

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

APPEAL FROM ADMINISTRATIVE LAW COURT  
S.C. Department of Probation, Parole and Pardon Services

S. Phillip Lenski, Administrative Law Judge  
Appellate Case No. 2019-002102  
Docket No. 19-ALJ-15-0029-AP

RECEIVED  
DEC 22 2020  
SC Court of Appeals

Bernard Bagley, #175851,

Appellant,

v.

South Carolina Department of Probation,  
Parole and Pardon Services,

Respondent.

APPENDIX

Bernard Bagley  
#175851/HD133/KER.CI  
4848 Goldmine Hwy.  
Kershaw, SC 29067

Pro se

Matthew C. Buchanan  
SCDPPPS General Counsel  
P.O. Box 207  
Columbia, SC 29202  
Attorney for Respondent

INDEX

U.S. Department of Veterans Affairs Rating Decision dated 6/9/20	1-4
ImageCare MR-Lumbar Spine Exam Report dated 7/31/20, and 8/3/20	5-7
SCDC inmates concerns about spread of covid-19 and deaths in prison copy dated 12/20/20	8-10



**DEPARTMENT OF VETERANS AFFAIRS**  
**Veterans Benefit Administration**  
**Regional Office**

**BERNARD BAGLEY**

**VA File Number**  
[REDACTED]

**Represented By:**  
**DISABLED AMERICAN VETERANS**  
**Rating Decision**  
**06/09/2020**

**INTRODUCTION**

The records reflect that you are a veteran of the Peacetime. You served in the Army from [REDACTED] and from [REDACTED]. The Board of Veterans Appeals remanded the case to our office on November 28, 2018. Based on a review of the evidence listed below, we have made the following decision(s) on your claim.

**DECISION**

1. Evaluation of lumbosacral strain with severe muscle spasms and pain on ambulation (to include numbness; stiffness; muscle spasms and knee condition), which is currently 20 percent disabling, is increased to 40 percent effective December 6, 2019.
2. Evaluation of lumbar radiculopathy, left lower extremity sciatic nerve, which is currently 10 percent disabling, is increased to 20 percent effective December 6, 2019.
3. Evaluation of lumbar radiculopathy, right lower extremity sciatic nerve, which is currently 10 percent disabling, is increased to 20 percent effective December 6, 2019.



4. Service connection for lumbar radiculopathy, left lower extremity femoral nerve is granted with an evaluation of 20 percent effective December 6, 2019.
5. Service connection for lumbar radiculopathy, right lower extremity femoral nerve is granted with an evaluation of 20 percent effective December 6, 2019.

### EVIDENCE

- Board of Veterans Appeals Remand, November 28, 2018
- VA Medical Center Columbia outpatient treatment records for period December 11, 1997 to August 11, 2016 received, June 9, 2020
- Disability Benefits Questionnaire QTC Back conditions, December 6, 2019

### REASONS FOR DECISION

**1. Evaluation of lumbosacral strain with severe muscle spasms and pain on ambulation (to include numbness; stiffness; muscle spasms and knee condition) currently evaluated as 20 percent disabling.**

The evaluation of lumbosacral strain with severe muscle spasms and pain on ambulation (to include numbness; stiffness; muscle spasms and knee condition) is increased to 40 percent disabling effective December 6, 2019, the day of your VA examination. (38 CFR 4.1, 38 CFR 3.400)

We have assigned a 40 percent evaluation for your lumbosacral strain with severe muscle spasms and pain on ambulation (to include numbness; stiffness; muscle spasms and knee condition) based on: [REDACTED]

- Forward flexion of the thoracolumbar spine 30 degrees or less

Additional symptom(s) include:

- Combined range of motion of the thoracolumbar spine not greater than 120 degrees
- Guarding severe enough to result in an abnormal gait or abnormal spinal contour such as scoliosis, reversed lordosis, or abnormal kyphosis
- Muscle spasm severe enough to result in an abnormal gait or abnormal spinal contour such as scoliosis, reversed lordosis, or abnormal kyphosis
- Painful motion upon examination

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The provisions of 38 CFR §4.40 and §4.45 concerning functional loss due to pain, fatigue, weakness, or lack of endurance, incoordination, and flare-ups, as cited in DeLuca v. Brown and Mitchell v. Shinseki, have been considered and applied under 38 CFR §4.59.

