

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

CORY M. WRIGHT,

Plaintiff,

v.

OPINION and ORDER

12-cv-58-wmc

OFFICER RUSSELL, OFFICER OLSON,
OFFICER WULFE, OFFICER BRODER,
OFFICER GOESER and SGT. M. LARSON,

Defendants.

Plaintiff Cory Wright, a prisoner at the Waupun Correctional Institution, submitted a proposed complaint under 42 U.S.C. § 1983 and seeks leave to proceed under the *in forma pauperis* statute, 28 U.S.C. § 1915. Having been found eligible for pauper status and made the initial partial payment of the filing fee required of him under the Prison Litigation Reform Act (“PLRA”), 28 U.S.C. § 1915(b)(1), the next step under the PLRA is for the court to screen the complaint and dismiss any portion that is frivolous, malicious, fails to state a claim on which relief may be granted, or seeks money damages from a defendant who is immune from such relief. 28 U.S.C. § 1915A(b). Because Wright's allegations do not articulate a plausible claim, his complaint will be dismissed in its entirety.

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,

Wright alleges, and the court assumes for purposes of this screening order, the following facts:

- Plaintiff Cory Wright is a prisoner at the Waupun Correctional Institution, where the defendants (Officer Russell, Officer Olson, Officer Wulfe, Officer Broder, Officer Goeser, and Sergeant M. Larson) are employed as corrections officers.
- On April 13, 2011, Wright was assigned to cell B-219, which was located in a segregation unit at WCI. While eating a bag of potato chips, Wright “was stuck with a staple [which] became lodged deep inside his gums and jammed between his teeth,” causing him “excruciating pain.” The metal staple was lodged so deep in his gums that he was unable to extract it. Wright does not provide any explanation about how this occurred, but he implies that the staple was in the bag of potato chips.
- Wright pushed the emergency call button in his segregation cell. He then told Officer Russell that he was “stuck in the gums, while eating potato chips,” that he could not remove the object and needed to see a nurse because he was “in serious pain[.]”
- Russell told Wright that it was not a medical emergency and that he should contact his range officer about the issue.
- Wright yelled out of his cell door in an attempt to contact his range officer or anyone else who could help. No one came. Wright pushed the emergency call button again and asked the inmate in the neighboring cell to do the same.
- A couple of minutes later, Officer Wulfe came to Wright's cell door. Wright explained “that he was eating potato chips and was stuck in his gums with something metal,” to which Wulfe responded by stating that “it’s not a medical emergency and you’re not dying.” Wulfe then walked away.
- At meal-bag pickup, Wright told Officer Goeser that “he was stuck with something while eating potato chips” and needed to see medical staff. Goeser told Wright that he would inform the segregation sergeant, defendant M. Larson, but neither Larson nor medical staff came to see Wright.
- Five minutes later, Wright spoke with Officer Olson (the “B-Range Officer”), who was distributing medication. Wright told Officer Olson that he was “in pain because of something being stuck in his gums.” Wright

asked if he could call a nurse. By this point, Wright “had tears in his eyes due to the pain.” Olson also did nothing.

- Later, Officer Broder came through passing out mail. Wright told Broder about the pain he was in and asked him to call the Health Services Unit. Broder told Wright that he would bring dental floss to see if Wright could remove the object. Broder neither returned with floss nor called the Health Services Unit.
- That night, Wright filled out a health services request. For the rest of the evening and overnight, Wright was in excruciating pain and his gums were swollen because the metal had not been removed.
- About 19 hours after the initial incident, Wright was seen by a nurse. She confirmed that there was something metal stuck inside Wright’s gums and attempted to remove it but could not.
- The nurse asked the dental office to send someone to the segregation nurse’s station. A dental assistant arrived and removed what appeared to be a straightened-out staple.

OPINION

The Eighth Amendment prohibits prison officials from acting with deliberate indifference to a prisoner’s serious medical needs or suffering. *Estelle v. Gamble*, 429 U.S. 97, 103 (1976). A prison official acts with deliberate indifference if he intentionally disregards a known, objectively serious medical condition that poses an excessive risk to an inmate’s health. *See Farmer v. Brennan*, 511 U.S. 825, 837 (1994). “Serious medical needs” include: (1) conditions that are life-threatening or that carry risk of permanent serious impairment if left untreated; (2) conditions causing needless pain and suffering; or (3) conditions that have been “diagnosed by a physician as mandating treatment.” *Gutierrez v. Peters*, 111 F.3d 1364, 1371-73 (7th Cir. 1997).

