

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 92-CV-870-JLK

JESSE MONTEZ, et al.

Plaintiffs,

-vs.-

JOHN HICKENLOOPER, et al.

Defendants.

Claim Number 03-276

Category III

Claimant: Michael K. Tivis, #52378

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

ORDER OF SPECIAL MASTER

THIS MATTER COMES before the Court on Claimant's letter which is undated. *Doc. 5210*. In the letter, Claimant details medical problems that he has experienced over the last two years, including a bone infection. Claimant indicates further that medical care has been delayed. He has alleged that his civil rights are being violated.

Claimant previously filed a motion requesting additional accommodations. That motion was dismissed as Judge Kane had ruled that no additional *pro se* motions would be accepted. The sole exception was for claimants who had received an order from the Court providing continuing items such as medical shoes. Claimant received a favorable ruling on his claim and was awarded money, which has been paid to him. Thus, there is no continuing jurisdiction over the claim.

More importantly, the United States Court of Appeals for the Tenth Circuit ruled that the ADA and Rehabilitation Act are not available for claims of substandard medical treatment. *Fitzgerald v. Corrections Corporation of America*, 403 F.3d 1134, 1143 (10th Cir. 2005). The *Montez* case deals with the ADA and Rehabilitation Act, not Eighth Amendment violations. Claimant is entitled to file his own separate lawsuit concerning the medical care he has received. Claimant cannot pursue his own civil rights claim concerning medical care in this case.

IT IS HEREBY ORDERED that Claimant's letter, being treated as a motion for accommodations, is denied for lack of jurisdiction.

IT IS FURTHER ORDERED that a copy of Claimant's 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 January 23, 2012.**

SIGNED this 16th of November, 2011.

BY THE COURT:

/s/ Richard M. Borchers

Richard M. Borchers
Special Master