

Court of Claims of Ohio

The Ohio Judicial Center
65 South Front Street, Third Floor
Columbus, OH 43215
614.387.9800 or 1.800.824.8263

www.cco.state.oh.us

EVERETT L. JOHNS

Plaintiff

v.

DEPARTMENT OF REHABILITATION
AND CORRECTION

Defendant

Case No. 2006-07724-AD

Deputy Clerk Daniel R. Borchert

MEMORANDUM DECISION

FINDINGS OF FACT

{¶ 1} 1) Plaintiff, Everett L. Johns, was incarcerated under the custody of defendant, Department of Rehabilitation and Correction, from December, 1967 to June 21, 2006, when he was released on parole. Plaintiff explained from the time he was first incarcerated in 1967 to December, 1982, 25% of his inmate state pay was subject to collection and deposited into a separate account, referenced by plaintiff as a “Going Home Account” or “Earned Prisoner Account.” Plaintiff related the practice of withdrawing a percentage of inmate pay to be set aside in a “Going Home Account” was discontinued after 1982. However, plaintiff noted funds collected from his state pay for a period of 180 months (December, 1967-December, 1982) remained in his personal “Going Home Account” after the practice was discontinued.

{¶ 2} 2) Plaintiff recalled he worked as a clerk for various departments under defendant’s control during the time frame the “Going Home Account” plan was being implemented. Plaintiff estimated his monthly pay as, “[a] skilled worker [c]lerk,” was \$28.00 per month for the entire time his state inmate pay was subject to the 25% “Going Home Account” deduction. According to plaintiff, an approximate total of \$1,260.00 was deducted from his state pay from 1967 to 1982. On June 21, 2006, when plaintiff was released on

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parole, defendant issued him a check in the amount of \$633.82. Plaintiff surmised the payment of \$633.82 he received was determined by multiplying \$3.00 by 180 (monthly pay deduction for fifteen years), adding \$76.50 (the acknowledged "Going Home Account" funds set aside for plaintiff), plus \$17.36 (the balance left in plaintiff's inmate commissary account). Therefore, using plaintiff's calculations the total "Going Home Account" funds received amounted to \$616.50 (the product of \$3.00 multiplied by 180 added to the agreed balance on plaintiff's "Going Home Account"). Plaintiff maintained he is entitled to receive an additional \$643.50 for state pay deductions made to his "Going Home Account" (the product of \$4.00 multiplied by 180 minus \$76.50). Consequently, plaintiff filed this complaint seeking to recover \$643.50, an amount representing his calculation of the unpaid balance in the defunct "Going Home Account." The filing fee was paid.

{¶ 3} 3) Plaintiff asserted defendant could not produce any records regarding monthly deposits from his state pay into his "Going Home Account" for the years 1967 through 1982. Plaintiff explained he worked as a clerk at various institutions from 1967 through 1982 and always received "top pay." Plaintiff recalled his pay scale ranged from \$24.00 to \$28.00 per month during the period in question although he acknowledged he could not remember what his pay rate was from 1967 to 1973, but did note the "top pay" for that period was \$28.00 per month. Plaintiff made several attempts prior to his release on parole to obtain an accurate accounting from defendant of the amount contained in his "Going Home Account."

{¶ 4} 4) On or about August 18, 2005, defendant sent plaintiff correspondence notifying him that his "Going Home Account" balance had been adjusted to reflect an amount of \$633.86. Defendant noted this figure was based on, "an average of what has been accumulated by inmates that have been incarcerated the same amount of time," as plaintiff. Plaintiff suggested the money in his "Going Home Account" should have been transferred to his active inmate account once the original program was discontinued. Additionally, plaintiff attempted through administrative means to have adjustments made to

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his "Going Home Account" balance. Plaintiff insisted his account balance should have been set at \$1,260.00, rather than the \$633.86 determination made by defendant. However, defendant could not obtain any documentation to establish \$1,260.00 was actually deposited in plaintiff's "Going Home Account." Inmate payroll records from 1967 through 1982 could not be found by defendant.

{¶ 5} 5) Defendant filed an investigation report in this matter recording, "[t]he defendant takes no position in this case." Defendant did not further address plaintiff's claim other than to offer, "[d]efendant is unable to admit or deny any of the allegations asserted by plaintiff."

{¶ 6} 6) Plaintiff submitted a response in which he reasserted he was paid half of his "Going Home Account" wages and requested the court award him an amount representing the remaining portion of his state pay deducted by defendant. Plaintiff stated, "[d]efendant admits they cannot find [p]laintiff's records showing his wages from 1967 to 1982, and because of this, the [d]efendant decided on paying the [p]laintiff the lowest minimum wage," as full payment upon his release from incarceration.

CONCLUSIONS OF LAW

{¶ 7} The Tenth District Court of Appeals has stated that "[t]he language in R.C. 2743.02 that 'the state' shall 'have its liability determined *** in accordance with the same rules of law applicable to suits between private parties, ***' means that the state cannot be sued for its legislative or judicial functions, or the exercise of an executive function involving a high degree of official judgment or discretion." *Deavors v. Dept. of Rehab. and Corr.* (May 20, 1999), Franklin App. No. 98AP-1105; citing *Reynolds v. State* (1984), 14 Ohio St. 3d 68, 70. The court finds that defendant's decision relating to the amount of money plaintiff was given upon release involved a high degree of official discretion. Accordingly, plaintiff's claim grounded in that decision by defendant must fail.

[Cite as *Johns v. Ohio Dept. of Rehab. & Corr.*, 2007-Ohio-3748.]

{¶ 8} Furthermore, plaintiff's entire claim is based on his failure to receive an accumulation of state pay deductions from prison labor performed. State pay loss is not a compensable element of damages in regard to prison employment. See *Cotton v. Dept. of Rehab. and Corr.* (1993), 92-02013-AD, jud; *Platz v. Noble Correctional Institution* (2001), 2001-02210-AD; *Myers v. Southern Ohio Correctional Facility* (2006), 2005-10063-AD, jud.



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ENTRY OF ADMINISTRATIVE
DETERMINATION

Having considered all the evidence in the claim file and, for the reasons set forth in the memorandum decision filed concurrently herewith, judgment is rendered in favor of defendant. Court costs are assessed against plaintiff. The clerk shall serve upon all parties notice of this judgment and its date of entry upon the journal.

DANIEL R. BORCHERT
Deputy Clerk

Entry cc:

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RDK/laa
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