IN THE UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF WISCONSIN

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MICHAEL E. WILLIAMS,

OPINION and ORDER

Plaintiff,

10-cv-433-bbc

v.

GREGORY GRAMS, JANEL NICKEL,
DYLON RADTKE, LORI ALSUM,
STEVE HELGERSON, DR. DALIA SULIENE,
MARY LEISER, and PAUL KETARKUS,

Defendants.

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Plaintiff Michael Williams, a prisoner, has filed a proposed complaint under 42 U.S.C. § 1983 in which he alleges that defendants exposed him to excessive heat, failed to prevent him from slipping on a wet floor and failed to treat a back and neck injury he sustained from the fall, in violation of the Eighth Amendment. He has made an initial partial payment in accordance with 28 U.S.C. § 1915. Because he is a prisoner, I must screen his complaint to determine whether it states a claim upon which relief may be granted. I conclude that plaintiff may proceed on this claims that defendants Dalia Suliene, Lori Alsum, Steve Helgerson and Paul Ketarkus failed to provide adequate treatment for

plaintiff's back and neck pain. Plaintiff's remaining claims must be dismissed.

In addressing any pro se litigant's complaint, the court must read the allegations of the complaint generously. Haines v. Kerner, 404 U.S. 519, 521 (1972). In his complaint, plaintiff fairly alleges the following facts.

ALLEGATIONS OF FACT

Plaintiff Michael Williams is incarcerated at the Columbia Correctional Institution in Portage, Wisconsin. In June 2009 he was placed in "DS2," a type of disciplinary segregation. When he asked a correctional officer for his fan, the officer told him that "oscillating fans" were no longer allowed at the prison. (Although plaintiff does not say so explicitly, I assume that he owned an oscillating fan.)

Plaintiff is 54 years old and suffers from diabetes, a disease that impairs his ability to adjust to hot weather. Between June 12, 2009 and June 22, 2009, the prison was under a "heat advisory" and the heat index reached 95 degrees.

On June 19, plaintiff wrote to defendant Janel Nickel, the security director, and asked for his fan. He complained that it was "90 degrees outside and what makes matters wors[e] [is] the windows in the cell that I was in would not open." In addition, he said that the floors were wet and he was "sweating up a storm." Defendant Nickel did not respond, but defendant Dylon Radtke, the administrative captain, told plaintiff that his request for a fan

was denied.

On August 9, 2009, the prison was placed under another heat advisory, requiring all "institutional movement" to be canceled. The heat index again reached 95 degrees. When plaintiff got off his bunk to get some water, he slipped on the floor, which was wet because of the hot and humid conditions, and he injured his neck and back.

Plaintiff's cell does not include a medical alert button, so he had to wait until a correctional officer walked by to receive medical attention. The officer helped plaintiff walk to see the nurse, defendant Steve Helgerson. Plaintiff told Helgerson that he "was having sever[e] pain in [his] back and neck area." In particular, he said that his "head had snapped backwards from the fall," his "head felt as if it was unbalanced on [his] shoulders and neck," he "had sharp pains in both sides of [his] neck" and he "had pain in [his] lower and upper parts of [his] back." Helgerson "acted like he really didn't believe what [plaintiff] was telling him," but he prescribed an ice bag four times a day, Tylenol and rest and charged plaintiff a co-payment of $7.50. Plaintiff was still in "extreme pain" when he returned to his cell.

On August 10, 2009 a doctor ordered C-spine x-rays and concluded that plaintiff had "age appropriate degenerative change in the cervical spine with no acute process."

On August 16, 2009, plaintiff filed a grievance "about the ventilation and air quality in DS2 Segregation," but defendant Mary Leiser, the complaint examiner, rejected the

complaint on procedural grounds. Plaintiff filed two additional grievances on August 18, one about inadequate ventilation and the another one about his back and neck injury. Leiser returned the complaint to plaintiff, directing him to contact defendant Lori Alsum (the health services manager), defendant Radtke and the unit sergeant.

Plaintiff wrote to Alsum, Radtke and the unit sergeant, but only Radtke responded. Radtke stated that the "current Ventilation meets appropriate standards and is reviewed by Maintenance on a regular basis."

On August 20, plaintiff submitted a health services request in which he complained that the Tylenol was not helping his neck and back pain. "Health services staff" told plaintiff to "wait for sick call," but he was never seen. He sent another request on August 21. He did not receive a response until August 25, when a nurse stated incorrectly that plaintiff had been scheduled for an appointment on August 21 but refused to be seen.

