

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

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SHAWN McGARVEY,

Plaintiff,

v.

THOMAS BORGAN,  
ANDREW BATH and  
LT. DOMMISSE,

Defendants.  
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ORDER

04-C-269-C

Plaintiff has renewed his motion for appointment of counsel after making the threshold showing that he made reasonable efforts to retain counsel and was unsuccessful.

Appointment of counsel is appropriate in cases in which the pro se plaintiff appears incompetent to litigate his case by himself in light of the difficulty of the case and the presence of counsel would likely make a difference in the outcome of the suit. Farmer v. Haas, 990 F.2d 319, 322 (7th Cir. 1993). Plaintiff is proceeding in this case on his claims that in the summer of 2003, 1) defendant Dommisse retaliated against him for refusing to sign a waiver of work restrictions by issuing him a conduct report; 2) all of the defendants retaliated against plaintiff for writing a letter to a congressman; and 3) all of the defendants

violated plaintiff's Eighth Amendment rights by cancelling his scheduled appointments with a physician and discontinuing his prescribed treatment for a work injury to his thumb. However, defendants have moved to dismiss each of plaintiff's claims on the ground that plaintiff failed to exhaust his administrative remedies in compliance with 42 U.S.C. § 1997e(a). Plaintiff has opposed the motion with a coherent brief and documentation of his exhaustion efforts. Appointing counsel at this time would not make a difference in the outcome of the motion, and it may be that the motion will dispose of the case.

ORDER

IT IS ORDERED that plaintiff's second motion for appointment of counsel is DENIED without prejudice to his filing the motion at a later time if defendants' motion to dismiss is denied.

Entered this 10th day of September, 2004.

BY THE COURT:

BARBARA B. CRABB  
District Judge