

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 92-CV-870-CMA

JESSE MONTEZ, et al.

Plaintiffs,

-vs.-

BILL OWENS, et al.

Defendants.

Claim Number X-359

Category: Untimely Filed Claim

Claimant: Fermen Arguello, #133019

Address of Claimant: FCF, P.O. Box 999, Canon City, CO 81215-0999

ORDER OF DISMISSAL OF SPECIAL MASTER

THIS MATTER came before the Special Master on the claim form of Fermen Arguello. In his claim form, Claimant stated that he is mobility impaired. Claimant also stated that he came into DOC custody in September 2006.

Since it appeared that there might be no jurisdiction over this damage claim, a show cause order was issued to Claimant. Despite being granted up to and including June 8, 2009 in which to respond to the show cause order, Claimant has filed nothing further in support of his claim.

Article XXXII of the Remedial Plan provides for a claim process for individuals who were in DOC custody on or before August 27, 2003 and were the victims of discrimination prohibited by the ADA and Rehabilitation Act on or before that date. Claimant was not in DOC custody on or before August 27, 2003. There is no jurisdiction over this damage claim, and it will be dismissed.

Claimant appears to be seeking help concerning an issue that has arisen since his arrival in DOC custody. At the time of the issuance of this order, the controlling case law would require that this letter be forwarded to class counsel for action. *McNeil v. Guthrie*, 945 F.2d 1163 (10th Cir. 1991). Counsel for the class has argued that the Remedial Plan and the two subsequent stipulations allow claimants to seek individual relief, as Claimant is attempting to do with his initial letter. The jurisdictional issue has not been resolved, and no action can be taken on anything that has recently occurred. Claimant's pleadings will be held in abeyance until the jurisdictional issue is resolved.

IT IS HEREBY ORDERED that Claimant's damage claim under Article XXXII of the Remedial Plan is dismissed for lack of jurisdiction, as Claimant came into DOC custody after August 27, 2003; and

IT IS FURTHER ORDERED that Claimant's request for individual relief is held in abeyance pending resolution of the jurisdictional issue before the assigned District Judge; 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 August 10, 2009.**

SIGNED this 12th day of June, 2009.

BY THE COURT:

/s/ Richard M. Borchers

Richard M. Borchers
Special Master