

# Court of Claims of Ohio

The Ohio Judicial Center  
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Columbus, OH 43215  
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RICHARD WHITMORE

Plaintiff

v.

OHIO DEPARTMENT OF REHABILITATION AND CORRECTION

Defendant

Case No. 2008-10366

Judge Clark B. Weaver Sr.  
Magistrate Matthew C. Rambo

## JUDGMENT ENTRY

{¶ 1} On January 31, 2011, the magistrate issued a decision recommending judgment for plaintiff in the amount of \$5,025.

{¶ 2} Civ.R. 53(D)(3)(b)(i) states, in part: “A party may file written objections to a magistrate’s decision within fourteen days of the filing of the decision, whether or not the court has adopted the decision during that fourteen-day period as permitted by Civ.R. 53(D)(4)(e)(i).” Plaintiff timely filed objections and a transcript of proceedings. Defendant did not file an objection.

{¶ 3} Although plaintiff sets forth three objections, the crux of plaintiff’s argument is that the magistrate erred as a matter of law when he determined that “plaintiff is entitled to damages for the pain and suffering caused by the injury to his back and head and for the pain and loss of use related to his left knee only for that period of time between the first and second fall.” Upon review of the magistrate’s March 3, 2010 decision on the issue of liability, which the court adopted as its own on June 8,

2010, the court concludes that the magistrate's expressed limitation upon the nature and extent of damages available to plaintiff is consistent with the prior decision.

{¶ 4} Plaintiff also objects to the amount of the damage award as being against the weight of the evidence. Specifically, plaintiff contends that the magistrate failed to consider the aggravation of plaintiff's pre-existing left knee injury. However, contrary to plaintiff's assertion, the magistrate expressly compensated plaintiff for both pain and any loss of use of the left knee attributed to the first fall. An independent review of the evidence convinces the court that the magistrate did not err in determining the amount of the award.

{¶ 5} Upon review of the record, the magistrate's decision and the objections, the court finds that the magistrate has properly determined the factual issues and appropriately applied the law. Therefore, the objections are OVERRULED and the court adopts the magistrate's decision and recommendation as its own, including findings of fact and conclusions of law contained therein.

{¶ 6} Judgment is rendered for plaintiff in the amount of \$5,025 which includes the filing fee paid by plaintiff. Court costs are assessed against defendant. The clerk shall serve upon all parties notice of this judgment and its date of entry upon the journal.

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CLARK B. WEAVER SR.  
Judge

cc:

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To S.C. reporter June 22, 2011