A higher evaluation of 50 percent is not warranted for lumbosacral strain unless the evidence shows:



BERNARD BAGLEY  
[REDACTED]

3 of 4

- Unfavorable ankylosis of the entire thoracolumbar spine. (38 CFR 4.71a)

**2. Evaluation of lumbar radiculopathy, left lower extremity sciatic nerve currently evaluated as 10 percent disabling.**

The evaluation of lumbar radiculopathy, left lower extremity sciatic nerve is increased to 20 percent disabling effective December 6, 2019, the day of your VA examination. (38 CFR 4.1, 38 CFR 3.400)

We have assigned a 20 percent evaluation for your lumbar radiculopathy, left lower extremity based on:

- Moderate incomplete paralysis (38 CFR 4.124a)

A higher evaluation of 40 percent is not warranted for paralysis of the sciatic nerve unless the evidence shows nerve damage is moderately severe. (38 CFR 4.120, 38 CFR 4.124a)

**3. Evaluation of lumbar radiculopathy, right lower extremity sciatic nerve currently evaluated as 10 percent disabling.**

The evaluation of lumbar radiculopathy, right lower extremity sciatic nerve is increased to 20 percent disabling effective December 6, 2019, the day of your VA examination. (38 CFR 4.1, 38 CFR 3.400)

We have assigned a 20 percent evaluation for your lumbar radiculopathy, right lower extremity based on:

- Moderate incomplete paralysis (38 CFR 4.124a)

A higher evaluation of 40 percent is not warranted for paralysis of the sciatic nerve unless the evidence shows nerve damage is moderately severe. (38 CFR 4.120, 38 CFR 4.124a)

**4. Service connection for lumbar radiculopathy, left lower extremity femoral nerve as secondary to the service-connected disability of lumbosacral strain with severe muscle spasms and pain on ambulation (to include numbness; stiffness; muscle spasms and knee condition).**

Service connection for lumbar radiculopathy, left lower extremity femoral nerve has been established as related to the service-connected disability of lumbosacral strain with severe muscle spasms and pain on ambulation (to include numbness; stiffness; muscle spasms and knee condition). (38 CFR 3.310)

An evaluation of 20 percent is assigned from December 6, 2019, the day of your VA examination (38 C F R 4.1, 38 C F R 3.400).

We have assigned a 20 percent evaluation for your lumbar radiculopathy, left lower extremity



BERNARD BAGLEY

4 of 4

femoral nerve based on:

- Moderate incomplete paralysis (38 CFR 4.124a)

A higher evaluation of 30 percent is not warranted for paralysis of the anterior crural nerve unless the evidence shows nerve damage is severe. (38 CFR 4.120, 38 CFR 4.124a)

**5. Service connection for lumbar radiculopathy, right lower extremity femoral nerve as secondary to the service-connected disability of lumbosacral strain with severe muscle spasms and pain on ambulation (to include numbness; stiffness; muscle spasms and knee condition).**

Service connection for lumbar radiculopathy, right lower extremity femoral nerve has been established as related to the service-connected disability of lumbosacral strain with severe muscle spasms and pain on ambulation (to include numbness; stiffness; muscle spasms and knee condition). (38 CFR 3.310)

An evaluation of 20 percent is assigned from December 6, 2019, the day of your VA examination (38 C F R 4.1, 38 C F R 3.400)

We have assigned a 20 percent evaluation for your lumbar radiculopathy, right lower extremity femoral nerve based on:

- Moderate incomplete paralysis (38 CFR 4.124a)

A higher evaluation of 30 percent is not warranted for paralysis of the anterior crural nerve unless the evidence shows nerve damage is severe. (38 CFR 4.120, 38 CFR 4.124a)

**REFERENCES:**

Title 38 of the Code of Federal Regulations, Pensions, Bonuses and Veterans' Relief contains the regulations of the Department of Veterans Affairs which govern entitlement to all veteran benefits. For additional information regarding applicable laws and regulations, please consult your local library, or visit us at our website, [www.va.gov](http://www.va.gov).

4



Appellate Case No. 2019-002102



Palmetto Imaging - ImageCare  
710 Rabon Road, Columbia, SC 29203  
p: 803.462.3680 f: 803.462.3690

PATIENT NAME: Bagley, Bernard  
DOB: 01/27/1957  
MRN: 08-1495759  
PHONE: 803-896-3319  
PHYSICIAN: Kevin W. Burnham, PA  
EXAM DATE: 07/31/2020

EXAM: MR-Lumbar Spine without contrast

REASON FOR EXAM: M54.5 - Low back pain

ADDITIONAL HISTORY: Chronic lower back pain. Bilateral leg pain

COMPARISON: MRI of the lumbar spine of 03/19/2012

TECHNIQUE: Utilizing a 1.5 Tesla magnet, multiplanar multi sequence MRI of the lumbar spine was obtained without contrast.

**FINDINGS:**

The sagittal alignment is maintained. The vertebral body heights are preserved. Degenerative disc disease is present significantly at L4-L5 level, further narrowing the disc height when compared to previous examination. No suspicious bony lesions identified.

The cord is of normal caliber and signal. The conus terminates normally at L1.

