

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

ANTHONY CORDOVA,

Plaintiff,

OPINION AND ORDER

v.

05-C-487-C

THOMAS BOSTON,

Defendant.

In this civil action for declaratory and injunctive relief, plaintiff Anthony Cordova contends that defendant Thomas Boston, a dentist at the Wisconsin Secure Program Facility in Boscobel, Wisconsin, exhibited deliberate indifference to his serious medical needs when he allowed prison officials to confiscate plaintiff's dental bite plate and refused to issue a new one.

Now before the court is defendant's motion for summary judgment. In his brief opposing the motion for summary judgment, plaintiff contends that he grinds his teeth and that the grinding causes him to suffer severe migraine headaches and attempt suicide. However, plaintiff has not proposed any facts in support of these allegations. Moreover, plaintiff has not produced any evidence from which it can be inferred that defendant

believed he was placing plaintiff at substantial risk of serious harm by refusing to order him a dental bite plate. Because plaintiff has not come forward with evidence supporting his contention that defendant acted with deliberate indifference to his serious medical needs, defendant's motion for summary judgment will be granted.

UNDISPUTED FACTS

A. Parties

Plaintiff Anthony Cordova has been an inmate of the Wisconsin Secure Program Facility in Boscobel, Wisconsin, since December 15, 1999.

Defendant Thomas Boston has been a licensed dentist since 1977, when he received his D.D.S. degree from Marquette University. Defendant is employed by the Wisconsin Department of Corrections as a dentist at the Wisconsin Secure Program Facility and at the Prairie du Chien Correctional Institution in Prairie du Chien, Wisconsin.

B. Plaintiff's Dental Problems

On March 7, 2001, plaintiff was fitted with a bite splint by a dentist at the Wisconsin Secure Program Facility. (A bite splint is a dental device used to prevent wear on teeth and to alleviate muscle pain in the jaws caused by tooth grinding.) On February 11, 2003, plaintiff submitted an inmate complaint alleging that the prison's property department had

lost his bite plate. Seven months later, on September 26, 2003, defendant sent a response to plaintiff, stating that the “property sergeant knew nothing” about plaintiff’s bite plate.

On February 17, 2005, plaintiff submitted a dental service request, in which he stated:

I have been waiting for my bite splint for over a year and a half. I need it because I grind my teeth alot [sic] when I sleep and even when I’m awake. This disorder gives me real bad headaches, which I have had to endure while awaiting my bite splint that is in my property. The bite splint was made here at [the] W[isconsin] S[ecure] P[rogram] F[acility], and there is no reason why I cannot have it. Please send me my bite splint because I don’t want to end up litigating this issue.

Boston Aff., dkt. #23, Exh. A, at 10. The following day defendant responded to plaintiff’s request, stating, “Property says you don’t have a bite splint. We do not make them here anymore.” Id.

The Wisconsin Department of Corrections will authorize the purchase of a bite splint for an inmate if a dentist concludes that the bite splint is medically necessary. On April 20, 2005, defendant examined plaintiff and took five x-rays of plaintiff’s teeth. Defendant noted that plaintiff had poor oral hygiene and heavy plaque deposits. After studying plaintiff’s x-rays, defendant concluded that plaintiff’s dental needs were not acute. Plaintiff’s teeth did not show signs of excessive wear and he did not exhibit symptoms of temporomandibular joint syndrome, which is a disorder caused by faulty articulation of the temporomandibular joint and characterized by facial pain, headache, ringing ears, dizziness,

and stiffness of the neck. The American Heritage Dictionary of the English Language (4th ed. 2000) Defendant concluded that if plaintiff were grinding his teeth, he was suffering no damage to his mouth as a result. In defendant's professional opinion, a bite splint would not improve plaintiff's oral health significantly.

Any inmate at the Wisconsin Secure Program Facility may purchase a mouth guard with his own funds, even if a mouth guard is not medically necessary.

OPINION

In this lawsuit, plaintiff contends that defendant violated his Eighth Amendment right to be free from cruel and unusual punishment by refusing to order him a dental bite splint. Defendant contends that he is entitled to summary judgment because plaintiff had no serious medical need that necessitated a bite splint and therefore defendant did not intentionally place plaintiff at risk by refusing to order a bite splint for him.

“[T]he Eighth Amendment requires the government “to provide medical care for those whom it is punishing by incarceration.” Snipes v. DeTella, 95 F.3d 586, 590 (7th Cir. 1996) (quoting Estelle v. Gamble, 429 U.S. 97, 103 (1976)). When prison officials act with deliberate indifference to inmate health or safety, they violate this constitutional mandate. Farmer v. Brennan, 511 U.S. 825, 8342 (1994).

