

DOC NO  
RECORDED/FILED  
IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WISCONSIN  
2018 SEP 13 AM 10:29

JOHN BOUCHER,  
  
Plaintiff,  
  
vs.  
  
DR. MARTIN and  
DEBRA TIDQUIST,  
  
Defendants

) PETER C. PETERSON  
) CLERK US DIST COURT  
) WD OF WI

18 760

CIVIL ACTION NO. \_\_\_\_\_  
JURY TRIAL DEMANDED

COMPLAINT

Plaintiff John Boucher ("Mr. Boucher"), proceeding pro se, brings this action against Defendants Dr. Martin, M.D. and Debra Tidquist, NP ("Defendants") hereby alleges as follows:

INTRODUCTION

1. This is a civil action for damages due to Defendants' negligence and deliberate indifference in failing to adequately diagnose and treat Mr. Boucher's serious medical injury.

JURISDICTION AND VENUE

2. This action arises under 42 U.S.C. §1983. Jurisdiction is conferred by 28 U.S.C. §§ 1331, 1343(a)(3) and 1367.

3. Venue in this Court is appropriate pursuant to 28 U.S.C. §1391(b)(2) because a substantial part of the events giving rise to the claims presented herein occurred in the geographical boundaries of the Western District of Wisconsin.

PARTIES

4. Plaintiff John Boucher is an adult state inmate and currently resides at the Jackson Correctional Institution (JCI) in Black River Falls, Wisconsin.

5. Defendant Dr. Martin, at all times relevant to this action was a resident of Wisconsin and worked at JCI as a licensed medical doctor employed by the Wisconsin Department of Corrections' Bureau of Health Services ("BHS").

6. Defendant Debra Tidquist, at all times relevant to this action, was a resident of Wisconsin and worked at JCI as a practice nurse prescriber employed by the Wisconsin Department of Corrections' BHS.

ALLEGATIONS OF FACT

Events Leading To Right Shoulder Injury

7. In December 2014, Mr. Boucher injured his right shoulder in a bicycling accident (in Mexico) which left a massive tendon rupture in his right rotator cuff causing him excruciating pain and extremely limited range of motion in his right shoulder.

8. On December 4, 2014, Mr. Boucher turned himself into border patrol agents at the United States border crossing as he was a fugitive from an extended supervision violation in the State of Wisconsin. He later transported to the San Diego County Jail.

9. While confined in the San Diego County Jail, Mr. Boucher received some medical attention for his right shoulder. After

treating the injury to Mr. Boucher's right shoulder as best as he could, the attending physician diagnosed Mr. Boucher's shoulder as requiring an orthopedic consultation but Mr. Boucher was transferred to a different jail before he was able to see an orthopedic specialist.

Events Prior To Orthopedic Consultation

10. Mr. Boucher arrived at Dodge Correctional Institution (DCI) on February 24, 2015 and met with DCI medical staff shortly thereafter. Mr. Boucher told the medical staff at DCI that he had sustained a serious injury to his right shoulder which caused continuous and severe pain.

11. On March 3, 2015, DCI medical staff issued medical restrictions for Mr. Boucher to have a low bunk, 1st floor only cell, cane, sling immobilizer for his shoulder and tennis shoes.

12. On April 6, 2015, Dr. Parrish prescribed a pain medication called Gabapentin for Mr. Boucher to take for pain associated with his shoulder injury.

13. On May 5, 2015, Mr. Boucher was transferred from DCI to Jackson Correctional Institution (JCI). Upon his arrival to JCI, Mr. Boucher immediately submitted a health service request explaining that he had been receiving medical care at DCI for injuries sustained to his ankle and shoulder. He requested a wheelchair for long distances.

14. Two days later, i.e. May 7, Mr. Boucher met with Nurse Kostohryz. During the appointment, Nurse Kostohryz verified that Mr. Boucher had severe injuries and made a STST referral to Defendant Martin.

