IN THE UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF WISCONSIN

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MICHAEL C. MAYFIELD,

ORDER

Petitioner,

08-cv-395-slc

v.

HSU STAFF,[1]

Respondent.

- -

On September 5, 2008, I screened petitioner's complaint pursuant to 28 U.S.C. § 1915(e)(2). I denied his request for leave to proceed in forma pauperis on a claim that former respondents Stanley Correctional Institution, Pamella Wallace, Sean Salters, Sergeant Anderson, Correctional Officer Tempski and the "Waupun Correctional Institution Stair Manufacturer" violated his Eighth Amendment rights by failing to maintain in a safe condition a stairwell at the Stanley Correctional Institution, dkt. #8. In that same order, I dismissed petitioner's claim that unnamed HSU Staff had failed to provide him with

[1]Although petitioner named several other respondents in his initial complaint, I dismissed those parties. HSU staff was the only remaining respondent before petitioner filed his proposed amended complaint.

indispensable treatment for his injuries following the fall, because petitioner's allegations in this respect violated Fed. R. Civ. P. 8. In particular, petitioner did not identify the individuals who failed to treat him or even describe what his injuries were and what treatment he needed so that the respondents could have fair notice of his claim against them. Rather than dismiss this action, however, I gave petitioner an opportunity to submit a proposed amended complaint in which he "(1) name[d] the person or persons responsible for denying him medical treatment; and (2) describe[d] in short and plain statements what each respondent did or did not do to care for petitioner's injury." Dkt. #8 at 6.

Now before the court is petitioner's proposed amended complaint, dkt. #10, in which he names as respondents individuals at the Stanley Correctional Institution who he alleges denied him medical treatment immediately following his fall, and additional individuals who are allegedly denying him treatment at the Columbia Correctional Institution. Also before the court is petitioner's "Motion for Reconsideration," dkt. #9, in which he asks the court to revisit its decision to deny him leave to proceed on his claim that the stairwell was maintained in a condition that violated his constitutional rights.

Addressing petitioner's motion for reconsideration first, I conclude that the motion must be denied. Petitioner argues that his claim regarding his slip and fall should not have been dismissed because the respondents he named are not immune from liability and because this claim can be brought under constitutional provisions other than the Eighth

Amendment. Regarding petitioner's immunity argument, I did not dismiss his claim on the ground that the respondents are immune from liability. Indeed, I did not discuss immunity at all. I dismissed petitioner's claim for his failure to state a claim upon which relief may be granted against the respondents he named, that is, for petitioner's failure to allege facts making out an Eighth Amendment claim.

Furthermore, petitioner's allegations that he slipped and fell on stairs that had been improperly maintained do not allow an inference to be drawn that respondents deprived him of any other constitutional right. Petitioner suggests that his slip and fall somehow deprived him of rights guaranteed under the Fourth, Ninth and Fourteenth Amendments. However, petitioner is incorrect. Nothing in his allegations support a claim that respondents subjected him to an unreasonable search and seizure so as to violate the Fourth Amendment, or to equal protection of the laws so as to violate Fourteenth Amendment. Moreover, the Ninth Amendment is not a source of rights for petitioner. It is simply a rule about how to read the Constitution. Troxel v. Granville, 530 U.S. 57 (2000). Because nothing in petitioner's motion for reconsideration convinces me that I erred in dismissing petitioner's claim that respondents deprived him of his constitutional rights by failing to maintain properly the stairs on which he slipped and fell, the motion will be denied.

I turn then to petitioner's proposed amended complaint. Under the Prison Litigation Reform Act, I am required to screen the proposed amended complaint, just as I screened

petitioner's initial complaint. 28 U.S.C. § 1915A. In performing that screening, I conclude that petitioner has stated an Eighth Amendment claim that respondent Hyde was deliberately indifferent to his serious medical needs. However, I conclude also that petitioner has failed to state a claim upon which relief can be granted against respondents Rummer, Anderson, Brenda, Voeks, Alsum, Suliene, Bachmann, Boehlmann, Spencer and Hannula.

