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

RAYNARD R. JACKSON,

Plaintiff,

v.

STACEY HOEM, LEBBEUS BROWN, JAMES BOLSEN, DAN SUTTERS, MICHAEL COCROFT, TIMOTHY JONES, JONI SHANNON-SHARPE, DANE ESSER, SARAH MASON, ELLEN K. RAY, DARRYL FLANNERY, BETH EDGE, ANTHONY BROADBENT, JEROME SWEENEY, and TIM HAINES,

Defendants.

OPINION AND ORDER

18-cv-237-wmc

On May 2, 2019, the court dismissed *pro se* plaintiff Raynard R. Jackson's 119-page complaint without prejudice on the ground that his unnecessarily lengthy and disjointed allegations did not satisfy the requirements of Federal Rule of Civil Procedure 8. Before closing the case, however, the court also gave Jackson the opportunity to file a pared-down amended complaint. On June 6, 2019, Jackson file his proposed amended complaint, which seeks to proceed against 15 defendants on constitutional claims related to his conditions of confinement between May 22 and 28, 2013, while housed on clinical observation status at the Wisconsin Secure Program Facility ("WSPF"). Having now screened the allegations in Jackson's proposed amended complaint as required by 28 U.S.C. § 1915A, the court will grant him leave to proceed on Eighth and Fourteenth Amendment claims against certain of the named defendants.

ALLEGATIONS OF FACT[1]

A. Background

While plaintiff Raynard Jackson is currently incarcerated at Waupun Correctional Institution ("Waupun"), the events comprising his claims took place during his incarceration at WSPF in 2013. Before the events outlined in his complaint, a doctor directed that Jackson, who suffers from asthma, be given access to an albuterol asthma inhaler upon request. Jackson also had a medical restriction that prohibited the use of incapacitating agents on him, since those agents can trigger his asthma.

Jackson names 15 defendants in his proposed amended complaint, all of whom were working at WSPF during the relevant period on 2013. They are: Stacy Hoem, a psychologist; Captains Lebbeus Brown, James Bolsen, Sarah Mason and Darryl Flannery; Lieutenant Dane Esser; Sergeant Dan Sutters; Correctional Officers Michael Cocroft and Timothy Jones; Crisis Worker Joni Shannon-Sharpe; Inmate Complaint Examiner ("ICE") Ellen K. Ray; RN Beth Edge; Food Service Administrator Anthony Broadbent; Security Director Jerome Sweeney; and Warden Tim Haines.

On May 17, 2013, before Jackson's clinical observation placement, another inmate, Quentrell Williams, was housed in WSPF's clinical observation cell (A-404) and had smeared his feces throughout the cell. As a result, Captain Brown decided Williams needed to be extracted from the cell and ordered WSPF's control center to deactivate the water

[1] 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 order, the court assumes the following facts based on the allegations in plaintiff's complaint, unless otherwise noted, drawing all reasonable inferences in a light most favorable to plaintiff.

system linked to cell A-404, which apparently included both hot and cold water at the sink and water to the toilet. After the cell extraction, which involved the use of incapacitating agents, Brown allegedly failed to instruct WSPF's control center to reactivate the water system to cell A-404 nor did he ensure that the cell was cleaned.

B. Jackson's Stay in Clinical Observation Cell A-404

On May 22, at approximately 4:40 p.m., Jackson alerted Sergeant Sutters that he was having thoughts of self-harm and needed to be placed into clinical observation status. At WSPF, this is a non-punitive status for prisoners who pose a risk to themselves and require consistent observation by prison officials and psychological staff. After Sutters passed on Jackson's request for placement into clinical observation status, Captain Bolsen, along with Correctional Officers Cocroft and Jones, went to Jackson's cell, put him in handcuffs and shackles, moved him to a separate cell, and conducted a strip search. Jackson did not object to any of these measures.

While Jackson was in the strip cage, Captain Bolsen apparently called the on-call clinician, defendant Shannon-Sharpe, for authorization to place Jackson on clinical observation status. During the phone call, Bolsen asked Shannon-Sharpe what property Jackson could possess, and Shannon-Sharpe authorized a "seg smock," also called a suicide gown, and a "high risk rubber mat." Officer Jones then retrieved a seg smock for Jackson, who remained shackled and handcuffed, and Bolsen, Cocroft and Jones transported him to clinical observation cell A-404, which still had not been cleaned and still did not have running water.

