

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

VINCENT L. AMMONS,

Plaintiff,

v.

BRUCE GERLINGER, RENEE
ANDERSON, BECKY DRESSLER
and RITA ERICSON,

Defendants.

OPINION and ORDER

06-C-20-C

In this civil action for monetary relief under 42 U.S.C. § 1983, plaintiff Vincent Ammons, a prisoner at the Stanley Correctional Institution in Stanley, Wisconsin, is proceeding on claims that defendants Bruce Gerlinger, Renee Anderson, Becky Dressler and Rita Erickson violated his rights under the Eighth Amendment by refusing to treat several of his medical problems when he asked for medical attention. Jurisdiction is present under 28 U.S.C. §1331.

Now before the court is defendants' motion for summary judgment on the merits of plaintiff's claims. Despite having obtained an extension of time in which to respond to

defendants' motion, plaintiff has filed no response. Because the undisputed facts reveal that defendants did not exhibit deliberate indifference to plaintiff's rectal bleeding or fractured wrist, the motion will be granted.

From defendants' proposed findings of fact, I find the following facts to be material and undisputed.

UNDISPUTED FACTS

A. Parties

Plaintiff Vincent Ammons is a prisoner incarcerated at the Stanley Correctional Institution in Stanley, Wisconsin.

From July 25, 2005 to June 2, 2006, defendant Bruce Gerlinger was employed as a doctor at the Stanley Correctional Institution.

Defendants Renee Anderson and Rita Ericson work as nurse clinicians at the Stanley Correctional Institution. As nurse clinicians, respondents Anderson and Ericson provide patient care, assist practitioners and complete necessary paperwork. In addition, they "triage" written inmate requests for health services.

Defendant Becky Dressler is the Stanley Correctional Institution's health service unit manager. Her duties include managing health service unit staff, reviewing patient medical

records and assisting staff in responding to patient requests. In addition, respondent Dressler is the record custodian for the institution's health services unit.

B. Requests for Medical Treatment

1. Prison procedure

When an inmate has a medical concern or wishes to be seen in the health services unit, he fills out a request form, which is placed in a request box in the inmate's housing unit. Each night, the request forms are brought to the health services unit, where they are reviewed and "triaged" by nursing staff. Nurses in the health services unit are instructed to open and read all requests, even if the requests are directed to a specific nurse or practitioner.

If an inmate raises a new medical complaint in his request or submits a request requiring immediate attention, the request is addressed by a nurse within 24 hours. Depending on the urgency of the inmate's medical need, the triage nurse may decide that the patient should be transported immediately to the emergency room, or she may call a practitioner to see the patient. If the patient does not require immediate treatment from a practitioner, the nurse may schedule an appointment for the patient to be seen by a physician or nurse practitioner and may immediately treat the patient based on approved nursing protocols.

When an inmate requests non-urgent treatment or follow-up care, the nurse schedules an appointment for him. It can take up to two months for an inmate to be seen by a doctor or nurse practitioner.

2. Plaintiff's requests

a. Wrist injury

Sometime around May 28, 2005, plaintiff slipped and hit his left wrist on a bedrail in his prison cell. Plaintiff saw prison doctor Deb Lemke on June 1 or 2, 2005. (The parties do not say what occurred at that visit.) On June 29, 2005, plaintiff completed a typewritten, eight page health service request form, which he addressed to Dr. Lemke. The service request form included the following statements regarding plaintiff's injury:

[W]hen I explained to you the problems and symptoms I was having with my left hand you basically flipped me off as if they were not important. I lost confidence in you treating me according to your ability and shut down. And, based on your expressions now before me, I feel that I had good reason. What you are doing now, in alleging denial that there is a serious problem afoot with regard to my intestinal wall, is the same attitude you expressed regarding my left hand. Well, guess what, my hand is not just sore! There is a serious problem effecting it, and it won't just go away with time!!! It must be treated appropriately.

The triage nurse who received plaintiff's request form asked respondent Dressler to help review it. Plaintiff was scheduled to see a doctor on the next available appointment

date. In addition, respondent Dressler responded to plaintiff with the following message:

Mr. Ammons, you have an upcoming appointment with the practitioner in the near future to discuss this issue- If you wish to file an inmate complaint please use the appropriate inmate complaint form - The H[ealth] S[ervices] U[nit] request is not the appropriate form[.]