In his proposed amended complaint, petitioner alleges the following facts.

ALLEGATIONS OF FACT

A. Parties

Petitioner Michael Mayfield currently resides in Racine, Wisconsin. At all times relevant to this lawsuit, he was incarcerated either at the Stanley Correctional Institution in Stanley, Wisconsin or the Columbia Correctional Institution in Portage, Wisconsin. Respondents Dr. Bachmann, Dr. Boehlmann, Dr. Spencer and Dr. Honnula are institution doctors at the Stanley Correctional Institution. Respondents R.N. Rummer, R.N. Hyde, R.N. Anderson and R.N. Brenda are nurses at the Stanley Correctional Institution. Respondent Voeks is the Health Services Unit manager at the Stanley Correctional Institution. Respondent Dr. Suliene is an institution doctor at the Columbia Correctional Institution. Respondent Lori Alsum is the Health Services Unit manager at the Columbia

Correctional Institution.

B. Petitioner's Injury and the Medical Care Received

On June 29, 2007, while petitioner was incarcerated at the Stanley Correctional Institution, he slipped and fell on some stairs and injured his left knee. After the fall, petitioner was taken to Our Lady of Victory Hospital where his knee was x-rayed and examined by Dr. Hameed. Dr. Hammed noted that petitioner had a previous history of left knee injuries, that the x-ray showed no broken bones and that petitioner's injury was a "left knee contusion with abrasion." Petitioner was prescribed 800 mg of Motrin every six hours as needed and if the Motrin failed to help with the pain, one to two Vicodin tablets every eight hours as needed. Petitioner was to receive a follow up visit with a doctor after ten days if his injury did not improve.

Between June 29, 2007, when petitioner initially injured his knee, and April 25, 2008, when he was transferred to the Columbia Correctional Institution, petitioner was seen by respondents Bachmann, Boehlmann, Spencer and Honnula regarding his injured knee. In September 2007, petitioner was seen by either Bachmann, Boehlmann or Spencer. Upon meeting with one of the doctors, petitioner was told that they would start the process to obtain an appointment for petitioner to receive an MRI of his knee as well as a consultation with an orthopedic surgeon. Respondents Bachmann, Boehlmann and Spencer promised

petitioner that they would help him obtain surgery.

Petitioner repeatedly requested information about the scheduling of an MRI appointment and was told that obtaining permission for the appointment was a "work in progress" and that he should continue to take his pain medications. In February 2008, respondent Honnula met with petitioner regarding the request that he be allowed to consult with an orthopedic doctor in Madison to have an MRI and discuss possible surgery for his knee. On March 20, 2008, petitioner received an appointment to see an orthopedic surgeon. During the time petitioner waited for an appointment, he was prescribed several pain medications. However, sometimes respondent Hyde refused to provide petitioner with his pain medication because she believed he was addicted to the medication and not really in pain.

On March 20, 2008, petitioner was taken to Black River Memorial Hospital to have an MRI taken of his left knee and to have an orthopedic consultation. The orthopedic doctor created a preliminary report and noted that the MRI showed that petitioner has degenerative arthritic changes in his knee joint as well as "a very obvious torn, unstable lateral meniscal tear." The report also noted that petitioner "would seem to be a good candidate to go ahead with arthroscopic surgery . . . but the most significant risk is that it may be that we can help the lateral meniscus problem, but can't really solve the underlying arthritic complaints and that may continue to keep him symptomatic."

On April 25, 2008, petitioner was transferred to the Columbia Correctional Institution. On May 2, 2008, respondent Suliene requested that petitioner be provided with surgery for his knee, but on May 7, 2008, Dr. David Burnett disapproved the request pending an opinion by a "committee" responsible for reviewing requests for elective orthopedic procedures. Petitioner received a second opinion at Shrank Clinic on June 17, 2008. The doctor at Shrank Clinic recommended surgery. However, on June 26, 2008, petitioner was told that the surgery request was denied. Instead, petitioner received a cortisone injection and Vicodin. Petitioner was released from prison on September 30, 2008.

