

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

LAVALL T. LEE,

Plaintiff,

v.

OPINION and ORDER

BRIAN CHAK,
MR. INGENTHRON,
and SGT. WRIGHT,

22-cv-119-wmc¹

Defendants.

Pro se plaintiff Lavall T. Lee challenges how staff at New Lisbon Correctional Institution responded to a 2022 outbreak of the COVID-19 virus. The court dismissed his complaint for failure to state a claim and let him amend his allegations. Dkt. 8. Lee has filed a motion for leave to amend his complaint with a proposed amended complaint. Dkt. 9–10.

Because Lee proceeds in forma pauperis, I must screen the amended complaint and dismiss 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 money damages. 28 U.S.C. §§ 1915, 1915A. In doing so, I accept the allegations as true and construe the amended complaint generously, holding it to a less stringent standard than formal pleadings drafted by lawyers. *Arnett v. Webster*, 658 F.3d 742, 751 (7th Cir. 2011). With that standard in mind, I conclude that this lawsuit must be dismissed.

¹ I am exercising jurisdiction over this case for the purpose of screening only.

ALLEGATIONS OF FACT

Lee has “a weak immune system” and suffers from multiple underlying health problems including hypertension, gastritis, diverticulitis, and constipation. Dkt. 1, ¶ 32. On January 5, 2022, the Wisconsin National Guard administered COVID-19 tests to New Lisbon inmates. Five days later, defendant Brian Chak announced that institutional operations would be modified because over 400 inmates had tested positive for the virus. Yet all inmates, regardless of status, were allowed out to get and bring their dinners back to their cells and to use the day room. Also that day, defendant Sergeant Wright told Lee’s cellmate that he had tested positive.

The next day, defendant Unit Manager Ingenthron told Lee that he had tested negative for the virus. Lee complained to Ingenthron and Wright about being housed with a COVID-positive cellmate, but neither Ingenthron nor Wright took any action. Health Services Unit Manager Strumness later confirmed in writing to Lee that the Wisconsin Department of Corrections was following CDC guidelines as well as the state Bureau of Health’s guidelines. Lee did not become infected with COVID-19 but contends that he could have died had he caught the virus, and that he had been at “risk of serious damage to his future health” because of his underlying health conditions, of which defendants were aware. *Id.*, ¶ 33.

ANALYSIS

Lee contends that defendants mishandled their response to the COVID-19 outbreak in violation of his Eighth Amendment right to be free of cruel and unusual punishment. The Eighth Amendment requires prison officials to provide inmates with humane conditions of confinement and to take reasonable measures to guarantee the safety of inmates. *Farmer v. Brennan*, 511 U.S. 825, 834 (1994). A prison official violates the Eighth Amendment if the

official consciously disregards a substantial risk of serious harm to an inmate. *Balsewicz v. Pawlyk*, 963 F.3d 650, 654 (7th Cir. 2020).

Lee contends that because of his underlying conditions, the events of January 2022 put him at “risk of serious damage to his future health.” Dkt. 1 at ¶ 33. But he does not allege that he ever contracted COVID-19, or suffered any other form of injury, from sharing a cell with his COVID-positive cellmate or from the dinner and day room protocols then in effect, so those events do not appear to have created a substantial risk to his future health. Nor does he allege an ongoing risk of exposure.² If a plaintiff “want[s] to recover money damages solely for the risk to his life” that defendants consciously disregarded, “[t]hat risk is not compensable without evidence of injury.” *Lord v. Beahm*, 952 F.3d 902, 905 (7th Cir. 2020); *see also Barnes v. Carr*, No. 21-cv-51-jdp, 2021 WL 3662452, at *1 (W.D. Wis. Aug. 18, 2021) (New Lisbon inmate’s claim arising from exposure to coronavirus failed to state a claim for damages because he did not allege that he contracted COVID-19 or was otherwise harmed).

Because Lee has again failed to state a claim, and I conclude that any further attempts at amendment would be futile, I will dismiss the amended complaint and deny Lee’s motion to amend his complaint. I will also direct the clerk of court to record a strike under 28 U.S.C. § 1915(g). If Lee accumulates three strikes “while incarcerated or detained in any facility,” he will no longer be able to proceed as a plaintiff not required to prepay the full filing fee for a civil lawsuit unless he can show that he is “under imminent danger of serious physical injury.” 28 U.S.C. § 1915(g).

² The DOC’s publicly reported data for COVID-19 infections among the prison population shows no active cases at New Lisbon as of June 20, 2023. *See* [https://doc.wi.gov/Pages/COVID19\(Coronavirus\)/COVID19TestingDashboard.aspx](https://doc.wi.gov/Pages/COVID19(Coronavirus)/COVID19TestingDashboard.aspx).

ORDER

IT IS ORDERED that:

1. Plaintiff is DENIED leave to proceed, and his motion to amend his complaint, Dkt. 9, is DENIED.
2. This case is DISMISSED.
3. The clerk of court is directed to enter judgment for defendants, close this case, and record a strike under 28 U.S.C. § 1915(g).

Entered June 27, 2023.

BY THE COURT:

/s/

JAMES D. PETERSON
District Judge