A delay in treatment may constitute deliberate indifference if the delay exacerbated the injury or unnecessarily prolonged an inmate's pain. *Estelle*, 429 U.S. at 104-05; *McGowan v. Hulick*, 612 F.3d 636, 640 (7th Cir. 2010) (“[T]he length of delay that is tolerable depends on the seriousness of the condition and the ease of providing treatment.”) (citations omitted). Even so, a defendant's liability under § 1983 must be based on that individual's personal involvement in the constitutional violation. *See Palmer v. Marion County*, 327 F.3d 588, 594 (7th Cir. 2003); *Gentry v. Duckworth*, 65 F.3d 555, 561 (7th Cir. 1995). “[A]n official meets the ‘personal involvement’ requirement when ‘she acts or fails to act with a deliberate or reckless disregard of plaintiff's constitutional rights, or if the conduct causing the constitutional deprivation occurs at her direction or with her knowledge and consent.” *Black v. Lane*, 22 F.3d 1395, 1401 (7th Cir. 1994) (quoting *Smith v. Rowe*, 761 F.2d 360, 369 (7th Cir. 1985)).

Taking all of Wright's allegations as true, he does not state a plausible violation of the Eighth Amendment. First, there are no alleged facts suggesting that defendant Larson was actually aware that Wright was in pain nor that Larson knew but intentionally disregarded Wright's need for medical care. Larson cannot be held liable for a constitutional violation on the basis of his supervisory status. *See, e.g., T.E. v. Grindle*, 599 F.3d 583, 590 (7th Cir. 2010) (“Because there is no theory of respondeat superior for constitutional torts, a plaintiff must plead that each Government-official defendant, through the official's own individual actions, has violated the Constitution.”) (quotation omitted). Therefore, the claim against defendant Larson fails for lack of personal involvement.

Given the questionable nature and severity of Wright's *professed* injury, biting on something metal while Wright was eating potato chips, Wright does not allege facts showing that he had an objectively serious medical condition that would have been obvious to a layperson. Instead, Wright himself alleges each of the officers that Wright spoke with on April 13, 2011 (defendants Russell, Wulfe, Goeser, Olson and Broder) concluded that Wright's dental pain was not a medical emergency and that he could wait for an appointment with HSU. Only with the benefit of hindsight does that conclusion appear even arguably unreasonable. Not only was the cause of Wright's claimed injury implausible, but Wright alleges no outward symptoms of pain (e.g., swelling, redness, bleeding, sweating, etc.) beyond tears in his eyes.

Notably, Wright did not submit a request for an appointment with HSU until the "night" of April 13, 2011. At 10:00 a.m. the next morning, Wright was seen by a nurse and treated by a dental hygienist, who removed the straightened out staple from Wright's gum. To the extent that Wright faults the defendants for delaying his access to treatment, he alleges neither facts showing that the delay caused his condition to worsen nor that his pain was prolonged unnecessarily. *Compare Grieveson v. Anderson*, 538 F.3d 763, 778-80 (7th Cir. 2008) (holding that security officers could be liable for delaying treatment for a painful broken nose by at least a day-and-a-half) with *Gutierrez*, 111 F.3d at 1374 (holding that dismissal for failure to state a claim was proper because six-day wait to see a doctor was not unreasonably long for infected cyst that was not severe).

In hindsight, Wright being seen sooner rather than later by medical staff would have been preferable, even advisable, but at the time -- locked in segregation, complaining

of a piece of metal stuck in his gum from eating chips -- Wright presented with something less than a serious medical need or suffering or so the guards could believe in good faith. Under the circumstances alleged, therefore, Wright does not demonstrate that he was denied medical care, or that care was delayed, with deliberate indifference.

ORDER

IT IS ORDERED that

1. Plaintiff Cory Wright's request to proceed is DENIED and his complaint is dismissed pursuant to 28 U.S.C. § 1915A(b) for failure to state a claim.
2. All pending motions are MOOT.
3. If he has not already done so, plaintiff must satisfy the unpaid balance of his filing fee in monthly installments as described in 28 U.S.C. § 1915(b)(2). The clerk of court is directed to send a letter to the state prison where plaintiff is in custody, advising the warden of his obligation to deduct payments from plaintiff's inmate trust fund account until the filing fee has been paid in full.

Entered this 24th day of September, 2013.

BY THE COURT:

/s/

WILLIAM M. CONLEY
District Judge