



**Testimony of
Curt Marsh
Before the
Subcommittee on Commercial and Administrative Law
of the
Committee on the Judiciary
"The National Football League's System for Compensating Retired Players: An Uneven Playing
Field?"
June 26, 2007**

My name is Curt Marsh. I am 47 years old and live in Snohomish, Washington. I attended the University of Washington on a football scholarship and played defensive line, offensive guard and eventually ended up at offensive tackle. After my senior season I was selected in the NFL draft by the Oakland Raiders as the 23rd player picked in the first round. Oakland moved me to offensive guard where I remained for my entire 7 year career in the NFL, all with the Raiders. I played left guard behind a 15-year veteran by the name of Gene Upshaw. After 4 games in my rookie season I was promoted to the starting position and remained the starter at left guard without missing a game for that season and the next. Gene Upshaw retired after my second season. He was a good teammate and very supportive mentor.

After my rookie season the doctor found that I had a hernia and surgery was done to repair it. I had a similar surgery again after season two as a hernia was found on the other side midway through the year. The only other injuries I had were usually related to my neck. I always had a problem with what were called "stingers". They were basically pinched nerves in your neck brought on by high speed collisions with your head. I would smack into a linebacker as hard as I could and one whole side of my body would feel like it had exploded and then go numb. I was cursed with those throughout my whole career. I had 1 low back surgery in college to repair a disc injury at L5- S1 and recovered nicely. However, in training camp before my 3rd season I blew out another disc in my low back at L4-L5 and was rushed to the hospital where I was given 3 cortisone shots a day directly into my back for 2 weeks and kept in traction. When that didn't work they operated. The surgery was not as successful as the first and I did not fully regain my strength or feeling in my left leg. Parts are still numb. In addition, the cortisone shot had made me balloon up and I had these pimple like spots all over my body. It was an awful experience. I rehabbed hard and was practicing by the end of the season and ready to come back the next. Somehow, I re-injured the hernia repair on the right side and it had to be redone during the off-season between my 3rd and 4th years. All through the training camp of my 4th season my low back was very stiff and painful. The team orthopedic Physician, Dr. Rosenfeld, again used cortisone shots combined with a numbing medicine to help the pain, and I got them before each practice and games. I did not get my starting job back until the 5th game of that season. During a game against the Kansas City Chiefs I injured my left shoulder with a slight separation. I did not miss any games because of it. It was just another annoying injury.

Unhappy with my performance in my 4th year I trained extremely hard in the off-season prior to my 5th year and came into camp in the best shape of my life. On day 2 of practice during a contact drill I hit a defensive back at full speed and as we rolled to the ground I felt my upper arm snap. I had broken it completely in half. I was rushed to the hospital and taken directly to surgery where the arm was screwed back together. After the surgery I flew right back to camp and began rehab. 5 weeks later I was activated to play again. I was not put back into a starting position. I rotated into the right guard spot with another player and we would split playing time. I was also the backup center at that point. In my second game back while blocking a linebacker I heard a snap and felt extreme pain in my left hand. I looked down and saw my ring finger pointing at a very odd angle and knew my hand and/or finger was broken. It was. I was put in a cast and continued to play. The cast however, was very cumbersome and made it difficult to pass protect so the Dr. suggested taking the cast off to play and putting it back on after each game and then doing surgery at the end of the season to repair any damage to the hand. By this time I wanted playing time so badly I would do just about anything. I wanted my starting job back and you can't get that sitting on the bench. So I agreed. Each game we would saw off the cast, shoot cortisone and novocain into my hand and then tape it up. In addition to my hand and arm hurting as well as still getting shots in my back and it getting stiffer throughout the season now my right knee was giving me problems and my left knee was clicking and grinding. My back was getting so bad that I had to get up early each morning and spend about an hour in our condominium complex hot tub stretching just to get limber enough to function and get to the practice facility. I would apply heat packs during meetings and use heat balm, as well as stretch constantly throughout the day. By the end of practice each day I was thrashed. That season ended without me winning my starting job back. So I went into the hospital to have my hand put back together and to have arthroscopic surgery on both knees to take out loose bodies and to fix cartilage injuries and to just rest my back.

