

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

EDUARDO M. PEREZ,

Plaintiff,

v.

BHS-DOC R/N SHARON ZUNKER,

Defendant.

ORDER

05-C-711-C

Plaintiff Eduardo Perez has been granted leave to proceed in this action on his claim that defendant Sharon Zunker was deliberately indifferent to his serious medical needs because she ignored recommendations beginning in March 2004 that he receive pain management treatment at the UW-Health Pain Clinic. However, I dismissed a second claim plaintiff proposed in his complaint alleging that defendant Zunker and proposed defendants Sullivan and DeMotts were deliberately indifferent to his serious medical needs when they denied him surgery following a July 1997 back injury. This claim was dismissed on the ground that plaintiff already had litigated an identical claim in Perez v. Sullivan, Case. No. 01-C-519-C, and had lost. In particular, in Case No. 01-C-519-C, the undisputed facts showed that plaintiff had received conflicting medical opinions about the optimal treatment

for his back, one opinion recommending surgery and the other recommending conservative therapy with pain management. I concluded that in light of these conflicting opinions by the two neurologists who had treated plaintiff, plaintiff's claim amounted to nothing more than dissatisfaction with his medical treatment and failed to show that the proposed defendants had been deliberately indifferent to his serious medical needs.

Recently, plaintiff wrote this court claiming to have discovered new evidence, a W-DIC form 3001 dated March 10, 2004, that would show that "doctors" recommended surgery for plaintiff's back condition. In an order dated January 30, 2006, I noted that if plaintiff had evidence to show that between the time his previous lawsuit ended in 2002 and March of 2004, his back condition worsened so substantially that all of the doctors and specialists who have assessed his condition since 2002 agree that he needs surgery, then his claim would not be barred under the doctrine of claim preclusion. Now plaintiff has submitted a document titled "Brief of Eduardo Moliner Perez, the Petitioner on the Entire Case in Support of the Claims of Deliberate Indifference to the Serious Medical Needs by WIS-DIC-BHS pursuant to 42 USCA 1983." In addition to legal argument, this document includes several pages of documents marked as "exhibits," including a W-DIC form 3001 dated March 10, 2004. Therefore, I construe plaintiff's submission to include a request for reconsideration of this court's January 3, 2006 order denying him leave to proceed on his claim that defendants Sullivan, Zunker and DeMotts were deliberately indifferent to his

serious medical needs when they denied him surgery for his 1997 back injury.

Unfortunately for plaintiff, the W-DOC form 3001 he submitted does not show that all of his treating physicians have agreed that he needs surgery. To the contrary, the form is signed by one physician only, Dr. Witwer, and states in relevant part, “Diffuse DND Lumbar Spine Ø surgical intervention indicated.” As I understand this statement, the “Ø” means “no.” Thus, the form does not supply “new evidence” that would support a finding that this court erred when it denied plaintiff leave to proceed on his claim that his Eighth Amendment rights were violated when defendants refused to arrange for him to receive surgery for his back.

ORDER

IT IS ORDERED that plaintiff’s motion for reconsideration of this court’s January 3, 2006 order denying him leave to proceed on his claim that defendants Sullivan, Zunker and DeMotts were deliberately indifferent to his serious medical needs when they denied him

surgery for his 1997 back injury, is DENIED.

Entered this 23rd day of February, 2006.

BY THE COURT:

/s/

BARBARA B. CRABB

District Judge