15. Shortly thereafter, Defendant Martin entered the exam room and Mr. Boucher proceeded to explain to Defendant Martin that he was experiencing throbbing pain which he ruled 8/10 on the pain scale, severely decreased range of motion. Mr. Boucher then requested an MRI, a referral to an orthopedic specialist and a wheelchair for long distances because he had a permanently damaged right ankle from a 1989 accident which resulted in 8-10 surgical procedures. Additionally, Mr. Boucher asked Defendant Martin for a medical restriction to have an inmate handler deliver his meal trays.

16. Defendant Martin told Mr. Boucher that he did not deserve either a wheelchair or a meal tray delivery restriction. Mr. Boucher replied that it was so painful to walk that he could barely walk to obtain his pain medication three times per day as prescribed.

17. Defendant Martin issued Mr. Boucher a permit to use a walker (with no wheels), of course. Immediately after his visit with Mr. Boucher, Defendant Martin called to Mr. Boucher's housing unit and advised Sergeant Archer that Mr. Boucher was required to pick up his own meal trays. Inmate handlers typically delivered Mr. Boucher's meal trays as a result of his serious medical conditions.

18. On May 9, 2015, Mr. Boucher walked to the HSU for pain medication, during which time he fell and sustained injuries. Upon his arrival to the HSU, Mr. Boucher requested immediate medical attention, to no avail.

19. On May 11, 2015, Mr. Boucher, filed inmate complaint no. JCI-2015-8484, in which he complained about being given a walker because the walker exasperated his right shoulder pain. On May 21, 2015, the Appropriate Reviewing Authority decision was to dismiss Mr. Boucher's complaint with modification.

20. On August 15, 2015, Mr. Boucher submitted an Information/Interview request to the HSU Supervisor, Ms. Maassen, requesting permission for him to use a wheelchair for long distance.

21. In her response, dated August 26, Ms. Maassen wrote, "your request for a wheel chair will need to be evaluated by Special Needs Committee-can temporarily allow W/C use in bad weather."

22. Mr. Boucher was next seen for his shoulder by Nurse Kostohryz on April 18, 2016, after he submitted a health service request on or about April 16, 2016. Mr. Boucher reported that the pain in his right shoulder had not improved since the injury. After conducting an examination, Nurse Kostoryz scheduled Mr. Boucher for a follow up appointment with a physical therapist.

23. On April 22, 2016, Mr. Boucher submitted a health service request, on which he inquired about his appointment with the physical therapist. He also stated that his shoulder continuously cased him severe pain.

24. On April 28, 2016, Mr. Boucher was evaluated by the physical therapist. The therapist noted right shoulder pain since being hurt after getting hit by a car; pain intensity 8/10, most likely caused by rotator cuff compromise.

25. Upon his return to HSU, Mr. Boucher was seen by Defendant Tidquist, she ordered six weeks of physical therapy. However, six weeks of therapy did not alleviate Mr. Boucher's pain.

26. On June 21, 2016, Mr. Boucher reported to Defendant Tidquist that physical therapy was not alleviating his shoulder pain. Mr. Boucher described his physical condition as unchanged- he could not lift his right arm (frozen shoulder). Mr. Boucher requested an MRI and an orthopedic consultation but was denied by Defendant Tidquist.

27. On August 24, 2016 and September 1, 2016, Mr. Boucher visited Defendant Tidquist again and complained that he continuously experienced shoulder pain. His physical examination at both visits showed severely limited range of motion (frozen shoulder) in the right shoulder.

28. Mr. Boucher wrote a series of health services requests during the summer of 2016 dated May 2nd, May 20th, June 17th, June 20th, June 26th, and July 1st, complaining about his shoulder pain and requesting an orthopedic consultation.

