IN THE UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF WISCONSIN

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LAWRENCE WILLIAMS III,

Plaintiff,

v.

DANIEL BERTRAND, PETE ERICKSEN,
WENDY MONFILS, GREG HEITZKEY,
JERRY GRASSEL, and GARY LUNDE,
in their individual and official capacities,

Defendants.

ORDER

01-C-684-C

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Plaintiff has paid the full fee for filing his complaint. However, because he is a prisoner and defendants are "officer[s] or employee[s] of a governmental entity," this court is required to screen the complaint, identify the claims and dismiss any claim that is frivolous, malicious, is not a claim upon which relief may be granted or seeks monetary relief from a defendant who is immune from such relief. See 28 U.S.C. §§ 1915A(a), (b). Having screened plaintiff's complaint, I conclude that his claim that he has been deprived of a liberty interest without due process and in violation of his equal protection rights must be dismissed as legally frivolous.

In addressing any pro se litigant's complaint, the court must construe the complaint liberally, Haines v. Kerner, 404 U.S. 519, 521 (1972). Plaintiff's complaint may be fairly read to state the following material allegations of fact.

ALLEGATIONS OF FACT

Plaintiff Lawrence Williams is a prisoner at the Waupun Correctional Institution in Waupun, Wisconsin. During the events described in the complaint, plaintiff was incarcerated at the Green Bay Correctional Institution in Green Bay, Wisconsin.

Defendant Daniel Bertrand is the warden of the Green Bay Correctional Institution. Defendant Pete Ericksen is the security director, defendant Jerry Grassel is a guidance counselor, defendant Gary Lunde is a social worker, defendant Wendy Monfils is a program review coordinator and defendant Greg Heitzkey is a correctional officer, all at the Green Bay facility.

On September 13, 2000, plaintiff received a conduct report charging him with "Use of Intoxicants." He was found guilty of the offense on September 18, 2000, and received a penalty of five days' adjustment segregation, ninety days' no contact visits and a referral to the program review committee with a recommendation that he be unable to keep his job.

On or about September 27, 2000, plaintiff filed an inmate complaint contending that there had been "procedural error" at his disciplinary hearing. The complaint and subsequent

appeal were dismissed.

On October 19, 2000, and again on October 25, 2000, plaintiff was reviewed by a program review committee made up of defendants Wendy Monfils, Greg Heitzkey, Jerry Grassel and Gary Lunde. The committee accepted the recommendation of the security director and removed plaintiff from his job at Badger State Industries. Plaintiff appealed this decision to the warden and the warden upheld the committee's decision.

OPINION

A. Procedural Due Process

I understand plaintiff to allege that defendants violated his Fourteenth Amendment right to due process by removing him from his job after he was found guilty of a violation of the prison's rules. Plaintiff does not allege how defendants' procedures might have been defective, but that does not matter. A procedural due process violation against government officials requires proof of inadequate procedures *and* interference with a liberty or property interest. See Kentucky Dept. of Corrections v. Thompson, 490 U.S. 454, 460 (1989). In Sandin v. Conner, 515 U.S. 472, 483-484 (1995), the Supreme Court held that liberty interests "will be generally limited to freedom from restraint which . . . imposes [an] atypical and significant hardship on the inmate in relation to the ordinary incidents of prison life." After Sandin, in the prison context, protected liberty interests are essentially limited to the

loss of good time credits because the loss of such credit affects the duration of an inmate's sentence. See Wagner v. Hanks, 128 F.3d 1173, 1176 (7th Cir. 1997) (when sanction is confinement in disciplinary segregation for period not exceeding remaining term of prisoner's incarceration, Sandin does not allow suit complaining about deprivation of liberty).

In Higgason v. Farley, 83 F.3d 807, 809 (7th Cir. 1996), the Court of Appeals for the Seventh Circuit held that the loss of " social and rehabilitative activities" are not "atypical and significant hardships " that are constitutionally actionable rights under Sandin, 515 U.S. 472, and in Vanskike v. Peters, 974 F.2d 806, 809 (7th Cir. 1992), the court held expressly that a prisoner has no protected liberty interest in a prison job. Plaintiff's' contention that the revocation of his prison job violates his constitutional right to due process is legally frivolous.

B. Equal Protection

Plaintiff contends also that defendants violated his right to equal protection when they removed him from his job. He seems to be arguing that the failure of prison officials to allow all inmates to work violates the equal protection clause. This argument is without legal merit.

The equal protection clause of the Fourteenth Amendment guarantees that "all persons similarly situated should be treated alike." City of Cleburne v. Cleburne Living

Center, 473 U.S. 432, 439 (1985). Plaintiff's allegations fall far short of suggesting that he is similarly situated to other inmates who are allowed to work at the institution. When assigning an inmate to a job, school, vocational or other program, prison officials apply the following criteria, among others: the resident's aptitude; motivation; present and potential vocational and educational needs, interests and ability; institutional adjustment; past performance in programs . . . ." Wis. Admin. Code § DOC 302.16(2). Plaintiff does not allege that in all important respects, his aptitude, motivation, educational needs, institutional adjustment and past performance match those of any other prisoner who is allowed to work at the institution. Because plaintiff's allegations do not support an inference that he is being treated differently from other inmates with whom he is similarly situated, he cannot succeed on his claim that defendants have deprived him of his right to equal protection. This claim will be dismissed as legally frivolous.

ORDER

IT IS ORDERED that

1. Plaintiff's claims that he was deprived of his Fourteenth Amendment rights to due process and equal protection under the laws are DISMISSED pursuant to 28 U.S.C. § 1915A as legally frivolous.

2. The clerk of court is directed to enter judgment for defendants and close this case.

3 A strike will be recorded against plaintiff in accordance with 28 U.S.C. § 1915(g).

Entered this 18th day of December, 2001.

BY THE COURT:

BARBARA B. CRABB
District Judge