T10-T11 and T11-T12: Mild to moderate broad-based disc osteophyte complex mildly extending into the neural foramen bilaterally resulting in mild to moderate bilateral neural foraminal narrowing at T10-T11 and mild to moderate at T11-T12. There may be abutment of the exiting nerve roots bilaterally. This appears to have slightly progressed compared to prior exam although T10-T11 level was not imaged previously.

L1-L2: No disc herniation or disc bulging. No neuroforaminal narrowing or spinal canal stenosis.

L2-L3: There is mild further narrowing of the disc height with moderate broad-based disc osteophyte complex, eccentric to the left side with moderate facet joint hypertrophy, ligamentum flavum thickening and epidural lipomatosis remodeling the thecal sac circumferentially and narrowing the spinal canal to 7.5 mm, slightly progressed. There is moderate bilateral neural foraminal narrowing with possible abutment of the exiting nerve roots bilaterally.

Radiology

PAGE 1 of 3

5

Appellate Case No. 2019-002102

**PATIENT NAME:** Bagley, Bernard  
**DOB:** 01/27/1957  
**EXAM:** MR-Lumbar Spine without contrast  
**EXAM DATE:** 07/31/2020

L3-L4: There is mild to moderate broad-based disc osteophyte complex extending into the neural foramen bilaterally, right greater than left. There is moderate facet joint hypertrophy, ligamentum flavum thickening and epidural lipomatosis remodeling the thecal sac circumferentially narrowing the spinal canal to 7.3 mm. There is moderate to severe bilateral neural foraminal narrowing, right greater than left with encroachment of the exiting nerve roots bilaterally, progressed.

L4-L5: There is further narrowing of the disc height with moderate broad-based disc osteophyte complex and a central disc/osteophyte protrusion that measures approximately 2.3 mm. There is moderate facet joint hypertrophy, ligamentum flavum thickening, epidural lipomatosis and along with a disc protrusion further narrows the spinal canal, crowding and clumping the nerve roots. The spinal canal is narrowed at this level to measure 5.6 mm. There is moderate to severe bilateral neural foraminal narrowing. There is mild facet joint edema noted bilaterally, new from previous exam.

L5-S1: There is mild narrowing of the disc height with mild broad-based disc osteophyte complex and a central disc/osteophyte protrusion measuring 3 mm annular tear. There is mild facet and hypertrophy with mild to moderate right neural foraminal narrowing, stable to minimally progressed.

Paraspinal soft tissues are unremarkable.

**IMPRESSION:** There is significant progression of degenerative changes of the lumbar spine superimposed in a developmental narrowed spinal canal. This results in further narrowing of the spinal canal and severe spinal canal stenosis is present at L4-L5 measuring 5.8 mm, crowding the nerve roots. There is moderate to severe bilateral neural foraminal narrowing that has progressed compared to prior exam encroaching on the exiting nerve roots bilaterally.

At L3-L4, there is moderate to severe bilateral neural foraminal narrowing, right greater than left with encroachment of the exiting nerve roots bilaterally.

At L2-L3, there is moderate bilateral neural foraminal narrowing with possible abutment of the exiting nerve roots bilaterally.

At L5-S1, there is mild to moderate right neural foraminal narrowing that is stable to minimally progressed.

6

Radiology

PAGE 2 of 3

Appellate Case No. 2019-002102

PATIENT NAME: Bagley, Bernard  
DOB: 01/27/1957  
EXAM: MR-Lumbar Spine without contrast  
EXAM DATE: 07/31/2020

See details above for each level.

Laura Gillihan Ulrich, MD

\*\*\* THIS IS AN ELECTRONICALLY VERIFIED REPORT \*\*\*

8/3/2020 11:09 AM: Laura Gillihan Ulrich, MD

LG/lgu  
DD: 08/03/2020 11:02 am  
DT: 08/03/2020 11:09 am  
Accession #: 08-4007655

7

Radiology

PAGE 3 of 3

Appellate Case No. 2019-002102

The spokesperson for the SCDC Chrysti Shain says the department is taking several measures to help prevent the spread of the virus. Shain says they only allow critical staff to enter prisons and have stopped all other visitations.

She says inmates are taught COVID-19 safety precautions and are advised to clean their areas every two hours and are provided cleaners and hand sanitizers.

Shain says the inmates are in charge of cleaning their cells and staff clean common areas. She says they are taught about social distancing, but it's difficult to do in a prison setting.

"They don't have many options as far as where they can go where they can be at certain times," Peper said. "When they try to social distance, that's all good and well but you're in a pod with a number of other inmates, you're in a very small cell with at least two people at night, and so there's just not many opportunities to take advantage of the CDC guidelines."

