

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

JESSIE WILLIAMS,
Plaintiff,

v.

MEMORANDUM and ORDER

C.O. HENNING and NURSE
SHARLINE,

07-C-027-S

Defendants.

Plaintiff Jessie Williams was allowed to proceed on his Eighth Amendment claim that defendants C.O. Henning and Nurse Sharline were deliberately indifferent to his serious medical need. In his complaint he alleges that the defendants denied him treatment when he had a serious asthma attack and lost consciousness on June 14, 2006 at the Waupun Correctional Institution, Waupun, Wisconsin.

On June 8, 2007 defendants moved for summary judgment pursuant to Rule 56, Federal Rules of Civil Procedure, submitting proposed findings of facts, conclusions of law, an affidavit and a brief in support thereof. Pursuant to this Court's April 17, 2007 scheduling order plaintiff's opposition to defendants' motion was to be filed not later than June 28, 2007 and has not been filed to date.

On a motion for summary judgment the question is whether any genuine issue of material fact remains following the submission by

both parties of affidavits and other supporting materials and, if not, whether the moving party is entitled to judgment as a matter of law. Rule 56, Federal Rules of Civil Procedure.

Supporting and opposing affidavits shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated therein. An adverse party may not rest upon the mere allegations or denials of the pleading, but the response must set forth specific facts showing there is a genuine issue for trial. Celotex Corp. v. Catrett, 477 U.S. 317 (1986).

There is no issue for trial unless there is sufficient evidence favoring the non-moving party that a jury could return a verdict for that party. If the evidence is merely colorable or is not significantly probative, summary judgment may be granted. Anderson v. Liberty Lobby, Inc., 477 U.S. 242 (1986).

FACTS

For purposes of deciding defendants' motion for summary judgment the Court finds that there is no genuine dispute as to any of the following material facts.

Plaintiff Jessie Williams is an adult inmate at the Waupun Correctional Institution, Waupun, Wisconsin (WCI). Defendant

Jessica Henning is a Correctional Officer at WCI. Defendant Charlene Reitz (Nurse Sharline) is a nurse at WCI.

On June 14, 2006 at approximately 8:45 a.m. plaintiff informed Henning that he needed his inhaler from the medication cart. He claimed to have had an asthma attack but did not appear to be in any distress. Henning checked the medication cart and found that plaintiff's prescribed inhaler was a Flovent inhaler which was to be taken twice a day. Plaintiff had refused the inhaler when Henning offered it to him earlier that morning.

Henning contacted Health Services to check to see if she should give plaintiff the inhaler. Henning was told that she should not give plaintiff the Flovent inhaler because it was not a rescue inhaler. She was also advised that plaintiff had a rescue inhaler in his cell. Henning provided this information to plaintiff who was upset and yelling. Plaintiff did not tell Henning that he did not have a rescue inhaler in his cell. Henning did not observe that plaintiff was in any physical distress.

A short time later Henning saw plaintiff on the floor and informed Captain Schuler. Captain Schuler made a sharp noise and plaintiff moved. Captain Schuler and Henning concluded that plaintiff was pretending to have fainted. Plaintiff asserts in his complaint that he saw the nurse, defendant Charlene Reitz, around 1:00 p.m. that day.

MEMORANDUM

Plaintiff claims that defendants violated his Eighth Amendment rights by being deliberately indifferent to his serious medical need. In opposing defendants' motion for summary judgment plaintiff cannot rest on the mere allegations of his pleadings but must submit evidence that there is a genuine issue of material fact for trial. Plaintiff has failed to submit any affidavit or other evidence which contradicts the affidavits submitted by the defendants. There is no genuine issue of material fact, and this case can be decided on summary judgment as a matter of law. As a matter of law defendants did not violate plaintiff's Eighth Amendment rights. Accordingly, defendants' motion for summary judgment will be granted.

The Eighth Amendment prohibits deliberate indifference to an inmate's serious medical need. Estelle v. Gamble, 429 U.S. 97 (1976). Deliberate indifference is a subjective standard which requires that the defendants knew that plaintiff was at risk of serious harm and acted with callous disregard to this risk. An official must both be aware of the facts from which the inference could be drawn that a substantial risk of serious harm exists and must also draw the inference. Farmer v. Brennan, 511 U.S. 825, 834 (1994).

Although plaintiff alleges in his complaint that he had a serious asthma attack and lost consciousness he has provided no

evidence that this event occurred. Defendant Henning has submitted an affidavit that plaintiff was in no distress on June 14, 2006 but that she contacted Health Services to determine whether she should provide plaintiff his Flovent inhaler. She was advised that plaintiff had a rescue inhaler in his cell to use if he was having an asthma attack. Henning also asserts that she and Captain Schuler determined that plaintiff had not fainted but was pretending. Plaintiff saw defendant Nurse Charlene Reitz that same day.

There is no evidence that plaintiff had a serious medical need on June 14, 2006 nor that defendants Henning and Reitz were deliberately indifferent to it. Accordingly, as a matter of law defendants are entitled to judgment in their favor on plaintiff's Eighth Amendment claim.

Plaintiff is advised that in any future proceedings in this matter he must offer argument not cumulative of that already provided to undermine this Court's conclusion that his claim must be dismissed. See Newlin v. Helman, 123 F.3d 429, 433 (7th Cir. 1997).

ORDER

IT IS ORDERED that defendants' motion for summary judgment is GRANTED.

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IT IS FURTHER ORDERED that judgment be entered in favor of defendants against plaintiff DISMISSING his complaint and all claims contained therein with prejudice and costs.

Entered this 6th Day of July, 2007.

BY THE COURT:

/s/

JOHN C. SHABAZ
District Judge