To prove that a prison official has violated the Eighth Amendment by failing to

respond to a medical need, a plaintiff must show that he had a serious medical need and the defendant was deliberately indifferent to it. Norfleet v. Webster, 439 F.3d 392, 395 (7th Cir. 2006). The Court of Appeals for the Seventh Circuit has held that “serious medical needs” are not only conditions that are life threatening or that carry risks of permanent, serious impairment if left untreated, but also those in which the withholding of medical care results in needless pain and suffering. Gutierrez v. Peters, 111 F.3d 1364, 1371 (7th Cir. 1997). Nevertheless, not all discomfort is entitled to Eighth Amendment protection. In order to be considered serious, a medical need must be “one that has been diagnosed by a physician as mandating treatment or one that is so obvious that even a lay person would easily recognize the necessity for a doctor's attention.” Henderson v. Sheahan, 196 F.3d 839, 846 (7th Cir. 1999).

In his brief in opposition to defendant’s motion for summary judgment, plaintiff contends that he grinds his teeth, a habit that leads to migraine headaches so severe that he has attempted suicide in order to stop the pain. Despite the seriousness of his allegation, plaintiff did not propose as fact or aver his affidavit in opposition to the motion for summary judgment that he suffers from such headaches or that the headaches have led him to attempt suicide. In fact, his affidavit avers only that he “suffers from the pain in his jaws.” Plaintiff does not aver that any doctor has told him in the past that he required treatment for his jaw pain and the problem is not one so obvious that a lay person could

reasonably conclude that plaintiff needed a bite splint in order to treat his pain. Because plaintiff has not introduced evidence showing that he has a serious medical need for a bite splint, defendant's motion could be granted on this ground alone.

However, even if plaintiff could show that his jaw pain is a serious medical condition, he has not shown that defendant was deliberately indifferent to his pain. In the context of prisoner litigation, "deliberate indifference" means that a prison official is aware of facts that could lead to the conclusion that a prisoner was at substantial risk of serious harm and actually comes to the conclusion that the prisoner is at substantial risk of serious harm and yet does nothing to alleviate the potential harm. Id. at 837. Deliberate indifference requires more than inadvertent error, negligence or even gross negligence. Vance v. Peters, 97 F. 3d 987, 992 (7th Cir. 1996). Under this legal standard, it is not enough that an official "should have known" of a risk to plaintiff. Rather, the official must actually know of a risk and consciously choose to disregard it. Higgins v. Correctional Medical Services of Illinois, 178 F.3d 508, 511 (7th Cir. 1999).

When plaintiff complained about the loss of his bite splint in 2001, defendant investigated the complaint and responded to plaintiff's concern by telling him that the prison property staff were unable to confirm plaintiff's allegation that the bite splint had been misplaced by prison staff. The undisputed facts show that plaintiff did not ask about his bite splint again until nearly two years later, when he complained of headaches and asked for a

new bite splint. Defendant responded promptly to this request by scheduling an appointment for plaintiff, examining him and taking dental x-rays.

Although petitioner contends that his alleged headaches are the result of tooth-grinding, defendant was not required to accept petitioner's explanation as true. The Constitution does not require prison health care providers to provide each prisoner with the medical care the prisoner believes appropriate; it requires the providers to rely upon their own medical judgment to provide care that is reasonable in light of their knowledge of each prisoner's problems. See, e.g., Estelle v. Gamble, 429 U.S. 97, 107 (1976) (plaintiff's objection to prison physician's failure to order back x-ray failed to state claim under Eighth Amendment when prison physicians provided minimal but adequate treatment).

Defendant examined plaintiff and studied plaintiff's dental x-rays. Defendant found no evidence of excessive wear or TMJ disorder that could be treated with a bite splint. Instead, defendant concluded that plaintiff's oral problems were a result of poor dental hygiene and recommended that plaintiff schedule a cleaning for his teeth. From these facts, no jury could infer that defendant was indifferent to plaintiff's dental needs. Because plaintiff has not adduced evidence showing that defendant knew he was placing plaintiff at risk of serious harm by refusing to order him a new bite splint, defendant's motion for summary judgment will be granted.

ORDER

IT IS ORDERED that the motion for summary judgment of defendant Thomas Boston is GRANTED. The clerk of court is directed to enter judgment in favor of defendant and close the case.

Entered this 1st day of May, 2006.

BY THE COURT:

/s/

BARBARA B. CRABB

District Judge