[Cite as *Williams v. Ohio Dept. of Rehab & Corr.*, 2003-Ohio-833.]

IN THE COURT OF CLAIMS OF OHIO

ANTHONY WILLIAMS, #356-402 :
P.O. Box 788
Mansfield, Ohio 44901 : Case No. 2002-06120-AD

Plaintiff : MEMORANDUM DECISION

v. :

DEPARTMENT OF REHABILITATION :
AND CORRECTION
:
Defendant

: : : : : : : : : : : : : : : : :

For Defendant: Gregory C. Trout, Chief Counsel
Department of Rehabilitation and
Correction
1050 Freeway North
Columbus, Ohio 43229

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FINDINGS OF FACT

{¶1} On June 2, 2001, plaintiff, Anthony Williams, an inmate incarcerated at defendant's Mansfield Correctional Institution (ManCI), suffered personal injury while working as a kitchen line server in the inmate dining hall of defendant's facility. Plaintiff indicated a piece of his finger was severed when a defective "iron slide window" dropped on his hand. Plaintiff asserted the injury he received resulted in not only the loss of a piece of his finger, but permanent nerve damage. Plaintiff contended his injury was proximately caused by negligence on the part of defendant. Consequently, plaintiff filed this complaint seeking to recover $2,500.00 as compensation for the injury he received.

{¶2} Plaintiff stated he was working in the ManCI dining hall on June 2, 2001 when defendant's employee, Gary Hall, told him to assist a fellow inmate, Darrell Washington. Plaintiff related he was ordered to lift an "iron slide window." Plaintiff described the window as 1/4 inch thick, two feet wide, two feet high, and weighing fifteen to twenty pounds. Plaintiff asserted the window was not equipped with a safety latch or similar device for securing the window in position once it had been raised. Additionally, plaintiff related he was not given instructions or training regarding proper technique in raising the window. Apparently the window, after being raised, fell upon plaintiff's hand, injuring his finger. Plaintiff explained he was eventually transported to an outside medical facility where he received treatment for his injury.

{¶3} On June 26, 2001, plaintiff filed a grievance with defendant regarding the events occurring in the institution dining hall on June 2, 2001. In his complaint plaintiff asserted he lifted the "'iron slide window' all the way up to its standard, it paused, for a second and came straight down, smashing on my right hand, middle finger." Plaintiff did not make any reference to being ordered to open the window. Plaintiff did maintain the window was not equipped with a latch and or lock.

{¶4} On July 4, 2001, plaintiff resubmitted an informal complaint to defendant describing the June 2, 2001 personal injury occurrence. In this complaint plaintiff wrote, "[u]pon given orders by Mr. Hall, food coordinator, I assisted an inmate by the name of Darrell Washington #342-002, by lifting an iron slide window that was designed for sliding trays under to inmates." Plaintiff continued by stating, "[w]hile lifting this iron slide all the way up to its standard, it paused and came straight down, slicing and smashing my right hand, middle finger." Plaintiff again asserted the window was not equipped with a safety latch or locking device. On July 17, 2001, plaintiff filed a grievance with

defendant regarding his injury. This grievance is a replication of the language contained in the July 4, 2001 informal complaint submission.

{¶5} Defendant acknowledged plaintiff suffered some injury on June 2, 2001 when a slide window in the dining hall of ManCI fell on plaintiff's middle finger of his right hand. However, defendant denied plaintiff's finger was damaged to the extent he claimed. Defendant asserted plaintiff suffered a "gash in the pad of the finger." Statements from defendant seemingly indicate no ManCI personnel actually witnessed plaintiff injure his finger.

{¶6} Furthermore, defendant denied its employee Gary Hall or any of its staff ordered plaintiff to open the slide window. Defendant did not provide a statement from Hall regarding the June 2, 2001 incident. Defendant suggested plaintiff, on his own initiative, decided to open the slide window. Defendant explained two slide windows had been installed at each end of the serving line in the north inmate dining room of defendant's facility. Although these windows had been installed essentially as barricades to help prevent food loss and promote safety for inmate kitchen workers,

{¶7} the windows had not been used for some time after installation. According to defendant, the windows were not in use when plaintiff opened one on June 2, 2001. Defendant related photographs were taken of the site where plaintiff's injury occurred. These photographs were not submitted into the claim file despite their relevance in assisting the trier of fact. Defendant indicated the slide windows are each equipped with a hasp/lock device but plaintiff did not engage the particular lock after he opened the window. Defendant contended plaintiff's own inattention and poor choice were the only causes of his injury.

