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

JACKIE CARTER,

Plaintiff,

v.

OPINION AND ORDER

15-cv-165-wmc

JAMES GREEN, EDWARD WALL, MICHAEL DITTMAN, MICHAEL MEISNER, DONALD MORGAN, CHAD KELLER, DR. SPRING, MERIDITH MESHAK, CANDACE WARNER, LORI ALSOM, KAREN ANDERSON, DENISE VALERIOUS, MELISA THORNE, TRISH STRECKER-ANDERSON, KIM CAMPBELL, DR. WOOD, DR. JOHNSTON, LT. LUCAS WOGERNESE, RICHARD DONOVAN, SGT. MORIN, SGT. HAAG, SGT. FOSTER, SGT. PILLAR, JOHN DOE, and KEISHA PERRENOUD,

Defendants.

Based on an alleged alteration of his medical records, *pro se* plaintiff Jackie Carter alleges that more than two dozen employees of Wisconsin Department of Corrections (1) retaliated against him in violation of his First Amendment Rights and (2) were deliberately indifferent to his serious medical needs in violation of the Eighth Amendment. (Compl. (dkt. #1).) Because Carter is incarcerated and seeking redress from a governmental employee, the Prison Litigation Reform Act ("PLRA") requires the court to screen and dismiss any portion of his complaint that is: (1) frivolous or malicious; (2) fails to state a claim on which relief may be granted; or (3) seeks money damages from a defendant who is immune from such relief. 28 U.S.C. § 1915A. For the reasons that follow, the court will grant Carter leave to proceed on his retaliation claim

against defendants Donald Morgan and Chad Keller and an Eighth Amendment deliberate indifference claim against defendant Dr. Spring, but will deny him leave to proceed in all other respects and against all other proposed defendants.

ALLEGATIONS OF FACT[1]

As listed in the caption above, Carter purports to assert claims against twenty-five individuals working at the DOC's Columbia Correctional Institution ("CCI"), all based on alleged retaliation for Carter's earlier lawsuits complaining of improper footwear. Specifically, Carter alleges that on December 17, 2013, Dr. Heinzl prescribed the purchase of shoes from an outside vendor that exceeded the $75.00 limit for use during showers on the unit and other special needs. Either on December 18 or 19, Carter alleges that Captains Donald Morgan and Chad Keller arranged for a doctor, Dr. Spring, that he had never even seen "to alter [those] medical prescriptions." (Compl. (dkt. #1) p.2.) Carter alleges that Morgan and Keller did so in retaliation for previous lawsuits concerning denial of prescription footwear, including a 2010 lawsuit before this court, *see Carter v. Radtke*, 10-cv-520-wmc. Carter contends that Morgan and Keller were not only aware of, but directly involved in, the 2010 lawsuit, including the court's consideration of Carter's request for injunctive relief. Carter also alleges that other defendants told him that Morgan and Keller were actively blocking his access to any further footwear.

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[1] In addressing any *pro se* litigant's complaint, the court must read the allegations of the complaint generously, resolving ambiguities and making reasonable inferences in plaintiff's favor. *Haines v. Kerner*, 404 U.S. 519, 521 (1972). In his complaint, Carter alleges, and the court assumes for purposes of this screening order, the following facts.

In addition to his principal claim, Carter alleges in cursory fashion that defendants Foster, Haag, Pillar and Morgan (1) created false conduct reports, (2) held in him solitary confinement, and (3) denied him his medically-prescribed footwear. Carter further alleges that defendants HSU employees Candace Warner, Lori Alsom, Meredith Meshak and Karen Anderson ignored him when he attempted to point out how his medical records had been altered. Next, he claims that Bureau of Health Services Director James Green, Secretary of the Department of Corrections Edward Wall, Wardens Michael Miesner and Michael Dittman were informed of the alteration of his medical record and turned a blind eye to Carter's complaints. Carter also claims that nurses Denise Valerious, Melisa Thorne, Trish Strecker, and Kim Campbell turned a blind eye to Carter's complaint about inadequate footwear. Finally, Carter alleges that Morgan and Keller convinced Drs. Wood and Johnson to alter his psychological file to misrepresent that they had screened him for a transfer to Wisconsin Secure Program Facility.

