

[Cite as *Seymour v. Dept. of Rehab. & Corr.*, 2004-Ohio-4721.]

IN THE COURT OF CLAIMS OF OHIO

BRUCE SEYMOUR :
:
Plaintiff : CASE NO. 2001-09869
Judge J. Warren Bettis
v. : Magistrate Steven A. Larson

DEPARTMENT OF REHABILITATION : JUDGMENT ENTRY
AND CORRECTION :
:
Defendant :
:
: : : : : : : : : : : : : : : :

{¶1} This case was tried to a magistrate of the court. On June 22, 2004, the magistrate issued a decision recommending judgment for plaintiff with a 40 percent reduction in any future damages award to account for plaintiff's own negligence.

{¶2} Civ.R. 53(E)(3)(a) states: “A party may file written objections to a magistrate’s decision within fourteen days of the filing of the decision, regardless of whether the court has adopted the decision pursuant to Civ.R. 53(E)(4)(c). ***” Both defendant and plaintiff timely filed objections.

{¶3} Defendant filed four objections to the magistrate’s decision:

{¶4} “OBJECTION NO. 1:

{¶5} “The Magistrate erred, as a matter of law, in concluding that Defendant had not adequately trained, warned, and instructed Plaintiff of an open and obvious hazard thereby barring his recovery:

{¶6} “***

{¶7} “OBJECTION NO. 2:

{¶8} “The Magistrate erred, as a matter of law, in concluding that Plaintiff’s claim was not barred by his assumption of the risk.

{¶9} “***

{¶10} “OBJECTION NO. 3:

{¶11} “The Magistrate erred, as a matter of law, in concluding that Plaintiff’s negligence was not greater than that of the Defendant thereby barring his recovery.

{¶12} “***

{¶13} “OBJECTION NO. 4:

{¶14} “The Magistrates [sic] decision is against the manifest weight of the evidence.

{¶15} “***.”

{¶16} Plaintiff filed two objections to the magistrate’s decision:

{¶17} “1.) The Magistrate erred in determining Seymour was 40% negligent, considering the design and method of operation to feed various size heads or partial heads of lettuce into the machine;

{¶18} “2.) The Magistrate’s finding of Seymour’s contributory negligence is against the weight of the evidence as to the findings and amount.”

{¶19} Ultimately, both defendant and plaintiff are arguing that the magistrate’s decision was against the weight of the evidence. After reviewing the record, trial transcript, exhibits, and the magistrate’s decision, the court finds that the magistrate’s conclusions regarding both liability and the apportionment of fault are supported by the greater weight of the evidence.

{¶20} Upon review of the record, the magistrate’s decision, and the objections, the objections are **OVERRULED** and the court adopts the magistrate’s decision and recommendation as its own, including the findings of fact and conclusions of law contained therein.

{¶21} Judgment is rendered for plaintiff with a 40 percent reduction in any future damages award.

{¶22} The court shall issue an entry in the near future scheduling a date for the trial on the issue of damages.

J. WARREN BETTIS
Judge

Entry cc:

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