will set out below, the AAPC helpfully described the Settlement’s existing approach to using the TOPF. After doing so, the Panel concluded that Mr. [REDACTED] did not meet his high burden of demonstrating that he should not have to use the same testing protocol as all other Claimants.

I accept the Panel’s conclusion. I consequently deny Mr. [REDACTED]’ appeal.

CLAIM HISTORY

Mr. [REDACTED] was first evaluated through the BAP in 2019. Doc. 376636. The BAP neuropsychologist who administered Mr. [REDACTED]’ testing noted that he “denied any ... serious academic issues,” though “he did report he was a slow reader and he suspects he may have some mild ADHD.” *Id.* at 1. His TOPF score was “low average,” “consistent with his report of reading issues.” *Id.* at 2. Overall, the neuropsychologist found no cognitive impairment or functional decline. *Id.*

Five years later, then-qualified MAF Physician Dr. Daniel Jacobs determined that Mr. [REDACTED] met the requirements for a Level 1.5 Neurocognitive Impairment Qualifying Diagnosis after a November 11, 2024 examination.³ Doc. 367453. Dr. Jacobs relied on neuropsychological testing conducted by Dr. [REDACTED] on October 24, 2024. Doc. 367444.

Dr. Jacobs’ hand-written report noted that Mr. [REDACTED] had retired from coaching but was working as a doorman/guard, that he had no retained hobbies or community activities, and had “poor memory.” Doc. 367450. His narrative typewritten notes expanded on those observations,

² See Exhibit A to the Motion of the NFL Parties and Class Counsel to Approve Modification to the NFL Concussion Settlement Agreement Pursuant to Section 6.6, https://www.nflconcussionsettlement.com/ViewDoc.aspx?dp=motion_settlement_agreement_modifications.pdf

³ Dr. Jacobs was dismissed from the Program in the Fall of 2025.

though these notes state that he “has not worked” since 2020, and note a diagnosis code of “Mild cognitive impairment.” Doc. 367453 at 4. Dr. Jacobs’s report did not mention any difficulties that Mr. [REDACTED] had with reading.

Dr. [REDACTED]’ reporting was more extensive. After describing Mr. [REDACTED]’ developmental and occupational history, the neuropsychologist noted that Mr. [REDACTED]’ speech was notable for “mild word-finding difficulties.” Doc. 367444 at 2. He continued:

Mr. [REDACTED]’s premorbid intellectual functioning ... estimated to be in the borderline range based on the TOPF reading score (SS=79). However Mr. [REDACTED]’s reported a longstanding history of reading difficulties, which likely affected his score on this measure. He reported he was held back in first grade due to reading problems and that he continues to experience difficulties reading. However, his Full Scale IQ is in the average range.

Id. at 2, 4.

Dr. [REDACTED] assessed Mr. [REDACTED] as having Level 1.5 Impairment in Complex Attention and Executive Function, but no impairment in the domains of Learning and Memory, Visual-Perceptual Processing and Language. Overall, Dr. [REDACTED] concluded that Mr. [REDACTED] qualified for Level 1.5 Impairment: his scores on the remaining domains were “close to meeting the criteria,” his “performance has been declining gradually,” and his functioning otherwise had declined “significantly.” *Id.* at 5-6.

Based on this set of tests, Dr. Jacobs signed a Diagnosing Physician Certification asserting a Level 1.5 Qualifying Diagnosis as of November 3, 2024. Doc. 367457. A Claim Form followed on November 21, 2024. Doc. 367934.

The Claims Administrator asked Dr. [REDACTED] for some follow-up to further justify and explain his reasons for avoiding the TOPF scoring. Doc. 391207. Dr. [REDACTED] offered a densely-argued response over four main points:

1. As stated in my report, Mr. [REDACTED]’s IQ is in the average range. His WAIS-IV Verbal Comprehension Index score is average. In no other part of my neuropsychology practice would I use the TOPF to characterize someone’s premorbid ability in the context of a history of learning disorder, and average Verbal Comprehension Index (37th percentile), and an average IQ (32nd percentile), as the TOPF reading score (8th percentile) obviously underestimates his intellectual abilities. In the Holdnack et al. book WAIS-IV, WMS-IV, and ACS, the authors state on page 275, “The TOPF reading test should not be used in cases where there is a history of reading disability.” Using the TOPF to estimate his premorbid abilities in the context of a reading disability and an average IQ is poor neuropsychological practice.
2. From a statistical perspective, the ACS system finds a significant difference between Mr. [REDACTED]’s TOPF score and his Full Scale IQ, his Verbal Comprehension