I began the season 6 training camp as the starting left guard. I got up each day, did my low back routine, got the shots and off I went. During the second game of the season against the Redskins in Washington D.C. I was injured on a play where my left knee and right ankle were hurt at the same time. I was given

the pain killing shots and re taped and continued to play. After returning home further tests were done and it was discovered that I had torn a ligament in my left knee. However, the x-ray done on my ankle showed no obvious breaks and it was diagnosed as ligament damage. I was put on injured reserve for the rest of that season. My knee healed without surgery but I continued to have problems with my ankle.

My ankle was well enough for me to start practices in the next training camp prior to season 7. However, once I started to play on it in practice it ballooned up and hurt tremendously again. I went to Dr. Rosenfeld and he again pulled out the same x-ray and said it was OK and he would shoot it and I should play. They drained all the fluid out before each practice and then shot it full of cortisone and Novocain to numb it and I would practice on this numb stump until the shot would wear off. Then it would balloon up again and I would be in excruciating pain. I begged the doctor to do something else and he just kept telling me if he shot it and I played it would get better. I then said I was going to go to another doctor or 2 to get other opinions. That was when he decided to send me for another x-ray only. When it came back I made sure my player union rep Mike Davis was with me in my room to meet with the doctor. The x-ray showed several loose bodies that weren't there before, but no break. Dr. Rosenfeld said he was sticking with his advice to shoot it and play. I then said I was leaving to get the other opinions. He said he knew that they were going to say that I needed to get the loose bodies removed. I said, "Well then maybe I do." He then turned to walk out the door, stopped and to our amazement said, "Well, my advice is that you get the loose bodies removed." Unbelievable. Talk about CYA. One thing you must understand in dealing with NFL medical issues is that the doctors who work for the NFL teams are not like regular doctors. Regular doctors are committed to making a person well. **An NFL doctor's only job is to make a player well enough to play.** And the further back you go in NFL history the worse it was. Our team doctor Dr. Rosenfeld was in his 80's, so he was very "old school".

To make a long story shorter, I went to 3 doctors all of them said an x-ray is inadequate to diagnose this injury they would need a CAT scan. I chose Dr. Daley from Marina Del Ray, California and the CAT scan revealed that my ankle was broken. The talus bone in the center of the joint was broken all the way through and had been grinding away all this time. The x-ray angles couldn't catch it. The joint surfaces were ruined and I was never able to run again. My career was over. My body was toast. I spent the rest of that season on Injured Reserve, had my left knee scoped again and then retired. I did make one more mistake. I went to Dr. Rosenfeld to take the screw out of my ankle after it was healed because I was having some irritation. I thought it was an easy surgery no one could screw it up. I was wrong. I got a severe staff infection after the surgery that had me in the hospital for 28 days and on home IV antibiotics for another 4 weeks. I have had problems with recurring staff infections ever since.

After retiring I bought a home in Washington where I grew up and then invested in a vending business which I ran myself. I was a 1st round draft pick but my timing was not that great. I missed the really big money. As a matter of fact in my whole 7 year career I did not make a million dollars if you added every dollar I made together. I made good money, don't get me wrong, but we lived in the Bay Area and then Los Angeles where it was very expensive and most of the money I saved I put into the house and the business I bought in retirement. After a couple of years in the candy and beverage business, even though it made money it was not fulfilling. In addition I needed another surgery on my ankle and we did not have any insurance coverage. I was being asked to speak to youth groups and other organizations in my spare time and enjoyed that, so I thought I would sell my business and try to find work with young people. No one would hire me because my only other work experience was for myself or playing football. I was finally hired by the Mayor of the City of Everett Washington to run some youth programs.

I then had the first of what would turn out to be 11 more surgeries on the right ankle. I had more loose bodies taken out. Several months later some bone spurs removed, followed by some more loose bodies removed some months after that. I suffered another staff infection following the 3rd surgery and spent 11 days in the hospital including an additional surgery to clean the infected area and then 4 weeks on home IV therapy. After one more surgery to remove even more bone spurs that developed it was decided to fuse the sub-talus joint. That was done. This put more pressure on the ankle joint itself and I began having problems with that. In the mean time my low back is still in horrible shape. Somehow, in between surgeries I am still working and my bosses are very patient with me. Loose bodies were removed from my ankle joint followed by a surgery to remove bone spurs. My doctor then said he had done all he could do and referred me to the foremost authority on ankle surgery on the west coast who advised total fusion of the joint. We made 3 separate attempts to fuse the joint. After each attempt and subsequent recovery period the fusions broke down and collapsed. This was probably due the trauma to the bone by all of the surgery and infection. The only other solutions then were to use a wheel chair or amputate.