DISCUSSION

As an initial matter, I note that respondents Rummer, Anderson, Brenda, Voeks and Alsum must be dismissed from the lawsuit because petitioner does not allege any facts to suggest that they were personally involved in depriving him of a constitutional right. 42 U.S.C. § 1983 governs alleged violations of an individual's constitutional rights. It is well established that liability under this statute must be based on a respondent's personal involvement in the constitutional violation. Gentry v. Duckworth, 65 F.3d 555, 561 (7th Cir. 1995); Del Raine v. Williford, 32 F.3d 1024, 1047 (7th Cir. 1994); Morales v. Cadena, 825 F.2d 1095, 1101 (7th Cir. 1987). According to petitioner's allegations, respondents

Rummer, Anderson and Brenda merely relayed information from the doctors to petitioner. Relaying such information is not personal involvement. Further, respondents Voeks and Aslum appear to have had no involvement in depriving petitioner of a constitutional right. Because petitioner fails to explain how respondents Rummer, Anderson, Brenda, Voeks and Alsum were deliberately indifferent to his medical needs, I will dismiss these respondents for petitioner's failure to state a claim against them.

With respect to medical care, the Supreme Court has held that "a prisoner must allege acts or omissions sufficiently harmful to evidence deliberate indifference to serious medical needs" to state an Eighth Amendment claim. Estelle v. Gamble, 429 U.S. 97, 106 (1976). This standard contains objective and subjective components. First, an inmate's medical need must be objectively serious. A condition meets this standard if it is "one that has been diagnosed by a physician as mandating treatment or one that is so obvious that even a lay person would perceive the need for a doctor's attention." Greeno v. Daley, 414 F.3d 645, 653 (7th Cir. 2005). Two separate doctors have recommended surgery to fix petitioner's lateral meniscal tear and petitioner has been on pain medication for over a year for knee pain, both allegations evince that his knee injury is objectively serious.

The subjective element of a denial of medical care claim requires that the prison official act with a sufficiently culpable state of mind. Gutierrez v. Peters, 111 F.3d 1364, 1369 (7th Cir. 1997). This state of mind, known as deliberate indifference, requires at a

minimum that a prison official be aware of and disregard a substantial risk to the inmate's health. Greeno, 414 F.3d at 653. In other words, the official "must 'both be aware of facts from which the inference could be drawn that a substantial risk of serious harm exists' and 'must also draw the inference.'" Id. (quoting Farmer v. Brennan, 511 U.S. 825, 837 (1994)). Inadvertent error, negligence, gross negligence and medical malpractice are insufficient grounds for invoking the Eighth Amendment. Vance v. Peters, 97 F.3d 987, 992 (7th Cir. 1996); see also Snipes v. DeTella, 95 F.3d 586, 590-91 (7th Cir. 1996); Duckworth v. Franzen, 780 F.2d 645, 652-53 (7th Cir. 1985).

Deliberate indifference in the denial or delay of medical care can be shown by a defendant's actual intent or reckless disregard. Reckless disregard is highly unreasonable conduct or a gross departure from ordinary care in a situation in which a high degree of danger is readily apparent. Benson v. Cady, 761 F.2d 335, 339 (7th Cir. 1985). The question is whether the denial of medical treatment is "so blatantly inappropriate as to evidence intentional mistreatment likely to seriously aggravate the prisoner's condition," Snipes, 95 F. 3d at 592, giving rise to a claim of deliberate indifference. See also Estelle, 429 U.S. at 104 (holding that deliberate indifference "is manifested by prison doctors in their response to the prisoner's needs or by prison guards in intentionally denying or delaying access to medical care or intentionally interfering with the treatment once prescribed").

