

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-358

Category: Untimely Filed Claim

Claimant: Phillip Gonzales, #43794

Address of Claimant: c/o P.O. Brian Musso, 310 E. Abriendo, Suite D, Pueblo, CO 81004

ORDER OF DISMISSAL OF SPECIAL MASTER

THIS MATTER comes before the Special Master on the letter of Phillip Gonzales which requests assistance in obtaining a hearing aid. No claim form was filed with the letter.

This case was commenced in 1992 under the Americans with Disabilities Act and Rehabilitation Act. The general allegations were that DOC had many inmates who were disabled and who were being discriminated against because of those disabilities. On August 27, 2003, Judge Nottingham approved the Remedial Plan. That document is the written settlement agreement between counsel for the class and Defendants. 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. The filing of a claim form is necessary in order to commence the provisions of Article XXXII.

Claimant was granted up to and including June 20, 2009 in which to file a claim form. He has not filed a claim form as required by Article XXXII. Claimant has exhausted his right to file a claim, and any claim under Article XXXII is dismissed.

It appears that Claimant also is seeking help concerning an issue that has arisen after August 27, 2003. 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 letter. The jurisdictional

issue has not been resolved, and no action can be taken on anything that has recently occurred.

IT IS HEREBY ORDERED that Claimant's damage claim under Article XXXII of the Remedial Plan is dismissed for lack of jurisdiction, as Claimant has failed to file a claim form; 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 17, 2009.**

SIGNED this 23rd day of June, 2009.

BY THE COURT:

/s/ Richard M. Borchers

Richard M. Borchers
Special Master