OPINION

I. Allegations against Captains Morgan and Keller

To state a claim for retaliation, a plaintiff must: (1) identify a constitutionally protected activity in which he was engaged; (2) identify one or more retaliatory actions taken by defendant that would likely deter a person of "ordinary firmness" from engaging in the protected activity in the future; and (3) allege sufficient facts that would make it plausible to infer that plaintiff's protected activity was a motivating factor in defendant's decision to take retaliatory action. *Bridges v. Gilbert*, 557 F.3d 541, 555-56 (7th Cir.

2009) (citing *Woodruff v. Mason*, 542 F.3d 545, 551 (7th Cir. 2008)). Here, Carter alleges that Morgan and Keller altered his medical records to deny him footwear because of Carter's former complaints that he was being denied medically-prescribed footwear, including in the 2010 lawsuit in this court. Specifically, Carter alleges that Morgan and Keller was aware of and involved in his prior complaints, and further alleges that other defendants told him that Morgan was doing everything he could to deny his footwear.

The court finds these alleged facts are sufficient to state a claim against Morgan and Keller for First Amendment retaliation. Carter's complaint also sufficiently alleges the alteration of his medical record and continued denial of his medically-prescribed footwear as retaliatory acts. Whether Carter can actually tie his stint in solitary confinement and eventual transfer to WSPF to his protected conduct will await another day.

II. Allegations against Dr. Spring

Carter alleges that Dr. Spring altered his footwear prescription at the behest of Morgan and Keller, without seeking Carter. Raising all reasonable inferences in plaintiff's favor, the court finds this pleading sufficient to raise a claim of deliberate indifference under the Eighth Amendment. 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 it may be inferred that he had a serious medical need and that prison officials were deliberately indifferent to that need. *Gutierrez v. Peters*, 111 F.3d 1364, 1369 (7th Cir. 1997).

"Serious medical needs" include (1) conditions that are life-threatening or that carry risk of permanent serious impairment if left untreated, (2) those in which the deliberately indifferent withholding of medical care results in needless pain and suffering, or (3) conditions that have been "diagnosed by a physician as mandating treatment." *Gutierrez*, 111 F.3d at 1371-73. A prison official has acted with deliberate indifference when the official "knew of a substantial risk of harm to the inmate and acted or failed to act in disregard of that risk." *Norfleet v. Webster*, 439 F.3d 392, 396 (7th Cir. 2006) (citing *Walker v. Benjamin*, 293 F.3d 1030, 1037 (7th Cir. 2002)).

Carter's allegations against Dr. Spring form a sufficient basis at the pleading stage to find that he had a serious medical need and Dr. Spring was deliberately indifferent to that need. Accordingly, the court will grant Carter leave to proceed on his claim against Dr. Spring. While these allegations pass muster under the court's lower standard for screening, as Carter well knows, to be successful on this claim, he will have to prove defendants' deliberate indifference, which is a high standard. Inadvertent error, negligence or gross negligence are insufficient grounds for invoking the Eighth Amendment. *Vance v. Peters*, 97 F.3d 987, 992 (7th Cir. 1996). In particular, it will be Carter's burden to prove: (1) his medical condition constituted a serious medical need, which may well require expert testimony rebutting medical evidence to the contrary; and (2) perhaps even more daunting, that Dr. Spring knew his condition was serious and deliberately ignored his condition and related pain.

