

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

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PHILLIP E. BACON,

Plaintiff,

v.

ORDER

RANDALL HEPP, SHARRON ZUNKER,  
SHARRON HARDER, PAUL TRITES,  
DEB LEMKE, KENNETH ADLER, MATTHEW  
FRANK and DAVID BURNETT,

06-C-455-S

Defendants.

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Upon receipt of plaintiff's partial filing fee in the amount of \$8.83, the Court addresses the merits of plaintiff's complaint. According to 28 U.S.C. § 1915(b)(2), the institution's financial officer is authorized to deduct monthly payments from plaintiff's account until the \$350.00 filing fee is paid in full.

Plaintiff alleges that on December 30, 2005 while he was incarcerated at the Jackson Correctional Institution, Black River Falls, Wisconsin his ankle was injured. He alleges that although he has received medical treatment, defendants Sharron Harder, Paul Trites, Deb Lemke and Kenneth Adler have been deliberately indifferent to his serious medical need.

Plaintiff has submitted attachments that show x-rays taken on April 18, 2006 indicate that plaintiff has a small avulsion fracture from the lateral talus. Plaintiff alleges that he has received no treatment for this fracture but that defendants have only treated him for a sprain.

It is possible that plaintiff could prove a set of facts that support an Eighth Amendment deliberate indifference claim against defendants Harder, Trites, Lemke and Adler.

Plaintiff has not alleged any sufficient facts to support an Eighth Amendment claim against the remaining defendants. Accordingly, defendants Hepp, Zunker, Frank and Burnett will be dismissed.

ORDER

IT IS ORDERED that plaintiff will be allowed to proceed on his Eighth Amendment claims against defendants Sharron Harder, Paul Trites, Deb Lemke and Kenneth Adler.

IT IS FURTHER ORDERED that defendants Randall Hepp, Sharron Zunker, Matthew Frank and David Burnett are DISMISSED.

The complaint and summons are being delivered to the United States Marshal for service upon Sharron Harder and Kenneth Adler at the Jackson Correctional Institution, Black River Falls, Wisconsin and on Paul Trites and Deb Lemke at the Department of Corrections, P.O. Box 7925, Madison, Wisconsin.

Entered this 19<sup>th</sup> day of September, 2006.

BY THE COURT:

S/

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JOHN C. SHABAZ  
District Judge