Respondent Anderson did not play any part in handling or responding to plaintiff's June 29 health services request form.

On August 12, 2005, plaintiff went to see defendant Gerlinger about several medical problems. At that time, he complained that his wrist had been painful and swollen for about three months. Specifically, he indicated that his wrist was tender over the ulnar styloid region.

An x-ray in plaintiff's medical file reveals that he had a small "well-corticated bony density" at the end of his ulnar styloid process as early as 1987. It is unclear whether this formation was from an old fracture or was a normal bone variant. It is also unclear whether this bony formation played any role in plaintiff's 2005 wrist problems.

After noticing that plaintiff's pain increased when he rotated his lower arm, Respondent Gerlinger ordered an x-ray for plaintiff's wrist. In reviewing the previous physicians' orders contained in plaintiff's medical record, respondent Gerlinger noted that on June 2, 2005, another physician had prescribed 400 milligrams of ibuprofen for plaintiff to use as needed for general pain management for one year. Respondent Gerlinger did not

prescribe any additional pain medication for plaintiff.

On August 15, 2005, an x-ray of plaintiff's left wrist was performed at the prison. The x-ray revealed that plaintiff had suffered at some past point in time a bone fracture that had failed to heal properly. The x-ray did not reveal evidence of an acute fracture or dislocation.

On either August 15, 2005 or September 15, 2005, respondent Gerlinger completed a request for plaintiff to have an off-site orthopedic evaluation. The request was approved on September 21, 2005.

On September 14, 2005, respondent Gerlinger saw plaintiff again for complaints of pain in his left wrist. At that time, plaintiff indicated that his wrist brace was not helping alleviate the pain. Respondent Gerlinger prescribed plaintiff a six-month supply of salsalate and told him to write to the health services unit within a few weeks to let the staff know whether the medication was helping him effectively manage his pain. Dr. Gerlinger also instructed plaintiff not to strain his wrist or bear weight on it.

The following day, respondent Gerlinger saw plaintiff again for complaints of continued wrist pain and a knee injury. Respondent Gerlinger advised plaintiff to limit gripping and pushing to avoid further damage to his wrist.

On September 25, 2005, plaintiff submitted a health service request form in which

he asked for a medical order directing security staff to transport him using soft restraints rather than metal handcuffs. Respondent Gerlinger prescribed leather wrist restraints for plaintiff to use while being transported to various off-site appointments.

On October 2, 2005, plaintiff submitted a health services request form indicating that he did not find his pain medication effective in reducing his pain. At the time plaintiff submitted the request, respondent Gerlinger was out of the office attending a week-long business meeting. (It is not clear whether other health services staff members “triaged” plaintiff’s request for pain medication.)

On October 10, 2005, plaintiff submitted a health services request form asking for a wrist support. On October 10, 2005, respondent Gerlinger prescribed a wrist support for plaintiff, discontinued plaintiff’s salsalate prescription and issued plaintiff a new prescription for indocin, a pain management drug.

On October 26, 2005, respondent Gerlinger examined plaintiff again. At that time, plaintiff’s wrist was swollen and he reported that it was still painful. Respondent Gerlinger assured plaintiff that he would see an orthopedist soon.

Three days later, on October 28, 2005, plaintiff was seen by Dr. Nathaniel Stewart at Our Lady of Victory Hospital in Stanley, Wisconsin. Dr. Stewart agreed that plaintiff was suffering from an “old” fracture that had healed improperly. In addition, Dr. Stewart

suspected that plaintiff had a “triangular fibrocartilage complex” tear. Dr. Stewart recommended that plaintiff have an MRI, receive gallium injections in his wrist and be seen by a hand specialist.

On October 31, 2005, Dr. Gerlinger submitted a request for approval for an MRI of plaintiff’s wrist. The MRI was performed approximately one month later. The physician who read the MRU results concluded that plaintiff had both a “small ulnar styloid process likely related to previous trauma” and “a small partial tear involving the distal triangular fibrocartilage.”

On December 1, 2005, after reviewing a health service request from plaintiff regarding his wrist pain, respondent Gerlinger asked health services staff to schedule plaintiff an appointment with a hand specialist. In addition, respondent Gerlinger prescribed a five day course of Tylenol #3 for pain management.

