

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

LAWRENCE NORTHERN and
VIRN POLK,

Plaintiffs,

v.

MEMORANDUM and ORDER

LARRY FUCHS, C.O. REGER,
CAPTAIN DENKE and DR. GLEN
HEINZL,

07-C-142-S

Defendants.

Plaintiffs Larry Northern and Virn Polk were allowed to proceed on their equal protections and deliberate indifference claims against defendants Larry Fuchs, C.O. Reger, Captain Denke, and Dr. Glen Heinzl. In their complaint they allege that defendants were deliberately indifferent to their medical condition Pseudofolliculitis Barbae (OSB) and that they were not allowed to possess Andis Shaver/Trimmers to alleviate this condition although other inmates were allowed to have the trimmers.

On June 11, 2007 defendants moved for summary judgment pursuant to Rule 56, Federal Rules of Civil Procedure, submitting proposed findings of facts, conclusions of law, an affidavit and a brief in support thereof. This motion has been fully briefed and is ready for decision.

On a motion for summary judgment the question is whether any genuine issue of material fact remains following the submission by both parties of affidavits and other supporting materials and, if not, whether the moving party is entitled to judgment as a matter of law. Rule 56, Federal Rules of Civil Procedure.

Supporting and opposing affidavits shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated therein. An adverse party may not rest upon the mere allegations or denials of the pleading, but the response must set forth specific facts showing there is a genuine issue for trial. Celotex Corp. v. Catrett, 477 U.S. 317 (1986).

There is no issue for trial unless there is sufficient evidence favoring the non-moving party that a jury could return a verdict for that party. If the evidence is merely colorable or is not significantly probative, summary judgment may be granted. Anderson v. Liberty Lobby, Inc., 477 U.S. 242 (1986).

FACTS

For purposes of deciding defendants' motion for summary judgment the Court finds that there is no genuine dispute as to any of the following material facts.

Plaintiffs Lawrence Northern and Virn Polk are adult inmates incarcerated at the New Lisbon Correctional Institution, New Lisbon, Wisconsin. (NLCI). Defendant Larry Fuchs is the Security Director at NLCI. Defendant Captain Denke (Timothy Dahnke) is a Captain at NLCI. Defendant Shirley Reger is a Correctional Officer at NLCI. Defendant Glen Heinzl is employed as a physician at NLCI.

On March 18, 2005 defendant Fuchs issued a memo to staff and inmates which stated as follows:

After further review of the "Andis Headliner Shave and Trim Kit" they will no longer be available for purchases. This is due to the fact they are designed and can be used as a hair clipper, which would not comply with other DOC/Institution policies.

Those who currently possess them will be allowed to keep them while here at New Lisbon Correctional Institution until transfer to another facility. You will not be allowed to replace them. The Andis clippers will not transfer with you as allowable property to another institution.

On November 29, 2006 the Health Services Unit ordered that plaintiff Northern could have a beard trimmer that was security approved. The Andis Shaver/trimmer was not approved and plaintiff Northern never possessed one.

Plaintiff Polk mistakenly received an Andis Shaver Trimmer through property on December 13, 2006. The Property Captain retrieved the trimmer from plaintiff Polk on January 2, 2007 because it was not allowable property.

On November 23, 2004 plaintiff Polk was seen for Pseudofolliculitis Barbae (PFB) but has not requested treatment for it since then. PFB is a facial skin condition that occurs when hair follicles curve back into the skin which becomes inflamed. This condition which is also called razor bumps can be made worse by shaving.

On June 24, 2006 plaintiff Northern was seen by a nurse for PFB who noted he had a rash and ingrown hairs. On November 8, 2006 the nurse saw plaintiff Northern again and reported small bumps on his skin.

On January 5, 2007 plaintiff Northern was seen by Dr. Heinzl for his skin condition. Defendant Heinzl discussed a variety of treatment options with him. Plaintiff Northern elected to apply topical triple antibiotic ointment and hydrocortisone cream which were given to him. When defendant Heinzl saw plaintiff Northern on March 2, 2007 Northern had not been using the ointments.

