

{¶4} Plaintiff's discharge summary indicates that he had suffered a seizure because his Dilantin level was elevated; he had a corneal abrasion or scratch on his eye; a contusion or deep bruise on his left shoulder as evidenced by tenderness and swelling of the soft tissue; he had a neck injury as a result of a strained muscle and ligaments in the neck; a muscle strain in his shoulder as evidenced by shoulder pain; and a mild head injury. He also injured his left leg in the fall. He was prescribed an eye patch for the corneal abrasion, Tylenol 3 for pain, and Ibuprofen to reduce inflammation.

{¶5} During his first day in the infirmary at LoCI, plaintiff complained that he "hurt all over," especially in the neck area. The following day he complained of pain in his back and legs. On February 15, 2000, he complained that he could not feel his legs and was given a walker instead of a cane to ambulate.

{¶6} On February 22, 2000, plaintiff had a grand mal seizure which lasted one to two minutes. He was returned to the hospital and treated with Dilantin. He was still wearing the eye patch because of the corneal abrasion.

{¶7} Plaintiff continued to complain of back and left leg numbness. In an attempt to determine the cause of plaintiff's problems, several medical tests were administered. On March 10, 2000, plaintiff was sent to the neurological clinic at Corrections Medical Center (CMC) for neurological tests. On April 14, 2000, plaintiff was taken to OSU Medical Center in Columbus, Ohio for an MRI of the lumbar spine. The MRI report indicated that, "there is a small central disk protrusion at C4-5 with mild narrowing of the canal but it does not appear to be critical." (Defendant's Exhibit

GGG.) The doctor's final impression was, "no major abnormality." (Defendant's Exhibit FFF.)

{¶8} In late April 2000, plaintiff was transferred to Belmont Correctional Institution (BeCI). During his medical intake examination at BeCI, he continued to complain of leg, back, and neck pain. He was permitted to continue using his walker and was prescribed Tylenol 3 and Tylenol for pain and inflammation. On May 25, 2000, plaintiff was transported to OSU for an MRI of his brain. The MRI revealed "mild sinus disease" but "no brain parenchymal abnormality is demonstrated." (Plaintiff's Exhibit 1.)

{¶9} On July 7, 2000, plaintiff was sent to CMC for a medical consultation at the neurological clinic. The neurologist who evaluated plaintiff underlined in his consultation report that plaintiff experienced "give way weakness" while being administered a strength test. (Defendant's Exhibit UUU.) Allison A. Robinson, M.D., plaintiff's current treating physician, testified that the notation "give way weakness" is an indication that plaintiff may have been malingering. The neurologist recommended plaintiff's use of the walker be discontinued and any restrictions on his activity be lifted. On July 10, 2000, the use of the walker was discontinued and plaintiff was instructed to resume normal activity as tolerated. Plaintiff continued to complain of back pain and left leg weakness while at BeCI.

{¶10} On August 23, 2001, plaintiff was transferred to Grafton Correctional Institution (GCI). He continued to complain of back and left leg pain. He was sent to CMC on several occasions for routine medical evaluations and physical therapy. Plaintiff discontinued physical therapy because the round trip to CMC was

physically difficult as he was handcuffed and shackled during transportation.

{¶11} Plaintiff testified that he remembers waking up on the cell floor after his fall, but does not remember the fall. He described how he felt: "I felt paralyzed, I couldn't feel my leg and my head was hurting real bad." He testified that he was in a lot of pain on the way to the hospital and that he thought his left shoulder was broken.

{¶12} Plaintiff testified that he remained in the infirmary at LoCI for approximately three months before being transferred to BeCI. He claims that while in the infirmary he had continuous pain in his neck, shoulders, and legs. The pain in his left leg went all the way down his leg. When his left leg did not hurt, it felt numb. He testified that he was sent to CMC and OSU on several occasions for medical evaluations and tests. On each trip he was handcuffed and shackled, which caused pain all over his body that took two to three days to subside.

{¶13} Plaintiff testified that the reason that he transferred to BeCI was to continue his education. At BeCI he was placed in general population, but he asserted that he continued to have neck and back pain with left leg numbness while at BeCI.

{¶14} Upon his transfer to GCI in August 2001, he was assigned the job of porter in his housing unit. His duties consisted of dusting and sweeping the housing unit. He testified that he could rest if he felt discomfort or pain. He was prescribed Elavil for mild depression and Motrin 100 for lower back pain.

