

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

JEFFREY A. VOIGT,

Plaintiff,

v.

ORDER

05-C-356-C

BRIAN MILLER, Security Director,
Stanley Correctional Institution,

Defendant.

On September 19, 2005, this court granted defendant's motion to dismiss plaintiff's action on the ground that plaintiff failed to properly exhaust his administrative remedies prior to filing suit as required by 42 U.S.C. § 1997e(a). In particular, I found that although plaintiff had filed an inmate complaint about defendant Miller's refusal to grant him a permanent separation from an inmate Bearheart Weasley, with whom plaintiff had been involved in a fight, plaintiff did not appeal the dismissal of that complaint in the manner prescribed in the Wisconsin Administrative Code. Judgment of dismissal was entered on September 19, 2005. Now plaintiff has submitted a document titled "Motion to Reopen Dismissed Complaint Without Prejudice Against the Defendants." I construe plaintiff's

motion as a timely filed motion pursuant to Fed. R. Civ. P. 59.

Although it is not entirely clear, it appears that plaintiff is arguing in his motion that he could not appeal the institution complaint examiner's recommendation for dismissal of his inmate complaint and the reviewing authority's subsequent acceptance of that recommendation because he did not receive timely notice of the reviewing authority's decision. However, if plaintiff is saying that he did not receive an acknowledgment of his inmate complaint from the institution complaint examiner within 5 days of the day he completed the complaint as § DOC 310.11(2) requires, he should have made an inquiry to learn what had happened to his complaint. If he is saying that he received the acknowledgment but did not receive a copy of the institution complaint examiner's recommendation within 30 working days of that acknowledgment, then he should have known that pursuant to § DOC 310.12(3), he could consider the complaint dismissed and appeal the matter to the corrections complaint examiner. Either way, it was plaintiff's responsibility to insure that his complaint had been received and to file an appeal when the time for the institution complaint examiner's decision expired. Because plaintiff did not do that, it was proper to dismiss his complaint in this court for his failure to exhaust his administrative remedies.

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 September 19, 2005, is DENIED.

Entered this 19th day of October, 2005.

BY THE COURT:

/s/

BARBARA B. CRABB

District Judge