As the door to cell A-404 was closing, Jackson doubled over and said that it smelled like feces in the cell. Captain Bolsen allegedly laughed in response. When Jackson insisted that he be moved, Bolsen told him he could not move him, but would bring him materials to wipe everything down. As Bolsen walked away, Jackson also attempted to rinse off his hands, which had touched the cell door, only to discover that he had no running water. At that point, Jackson pushed his emergency intercom button and told Sergeant Sutters that there was no running water in his cell. Sutters responded that all the cells have running water, and they would not be moving him to another cell.

When Officer Cocroft came by Jackson's cell later for wellness rounds, Jackson also told him that (1) there was no running water and (2) he needed his prescribed asthma inhaler and nasal spray, since there were both incapacitating agents and contaminants in his cell. Cocroft allegedly responded, "yeah, yeah, you're just trying to get moved," and kept walking. Officer Jones came by next, also conducting a wellness round, and Jackson likewise asked for his inhaler and told him there was no running water. However, Jones merely told Jackson to complain to one of the regular correctional officers because he was only filling in for another officer. He then walked away.

On May 23, at about 6:30 a.m., staff was passing out breakfast and informed Jackson that defendants Mason, the unit manager, Broadbent, Sweeney and Haines, placed all clinical observation inmates on a "no-cup restriction." That restriction meant that clinical observation inmates were not allowed to receive, milk, juice or any type of nutritional fluids with their meals, apparently in response to inmates having used those fluids for improper or dangerous purposes. At that point, Jackson claims he was not only

deprived of water, but of other nutritional fluids.

At about 9:00 a.m. that same morning, Psychologist Hoem came to Jackson's cell to assess his mental health status. Jackson alleges that Hoem concealed her face from him during their conversation to avoid making eye contact, but she could clearly see that feces had been smeared all over Jackson's cell. Jackson also told her that he did not have running water, hygiene items, soap, a washcloth, socks, shower shoes, a regular mattress, a suicide blanket, and nutritional fluids. Hoem allegedly responded that Jackson would have all these materials had he stayed out of clinical observation status, and she understood that Jackson was on a "dry cell" restriction and thus he would have to take up his complaints about fluids with security staff. Hoem concluded that Jackson should remain on clinical observation status. At approximately 11:30 a.m. that day, Jackson received his lunch, but did not receive milk or water. The same thing happened at 4:00 p.m. that day when Jackson received his dinner.

The following morning, May 24, Jackson received both breakfast and lunch, but he still was denied any nutritional fluids, as well as running water. At about 1:05 p.m. that day, Psychologist Hoem once again assessed Jackson in his cell. Upset, Jackson acknowledges calling her a "coward ass poor excuse for a racist bitch," asking her to contact security about the lack of water and the unsanitary conditions in his cell, and warning her that if she did not, he would go wild. Hoem allegedly responded, "quit bitching, you wanted to be in clinical [observation] with your buddy Mr. Williams." She also told him to stop crying about the "shitty cells," and to get used to the conditions if he wanted to stay on observation status. Hoem allegedly took no further action to address Jackson's

complaints. At 4:30 p.m. that day, Jackson again received a meal without any nutritional liquid, and he still had no running water.

At 5:45 p.m. that same day, defendant Nurse Edge came to Jackson's cell, and he also told her that there was no running water as well. Jackson also explained that he needed his inhaler and was having chest pains. Nurse Edge allegedly responded that "per security," she was not allowed to speak with him, and he would need to submit a Health Service Request ("HSR") when he was out of clinical observation status. As a result, Edge took no corrective action with respect to Jackson's conditions of confinement. Finally, at 7:00 p.m. that day, still May 24, when Lieutenant Esser walked by Jackson's cell, he next claims to have told Esser that he did not have running water and his cell was unsanitary, to which Esser allegedly responded, "so what," and then walked away.