On August 28, plaintiff complained to defendant Alsum about his neck and back pain and asked to see someone. Defendant Helgerson responded, telling plaintiff that he had an appointment scheduled in "approximately 3-4 weeks."

The same day plaintiff filed another grievance about inadequate ventilation. The complaint examiner dismissed the complaint, stating that "[i]t is likely that condensation takes place when hot and humid weather conditions come into contact with cooler cement cell floors. It is during these times that inmates should take precautions to minimize the risk

of injury."

On September 8, plaintiff wrote to defendant Dalia Suliene, a doctor at the prison. He asked to be seen by a specialist for neck and back pain because the Tylenol was not helping. On September 18, defendant Suliene prescribed methocarbamol and piroxicam for the pain. In addition, she ordered an extra mattress and pillow for plaintiff. However, defendant Paul Ketarkus, a nurse and member of the "special needs committee" rescinded that order.

On October 2, plaintiff asked defendant Suliene for a lower bunk because he was scheduled to be released into general population soon. Plaintiff received a response stating, "[s]ick call appointments co-pay," signed by a nurse. On October 11, plaintiff made the same request to Suliene. A nurse responded, "no order issued by MD."

On February 12, 2010, plaintiff wrote defendant Gregory Grams, the warden, complaining that he had been in pain for seven months and had not received adequate medical treatment. Grams instructed plaintiff to write defendant Alsum. Plaintiff did so, but received no answer.

On February 24, plaintiff wrote Grams again. Grams said that his office "has no authority to request medical appointments for you" and he instructed plaintiff to contact the Bureau of Health Services.

OPINION

I understand plaintiff to be contending that defendants violated his rights under the Eighth Amendment in three ways: (1) exposing him to extreme heat; (2) failing to prevent his neck and back injury; and (3) failing to treat his neck and back injury.

A. Extreme Heat

Prisoners have a right under the Eighth Amendment to be free from extreme hot and cold temperatures. Shelby County Jail Inmates v. Westlake, 798 F.2d 1085, 1087 (7th Cir. 1986). The same Eighth Amendment standard applies to cell temperatures as to other conditions of confinement claims: whether the temperatures subject the inmate to a substantial risk of serious harm. Murphy v. Walker, 51 F.3d 714 (7th Cir. 1995). In assessing whether this standard has been satisfied, a court should consider the temperature's severity, its duration, whether the inmate has alternative means to protect himself from the extreme temperatures, the adequacy of these alternatives and whether the inmate must endure other uncomfortable conditions apart from the severe temperature. Dixon v. Godinez, 114 F.3d 640, 644 (7th Cir. 1997).

In this case, plaintiff contends that he was entitled to a fan because the prison was under a "heat advisory" for a 10-day period and the temperature reached as high as 95 degrees during that time. Plaintiff's frustration is understandable. From his perspective,

prison officials had no legitimate reason to prohibit him from using a fan to alleviate discomfort during hot weather. I agree with plaintiff that the rationale for prohibiting oscillating fans but allowing non-oscillating fans is not immediately apparent. However, the Eighth Amendment does not prohibit prison officials from engaging in all conduct that seems arbitrary to the prisoner; rather, it prohibits "extreme deprivations" only. Hudson v. McMillian, 503 U.S. 1, 8-9 (1992). The most that I can infer from plaintiff's allegations is that he was uncomfortable some of the time, but that is not enough. Rhodes v. Chapman, 452 U.S. 337, 347 (1981). See also Wilson v. Seiter, 893 F.2d 861, 864 (6th Cir.1990) (occasional exposure to 95 degree heat does not violate Eighth Amendment), vacated on other grounds, 501 U.S. 294 (1991).

Plaintiff alleges that he is more sensitive to the heat because he has diabetes, but that cannot carry the day for him for two reasons. First, despite his condition, he does not allege that he suffered any health consequences as a result of the heat. Knight v. Wiseman, 590 F.3d 458, 466 (7th Cir. 2009) (no claim under Eighth Amendment for deliberate indifference if prisoner not harmed). Second, Janel Nickel and Dylon Radtke are the only defendants who plaintiff alleges were aware that he did not have a fan, but he does not allege that he told them that he had diabetes or that they were otherwise aware of his condition. To hold a defendant liable for an Eighth Amendment violation, plaintiff must prove that the defendant knew about the conditions that created the substantial risk of harm. Farmer v.