On December 13, 2005, plaintiff was seen in the health services unit after he slipped on ice and fell onto his left wrist. He was told to apply ice directly to his wrist and to continue to use his pain medication as necessary. Later that same afternoon, respondent Gerlinger saw plaintiff for a previously scheduled appointment. Respondent Gerlinger addressed his concerns, examined plaintiff’s wrist, discontinued the indocin prescription and prescribed piroxicam (an anti-inflammatory medication) for pain relief.

On January 5, 2006, plaintiff submitted a health services request form indicating that the piroxicam was not as effective as the indocin for pain relief. He asked that the indocin be re-issued, which it was later that same day.

On January 12, 2006, plaintiff submitted a health services request form asking why it was taking so long for him to see an orthopedic specialist.

On January 26, 2006, plaintiff filed this lawsuit.

In February 2006, plaintiff was seen by an orthopaedic specialist in Beaver Dam, Wisconsin. Some time later, he underwent arthroscopic surgery for his wrist problems.

b. Rectal bleeding

On June 18, 2005, a corrections officer escorted plaintiff to the health services unit, where he complained of rectal bleeding. Plaintiff brought with him a towel that had a small amount of blood on it.

Respondent Ericson was the triage nurse on duty that night. She took plaintiff into an examining room and instructed him to remove his pants and lie down on the examining table. Respondent Ericson visually inspected plaintiff's rectal area, noting no signs of a rectal prolapse. Plaintiff denied having any problems with his bowel movements other than the bleeding.

Plaintiff had a history of hemorrhoids. He told respondent Ericson that he took milk of magnesia and used hemorrhoid ointment on a regular basis. Plaintiff's symptoms were consistent with hemorrhoids and were not, in respondent Ericson's opinion, indicative of rectal prolapse. Therefore, respondent Ericson instructed plaintiff to report any further problems to the health services staff and to continue avoiding constipation. She informed plaintiff that he would be scheduled to see a practitioner and told him that he could be seen again by nursing staff sooner if needed.

DISCUSSION

The 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)). To prevail on an Eighth Amendment claim, a prisoner must show that prison officials were deliberately indifferent to his serious medical needs. Estelle, 429 U.S. at 106. Therefore, to withstand summary judgment, a plaintiff must adduce facts from which a reasonable jury could infer that he had a serious medical need (objective component) and that prison officials were deliberately indifferent to this need (subjective component). Id. at 104; see also Gutierrez v. Peters, 111 F.3d 1364, 1369 (7th Cir. 1997). The Court of Appeals for the Seventh Circuit has held that "serious

medical needs” encompass not only conditions that are life-threatening or that carry risks of permanent, serious impairment if left untreated, but also those in which the deliberately indifferent withholding of medical care results in needless pain and suffering. Gutierrez, 111 F.3d at 1371.

As for the Eighth Amendment’s subjective component, the Supreme Court has held that deliberate indifference requires that “the official must both be aware of facts from which the inference could be drawn that a substantial risk of serious harm exists, and he must also draw the inference.” Farmer v. Brennan, 511 U.S. 825, 837 (1994). Inadvertent error, negligence, gross negligence or even ordinary malpractice are insufficient grounds for invoking the Eighth Amendment. Vance v. Peters, 97 F.3d 987, 992 (7th Cir. 1996); see also Snipes, 95 F.3d at 590-91. Deliberate indifference in the denial or delay of medical care is evidenced by a defendant’s actual intent or reckless disregard. A prison official has a sufficiently culpable state of mind when the official “knew of a substantial risk of harm to the inmate and acted or failed to act in disregard of that risk.” Norfleet v. Webster, 439 F.3d 392, 396 (7th Cir. 2006) (citing Walker v. Benjamin, 293 F.3d 1030, 1037 (7th Cir. 2002)). Negligence does not constitute deliberate indifference; therefore, even undisputed medical malpractice does not give rise to a constitutional violation. Id. To infer deliberate indifference on the basis of a medical professional’s treatment decision, a fact finder must

be able to say that the decision was so far afield of accepted professional standards as to imply that it was not actually based on a medical judgment. Estate of Cole by Pardue v. Fromm, 94 F.3d 254, 262 (7th Cir. 1996).