At around that time, another inmate filed an inmate complaint on Jackson's behalf, WSPF-2013-10302, reporting that Jackson was in an observation cell with no running water and everyone Jackson alerted to his conditions had ignored him. Jackson also submitted a copy of Complaint Examiner Ray's resolution of that inmate complaint, which included a note that the inmate complaint was received on May 28, 2013, and on that same day, defendant Ray responded that if staff were threatening Jackson, he should contact Captain Mason, the unit manager. (Pl. Ex. 8 (dkt. #13-7).) However, Ray apparently took no further action with respect to Jackson's conditions of confinement.

The next day, May 25, Jackson had another three meals without nutritional fluids, and he still did not have running water. At about 6:30 p.m. on the 25th, Lieutenant Esser again walked by Jackson's cell. This time calling him a "racist-faggot," Jackson stopped

him and demanded that defendant Esser turn on his water. Jackson also acknowledges suggesting to Esser that he would have to conduct a cell extraction if Esser did not get Jackson's water running. Esser also allegedly responded that Jackson would have water if he was not on clinical observation status, and he would not extract him from his cell. Then Esser allegedly laughed and walked away.[2]

On May 26, Jackson alleges that he again received another three meals without nutritional fluid, and he still did not have running water. At 7:30 p.m. on the 26th, Lieutenant Esser approached Jackson to report that Williams, who was housed a few cells away, had been extremely disruptive, complaining about the lack of running water in Jackson's cell. As a result, defendant Esser allegedly told Jackson that Psychologist Hoem wanted Williams and Jackson separated. Esser also reported his understanding that Williams had called Hoem a liar and a bitch, accusing her of wanting to separate them so that there were no witnesses to Jackson's conditions of confinement. Later that evening, when Nurse Edge was making a wellness round, Jackson claims he reported feeling sick from lack of water and the inhume conditions in his cell, and requested his asthma inhaler and nasal spray. Edge allegedly responded once again that "per security," she was not allowed to address Jackson's complaints, although he also claims that she proceeded to

[2] Jackson also claims that his relationship with Esser had been volatile since Jackson sued Esser in 2007, and that Esser had punished him every chance he got since then. However, Jackson does not seek to proceed on a First Amendment retaliation claim against Esser. Given Jackson's attention to detail, both in setting forth the allegations in his complaint and listing the claims upon which he seeks to proceed, the court will not read such a claim into this lawsuit. To the extent Jackson has exhausted his administrative remedies with respect to a retaliation claim related to Esser's actions that day, however, he is free to seek leave to amend his complaint to include facts related to a retaliation claim, which the court would then screen as required by § 1915A.

address the concerns of other prisoners on clinical observation status.

On May 27, Jackson once again received three meals without nutritional fluid, and he still did not have running water. At about 7:00 p.m. that evening, Jackson reported that he was having severe chest pains, and a sergeant called Nurse Edge to check on Jackson. Jackson showed Edge that his water was not working by pressing the hot and cold buttons on his sink and attempting to flush the toilet. Edge then told a correctional officer to call Lieutenant Esser immediately, who came to Jackson's cell and allegedly feigned surprise that his water was not running. At that point, Lieutenant Esser called the control center to reactivate the water system in Jackson's cell.

Later that day, Jackson also demanded medical care, to which Esser allegedly responded that Crisis Worker Shannon-Sharpe was responsible for his conditions of confinement and Jackson should blame her for any deficiency. Jackson then told Esser that he planned to sue him. In response, Esser allegedly told Nurse Edge to log Jackson as refusing medical care, to cover up his wrongdoing. While Esser allegedly took no steps to ensure that Jackson received medical attention, Sergeant Sutters apparently alerted Captain Flannery about Jackson's requests for medical care, and Flannery visited Jackson's cell an hour later. After Flannery asked Jackson why his lips were cracked and bloody, Jackson demanded to be seen by a nurse, telling Flannery he had not had fluids for five days and reporting, among other things, that he was suffering from chest pains, dehydration, difficulty urinating and swallowing, excessive sweating, fever, chills, raw throat, a burning sensation from the incapacitating agents and irritated skin. While Captain Flannery assured Jackson he would have a nurse examine him, Flannery never

returned and Jackson did not receive any medical treatment that evening.