Brennan, 511 U.S. 825 (1994).

Plaintiff includes an allegation in his complaint that prison staff were misapplying the rules regarding fans. However, even if this is true, it is irrelevant because a misinterpretation of a prison rule cannot provide the basis for a federal lawsuit. Guajardo-Palma v. Martinson, No. 10-1726, — F.3d —, 2010 WL 3619782, *5 (7th Cir. Sept. 20, 2010) ("[A] violation of state law is not a ground for a federal civil rights suit.")

B. Failure to Prevent Back and Neck Injury

The next question is whether plaintiff may proceed against any of the defendants for failing to prevent the accident that caused his back and neck injury. Again, the standard is whether any defendant was aware of a substantial risk that plaintiff would be seriously harmed and failed to take reasonable measures to prevent the harm from occurring. Fisher v. Lovejoy, 414 F.3d 659, 662 (7th Cir. 2005).

Plaintiff alleges that he complained to defendants Nickel and Radtke about the wet floors caused by the heat, but he fell after they failed to take any action. This claim has multiple potential problems.

First, plaintiff complained to Nickel and Radtke in June 2009, but he did not fall at that time. Rather, he says he fell on another hot and humid day in August 2009. Because plaintiff does not allege that his accident was preceded by a long hot spell like the one in

June, it may be too tenuous to infer that Radtke or Nickel would have been aware that plaintiff's cell floor was wet again.

Even if I assume that one of the defendants knew that plaintiff's floor might be wet, this does not mean that they were aware of a "substantial" risk of "serious" harm. Courts have held uniformly that a wet floor does not give rise to an Eighth Amendment claim. Reynolds v. Powell, 370 F.3d 1028, 1031 (10th Cir. 2004) ("[S]lippery floors constitute a daily risk faced by members of the public at large. . . . [T]here is nothing special or unique about plaintiff's situation that will permit him to constitutionalize what is otherwise only a state-law tort claim.") (internal quotations omitted); LeMaire v. Maass, 12 F.3d 1444, 1457 (9th Cir. 1993) ("[S]lippery prison floors . . . do not state even an arguable claim for cruel and unusual punishment."); Henderson v. Brown, 2010 WL 3861056, *4 (N.D. Ill. 2010) ("Wet and slippery floors . . . do not implicate the Constitution."); Simmons v. Schriro, 2010 WL 3238943, 2 (S.D.N.Y. 2010) ("It is well established that a slippery floor does not pose a substantial risk of serious harm."); Pippins v. Adams County Jail , 851 F. Supp. 1228, 1233 (C.D. Ill. 1994) ("[T]he lack of slip-resistant material on the floor does not approach a deliberate exposure to an unreasonable risk of harm."); Robinson v. Cuyler, 511 F. Supp. 161, 163 (D.C. Pa. 1981) ("A slippery kitchen floor does not inflict cruel and unusual punishment."). Accord Samuel v. Baucum, 2006 WL 2642178, *6 (W.D. Ark. 2006); Green v. Rushton, 2006 WL 2564396, *4 (D.S.C. 2006); Denz v. Clearfield Co., 712 F.

Supp. 65, 66 (W.D. Pa.1989); Mitchell v. West Virginia, 554 F. Supp. 1215, 1216-17 (N.D.W. Va.1983). See also Snipes v. DeTella, 95 F.3d 586, 592 (7th Cir. 1996) ("an inch or two" of accumulated water in the shower not "an excessive risk to inmate health or safety").

Although these courts acknowledge that wet floors create a risk of a slip and fall, officials may assume that prisoners will exercise caution on their own, particularly in a case like this one involving the plaintiff's own floor. Further, it is the rare occasion in which a fall on a wet floor results in more than temporary momentary discomfort and embarrassment. Thus, failing to address a wet floor may be negligence, but it is not cruel and unusual punishment.

