

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

JAMES NEWSON,

Plaintiff,

OPINION AND ORDER

v.

12-cv-293-wmc

JANEL NICKEL, CAPTAIN MORGAN,
and GLEN BENNETT,

Defendants.

In this proposed 42 U.S.C. § 1983 civil action, plaintiff James Newson alleges that defendants, prison officials and employees of Columbia Correctional Institution, refused him employment and denied him security clearance in retaliation for his 2006 lawsuit brought against correctional officers and prison officials at Green Bay Correctional Institution.¹ Having paid the full \$350 filing fee, Newson is not proceeding under the *in forma pauperis* statute. Still, the 1996 Prison Litigation Reform Act requires the screening of a prisoner complaint and dismissal of any portion that is legally frivolous, malicious, fails to state a claim upon which relief may be granted or asks for money damages from a defendant who by law cannot be sued for them. 28 U.S.C. § 1915A. Because Newson meets this step, he will be allowed to proceed and the state required to respond.

¹ Newson's complaint also includes deliberate indifference claims, unrelated to his retaliation claims. In a "supplement" to his complaint, Newson also names two new defendants for alleged retaliation. While his complaint was pending screening, Newson filed (1) a letter requesting to remove certain defendants and the deliberate indifference causes of action directed against them (dkt. #4); and (2) a motion to drop certain defendants (dkt. #5). The court will grant both motions and limits its review of Newson's complaint to the remaining allegations and causes of action. The court also has modified the caption accordingly.

ALLEGATIONS OF FACT

In addressing any pro se litigant's complaint, the court must read the allegations generously. *Haines v. Kerner*, 404 U.S. 519, 521 (1972). For purposes of this screening order, the court assumes these probative facts based on the allegations in his complaint:

- Plaintiff James Newson is, and was at all times relevant to this complaint, a prisoner at Columbia Correctional Institution (“CCI”).
- Defendant Janel Nickel is, and was at all times relevant to this complaint, the Security Director at CCI. Her duties include screening the applications of inmates who apply for employment and programming.
- Defendant Cpt. Morgan is, and was at all times relevant to this complaint, a Security Supervisor at CCI. His duties also include screening applications of inmates who apply for employment and programming.
- Defendant Glen Bennett is, and was at all times relevant to this complaint, a Food Service Manager at CCI.
- On August 23, 2006, Newson filed a lawsuit against correctional officers and prison officials at Green Bay Correctional Institution (“GCBI”) alleging sexual assault and retaliation. *Newson v. Frank*, No. 06-cv-00913-LA (E.D. Wis. Aug. 23, 2006). That case settled on June 24, 2010. As part of the settlement, Newson was transferred to CCI on July 17, 2010.
- On September 20, 2010, Newson enrolled in an 18-month Building Service Vocation (“BSV”) course, which he completed in January 2011. In January 2011, Mr. Qummie, the BSV instructor, contacted Maintenance Department Supervisor Mr. Plath, endorsing Newson for a maintenance job to continue his education. Upon Mr. Plath's request, Newson submitted an application. Mr. Plath informed Newson that his application had been denied by security, but would remain on file for future openings. Newson further alleges that additional openings were posted, for which he applied, but never received an interview.
- In early February 2011, Newson applied for a job in the main kitchen. Fellow inmate Julian Noblin recommended Newson to his supervisor Bennett. When Noblin inquired about Newson's application, Bennett replied, “Newson filed a lawsuit falsely accusing staff of sexual assault. That guy has a bad reputation for lying about staff and litigating. That guy will never work in my kitchen.” (Compl. (dkt. #1) ¶ 19.) Newson alleges that Nickel and/or Morgan were responsible for Bennett's beliefs about Newson.