C. Release from Cell A-404

Jackson was released from clinical observation cell A-404 on the afternoon of the following day, May 28, but alleges that he still received breakfast and lunch without receiving nutritional fluids or running water.[3]

After Jackson was back in his regular cell, he apparently filed a series of inmate complaints about his conditions of confinement while in cell A-404. One of his complaints was affirmed, although even in that decision the Inmate Complaint Examiner noted that Jackson would have been released from clinical observation on May 24, 2013, had he not refused to move to another cell. Commenting on Jackson's refusal to move, the Examiner stated, "The ICE finds it to be quite curious that the inmate chose to stay in a cell that had no water." (Pl. Ex. 10 (dkt. 13-10).)

OPINION

In his amended complaint, plaintiff now seeks to proceed against the named defendants on: (1) Eighth Amendment claims arising out of his alleged conditions of confinement in Cell A-404 between May 22 and May 28, 2013, and denial of medical care, and (2) Fourteenth Amendment claims related to alleged denials of equal protection and due process of law. The court examines these specific claims against each defendant

[3] Jackson also claims that he did not have access to water for those meals, but this is inconsistent with his allegation that Lieutenant Esser had directed his water be turned back on the previous day. Nevertheless, the court will accept Jackson's allegation that he still did not have water at that point.

individually below.

I. Eighth Amendment

A. Conditions of Confinement

To begin, plaintiff seeks to proceed against all named defendants on his claims for ongoing violations of his minimally acceptable conditions of confinement rights under the Eighth Amendment while housed in Call A-404. Prison officials may violate the Eighth Amendment if they knowingly deprive a prisoner of the minimal civilized measure of life's necessities or subject a prisoner to a substantial risk of serious harm. *Gillis v. Litscher*, 468 F.3d 488, 491 (7th Cir. 2006). To demonstrate that prison conditions violated the Eighth Amendment, a plaintiff must allege facts that satisfy a test involving both an objective and subjective component. *Lunsford v. Bennett*, 17 F.3d 1574, 1579 (7th Cir. 1994). The *objective* analysis focuses on whether prison conditions were sufficiently serious so that "a prison official's act or omission results in the denial of the minimal civilized measure of life's necessities," *Farmer v. Brennan,* 511 U.S. 825, 834 (1994), or "exceeded contemporary bounds of decency of a mature, civilized society." *Lunsford*, 17 F.3d at 1579. The *subjective* component requires an allegation that prison officials acted wantonly and with deliberate indifference to a risk of serious harm to plaintiff. *Id.*

Plaintiff's allegations about the conditions of cell A-404 -- lacking running water with the feces of another inmate smeared on the wall and remnants of incapacitating agents -- permit a reasonable inference that plaintiff was denied humane and sanitary conditions of confinement. In particular, the Seventh Circuit found in *Budd v. Motley*, 711 F.3d 840 (7th Cir. 2013), that "unhygienic conditions, when combined with the jail's failure to

provide detainees with a way to clean for themselves with running water or other supplies, state a claim for relief." *Id*. at 842; *see also Vinning-El v. Long*, 482 F.3d 923, 924 (7th Cir. 2007) (prisoner held in cell for three to six days with no working sink or toilet, floor covered with water, and wall smeared with blood and feces); *Ishy v. Clark*, 100 F.3d 502, 505-06 (7th Cir. 1996) (prisoner held in segregation cell that allegedly was "filthy, with dried blood, feces, urine and food on the walls").

For screening purposes, therefore, the operative question is whether each individual defendant responded to those conditions with deliberate indifference. Plaintiff's allegations that he informed defendants Hoem, Bolsen, Sutters, Cocroft, Jones, Esser and Edge about his lack of running water, the presence of incapacitating agents and/or the feces on the cell door and walls, and that each of them ignored his complaints, support a reasonable inference that they acted with deliberate indifference to his unsanitary cell conditions. Therefore, the court will allow him to proceed against these defendants.

However, plaintiff may not proceed on this claim against defendants Flannery, Mason, Sweeney, Haines, Broadbent, Shannon-Sharpe, Ray or Brown. First, Captain Flannery appears not to have even visited plaintiff's cell until May 27, after plaintiff's water had been turned on (or perhaps one day before the water was turned on), and it is unclear from plaintiff's allegations whether cell A-404 still contained feces on the wall, but plaintiff has not alleged that he complained to Flannery that his cell had been smeared with feces. As such, Flannery's alleged failure to take any corrective action with respect to plaintiff's circumstances on May 27 does not suggest that he consciously disregarded that fact, nor that plaintiff was dealing with unsanitary conditions of confinement.

