

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO

Civil Action No. 92-CV-870-JLK

JESSE (JESUS) MONTEZ, et al.,

Plaintiffs,

v.

BILL RITTER, et al.,

Defendants.

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Claim Number: 03-140

Category: III

Claimant: Shawn M. Winkler #48319

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

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**ORDER OF SPECIAL MASTER**

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THIS MATTER comes before the Court on Claimant's letter to the Court (#4161). In the letter, Claimant requests that he be granted a new hearing. The letter will be treated as a motion for new hearing.

Claimant was granted a hearing on September 2, 2005 at the Limon Correctional Facility. At that hearing, Claimant testified that he was injured while working in 1999 at the Buena Vista Correctional Facility (BVCF). This injury occurred due to an electrical shock that sent him across a room. The evidence presented by both sides indicated that Claimant received medical care from 1999 on and ended up in a wheelchair. Claimant had been screened by Dr. Singh at the Sterling Correctional Facility in 2004 and found to be disabled. A subsequent screening found that he did not meet the criteria of the Remedial Plan.

In the final order the Special Master determined that Claimant was not vision or hearing impaired on or before August 27, 2003. The Special Master did determine that Claimant was mobility impaired on or before that date. Claimant was determined, though, not to have been the victim of discrimination prohibited by the ADA and Rehabilitation Act. This case is and always has been a discrimination case. When the 10<sup>th</sup> Circuit issued its opinion in *Fitzgerald v. Corrections Corporation of America*, 403 F.3d 1134 (10<sup>th</sup> Cir. 2005), the issue of the quality and sufficiency of medical treatment was removed from this case. Claimant testified at his hearing at length about his concerns relating to medical care provided to him. Claimant established at his hearing that he was

mobility impaired on or before August 27, 2003 under the ADA, but that he had not been discriminated against in violation of the ADA.

Claimant has presented nothing in his letter that would change the outcome of his claim. He has not pointed to any discrimination prohibited by the ADA on or before August 27, 2003. His allegations concerning improper medical care cannot be considered in light of *Fitzgerald*. No basis has been presented that would warrant a new hearing.

IT IS HEREBY ORDERED that Claimant's motion for a new hearing is denied.

SIGNED this 23<sup>th</sup> day of October, 2009.

BY THE COURT:

*/s/ Richard M. Borchers*

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Richard M. Borchers  
Special Master