Index (VCI) score, his Perceptual Reasoning Index (PRI) Score, and his Processing Speed Index score. The difference between his TOPF score and his VCI and PRI scores occur in less than 10% of the normative sample. This confirms a significant reading problem.

3. An observation from testing also shows the difficulties Mr. [REDACTED] has reading. He read the word “aesthetic,” as “artistic.” In my opinion, that error is not close and shows he basically guessed how to pronounce words based on the word’s beginning and ending.
4. Mr. [REDACTED] reportedly repeated a grade because of his learning disorder. Repeating a grade is a significant functional problem. His mother corroborated the severity of his reading problem. She wrote that he exhibited reading problems from an early age and was held back for reading problems. In elementary and middle school, extra reading workbooks were sent home. According to his mother, he did not receive an assessment to test for dyslexia because the school did not provide that service. She wrote that they lived in a poor area, and “there was no money for tutoring or extra sessions in school.” That Mr. [REDACTED] did not receive further treatment or diagnosis of his reading problems was likely due to poverty. His family’s inability to pay for reading disorder treatment should not count as evidence that he did not have a serious learning disorder.

Thus, there is clinical, statistical, behavioral, and collateral evidence to support the presence of a serious learning disorder. For these reasons, I set the reading level to Average. It is my opinion that it facilitates the most accurate assessment of Mr. [REDACTED]’s abilities and the cognitive changes he has experienced.

Doc. 392857.

Mr. [REDACTED]’ mother also signed a statement, drafted by Mr. [REDACTED]’ counsel after they spoke, dated May 15, 2025. In it, Ms. [REDACTED] explained that Mr. [REDACTED] had “struggled with reading from an early age”, had “substantial difficulty reading out loud,” and that she believed that he might have been “dyslexic but no one in his school helped with that type of thing in our area back then. Doc. 393833. He had a substantial disability and was held back in first grade because his reading was not at an acceptable level.” *Id.* She stated that her son’s struggles continued through middle school, high school, college and “until this day.” *Id.*

On September 4, 2025, the Claims Administrator denied Mr. [REDACTED]’ Claim. In the Denial, the Administrator noted that Criteria 1, 3 and 4 of the Injury Definitions had been satisfied. Doc. 405329. However, as it wrote:

Dr. [REDACTED] reported the Player had adequate performance on validity tests, no Slick criteria concerns, borderline reading test scores, average reading level, no impairment in Learning/Memory, Visual-Perceptual Processing, and Language, and Level 1.5 impairment in Complex Attention and Executive Functioning, with an overall Level 1.5 neurocognitive impairment. However, Dr. [REDACTED] did not use

the Player's TOPF Word Reading Standard Score to determine the Player's reading level, as required by Settlement Agreement Exhibit 2.

The New Method Results using the Player's TOPF Word Reading score (below average) indicated no impairment in Complex Attention, Learning/Memory, Visual-Perceptual Processing, and Language, and Level 1.5 impairment in Executive Functioning, with no overall level of cognitive impairment.

Initial AAPC review concluded the Player had a possible mild learning disability and that below average was the appropriate reading score to be used. In response to outreach from the Claims Administrator, Dr. [REDACTED] (Doc ID 392857), along with a letter from the Player's mother (Doc ID 393833) clarified the Player's IQ and other test scores were in the average range, that the TOPF may have underestimated the Player's intellectual abilities, differences between the TOPF score and other test scores confirmed the Player had a significant reading problem, observations during testing also indicated the Player had difficulty reading, his mother corroborated the severity of the reading problem, and concluded that the reading level used should be Average. Subsequent review by the AAPC determined that many of Dr. [REDACTED]'s responses were not relevant, noted the New Method did not use estimates of or actual IQ to determine which algorithm to use, and that the Player's mother corroborated the Player's reading problem, and concluded that use of the Below Average category was appropriate (Doc ID 394450).

