

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

JUAN ROBERTS

Plaintiff

v.

OHIO DEPARTMENT OF REHABILITATION AND CORRECTION, et al.

Defendants

Case No. 2006-05551

Judge Joseph T. Clark
Magistrate Steven A. Larson

MAGISTRATE DECISION

{¶ 1} On March 9, 2009, the court issued a decision rendering judgment in favor of plaintiff on the issue of liability. The case proceeded to trial on the issue of damages.

{¶ 2} At all times relevant, plaintiff was an inmate in the custody and control of defendants at the Madison Correctional Institution (MCI) pursuant to R.C. 5120.16. He was released from incarceration on December 1, 2008. On January 3, 2006, plaintiff was injured when his right foot was run over by a trailer being towed by a John Deere “gator,” a general purpose maintenance vehicle that is approximately the size of a golf cart. The court determined that defendants’ employees were negligent in the operation of the gator. However, the court also found that plaintiff failed to take reasonable steps to ensure his own safety and determined that plaintiff’s damages award should be reduced by 40 percent.

{¶ 3} Plaintiff testified that since the incident, he has suffered from constant pain in his right ankle and foot. According to plaintiff, his ankle will occasionally “give out”

while he is walking and his mobility is severely hampered. Plaintiff stated that he experiences particularly intense pain when driving long distances and going up stairs.

{¶ 4} Plaintiff further testified that after the incident he endured approximately ten months of treatment for the injury to his foot. Immediately after the incident, he was taken from the MCI infirmary to the Ohio State University Medical Center where he was given a walking boot and crutches. Plaintiff testified that he wore the boot for approximately six months, then went without it for a month before wearing it for an additional three months. According to plaintiff, he also used crutches or a cane sporadically during this time period. Plaintiff stated that after he stopped wearing the boot, approximately eight months passed before he was able to walk normally. Plaintiff testified that since the injury he has stopped playing basketball, running, and participating in other sports.

{¶ 5} In support of his claim, plaintiff presented the testimony of John W. Cunningham, M.D. via videotaped deposition. (Plaintiff's Exhibit 2.) Dr. Cunningham is board-certified in occupational medicine and operates a practice that specializes in occupational health. Dr. Cunningham testified that he reviewed plaintiff's medical records, including an MRI taken March 17, 2006, and performed a physical examination of plaintiff. Dr. Cunningham stated that his physical examination showed no deformity of plaintiff's right foot or ankle; no inflammation; no instability in the ankle; some limitation in range of motion; and pain at the extremes of ankle motion. Dr. Cunningham also stated that at the time it was performed the MRI showed plaintiff suffered from plantar fascitis and partial tears of the peroneus longus and peroneus brevis tendons which are tendons that stretch from the muscles of the lower leg, through the ankle, and attach to the foot just below the ankle. Dr. Cunningham opined that the trauma of the trailer running over plaintiff's foot caused those tears. Dr. Cunningham testified that the tears are the cause of the pain that plaintiff experiences and that he advised plaintiff that lifting or carrying more than 50 pounds could risk further injury to the tendons.

{¶ 6} Defendant presented the testimony of Karl W. Kumler, M.D. via videotaped deposition. Dr. Kumler is board-certified in orthopedics and operates a private practice in that field. Dr. Kumler also reviewed plaintiff's medical records and performed a physical examination of plaintiff, particularly of his right foot and ankle. Dr. Kumler testified that he observed no swelling in plaintiff's right foot; that he has "flat" feet; that he was able to walk on his tiptoes and heels without problems; that he had diffuse tenderness over the outside of his right ankle; and that he had no limitations in range of motion. Dr. Kumler stated that he also took three x-rays of plaintiff's right foot and testified that the bones of the foot looked "normal" except for an osteophyte, or spur in an area where plaintiff's foot was tender, and some degenerative arthritis in his "mid" foot. Dr. Kumler also reviewed the March 17, 2006 MRI that showed tears in two of the tendons in plaintiff's foot. Dr. Kumler testified that the nature and severity of the tears meant that they were likely a chronic problem that developed as a result of plaintiff's history of athletic physical activity coupled with his flat feet. Dr. Kumler further stated that when he examined plaintiff's right foot, there was no tenderness or swelling in the area of those tendons, another indication that the tears were degenerative and "not significant." Based upon these findings, Dr. Kumler opined that the tears in the tendons were not a result of plaintiff's foot being run over by the trailer on January 3, 2006. Dr. Kumler further opined that the incident as was recounted to him by plaintiff would result in a contusion or bruise to the foot, but nothing more serious. Dr. Kumler testified that any foot pain that plaintiff may experience is the result of degenerative changes and osteophytes due to arthritis.

{¶ 7} Based upon the foregoing testimony, the court finds that plaintiff suffered a significant amount of pain as a result of the trailer running over his foot, but that he did not suffer a permanent injury. Specifically, the court finds Dr. Kumler's testimony regarding the tears in the tendons of plaintiff's right foot to be more credible than Dr. Cunningham's testimony. The court finds that plaintiff endured pain related to his injury for approximately one year following the incident, but suffers from no lasting effects.

The court concludes that plaintiff is entitled to damages in the amount of \$20,000, with a 40 percent reduction in damages due to plaintiff's own negligence. Accordingly, it is recommended that plaintiff be awarded damages in the amount of \$12,025 which includes the \$25 filing fee.

A party may file written objections to the magistrate's decision within 14 days of the filing of the decision, whether or not the court has adopted the decision during that 14-day period as permitted by Civ.R. 53(D)(4)(e)(i). If any party timely files objections, any other party may also file objections not later than ten days after the first objections are filed. A party shall not assign as error on appeal the court's adoption of any factual finding or legal conclusion, whether or not specifically designated as a finding of fact or conclusion of law under Civ.R. 53(D)(3)(a)(ii), unless the party timely and specifically objects to that factual finding or legal conclusion within 14 days of the filing of the decision, as required by Civ.R. 53(D)(3)(b).

STEVEN A. LARSON
Magistrate

cc:

Amy S. Brown
Daniel R. Forsythe
Eric A. Walker
Assistant Attorneys General
150 East Gay Street, 18th Floor
Columbus, Ohio 43215-3130

Walter W. Messenger, Jr.
1625 Bethel Road, Suite 102
Columbus, Ohio 43220

Magistrate Steven A. Larson

MR/cmd
Filed September 28, 2009
To S.C. reporter October 13, 2009