

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-455

Category: Untimely Filed Claim

Claimant: Rodney Harless, #117862

Address of Claimant: CCF, P.O. Box 600, Canon City, CO 81215-0600

ORDER OF DISMISSAL OF SPECIAL MASTER

THIS MATTER comes before the Special Master on the claim of Rodney Harless (Claimant). Defendants have filed an objection to the claim. Claimant and class counsel were granted up to and including November 30, 2010 in which to file a response to the objection of Defendants. Class counsel requested additional time in which to respond. That request was granted. Class counsel has filed a general response requesting that the claim be processed. Claimant has filed nothing further in support of his claim.

Claimant submitted a document entitled "complaint and affidavit." He alleged that he had become disabled in early 2002. When asked in the claim form for dates of discrimination in violation of the ADA, Claimant listed the earliest date as November 23, 2004. A show cause order was issued to Claimant requesting additional information. Claimant responded by alleging that he was discriminated against in June, 2003 by being denied diabetic snacks, glucose tablets, and finger sticks.

Defendants filed an objection to the claim and requested that it be dismissed. Defendant raised a number of reasons for dismissal. Defendants submitted with their objection a copy of an offender profile which reflects Claimant came into DOC custody on June 6, 2003. Defendants further argue that Claimant did not request an evaluation until July, 2005. DOC staff found Claimant not to be diabetic and not to be disabled, as defined by the Remedial Plan. Claimant has not responded in any way to the documents submitted by Defendants.

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 not responded in any way to the objections of Defendants. The Special Master must have sufficient information to allow this claim to proceed to a hearing. In this case, Claimant has not provided sufficient information to establish a *prima facie* showing of any disability that existed on or before August 27, 2003. Further, there are insufficient allegations of discrimination occurring on or before August 27, 2003. The Special Master does not have jurisdiction over his claim.

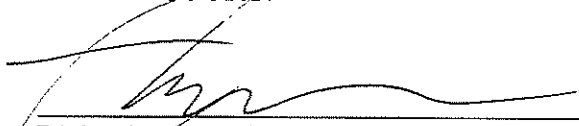
IT IS HEREBY ORDERED that the claim of Rodney Harless is dismissed, as Claimant has not established that he was the victim of discrimination on or before August 27, 2003 and has not established that he was disabled, as defined by the Remedial Plan, on or before that date; and

IT IS FURTHER ORDERED that a copy of Claimant's claim 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 March 7, 2011.**

SIGNED this 17th day of December, 2010.

BY THE COURT:



Richard M. Borchers
Special Master

CERTIFICATE OF MAILING

17th I hereby certify that I have mailed a copy of the foregoing Order of Special Master this day of December, 2010 to the following:

Mr. Rodney A. Harless
#117862
CCF
P.O. Box 600
Canon City, CO 81215-0600

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