

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

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TERRENCE WHITEHEAD,

Plaintiff,

v.

OPINION AND ORDER

18-cv-1023-wmc

WARDEN TIM HAINES,  
(ICE) MANDY MATHSON,  
and MRS. WEHRLE,

Defendants.

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*Pro se* plaintiff Terrance Whitehead, formerly incarcerated at Prairie Du Chien Correctional Institution (“PDCI”), brings this action under 42 U.S.C. § 1983 against PDCI employees Tim Haines, Mandy Mathson and Mrs. Wehrle. Whitehead claims that these defendants violated his constitutional rights in failing to address his report of mold in the PDCI kitchen. On February 18, 2020, this court issued an order explaining that the complaint failed to state a claim, but giving him an opportunity to file an amended complaint and “provide previously omitted details” about the alleged events. (Dkt. #13 at 1, 4.) Whitehead has taken that opportunity, and the court will construe his amended complaint as a supplement to the original complaint, treating both filings as one operative pleading now ready for screening as required by 28 U.S.C. § 1915(e)(2). For the following reasons, he will be granted leave to proceed on an Eighth Amendment claim against all defendants.

## ALLEGATIONS OF FACT<sup>1</sup>

In September 2018, Whitehead was working in the kitchen at PDCI. His work area consisted of two sinks and a large dish washer in the middle of the room. For seven months, Whitehead alleges that he was exposed to two large areas of thick, black mold above the sinks. Whitehead repeatedly asked his supervisor, Ms. Wehrle, to do something. (Dkt. #14 at 1-2.) In response, she allegedly told Whitehead to clean it, but provided ineffective soap and spray with no protective clothing or equipment for him to wear while cleaning. (Dkt. #14 at 2.) Although the amended complaint does not indicate how often Whitehead tried to clean off the mold, it alleges that he would become short of breath while cleaning and would suffer a headache and a bloody nose afterward. (Dkt. #14 at 2.)

In his original complaint, Whitehead further alleges that he filed an inmate complaint on September 12, 2018, while still working in the kitchen. However, Inmate Complaint Examiner (“ICE”) Mathson dismissed the complaint on November 18, 2018. In addition, Warden Haines allegedly became aware of his working conditions via a complaint filed on or about November 8, 2018, but also did nothing.

## OPINION

The court understands plaintiff to be asserting claims against the defendants under the Eighth Amendment, which prison officials may violate if they knowingly deprive a prisoner of the minimal civilized measure of life’s necessities or subject a prisoner to a

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<sup>1</sup> In addressing any *pro se* litigant’s complaint, the court must read the allegations generously, drawing all reasonable inferences and resolving ambiguities in plaintiff’s favor. *Haines v. Kerner*, 404 U.S. 519, 521 (1972).

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.*

Although there is no definitive test to determine whether conditions of confinement are cruel and unusual under the Eighth Amendment, the following kinds of alleged conditions have been found to rise to the level of unsanitary conditions: (1) being housed in a cell with broken windows, exposed wiring, extensive rust, sinks without running water, toilets covered in mold and a broken heating system, *Budd v. Motley*, 711 F.3d 840, 841-42 (7th Cir. 2013); (2) being required to sleep on a moldy and wet mattress for 59 days, *Townsend v. Fuchs*, 522 F.3d 765, 773-74 (7th Cir. 2008); (3) being subjected to a lack of sanitary conditions, including clean bedding, *Gillis*, 468 F.3d at 493-94; (4) having to live for 16 months in a cell infested with cockroaches that crawled over the prisoner’s body, *Antonelli v. Sheahan*, 81 F.3d 1422, 1431 (7th Cir. 1996); and (5) living in a cell in which with mold and fiberglass in the ventilation ducts caused the plaintiff severe nosebleeds and respiratory problems, *Board v. Farnham*, 394 F. 3d 469, 486 (7th Cir. 2005).

Here, plaintiff alleges that he was required to work for seven months in an area with significant black mold. Although his allegations are limited, plaintiff also describes possible consequences of his exposure, including respiratory problems, headaches, and nosebleeds that appear tied to the mold and his ineffective attempts to clean it. At least under the generous standard to which *pro se* litigants are entitled at the screening stage, these allegations are sufficient to permit an inference that the conditions in the kitchen were unsanitary and posed a serious risk of harm. *See, e.g., Murphy v. Mehr*, No. 20-1237-JDT-CGC, 2020 WL 6205854, at \*4 (W.D. Tenn. Oct. 22, 2020) (exposure to black mold may, in an appropriate case, satisfy the objective component of an Eighth Amendment violation).

Based on plaintiff's allegations, the court may also infer that defendants were deliberately indifferent to that risk. In particular, plaintiff alleges that despite repeatedly asking Supervisor Wehrle to remedy the situation, the only step she took was to tell plaintiff to try to clean the mold himself, but without providing proper cleaning supplies or any protective clothing or equipment. This, too, is sufficient to infer a reasonable inference of reckless disregard of plaintiff's health at this stage. *Cf. Gray v. Hardy*, 826 F.3d 1000, 1005 (7th Cir. 2016) (dismissal of infestation claim at summary judgment inappropriate in light of proof of "myriad infestations," including mosquitos, mice and birds, at least when coupled with a lack of access to cleaning supplies).

As for the other named defendants, ICE Mathson and Warden Haines, plaintiff alleges that they were both aware of the problem while he was still working in the kitchen, and in a position to intervene, yet both did nothing. To succeed on a failure-to-intervene

theory, “a plaintiff must prove that the defendant failed to intervene with deliberate or reckless disregard for the plaintiff’s constitutional right.” *Koutnik v. Brown*, 351 F. Supp. 2d 871, 876 (W.D. Wis. 2004) (citing *Fillmore v. Page*, 358 F.3d 496, 505-06 (7th Cir. 2004)). Although the allegations do not make clear to what extent any of these defendants were actually aware of plaintiff’s related health problems, the court will also resolve this ambiguity in plaintiff’s favor at this early stage.

Accordingly,

## ORDER

IT IS ORDERED that:

- 1) Plaintiff Terrance Whitehead is GRANTED leave to proceed on an Eighth Amendment deliberate indifference claim against defendants Wehrle, Mathson and Haines.
- 2) 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 state 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 plaintiff’s complaint if it accepts service for the defendants.
- 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 defendant, 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 the 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) If plaintiff moves while this case is pending, it is his obligation to inform the court of his new address. If he fails to do this and defendants or the court is unable to locate him, his case may be dismissed for failure to prosecute.

Entered this 13th day of April, 2021.

BY THE COURT:

/s/

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WILLIAM M. CONLEY  
District Judge