

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

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GABLE D. HALL,

Plaintiff,

OPINION & ORDER

v.

13-cv-385-wmc

DAVID MELBY,

Defendant.

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Pro se plaintiff Gable Hall has filed a proposed complaint under 42 U.S.C. § 1983 in which he contends that defendant Corrections Unit Supervisor David Melby acted with deliberate indifference to his medical needs in violation of the Eighth Amendment. Plaintiff has been granted leave to proceed *in forma pauperis* and has made an initial, partial payment in accordance with 28 U.S.C. § 1915(b)(1). Because plaintiff is incarcerated, the court must now screen his complaint to determine whether: the action is frivolous or malicious; fails to state a claim on which relief may be granted; or seeks monetary relief against a defendant who is immune from such relief. Having reviewed plaintiff's complaint, the court concludes that he may proceed on his claim that Melby violated his Eighth Amendment rights by behaving with deliberate indifference to plaintiff's serious medical needs.

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, plaintiff fairly alleges the following facts:

Plaintiff Gable Hall is an inmate at Columbia Correctional Institution ("CCI") and

defendant David Melby is the Corrections Unit Supervisor at CCI. Plaintiff has a history of conditions involving “chronic pain.” At every institution where he has resided, he has been given a “no floor,” “low bunk,” and “thick mattress” restriction by the medical staff.

On April 18, 2013, Supervisory Melby removed plaintiff from a DS-2 segregation unit to a DS-1 segregation unit because, accordingly to plaintiff, he “rightfully refuse[d] to double.” The DS-1 segregation unit had beds that were just 6½ inches off the ground; sleeping in those beds was in effect “just like sleeping [on] the floor.” Hall told Melby that he had a “no floor” restriction due to his medical conditions, but Melby removed him to DS-1 regardless.

Sleeping on the low bed in the DS-1 segregation unit made plaintiff’s left knee swell to twice its natural size. Sleeping inches from the floor also caused him to suffer “excruciating” back pain and “blinding sciatic nerve pain” in his right hip. These exacerbated conditions made walking painful. Even after learning about plaintiff’s medical restrictions, Melby took no action to address his severe pain.

Plaintiff requests an injunction moving him back to the DS-2 unit or, in the alternative, an injunction transferring him to a different prison with segregation units that have beds 2½ feet from the floor. Plaintiff is also seeking punitive damages of \$35,000, or \$100 for every day he is in a unit without a standard height bed.

## OPINION

Plaintiff contends that his Eighth Amendment rights were violated after Melby became aware of his serious medical needs and still made no effort to address them or otherwise alleviate his pain. 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 a jury may reasonably infer (1) that he had a serious medical need and (2) that prison officials were deliberately indifferent to that need. *See Gutierrez v. Peters*, 111 F.3d 1364, 1369 (7th Cir. 1997); *see also Board v. Farnham*, 394 F.3d 469, 479 (7th Cir. 2005) (deliberately depriving prisoner of an asthma inhaler can support an Eighth Amendment claim).

### **I. Serious Medical Need**

A "serious medical need" is one "that has been diagnosed by a physician as mandating treatment or one that is so obvious that even a lay person would easily recognize the necessity for a doctor's attention." *Gutierrez*, 111 F.3d at 1373 (quoting *Laaman v. Helgemoe*, 437 F. Supp. 269, 311 (D.N.H. 1977)). Delay in treating painful medical conditions, even if they are not life-threatening, can support a claim under the Eighth Amendment. *Id.* at 1371.

Taking Hall's allegations as true, the impact of low bedding on his chronic pain conditions has been recognized by previous penal institutions, given his past medical restrictions. Hall also alleges that sleeping on the ground or close to the ground exacerbates his chronic pain. Finally, Hall alleges that sleeping on the low bed in the DS-1 unit actually *did* worsen his chronic pain, causing severe swelling and making it extremely painful for him to walk. These allegations are sufficient to show that Hall had a serious medical need that required a standard height bed, at least at the screening stage.

## II. Deliberate Indifference

Hall must also allege facts showing that Melby acted with “deliberate indifference” toward his medical needs. Whether he does so, even at the screening stage, is a closer question.

A prison official can be found deliberately indifferent if “the official knows of and disregards an excessive risk to inmate health or safety.” *Farmer v. Brennan*, 511 U.S. 825, 834 (1994). Plaintiff’s allegations are sufficient to support his claim that Melby had knowledge of plaintiff’s serious medical needs but failed to act. Plaintiff claims to have told Melby about his “no floor” restriction when he was transferred to the DS-1 unit with a low bed. Plaintiff also informed Melby of his increased pain after sleeping on the low bed. Even after Melby became aware of plaintiff’s current pain, however, he allegedly took no steps to provide plaintiff with a standard height bed. Melby is also alleged to have had the authority to move plaintiff to a DS-2 segregation unit or to another unit with higher beds, but made no effort to act, nor did he apparently have plaintiff examined or transferred, at least based on the current record. Failing to act with such knowledge is enough to state a claim for deliberate indifference. *Grieverson v. Anderson*, 538 F.3d 763, 779-80 (7th Cir. 2008). Accordingly, plaintiff will be granted leave to proceed on his deliberate indifference claim against Melby.

While plaintiff’s allegations against Melby pass muster under the court’s lower standard for screening, he should be aware that to be successful on his claim, or even to get past a motion for summary judgment, plaintiff faces a much higher standard. Inadvertent error, negligence and gross negligence are insufficient grounds for invoking the Eighth

Amendment. *Vance v. Peters*, 97 F.3d 987, 992 (7th Cir. 1996). Specifically, it will be plaintiff's burden to prove his medical conditions and chronic pain constituted a serious medical need. This may well require expert testimony. Perhaps even more daunting, plaintiff will need to prove that Melby knew his condition was serious and deliberately ignored his pain.

## ORDER

IT IS ORDERED that:

1. Plaintiff Gable Hall is GRANTED leave to proceed on his claim that defendant Melby violated petitioner's Eight Amendment rights by not providing a medically necessary bed that was of a reasonable height above the floor.
2. For the remainder of this lawsuit, plaintiff must send defendant a copy of every paper or document he files with the court. Once plaintiff learns the name of the lawyer that will be representing the defendant, he should serve the lawyer directly rather than to the defendant. The court will disregard documents plaintiff submits that do not show on the court's copy that plaintiff has sent a copy to the defendant or to defendant's attorney.
3. 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 his documents.
4. 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 26th day of November, 2013.

BY THE COURT:

/s/

WILLIAM M. CONLEY

District Judge