

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

CHARLES ERDMANN,

Plaintiff,

v.

OPINION AND ORDER

19-cv-457-wmc

LOUIS WILLIAMS II,
ROBERT KING, MELISSA LAUFENBERG,
JASON STONE, KWAME GYASI, JAN COLE,
STACY RANQUETTE, and PENNY PERRY,

Defendants.

Pro se plaintiff Charles Erdmann, a federal prisoner currently incarcerated at the Federal Correctional Institution in Milan, Michigan, filed this lawsuit under *Bivens v. Six Unknown Agents of Federal Bureau of Narcotics*, 403 U.S. 388 (1974). Erdmann claims that defendants, all officials who were working at the Federal Correctional Institution in Oxford, Wisconsin (“FCI-Oxford”) in May of 2017, violated his Eighth Amendment and Wisconsin law rights with respect to how they handled his shoulder injury. Erdmann’s complaint is ready for screening as required by 28 U.S.C. § 1915A. For the following reasons, the court will allow him to proceed against one defendant.

ALLEGATIONS OF FACT¹

Plaintiff Charles Erdmann was incarcerated at FCI-Oxford in May of 2017. Erdmann names the following eight FCI-Oxford employees as defendants: Warden Louis Williams II; Dr. Robert King; Registered Nurse and Health Services Administrator Melissa

¹ In addressing any *pro se* litigant’s complaint, the court must read the allegations generously, drawing all reasonable inferences and resolving ambiguities in plaintiff’s favor. *Haines v. Kerner*, 404 U.S. 519, 521 (1972).

Laufenberg; Nurse Practitioner Jason Stone; Dr. Kwame Gyasi; Registered Nurses Jan Cole and Penny Perry; and Physician's Assistant Stacy Ranquette.

On May 27, 2017, Erdmann injured his right shoulder during a softball game, and he was taken to a hospital in Portage, Wisconsin. After examining him, a physician suspected a rotator cuff injury and recommended an MRI, commenting that Erdmann might suffer irreversible damage if the injury was not treated.

Erdmann was returned to FCI-Oxford that day, where he experienced severe pain and had difficulty with his range of motion in his right shoulder. Erdmann complained to the health services department, but he alleges that medical staff more or less ignored him. In particular, over the course of several days, Erdmann requested an appointment with Dr. King, but it does not appear that Dr. King examined him.

Approximately six weeks later, Erdmann returned to a hospital in Portage, Wisconsin, where he met with an orthopedic surgeon. The surgeon diagnosed Erdmann with a rotator cuff tear and told him he needed surgery to avoid permanent damage, characterizing Erdmann's need for an MRI as "urgent." Erdmann underwent the MRI a week later, and a week after that Erdmann was scheduled to meet with Dr. King.

Erdmann never actually met with Dr. King though, and he was informed at the time that the reason Dr. King had not seen him was because the institution had not yet received the results of the MRI. However, Erdmann later learned that the institution received the MRI results about ten minutes after medical staff sent him back to his housing unit, but no one called him back to meet with Dr. King.

The MRI results showed a fracture, bone contusion, "modest intrasubstance

tendon,” and “severe hype[r]trophic arthropathy at the acromioclavicular joint with prominent distal infer clavicular spur.” (Compl. (dkt. #1) ¶ 18.) Dr. King reviewed the MRI results but did not schedule an appointment with Erdmann. During this time, Erdmann suffered from increasing pain and discomfort that he reported to medical staff on a daily basis. However, no one provided Erdmann with any sort of medical attention or medication to relieve his pain. Erdmann believes that his injury has left him irreversibly disabled.

OPINION

Plaintiff seeks leave to proceed against all of the defendants on Eighth Amendment deliberate indifference and Wisconsin negligence claims.

To start, however, the court is dismissing Williams, Laufenberg, Stone, Gyasi, Cole, Ranquette, and Perry. To state a claim under *Bivens*, a plaintiff must allege the personal involvement of each defendant to a claim. *Ashcroft v. Iqbal*, 556 U.S. 662, 677 (2009). Plaintiff names Warden Williams as a defendant, but he has not alleged that Williams knew or had reason to know that plaintiff had even suffered an injury, and plaintiff may not proceed against Williams solely by virtue of his role as the warden. *See Zimmerman v. Tribble*, 226 F.3d 568, 574 (7th Cir. 2000) (rejecting § 1983 actions against individuals merely for their supervisory role over others). As for defendants Laufenberg, Stone, Gyasi, Cole, Ranquette and Perry, plaintiff claims that all defendants were aware of his condition and pain, but he has not included any allegations describing when each of these defendants learned about his condition and how they responded. While plaintiff may seek leave to file an amended complaint that provides additional allegations setting forth more details

about his interactions with Williams and/or his health care providers (such as when he requested care, who he directed his request to, and their respective responses), he may not proceed against them as currently pled.

