

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

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ERIC BOEHLER,

Plaintiff,

OPINION AND ORDER

v.

15-cv-67-wmc

WISCONSIN DEPARTMENT OF CORRECTIONS, *et al.*,

Defendants.

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Pro se plaintiff Eric Boehler brings this proposed civil action pursuant to 42 U.S.C. § 1983, alleging violations of his constitutional rights arising from treatment of a back injury and denial of due process while incarcerated by the Wisconsin Department of Corrections. Because he was incarcerated at the time he filed suit, the court must 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. At the same time, because he is a pro se litigant, Boehler is held to a “less stringent standard” in crafting pleadings. *Haines v. Kerner*, 404 U.S. 519, 521 (1972).

Even under this lenient standard, Boehler may not proceed on his claims because he concedes in his complaint that he did not exhaust his administrative remedies before filing suit. In particular, he states that he “chose[] to forego” the inmate complaint process because the process “is a joke and a mockery. . . .” He further alleges that “thousands of complaints have been filed against both the health service unit and its staff members at Oshkosh Correctional Institution . . . with absolutely no favorable results,” proving that the complaint system “is a joke and mockery in these type of situations.”

Despite Boehler's belief that using the inmate complaint process would be a waste of time, he is required by law to do so before filing suit in federal court. The Prison Litigation Reform Act, requires all inmates to exhaust all available administrative remedies before suing in federal court. 42 U.S.C. § 1997e(a); *Woodford v. Ngo*, 548 U.S. 81, 85 (2006). The exhaustion requirement "applies to all inmate suits," *Porter v. Nussle*, 534 U.S. 516, 524 (2002), and requires a prisoner-plaintiff to "properly take each step within the administrative process . . . in the place, and at the time, the prison's administrative rules require." *Pozo v. McCaughtry*, 286 F.3d 1022, 1025 (7th Cir. 2002). See also *Burrell v. Powers*, 431 F.3d 282, 284-85 (7th Cir. 2005). If a prisoner does not exhaust all available remedies, the court must dismiss the case. *Perez v. Wisconsin Dept. of Corrections*, 182 F.3d 532, 535 (7th Cir. 1999).

As his complaint makes clear, Boehler was incarcerated by the Wisconsin DOC "at all times mentioned" in his complaint. (Dkt. #1, p.1.) Accordingly, he was required to follow the exhaustion requirements of the inmate complaint review system set forth in Wis. Admin. Code § DOC 310. Boehler's belief that the inmate complaint review system is a "joke and a mockery" is not a recognized basis for failing to exhaust his administrative remedies, as there is no futility exception to the PLRA exhaustion requirement. *Perez*, 182 F.3d at 536. As the Seventh Circuit has explained, "[n]o one can *know* whether administrative requests will be futile; the only way to find out is to try." *Id.* (emphasis in original).

Ordinarily, a prisoner's failure to exhaust his administrative remedies is an affirmative defense that must be proven by the defendants, *Jones v. Bock*, 549 U.S. 199, 212 (2007), but a district court may raise an affirmative defense on its own if it is clear from the face of the complaint and any documents attached to it that the defense applies. *Gleash v. Yuswak*, 308 F.3d 758, 760-61 (7th Cir. 2002). Here, Boehler's own allegations state that he did not

comply with § 1997e(a). Accordingly, the case will be dismissed for his failure to exhaust his administrative remedies. In accordance with *Ford v. Johnson*, 362 F.3d 395, 401 (7th Cir. 2004), the dismissal will be without prejudice.

ORDER

IT IS ORDERED that plaintiff Erick Boehler's request for leave to proceed is DENIED and his complaint is DISMISSED without prejudice for failure to exhaust available administrative remedies as required by 42 U.S.C. § 1997a(e).

Entered this 29th day of July, 2015.

BY THE COURT:

/s/

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WILLIAM M. CONLEY  
District Judge