With respect to respondent Hyde, petitioner alleges that despite respondent's

knowledge of his knee injury and the pain medications he was prescribed, respondent refused to provide him with the medications. These allegations support a claim that respondent Hyde intentionally interfered with the treatment prescribed for petitioner, that being, his pain medications.

As for respondent Suliene, petitioner alleges that Suliene knew that two orthopedic surgeons had recommended that petitioner undergo surgery to fix his knee and yet did not provide petitioner with the surgery. However, according to petitioner's allegations and the documents he attached to his complaint, respondent Suliene did recommend that petitioner receive surgery and her recommendation was denied. She then took action by providing petitioner with a cortisone injection and pain medication. Respondent Suliene did not deny petitioner his surgery, but worked to obtain him a surgery referral. When the request was denied she continued to try to help alleviate the pain in petitioner's knee. I cannot infer that respondent Suliene's actions were blatantly inappropriate or a gross departure from ordinary care. According to petitioner's allegations, respondent Suliene did all that she could. Therefore, petitioner has failed to state a claim against this defendant for deliberate indifference to a serious medical need.

Further, I cannot infer from petitioner's allegations regarding respondents Bachmann, Boehlmann, Spencer and Hannula that these respondents were deliberately indifferent. All four respondents were treating petitioner in accordance with their physical examination of

petitioner's knee as well as the emergency room information that petitioner had suffered a "left knee contusion with abrasion," that is, a bruised and cut knee. Moreover, according to petitioner's allegations, respondents Bachmann, Boehlmann, Spencer and Hannula were all working to schedule petitioner for an MRI and consultation with a orthopedic surgeon. Instead of ignoring petitioner's complaints of pain, respondents prescribed pain medicine for petitioner while they sought to schedule his appointment for an MRI. Additionally, it was not until petitioner received an MRI of his knee that his meniscus tear was revealed. Petitioner's allegations establish that respondents Bachmann, Boehlmann, Spencer and Hannula responded to petitioner's knee injury in a reasonable manner, which is far from being blatantly inappropriate or a gross departure from ordinary care.

At most, respondents Bachmann, Boehlmann, Spencer and Hannula may have committed medical malpractice because, despite their efforts, they were unable to schedule petitioner for an MRI until March. However, medical malpractice is insufficient grounds for invoking the Eighth Amendment. Vance, 97 F.3d at 992. Therefore, petitioner has failed to state an Eighth Amendment claim for deliberate indifference to a serious medical need against respondents Bachmann, Boehlmann, Spencer and Hannula.

ORDER

IT IS ORDERED that:

1. Petitioner Michael C. Mayfield's motion to amend his complaint, dkt. #10, is

GRANTED and petitioner's proposed amended complaint, dkt. #10, is now the operative pleading in this case.

2. Petitioner is DENIED leave to proceed in forma pauperis against respondents Rummer, Anderson, Brenda, Voeks, Alsum, Suliene, Bachmann, Boehlmann, Spencer and Hannula for failing to state a claim upon which relief may be granted.

3. Respondents Rummer, Anderson, Brenda, Voeks, Suliene, Alsum, Bachmann, Boehlmann, Spencer and Hannula are DISMISSED from this case.

4. A strike will be recorded against petitioner pursuant to § 1915(g).

5. Petitioner is GRANTED leave to proceed in forma pauperis against respondent R. Hyde on his Eighth Amendment claim regarding deliberate indifference to a serious medical need.

6. For the remainder of this lawsuit, petitioner must send respondents a copy of every paper or document that he files with the court. Once petitioner has learned what lawyer will be representing respondents, he should serve the lawyer directly rather than respondents. 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.

7. 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.

8. Pursuant to an informal service agreement between the Attorney General and this court, copies of petitioner's amended complaint and this order are being sent today to the Attorney General for service on the state defendants.

9. Petitioner's motion for reconsideration, dkt. #9, is DENIED.

Entered this 21st day of October, 2008.

BY THE COURT:

/s/

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BARBARA B. CRABB
District Judge