As for defendants Mason, Sweeney, Haines and Broadbent, plaintiff claims that these defendants were responsible for issuing the "no cup" restriction for inmates on clinical observation status. While plaintiff claims that this restriction contributed to plaintiff's ability to obtain "nutritional fluid," plaintiff continued to receive all of his meals despite the "no cup" restriction, and his allegations do not suggest that he did not receive adequate nutrition from the meals he was receiving. Of course, the no cup restriction, coupled with the fact that plaintiff did not have running water, left plaintiff with no fluids. Still, at the time they imposed the no cup restriction, plaintiff has not alleged that any of these defendants *knew* that plaintiff's cell lacked running water. As such, it would be unreasonable to infer that any of them consciously disregarded the possibility that plaintiff would be denied *all "nutritional" fluids*, much less as a result of the cup restriction. Furthermore, plaintiff has not alleged that any of these defendants knew that cell A-404 was stained with feces, so their failure to take any corrective action with respect to that condition does not support a reasonable inference of their deliberate indifference either.

Next, plaintiff may not proceed against Crisis Worker Shannon-Sharpe because she was not alleged to be personally involved in this constitutional violation. *Minix v. Canarecci*, 597 F.3d 824, 833-34 (7th Cir. 2010) ("individual liability under § 1983 requires personal involvement in the alleged constitutional violation"). Indeed, her *only* alleged involvement in the events outlined in the amended complaint was that she spoke with Captain Bolsen over the phone about plaintiff's placement in clinical observation status and approved him to have access to a seg smock and high-risk mat. The fact that she only approved plaintiff to possess a seg smock and rubber mat does not suggest that she subjected him to or

approved of inhumane conditions of confinement; rather, the only reasonable inference to be drawn from her decision to limit plaintiff to these items is that she was approving measures to prevent him from harming himself. More importantly, there is no allegation that Shannon-Sharpe knew cell A-404 did not have running water or was contaminated with feces or incapacitating agents. Therefore, Shannon-Sharpe's approval of Jackson's placement in clinical observation status with certain restrictions to address his own proclaimed self-harm ideations does *not* support a reasonable inference that she was personally involved in any of the alleged constitutional violations.

As for Inmate Complaint Examiner Ray, it would obviously be unreasonable to infer that Ray was aware that plaintiff was dealing with unsanitary conditions of confinement in clinical observation before May 28 when she received his inmate complaint about it *after* he had been returned to regular confinement. While plaintiff also claims that *another* inmate submitted an inmate complaint on his behalf on May 24, he submitted a copy of Examiner Ray's resolution of that inmate complaint WSPF-2013-10302, which showed that Ray received the inmate complaint on May 28, plaintiff's last day in confinement. Moreover, Ray responded to the complaint that day as well. Regardless, by his own account, plaintiff had been released from cell A-404 on the same day that Ray received the other inmate's complaint. As such, Ray was not in a position to change plaintiff's circumstances, and so her failure to intervene at that point does not amount to deliberate indifference. Finally, to the extent plaintiff's disagreement with Ray is how she resolved either inmate complaint, that would *not* support a constitutional claim. *McGee v. Adams*, 721 F.3d 474, 485 (7th Cir. 2013); *George v. Smith*, 507 F.3d 605, 609-10 (7th Cir. 2007)

("Ruling against a prisoner on an administrative complaint does not cause or contribute to the violation."); *Owens v. Hinsley*, 635 F.3d 950, 953 (7th Cir. 2011) ("Prison grievance procedures are not mandated by the First Amendment and do not by their very existence create interests protected by the Due Process Clause, and so the alleged mishandling of Owens's grievances by persons who otherwise did not cause or participate in the underlying conduct states no claim.").

