

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

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MAURICE JOHNSON,

Petitioner,

OPINION and ORDER

v.

08-cv-636-bbc

GLEN HEINZL, M.D. HSU Physician;  
CANDACE WARNER, HSU Unit Manager;  
MILDRED PARISE, ICE Examiner;  
SHARON ZUNKER, ICE Examiner;  
TOM GOZINSKE, CCE; and  
AMY SMITH, OOS Examiner,

Respondents.  
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In this proposed civil action for monetary and declaratory relief brought pursuant to 42 U.S.C. § 1983, petitioner Maurice Johnson alleges that respondents violated his Eighth Amendment rights by failing to provide him adequate medical care. Petitioner has requested leave to proceed in forma pauperis and has paid the initial partial filing fee.

Because petitioner is a prisoner, the 1996 Prison Litigation Reform Act requires the court to deny leave to proceed if he has had three or more lawsuits or appeals dismissed for lack of legal merit, or if his 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). However, petitioner is also a pro se litigant, which means his complaint will be construed liberally as it is reviewed for these potential defects. Haines v. Kerner, 404 U.S. 519, 521 (1972).

Because petitioner's complaint boils down to nothing more than a disagreement with the type of medical treatment he was given from his doctor, he does not state an Eighth Amendment claim and his complaint will be dismissed with prejudice for failure to state a claim upon which relief may be granted.

In his complaint petitioner alleges the following facts.

## ALLEGATIONS OF FACT

### A. Parties

Petitioner Maurice Johnson is a prisoner confined at the New Lisbon Correctional Institution in New Lisbon, Wisconsin.

Various respondents are employed at the institution: Glen Heinzl is a physician, Candace Warner is the unit manager, Mildred Parise and Sharon Zunker are inmate complaint examiners and Tom Gozinske is a corrections complaint examiner. Respondent Amy Smith is the Deputy Secretary in the office of the secretary of the Wisconsin Department of Corrections.

### B. Petitioner's Medical Care

In March 2008, petitioner suffered a knee injury. (In the body of his complaint, petitioner describes only an “injury,” and does not provide a specific date; however, the documents he attaches to his complaint describe a knee injury that occurred in March. From the context of petitioner’s allegations, it is clear that his March knee injury is the subject of his complaint.) Respondent Heinzl treated petitioner with pain medication and “forced” him to do exercise and released him to work. In addition, respondent Heinzl ordered physical therapy.

Petitioner continued to experience pain from his injury and went for months “on and off work.” Petitioner complained about ongoing pain to respondent Heinzl, who prescribed stronger pain medication and ordered x-rays of petitioner’s knee. Respondent Heinzl did not prescribe a knee brace or order an MRI for petitioner’s knee, even though he knew the x-ray test would provide only limited information regarding potential damage to petitioner’s knee. Even after petitioner continued to experience problems with his knee and seven months had passed, respondent Heinzl still did not order an MRI for petitioner’s knee.

### OPINION

The Eighth Amendment affords prisoners a constitutional right to medical care. Snipes v. DeTella, 95 F. 3d 586, 590 (7th Cir. 1996) (citing Estelle v. Gamble, 429 U.S. 97,

103 (1976)). The standard for determining whether a prison official violates the Eighth Amendment in this setting is whether the official is “deliberately indifferent” to a prisoner’s “serious medical need.” Estelle, 429 U.S. at 104-05.

Petitioner does not contend that he did not receive *any* medical care, only that the care he received could have been better because respondent Heinzl could have ordered a knee brace and an MRI. Instead, Heinzl opted for “easier and less efficacious” treatment. Petitioner’s claim boils down to a simple disagreement about the proper treatment for his knee injury, which does not state an Eighth Amendment claim. When a prisoner disagrees with a doctor’s treatment, there is no constitutional claim “unless the medical treatment is so blatantly inappropriate as to evidence intentional mistreatment likely to seriously aggravate the prisoner’s condition.” Snipes v. DeTella, 95 F.3d 586, 592 (7th Cir. 1996) (internal quotations omitted). From petitioner’s complaint it is clear that the treatment he received from respondent Heinzl cannot be considered “so blatantly inappropriate” as to constitute an Eighth Amendment violation. Therefore, petitioner’s Eighth Amendment claim against respondent Heinzl must be dismissed for failure to state a claim upon which relief may be granted.

As for the other respondents, petitioner does not allege any facts regarding them. Therefore, his claims against them will be dismissed. To the extent that petitioner is complaining that they failed to take action in response to his inmate grievance about

respondent Heinzl's treatment, petitioner's claims against them would still be dismissed for the same reason that his claims against respondent Heinzl will be dismissed.

## ORDER

IT IS ORDERED that:

1. Petitioner Maurice Johnson's request for leave to proceed in forma pauperis on his Eighth Amendment claim against respondents Glen Heinzl, Mildred Parise, Candace Warner, Sharon Zunker, Tom Gozinske and Amy Smith is DENIED and this case is DISMISSED with prejudice for petitioner's failure to state claim upon which relief may be granted;
2. Petitioner is obligated to pay the unpaid balance of his filing fee in monthly payments as described in 28 U.S.C. § 1915(b)(2). This court will notify the warden at the New Lisbon Correctional Institution of that institution's obligation to deduct payments until the filing fee has been paid in full.
3. A strike will be recorded against petitioner pursuant to § 1915(g); and

4. The clerk of court is directed to close the file.

Entered this 17<sup>th</sup> day of November, 2008.

BY THE COURT:

/s/

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BARBARA B. CRABB  
District Judge