

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

---

JEFFREY D. LEISER,

Plaintiff,

OPINION AND ORDER

v.

BELINDA SCHRUBBE, R.N., DR. CHARLES  
LARSON, M.D., DR. DEBBE LEMKE, M.D.,  
DR. PAUL SUMNICH, M.D., CYNTHIA  
THORPE, Nursing Coordinator, MARY  
JENSEN, R.N., SANDY JACKSON, R.N.,  
CAPTAIN CORE, SERGEANT VANDER-GALON,  
SR., SERGEANT BRISTOL, OFFICER GEASE and  
John and Jane Does,

11-cv-254-slc

Defendants.

---

This is a proposed civil action in which plaintiff Jeffrey D. Leiser alleges that defendant prison employees failed to provide him medical treatment for severe pain in his neck and back. Leiser asks for leave to proceed under the *in forma pauperis* statute, 28 U.S.C. § 1915. He has made the initial partial payment (\$69.77) of the filing fee required of him under § 1915(b)(1).

The next step to determine whether Leiser's proposed action is: (1) frivolous or malicious, (2) fails to state a claim on which relief may be granted, or (3) seeks money damages from a defendant who is immune from such relief. 28 U.S.C. § 1915(e)(2). Because Leiser meets this step as to some defendants, he will be allowed to proceed and the state required to respond.

ALLEGATIONS OF FACT

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, Leiser alleges, and the court assumes for purposes of this screening order, the following facts.

- Plaintiff Jeffrey Leiser is a prisoner at the Stanley Correctional Institution, located in Stanley, Wisconsin. He previously was incarcerated at the Waupun Correctional Institution (WCI).
- Defendants Charles Larson, Debbe Lemke and Paul Sumnicht were doctors at WCI. Defendants Mark Jensen and Sandy Jackson were nurses. Defendant Belinda Schrubbe is the health services unit manager and defendant Cynthia Thorpe is the nursing coordinator. Defendants Vander-Galon, Sr., Bristol, Core and Gease are employed as correctional officers.
- From 1993 to 2002, Leiser had a serious medical problem with his lumbar spine, for which he had two spinal fusions.
- In October 2005, while incarcerated at WCI, Leiser developed a constant pinching, shooting pain in the "Thoracic and Cervical and Left Shoulder."
- An October 18, 2005 MRI report showed "a small disk osteophy with right incoverable spurring resulting in mild central canal and right neuroforminal narrowing." This report also showed that Leiser had disk bulges in his thoracic spine. These bulging disks are the cause of Leiser's pain.
- Dr. Larson failed to treat Leiser's severe pain. Defendant Lemke took Leiser off his pain medication, which caused him to suffer in needless pain.
- Dr. Sumnicht failed to treat Leiser's pain and said the October 2005 report showed nothing wrong even when it showed bulging thoracic disks.
- On January 21, 2010, Leiser had a second MRI, which showed cervical and thoracic disk herniation.
- Defendant Schrubbe refused to do anything for Leiser to help him get medical treatment.
- In October 2005 and on May 17, 2010, Nurse Jensen refused to treat Leiser's pain.
- On April 10, 2010, Nurse Jackson refused to see Leiser for his pain and his breathing issues.
- On October 15, 2006, defendant Vander-Galon refused to get Leiser his prescription medication. That same day defendant Bristol refused to give him his medication. Leiser began having withdrawal symptoms from not having his medication.

- At 11:30 p.m. on October 16, 2006, Leiser was given his medication.
- Defendant Gease took his “Medically Approved Special Needs Permission Slips” and he had to write for new ones.
- Defendant core failed to properly supervise the other correctional officers.

## OPINION

The Eighth Amendment prohibits prison officials from showing deliberate indifference to prisoners’ serious medical needs or suffering. *Estelle v. Gamble*, 429 U.S. 97, 103 (1976). To state a deliberate indifference claim, a plaintiff must allege facts from which it may be inferred that he had a serious medical need and that prison officials were deliberately indifferent to that need. *Gutierrez v. Peters*, 111 F.3d 1364, 1369 (7th Cir. 1997). Here, Leiser claims that defendants have denied him treatment for pain in his back and neck.

