

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
Judge John L. Kane

Civil Action No. **92-cv-00870-JLK**

JESSE MONTEZ, et al. (re Claimant Shawn M. Winkler, #48319, Claim # 03-143)

Plaintiffs, as representatives of themselves and all others similarly situated,
v.

JOHN HICKENLOOPER, et al.,

Defendants.

**ORDER re Doc. 4973 - MOTION FOR RECONSIDERATION OF ORDER
DENYING OBJECTION/APPEAL OF FINAL ORDER OF SPECIAL MASTER**

Kane, J.

Former DOC inmate Shawn M. Winkler moves to “amend” my February 3, 2011 Order (Doc. 4969) rejecting his appeal (Doc. 4624) of the Special Master’s Final Order dated April 9, 2010 (Doc. 4421). The Special Master’s April 9 Order was itself revisiting a 2005 Final Order denying Mr. Winkler’s 2003 claim under the Montez Remedial Plan on grounds that the claim sounded under the Eighth Amendment for inadequate medical care rather than for disability discrimination remediable under the Plan. *See* Final Order (Doc. 1147), dated 10/5/2005. In his April 9, 2010 Final Order, the Special Master reviewed additional pleadings and materials submitted by Mr. Winkler, but again rejected his claim, finding that while the materials may give rise to an independent action under *McNeil v. Guthrie*, 945 F.2d 1163 (10th Cir. 1991), they did not support a claim under § XXXII of the Montez Remedial Plan because the incidents of which Mr. Winkler complained occurred

after the August 27, 2003 claim cut-off date.

Because Mr. Winkler's Motion to Amend refers solely to matters and evidence that have already been considered, it affords no basis to reconsider my February 3, 2011 Order rejecting his Appeal. That Order, and the Final Order of the Special Master it affirmed, remain the law of the case. Mr. Winkler's remedy as a member of the Montez Class of inmates disabled as of August 2003 is limited to the institutional changes and injunctive relief being pursued by class counsel. Any legal remedies to which Mr. Winkler may be entitled under the ADA or Eighth Amendment must be pursued in an independent action under *McNeil*.

The Motion to Amend (Doc. 4973), which I treat as a Motion to Amend, is DENIED.

Dated September 9, 2011.

s/John L. Kane
SENIOR U.S. DISTRICT JUDGE

Service of this order shall be made via NEF and to Shawn M. Winkler.