

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-429

Category: Untimely Filed Claim

Claimant: Albino Montoya, #83268

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

ORDER OF DISMISSAL OF SPECIAL MASTER

THIS MATTER comes before the Special Master on the claim of Albino Montoya. Claimant has alleged that he is mobility impaired. Defendants filed an objection to the claim. Claimant and class counsel were given an opportunity to file a response to the Defendants' objection, but nothing further has been filed.

Claimant did not provide the time periods that he has been incarcerated in DOC. The DOC Locator reflects that Claimant was sentenced on April 14, 2005 in Adams County. Claimant has provided no information indicating when he was in DOC custody on previous occasions.

Claimant also did not provide a date when he was the victim of discrimination prohibited by the ADA. Defendants raised the issue of the lack of time periods being set forth in the claim form. Claimant was given the opportunity to provide additional information and has not done so.

Judge Kane issued an order on March 23, 2010. That order established some limitations on the claims process established by Article XXXII of the Remedial Plan. Judge Kane limited claims to the following individuals: (1) inmates who were in DOC custody on or before August 27, 2003; (2) inmates who were disabled, as defined by the Remedial Plan, on or before August 27, 2003; and (3) inmates who were the victims of discrimination on or before August 27, 2003. Unless each of these three requirements is established, a claimant cannot prevail on his claim.

Claimant has failed to set forth allegations that would allow the claim to proceed on its merits. Under Article XXXII of the Remedial Plan, Claimant would have to prove that he was disabled and the victim of discrimination on or before August 27, 2003. Claimant has not set forth sufficient information to allow his claim to be processed.

Claimant has not alleged sufficient information to confer jurisdiction on to the Special Master under Article XXXII of the Remedial Plan. Claimant may pursue his own separate lawsuit. A copy of his letter and claim will be sent to class counsel for such action as may be appropriate.

IT IS HEREBY ORDERED that the claim of Albino Montoya is dismissed, as Claimant has failed to provide sufficient information concerning date of disability and date of alleged discrimination; and

IT IS FURTHER ORDERED that a copy of Claimant's claim and letter will be provided to class counsel for such action as may be deemed appropriate; and

IT IS FURTHER ORDERED that Claimant, Defendants and class counsel 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 February 15, 2011.**

SIGNED this 29th day of October, 2010.

BY THE COURT:

/s/ Richard M. Borchers

Richard M. Borchers
Special Master