“Serious medical needs” include (1) conditions that are life-threatening or that carry risk of permanent serious impairment if left untreated, (2) those in which the deliberately indifferent withholding of medical care results in needless pain and suffering, or (3) conditions that have been “diagnosed by a physician as mandating treatment.” *Gutierrez*, 111 F.3d at 1371-73. A prison official has acted with deliberate indifference when the official “knew of a substantial risk of harm to the inmate and acted or failed to act in disregard of that risk.” *Norfleet v. Webster*, 439 F.3d 392, 396 (7th Cir. 2006) (citing *Walker v. Benjamin*, 293 F.3d 1030, 1037 (7th Cir. 2002)).

Leiser alleges that he has suffered severe pain in his neck and back since 2005. These allegations support an inference that he had a serious medical need. An inference must be made

at least for purposes of this preliminary screening, that defendants Larson, Lemke, Sumnicht, Schrubbe, Jensen and Jackson knew of his severe pain and did not treat it. Also his allegation that defendants Vander-Galon and Bristol denied him prescription pain medication, causing him to withdraw from that medication, raises an inference that these two defendants were deliberately indifferent to his serious medical need. Leiser will be allowed to proceed on his Eighth Amendment claims against these defendants.

The court cannot, however, infer that the remaining named defendants—namely Cynthia Thorpe, Captain Core, Officer Gease and the Doe defendants—knew of Leiser’s condition and could have provided treatment for it. Leiser has alleged no actions by Thorpe or the Does. Although he alleges that defendant Core failed to supervise the officers properly, he has not alleged that this failure was the cause of any alleged constitutional violation or that Core was personally involved in such violation. Finally, Leiser’s allegation that defendant Gease took his “Medically Approved Special Needs Permission Slips” does not rise to the level of deliberate indifference to his serious medical need because he does not allege that he was denied any special needs.

Although Leiser’s allegations pass muster under the court’s lower standard for screening as to the other defendants, he should be aware that to be successful on his claim he will have to prove defendants’ deliberate indifference, which is a high standard. Inadvertent error, negligence or gross negligence are insufficient grounds for invoking the Eighth Amendment. *Vance v. Peters*, 97 F.3d 987, 992 (7th Cir. 1996). In particular, it will be Leiser’s burden to prove that: (1) his medical conditions constituted serious medical needs, which could require expert testimony rebutting medical evidence to the contrary; and (2) the defendants knew his condition was

serious, that it could be relieved by additional medical treatment and that they nonetheless deliberately ignored his need for this treatment.

## ORDER

IT IS ORDERED that:

- (1) Plaintiff Jeffrey D. Leiser's request to proceed is GRANTED with respect to his Eighth Amendment deliberate indifference claims against defendants Charles Larson, Debbe Lemke, Paul Sumnicht, Mark Jensen, Sandy Jackson, Belinda Schrubbe, Sergeant Vander-Galon, Sr., and Sergeant Bristol.
- (2) Plaintiff's request to proceed on his claims against defendants Cynthia Thorpe, Captain Core, Officer Gease and John and Jane Does is DENIED and these defendants are DISMISSED.
- (3) For the time being, plaintiff must send defendants a copy of every paper or document he files with the court. Once plaintiff has learned what lawyer will be representing defendants, he should serve the lawyer directly rather than defendants. The court will disregard any documents submitted by plaintiff unless plaintiff shows on the court's copy that he has sent a copy to defendants or to defendants' attorney.
- (4) Plaintiff should keep a copy of all documents for his own files. If plaintiff does not have access to a photocopy machine, he may send out identical handwritten or typed copies of his documents.
- (5) Plaintiff is obligated to pay the unpaid balance of his filing fee in monthly payments as described in 28 U.S.C. § 1915(b)(2). This court will notify the warden at his institution of that institution's obligation to deduct payments until the filing fee has been paid in full.
- (6) 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 26<sup>th</sup> day of July, 2011.

BY THE COURT:

/s/

STEPHEN L. CROCKER  
Magistrate Judge