

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 92-CV-870-JLK

JESSE MONTEZ, et al.

Plaintiffs,

-vs.-

BILL RITTER, et al.

Defendants.

Claim Number X-379

Category: Untimely Filed Claim

Claimant: Daniel A. Hartley, #67103

Address of Claimant: FLCF, P.O. Box 1000, Ft. Lyon, CO 81038-1000

ORDER OF DISMISSAL OF SPECIAL MASTER

THIS MATTER comes before the Special Master on his motion. Claimant previously submitted a memo and attached documents to the Court. These documents relate to a request for accommodations.

Claimant had not filed a claim pursuant to Article XXXII of the Remedial Plan. Claimant was provided with a revised claim form and informational sheet. Claimant was granted up to and including September 28, 2009 in which to file a claim form. Nothing further has been filed by Claimant.

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. 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. In order to consider the request of a claimant, a claim form has to be filed. Claimant has failed to file claim in response to the order of August 28, 2009.

It appears that Claimant may be seeking help concerning an issue that may have arisen long 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. Judge Kane has taken the jurisdictional issue under advisement.

IT IS HEREBY ORDERED that the case of Daniel A. Hartley is dismissed for lack of jurisdiction, as Claimant failed to file a claim form; and

IT IS FURTHER ORDERED that Claimant's request for help for what has occurred while in custody of the Colorado Department of Corrections since August 27, 2003 will be held in abeyance pending a determination of the jurisdictional issue; 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 December 21, 2009.**

SIGNED this 2nd day of October, 2009.

BY THE COURT:

/s/ Richard M. Borchers

Richard M. Borchers
Special Master