As for Captain Brown, plaintiff claims that his failure to ensure cell A-404 was clean supports a claim of deliberate indifference, but plaintiff has neither alleged that Brown *knew* that plaintiff had been placed in cell A-404, nor even that he knew the cell had remained unclean or the water to the cell had remained turned off. To the contrary, Brown's only alleged involvement in the events outlined in plaintiff's complaint is *at most* that he orchestrated inmate Williams' cell extraction using incapacitating agents on May 17, 2013, after Williams had spread his feces throughout that cell. Not only is there no suggestion that Brown knew that plaintiff was placed in cell A-404 five days after Williams' extraction, but more importantly, plaintiff's allegations do not support a reasonable inference that Brown *consciously* disregarded the fact that cell A-404 had not been cleaned or had no running water were another inmate placed in that cell. At worst, Brown was negligent in failing to follow up about cell A-404, but negligence, even gross negligence does not amount to a constitutional violation. *Vance v. Peters*, 97 F.3d 987, 992 (7th Cir. 1996).

Accordingly, plaintiff may not proceed on Eighth Amendment conditions of confinement claims against defendants Flannery, Mason, Broadbent, Sweeney, Haines, Shannon-Sharpe, Ray or Brown, but he may proceed on this claim against the other

defendants.

B. Medical Care

Plaintiff also seeks to proceed against defendants Edge, Esser, Cocroft, Jones and Flannery for their alleged refusal to provide him medical care. A prison official who violates the Eighth Amendment in the context of a prisoner's medical treatment demonstrates "deliberate indifference" to a "serious medical need." *Estelle v. Gamble*, 429 U.S. 97, 104-05 (1976); *see also Forbes v. Edgar*, 112 F.3d 262, 266 (7th Cir. 1997) (same). "Serious medical needs" include (1) life-threatening conditions or those carrying a risk of permanent serious impairment if left untreated, (2) withholding of medical care that results in needless pain and suffering, or (3) conditions that have been "diagnosed by a physician as mandating treatment." *Gutierrez v. Peters*, 111 F.3d 1364, 1371 (7th Cir. 1997). "Deliberate indifference" requires two elements: (1) awareness on the part of officials that the prisoner needs medical treatment; and (2) disregard of this risk by conscious failure to take reasonable measures. Thus, a plaintiff's Eighth Amendment claim for deliberate indifference has three basic elements:

1. Did plaintiff objectively need medical treatment?
2. Did defendants know that plaintiff needed treatment?
3. Despite their awareness of that need, did defendants consciously fail to take reasonable measures to provide the necessary treatment?

Plaintiff seeks to proceed against defendants Edge, Cocroft and Jones related to their alleged refusals to provide plaintiff access to his inhaler and nasal spray. As an initial matter, the court will accept that plaintiff's asthma is a serious medical need, since he alleges that a doctor diagnosed that condition and prescribed him an albuterol inhaler with

instructions to request it as needed. The court also accepts that Nurse Edge, as well as Correctional Officers Cocroft and Jones, were generally aware of plaintiff's condition, since he explicitly asked each of them for his inhaler and informed them that he was breathing incapacitating agents, which worsened his asthma. Certainly, Edge's alleged failure to follow up as an RN is sufficient for plaintiff to proceed, but even the officers' apparent failure to follow up on his request by either bringing him his inhaler or asking medical personnel from HSU about whether he should receive his inhaler, supports a reasonable inference of deliberate indifference, especially since plaintiff alleges that days later he suffered from chest pains and difficulty breathing.

While plaintiff may proceed on his deliberate indifference claims against defendants Edge, Cocroft and Jones past screening, the court hastens to note that plaintiff has not alleged that he actually suffered an asthma attack because no one gave him his inhaler. The closest may be plaintiff's apparent allegation that Nurse Edge failed to act on a report that he was suffering from chest pains. Regardless, plaintiff should bear in mind that to survive summary judgment or to succeed at trial, he will likely have to come forward with more specific evidence related to exactly what symptoms he reported to each of these defendants, as well as any physical symptoms he was experiencing that would have been obvious to each defendant when he asked for his inhaler. For instance, if plaintiff simply asked for his inhaler without explaining that he was having trouble breathing or presenting with symptoms suggesting that he might suffer from an asthma attack, it would be unreasonable to infer that these defendants responded with deliberate indifference.