Consequently, the scores based on use of the Below Average reading category were relied on, which indicated the Player had no impairment in Complex Attention, Learning/Memory, Visual-Perceptual Processing, and Language, and Level 1.5 impairment in Executive Functioning, with no overall level of cognitive impairment. Therefore criterion (ii) is not fulfilled for any level of neurocognitive impairment.

Id. at 2.

Mr. [REDACTED] filed an appeal, and the NFL Parties opposed. Docs. 416476, 427139. Class Counsel then filed a supportive statement to which both Mr. [REDACTED] and the NFL Parties responded. Doc. 432102.

RESOLVING THIS APPEAL

As Mr. [REDACTED]'s thoughtful brief accurately notes, the only real issue in this Claim is whether Dr. [REDACTED] should have used the TOPF to determine his reading level. In 2021, the Norming Settlement defined a "New Method" for scoring and classifying neurological test scores, which eliminated race as a variable while emphasizing the TOPF. It did so because research had shown that:

The reading score is positively correlated with neuropsychological test performance in retired NFL players, meaning that, on average, those scoring higher on the reading test obtain higher scores on other neuropsychological tests, and those scoring considerably lower on the reading test, on average, obtain lower scores on other neuropsychological tests. The term “premorbid” functioning will not be used in the algorithms for defining impairment. Instead, the term “reading level” will be used (i.e., Below Average Reading Level, Average Reading Level, and Above Average Reading Level).

Norming Agreement Exhibit 2 at 3.

The document continued that examiners were to classify reading level based on the TOPF Reading Score into Below Average (<90), Average (90-109), and Above Average (>110). Then they were to use non-race-bearing norms to summarize test performance. For each of the reading score types, cutoffs for each domain were defined by the T-scores obtained.

As I have described above, both the Settlement and the explanatory note list three exceptions to this TOPF-based calibration: a “severe learning disability”, “an acquired language disorder,” or learning English as a “second language in adulthood.” Norming Report at 2 note 1 (breaks added).

When developing a Clinician’s Interpretation Guide to clarify this issue, the experts copied the Norming Agreement Exhibit’s language and then offered interpretative guidance: “In cases where, using his or her clinical judgment, the clinician decides not to use the TOPF Reading Standard Score for choosing the algorithm below, he or she must explain the rationale for such determination using articulated medical reasoning.” Guide at 10.

Dr. ██████’ supplementary report argued that Mr. ██████’ scoring ought to be calibrated to the average level because of his “serious” reading disorder. The evidence of that disorder consisted of (1) Mr. ██████ repeating first grade; (2) his mother’s (non-contemporaneous) report of continued difficulty reading; (3) a difference between his measured IQ (in the 32nd to 37th percentile) and his performance on the TOPF (which Dr. ██████ described as being in the 8th percentile); and (4) an observation from testing about the pronunciation of a word.

On appeal, Mr. ██████ argues that Dr. ██████’ argument was fully articulated and satisfied the requirement that his Claim be generally consistent with the Injury Definitions.⁴ He also suggests—while stating that the issue is “not necessary” to this Claim’s resolution—that obtaining different outcomes based on whether a Claimant has a “severe” versus a “mild” reading disability would run afoul of the Americans with Disabilities Act.⁵

⁴ Class Counsel cogently adds that Dr. ██████’s later-arriving statements ought to be incorporated into the file and given the same deference as those generated with the file, because they were produced at the request of the Claims Administrator.

⁵ I was as puzzled by the disclaimer as I was by the underlying argument. Even assuming that the ADA applies to claim review, Mr. ██████ never requested an accommodation, and was not diagnosed with *any* kind of reading disability apart from the one identified by Dr. ██████ *after* he submitted his Claim. In all events, the relevant factual question

Mr. [REDACTED] advances several lines of argument. He suggests that the TOPF is still used in this Settlement to “determine pre-morbid functioning,” although I had thought that the Norming Agreement dispensed with that very practice. He asserts that it was clear and convincing evidence of error to not give weight to statistically contested differences between his reading ability and underlying IQ. More conventionally, he argues that the Program ought to defer to his examiner’s articulated judgments. That deferential approach, however, is tied to text and context. And I was not sure if Dr. [REDACTED]’ explanation really stood squarely within one of the three narrow Settlement-defined categories in which the TOPF is known to yield unreliable estimates. If it did not, the explanation threatened to make every case an exceptional one.⁶