III. Allegations Other Defendants

With the exception of the retaliation allegations directed against Morgan, which Carter described as the "main player in my abuse and constitutional violations" (Compl. (dkt. #1) p.1), Keller, who is accused of nearly identical conduct, and Dr. Spring, who was complicit in the other two defendants' actions allegedly in violation of the Eighth Amendment, Carter's complaint fails to meet the requirements of Federal Rule of Civil Procedure 8, requiring a "'short and plain statement of the claim' sufficient to notify the defendants of the allegations against them and enable them to file an answer." Fed. R. Civ. P. 8(a); *Marshall v. Knight*, 445 F.3d 965, 968 (7th Cir. 2006). Dismissal is proper "if the complaint fails to set forth 'enough facts to state a claim to relief that is plausible on its face.'" *St. John's United Church of Christ v. City of Chi.*, 502 F.3d 616, 625 (7th Cir. 2007) (quoting *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). To demonstrate liability under 42 U.S.C. § 1983, a plaintiff must allege sufficient facts showing that an individual personally caused or participated in a constitutional deprivation. *See Zimmerman v. Tribble*, 226 F.3d 568, 574 (7th Cir. 2000); *Walker v. Taylorville Correctional Ctr.*, 129 F.3d 410, 413 (7th Cir. 1997) (noting that "personal involvement" is required to support a claim under § 1983).

Except for Morgan and (to a lesser extent) Keller and Spring, Carter wholly fails to allege personal causation or participations. Instead, Carter's complaint consists of a laundry list of claims that are for the most part unsupported by specific facts showing plausible entitlement to relief. Especially for *pro se* litigants, the pleading standard announced in Rule 8 (a) does not require "'detailed factual allegations,' but it demands

more than an unadorned, the-defendant-unlawfully-harmed-me accusation." *Ashcroft v. Iqbal*, 556 U.S. 662, 676-78 (2009) (quoting *Twombly*, 550 U.S. at 555). A pleading that offers "labels and conclusions" or "a formulaic recitation of the elements of a cause of action will not do." *Id.* (quoting *Twombly*, 550 U.S. at 555). It is particularly difficult to distinguish how each individual defendant was involved with the many claims that Carter is attempting to allege. Because Carter provides no short and plain statement of the facts in support of his claims, the proposed complaint to all other defendants does not meet the pleading standard found in Rule 8(a). For this reason, the court will deny him leave to proceed on his other claims.

Even if Carter's complaint met the requirements of Rule 8(a), however, Carter lodges claims against multiple defendants in a manner that appears to violate federal pleading rules on joinder. Specifically, a plaintiff may only join "either as independent or as alternate claims, as many claims, legal, equitable, or maritime, as the party has against an opposing party." Fed. R. Civ. P. 18(a). As a corollary, a plaintiff is only allowed the joinder of several defendants if the claims arose out of a single transaction and contain a question of fact or law common to all the defendants. Fed. R. Civ. P. 20(a).

In this case, Carter fails to allege how the defendants are related to a single transaction or common question of law and fact. By lodging unrelated claims against multiple defendants, the complaint does not comport with the federal pleading rules found in Fed. R. Civ. P. 18(a) or 20(a). The Seventh Circuit has emphasized that "unrelated claims against different defendants belong in different suits" and that federal joinder rules apply to prisoners just as to other litigants. *George v. Smith*, 507 F.3d 605,

607 (7th Cir. 2007). The Seventh Circuit having instructed that "buckshot complaints" should be "rejected," Carter's complaint against all other defendants is also subject to dismissal for violating these rules. *Id.*

ORDER

IT IS ORDERED that:

1) Plaintiff Jackie Carter's request to proceed on a First Amendment retaliation claim against defendants Donald Morgan and Chad Keller is GRANTED. Plaintiff Jackie Carter's request to proceed on an Eighth Amendment deliberate indifference claim against defendant Dr. Spring also is GRANTED. In all other respects Carter's request is DENIED, and all other defendants are dismissed from this action.

2) 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, he should serve the lawyer directly rather than defendants. 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.

3) 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.

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 20th day of January, 2017.

BY THE COURT:

/s/

WILLIAM M. CONLEY
District Judge