

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

GEORGE J. LAZARIS,

Plaintiff,

OPINION
AND ORDER

v.

04-C-156-C

DR. FERN SPRINGS, WARDEN TOM KARLIN,
CAPTAIN TEGEL, OFFICER HALE,
OFFICER CARLSON, R.N. MEYER and
R.N. HOLNICK,

Defendants.

A judgment of dismissal was entered in this case on June 11, 2004, after I granted defendants' motion to dismiss plaintiff's claims on the ground that plaintiff had failed to exhaust his administrative remedies as required by 42 U.S.C. § 1997e(a). Now plaintiff has filed a letter dated June 15, 2004, which I construe as a motion to alter or amend the judgment pursuant to Fed. R. Civ. P. 59.

In his motion, plaintiff asserts that when he was offered a chance to oppose defendants' motion to dismiss, he thought he had been appointed counsel to represent him. Petitioner gained this erroneous impression when he received this court's letter dated

April 14, 2004, advising him that his complaint had been forwarded to the Department of Justice for service on the defendants. That letter showed that a copy had been sent to Charles Hoornstra. For some reason, plaintiff believed Hoornstra was his court-appointed lawyer, even though this court had not entered an order appointing him to represent plaintiff. Plaintiff explains that it was not until this court ruled on defendants' motion to dismiss that he discovered that Charles Hoornstra was an assistant Attorney General, whose office was representing the defendants. He contends that if he had realized that he needed to respond to the motion to dismiss himself, he would have "proved beyond a shadow of a doubt" that he had exhausted his administrative remedies.

Plaintiff's Rule 59 motion will be denied. Even if plaintiff believed that Charles Hoornstra was his appointed lawyer when he received the court's April 14 letter, plaintiff should have been alerted to the fact that he might have been mistaken when he received the schedule for briefing defendants' motion to dismiss, which was mailed to him and not to Mr. Hoornstra. If this letter was not enough to trigger his concern, certainly he should have become suspicious of a problem when he had had no contact from Mr. Hoornstra in advance of the time his response to the motion to dismiss was due.

In any event, plaintiff does not include with his Rule 59 motion any documentation suggesting that it was error for this court to conclude that he failed to exhaust his administrative remedies on the claims he raised in this lawsuit. Therefore, there is no basis

for granting his motion.

ORDER

IT IS ORDERED that plaintiff's motion pursuant to Fed. R. Civ. P. 59 to alter or amend the judgment entered in this case on June 11, 2004, is DENIED.

Entered this 7th day of July, 2004.

BY THE COURT:
BARBARA B. CRABB
District Judge