UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

IN RE: NATIONAL FOOTBALL LEAGUE PLAYERS' CONCUSSION INJURY LITIGATION	No. 2:12-md-02323 Appeal 2026-22
THIS DOCUMENT RELATES TO: NFL PARTIES' APPEAL OF QUALIFYING DIAGNOSIS AND CLAIM DETERMINATION FOR SETTLEMENT CLASS MEMBER [redacted]	SPID 100001746

In January of this year, [redacted], a Retired NFL Football Player and Class Member under the Amended Class Action Settlement Agreement, filed a Claim for benefits based on a Qualifying Diagnosis of Level 2 Neurocognitive Impairment obtained through the BAP. After reviewing Mr. [redacted]' medical records, the Claims Administrator concluded that Mr. [redacted] met all of the Settlement's diagnostic requirements, including those concerning his functional impairment. Accordingly, the Claims Administrator determined that Mr. [redacted] was entitled to a Monetary Award.

The NFL Parties challenge that determination. I deny their Appeal.

CLAIM HISTORY

This is Mr. [redacted]' second-filed Claim. In it, he asserted a Qualifying Diagnosis of Level 2 Neurocognitive Impairment dated February 3, 2025, and certified by Qualified BAP Neuropsychologist Dr. [redacted] and Qualified BAP Neurologist Dr. [redacted]. Mr. [redacted]' first Claim followed from the same medical exams but was erroneously filed before their results had been finalized.[1]

[1] Mr. [redacted] asserted his first Claim—after an incomplete filing on February 16, 2025—on April 7, 2025. Doc. 386549. That Claim stemmed from the same BAP examinations with Dr. [redacted] and Dr. [redacted] that I discuss in the text above, and likewise asserted a Diagnosis of Level 2 Neurocognitive Impairment. On June 11, 2025, the Claims Administrator denied the first Claim because he had filed it before the BAP process was complete. Doc. 395619. Mr. [redacted] did not appeal. On January 28, 2026, the BAP Administrator provided Mr. [redacted] with a BAP Result Letter and BAP Diagnosing Physician Certification Form confirming his Qualifying Diagnosis of Level 2 Neurocognitive Impairment. Docs. 422429; 422430. Later that day, Mr. [redacted] filed this Claim. Doc. 422524.

Mr. [redacted]' (expanded) BAP examinations took place in 2024 and 2025.[2]

On April 25, 2024, Dr. [redacted] completed Mr. [redacted]' neuropsychological testing. Overall, the testing was valid and demonstrated Level 2 Neurocognitive Impairment. Doc. 356358 at 4, 8. In his accompanying report, Dr. [redacted] wrote:

> Mr. [redacted] reported that he continues to experience short-term memory difficulties. He, for example, pointed out that he believed that our evaluation was yesterday, not today. He indicated that "I feel like I'm a pretty sharp guy, but I forget a lot of things." He forgot to charge his car, for example. His wife tells him that he forgets little things. He did point out that he has had as many as 6 concussions over his playing career and reported that he has difficulties focusing for a long period of time. He goes to the family office, which is an office within a building that he and his family own. He works on various projects there and at times finds that he cannot focus for as long as he used to. He will work on family real estate and family trust matters and again pointed out that he has difficulty focusing for as long as he used to.
>
> Mr. [redacted] reported that his wife handles the bills. He did point out that he is very good at math. He is able to work on various projects such as the family real estate holdings, as well as the trusts, though his wife does most of the home activities.

Doc. 323830.

Several months later, on July 10, 2024, Mr. [redacted], a friend of Mr. [redacted] completed a Third-Party Sworn Statement describing Mr. [redacted]' functional impairment. Doc. 386672.

Then, on February 3, 2025, Dr. [redacted] evaluated Mr. [redacted] and completed a Clinical Dementia Rating (CDR) assessment form. In his written report, which I copy in the margin, Dr. [redacted] described the information he gathered from Mr. [redacted].[3] Doc. 386545.

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[2] Mr. [redacted] underwent at least one BAP examination in 2017, including on October 20, 2017, with Dr. [redacted] Doc. 323830 at 1. These examinations did not lead to a Diagnosis, nor are any medical records from these visits available in the Claim Portal.

