

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

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SHAHEED TAALIB'DIN MADYUN,

Plaintiff,

v.

CAROL COOK,

Defendant.

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OPINION AND ORDER

08-cv-30-bbc

Plaintiff Shaheed Madyun is proceeding on two claims against defendant Carol Cook: (1) she put “medicine or poison” in his food in September 2001 in violation of his Eighth Amendment rights; and (2) she put handcuffs on him so tightly in March 2002 that it caused his wrists to bleed and then refused to seek medical treatment for him in violation of his Eighth Amendment rights and his right to have access to the courts (plaintiff’s theory is that defendant took these actions in retaliation for his filing of grievances). Defendant has moved for summary judgment on both claims on the ground that plaintiff failed to exhaust his administrative remedies as required by 42 U.S.C. § 1997e(a).

Defendant says plaintiff failed to file any timely grievances with respect to either of his claims. It is not an easy task to identify plaintiff’s arguments in response to defendant’s

motion because he has filed a joint brief that purports to relate to each of the six motions for summary judgment that are pending in each of his six different cases. (These cases were originally filed under one complaint, but I was required to sever them in accordance with Fed. R. Civ. P. 20. George v. Smith, 507 F.3d 605 (7th Cir. 2007).) Recognizing belatedly that his materials were cumbersome and disorganized, plaintiff has filed motions to delay a ruling on summary judgment, dkt. #39 and to allow him to rewrite his brief, dkt. #42. Plaintiff filed identical motions in Madyun v. Kuster, 08-cv-32-bbc. The motions plaintiff filed in this case will be denied for the reasons explained in the May 21 opinion and order in Case No. 08-cv-32-bbc. (Plaintiff has filed a third motion seeking consideration of additional exhibits. Dkt. #40. That motion will be granted for the reasons I granted the same motion in Case No. 08-cv-32-bbc.) Also, defendant's motion to strike an additional brief plaintiff filed will be granted. Although this court gave plaintiff leave to submit supplemental exhaustion materials, this was not an invitation for plaintiff to submit another voluminous and unhelpful brief.

I conclude that defendant's motion must be granted in part and denied in part. For the reasons discussed below, it will be granted with respect to plaintiff's claim that defendant poisoned him but denied with respect to his claim that she hurt him by putting handcuffs on him too tightly.

The following facts are drawn from the parties' affidavits and exhibits. In addition,

I have taken judicial notice of orders entered in the public record of a case plaintiff filed in the Eastern District of Wisconsin, and subsequently appealed to the Court of Appeals for the Seventh Circuit, Madyun v. Lemon, 04-cv-343-WCG.

UNDISPUTED FACTS

In March 2002, plaintiff received a conduct report for falsely alleging that defendant had fractured his wrists by improperly placing handcuffs on him. A hearing officer found plaintiff guilty and imposed discipline of eight days in adjustment segregation and 180 days in program segregation. Plaintiff appealed to the warden, who affirmed the decision in June 2002.

Sometime in 2004, plaintiff filed a civil action in the Eastern District of Wisconsin, Madyun v. Lemon, 04-cv-343-WCG, in which he alleged that defendant put poison in his food. In an order entered in that case on March 30, 2005, Judge Griesbach held that plaintiff had not exhausted his administrative remedies with respect to that claim, 1:04-cv-343-WCG, dkt. #72 (March 30, 2005), aff'd sub nom, Madyun v. Cook, 204 Fed. Appx. 547, 548 2006 WL 2053466, 1 (7th Cir. 2006).

In 2006, plaintiff filed a grievance in which he complained that, in 2002, “officers in the ‘W’ building . . . had placed . . . chemical poison [in his food]” that caused him “much stomach pain.” The inmate complaint examiner rejected the grievance as untimely and

because it contained multiple issues. Plaintiff appealed the decision to the warden, who upheld the rejection as untimely.

OPINION

Under 42 U.S.C. § 1997e(a), a prisoner must exhaust all available administrative remedies before filing a lawsuit in federal court. This means that the prisoner must "properly take each step within the administrative process," Pozo v. McCaughtry, 286 F.3d 1022, 1025 (7th Cir. 2002), which includes following instructions for filing the initial grievance, Cannon v. Washington, 418 F.3d 714, 718 (7th Cir. 2005), as well as filing all necessary appeals, Burrell v. Powers, 431 F.3d 282, 284-85 (7th Cir. 2005), "in the place, and at the time, the prison's administrative rules require." Pozo, 286 F.3d at 1025. Thus, if prison officials reject a grievance for failing to comply with a procedural requirement and they decline to address the merits of the grievance, the general rule is that the prisoner has not exhausted his administrative remedies and any lawsuit the prisoner later files must be dismissed. Dixon v. Page, 291 F.3d 485 (7th Cir. 2002); Lewis v. Washington, 300 F.3d 829 (7th Cir. 2002); Pozo, 286 F.3d at 1025. Defendants have the burden to prove that plaintiff failed to comply with § 1997e(a). Jones v. Bock, – U.S. –, 127 S. Ct. 910 (2007).

