

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

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CHARLES G. RUBEL,

Petitioner,

v.

PAM WALLACE, Warden CVCTF,  
THOMAS KARLEN, Deputy Warden CVCTF,  
JAMES GREER, Director of the Bureau of  
Health Services Madison, REED RICHARDSON,  
Captain CVCTF, SHARON ZUNKER, Title  
Unknown Madison, COMPLAINT EXAMINERS,  
ET AL., Involved in the Exhaustion of Administrative  
Remedies and FERN SPRINGS, Doctor at CVCTF,

Respondents.  
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ORDER

08-cv-238-bbc

In this proposed civil action for declaratory and injunctive relief, petitioner Charles G. Rubel contends that respondents Pam Wallace, Thomas Karlen, James Greer, Reed Richardson, Sharon Zunker, Complaint Examiners Et Al. and Fern Springs violated his rights under the Eighth Amendment by denying him medical care. Petitioner has requested leave to proceed in forma pauperis and has paid the \$8.40 initial partial filing fee.

In addressing any pro se litigant's complaint, the court must construe the complaint

liberally. Haines v. Kerner, 404 U.S. 519, 521 (1972). However, when the litigant is a prisoner, the 1996 Prison Litigation Reform Act requires the court to deny leave to proceed if the prisoner has had three or more lawsuits or appeals dismissed for lack of legal merit or if the prisoner's complaint is legally frivolous, malicious, fails to state a claim upon which relief may be granted or asks for money damages from a respondent who by law cannot be sued for money damages. 28 U.S.C. § 1915(e)(2).

Petitioner's allegations support an Eighth Amendment claim against respondents Springs, Greer and Zunker because the petitioner alleges that respondent Springs is a doctor who refused to treat petitioner's severe pain and injuries and respondents Greer and Zunker are medical professionals who reviewed his grievance related to respondent Springs's treatment but refused to act. Petitioner's allegations do not support such a claim against respondents Wallace, Karlen, Richardson and "Complaint Examiners Et Al." Therefore, these respondents will be dismissed from the case.

I draw the following allegations of fact from petitioner's proposed complaint.

## ALLEGATIONS OF FACT

### A. Parties

Plaintiff Charles G. Rubel is a prisoner at the Chippewa Valley Correctional Treatment Facility in Chippewa Falls, Wisconsin. Respondent Pam Wallace is the warden,

respondent Thomas Karlen is the deputy warden, respondent Becky Dressler is the Nursing Supervisor and respondent Richardson is a captain at the Chippewa Valley Correctional Treatment Facility. Respondent Greer is Director of the Bureau of Health Services, responsible for “all medical staff.” From other lawsuits filed in this court, I am aware that respondent Sharon Zunker is the coordinator of the Bureau of Health Service.

#### B. Medical Treatment

On October 9, 2007, petitioner fell backwards down four or five stairs and hurt his neck and back. Since then, he has suffered from daily headaches, migraines, back spasms that require him to wear himself out pacing in order to be able to sleep and his legs “feel like they are asleep” most of the time. Petitioner is in so much pain that he cannot put on his shoes and socks in the morning. In addition, petitioner has developed a lump on his chest that causes “excruciating pain” on a daily basis.

Before his October injury, petitioner had already suffered pain from “previous back injuries” for which he had been receiving pain medications before imprisonment and while in a previous institution. When petitioner arrived at the Chippewa Valley Correctional Treatment Facility, respondent Springs refused to keep him on any pain medication, and has prolonged or canceled any appointments petitioner has made. Respondent Springs prescribed Gabapentin, an epilepsy medicine, and told petitioner that she would not give

him any other prescription medicine. Petitioner has an ulcer and ibuprofen makes him sick, and the Gabapentin has not given him relief from his pain. Petitioner has requested an MRI, but respondent Springs refused to request one for him.

On or about February 21, 2008, petitioner injured his foot. Respondent Springs took six weeks to order a brace for the foot; now petitioner has permanent foot damage and remains in pain.

Petitioner filed an inmate complaint and complained up the “chain of command” about respondent Springs’s refusal to treat him. Respondents Wallace, Karlen, Greer, Richardson and Zunker were involved in reviewing petitioner’s complaint. None of them provided the relief petitioner requested.

## OPINION

Deliberate indifference to prisoners' serious medical needs constitutes the unnecessary and wanton infliction of pain proscribed by the Eighth Amendment. Estelle v. Gamble, 429 U.S. 97, 104-05 (1976). To state a deliberate indifference claim, “a prisoner must allege acts or omissions sufficiently harmful to evidence deliberate indifference to serious medical needs.” Id. at 106. In other words, petitioner must allege facts from which it can be inferred that he had a serious medical need (objective component) and that prison officials were deliberately indifferent to this need (subjective component). Gutierrez v. Peters, 111 F.3d

1364, 1369 (7th Cir. 1997).

“Serious medical needs” encompass (1) conditions that are life-threatening or that carry risks of permanent serious impairment if left untreated; (2) those in which the deliberately indifferent withholding of medical care results in needless pain and suffering; and (3) conditions that have been “diagnosed by a physician as mandating treatment.” Gutierrez, 111 F.3d at 1371-73. Petitioner’s allegations suggest that he experiences “excruciating” daily pain and suffers from a number of different physical injuries. These allegations of pain and suffering are sufficient to suggest a serious medical condition. Gutierrez, 111 F.3d at 1372 n.7 (given liberal pleading standards for pro se complaints, “the ‘seriousness’ determination will often be ill-suited for resolution at the pleading stage”).

