

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

NATHANIEL BELL,

Plaintiff,

v.

LYNN CIHLAR,

Defendant.

OPINION AND
ORDER

06-C-172-C

In this civil action brought under 28 U.S.C. § 1983, plaintiff Nathaniel Bell contends that defendant Lynn Cihlar violated his Eighth Amendment protection against cruel and unusual punishment when she was deliberately indifferent to his serious medical needs by failing to treat his broken foot. Plaintiff is incarcerated and is presently housed at the Oakhill Correctional Institution in Oregon, Wisconsin. Now before the court is defendant's unopposed motion for summary judgment. From the facts adduced by defendant in support of her motion for summary judgment, no reasonable jury could infer that defendant was deliberately indifferent to plaintiff's serious medical needs. Therefore, defendant's motion for summary judgment will be granted.

From defendant's proposed findings of fact, I find the following facts to be material

and undisputed.

FACTS

At times relevant to this case, plaintiff Nathaniel Bell was incarcerated at the Fox Lake Correctional Institution. Defendant Lynn Cihlar is a registered nurse who was been employed as a Nurse Clinician 2 at the Fox Lake Correctional Institution since August, 2001.

On December 27, 2005, plaintiff injured his ankle playing basketball. Defendant, who was working the second shift in the health services unit, received a call from security about plaintiff's injury at approximately 6:45 p.m. After speaking with the security officer about plaintiff's injury, defendant sent an ace bandage and crutches to the recreation area. She instructed the security officer that he should have plaintiff wrap his foot with the bandage and use the crutches when he needed to move around. In addition, she told the security officer to instruct plaintiff that he should elevate his ankle, apply ice for the first 24 hours and three or four times a day thereafter and take acetaminophen or ibuprofen to reduce the pain. Finally, she recommended that plaintiff submit a request to see a physician the following day.

At approximately 7:15 p.m., a security officer brought plaintiff to the health services unit. Plaintiff said that his foot was broken and insisted that he be sent to the local

emergency room for an x-ray. Defendant looked at plaintiff's foot, which showed no "gross deformities or discoloration." Defendant did not recommend that plaintiff be taken to the emergency room at that time, and instead reiterated her advice that he use crutches, avoid putting weight on the foot and apply ice. When plaintiff told defendant that he didn't have any pain medication available to him, she gave plaintiff 24 tablets of ibuprofen, along with dosing instructions. Defendant scheduled plaintiff for a doctor's appointment the following day. At approximately 8:20 p.m., defendant asked a unit security officer to check on plaintiff. The security officer reported that plaintiff was not elevating his ankle, as defendant had recommended.

Plaintiff saw Dr. Enrique Luy at an appointment the next morning. At that time, Dr. Luy observed that plaintiff's ankle was swollen, but did not observe any "gross deformities" that would have required emergency care the night before. Dr. Luy ordered an x-ray of plaintiff's foot, which was scheduled for the following week. Dr. Luy instructed plaintiff that, in the interim, he was to elevate his foot, apply ice, use an ace bandage and air split and take ibuprofen as needed for the pain. Finally, he directed plaintiff to follow up with a physician after his x-ray.

An x-ray performed on January 4, 2006 revealed a small avulsion fracture in plaintiff's ankle. In layman's terms, plaintiff had a small hairline or chip fracture of his left ankle. After the x-ray was performed, Dr. Luy instructed plaintiff to use a CAM boot, apply ice and

elevate his foot.

Dr. Luy and Holly Puhl, the health services unit manager at the Fox Lake Correctional Institution are aware of plaintiff's injury and defendant's recommended treatment. They believe that defendant's treatment recommendations were reasonable and well within the nursing standard of care.

OPINION

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, 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 physician'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 possible to infer from the facts that plaintiff's broken foot constitutes a serious medical need. Therefore, the only question remaining is whether defendant exhibited deliberate indifference to plaintiff's medical condition. The facts show that when defendant learned about plaintiff's injury, she responded immediately by sending him an ace bandage, crutches and instructions for alleviating the swelling and pain. Later that evening, when plaintiff came to see her, defendant examined his foot, determined that he should see Dr. Luy the following day and reiterated her prior instructions. Based on her review of plaintiff's foot, she determined that he did not need an immediate x-ray. Defendant scheduled a doctor's appointment for plaintiff the next morning. The course of treatment suggested by Dr. Luy at that appointment was very similar to that suggested by defendant the night before—plaintiff was directed to ice and elevate his foot, use an ace bandage and air split and take ibuprofen as needed for the pain. Dr. Luy determined that an x-ray would be helpful, but that it could be done a week later. Then, after an x-ray was performed, Dr. Luy reaffirmed this course of treatment, adding only that plaintiff should wear a CAM boot.

In light of these facts, a reasonable jury could not conclude that defendant's treatment of plaintiff violated the Eighth Amendment. Because plaintiff has not responded to defendant's motion for summary judgment, it is difficult to discern which aspects of defendant's behavior and treatment of him plaintiff believes constituted deliberate indifference. There is no direct evidence that defendant intended to cause plaintiff harm or

recklessly disregarded a risk of unnecessary suffering. Nor is there is any evidence that defendant's care of plaintiff was so far afield of accepted professional standards that a reasonable jury could draw an inference that defendant acted with deliberate indifference.

Standing alone, plaintiff's denied request for an immediate x-ray is not a sufficient reason to maintain an Eighth Amendment claim, because mere disagreement between a prisoner and his medical provider about the appropriate course of treatment does not amount to deliberate indifference. The record contains no evidence that an earlier x-ray would have changed plaintiff's condition in the slightest or that defendant's decision not to order an immediate x-ray was outside the range of accepted professional decisions. The courses of treatment recommended by defendant before the x-ray and Dr. Luy after the x-ray were similar. From the undisputed facts, no reasonable jury could conclude that defendant was deliberately indifferent to plaintiff's serious medical needs. Therefore, defendant's motion for summary judgment will be granted.

ORDER

IT IS ORDERED that defendant Lynn Cihlar's motion for summary judgment is GRANTED.

The clerk of court is directed to enter judgment for defendant and close this case.

Entered this 8th day of February, 2007.

BY THE COURT:

/s/

BARBARA B. CRABB

District Judge