So, I asked the Claims Administrator to convene the AAPC Panel of independent advisory neuropsychologists. We discussed how they have handled questions of the TOPF since its function changed under the Norming Agreement, as well as the facts of this Appeal.⁷ After that conversation concluded, I asked the AAPC to summarize their joint views in writing. They did so. Doc. 439183.

To begin, the Panel explained how the TOPF works within the Settlement Program:

As described in the Clinician’s Guide, neuropsychological evaluation includes the establishment of a score level (Below Average, Average, Above Average) using the Test of Premorbid Functioning Reading Standard Score (abbreviated as TOPF SS hereafter). The title of this test and the history of using estimates of premorbid function in the Settlement program have engendered confusion about this process. The Settlement no longer considers estimates of premorbid intellectual function. Determination of score level is based solely on the obtained TOPF SS. Arguments against use of TOPF SS in a given case because it is not indicative of true premorbid intellectual function are not germane.

on Appeal is whether Mr. [REDACTED] has shown that he meets the Settlement’s injury definitions, which relevantly require use of the TOPF unless the claimant has shown “a strong indication” of a “severe learning disability.”

⁶ See In re: Appeal of SPID #900002014, 2025-4, at 6 n. 9 (Feb. 21, 2025), at https://www.nflconcussionsettlement.com/ViewDoc.aspx?dp=generallyconsistent_sm_2.pdf (“Before [the Norming Agreement] changes, in order to calculate pre-morbid functioning (now, pre-morbid reading level), clinicians had the freedom to choose between using the TOPF score and a combination of demographic models, which included, among other things, an education component. ECF No. 11648-2, Exhibit 2: New Method (Mar. 4, 2022). In May 2020, recognizing this broad discretion, I found that the generally consistent standard granted deference to a clinician’s articulated choice of which model to use, as well as to adjustments or deviations justified on the basis of education. Special Master Ruling on Test of Premorbid Functioning (TOPF), at 3-6 (May 1, 2020), https://www.nflconcussionsettlement.com/ViewDoc.aspx?dp=topf_sm.pdf. With respect to the TOPF and determining pre-morbid reading level, that decision no longer carries weight. Under the revised Exhibit A-2, clinicians must now use the TOPF score alone, subject to the limited exceptions described by the Claims Administrator. ECF No. 11648-1. *The generally consistent standard’s application must reflect these changes.*”) (emphasis added).

⁷ By email, the Panel also reviewed sixteen claims in which clinicians had declined to use the TOPF: in eleven the Program accepted that argument, and in five it did not. Dr. [REDACTED] produced analyses supporting both accepted and rejected Claims.

This use of the TOPF SS is based on analyses which show the direct positive correlation of this score with neuropsychological test performance in retired NFL players. The positive correlation means that, on average, those scoring higher on the TOPF SS obtain higher scores on other neuropsychological tests, and those scoring considerably lower on the TOPF SS, on average, obtain lower scores on other neuropsychological tests.

Statistical analyses reveal that the correlation between TOPF SS and neuropsychological test scores substantially derives from the association of TOPF SS with a variety of social determinants that impact neuropsychological performance. Ignoring the fact that those with below average or above average TOPF SS will tend to score lower or higher, respectively, across neuropsychological tests may contribute to inaccurate diagnosis.

Id. at 1 (breaks added).

That is, the TOPF offers a racially-neutral way to account for differences in test performance that are unrelated to cognitive decline—*e.g.*, social determinants that impact reading unfamiliar words. It was a premise of the Race Norming Agreement that failing to account for those social determinants would lead to inaccurate diagnoses, because examiners would pin poor neurocognitive test performance on recent cognitive *decline*, when the real cause was a lack of training in reading (and other resources) growing up. To get diagnoses right, what's needed is a way to stratify test performance by reading ability. The TOPF is a good assessment for that purpose because individuals retain whatever latent ability they have to read unfamiliar and rare words when their cognition otherwise declines. The Settlement uses that stable score not to reconstruct what a given player's ability once was, but to identify the group he should be compared against—so a below-average reading score lowers the expected range of neuropsychological test performance rather than implying a decline from some estimated baseline.