Plaintiff also seeks to proceed against defendants Esser and Flannery for their

respective failures to ensure that he received medical attention on May 27. As for Lieutenant Esser, when Nurse Edge confirmed that plaintiff did not have running water on May 27, Esser allegedly told Nurse Edge to falsify the medical log to indicate that plaintiff *refused* treatment. While the details of this interaction are unclear, these allegations are enough at the screening stage to conclude a reasonable jury might infer that Esser deliberately refused plaintiff access to medical attention for his dehydration and related symptoms. Accordingly, plaintiff may proceed against defendant Esser on a deliberate indifference claim as well.

As for defendant Flannery, plaintiff allegedly reported numerous symptoms related to his lack of access to any fluids on day 5 of his time in cell A-404. From plaintiff's allegations, a jury might reasonably infer both that: (1) plaintiff presented to Captain Flannery with a need for medical attention; and (2) Flannery's failure to ensure that a health care provider at least examine plaintiff consisted deliberate indifference to his need for medical treatment. Accordingly, plaintiff may also proceed against defendant Flannery on an Eighth Amendment claims related to his failure to ensure that he received medical treatment on May 27.

II. Fourteenth Amendment

Plaintiff next seeks to proceed under the Fourteenth Amendment on (a) a "class-of-one" equal protection clause claim, and (b) a due process clause claim. The court will take up each claim separately.

A. Class of One Equal Protection Clause

Plaintiff seeks to proceed on class-of-one claims against defendants Brown, Hoem, Shannon-Sharpe, Bolsen, Sutters, Cocroft, Jones, Mason, Esser, Edge and Ray. In the Seventh Circuit, to proceed on such a claim, plaintiff must "plead and prove that he was 'intentionally treated differently from others similarly situated and that there is no rational basis for the difference in treatment.'" *Glover v. Dickey*, 668 Fed. Appx. 158, 160 (7th Cir. 2016) (quoting *D.B. ex rel. Kurtis B. Kopp*, 725 F.3d 681, 685-86 (7th Cir. 2013)). However, "[i]f the government official provides a rational basis for the challenged action 'that will be the end of the matter -- animus or no.'" *Id.* (quoting *Fares Pawn, LLC v. Ind. Dep't of Fin. Insts.*, 755 F.3d 839, 845 (7th Cir. 2014)); *see Flynn v. Thatcher*, 819 F.3d 990, 991 (7th Cir. 2016) ("Prison classifications are presumed to be rational and will be upheld if any justification for them can be conceived.") (citations omitted).

Plaintiff's position is that since other inmates housed in clinical observation status had running water and access to medical care, then defendants obviously singled plaintiff out for irrational punishment in denying him running water and medical care. While perhaps duplicative of plaintiff's Eighth Amendment claims, his allegations, if true, may also permit a reasonable inference that defendants Hoem, Bolsen, Sutters, Cocroft, Jones, Esser and Edge chose to single out and punish plaintiff without a rational basis by either refusing to ensure that he had running water or failing to provide him with medical care (or both). As noted above, however, plaintiff has not alleged that defendants Brown, Shannon-Sharpe, Mason or Ray were aware of the conditions in plaintiff's cell between May 22 and 28, nor his attempts to obtain medical care during that time frame.

Accordingly, it would be unreasonable to infer that they singled him out for punishment.

B. Due Process Clause

Finally, plaintiff seeks to proceed under the due process clause against just defendants Broadbent, Mason, Sweeney and Haines, for imposing the "no cup" restriction without due process. To proceed on a due process claim, however, a plaintiff must allege that: (1) he has a liberty or property interest with which the state interfered; and (2) the procedures he was afforded upon that interference were constitutionally deficient. *Ky. Dep't of Corr. v. Thompson*, 490 U.S. 454, 460 (1989); *Marion v. Columbia Corr. Inst.*, 559 F.3d 693, 697 (7th Cir. 2009); *Scruggs v. Jordan*, 485 F.3d 934, 939 (7th Cir. 2007).