[3] He wrote: "I had the pleasure of evaluating [redacted] a 54-year-old male, as a new patient today at ANA. He has been experiencing memory lapses, which he attributes to aging, but his wife suspects may be indicative of dementia. These memory issues have been present for approximately 15 years, with no clear evidence of progressive worsening. He occasionally struggles with word finding and perceives a decline in his cognitive abilities compared to his younger years. Despite these challenges, he remains active in his self-employed commercial real estate business, although he relies on property managers and attorneys for operational management. He retired from professional football in 2000 after an [redacted] career as a wide receiver, during which he sustained 4 to 5 documented concussions. He reports no significant coordination issues or balance problems. He is married and has a 24-year-old son who resides with them and assists in their real estate business. His wife manages the household shopping and cooking, while he enjoys golfing and spending time alone in quiet environments. He has a small social circle and prefers peaceful activities such as fishing, although he has not engaged in this activity recently. He has a history of depression related to family loss but does not currently feel depressed. He underwent neuropsychological testing less than a year ago with Dr. [redacted] He has not had any brain imaging studies but recalls undergoing a sleep study during his baseline assessment,

As for the CDR assessment, Dr. [redacted] assigned Mr. [redacted] a CDR score of 1.0 in Community Affairs, a score of 2.0 in Home & Hobbies, a score of 2.0 in Personal Care, and an overall CDR score of 2.0. Doc. 386548. Besides inputting these numerical scores, Dr. [redacted] left the CDR assessment form largely blank. *Id.* Dr. [redacted] did not provide any written explanation for the three CDR category scores, nor for the overall CDR score. *Id.*

At this point, the relevant exams had been completed, but it was obvious that the resulting reports left something to be desired. The Claims Administrator, as a part of its ordinary process of quality control, and seeking to avoid finding conflict between examiners where none existed, attempted to learn a bit more about Mr. [redacted]' situation. On April 17, 2025, it contacted Mr. [redacted] to ask about his involvement in two businesses. Doc. 388111. Mr. [redacted] responded the same day, generally disclaiming a personal and active role in those activities. Doc. 388158.

Then, on May 22, 2025, the BAP Administrator pinged Dr. [redacted] and requested that he provide an addendum explaining his CDR scoring in light of Mr. [redacted]'s Third-Party Sworn Statement. Doc. 393359. One request did not suffice, and it was not for another month that Dr. [redacted] submitted a revised CDR assessment form. Doc. 396541. That revised form contained only one new sentence. *Compare* Doc. 386548, *with* Doc. 396541. In the Community Affairs section, Dr. [redacted] added: "After reviewing third-party statement does appear that patient's community affairs CDR score is appropriate at a level 2." Doc. 396541. The other sections remained blank. *Id.*

Unsurprisingly, on August 1, 2025, the BAP Administrator again contacted Dr. [redacted] for further explanation:

> Thank you for your previous response. We reviewed the CDR assessment form you submitted and noticed that you provided scores but did not provide any information or medical reasoning to support the scores. Please provide an addendum describing the Player's functional impairment in each of the three CDR categories and provide your medical reasoning for assigning the scores.

Doc. 401746.

Dr. [redacted] needed multiple follow-ups to secure a response. Finally, on October 22, 2025, Dr. [redacted] filed a second revised CDR assessment form, with written explanations for each CDR category:

> Community Affairs
> Although patient still has a commercial real estate business he is not performing any of the duties to manage the business. He is relying on our property managers and

which revealed seizures, although he was not informed of this finding at the time. He has never experienced any seizure-like episodes or fainting spells. He also reports sleep disturbances, often waking up between midnight and 4:30 AM and struggling to return to sleep. He describes feeling fatigued and as though his mind is racing during these periods. He has a history of headaches and is curious if they could be related to his concussions."

lawyers to assist. This is supported by the third-party statement as well. Patient's wife manages the household, shopping and cooking while he enjoys spending time mostly alone in a quiet environment. He does have a small social circle but does not interact much with them at all.

Home & Hobbies
This is also supported by the third-party statement which states patient has lost interest in his hobbies which he used to do painting, reading, entertaining, photography and gardening. Also supported by the fact that third-party statement states patient has difficulty getting along with family members and performing household tasks.

Personal Care
This score is supported by third-party statement which states he lost his ability to dress himself, lapses in washing grooming and declined eating habits. Patient has poor toileting habits or loss of bladder control there has been examples of him soiling himself and wetting himself.

Overall CDR Rating
This score is supported based on interview, examination, review of neuropsych testing, review of third-party and above CDR ratings.