That said, plaintiff may proceed against Dr. King on Eighth Amendment deliberate indifference and Wisconsin negligence claims. A prison official who violates the Eighth Amendment in the context of a prisoner's medical treatment demonstrates "deliberate indifference" to a "serious medical need." *Estelle v. Gamble*, 429 U.S. 97, 104-05 (1976); *Forbes v. Edgar*, 112 F.3d 262, 266 (7th Cir. 1997). "Serious medical needs" include (1) life-threatening conditions or those carrying a risk of permanent serious impairment if left untreated, (2) withholding of medical care that results in needless pain and suffering, or (3) conditions that have been "diagnosed by a physician as mandating treatment." *Gutierrez v. Peters*, 111 F.3d 1364, 1371 (7th Cir. 1997). "Deliberate indifference" encompasses two elements: (1) awareness on the part of officials that the prisoner needs medical treatment and (2) disregard of this risk by conscious failure to take reasonable measures. *Forbes v. Edgar*, 112 F.3d 262, 266 (7th Cir. 1997).

The court accepts that plaintiff's torn rotator cuff constitutes a serious medical need. It is reasonable to infer, at this stage, that Dr. King was made aware that plaintiff sought medical attention prior to plaintiff's appointment with the orthopedic surgeon, and thus it is likewise reasonable to infer that Dr. King's failure to assess his pain level or prescribe him any sort of pain medication during those six weeks constitutes a reckless disregard of his need for care. Furthermore, it appears that, even after plaintiff went to the orthopedic surgeon and underwent the MRI, Dr. King never met with him to discuss the condition of

his shoulder or provide any sort of pain management plan. That inaction, too, permits a reasonable inference of deliberate indifference.

For the same reasons, the court will allow plaintiff to proceed on Wisconsin medical negligence claim against defendant Dr. King, but not any other defendant. *See* 28 U.S.C. § 1367(a) (“[D]istrict courts shall have supplemental jurisdiction over all other claims that are so related to claims in the action within such original jurisdiction that they form part of the same case or controversy under Article III of the United States Constitution.”). Under Wisconsin law, the elements of a cause of action in negligence are: (1) a duty of care or a voluntary assumption of a duty on the part of the defendant; (2) a breach of the duty, which involves a failure to exercise ordinary care in making a representation or in ascertaining the facts; (3) a causal connection between the conduct and the injury; and (4) an actual loss or damage as a result of the injury. *Green Spring Farms v. Kersten*, 136 Wis. 2d 304, 307 (1987). Plaintiff’s allegations support a reasonable inference that Dr. King’s failure to hasten plaintiff’s MRI or provide any sort of attention to his complaints of pain breached a duty of care and possibly worsened his injury. However, since the court is dismissing the federal claims against Williams, Laufenberg, Stone, Gyasi, Cole, Ranquette and Perry, it declines to exercise supplemental jurisdiction over plaintiff’s proposed state law claims against them. 28 U.S.C. §1367(c)(3); *Burritt v. Ditlefsen*, 807 F.3d 239, 252 (7th Cir. 2015).

ORDER

IT IS ORDERED that:

1. Plaintiff Charles Erdmann is GRANTED leave to proceed on Eighth

Amendment deliberate indifference and Wisconsin negligence claims against Dr. Robert King.

2. Plaintiff is DENIED leave to proceed on any other claims, and defendants Williams II, Laufenberg, Stone, Gyasi, Cole, Ranquette and Perry are DISMISSED without prejudice.
3. The clerk's office will prepare summons and the U.S. Marshal services shall affect services upon defendant.
4. For the time being, plaintiff must send the defendant a copy of every paper or document he files with the court. Once plaintiff has learned what lawyer will be representing the defendant, he should serve the lawyer directly rather than the defendant. The court will disregard any documents submitted by plaintiff unless plaintiff shows on the court's copy that he has sent a copy to the defendant or to the defendant's attorney.
5. Plaintiff should keep a copy of all documents for his own files. If plaintiff does not have access to a photocopy machine, he may send out identical handwritten or typed copies of his documents.
6. If plaintiff is transferred or released while this case is pending, it is plaintiff's obligation to inform the court of his new address. If he fails to do this and defendant or the court are unable to locate him, his claims may be dismissed for his failure to prosecute him.

Entered this 26th day of October, 2021.

BY THE COURT:

/s/

WILLIAM M. CONLEY
District Judge