The Panel continued:

However, it is understood that there are a narrow set of circumstances in which the typical association of TOPF Reading Standard Score and neuropsychological test score cannot be assumed to hold. Statistically these cases are outliers. A straightforward example is when English is learned as a second language in adulthood. Under this circumstance it cannot be assumed that the score obtained with the English administration of TOPF retains the typical association with performances on neuropsychological tests. Acquired language disorder, *e.g.*, aphasia due to stroke or neurodegeneration, is another example where a score obtained on TOPF Reading likely dissociates from the typical correlation with non-language based neuropsychological tests. In cases where there is a previously obtained single word reading recognition score indicating a higher level of performance it is appropriate to use those scores.

Id.

I'll again attempt a translation: it's easy to understand why a test of the ability to read atypical words would be a bad gauge if, for example, a person had *no* experience reading English when they were young. It can take a lifetime with English to read *cough* out loud and say *kof*, or know that *island* has lost its *s*. Adult learners simply haven't had the time-on-task to become familiar with our language's foibles. The same is true for those suffering from acquired language disorders.

Now onto the crux of the matter. As the Panel explained:

Perhaps the most challenging example of dissociation of TOPF reading score and neuropsychological test performance occurs with severe reading disability. The Clinician's Guide specifically indicates that merely having poor reading skills, or a possible mild learning disability, is not a rationale to reclassify a player to higher reading level (i.e., from Below Average to Average Reading Level).

These [having poor reading skills or a mild learning disability] are not likely to be outlier cases. Rather these are cases at high risk for misdiagnosis, (i.e., attribution of low scores to neurodegenerative disease rather than to developmental or lifelong factors associated with both low reading skill and lower baseline performance on neuropsychological tests). However, the Clinician's Guide stipulates that cases of severe language-based learning disability (i.e., severe dyslexia) are cases where reclassification may occur.

These guidelines thus impose the challenge of distinguishing between severe dyslexia and milder forms of learning disability. This is especially challenging in players that are many years removed from educational settings. When severe dyslexia is the suspected clinical situation, it is incumbent on the examiner to document as much evidence as possible for the severity of the reading disorder. Alone, self-report of trouble reading, single grade retention, poor grades, or conversely, ability to complete college in spite of low TOPF score are insufficient. The Clinicians Guide references "strong indication from the patient's history, behavioral observations, and other language test results suggesting that an acquired language disorder or severe learning disability is present."

Id. at 1-2 (breaks added).

Put simply, for a mild reading problem, the low TOPF score is doing exactly its job. A player who reads poorly because of limited schooling or a mild disability really does tend to score lower across neuropsychological tests—that association is what the TOPF is meant to capture, and reclassifying him to Average would strip out the adjustment and reintroduce the very misdiagnosis it guards against. *Severe dyslexia* is different in kind: it depresses word-reading through a specific

decoding deficit that need not drag the rest of cognition down with it. Only then does the reading score come unmoored from the correlation, and only then is there reason to set it aside.

So, what has sufficed to meet the severity standard? The AAPC, in considering its own practices and the literature, offered some guidelines for what it has expected from clinicians and how it consequently reviews claims:

[I]n most cases, there will be multiple indications over time and across settings to support severe reading disability/dyslexia. These indications may include the following:

Patient's history

- Clear awareness on the part of the player and collaterals of need for special educational assistance in early school years and continuing need throughout their educational experience
- Documented evaluation and diagnosis of severe learning/reading disability by a qualified professional prior to entry into this Program.
- Reports of persistence of educational challenges or repeated academic failure due to poor educational performance in spite of assistance
- Inability to sustain employment in careers requiring extensive processing of written language or reports of need for accommodation in the post-NFL workplace for reading challenges

Behavioral observation

- Inability to complete, or significant support needed for the player to complete, documents (e.g., consent documents) or measures (e.g., MMPI-2-RF) that require reading

Language Test results

- TOPF SS scores at or below the 2nd percentile. However, note that the BAP neuropsychological test battery, and the TOPF specifically, were not designed to diagnose reading or other learning disability. Test scores alone cannot be used for that purpose.
- Patterns of responding on tests that suggest poor reading skills, (e.g., elevated VRIN, TRIN or CNS scores on MMPI-2-RF).