Clarify Any Discrepancies
Please review description as above and community affairs. Patient is relying on others to perform the work through the real estate business as he is not doing any of the work himself.

Doc. 410674 (cleaned up).

Having reviewed Dr. [redacted]'s submission, the BAP Administrator contacted Dr. [redacted] yet again on December 4, 2025, with *another* round of clarifying questions.[4] Doc. 416710. Another month passed while the Administrator tried valiantly to secure a response so it could make a final determination. Finally, Dr. [redacted] responded on January 24, 2026. Doc. 422380.

[4] It relevantly wrote:

> "Please provide an addendum clarifying where the information regarding hobbies (painting, reading, photography, gardening), difficulty performing household tasks, inability to dress himself, lapses in washing/grooming, and double incontinence is located and where you obtained this information (sworn statement, medical records, interview of the Player, etc.). You mention that this information is supported by the third-party sworn statement; however, none of this information is mentioned in the affidavit. Additionally, it is noted that the Player reported abnormal headaches and significant joint issues causing pain to Dr. [redacted] Please confirm whether pain, untreated mental illness, and sleep issues were considered when you completed your CDR analysis and that the scores you assigned were based on cognitive decline alone. If they were not, please provide an updated CDR analysis excluding outside factors."

A few days later, on January 28, 2026, the BAP Administrator sent Mr. [redacted] his BAP Result Letter and BAP Diagnosing Physician Certification Form, and Mr. [redacted] submitted the present Claim. Docs. 422429; 422430; 422524.

On March 5, 2026, as part of its ordinary process of review, the Claims Administrator contacted him with a Notice of Request for Additional Documents, to show sufficient documentary evidence that corroborated his Diagnosis. Doc. 426286.

Mr. [redacted] responded to the Claims Administrator the next day, submitting an updated Third-Party Sworn Statement from Mr. [redacted] dated March 6, 2026. Doc. 426417. In light of Mr. [redacted]'s updated Third-Party Sworn Statement, the Claims Administrator again contacted Mr. [redacted] on April 6, 2026, to clarify his involvement in various social events, including autograph signings, meet and greets, and a podcast. Doc. 429789.

Mr. [redacted] responded the next day with a written explanation of each event. Doc. 429897. He noted that his wife always travels with him and any speaking engagements are limited to pre-prepared questions. *Id.* In response to "how [his] participation in these events is consistent with the records submitted with [his] Claim Package," Mr. [redacted] wrote:

> I am simply filing a claim based on the Qualifying Diagnosis I received for the doctor I was sent to through the BAP, I continue to have lapses in train of thought and issues when discussing things I don't have a long history with. Questions about football and my career come easier for me because it was such a big part of my life and is always in most conversations with people. Other things not so much and not as easy.

Id. (cleaned up).

Roughly one month later, on May 11, 2026, the Claims Administrator issued a Notice of Monetary Award Claim Determination, informing Mr. [redacted] that he was entitled to an Award for Level 2 Neurocognitive Impairment. Doc. 433337.

The NFL Parties timely appealed. Doc. 436670. Mr. [redacted] filed a *pro se* response. Doc. 437997.

RESOLVING THIS APPEAL

To prevail on appeal, the NFL Parties must show by clear and convincing evidence that the Claims Administrator erred in approving Mr. [redacted]' Claim. This is a high bar and it rests on a slender base: that Dr. [redacted]'s CDR analysis does not meet the Settlement's requirements for establishing functional impairment under criterion (iii).[5] I conclude that the NFL Parties have not sufficiently demonstrated the Claims Administrator's determination to the contrary was in error.

[5] *See* Settlement Agreement, Exhibit A-1(2)(a)(iii) (requiring that a Player who receives a Diagnosis of Level 2 Neurocognitive Impairment "exhibit[] functional impairment generally consistent with the criteria set forth in the

The NFL Parties first argue that Dr. [redacted] failed to conduct a "structured interview" of Mr. [redacted] or a reliable informant.[6] And it's true that Dr. [redacted]'s records do not literally say that he interviewed Mr. [redacted] But it's easy to conclude that this questioning must have happened. After examining Mr. [redacted] Dr. [redacted] produced a written report with a detailed description of the former's cognitive symptoms and functional impairment. Doc. 386545 at 2. That information could only have been gathered from an interview. In fact, on multiple occasions throughout his report, Dr. [redacted] attributes pieces of information to what Mr. [redacted] "report[ed]" and "describe[d]" in their conversations. *Id.* The NFL Parties offer no evidence that Dr. [redacted] departed from normal practice in that conversation—*i.e.,* it was a structured examination, not an informal chat.

