

# Court of Claims of Ohio

The Ohio Judicial Center  
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JACK BARNETT

Plaintiff

v.

OHIO DEPARTMENT OF REHABILITATION AND CORRECTION

Defendant

Case No. 2002-09382

Judge J. Craig Wright  
Magistrate Steven A. Larson

## MAGISTRATE DECISION

{¶ 1} Plaintiff brought this action alleging two counts of negligence. The case was tried to the court on the issue of liability.

{¶ 2} At all times relevant to this action, plaintiff was an inmate in the custody and control of defendant at the Madison Correctional Institute Institution (MCI) pursuant to R.C. 5120.16. Plaintiff's claims arise as a result of two separate incidents that occurred when he was employed as a kitchen worker at MCI.

{¶ 3} The first incident concerns injuries plaintiff sustained after being directed to clean a tilt grill with a product known as "Hot Shot." Plaintiff alleges that he was not properly trained to use the product, that he was not provided with protective clothing or safety goggles, and that he was not informed that the product contained caustic chemicals. Plaintiff contends that the product clung to his body and clothing and that it caused burns on his hands, arms, and right leg.

{¶ 4} The second incident concerns an injury plaintiff sustained when working with a food-warming device known as a "hot box." Plaintiff alleges that he opened the

door of the hot box to insert a tray of oatmeal and received a severe electrical shock. He contends that defendant was negligent in failing to maintain the device, in failing to properly secure the electrical outlet into which it was plugged, in failing to warn him of potential electrical faults, and in failing to provide instruction on how to prevent electrical shock.

{¶ 5} In order to prevail upon his claims of negligence, plaintiff must prove by a preponderance of the evidence that defendant owed him a duty, that it breached its duty, and that the breach proximately caused his injuries. *Armstrong v. Best Buy Company, Inc.*, 99 Ohio St.3d 79, 81, 2003-Ohio-2573, citing *Menifee v. Ohio Welding Products, Inc.* (1984), 15 Ohio St.3d 75, 77. While the court is cognizant of a “special relationship” between an inmate and his custodian, no higher standard of care is derived from the relationship. *Clemets v. Heston* (1985), 20 Ohio App.3d 132. “[W]here a prisoner also performs labor for the state, the duty owed by the state must be defined in the context of those additional facts which characterize the particular work performed.” *McCoy v. Engle* (1987), 42 Ohio App.3d 204, 208.

{¶ 6} Upon consideration of the testimony and other evidence presented, the court finds for the following reasons that plaintiff failed to prove either of his claims by a preponderance of the evidence.

{¶ 7} The evidence established that prior to the first incident plaintiff had been working in the kitchen for approximately two years, first in the food-service line and later as a cook. According to Warren Gebhart, MCI’s safety and health coordinator, inmates were required to attend an orientation before beginning work in the kitchen, during which they would participate in a kitchen walk-through, receive instruction on equipment operation, and be taught safety policies and procedures. Gebhart testified that in his experience at MCI, he had never heard any report that the training was inadequate.

{¶ 8} Christine Reese, a food-service coordinator, testified that she personally provided the required training to plaintiff. Reese related that she generally worked with

groups of four or five inmates and that there was no specific amount of time allotted for the training sessions. She further testified that inmates were provided with an "Acknowledgment of Safety Practices" form that listed 13 items that were covered in the training session, including the use of chemical cleaners, and that each item had to be initialed and dated by the inmates. Plaintiff did complete such a form prior to beginning work in the kitchen. (Defendant's Exhibit B and C.) The first paragraph of the form reads in pertinent part: "I have been instructed on how to operate equipment and machinery and to utilize all safety equipment pertaining to the operation. I also understand that if potentially hazardous chemicals/materials are used in the shop I will use all protective equipment supplied; to include but not limited to gloves, respirators, safety glasses, earplugs, etc."

{¶ 9} Both Gebhart and Reese testified that inmates working with chemicals were specifically instructed to use protective clothing and that aprons, gloves, and safety goggles were available; the items were dispensed by defendant's staff members. Reese stated that the inmates were taught where the equipment was stored and how to obtain it. Gebhart testified that if defendant's kitchen staff were to observe an inmate using Hot Shot cleaner without protective gear, it would have been the staff's responsibility to stop the inmate and provide him with appropriate gear. Gebhart also testified that he had looked through MCI records and found no other reports of injury caused by the use of Hot Shot.