{¶8} On December 9, 2002, plaintiff submitted a response to defendant's investigation report. Plaintiff disputed defendant's assertion that the window which fell on his finger was equipped

with a proper safety latch. Plaintiff indicated the window has a welded attached hasp which can be secured with a lock. Plaintiff argued he could not use the lock on the hasp because the device is key operated and only defendant's personnel have access to keys. Plaintiff additionally argued "the window was not secure and the lock (safety device) was absent." Plaintiff is seemingly contending the window was either not equipped with a safety latch or he had no means available of securing the window. Plaintiff did not offer any information to reveal if he tried to secure the window as he opened it or if he tried to inform defendant's personnel the window could not be latched in a safe position. Plaintiff did maintain defendant removed the safety device on the window, failed to offer proper training on opening and securing the window, failed to provide warnings of damages associated with opening the window, failed to give adequate supervision regarding how to open the window, and ordered the window be opened. Plaintiff reasserted defendant's negligent acts and omissions were the proximate causes of the injury he received.

{¶9} Plaintiff submitted an affidavit from Darrell Washington, an eyewitness to the June 2, 2001 personal injury incident. Washington stated he heard defendant's employee Gary Hall, "instruct plaintiff to use said window on said date." Washington related the "iron slide" window is equipped with a "master-like" padlock which is key operated and is used to secure the window in either an open or closed position. According to Washington, the window lock "was not present on the date of Mr. Williams' injuries." Washington maintained he saw the window in use prior to June 2, 2001 and had used the window himself. Washington additionally declared plaintiff did not secure the window after opening it and had passed articles through the window just before it fell.

{¶10} Plaintiff insisted he was ordered by defendant's employee to open the slide window. Plaintiff's witness, Darrell Washington,

stated he did hear Gary Hall on June 2, 2001 instruct plaintiff to use the iron slide window. Defendant denied Gary Hall gave any order, instruction, or request for plaintiff to open the iron slide window in the institution dining hall. Defendant suggested plaintiff was "messing around" with the window when his injury occurred. Defendant asserted plaintiff opened the window on his own volition.

{¶11} Both plaintiff and Washington contended the window was not equipped with a lock and safety latch on June 2, 2001. Defendant related the window was equipped with a lock and a safety latch on June 2, 2001. Both plaintiff and Washington stated the window had been used prior to June 2, 2001. Defendant asserted the window had not previously been used.

{¶12} The trier of fact finds neither plaintiff's assertions nor defendant's assertions are particularly persuasive. Neither defendant nor plaintiff has offered competent credible evidence regarding any circumstances involved in the June 2, 2001 incident forming the basis of this claim.

CONCLUSIONS OF LAW

{¶13} Without making a determination of liability, the court finds plaintiff has failed to offer sufficient evidence to support his damage claim. Although plaintiff contended he suffered some sort of amputation trauma and permanent irreparable nerve damage he has not submitted any supporting evidence to prove he was injured to the degree and extent professed. The file is devoid of any medical evidence. Damage assessment is a matter within the function of the trier of fact. *Litchfield v. Morris* (1985), 25 Ohio App. 3d 42. Reasonable certainty as to the amount of damages is required, which is that degree of certainty of which the nature of the case admits. *Bemmes v. Pub. Emp. Retirement Sys. Of Ohio* (1995), 102 Ohio App. 3d 782. Damages in this action are minimal based on evidence presented.

{¶14} Concomitantly, the court concludes plaintiff has failed

to produce adequate evidence to prove defendant is liable for the injury he suffered. Defendant does not act as an insurer of the safety of its prisons, defendant is only required to use reasonable care necessary to prevent injury to a prisoner if aware of a dangerous condition. *Clemets v. Heston* (1985), 20 Ohio App. 3d 132. In the instant claim plaintiff has failed to prove the window which caused his injury was not equipped with a safety latch, rendering it dangerous, and plaintiff did not establish defendant knew the window did not have a safety device. Although defendant did owe plaintiff a duty of care with respect to the operation of the window, plaintiff was also under a duty to exercise reasonable care for his own protection. See *Williams v. Southern Ohio Correctional Facility* (1990), 67 Ohio App. 3d 517, 526. "Plaintiff was not free to place himself in harm's way, and then complain after he was injured that DRC failed to protect him from [an obvious hazard]." *Dean v. Dept. of Rehab. and Corr.* (1998), Ohio App. LEXIS 4451 (Sept. 24, 1998), Franklin App. No. 97API12-1614, unreported. Plaintiff himself admitted he knew the window could not safely be secured, but opened the window despite the professed knowledge of the dangerous condition. Additionally, the court determines evidence is inconclusive to indicate plaintiff was ordered by defendant's employee to use an unsafe device. Plaintiff asserted such an order was given, defendant denied any order was directed to plaintiff. Consequently, the court concludes plaintiff has failed to prove he suffered any injury as a proximate cause of any negligent act or omission on the part of defendant.

{¶15} Having considered all the evidence in the claim file and adopting the memorandum decision concurrently herewith;

{¶16} IT IS ORDERED THAT:

{¶17} 1) Plaintiff's claim is DENIED and judgment is rendered in favor of defendant;

{¶18} 2) Court costs are assessed against plaintiff.

DANIEL R. BORCHERT
Deputy Clerk

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