

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

LAWRENCE NORTHERN,

Plaintiff,

v.

A. BAUMGART, MS. FRISK, C. WARNER,
and T. JOHNSON,

Defendants.

OPINION AND ORDER

13-cv-367-wmc

Plaintiff Lawrence Northern brings this action under 42 U.S.C. § 1983 against health care providers at New Lisbon Correctional Institution (“NLCI”), asserting deliberate indifference to his medical needs in violation of the Eighth Amendment. Northern is an inmate at NLCI. Because he filed a civil action seeking redress from employees of a governmental entity, the court must determine whether his proposed action (1) is frivolous or malicious; (2) fails to state a claim upon which relief may be granted; or (3) seeks money damages from a defendant who is immune from such relief. 28 U.S.C. § 1915A(a). The court finds that Northern has stated a viable legal claim and may proceed.

ALLEGATIONS OF FACT

In addressing any pro se litigant’s complaint, the court must read the allegations generously, holding the complaint “to less stringent standards than formal pleadings

drafted by lawyers.” *Haines v. Kerner*, 404 U.S. 519, 521 (1972). Northern alleges, and the court assumes for purposes of this screening order only, the following facts.

A. The parties

Plaintiff Lawrence Northern is a prisoner currently confined at NLCI.

Defendants A. Baumgart, Ms. Frisk and T. Johnson are nurse clinicians at NLCI.

Defendant C. Warner is the health services manager at NLCI.

B. Failure to treat at NLCI

On January 25, 2013, Northern seriously injured his left ankle. He was taken in a wheelchair to the Health Services Unit (HSU), where he informed staff that he heard an audible “pop” from his ankle at the time of the injury. Nurse Clinician Baumgart diagnosed a swollen Achilles tendon and prescribed ice, elevation and anti-inflammatory/pain medication.

On January 31, Northern complained that he had trouble walking, had run out of medication, and that his Achilles tendon remained swollen and sore. He was given a February 4 appointment, which was cancelled because he was late. Northern re-submitted another request, and was given an appointment on February 12. At that visit, Northern explained that he continued to experience unabated symptoms in his leg and requested a doctor’s appointment, as well as further diagnostic tests. However, the attending nurse clinician, Ms. Frisk, simply told him to purchase pain medication from the canteen.

On March 26, Northern filed a health services request because his ankle remained painful and a “knot” had formed in his Achilles tendon. On April 1, Northern was finally

seen by a doctor. Doctor Adler observed his symptoms, conducted a physical examination of the leg, and prescribed more anti-inflammatory medication, physical therapy, and an orthopedic evaluation.

On April 16, Northern submitted a health services request asking to be reassigned to a lower bunk. Health Services Manager Warner returned the written request, instructing him to re-file on the appropriate “blue slip” form. The next day, Northern was taken to Waupun Memorial Hospital and found to have a chronic Achilles tear. Two days later, he was formally reassigned to a lower bunk, but was not given his new bunk for 10 days.

In May 2013, Northern had surgery to reconstruct his Achilles tendon.

OPINION

The Eighth Amendment requires that the government “provide medical care for those whom it is punishing by incarceration.” *Estelle v. Gamble*, 429 U.S. 97, 103 (1976). Prison officials who do not provide adequate medical care to prisoners may violate the Eighth Amendment, because such failures may cause pain and suffering, which “serve[s] no penological purpose.” *Id.* at 103. However, to satisfy the objective prong of the Eighth Amendment test, an inmate’s untreated medical needs must be serious. *Id.* at 9-10; *Estelle*, 429 U.S. at 104. At least facially, Northern has alleged a serious medical need. As alleged, his Achilles tear (1) caused him a chronic and substantial pain, (2) prevented him from carrying out daily activities such as comfortably getting into and out of bed, and (3) ultimately required surgical repair.

For the most part, it would appear the health services staff at NLCI treated his injury with a degree of care and attention that, even making all possible inferences in Northern's favor, cannot be described as "deliberate indifference." His initial treatment directly after the injury does not appear facially inadequate or negligent, let alone grossly deficient as required for a constitutional violation. Moreover, Northern was ultimately taken to see a doctor and ultimately provided adequate hospital care, as well as accommodations for his injury in prison.

Only two aspects on his treatment even arguably qualify as an Eighth Amendment violation. The first is the delay of ten days between his official reassignment to a lower bunk and his actual transfer to a cell with a lower bunk. After some consideration, the court finds that, at least as alleged, this does not rise to the level of deliberate indifference. Although the transfer undoubtedly would ideally have been executed sooner, Northern's request for the lower bunk was not an obviously pressing medical need in the context of his overall treatment. Moreover, when he reminded health services staff that he had not been moved, the transfer was promptly achieved.

The second incident that arguably qualifies as an Eighth Amendment violation was the treatment during his visit to the HSU on February 12, 2013. At that point, it had been over two weeks since his injury and he continued to experience pain and swelling in his leg. Northern was seen by Nurse Clinician Frisk, who apparently did not examine the leg, conduct any tests, arrange for a doctor's appointment, or indeed provide any treatment other than send Northern to the canteen to purchase more medication. While Frisk's behavior at that time may very well have been appropriate for Northern's

diagnosed injury (at least as Northern's symptoms presented themselves on that day), but the failure to provide any sort of follow-up exam or treatment may be enough to create an inference of deliberate indifference. Accordingly, Northern may proceed beyond screening against Nurse Clinician Frisk, but not against any of the other defendants.

ORDER

IT IS ORDERED that:

- (1) Plaintiff Lawrence Northern's request to proceed on his § 1983 claim is GRANTED with respect to defendant Frisk and DENIED with respect to all other defendants.
- (2) 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 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 for defendant.
- (3) For the time being, plaintiff must send defendant a copy of every paper or document he files with the court. Once plaintiff has learned what lawyer will be representing defendant Frisk, he should serve the 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.

(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.

Entered this 18th day of December, 2013.

BY THE COURT:

/s/

WILLIAM M. CONLEY
District Judge