

[Cite as *Stewart v. Ohio Dept. of Rehab. & Corr.*, 2003-Ohio-455.]

IN THE COURT OF CLAIMS OF OHIO

WALLACE JAMES STEWART :
Plaintiff : CASE NO. 2000-12351
v. : JUDGMENT ENTRY
OHIO DEPARTMENT OF : Judge J. Warren Bettis
REHABILITATION AND CORRECTION :
Defendant :
: : : : : : : : : : : : : : : : :

{¶1} This case was tried to a magistrate of the court. On September 30, 2002, the magistrate issued a decision recommending judgment in favor of plaintiff.

{¶2} Civ.R. 53 states: "Within 14 days of the filing of a magistrate's decision, a party may file written objections to the magistrate's decision." On October 15, 2002, defendant filed a motion for an extension of time to file objections to the magistrate's decision. On October 17, 2002, the court granted defendant leave until November 19, 2002, to file objections. On November 19, 2002, defendant filed objections and a transcript of the proceedings.¹ On November 27, 2002, plaintiff filed a motion for an extension of time to file a memorandum contra to defendant's objections. On December 6, 2002, the court granted plaintiff leave until January 3, 2003, to file his response. On December 23, 2002, plaintiff filed a memorandum contra to defendant's objections.

¹Civ.R. 53(E)(3)(b) states, in pertinent part: "Objections shall be specific and state with particularity the grounds of objection. *** Any objection to a finding of fact shall be supported by a transcript of all the evidence submitted to the magistrate relevant to that fact or an affidavit of that evidence if a transcript is not available. ***"

{¶3} In its first and second objections, defendant contends that the magistrate erred in his characterization of plaintiff's claims and in framing the issues in the case since plaintiff's complaint did not contain any allegations of a physical handicap. However, paragraph two of plaintiff's complaint states: "Plaintiff says he came to the Chillicothe Correctional Institution in 1996. Plaintiff says he was given and had a permanent low bunk/range restriction because Plaintiff is handicapped, suffers from epilepsy resulting in seizure disorder, which were all present before and during his incarceration. Plaintiff asserts said disorders are contained in his medical records which came with him to Chillicothe Correctional Institution from Warren Correctional Institution. ***" Given the specific allegations in plaintiff's complaint, the court finds that the magistrate did not err in his characterizations of plaintiff's claims or in framing the issues to be decided. Accordingly, defendant's first and second objections are OVERRULED.

{¶4} In its third objection, defendant contends that the magistrate erred in admitting irrelevant evidence regarding plaintiff's physical condition. Given the court's decision regarding defendant's first two objections, evidence of plaintiff's physical condition was relevant. Accordingly, defendant's third objection is OVERRULED.

{¶5} In its fourth objection, defendant argues that the magistrate erred in admitting the testimony of inmate Penn on the grounds that Penn was not identified in plaintiff's pretrial statement. A review of the transcript of proceedings reveals that the magistrate addressed such concern by providing defendant the opportunity to speak with the witness, off the record, prior to

allowing his testimony. Defendant declined and the testimony was admitted. Upon review, the court finds that the magistrate did not err in admitting the testimony. Defendant's fourth objection is OVERRULED.

{¶6} In its eighth objection, defendant contends that the magistrate erred in finding that plaintiff had been issued numerous lower bunk restrictions based solely upon the deformity of his right leg. The magistrate's decision states at page 1: "On February 19, 1997, the restriction was renewed for the stated reason of "seizures"; on March 17, 1997, for "deformity of right foot"; and on September 15, 1997, and December 23, 1997, for "seizures." The magistrate's decision states at page 4: "Plaintiff's medical file, which dates back to 1990, documents a history of epilepsy, seizures, and right-sided paralysis. His records also reflect that he had been issued numerous lower bunk restrictions based upon his seizure disorder and deformity of his right leg."

{¶7} Upon review, the court does not agree with defendant's interpretation of the language in the magistrate's decision. Indeed, in the view of the court the magistrate simply found that plaintiff's records reflect the issuance of numerous lower bunk restrictions, to include restrictions based upon his seizure disorder and right leg deformity. This finding is supported by the evidence. Accordingly, defendant's eighth objection is OVERRULED.

{¶8} Defendant's fifth, sixth, seventh, ninth, tenth, eleventh, twelfth and thirteenth objections challenge specific factual findings and legal conclusions as being against the manifest weight of the evidence and contrary to law.

{¶9} However, upon review of the transcript of proceedings, the evidence admitted in this case and the magistrate's decision, the court finds that the decision of the magistrate is supported by competent, credible evidence, is not against the manifest weight of the evidence and is in accordance with law. Therefore, defendant's fifth, sixth, seventh, ninth, tenth, eleventh, twelfth and thirteenth objections are OVERRULED.

{¶10} Having OVERRULED each of defendant's 13 objections, the court hereby adopts the magistrate's decision as its own, including the findings of fact and conclusions of law contained therein. In accordance with the magistrate's recommendation, judgment is rendered in favor of plaintiff in an amount to be determined in a separate trial on the issue of damages.

J. WARREN BETTIS
Judge

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