Prior to the amputation I told the doctor that I had been experiencing extreme pain in my hips, especially my left. He examined me and found that I had avascular necrosis in both hips. It is a disease where the blood flow has been restricted to the hip bone and the bone dies and slowly crumbles away. The only solution is total hip replacement. When I asked how this could have happened to me, it was explained given my history of excessive cortisone injections that they were most probably the cause of the disease. I would need a total hip in the left within 2 years and the right sometime later. They felt that they might be able to give my right hip some more time if they did a bone graft during the amputation surgery. The amputation and hip graft were done in 1994. By this time I had missed so much work that I was amazed that they still kept me employed. They said they understood my hardships and felt that it was still the right thing to do as long as I could help them raise money for the non-profit. The Parks Department had just developed a new 501C3 to support its programs and I was assigned to help with that. They appreciated how hard I had worked when I had been capable and felt that my name recognition and personality in the community would still be helpful in working for their non profit. They became the ultimate benevolent employer.

For the next year and a half I worked as often as I could until I simply could not walk on my hip anymore and went in for the replacement in 1996. After recovering from that I had taken some youth to the Seahawk training facility to see practice. I ran into Reggie McKinzie who played several years in the NFL and was coaching with the Seattle team. He saw my artificial leg and asked me if I had applied for the new disabled player benefit. I said I only knew about the one you had to file within 12 months after playing or you were ineligible. He said there was a new one from the 93 CBA. So I called and asked for the info and was sent the information in 1996.

I applied and was told I needed to see a doctor at my own expense (to be reimbursed if I qualified) and the physician would make a recommendation to a board who meets once every 6 months. The board votes on the recommendation and you are either approved or declined. In case of a tie you are sent to another doctor and you repeat the process. In case of another tie, you are then sent to a MAP physician who has the final word on whether you are approved for the total and permanent disability or not. No more votes after the 3rd doctor will take place. In the paperwork it also said that you are totally and permanently disabled if you are not able to work for remuneration or profit. The exceptions were: if you worked for any team or the league, if you worked for a charity or if you worked for a benevolent employer. I worked for a charity and a benevolent employer. So I had the city of Everett Parks Department write a letter which I took to each doctor I went to.

My 1st doctor was a physician on Colby avenue in Everett, Washington. He looked me over thoroughly and stated that he had seen several players and not recommended many if any at all but that I was the worst he had ever seen, with my leg, hips, back, shoulder, hand, arm, neck and knees. He said he was recommending a yes for the board. After the board met I received a letter stating that they had a vote and it resulted in a 3 to 3 tie. I needed to see another doctor at my expense if I wished to pursue this. I said yes and was sent to Dr. Smith in Seattle, Washington who stated that I was the worst he had seen. In the mean time, I was having a lot of re-occurring problems with my stump, getting sores and infections and not being able to wear my prosthesis. In addition, my low back was getting worse and I was having the signs of more disc problems with pain shooting down my leg. My right hip was getting harder and harder to get around on. After Dr. Smith sent his recommendation, I was informed again that the vote of the board was 3 to 3. I was told I would have to see the final doctor in Los Angeles, California. I paid for my round trip to see Dr. James Tibone in late August of 1997. He said the same thing I had heard from the 2 physicians before him. He stated that he did not approve many but that I was the worst case had seen and that he was going to recommend that I receive the total and permanent disability. The board met 2 months after that and I received news that my disability had been approved as of 9/1/1997 and my checks started to come. I applied for the first time in mid 1996 and about a year and a half later I was finally approved for disability.