I conclude that defendant has met its burden with respect to one of plaintiff's claims but not the other. Plaintiff did not properly exhaust his administrative remedies with respect

to his claim that defendant “poisoned” him. To begin with, I may not consider plaintiff’s allegations that he exhausted this claim in 2002. In Madyun v. Lemon, 04-cv-343-WCG (E.D. Wis.), plaintiff raised the claim that defendant poisoned him. In an order dated March 30, 2005, Judge Griesbach dismissed the same claim for plaintiff’s failure to exhaust his administrative remedies, dkt. #72, at 11-12, and the court of appeals affirmed that decision. Madyun v. Cook, 204 Fed. Appx. 547, 548 2006 WL 2053466 (7th Cir. 2006). Those determinations cannot be relitigated in this case, even if plaintiff believes the court made a mistake. Meyer v. Rigdon, 36 F.3d 1375, 1379 (7th Cir. 1994) (issue preclusion applies when same party lost on same issue in previous case).

In one of his multiple supplements to his brief, dkt. #26, plaintiff argues that Judge Griesbach’s decision has no effect on this case because the case in the Eastern District was dismissed “because [plaintiff] misidentified his exhibits.” This a brazen misrepresentation of Judge Griesbach’s decision, in which the judge painstakingly discussed each of the documents that plaintiff submitted to show administrative exhaustion. At the conclusion of this discussion, the court stated that plaintiff “fails to place in dispute defendants’ evidence that he failed to properly exhaust his administrative remedies.” Madyun v. Lemon, No. 04-C-343 (E.D. Wis. Mar. 30, 2005). Thus, the only question regarding his claim of poisoning is whether he exhausted his administrative remedies sometime after he filed Case No. 04-C-343 in 2004. I conclude he did not.

Plaintiff filed one grievance in 2006 that touched on his claim that defendant poisoned him, but that grievance was rejected under Wis. Admin. Code § DOC 310.11(5)(d) because he submitted the grievance more than 14 days after the incident giving rise to the grievance. The Supreme Court has held that when a prisoner's grievance is rejected for failing to meet an administrative deadline, the prisoner has not exhausted his administrative remedies as required by 42 U.S.C. § 1997e(a). Woodford v. Ngo, – U.S. –, 126 S. Ct. 2378 (2006); see also Pozo v. McCaughtry, 286 F.3d 1022, 1025 (7th Cir. 2002). Plaintiff argues that it is not his fault because defendants prevented him completing the grievance process in 2002, but this is just another attempt to avoid Judge Griesbach's ruling.

Plaintiff's only other argument is that exhaustion is not required for his claim because he is seeking money damages, a form of relief not provided through the grievance process. Unfortunately for plaintiff, this argument was rejected long ago by the Supreme Court. Booth v. Churner, 532 U.S. 731 (2001) (prisoners must complete grievance process even when it does not provide money damages). Because defendant has shown that plaintiff failed to exhaust his administrative remedies with respect to his claim that defendant poisoned him, the complaint must be dismissed as to that claim.

Plaintiff has exhausted all available administrative remedies with respect to his claim that defendant hurt him by putting handcuffs on him too tightly. When plaintiff received a conduct report for making this allegation, he appealed the decision to the warden, as he

was required to do under Wis. Admin. Code § DOC 303.76(7). This is all the regulations permitted him to do.

Under § DOC 310.08(2)(a), plaintiff was not permitted to file any grievances on “any issue related to a conduct report” until he was finished with the disciplinary process. Defendant appears to believe that plaintiff should have filed a grievance after he completed the disciplinary process, but she fails to acknowledge § DOC 310.08(3), which says that “an inmate may use [the grievance system] to challenge only the *procedure* used in . . . the disciplinary process” (emphasis added). A grievance alleging that defendant had hurt him with the handcuffs would not be a challenge to procedure; it would be an attack on the substance of the disciplinary decision. Obviously, no grievance examiner could find in favor of plaintiff on his grievance without setting aside the decision finding that plaintiff had lied about the incident. Thus, once plaintiff finished the disciplinary process, he had no more available administrative remedies, which means that he has satisfied the requirements of 42 U.S.C. § 1997e(a).

Defendant’s motion does not address the question whether plaintiff exhausted his administrative remedies with respect to his claims that defendant failed to provide him with medical care and that she took these actions in retaliation for his filing of grievances. Accordingly, I do not consider those questions in this opinion.

ORDER

IT IS ORDERED that

1. Plaintiff Shaheed Madyun's motions to delay ruling on summary judgment, dkt. #39, and to allow him to refile his brief, dkt. #42, are DENIED.
2. Plaintiff's motion to submit additional exhibits, dkt. #40, is GRANTED.
3. Defendant Carol Cook's motion to strike plaintiff's brief dated April 17, 2008, dkt. #38, is GRANTED.
4. The motion for summary judgment filed by defendant Carol Cook, dkt. #9, is GRANTED with respect to plaintiff's claim that defendant poisoned him in 2002. Plaintiff's complaint is DISMISSED without prejudice for his failure to exhaust his administrative remedies with respect to that claim. Defendant's motion is DENIED with respect to plaintiff's claim that she hurt him by putting handcuffs on him too tightly.

Entered this 23rd day of May, 2008.

BY THE COURT:

/s/

BARBARA B. CRABB
District Judge