

**Commonwealth of Kentucky**

**Court of Appeals**

NO. 2015-CA-000022-MR

JORGE TAMAYO-MORA

APPELLANT

v.

APPEAL FROM FRANKLIN CIRCUIT COURT  
HONORABLE PHILLIP J. SHEPHERD, JUDGE  
ACTION NO. 14-CI-00909

LADONNA THOMPSON,  
COMMISSIONER, KENTUCKY  
DEPARTMENT OF CORRECTIONS;  
TONEY BAILEY, OPERATION  
MANAGER, KENTUCKY  
CORRECTIONAL INDUSTRIES; AND  
CHARLES WILKERSON, ASSISTANT  
DIRECTOR, KENTUCKY  
CORRECTIONAL INDUSTRIES

APPELLEES

OPINION  
AFFIRMING

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BEFORE: DIXON, NICKELL, AND VANMETER, JUDGES.

VANMETER, JUDGE: Jorge Tamayo-Mora appeals from the Franklin Circuit Court's November 18, 2014, order dismissing his petition for declaration of rights for failure to state a claim. For the following reasons, we affirm.

Tamayo-Mora is an inmate currently incarcerated at the Kentucky State Reformatory. On January 7, 2013, while housed at the Green River Correctional Complex, Tamayo-Mora injured his left hand while working on a table saw at the Kentucky Correctional Industries' ("KCI") furniture plant. As a result of this injury, Tamayo-Mora was unable to work for 8 months. KCI's policy number CI-05-01-04(II)(A)(13) provides for an inmate to be paid for time lost due to an unavoidable injury sustained while working at KCI. An inmate is limited in his recovery under this policy to 30-days' pay, unless the Division Director approves additional time, in which case an inmate may receive up to six-months' pay. Tamayo-Mora was compensated for 30 days worth of lost time.

Subsequently, Tamayo-Mora filed a petition for declaration of rights, arguing that his rights were violated when a payment of six months of lost time was not approved and seeking to have KCI's policy number CI-05-01-04(II)(A)(13) applied to him as a matter of right. The trial court dismissed his petition, and this appeal follows.

On appeal, Tamayo-Mora argues that the trial court erred in dismissing his petition because the court failed to require the Department of Corrections and KCI to produce a number of requested documents, including an accident investigation report, machine inspection logs, training and tool safety

review, and an explanation of the “operating error” that caused his accident.

“Since a motion to dismiss for failure to state a claim upon which relief may be granted is a pure question of law, a reviewing court owes no deference to a trial court's determination; instead, an appellate court reviews the issue *de novo*.” *Fox v. Grayson*, 317 S.W.3d 1, 7 (Ky. 2010). Dismissal under CR<sup>1</sup> 12.02 for failure to state a claim upon which relief can be granted is inappropriate “unless it appears the pleading party would not be entitled to relief under any set of facts which could be proved in support of his claim.” *Pari-Mutuel Clerks’ Union v. Kentucky Jockey Club*, 551 S.W.2d 801, 803 (Ky. 1977).

Tamayo-Mora’s contention that the trial court’s refusal to order the Department of Corrections and KCI to produce certain documentation related to the accident is irrelevant. Under KCI’s policy CI-05-01-04(II)(A)(13), payment is mandated for only 30 days of lost time; payment for 6 months of lost time is not a matter of right; and any payment above 30 days of lost time is discretionary. Tamayo-Mora was compensated for 30 days of lost time, a fact which he does not dispute. He has not alleged any other facts or made any other claims against the Department of Corrections regarding the accident, and he provides no authority for his argument that he was entitled to more pay. Accordingly, Tamayo-Mora failed to state any claim upon which relief can be granted.

For the foregoing reasons, the order of the Franklin Circuit Court is affirmed.

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<sup>1</sup> Kentucky Rules of Civil Procedure.

ALL CONCUR.

BRIEFS FOR APPELLANT:

Jorge Tamayo-Mora, Pro se  
La Grange, Kentucky

BRIEF FOR APPELLEES:

Angela Dunham  
Frankfort, Kentucky