

Court of Claims of Ohio

The Ohio Judicial Center
65 South Front Street, Third Floor
Columbus, OH 43215
614.387.9800 or 1.800.824.8263
www.cco.state.oh.us

JAMES CURREY

Plaintiff

v.

OHIO DEPARTMENT OF REHABILITATION AND CORRECTION

Defendant

Case No. 2005-05779

Judge Clark B. Weaver Sr.
Magistrate Steven A. Larson

MAGISTRATE DECISION

{¶ 1} Plaintiff brought this action alleging negligence. Defendant did not contest the issue of liability and the case is now before the court on the issue of damages.

{¶ 2} At all times relevant, plaintiff was an inmate in the custody and control of defendant at the Belmont Correctional Institution (BeCI) pursuant to R.C. 5120.16. On October 11, 2004, plaintiff and other inmates were directed to clean up a backup of raw sewage. Plaintiff was not provided with either protective equipment or cleaning supplies and, as a result, he became covered in raw sewage. Plaintiff was denied the opportunity to take a shower for at least 24 hours following the incident.

{¶ 3} In support of his claim, plaintiff presented his own testimony, portions of his medical records, and copies of complaints and grievances that he had filed with defendant after the incident.

{¶ 4} Plaintiff testified that during the cleanup he and other inmates used dustpans to scoop the sewage up and put it in garbage cans that were then emptied outside. Plaintiff testified that his shoes and pants became soaked in sewage and that it

also splashed on his arms, chest, face, and hair. Plaintiff stated that when he and other inmates asked to be taken to another building for showers since the water had been turned off in their building, Corrections Lieutenant Johnson told them to “go lay down and lick your nuts.” According to plaintiff, he visited the BeCI infirmary a few days after the cleanup and received a tetanus shot and a series of hepatitis vaccinations.

{¶ 5} Plaintiff also testified that soon after the cleanup he developed a rash on his feet and legs. Plaintiff stated that he was unable to see a podiatrist at BeCI for several months but that, once he did, he was given a salve that cleared up the rash within a few weeks. Plaintiff testified that after the cleanup he continued to fear infection and disease until he was released from defendant’s custody and visited a doctor and “checked out okay.”

{¶ 6} Susan Nesbitt, healthcare administrator at BeCI, testified that she reviewed plaintiff’s medical records to determine the medical treatment that he had received after the sewage cleanup. According to Nesbitt, interdisciplinary progress notes that are part of plaintiff’s medical record show that on October 13, 2004, plaintiff was seen in the infirmary by a nurse who diagnosed him with a rash on his feet. (Plaintiff’s Exhibit 9.) The records also show that plaintiff visited the podiatric clinic on November 13, 2004, and that he was diagnosed with and treated for “athlete’s foot.”

{¶ 7} Based upon the totality of the testimony and evidence, the court finds that plaintiff had to endure at least 24 hours of severe discomfort due to being covered in raw sewage, and that he suffered from anxiety for a significant period of time based upon his fear of infection and disease. Thus, the court finds that plaintiff’s emotional injuries were significant. The court further finds that the exposure to the sewage caused plaintiff to suffer from a rash on his feet and lower legs for a period of time after the cleanup. The court concludes that plaintiff’s damages in this case amount to \$7,500. Accordingly, judgment is recommended in favor of plaintiff in the amount of \$7,525 which includes the \$25 filing fee.

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).

STEVEN A. LARSON
Magistrate

cc:

Douglas R. Folkert
Assistant Attorney General
150 East Gay Street, 18th Floor
Columbus, Ohio 43215-3130

Richard F. Swope
6504 East Main Street
Reynoldsburg, Ohio 43068-2268

Magistrate Steven A. Larson

MR/cmd
Filed September 8, 2009
To S.C. reporter October 6, 2009