{¶ 10} Plaintiff and two other inmates, Tyrone Wise and Dale Nelson Davis, testified that they were given the acknowledgment forms and told to sign them, but that they were not provided with the training attested to on the forms. Both Wise and Davis stated that they refused to use the Hot Shot cleaner and opted to thoroughly clean the tilt grill without the product. Carmen Jones, a food-service employee, testified that he advised inmates to use aprons and gloves when using Hot Shot. He also related that MCI staff would be subject to disciplinary action if inmates were simply forced to sign acknowledgment forms without providing the proper training.

{¶ 11} Upon review of all of the testimony, the court finds that plaintiff's allegations that he was not trained for the use of Hot Shot, was not aware that it contained caustic chemicals, and was not provided with protective clothing lack credibility. Although defendant owed plaintiff a duty of care commensurate with the work he performed, inmates are also required to use reasonable care to ensure their own safety. *Macklin v. Ohio Dep't of Rehab. & Corr.*, Franklin App. No. 01AP-293, 2002-Ohio-5069; *Perry v. Eastgreen Realty Co.* (1977), 55 Ohio App.2d 130, 132. Plaintiff admitted that even before his incarceration he had been taught that oven cleaner should be used cautiously because it could cause skin and eye irritation. In short, the weight of the evidence demonstrates that defendant did not breach any duty of care owed to plaintiff as a kitchen worker using caustic chemicals but, rather, that plaintiff was careless in his use of the Hot Shot product. Thus, plaintiff's first negligence claim must fail.

{¶ 12} With regard to the second incident, the evidence establishes that plaintiff did indeed experience a serious electrical shock when he opened the hot box in question. He was promptly taken to MCI's infirmary, was thereafter sent to the Ohio State University Medical Center for testing and observation, and was returned to MCI after several hours. However, the state cannot be held liable unless it became aware of a danger posed by the hot box and failed to take the reasonable care necessary to insure that inmates were not injured. *Id.* ¶21, citing *Clemets*, supra, at 136. Plaintiff bears the burden of proof to demonstrate that defendant was on notice or aware of the condition of the hot box. *Williams v. Ohio Dept. of Rehab. & Corr.* (1991), 61 Ohio Misc.2d 699, 702-703.

{¶ 13} The legal concept of notice is of two distinguishable types: actual and constructive. "The distinction between actual and constructive notice is in the manner in which notice is obtained or assumed to have been obtained rather than in the amount of information obtained. Wherever from competent evidence the trier of the facts is

entitled to hold as a conclusion of fact and not as a presumption of law that information was personally communicated to or received by a party, the notice is actual. Constructive notice is that which the law regards as sufficient to give notice and is regarded as a substitute for actual notice.” *In re Estate of Fahle* (1950), 90 Ohio App. 195, paragraph two of the syllabus.

{¶ 14} The evidence in this case fails to demonstrate that defendant had either actual or constructive notice of any defect with the hot box. Although there was some hearsay evidence that other kitchen workers had been shocked by a hot box, there were no witnesses who had any personal knowledge of an inmate or member of defendant’s staff who had experienced an electrical shock prior to the incident involving plaintiff. Plaintiff testified that he had been working with hot boxes for five days per week for approximately one year and that he had never previously been shocked, nor had he heard of other inmates being shocked. Gebhart testified that MCI’s maintenance department conducted routine inspections of kitchen equipment to ensure that all devices were functioning properly. (Defendant’s Exhibit J.) If an injury were reported or a defect discovered, maintenance staff would remove the device at issue and have it repaired. According to Gebhart, the box that caused plaintiff’s injury was not properly grounded as a result of inmates pulling the electrical cord out of the wall by jerking on it, rather than bending over to grasp the plug at the wall. There was no evidence that the condition had existed for a length of time sufficient to put defendant on notice that the box had become unsafe. Thus, the court concludes that plaintiff failed to meet his burden of proof and the second claim of negligence also must fail.

{¶ 15} For the foregoing reasons, it is recommended that judgment be rendered in favor of defendant.

*A party may file written objections to the magistrate’s decision within 14 days of the filing of the decision, whether or not the court has adopted the decision during that 14-day period as permitted by Civ.R. 53(D)(4)(e)(i). If any party timely files objections, any other party may also file objections not later than ten days after the first objections*

*are filed. A party shall not assign as error on appeal the court's adoption of any factual finding or legal conclusion, whether or not specifically designated as a finding of fact or conclusion of law under Civ.R. 53(D)(3)(a)(ii), unless the party timely and specifically objects to that factual finding or legal conclusion within 14 days of the filing of the decision, as required by Civ.R. 53(D)(3)(b).*

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STEVEN A. LARSON  
Magistrate

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Magistrate Steven A. Larson

LH/cmd  
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