Second, the NFL Parties argue that Dr. [redacted] simply got it wrong. Here, they rely on the well-established rule that when the Claims Administrator *disagrees* with a diagnosing neurologist's CDR scoring, the question on appeal turns on the degree of deference the doctor is due. That deference "is not automatic. It requires a diagnosing neurologist to have carefully considered the relevant evidence. That is, they must provide an articulated and holistic justification for their CDR scoring for it to have significant weight."[7]

Relying on these precedents, the NFL Parties argue that Dr. [redacted] did not provide an articulated justification for his CDR scores and therefore his assessment of functional impairment can't stand.

But the procedural posture of this Appeal is different from the decisions that the NFL Parties press. The Claims Administrator ultimately *did* agree with Dr. [redacted]'s CDR scoring, and after reviewing Mr. [redacted]' entire medical record, it determined that Mr. [redacted] satisfied the Settlement's functional impairment requirement. Thus, the NFL Parties don't just have to show that Dr. [redacted] was wrong, but that there is clear and convincing evidence that the Claims Administrator should have thought so too.

To satisfy this high burden, the NFL Parties highlight what they see as Dr. [redacted]'s "overall unreliability." Doc. 436670 at 2. They point out that Dr. [redacted]'s communications with the BAP Administrator were often untimely, sometimes confusing, and, at least initially, incomplete. Most notably, as the NFL Parties explain, Dr. [redacted] incorrectly attributed pieces of information to Mr. [redacted]'s 2024 Sworn Statement on multiple occasions.

National Alzheimer's Coordinating Center's Clinical Dementia Rating (CDR) scale Category 2.0 (Moderate) in the areas of Community Affairs, Home & Hobbies, and Personal Care.").

[6] *See* In re: Appeal of SPID #950004523, 2020-22, at 6 (Dec. 15, 2020), at https://www.nflconcussionsettlement.com/ViewDoc.aspx?dp=functional_impairment_sm.pdf (noting the requirement for such an interview).

[7] In re: Appeal of SPID #100002076, 2026-1, at 9 (Feb. 11, 2026), at https://www.nflconcussionsettlement.com/ViewDoc.aspx?dp=functional_impairment_deference_sm.pdf (internal quotations omitted).

But, occasional errors in Dr. [redacted]'s reporting do not impeach the Claims Administrator's overall judgment.

Why not? Well, first, the Claims Administrator *knew* that Dr. [redacted] had misattributed the information. The BAP Administrator asked Dr. [redacted] about the error on December 4, 2025. Doc. 416710. Moreover, although the NFL Parties have established that Dr. [redacted]—at times—misattributed the source of his information, the NFL Parties have not established that the information itself was false. In fact, much of the information that Dr. [redacted] relied on in his October 22, 2025 revised CDR assessment was later corroborated by Mr. [redacted]'s 2026 Third-Party Sworn Statement. *Compare* Doc. 410674 ("[Mr. [redacted] lost his ability to dress himself, lapses in washing grooming and declined eating habits."), *with* Doc. 426417 ("All of the household task and chores like cooking, cleaning, and shopping are done by [redacted] his wife or his son [redacted] He seems to have lapses in memory and grooming at times, which is not like him."). The Claims Administrator considered any inconsistencies in reaching its judgment, and simple re-litigation of the outcome of that process is not clear and convincing evidence that it was reached in error.

Similarly, the NFL Parties disagree with how Dr. [redacted] evaluated the various pieces of the CDR. But, given his explanations, those determinations were entitled to the very deference that the Claims Administrator gave them. And on appeal, mere disagreement with the weight given to conflicting pieces of data cannot establish clear and convincing evidence of error in the Claims Administrator's ultimate judgment.

CONCLUSION

The Claims Administrator concluded that Mr. [redacted] satisfied the Settlement's criteria for a Diagnosis of Level 2 Neurocognitive Impairment and approved his Claim. As the NFL Parties have not shown by clear and convincing evidence that this determination was in error, I deny their Appeal.

Date: October 7, 2026

David A. Hoffman, Special Master