Id. at 2.

I am persuaded that this framework effectuates the Settlement's text, as well as the approved documentation supporting the Norming Agreement. I accept the AAPC's considered and consistent approach and instruct the Claims Administrator to ensure that it is disseminated so that clinicians may understand exactly how the Program comes to its judgments regarding use of the TOPF.

In analyzing this Claim against that settled practice, the AAPC agreed with Class Counsel and Mr. [REDACTED] that Dr. [REDACTED] had articulated his judgment. But it nevertheless concluded that he clearly erred: “it was the consensus of all four AAPCs that the examining clinician did not document a strong indication of severe reading disability.”

It is the opinion of the AAPC, that while the neuropsychologist’s reasoning was articulated, it was incomplete and included an overly simplistic rationale for not using the TOPF as stipulated in III(A)(i) of the Manual:

1. A TOPF score of 79 falls at the upper limit of the borderline range and would not be considered evidence of a severe reading disorder.
2. The examinee’s college GPA was reportedly 2.8, which suggests academic achievement at a C+ equivalent at a post-secondary level and thus is not suggestive of a severe learning problem.
3. The report indicated that the MMPI-2-RF was administered and generated a valid profile, suggesting that the examinee does not have a severe reading disorder.
4. Other possible indications of a severe learning disorder were generally absent in the report.
 - a. While the report indicated that the examinee repeated the first grade, there was no further indication of any efforts to remediate severe reading issues. A prior neuropsychological report in 2019 mentioned that he was a slow reader and had suspected mild ADHD but did not describe any reading disorder.
 - b. There were no indications that the examinee was required to attend summer school or repeat any grades after the first grade due to a reading disorder or any other cause.
 - c. There was no mention of academic accommodations or special tutoring that would typically be necessary for someone with a severe reading disorder.

Conclusion: The AAPC unanimously agreed that the neuropsychologist’s analysis was clearly erroneous when determining that the obtained TOPF score should not be used. The evidence presented did not support that the claimant had a severe reading disorder. Therefore, this claimant’s obtained below average TOPF Reading Standard Score should be used in this evaluation.

Id. at 3.

I adopt the AAPC’s views. The record does not contain a “strong indication” that Mr. [REDACTED] has a “severe learning disability.” That judgment means that it was inappropriate for Dr. [REDACTED] to dispense with the TOPF’s applicability. When he did so, his choice was not generally consistent with the ordinary approach to estimating cognitive injury that applies to all Claimants.

Though Dr. [REDACTED] offered a set of reasons justifying his conclusion, the AAPC found them to be clearly erroneous, and I accept that factual judgment.⁸

For that reason, there was no clear and convincing evidence of error in the processing of Mr. [REDACTED]'s file: the Claims Administrator appropriately denied his Claim.

CONCLUSION

Adopting the AAPC's analysis, I conclude as a matter of fact that Mr. [REDACTED] has not sufficiently demonstrated that he suffers from a severe learning disability, and consequently it was wrong for Dr. [REDACTED] to dispense with the use of the TOPF Reading Level test in identifying him as a below average reader. When the TOPF below average reading level is appropriately applied to Mr. [REDACTED]'s neuropsychological test scores, as the Settlement requires, he does not satisfy the requirements for any Qualifying Diagnosis. Therefore, there was no error in denying his Claim, let alone clear and convincing evidence of error, and I dismiss this Appeal.

Date: July 13, 2026



David A. Hoffman, Special Master

⁸ The worry expressed by Dr. [REDACTED] that a lack of school resources explains why Mr. [REDACTED]'s reading problems went undiagnosed cuts the wrong way here. A reading level depressed by limited schooling or poverty is the paradigm case for keeping the TOPF, because those factors lower reading and baseline performance at the same time—the correlation the TOPF captures—rather than isolating a decoding deficit that leaves the rest of cognition intact.