C. Failure to Treat Back and Neck Injury

Plaintiff's final claim is that various defendants have failed to provide him treatment for his back and neck pain. A prison official may violate a prisoner's right to medical care if the official is "deliberately indifferent" to a "serious medical need." Estelle v. Gamble, 429 U.S. 97, 104-05 (1976). A "serious medical need" may be a condition that a doctor has recognized as needing treatment or one for which the necessity of treatment would be obvious to a lay person. Johnson v. Snyder, 444 F.3d 579, 584-85 (7th Cir. 2006). The condition does not have to be life threatening. Id. A medical need may be serious if it

"significantly affects an individual's daily activities," Chance v. Armstrong, 143 F.3d 698, 702 (2d Cir. 1998), if it causes significant pain, Cooper v. Casey, 97 F.3d 914, 916-17 (7th Cir. 1996), or if it otherwise subjects the prisoner to a substantial risk of serious harm, Farmer v. Brennan, 511 U.S. 825 (1994). "Deliberate indifference" means that the officials are aware that the prisoner needs medical treatment, but are disregarding the risk by failing to take reasonable measures. Forbes v. Edgar, 112 F.3d 262, 266 (7th Cir. 1997).

At this stage, plaintiff's allegations of pain are sufficient to show that he has a serious medical need. Cooper, 97 F.3d at 916-17. The question is whether he has alleged that defendants are consciously disregarding his health.

Plaintiff alleges that several health care providers at the prison disregarded his complaints of pain by failing to acknowledge its severity or ignoring it altogether. That is sufficient to state a claim upon which relief may be granted. Accordingly, I will allow plaintiff to proceed against defendants Suliene, Helgerson, Alsum and Ketarkus.

At summary judgment or trial, it will not be enough for plaintiff to show that he disagrees with defendants' conclusions about the appropriate treatment, Norfleet v. Webster, 439 F.3d 392, 396 (7th Cir. 2006), or even that defendants could be providing better treatment, Lee v. Young, 533 F.3d 505, 511-12 (7th Cir. 2008). Rather, plaintiff will have to show that any medical judgment of defendants was "so blatantly inappropriate as to evidence intentional mistreatment likely to seriously aggravate" his condition. Snipes v.

DeTella, 95 F.3d 586, 592 (7th Cir. 1996) (internal quotations omitted).

Plaintiff alleges that he complained to defendant Grams (the warden) and defendant Leiser (a complaint examiner), but they directed plaintiff to health care staff. Under the law of this circuit, nonmedical prison staff are entitled to defer to the judgment of medical professionals. Berry v. Peterman, 604 F.3d 435, 440-41 (7th Cir. 2010); Hayes v. Snyder, 546 F.3d 516, 526-28 (7th Cir. 2008).

ORDER

IT IS ORDERED that

1. Plaintiff Michael Williams is GRANTED leave to proceed on his claims that defendants Dalia Suliene, Lori Alsum, Steve Helgerson and Paul Ketarkus failed to provide adequate treatment for his back and neck injury, in violation of the Eighth Amendment.

2. Plaintiff is DENIED leave to proceed on all other claims. The complaint is DISMISSED as to defendants Gregory Grams, Mary Leiser, Janel Nickel and Dylon Ratdke.

3. A strike will be recorded in accordance with 28 U.S.C. § 1915(g) and George v. Smith, 507 F.3d 605 (7th Cir. 2007).

4. For the remainder of this lawsuit, plaintiff must send defendants a copy of every paper or document that he files with the court. Once plaintiff learns the name of the lawyer who will be representing defendants, he should serve the lawyer directly rather than

defendants. The court will disregard documents plaintiff submits that do not show on the court's copy that he has sent a copy to defendants or to defendants' attorney.

5. Plaintiff should keep a copy of all documents for his own files. If he is unable to use a photocopy machine, he may send out identical handwritten or typed copies of documents.

6. Plaintiff is obligated to pay the unpaid balance of his filing fees in monthly payments as described in 28 U.S.C. § 1915(b)(2). The clerk of court is directed to send a letter to the warden of plaintiff's institution informing the warden of the obligation under Lucien v. DeTella, 141 F.3d 773 (7th Cir. 1998), to deduct payments from plaintiff's trust fund account until the filing fees have been paid in full.

7. Pursuant to an informal service agreement between the Wisconsin Department of Justice and this court, copies of plaintiff's complaint and this order are being sent today to the Attorney General for service on the defendants. Under the agreement, the Department of Justice will have 40 days from the date of the Notice of Electronic Filing of this order to answer or otherwise plead to plaintiff's complaint if it accepts service for

defendants.

Entered this 13th day of October, 2010.

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