

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

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EDUARDO M. PEREZ,

Plaintiff,

v.

BHS-DOC R/N SHARON ZUNKER  
in her personal and official capacities,

Defendants.  
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OPINION and ORDER

05-C-711-C

This civil action under 42 U.S.C. § 1983 has a lengthy history that requires brief explanation. Plaintiff Eduardo Perez is a long time inmate of the Wisconsin prison system. He filed this action in December 2005 and was granted leave to proceed in forma pauperis on a single claim: that defendant Sharon Zunker violated his Eighth Amendment right to medical care by failing to authorize his referral to a pain clinic for treatment of his chronic back pain.

At first, the case appeared to progress smoothly. However, after defendant filed a motion for summary judgment in June 2006, plaintiff began moving repeatedly for extensions of time in which to file his summary judgment response. From his filings, it was

clear that plaintiff (a native speaker of Spanish) possessed limited skill in the English language. Mindful of the court's obligation to insure that litigants are not unfairly prevented from pursuing their claims because of language barriers, I appointed counsel for plaintiff in September 2006.

All was quiet until late March 2007, when plaintiff's lawyers moved to withdraw from his case, averring that although they had diligently investigated plaintiff's case, engaged in discovery, and conferred at length with plaintiff, they believed they were required to withdraw from representing him "because 'professional considerations require termination of the representation.'" On May 4, 2007, a hearing was held on counsel's motion to withdraw. At the hearing, counsel represented that they were concerned that they could not represent plaintiff ethically and also fulfill their duties as officers of the court. Plaintiff did not deny that he and counsel had irreconcilable differences about their views of the evidence. I explained to plaintiff that he had two choices: to continue to work with appointed counsel or to represent himself. Plaintiff chose the latter option.

Now before the court is defendant's motion for summary judgment. Although plaintiff has responded to the motion by proposing facts and attempting to dispute facts proposed by defendant, he has not adduced any admissible evidence in support of his version of events. The undisputed facts, supported by admissible evidence, reveal that defendant Zunker did not exhibit deliberate indifference to plaintiff's need for medical care.

Consequently, her motion for summary judgment will be granted.

From the parties' proposed findings of fact, I find the following to be material and undisputed.

## UNDISPUTED FACTS

### A. Parties

Plaintiff Eduardo Perez is a prisoner confined at the Stanley Correctional Institution in Stanley, Wisconsin.

Since 2002, defendant Sharon Zunker has been employed by the Wisconsin Department of Corrections as nursing coordinator for the Bureau of Health Services. (From 1992-2002, defendant Zunker was Director of the Bureau of Health Services.) She is a registered nurse.

### B. Plaintiff's Medical Care

#### 1. Organization of the prison health care system

In the Wisconsin prison system, inmates receive medical care from doctors, nurse practitioners and physician's assistants. These health care professionals are required to manage patients' care, diagnose and treat illnesses and consult with outside specialists when they are unable to provide appropriate care themselves.

As nursing coordinator, defendant Zunker is responsible for coordinating and overseeing the health services provided by Wisconsin prisons. She does this by consulting with institutional staff regarding professional practice matters and serving as a liaison between the department and the bureau's doctors, psychiatrists, dentists and other medical staff. In addition, she is responsible for training all medical staff in departmental policies and procedures. She does not provide direct care to prisoners or supervise the care provided to individual prisoners.

## 2. Plaintiff's medical problems

In July 1997, plaintiff fell and injured his back while taking a shower at the Bowie County jail in Texas, where he was being housed temporarily while in the custody of the Wisconsin Department of Corrections. After plaintiff saw a local doctor, defendant Zunker (then director of the Bureau of Health Services) decided that plaintiff should be transported back to Wisconsin for follow-up medical care and authorized his return.

On September 12, 1997, plaintiff was taken to the Dodge Correctional Institution in Waupun, Wisconsin. Once admitted, plaintiff was placed in the infirmary for medical evaluation and treatment.