- On June 6, 2011, inmate Jarrod Alston spoke with Bennett informing him that Newson had not received any tickets at CCI and was willing to work, Bennett stated, “I’m familiar with Mr. Newson. He was involved in a GBCI lawsuit involving a guard. I don’t want to, no one wants to work with that guy.” (Compl. (dkt. #1) ¶ 28.)
- Sometime in the spring of 2011, Newson applied for and received an interview for a Math Tutoring job. During the interview, Mr. Monfort offered him the tutoring job, and Newson accepted. On May 25, 2011, Newson submitted an essay of interest to the Education Department, as required to participate in tutor training. On June 8, 2011, Mr. Monfort wrote, “Hey! Apparently security did not approve your application for tutor class. Perhaps you can get that straight with them in the future. Thanks for the job application. Good Luck take it easy.” (Compl. (dkt. #1) ¶ 25.) On or about October 24, 2011, Newson received a notice to begin tutor training on Monday, October 31, 2011.
- Newson alleges that he exhausted his administrative remedies by using the Inmate Complaint Review System to file Offender Complaint No. CCI-2011-17983, which alleged that Nickel, Morgan and Bennett were blacklisting him in retaliation for filing grievances and a lawsuit against correctional officers at GCBI.

OPINION

Pursuant to 42 U.S.C. § 1983, Newson alleges claims for retaliation in violation of his rights under the First Amendment to the United States Constitution. A prison official who retaliates against an inmate for exercising a constitutional right may be liable for damages. *Babcock v. White*, 102 F.3d 267, 275 (7th Cir. 1996). To state a claim of retaliation, a prisoner must identify the alleged retaliatory acts of the defendant, as well as the protected act that prompted the retaliation. *McElroy v. Lopac*, 403 F.3d 855, 858 (7th Cir. 2005) (per curiam); *Higgs v. Carver*, 286 F.3d 437, 439 (7th Cir. 2002) (complaint would be insufficient if it contained only allegations that defendants had

retaliated against plaintiff for filing suit and no allegations identifying the suit or acts alleged to have constituted retaliation).

Here, Newson alleges that defendants were aware of his lawsuit against GCBI correctional officers and that defendants blacklisted him from employment by either refusing him employment or denying him security clearance in retaliation for his prior lawsuit. Inmates have a right of access to the courts. *Lewis v. Casey*, 518 U.S. 343, 351 (1996). If defendants blacklisted him from employment in retaliation for bringing a lawsuit, then they may have violated Newson's First Amendment rights. *See Jellis v. Hulick*, No. 10-3580, 422 Fed. Appx. 548, 550, 2011 WL 2161359, at *2 (7th Cir. June 2, 2011) (finding inmate stated First Amendment retaliation claim where guard threatened to remove inmate from job because he filed a grievance). Accordingly, Newson may proceed beyond the screening stage on his retaliation claim.

Going forward, Newson is cautioned that he will still have to *prove*, not just allege, that his filing of a lawsuit was (1) the cause of defendants Nickel and Morgan's refusal to grant him security clearance for employment and (2) defendant Bennett's reason for not employing him in the main kitchen. Newson will also have to prove that defendants Nickel, Morgan and Bennett were each personally involved in these actions.

ORDER

IT IS ORDERED that:

- 1) Plaintiff James Newson's letter request to remove and dismiss defendants Kathy Sutter and Sgt. Pischke, as well as the deliberate indifference causes of actions and the entire supplement to the complaint (dkt. #4) and motion to drop defendants Sutter, Ziegler and Bitter (dkt. #5) are both GRANTED;

- 2) Plaintiff James Newson's request to proceed on his First Amendment retaliation claims against defendants Janel Nickel, Captain Morgan and Glenn Bennett is GRANTED.
- 3) For the time being, plaintiff must send defendants a copy of every paper or document he files with the court. Once plaintiff has learned what lawyer will be representing defendants, he should serve the lawyer directly rather than defendants. The court will disregard any documents submitted by plaintiff unless plaintiff shows on the court's copy that he has sent a copy to defendants or to defendants' attorney.
- 4) Plaintiff should keep a copy of all documents for his own files. If plaintiff does not have access to a photocopy machine, he may send out identical handwritten or typed copies of his documents.
- 5) Pursuant to an informal service agreement between the Wisconsin Department of Justice and this court, copies of plaintiff's complaint and this order are being sent today to the Attorney General for service on the defendants. Under the agreement, the Department of Justice will have 40 days from the date of the Notice of Electronic Filing of this order to answer or otherwise plead to plaintiff's complaint if it accepts service for defendants.

Entered this 30th day of April, 2013.

BY THE COURT:

/s/

WILLIAM M. CONLEY
District Judge