

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

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JAMES D. JENKINS,

Plaintiff,

v.

C/O II WIEGEL,

Defendant.  
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OPINION AND ORDER

13-cv-285-bbc

In this proposed civil action under 42 U.S.C. § 1983, plaintiff James Jenkins, a prisoner at the Wisconsin Secure Program Facility, contends that defendant C/O II Wiegel violated his rights under the Eighth Amendment by using excessive force against him and filing a false conduct report.

Plaintiff is proceeding under the in forma pauperis statute, 28 U.S.C. § 1915, and has made an initial partial payment. Because plaintiff is a prisoner, I am required by the 1996 Prison Litigation Reform Act to screen his complaint and dismiss any portion that is legally frivolous, malicious, fails to state a claim upon which relief may be granted or asks for money damages from a defendant who by law cannot be sued for money damages. 28 U.S.C. § 1915A. 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).

After reviewing the complaint, I conclude that plaintiff may proceed on his Eighth

Amendment claim for excessive force but not on his claim for the false conduct report.

In the complaint, plaintiff alleges the following facts.

#### ALLEGATIONS OF FACT

Plaintiff James Jenkins is a prisoner confined at the Wisconsin Secure Program Facility located in Boscobel, Wisconsin. Defendant Wiegel is a correctional officer employed at the Wisconsin Secure Program Facility.

On September 8, 2012, plaintiff was housed in segregation. Shortly after 8:00 a.m., defendant was delivering supplies to segregated prisoners. When he arrived at plaintiff's cell, defendant asked what supplies plaintiff needed and plaintiff replied that he needed a pen and a roll of toilet tissue. Defendant gave him the pen but not the tissue. Plaintiff told defendant that he had forgotten to give him the tissue and left his right hand on the cell door trap waiting for the tissue. Defendant then slammed plaintiff's hand in the metal trap and "kept pressure on the trap while plaintiff screamed in pain."

Defendant "would not notify the medical staff," so plaintiff used his medical call button and was soon escorted to the nurse's station. The nurse noted that plaintiff's pinky finger was cut and he had a "soft tissue injury, musculoskeletal pain [and] potential impaired movement." She ordered ice for two days and ibuprofen for the pain. Plaintiff "was in pain for weeks" and was unable "to properly use his right hand."

In an attempt to "downplay his misuse of force," defendant filed a fabricated conduct report charging plaintiff with making threats, disobeying an order and disrespect. Plaintiff

requested a full due process hearing and asked that the hearing officer review the camera footage from inside plaintiff's cell and in the vestibule. The hearing officer found plaintiff not guilty of making threats or disobeying orders but guilty of disrespect.

## DISCUSSION

To state a claim of excessive force against a prison official, a plaintiff must allege that the official applied force "maliciously and sadistically for the very purpose of causing harm," rather than "in a good faith effort to maintain or restore discipline." *Hudson v. McMillian*, 503 U.S. 1, 6-7 (1992) (quoting *Whitley v. Albers*, 475 U.S. 312, 320-21 (1986)). The factors relevant to this determination include such matters as why force was needed, how much force was used, the extent of the injury inflicted, whether the defendant perceived a threat to the safety of staff and prisoners and whether efforts were made to temper the severity of the force. *Whitley*, 475 U.S. at 321.

Plaintiff alleges that defendant slammed his hand in the cell trap door and continued applying pressure while plaintiff screamed in pain. Although plaintiff has not alleged that he sustained any substantial injuries, the Supreme Court has explained that an inmate subjected to gratuitous use of force "does not lose his ability to pursue an excessive force claim merely because he has the good fortune to escape without serious injury." *Wilkins v. Gaddy*, 559 U.S. 34, at 38 (2010) (citation omitted). The ultimate question is whether the "force was applied in a good-faith effort to maintain or restore discipline, or maliciously and sadistically to cause harm." *Hudson*, 503 U.S. at 6-7. If plaintiff's allegations are true, he

may be able to prove that defendant violated his constitutional rights by applying force for the sole purpose of harming him.

In several cases, courts have stated that “[e]ven if an officer’s use of force serves no good-faith disciplinary purpose, the force may be so ‘de minimis’ that it does not violate the Eighth Amendment.” Hendrickson v. Cooper, 589 F.3d 887, 890 (7th Cir. 2009) (citing Hudson, 503 U.S. at 10). Examples of such minor incidents that do not rise to the level of constitutional violations are things such as a “malevolent touch” or a “simple act of shoving.” Id. (citing Hudson, 503 at 10; DeWalt v. Carter, 224 F.3d 607, 619 (7th Cir.2000)). At this early stage of the case, I must draw an inference in plaintiff’s favor that defendant slammed the cell trap on plaintiff’s hand deliberately and held it there, which I am unwilling to conclude is de minimis force. Accordingly, I will allow plaintiff to proceed on his excessive force claim.

Plaintiff also alleges that defendant filed a false conduct report in order to downplay his misuse of force. However, as long as a prisoner’s disciplinary hearing provided procedural due process, an allegation that a prison officer offered false evidence or false reports in order to implicate the inmate in a disciplinary infraction does not state a claim for which relief can be granted. Hanrahan v. Lane, 747 F.2d 1137, 1141 (7th Cir. 1984).

#### ORDER

IT IS ORDERED that

1. Plaintiff James Jenkins is GRANTED leave to proceed on his claim that defendant

C/O II Wiegel used excessive force against plaintiff in violation of the Eighth Amendment.

2. Plaintiff is DENIED leave to proceed on his claim that defendant filed a false conduct report against plaintiff.

3. Under 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 defendant. 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 on behalf of defendant.

4. For the time being, plaintiff must send defendant a copy of every paper or document that he files with the court. Once plaintiff has learned what lawyer will be representing defendant, he should serve defendant's lawyer directly rather than defendant. The court will disregard any documents submitted by plaintiff unless plaintiff shows on the court's copy that he has sent a copy to defendant or to defendant's attorney.

5. 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.

6. Plaintiff is obligated to pay the balance of his unpaid filing fee 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 fee has been paid in full.

Entered this 20th day of June, 2013.

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