SCDC says inmates were also provided two masks and can request additional masks if needed.

Department officials say they test inmates who are symptomatic and have designated areas where they can quarantine.

In July, SCDC says they began mass testing inmates for coronavirus in prisons where they were seeing a greater number cases. Shain says the higher number of cases being reported at some prisons are because of an increase in testing.

Broad River prison in Columbia is reporting 333 active COVID-19 cases. Mass testing efforts are underway at the facility.

Department officials said Broad River houses a portion of inmates who have health conditions. For example, it has a hospice, dialysis and chemo units.

SCDC officials say they began mass testing in July after the state legislature approved CARES Act funds to go to the department. They also have a partnership with MUSC to process the test results.

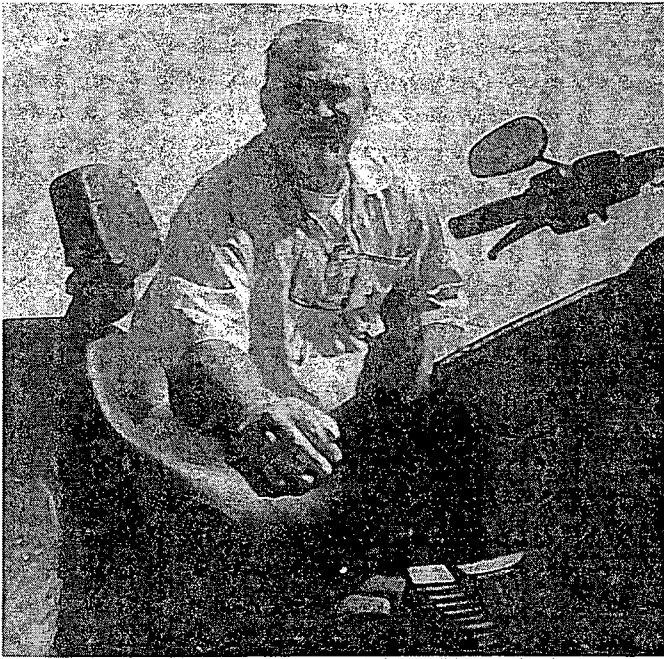
The American Civil Liberties Union released the following statement saying in part:

*"The spike in COVID-19 cases and deaths among South Carolina's prison population is both tragic and predicted. It is essential that those with the authority to act do everything in their*

*immense power to prevent future deaths from COVID-19 in correctional settings, including reducing the number of people held in South Carolina's prisons. It is well within SCDC Director Stirling's power to petition the SC Board of Pardons and Paroles for the release of incarcerated people who are considered terminally ill, permanently incapacitated, or geriatric. Doing less than everything possible to save lives is neither a solution nor a good faith effort.*

*What's happening to incarcerated people right now is inexcusable, and the unfortunate reality is that the damage caused by SCDC's and elected officials' failure to get in front of this problem has created a footprint that extends well beyond the property lines of South Carolina's prisons. In addition to the 2,148 incarcerated people who have become infected, as of September 29, 474 SCDC staff, who return home to their communities at the end of their shifts, reported testing positive for COVID-19. We should be extremely concerned for those who are incarcerated as well as the greater communities that will inevitably pay the price for our state's failure to prevent the worst from happening in these institutions."*

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*Mark Trammell fighting for early release because he has stage four liver cancer and recently suffered a heart attack. He's served 40 years for kidnapping and voluntary manslaughter.*

He's been behind bars for 40 years at the Broad River Correctional Institution in Columbia. He's already served his 30 year sentence for voluntary manslaughter. But for kidnapping, he was given life. Today that charge carries no more than 30 years.

Bebeau says he recently suffered a near fatal heart attack.

"Now he's dying," she says. "He certainly isn't a threat to society at this point."

### The Lawsuit

The American Civil Liberties Union of South Carolina has filed a lawsuit in Charleston federal court on behalf of Varner's wife and other inmates.

"To us, incarcerated people are people and they're human beings," says Ali Titus, the Policy and Communications director for the ACLU of South Carolina.

"In this country they're protected under the U.S. Constitution."

The group wants South Carolina to do what other states have already done, release inmates who are vulnerable to the virus like people over the age of 50 and those who have medical conditions or disabilities.

"Folks who really don't pose a significant threat to the public safety and really, really should not be in prison right now," says Titus.

The lawsuit also claims the state's prisons, with a population of roughly 17,000, are not equipped to handle a pandemic.

"Our department of corrections is still grappling with a significant staffing shortage which resulted in the deadliest prison riot in America in 25 years," Titus says.

Two years ago, seven inmates were killed at Lee Correctional Institution in Bishopville, South Carolina. The state's prison system has been asking for additional funding for better security. But this year's state budget is in question because of the pandemic.