

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

TITUS HENDERSON,

Plaintiff,

v.

BRIAN KOOL and
JUDITH HUIBREGTSE,

Defendants.

ORDER

05-C-157-C

On November 17, 2005, judgment was entered dismissing this case without prejudice to plaintiff's filing a new case after he has exhausted his administrative remedies. Now plaintiff has filed a motion for reconsideration, which I construe as a motion to alter or amend the judgment pursuant to Fed. R. Civ. P. 59.

The purpose of Rule 59 is to allow the district court to correct its own errors, sparing the parties and appellate courts the burden of unnecessary appellate proceedings. Charles v. Daley, 799 F.2d 343, 348 (7th Cir. 1986). Motions under Rule 59 must be filed within ten days of the entry of judgment, excluding weekends and holidays. Fed. R. Civ. P. 59(e). Plaintiff's motion was filed on November 30, 2005, and is timely.

However, plaintiff's motion raises no issues that I did not consider in deciding defendants' motion for summary judgment, with one exception. Plaintiff has attached to his motion additional documentation of his use of the inmate complaint review system in an attempt to show that he exhausted his administrative remedies on his retaliation claim against defendant Kool. This documentation reveals that plaintiff attempted to file an inmate complaint on January 13, 2005, contending that Ellen Ray and defendant Kool "conspired to punish [plaintiff] for protected speech of filing lawsuits against staff by denying level 3." This vague claim of a conspiracy between defendants Kool and Ray to prevent plaintiff from moving to level three "to punish [him] for protected speech of filing lawsuits" does not put defendants on notice of the retaliation claim plaintiff brought against defendant Kool in this court, that is that defendant Kool had denied him a level 3 promotion because he had written in a questionnaire, "I was transferred to Wisconsin Secure Program Facility for filing civil action against Redgranite prison officials." In any event, the January 13 complaint was rejected by the institution complaint examiner on January 19, 2005, as having been "previously addressed." A prisoner cannot show that he exhausted his administrative remedies with a complaint that has been rejected at the first step. He must raise his claim clearly and in accordance with the institution's administrative procedures and carry his claim through the various stages of appeal unless it is resolved in his favor at an early level.

In dismissing plaintiff's retaliation claim against defendant Kool, I considered two inmate complaints plaintiff had filed before January 13 in which plaintiff complained about Kool's failure to advance plaintiff to level 3 for purported retaliatory reasons. In each instance, I concluded that the claim raised in the inmate complaint was not the same claim plaintiff raised in his complaint in this court and was therefore insufficient to show that he had exhausted his administrative remedies. Because nothing in plaintiff's Rule 59 motion supports a finding that I erred in entering a judgment of dismissal, the motion will be denied.

A timely filed motion extends the time for filing a notice of appeal, if an appeal is to be taken, to thirty days from the date of the entry of the order disposing of the Rule 59 motion. See Fed. R. App. P. 4(a)(4)(A)(iv). Therefore, if plaintiff intends to file an appeal, he has thirty days from the date of entry of this order in which to do so. Any such notice of appeal should be accompanied by a trust fund account statement for the six-month period immediately preceding the filing of the notice of appeal or a check or money order in the amount of \$255.

ORDER

IT IS ORDERED that plaintiff's motion to alter or amend the judgment entered in

this case on November 17, 2005 is DENIED.

Entered this 1st day of December, 2005.

BY THE COURT:

/s/

BARBARA B. CRABB

District Judge