

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 92-N-870 (OES) (Consolidated for all purposes with Civil Action No. 96-N-343)

JESSE MONTEZ, et al.

Plaintiffs,

-vs.-

BILL OWENS, et al.

Defendants.

Claim Number X-333

Category: Untimely Filed Claim

Claimant: David M. Aragon, #142535

Address of Claimant: SCF, P.O. Box 6000, Sterling, CO 80751

ORDER OF SPECIAL MASTER

THIS MATTER comes before the Special Master on the claim form and other documents filed by Claimant. He checked the boxes for mobility impairment and diabetes. He submitted an accommodation resolution which reflects that he is diabetic.

The claim form set forth that Claimant came into DOC custody in February 2008. It appeared that there may be no jurisdiction over this claim for damages. An order was issued to Claimant directing him to respond concerning the issue of jurisdiction over his claim. Claimant has filed a response.

Claimant's damage claim was submitted pursuant to Section XXXII of the Remedial Plan. In order to collect damages under this part of the Remedial Plan, an individual had to have been in DOC custody on or before August 27, 2003. Claimant came into DOC long after that date. The Special Masters have no jurisdiction over the damage claim, as Claimant was not in DOC custody on or before August 27, 2003.

The second question is whether Claimant may seek individual relief under the Remedial Plan and subsequent stipulations. Claimant is diabetic. The April 4, 2008 stipulation appears to place all diabetics into the class. The question, though, is whether an individual inmate may seek relief or damages under the Remedial Plan and/or either of the two stipulations. That issue has been placed before Judges Arguello and Kane for resolution. The Special Master cannot proceed to adjudicate

individual requests until the jurisdictional issue is resolved.

IT IS HEREBY ORDERED that the damage claim filed by David M. Aragon is dismissed, as he came into DOC custody after August 27, 2003; and

IT IS FURTHER ORDERED that Claimant's request for relief is held in abeyance pending resolution of the jurisdictional issue concerning individual motions for relief under the Remedial Plan and stipulations; and

IT IS FURTHER ORDERED that Claimant and Defendants are advised that they may file an objection to this Order pursuant to Federal Rule of Civil Procedure 53(g)(2), but said objection must be filed with the Clerk of the United States District Court, 901 19th Street, Denver, CO 80294 **on or before March 30, 2009.**

SIGNED this 30th day of January, 2009.

BY THE COURT:

/s/ Richard M. Borchers

Richard M. Borchers
Special Master