I continued to show up at the city of Everett from time to time for about a year more until I just couldn't do it any longer. I had another hernia surgery, this time in my upper abdomen. In addition, my back, hip, leg and now neck pain were limiting me from even doing the little things on any kind of regular schedule. I had to quit and rely solely on my disability income. This meant that my wife had to find work in order for our family, which included 3 children, to have health insurance. In 2001 I went in for my 28th surgery to have the disc removed from between the C5-C6 vertebra in my neck and then have it fused together. This eliminated some of the more severe pain in my upper spine. However, I still have bad arthritis and pain in my neck and upper back from all of the high speed impact during my playing days.

In 2003 the severe pain in my low back again became too much to bear so I had surgery to remove the bulging disc at L3-L4. Following that surgery I went through what was to be the worst medical experience of my life. I again got a staff infection, but this time it was in my spinal area. I have experienced pain in my life, but never before have had I to endure the kind of pain that I lived through for several weeks with that infection. I was in the hospital for 2 months. The stay included an additional surgery to clean out the infection and add 2 steel rods on each side of my spine in the low back to stabilize the area so it could heal properly. I had to learn how to walk again when that was over. After I got home I was on home IV therapy for another 2 months. What a nightmare.

In 2004 the shoulder I had injured playing football had gotten so bad that I could not lift it more than half way to my head, so I relented and had arthroscopic surgery to clean the joint out and finally repair the damaged ligaments. By 2006 my right hip had collapsed to bone on bone and I could barely take a step. I was deathly afraid of major surgery now because of the last infection, but it had to be done. I had the total hip replacement in October and recovered fairly well. And that brings me to the here and now.

I have been required by the Plan to see a physician once a year since receiving the disability to have a thorough checkup to prove that I am still disabled. I guess they want to make sure that I haven't grown new hips or a leg, or that my back and neck are miraculously not full of metal and severely arthritic. Not to forget my knees and shoulder, or arm that I cannot fully straiten and the hand that I can now barely make into a fist.

I have been asked to comment on the disability plan and its procedures of qualification. To that I must say this. I believe that the procedure is altogether much too cumbersome. I went through it and experienced this first hand. And I find it very interesting when I hear it said that I must be confused about my own experiences. In talking with staff preparing for the hearing they called me after meeting with the NFL and NFLPA reps and asked if I was sure that I had seen an arbitration physician to decide my disability. I responded that I was sure. I was then told that the NFL reps stated that I had not and that I was probably confusing some other doctor visits I had with the disability required visits. I was a football player but I am not dumb. I have an IQ in the high 130's and have no problem with my memory. I was contacted by Gene Upshaw after I was asked to report to this committee. He said he had seen my name on a witness list and

wanted to know what my interest was. I had been a teammate of Gene's and always gotten along well with him, so I told him I was going to comment on my experiences and how cumbersome the process was, taking me a year and a half, as well as how many doctors I had to see. I didn't understand how 2 doctors' recommendations saying the same thing to the same group could still come back in a deadlock twice until the 3rd doctor had to decide it for them. I said if you believed the 3rd doctor you should just send people to him in the first place. If my job was the issue that was ridiculous because of the letter my employer wrote stating that I was unemployable but that they kept me employed as a favor to me and for my name recognition to help their 501C3 to raise money. That covered 2 of the clauses in the CBA for employment. If you were employed by a benevolent employer or worked for a charity you could still qualify for the total and permanent disability. So my employment was moot. After our conversation I received an e-mail from Gene trying to tell me that he had information which said I only waited 6 months for my disability to be approved. He then faxed me a paper showing I applied June of 1997 and was approved in October of 1997. Where in the heck did they come up with these dates? This doesn't even make sense. If the board only meets once every 6 months and my case was submitted even to only 2 doctors as their paperwork says, it would take at least 6 months not 4. In addition their paperwork says that the second doctor I saw was Dr. Tibone and he was a MAP physician. Which I believe refers to their "medical arbitrating physician." You are not sent to a MAP doctor unless you have been to the board twice with a tie. That is in the instructions for the disability procedures. So they are not only trying to convince everyone else that the process is fair, quick and simple. They are so bold as to believe they can convince even me that I don't remember it correctly and I was approved within 3 to 4 months of my application coming in. It reminds me of when I was a young child and I didn't want to get caught by my parents doing something wrong, so I lied so fervently that even I began believing my own lie. Either that or they just keep horrible records.