{¶15} Plaintiff further testified that he graduated from high school, completed two years of college, and worked as a licensed union electrician making up to \$20 per hour prior to this

incarceration. He claims that his injury will prevent him from becoming re-employed as an electrician. Plaintiff also testified that prior to his injury he lifted weights, shot baskets in the gym, and was a marathon runner. Plaintiff claims that as a result of his injuries he can no longer run, lift weights, or play sports, which causes him to feel depressed.

{¶16} However, plaintiff's medical records indicate a history of drug abuse, alcohol abuse, and depression dating back several years. His records indicate that he was re-incarcerated on March 14, 1996, as a result of a probation violation for a "dirty urine" after he had been released early on "shock probation" from a previous incarceration for robbery. During a mental health screening on March 22, 1996, plaintiff admitted to using cocaine "on and off for the past 6-7 years." He also admitted to a history of alcohol abuse and being "overly depressed." (Plaintiff's Exhibit 2.) During a psychiatric examination conducted on April 10, 1996, plaintiff admitted to using cocaine two to three times a month beginning at age 25. During the interview for the examination, he was unable to give a consistent work history and stated that his wife was the breadwinner of the family. (Plaintiff's Exhibit 1.)

{¶17} Dr. Robinson testified that he is a medical doctor who began treating inmates at GCI in September 2002. Since November 2002, he has seen plaintiff monthly for consistent complaints of shoulder pain, upper and lower back pain, and weakness in his back and hip. After evaluating plaintiff and reviewing his medical history, Dr. Robinson prescribed anti-inflammatory medication, restricted his activity level, continued his bottom bunk restriction, and provided him with a cane to assist ambulation.

{¶18} Dr. Robinson testified that plaintiff is suffering from a muscular skeletal soft tissue injury which is temporary in nature. In his opinion, plaintiff's condition will resolve itself in one to two years. Since plaintiff is due to be released from prison in July 2004, Dr. Robinson testified that he would require some medical restriction for about one year after his release. Dr. Robinson estimated that the cost of plaintiff's medical care for the year after his release would be approximately \$1,000. Dr. Robinson conceded that the disk protrusion may not resolve itself in one to two years, but he was unable to say that the disk protrusion was related to plaintiff's fall from his bunk.

{¶19} Dr. Robinson further testified that, in his opinion, plaintiff was exaggerating his complaints because they were inconsistent with the findings of plaintiff's physical exams. Additionally, plaintiff exhibited four out of seven signs on the Waddell Scale, which measures suffering verses malingering. Dr. Robinson explained such a result is another indication that plaintiff is malingering or exaggerating his complaints.

{¶20} Based on the totality of the evidence and after assessing the credibility of each witness, the court finds that as a result of plaintiff's fall from his bunk on February 9, 2000, plaintiff suffered a corneal abrasion, bruised left shoulder, muscle strains of his neck and shoulders, a mild concussion, and a left leg injury. Plaintiff has been treated conservatively with restricted activity, anti-inflammatory drugs, Tylenol, and Ibuprofen. All of plaintiff's injuries are muscular skeletal soft tissue injuries that are temporary and will fully resolve themselves by April 2005. Plaintiff's medical expenses will be \$1,000 for one year after his release.

{¶21} The court further finds that plaintiff has failed to prove by a preponderance of the evidence that he will incur any lost wages or diminution in lifestyle upon his release. Plaintiff's prior statements to medical providers that he was a regular drug abuser and alcoholic who was supported by his wife contradict his claims that he worked as a licensed electrician and participated in several sports.

{¶22} Finally, the court finds that plaintiff has failed to prove by a preponderance of the evidence that his depression is related to the injuries from his fall because his psychological problems pre-date his fall.

{¶23} Therefore, judgment is recommended in favor of plaintiff in the amount of \$8,500 which includes, but is not limited to, medical expenses, lost wages, pain and suffering, and the \$25 filing fee. *A party may file written objections to the magistrate's decision within 14 days of the filing of the decision. A party shall not assign as error on appeal the court's adoption of any finding or conclusion of law contained in the magistrate's decision unless the party timely and specifically objects to that finding or conclusion as required by Civ.R. 53(E)(3).*

STEVEN A. LARSON
Magistrate

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- 8 -

MAGISTRATE DECISION

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