Defendant had no further contact with plaintiff until September 2005, when plaintiff filed an inmate complaint objecting to the alleged refusal of the Bureau of Health Services

to authorize him to be seen at the University of Wisconsin Hospitals and Clinics Pain Clinic. Apparently, plaintiff's prison doctor had completed a request form, asking the Bureau of Health Services to allow plaintiff to be seen at the University of Wisconsin Hospital's Pain Clinic for treatment of his ongoing back pain. (Because the parties do not say what happened to plaintiff's authorization request, it is unclear whether the request was denied or approved, and by whom.)

All requests for elective treatment, such as pain clinic appointments, are reviewed by nursing specialists who approve requests that meet specific criteria. Only when a request fails to meet the criteria is it sent to the director of the bureau of health services for a final decision. (By 2005, defendant Zunker was no longer director of the bureau of health services.) Defendant Zunker did not review the pain clinic referral request made by plaintiff's doctor.

The inmate complaint examiner who investigated plaintiff's inmate complaint reported that plaintiff had been seen by a doctor for back pain on September 1, 2005, and was scheduled to be seen again soon. The inmate complaint examiner recommended that plaintiff's complaint be dismissed and that plaintiff talk to his doctor at his upcoming appointment about the status of his pain clinic referral. In addition, the inmate complaint examiner directed plaintiff to contact the Bureau of Health Services if he had ongoing concerns about his pain management.

Defendant Zunker reviewed the inmate complaint examiner's recommendation and plaintiff's medical records. She noted that plaintiff was receiving ongoing medical care from doctors at the prison and at the University of Wisconsin, in addition to physical therapy and pain medication. On September 29, 2005, defendant Zunker adopted the recommendation of the inmate complaint examiner and dismissed plaintiff's inmate complaint.

## DISCUSSION

As I explained to plaintiff in the January 4, 2006 order granting him leave to proceed in this action, with respect to medical care, the Eighth Amendment is violated only when prison officials are deliberately indifferent to inmate health or safety. Farmer v. Brennan, 511 U.S. 825, 834 (1994). The Supreme Court has said that in the context of prisoner litigation, "deliberate indifference" means that an official (1) was aware of facts that could lead to the conclusion that a prisoner was at substantial risk of serious harm and (2) actually came to the conclusion that the prisoner was at substantial risk of serious harm. Id. at 837. Under this legal standard, it is not enough that an official "should have known" of a risk to petitioner. Rather, the official must actually know of a risk and consciously choose to disregard it. Higgins v. Correctional Medical Services of Illinois, 178 F.3d 508, 511 (7th Cir. 1999).

In his complaint, plaintiff alleged that defendant Zunker had known since 1997 that

he was in continuing pain from his back injury and that she had done nothing to provide him with access to treatment, despite her duty to do so. However, the facts developed on summary judgment paint a different picture.

Although it is undisputed that defendant Zunker had some knowledge of plaintiff's 1997 injury (having authorized his transfer from Texas to Wisconsin), she was an administrator, not a health care provider. Defendant Zunker had no supervisory authority over plaintiff's doctors and she did not make the decision to grant or deny the pain clinic referral request submitted by plaintiff's doctor. With respect to plaintiff's 2005 inmate complaint, defendant Zunker knew only that plaintiff was receiving ongoing medical care for his back pain (including pain medication and physical therapy) and that he would be given an opportunity to discuss his questions about the pain clinic referral with his doctor at an upcoming appointment. Given the facts known to her, defendant Zunker's decision to dismiss plaintiff's inmate complaint did not represent an act of deliberate indifference to plaintiff's serious health care needs.

To infer deliberate indifference on the basis of a medical professional's treatment decision, a fact finder must be able to say that the decision was so far afield of accepted professional standards as to imply that it was not actually based on a medical judgment. Estate of Cole by Pardue v. Fromm, 94 F.3d 254, 262 (7th Cir. 1996). Because plaintiff has not come forward with facts from which a jury could conclude reasonably that defendant

Zunker exhibited deliberate indifference to his need for pain treatment by her decision to dismiss his inmate complaint, defendant's motion for summary judgment must be granted.

ORDER

IT IS ORDERED that defendant Sharon Zunker's motion for summary judgment is GRANTED. The clerk of court is directed to enter judgment in favor of defendant and close this case.

Entered this 9th day of August, 2007.

BY THE COURT:  
/s/  
BARBARA B. CRABB  
District Judge