I have absolutely no reason to lie to you today. I have nothing to gain either way. I was not even aware of the groundswell surrounding this issue until I was invited to testify and searched the internet and found many articles about Coach Ditka and Mr. Carson and others raising awareness about this issue. I even read the transcript of the case brought against the Disability Plan by the family of Mike Webster and I was extremely disappointed by what I read. It reminded me of the feelings I experienced when going through my application process. I felt as though some members on the board reviewing my case were looking for the smallest loophole to not grant disability rather than trying to find people who truly qualified. I was reminded of a movie I had seen called "Rain Maker", where a poor family was seeking insurance coverage for cancer treatment from their carrier but kept getting denied until it was found out that the denials were a result of a policy the company had to simply deny every single claim that came in regardless of the merit to try to weed out as many people as they could. Only those with the will to stick it out even had a chance at getting any further and even then they just kept denying until you went away. I am not saying that is what is happening here but I am saying that is how I felt. I had no leg, no hips, no back, and the rest of my body was falling apart. I had a job but it was with a benevolent employer and a charity which were both allowed under the plan. Even then I was hardly ever at work due to surgeries or complications. And finally the doctors that examined me recommended that I receive the disability. I thought to myself, "If I don't qualify, then who would? You must have to be paralyzed in a wheelchair to get this benefit."

I appreciate that the 1993 CBA introduced the degenerative disability plan at all, because before that a player had to file by his 12th month out of the league or he was out of luck. How many of us even know that our cumulative injuries are going to be so disabling by then? Not many. But more needs to be done. The suggestion I read about, forwarded by Gene Upshaw, to rely on the Social Security standard for qualification is as good a place to start as any. But, once the process is streamlined and fair then the benefit itself needs to be examined. The benefit is currently a monetary benefit, which is great. But that is only half of the story. There are 2 problems that I believe the next CBA should address and those are cost of living increases which can either be negotiated in each CBA or set at a percentage each year and just set continuously and the second is medical benefits. The issue with total and permanent disability is that you will never be able to work again which means you will never qualify for health insurance again either. If you are so disabled by your football related injuries that cannot work then you will most defiantly need a lot of medical care and that is extremely expensive. The amount of money I receive from the benefit helps to pay the bills and feed my family and then some, but it comes nowhere near being able to cover the staggering medical costs I have incurred over the years. I thank God my wife is willing to go to work every day and provide insurance for our family. What about those who are not married or whose wives cannot work? No amount of monthly stipend is going to cover surgeries and hospital stays or home health care. So I believe that the next addition to the disability plan should be a health insurance component which is good for the duration of time that the player qualifies for the disability.

In closing I would like to add, that the players who came before us are the foundation of all that came after us. They deserve our respect and compassion. The medical treatment they received during their playing days was far inferior to that of today's million dollar athletes and they are suffering the consequences in the here and now. It is easy for those who are dealing in the world of the high finance NFL on a day to day basis to get caught up in how important who and what they do seem to be. So much so, that it is easy to forget the suffering of those trailblazers who have no voice today. I may be in the minority but I still hold out hope that Gene Upshaw will fight for the players of the past and make the improvements that are required to serve their needs. He must be held accountable. Thank you

Curt Marsh

Surgical History

1979

1981 L5 S1 Laminectomy
1981 Lower Hernia Left
1982 Tonsillectomy
1982 Lower Hernia Right
1983 L4 L5 Discectomy
1985 Right Upper Arm Open Reduction
1985 Left Hand Open Reduction
1985 Scope Right & Left Knees
1986 2 Surgeries on Broken Right Ankle (*Staff infection following second surgery*)
1986 Left Knee Scope
1989 11 more surgeries on right ankle including a
- subtalar fusion and 3 attempts to fuse entire
- ankle. (*One more staff infection following an ankle surgery in 1991*)
1994 Right Below Knee Amputation combined with a vascular and bone core replacement in right hip.
1996 Left Total Hip Replacement
1999 Stomach Hernia
2001 Discectomy and Fusion C5 C6
2003 Discectomy L3 L4 (*Followed by severe staff infection of spine*)
2003 Another L3 L4 Surgery plus Fusion to clean out infection and fix problem with first surgery.
2004 Left Shoulder Surgery to clean joint and tighten ligaments
2006 Right Total Hip Replacement