

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

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LAMONT WALKER,

Plaintiff,

v.

CHAD KELLER and D. MORGAN,

Defendants.  
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ORDER

13-cv-342-bbc

Plaintiff Lamont Walker, a prisoner at the Wisconsin Secure Program Facility, is proceeding on claims that defendant Chad Keller retaliated against him for filing a 2010 lawsuit against Keller by giving him a false conduct report (for “authorizing” a letter to Security Director Janel Nickels that made sexual demands and threatened to grope and kill her) and providing false testimony against him, and that his due process rights were violated by Keller’s fabricated testimony and defendant D. Morgan’s decision to allow Keller to “deliberate” with the disciplinary committee after the hearing. In the October 9, 2013 screening order, I denied plaintiff leave to proceed on due process and retaliation claims against defendant Janel Nickels for denying him witnesses for his disciplinary hearing. I stated as follows regarding the retaliation claim against Nickels:

... plaintiff has not alleged any facts indicating that Nickels meant to retaliate against him other than the implication that she may have been aware of the 2010 lawsuit. He has shown no reason to believe that Nickels knew that plaintiff was innocent of the disciplinary charges and there is no non-

speculative connection between the previous lawsuit and the defendant's alleged retaliatory actions. In fact, it actually seems more likely that a person in Nickels's position would have had motivation to retaliate against plaintiff if he actually *had* written the offensive letter. Because plaintiff's claim against Nickels relies almost exclusively on speculation about her motivation for denying him an opportunity to call witnesses, I find that he has not stated a retaliation claim against her. Bell Atlantic Corp. v. Twombly, 550 U.S. 544 (2007); Atkins v. City of Chicago, 631 F.3d 823, 830-32 (7th Cir. 2011) (to avoid dismissal, a plaintiff "must plead some facts that suggest a right to relief that is beyond the speculative level") (internal quotations omitted).

Dkt. #17. I denied plaintiff leave to proceed against Nickels on a due process claim because a prisoner in plaintiff's position has no due process right to call witnesses. Id. (citing Wilkinson v. Austin, 545 U.S. 209, 228 (2005)).

Now plaintiff has filed a motion for reconsideration of my decision to deny him leave to proceed on his claims against Nickels, arguing that "it is very likely for a person like Janel Nickels, whom is the Security Director, that has the authority to approve or deny the acceptance of a conduct report that lacks substances of facts to find an inmate guilty of such offenses." I understand plaintiff's motion to be saying that I neglected to consider retaliation and due process claims about Nickels's role in *approving* the conduct report.

Under Wis. Admin. Code § 303.67, one of the provisions explaining conduct report procedure, the security director reviews all conduct reports and may dismiss them. Thus, construing plaintiff's complaints generously, I understand him to be bringing a claim that his due process rights were violated when Nickels reviewed and approved the conduct report even though she was the alleged victim of the letter alleged to have been authorized by plaintiff. As with the due process claim against Keller, I will allow plaintiff to proceed on a due process claim against Nickels for the deprivation of an unbiased review of his conduct

report. However, I will not allow him to proceed on a retaliation claim regarding this allegation because, as I stated regarding his other retaliation claim against Nickels, plaintiff relies on pure speculation that Nickels meant to retaliate against him.

## ORDER

1. Plaintiff Lamont Walker's motion for reconsideration of the October 9, 2013 screening order in this case, dkt. #17, is GRANTED in part. Plaintiff is now GRANTED leave to proceed on the following claims:

- a. Defendant Keller gave him a false conduct report and provided false testimony against him in retaliation for his 2010 lawsuit against him.
- b. Plaintiff's due process rights were violated by defendant Janel Nickels's approval of the conduct report even though she was the victim of plaintiff's alleged behavior; by defendant Keller's fabrication of testimony at the disciplinary hearing; and by defendant D. Morgan's allowing Keller to "deliberate" with the disciplinary committee after the hearing.

2. Under the informal service agreement between the Wisconsin Department of Justice and this court, the department should inform the court whether it accepts service on behalf of defendant Nickels and file an amended answer if it accepts service on her behalf.

Entered this 27th day of November, 2013.

BY THE COURT:

/s/

BARBARA B. CRABB

District Judge