To show deliberate indifference, petitioner must establish that a respondent was “subjectively aware of the prisoner’s serious medical needs and disregarded an excessive risk that a lack of treatment posed” to his health. Wynn v. Southward, 251 F.3d 588 (7th Cir. 2001). Although a negligent or inadvertent failure to provide adequate medical or dental care does not amount to deliberate indifference because such a failure is not an “unnecessary and wanton infliction of pain,” Estelle, 429 U.S. at 105-06, a prison official need not have intended or hoped for the harm that the inmate suffered in order to be held liable under the Eighth Amendment. Haley v. Gross, 86 F.3d 630, 641 (7th Cir. 1996).

The Court of Appeals for the Seventh Circuit has held that to recover damages under

§ 1983, a petitioner must establish each respondent's personal responsibility for the claimed deprivation of a constitutional right. Although a prison official need not participate directly in the alleged deprivation to be liable, the official must either "act[] or fail[] to act with a deliberate or reckless disregard of petitioner's constitutional rights" or allow "the constitutional deprivation to occur[] at her direction or with her knowledge or consent." Smith v. Rowe, 761 F.2d 360, 369 (7th Cir. 1985); Crowder v. Lash, 687 F.2d 996, 1005 (7th Cir. 1982). In order for a supervisory official to be found liable under § 1983, there must be a "causal connection, or an affirmative link, between the misconduct complained of and the official sued." Smith v. Rowe, 761 F.2d at 369; Wolf-Lillie v. Sonquist, 699 F.2d 864, 869 (7th Cir. 1983).

Petitioner will not be allowed to proceed against respondents Wallace, Karlen, Richardson and "Complaint Examiners Et Al." I understand petitioner to allege that each of these respondents was in the "chain of command" for the complaint process that petitioner followed to exhaust his administrative remedies ("Complaint Examiners Et Al." is a title petitioner used to describe these other respondents). However, a complaint examiner cannot be held liable for deferring to the decision of the medical professional whose treatment is the subject of a complaint unless the examiner is a medical professional herself and the complaint related the prisoner's serious medical need and treating professional's failure to treat it. Johnson v. Doughty, 433 F.3d 1001, 1010-11 (7th Cir. 2006); Greeno

v. Daley, 414 F.3d 645, 656 (7th Cir. 2005). Nothing in petitioner's complaint allows such an inference. Therefore, petitioner will be denied leave to proceed against respondents Wallace, Karlen, Richardson and "Complaint Examiners Et Al."

However, petitioner will be granted leave to proceed against respondents Springs, Greer and Zunker. From the allegations, it is possible to infer that respondent Springs knew of petitioner's "excruciating pain" and assorted physical injuries but refused to treat them. Although respondent Springs prescribed Gabapentin, it is possible to infer that she knew that this medicine would not relieve petitioner's excruciating pain.

As for respondents Greer and Zunker, they were "complaint examiners" who reviewed petitioner's grievance in which he stated that respondent Springs refused to treat his pain and injuries. However, unlike the other complaint examiners, respondents Greer and Zunker have "medical" positions: respondent Greer is the Director of the Bureau of Health Services and respondent Zunker is the coordinator of the Department of Corrections Bureau of Health Service. Construing the allegations in the complaint in the light most favorable to plaintiff, I may infer from their titles that these respondents have medical expertise and, therefore, would be expected to exercise independent medical judgment in reviewing plaintiff's complaints about respondent Springs's alleged improper medical care. Because the allegations tend to show that respondents Springs, Greer and Zunker were subjectively aware of petitioner's serious medical needs and disregarded an excessive risk that a lack of

treatment posed, petitioner will be granted leave to proceed on his Eighth Amendment Claim against those respondents.

One further matter requires attention. In his proposed complaint petitioner requests a preliminary injunction for immediate medical care by a “qualified physician.” If petitioner wishes to seek a preliminary injunction, he must file a motion for a preliminary injunction and comply with this court’s procedures for obtaining a preliminary injunction. Under these procedures, which I am enclosing to petitioner with a copy of this order, petitioner must file with the court and serve on respondents proposed findings of fact supporting his claim, and submit with his proposed findings of fact any evidence he has to support his request, such as an affidavit explaining what steps he has taken to obtain medical care or authenticated copies of his medical records showing the failure of respondent Springs to attend to his needs. If petitioner submits such a motion, I will set a short deadline within which respondent Springs will be required to respond to it.

## ORDER

IT IS ORDERED that:

1. Petitioner Charles G. Rubel is GRANTED leave to proceed on his claim that respondent Fern Springs, James Greer and Sharon Zunker violated his Eighth Amendment rights by refusing to address his serious medical needs;



2. Petitioner Charles G. Rubel is DENIED leave to proceed on his claim that respondents Pam Wallace, Thomas Karlen, Reed Richardson, and “Complaint Examiners Et Al.” violated his Eighth Amendment rights because petitioner’s allegations fail to state a claim that these respondents were deliberately indifferent to petitioner’s serious health care needs. Respondents Wallace, Karlen, Richardson and “Complaint Examiners Et Al.” are DISMISSED from this case;

3. A strike is recorded against petitioner for raising in his complaint in this case claims against respondents Wallace, Karlen, Richardson and “Complaint Examiners Et Al.” that were required to be dismissed for petitioner’s failure to state a claim upon which relief may be granted against them;

4. For the remainder of this lawsuit, petitioner must send respondent a copy of every paper or document that he files with the court. Once petitioner has learned what lawyer will be representing respondent, he should serve the lawyer directly rather than respondent. The court will disregard any documents submitted by petitioner unless petitioner shows on the court’s copy that he has sent a copy to respondent or to respondent’s attorney; and

5. Petitioner should keep a copy of all documents for his own files. If petitioner does not have access to a photocopy machine, he may send out identical handwritten or typed

copies of his documents.

Entered this 7th day of July, 2008.

BY THE COURT:

*Barbara B. Crabb*

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BARBARA B. CRABB  
District Judge