Although plaintiff has not filed a response to defendant's motion for summary judgment, it is clear from the undisputed facts that his wrist injury (which required later surgery) constituted a serious medical need. Although it is much less clear whether his rectal bleeding rises to the level of a serious medical need protected by the Eighth Amendment, there is no need to resolve that question because plaintiff has adduced no evidence that any respondent exhibited deliberate indifference to either his wrist injury or his rectal bleeding.

With respect to plaintiff's rectal bleeding, the undisputed facts reveal that before he even filed a health services request form, he was taken to the prison health services unit where he was examined immediately by respondent Ericson. She visually inspected his rectal area and spoke to him about his health, which included a history of hemorrhoids. Plaintiff told respondent Ericson that he used over the counter laxatives and ointments to treat his hemorrhoids. Respondent Ericson noted that plaintiff's bleeding was minimal and she directed him to report any new or more serious signs to the health services staff.

Plaintiff adduced no evidence that his bleeding increased later, that he suffered any long or short term injury as a result of respondent Ericson's action or that any other medical

professional would have treated plaintiff differently than respondent Ericson treated him. It is certainly not obvious what else respondent Ericson could or should have done. Because the undisputed facts make clear that respondent Ericson did not exhibit indifference to plaintiff's medical needs, deliberate or otherwise, defendants' motion will be granted with respect to plaintiff's claims against her.

Next, I turn to the question whether plaintiff has met his burden of coming forward with evidence from which a jury could conclude that defendants Gerlinger or Dressler were deliberately indifferent to plaintiff's wrist injury. Certainly, it is easy to see why plaintiff objects to the care he received for his injury: it is undisputed that, by a conservative estimate, plaintiff was in pain from the time he wrote his June 29, 2005 health services request form until sometime after his surgery in mid to late 2006. Nevertheless, the relevant constitutional question is not whether prison officials could have provided plaintiff with faster, more effective care but whether they exhibited deliberate indifference to his suffering.

As explained above, deliberate indifference is more than poor medical judgment; it is the equivalent of no judgment at all. In this case, it is undisputed that defendants Dressler and Gerlinger took action with respect to plaintiff's complaints regarding his wrist injury. Defendant Dressler's only connection to plaintiff's wrist injury was through her response to his June 29, 2005 health services request form. In that request plaintiff stated only that his

hand was “not just sore” and that plaintiff thought “a serious problem” was affecting it. In response, defendant Dressler scheduled plaintiff an appointment at the next available time (which, unfortunately, was more than one month later) and wrote back to plaintiff promptly informing him that an appointment had been scheduled. Her response cannot be characterized as indifferent to plaintiff’s need for medical care.

It is even more difficult to see how defendant Gerlinger’s actions could be viewed as deliberately indifferent to plaintiff’s medical needs. Although defendant Gerlinger was not able to correct plaintiff’s wrist problems quickly, he secured two referrals to orthopedic specialists for plaintiff, ordered extensive radiological testing, prescribed a number of different pain medications in response to plaintiff’s complaints of ongoing pain, authorized wrist splints and leather restraints for plaintiff to minimize the pain caused by his injuries and examined plaintiff on a regular basis to discuss pain management and treatment. There is no evidence that defendant Gerlinger failed to take appropriate medical action at any point in plaintiff’s treatment, much less that he exhibited indifference to plaintiff’s serious medical needs.

Finally, I note that plaintiff has failed to adduce evidence showing that defendant Anderson had anything to do with plaintiff’s medical care or with any delay in his receipt of medical services.

Because undisputed facts show that defendants Ericson, Anderson, Dressler and Gerlinger did not violate plaintiff's rights under the Eighth Amendment by the manner in which they treated him for his rectal bleeding and wrist injury, defendants' motion for summary judgment will be granted in its entirety.

ORDER

IT IS ORDERED that the motion for summary judgment of defendants Bruce Gerlinger, Renee Anderson, Rita Ericson and Becky Dressler is GRANTED. The clerk of court is directed to enter judgment in favor of defendants and close this case.

Entered this 16th day of July, 2007.

BY THE COURT:
/s/
BARBARA B. CRABB
District Judge