Starting with the first element, a prisoner's conditions of confinement may implicate a liberty interest protected by the due process clause if he is subjected to *an atypical and significant hardship* as compared to prison life generally. *Sandin v. Connor*, 515 U.S. 472, 486 (1995). For example, a prisoner's placement in segregation may implicate a liberty interest, but only if the length of segregated confinement is substantial and the conditions of confinement are unusually harsh. *Marion*, 559 F.3d at 697-98; *see also Townsend v. Fuchs*, 522 F.3d 765, 771-72 (7th Cir. 2008) (prisoner had no liberty interest in avoiding 59-day stay in temporary lockup status while prison conducted investigation into alleged misbehavior); *Lekas v. Briley*, 405 F.3d 602, 612 (7th Cir. 2005) (three-month placement in segregation did not implicate liberty interest); *Hoskins v. Lenear*, 395 F.3d 372, 375 (7th Cir. 2005) (two-month placement in segregation did not implicate liberty interest); *Obricht v. Raemisch*, 565 F. App'x 535, 539-40 (7th Cir. 2014) (78-day confinement in segregation

with mattress placed directly on wet floor did not implicate liberty interest). Still, the Court of Appeals for the Seventh Circuit has specifically held that inmates have no liberty interest in avoiding transfer to administrative segregation. *Townsend*, 522 F.3d at 771 ("[W]e have concluded that inmates have no liberty interest in avoiding transfer to discretionary segregation -- that is, segregation imposed for administrative, protective, or investigate purposes.") (citations omitted).

Here, plaintiff's placement on clinical observation status without a cup was *not* punitive. Far from it, plaintiff affirmatively alleges that he wanted to be placed on clinical observation status, and his placement was a discretionary response by the institution to plaintiff's reports that he was considering self-harm and thus needed to be placed in a cell where he could be under close observation without access to items he could use for self-harm. Even assuming plaintiff's placement on clinical observation status could be construed as punitive, plaintiff's 6-day period of time in which he was subjected to the no cup restriction did not amount to a loss of liberty. While plaintiff's cell may well have been unsanitary, and he certainly lacked access to certain property items and fluids, his allegations indicate that he still had all of his meals and was consistently interacting with other inmates and WSPF staff between May 22 and 28, 2013. Moreover, while the "no cup" restriction may have contributed to plaintiff's alleged, eventual dehydration, he was consistently provided three meals a day (and perhaps "non-nutritional" drinks, albeit not water) during this six-day period of time. As such, it would be unreasonable to infer that plaintiff's experiences in clinical observation status amount to a loss of liberty.

Finally, even assuming plaintiff's conditions of confinement between May 22 and

28, 2013, amounted to a loss of liberty, defendants Broadbent, Mason, Sweeney and Haines were not responsible for those conditions. In particular, there is *no* indication that any of them knew: (1) plaintiff had been placed on clinical observation status during this six-day window; or (2) cell A-404 did not have running water and would thus leave plaintiff without fluids. Accordingly, plaintiff may not proceed against defendants Broadbent, Mason, Sweeney or Haines on a due process claim related to this restriction, and these defendants will be dismissed.

ORDER

IT IS ORDERED that:

1. Plaintiff Raynard Jackson is GRANTED leave to proceed on:

    a. Eighth Amendment conditions of confinement claims against defendants Hoem, Bolsen, Sutters, Cocroft, Jones, Esser, and Edge.

    b. Eighth Amendment medical care deliberate indifference claims against defendants Cocroft, Jones, Edge, Esser and Flannery.

    c. Fourteenth Amendment equal protection class of one claims against defendants Hoem, Bolsen, Sutters, Cocroft, Jones and Edge.

2. Plaintiff is DENIED leave to proceed on any other claims, and defendants Lebbeus Brown, Joni Shannon-Sharpe, Sarah Mason, Ellen Ray, Anthony Broadbent, Jerome Sweeney and Tim Haines are DISMISSED.

3. 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 60 days from the date of the Notice of Electronic Filing in this order to answer or otherwise plead to the plaintiff's complaint if it accepts service for the defendants.

4. For the time being, plaintiff must send the defendants a copy of every paper or document he files with the court. Once plaintiff has learned what lawyer will be representing the defendants, he should serve the lawyer directly rather than the 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 the defendants or to the defendants' attorney.

5. 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.

6. If plaintiff is transferred or released while this case is pending, it is plaintiff's obligation to inform the court of his new address. If he fails to do this and defendants or the court are unable to locate him, his claims may be dismissed for his failure to prosecute him.

Entered this 11th day of February, 2020.

BY THE COURT:

/s/

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WILLIAM M. CONLEY
District Judge