On April 19, 2007 plaintiff Polk requested permission from his Unit Manager for weekly beard trims. The Unit Manager granted plaintiff Polk's request.

Inmates Steven Anderson, Gregory Farrow, Jeffrey Golden, Jeffrey Hopkins, Walker Johnson, Thomas Cacique and Billy Stark were allowed to retain their beard trimmers.

MEMORANDUM

Plaintiffs claim that defendants violated their Eighth Amendment rights by being deliberately indifferent to their serious medical needs. The Eighth Amendment prohibits deliberate indifference to an inmate's serious medical need. Estelle v. Gamble, 429 U.S. 97 (1976). Deliberate indifference is a subjective standard which requires that the defendants knew that plaintiff was at risk of serious harm and acted with callous disregard to this risk. An official must both be aware of the facts from which the inference could be drawn that a substantial risk of serious harm exists and must also draw the inference. Farmer v. Brennan, 511 U.S. 825, 834 (1994).

Although PFB is an annoying skin condition there is no evidence that it is a serious medical condition. Plaintiff Polk requested treatment for his PFB on November 23, 2004 and has not requested treatment since then. There is no evidence in the record that defendants were deliberately indifferent to plaintiff Polk's PFB.

Plaintiff Northern was treated for his PFB by Dr. Heinzl. He was provided antibiotic ointment. Plaintiff Northern never requested weekly beard trims. Although plaintiff Northern disagrees with the treatment he has received, this disagreement does not constitute deliberate indifference under Estelle v. Gamble. There is no evidence in the record that the defendants

were deliberately indifferent to plaintiff Northern's PFB. Accordingly, defendants are entitled to judgment in their favor on plaintiffs' Eighth Amendment deliberate indifference claims.

Plaintiffs also claim that they were denied their equal protection rights. The Equal Protection Clause of the Fourteenth Amendment guarantees that all persons similarly situated should be treated alike. Cleburne v. Cleburne Living Center, 473 U.S. 432, 439 (1985). Plaintiff has submitted an affidavit that inmates Steven Anderson, Gregory Farrow, Jeffrey Golden, Jeffrey Hopkins, Walker Johnson, Thomas Cacique and Billy Stark are in possession of beard trimmers. There is no evidence that these inmates requested beard trimmers after the March 18, 2005 memo from defendant Fuchs. It appears that because they had their beard trimmers prior to the memo they were allowed to keep them. At the time of the memo plaintiffs did not have the beard trimmers and they were not allowed to receive them after the memo. There is no evidence that plaintiffs were treated differently than inmates who requested beard trimmers after they were prohibited by the March 18, 2005 memo. Plaintiffs have not raised a genuine issue of material fact concerning their equal protection claim. Accordingly, defendants are entitled to judgment in their favor on this claim. Defendants' motion for summary judgment will be denied.

In response to plaintiff's motion to compel discovery concerning the identity of inmates possessing the Andis Shaver/

Trimmer defendants agree to identify any inmate who received an Andis Shaver after March 18, 2005. Defendants, however, agree to provide this information by August 13, 2007 which would be after the trial date in this matter. If there are inmates who received an Andis Shaver/Trimmer this information should be provided forthwith to plaintiffs. Where this evidence is relevant to this Court's denial of plaintiffs' equal protection claim plaintiffs may move reconsideration.

Plaintiffs are advised that in any future proceedings in this matter they must offer argument not cumulative of that already provided to undermine this Court's conclusion that his claim must be dismissed. See Newlin v. Helman, 123 F.3d 429, 433 (7th Cir. 1997).

ORDER

IT IS ORDERED that defendants provide to plaintiffs forthwith and immediately the identity of any inmate at NLCI who received an Andis Shaver/Trimmer after March 18, 2005.

IT IS FURTHER ORDERED that defendants' motion for summary judgment is GRANTED.

IT IS FURTHER ORDERED that plaintiffs' motion to produce witnesses is DENIED as moot.

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IT IS FURTHER ORDERED that judgment be entered in favor of defendants against plaintiffs DISMISSING their complaint and all claims contained therein with prejudice and costs.

Entered this 16th day of July, 2007.

BY THE COURT:

/s/

JOHN C. SHABAZ
District Judge