

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

JESSIE WILLIAMS,

Plaintiff,

v.

JOSEPH BEAHM and
C.O. STANIEC,

Defendants.

OPINION and ORDER

11-cv-436-bbc

In this civil action for monetary relief, plaintiff Jessie Williams is proceeding pro se on claims that defendants Joseph Beahm and C.O. Staniec used excessive force against him in violation of the Eighth Amendment. Now before the court is defendants' motion for summary judgment on their defense that plaintiff has failed to exhaust his administrative remedies. Dkt. #20.

Plaintiff has not responded to the motion or to defendants' proposed facts. Accordingly, defendants' proposed findings of fact must be taken as undisputed. Procedure to Be Followed on Motions for Summary Judgment, II.A, II.B and II.C and Memorandum to Pro Se Litigants Regarding Summary Judgment Motions, attached to Preliminary Pretrial Conference Order, dkt. #17.

After considering the undisputed facts and defendants' arguments, I conclude that plaintiff has failed to exhaust his administrative remedies with respect to his claims against defendants. Therefore, I will grant defendants' motion for summary judgment and dismiss plaintiff's claims without prejudice.

OPINION

Under 42 U.S.C. § 1997e(a), a prisoner must exhaust all available administrative remedies before filing a lawsuit in federal court, meaning that the prisoner must “file complaints and appeals in the place, and at the time, the prison’s administrative rules require.” Burrell v. Powers, 431 F.3d 282, 285 (7th Cir. 2005) (citing Pozo v. McCaughtry, 286 F.3d 1022, 1025 (7th Cir. 2002)). To satisfy exhaustion requirements, the prisoner must give the prison grievance system “a fair opportunity to consider the grievance,” which requires that the complainant “compl[y] with the system’s critical procedural rules,” Woodford v. Ngo, 548 U.S. 81, 95 (2006) and that the grievance “contain the sort information that the administrative system requires.” Strong v. David, 297 F.3d 646, 649 (7th Cir. 2002). Section 1997e(a) requires more than simply notifying the prisoner grievance system once; a prisoner must take any administrative appeals available under the administrative rules. Burrell, 431 F.3d at 284-85. Because exhaustion is an affirmative defense, defendants bear the burden of establishing that plaintiff failed to exhaust. Jones v. Bock, 549 U.S. 199, 216 (2007).

Wisconsin inmates have access to an administrative grievance system governed by the procedures set out in Wis. Admin. Code §§ DOC 310.01-310.18. Under these provisions, prisoners start the complaint process by filing an inmate complaint with the institution complaint examiner within 14 days after the occurrence giving rise to the complaint. Wis. Admin. Code § DOC 310.09. The complaint examiner may investigate inmate complaints, reject them for failure to meet filing requirements, recommend a disposition to the appropriate reviewing authority (the warden or the warden's designee) or direct the inmate to attempt to resolve the complaint informally. Id. at §§ 310.07(2), 310.09(4), 310.11, 310.12. If the institution complaint examiner recommends granting the complaint or dismissing it on its merits, the appropriate reviewing authority may dismiss, affirm or return the complaint for further investigation. Id. at § 310.12. If an inmate disagrees with the decision of the reviewing authority, he may appeal. Id. at § 310.13.

Plaintiff was granted leave to proceed on claims that (1) defendant Beahm used excessive force against him on June 24, 2009 by slamming his head into a door; and (2) defendants Beahm and Staniec used excessive force against him on January 14, 2007 when they hit him in the mouth while escorting him from the showers. Defendants have submitted plaintiff's complete inmate complaint history report, dkt. #24-1, which shows that plaintiff did not file an inmate grievance related to defendant Beahm's alleged excessive force against him in June 2009. Therefore, I will dismiss without prejudice plaintiff's claim against Beahm related to the June 2009 incident for failure to exhaust his administrative

remedies. *Ford v. Johnson*, 362 F.3d 395, 401 (7th Cir. 2004) (“[A]ll dismissals under § 1997e(a) should be without prejudice.”).

The complaint history report shows that plaintiff filed two inmate complaints related to defendants’ alleged use of excessive force on January 14, 2007. He filed his first complaint on January 16, 2007, alleging that while defendants were escorting him, defendant Beahm held his shoulders and defendant Staniec punched him. WCI-2007-1693, dkt. #23-2. On January 31, 2007, the complaint examiner rejected the complaint under Wis. Admin. Code. § DOC 310.08(2)(a), which states that an inmate cannot use the inmate complaint review system for “[a]ny issue related to a conduct report, unless the inmate has exhausted the disciplinary process in accordance with ch. DOC 303.” The complaint examiner noted that plaintiff had received two conduct reports “related to” the January 14 incident that had not been resolved yet and thus, plaintiff’s complaint fell outside the scope of the inmate complaint review system. Dkt. #23-2. The complaint examiner cited specifically to conduct report #1911671, which charged plaintiff with putting paper on his cell window, and conduct report # 1911673, which charged plaintiff with having contraband and property items over the allowable limit in his cell. (It is interesting that the complaint examiner did not cite conduct report #1911672, which plaintiff also received on January 14, 2007. This conduct report charges plaintiff with battery, threats and other rule violations in conjunction with defendants’ escort of plaintiff from the shower and thus, is related

directly to the allegations of excessive force in plaintiff's inmate complaint.)

Plaintiff did not appeal the rejection of his inmate complaint. On February 23, 2007, disciplinary hearings were held on the three conduct reports plaintiff had received on January 14. At the hearing regarding conduct report #1911671, the disciplinary hearing officer considered evidence related directly to the events surrounding plaintiff's excessive force claim. Dkt. #23-4 at 27. Plaintiff did not attend the hearings and was found guilty of refusing to remove paper from his window, violating the property rules, and battery, threats and disobeying orders. Id. at 9, 18, 27. Plaintiff did not appeal the decisions of the disciplinary hearing officer.

On February 26, 2007, plaintiff filed offender complaint WCI-2007-6167, making the same allegations that he had made in his earlier complaint. Specifically, plaintiff alleged that while defendants were escorting him, defendant Beahm grabbed his shoulders and defendant Staniec punched him in the face. Dkt. #23-3. The complaint examiner rejected the complaint as untimely because it was filed outside the 14-day time limit. Plaintiff appealed the rejection, but his appeal was dismissed as untimely.

Because plaintiff did not participate in the disciplinary hearings or appeal the decision of the disciplinary hearing officer regarding the conduct reports related to his excessive force claim, he did not exhaust the disciplinary process and could not use the inmate complaint review system to file grievances against defendants. In other words, plaintiff did not "file complaints and appeals in the place, and at the time, the prison's administrative rules

require.” Burrell, 431 F.3d at 285. Plaintiff has suggested no reason why he could not participate in the disciplinary hearing process or why the regulations should not apply in this case. Thus, plaintiff has failed to exhaust his administrative remedies.

ORDER

IT IS ORDERED that

1. The motion for summary judgment filed by defendants Joseph Beahm and Jeremy Staniec, dkt. #20, is GRANTED. Plaintiff’s claims that defendants used excessive force against him are DISMISSED WITHOUT PREJUDICE for plaintiff’s failure to exhaust his administrative remedies.

2. The clerk of court is directed to enter judgment for defendants and close this case.

Entered this 30th day of December, 2011.

BY THE COURT:

/s/

BARBARA B. CRABB

District Judge