

Court of Claims of Ohio

The Ohio Judicial Center
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Columbus, OH 43215
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CHARLES Y. WALKER

Plaintiff

v.

OHIO DEPARTMENT OF REHABILITATION AND CORRECTION

Defendant

Case No. 2005-05833

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 and mop buckets to scoop the sewage up and put it in garbage cans that were then emptied outside. Plaintiff estimated that he spent nearly 12 hours cleaning up

sewage that day and that it “got all over” him. Plaintiff testified that when he and the other inmates requested to be sent to another building for a shower since the water had been turned off in their building, Corrections Lieutenant Johnson told them “lay down and lick your nuts, you ain’t getting no shower.” According to plaintiff, he was permitted to shower approximately 33 hours later. Plaintiff testified that he visited the BeCI infirmary after the cleanup and received a tetanus shot, a bottle of medicated soap, and cream for a rash that had developed on his feet. According to plaintiff, the nurses at the infirmary told him that he did not need a hepatitis vaccination because he had previously been vaccinated.

{¶ 5} Plaintiff further testified that he did not return to the infirmary to seek additional treatment after the initial visit. According to plaintiff, however, the rash on his feet persisted, which he treated with creams that he bought at the BeCI commissary. Plaintiff stated that he continues to experience anxiety over the incident and plans to seek additional treatment and counseling when he is released from defendant’s custody, but not while he is incarcerated because “they won’t do anything.” Plaintiff also testified that he developed sleep apnea after the incident, but he did not provide any expert medical testimony to show that the sewage cleanup caused the apnea.

{¶ 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 records show that on October 13, 2004, he was seen in the infirmary by a nurse who noted that he complained of a rash, but showed no signs of rash or infection. The nurse gave plaintiff an antibiotic soap and some ointment, along with cough syrup and throat spray for a sore throat. (Plaintiff’s Exhibit 7.) Nesbitt further testified that plaintiff was approved for treatment for sleep apnea on March 14, 2006.

{¶ 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. However, the court further finds that plaintiff failed to prove that he suffered any rash from exposure to the sewage, and that he failed to show that the exposure was the cause of his sleep apnea. The court concludes that plaintiff's damages in this case amount to \$4,000. Accordingly, judgment is recommended in favor of plaintiff in the amount of \$4,025 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:

Case No. 2005-05833

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MAGISTRATE DECISION

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Magistrate Steven A. Larson

MR/cmd
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