

[Cite as *Vasquez v. Ohio Dept. of Rehab. & Corr.*, 2003-Ohio-1986.]

IN THE COURT OF CLAIMS OF OHIO

DANIEL VASQUEZ

$$\vdots$$

Plaintiff :

CASE NO. 97-12734

V.

:

MAGISTRATE DECISION

OHIO DEPARTMENT OF
REHABILITATION AND CORRECTION

:

Anderson M. Renick, Magistrate

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Defendant

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{¶1} This case was tried to a magistrate of the court on the issue of damages. In a prior decision on the issue of liability, the court found in favor of defendant. However, the Tenth District Court of Appeals reversed this court's decision and remanded the case for further proceedings to determine appropriate damages. Accordingly, on March 31, 2003, this court entered judgment in favor of plaintiff on the issue of liability. See *Vasquez v. Ohio Dept. of Rehab. & Corr.* (Feb. 22, 2001), Franklin App. No. 00AP-387.

{¶2} Plaintiff, an inmate at the Southern Ohio Correctional Facility (SOCF) in Lucasville, Ohio, was injured on November 11, 1996, as the result of an assault by other inmates. During the assault, plaintiff was cut on the face with an inmate-manufactured “shank.” Plaintiff’s medical records show that he sustained blunt trauma to his head and a laceration above his right eye that was approximately two inches in length. Plaintiff testified that he has experienced headaches, pain in his right shoulder, occasional anxiety, and “seizures” since the time of the assault. Plaintiff explained that his “seizures” occur when he gets “stressed out.” Plaintiff testified that he had problems with stress and anxiety prior to the assault, but that the stress became more severe after the incident.

{¶3} Plaintiff's testimony and medical records established that he has experienced occasional headaches and right shoulder pain as a result of a motor vehicle accident that occurred when he was 12 years old. Plaintiff's medical records also document that he had experienced "frequent" dislocation of his right shoulder prior to the assault and that he had complained of shoulder pain within several months prior to the assault. In 1994, plaintiff was prescribed psychotropic medications to treat symptoms that included blackouts, headaches, and difficulty in sleeping. According to a mental health evaluation report, plaintiff received neurological evaluations in 1994 and 1996 for complaints of seizures. The evaluation history reports that the neurological tests produced "normal" results and that plaintiff's "problems were probably due to anxiety." Although plaintiff's mental health records document a history of pre-existing mental health problems, the records also show that defendant's medical personnel had diagnosed plaintiff with depression, anxiety and posttraumatic stress disorder (PTSD) that were related to the assault at SOCF.

{¶4} Based upon the above, the court finds that the head injuries that plaintiff sustained as a result of the November 11, 1996, assault aggravated his pre-existing mental health problems. Although, the mental health records show that plaintiff's PTSD symptoms were resolved by June 2001, the court finds that plaintiff continues to experience an elevated level of anxiety as a result of the assault. Furthermore, since the medical records do not support plaintiff's claim that the assault aggravated his pre-existing shoulder injury the court finds that plaintiff did not sustain an aggravation of his pre-existing shoulder injury as a result of the assault.

{¶5} Based upon the totality of the testimony and evidence, the court finds that plaintiff has a permanent scar on his forehead and that he sustained some psychological trauma as a result of the incident. The court finds that plaintiff's total damages in this case amount to \$12,000, which include, but are not limited to, past and future pain and suffering. Accordingly, judgment is recommended in favor of plaintiff in the amount of \$12,025 which includes the \$25 filing fee.

ANDERSON M. RENICK
Magistrate

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