#### The Diagnosis

29. On September 14, 2016, approximately 69 weeks after arriving at JCI, Defendants finally ordered an MRI. It disclosed a full thickness rotator cuff rupture with evidence of muscle atrophy and retraction. Mr. Boucher received the results on October 11, 2016, and Defendant Martin scheduled a consultation with Dr. Grossman, an orthopedic surgeon, on November 9, 2016.

30. Dr. Grossman examined Mr. Boucher and reviewed his MRI results, he noted "obvious atrophy posteriorly." that Mr. Boucher had "remarkably little

shoulder motion," and that the "chronic rotator cuff tear... appears to be 'unreparable.'" (emphasis added).

31. On November 15, 2016, Mr. Boucher filed offender complaint JCI-2016-25332, complaining about the irreparable harm to his right shoulder as a result of the named defendants delayed medical care. The complaint was dismissed by the Appropriate Reviewing Authority in December 2016. Mr. Boucher appealed that decision. On January 6, 2017, the Corrections Complaint Examiner issued a recommendation to dismiss the appeal. The Secretary accepted CCE's recommendation on January 25, 2017.

#### CAUSES OF ACTION

##### COUNT ONE

Defendants Significant Delay In Order Diagnostic Testing  
and Orthopedic Referral For Torn Rotator Cuff and  
Associate Pain Amounted To Deliberate Indifference In  
Violation Of the Eighth Amendment

32. Mr. Boucher repeats and realleges the allegations contained in the proceeding paragraphs of this Complaint as though said paragraphs were set forth herein.

33. The named Defendants ignored the fact that Mr. Boucher could not lift his right arm (frozen shoulder); was not responding to therapy, failed to timely order an MRI for Mr. Boucher's right shoulder and instead they waited more than 17 months to get an MRI which revealed a full thickness rotator cuff rupture.

34. Between May 7, 2015 and October 11, 2016, Mr. Boucher made dozens of requests for an MRI and a referral to an orthopedic specialist, but all were denied by Defendants, leaving Mr. Boucher to suffer in pain more than 17 months with a full thickness rotator cuff rupture.

35. Defendants failed to properly diagnose, treat, or refer out Mr. Boucher's serious injury in a timely manner, leaving him to suffer in pain for more that 17 months.

36. Defendants knew or should have known that ignoring Mr. Boucher's requests for orthopedic consultation would cause unnecessary and severe pain for him.

37. Defendants' actions resulted in deliberate medical indifference to Mr. Boucher's serious medical condition in violation of the Eighth Amendment.

38. As a result of Defendants' failure to order timely diagnostic testing and an orthopedic consultation, Mr. Boucher suffered a life-long handicap or permanent loss of the use of his right shoulder.

#### COUNT TWO

##### Medical Malpractice/Negligence Against Defendants

39. Mr. Boucher repeats and realleges the allegations contained in the proceeding paragraphs of this Complaint as though said paragraphs were fully set forth herein.

40. Defendants Martin and Tidquist owed Mr. Boucher a duty to provide reasonable medical care such as arranging necessary diagnostic testing.

41. Defendant Martin breached the duty of care owed to Mr. Boucher in failing to timely refer him for diagnostic testing and an orthopedic specialist.

42. Defendant Tidquist breached the duty of care owed to Mr. Boucher in failing to timely refer him for diagnostic testing and orthopedic consultation.



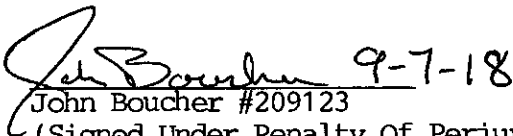
43. Defendants breach compounded Mr. Boucher's injury and caused him irrepaialbe right shoulder damage.

44. Defendant' negligence acts and grossly inadequate treatment caused Mr. Boucher to suffer extreme pain for a period of over 17 months.

WHEREFORE, Plaintiff John Boucher respectfully demands judgment against Defendants as follows:

1. Entering judgment for Plaintiff and against each Defendant, jointly and severally;
2. Awarding compensatory damages against all Defendants;
3. Awarding punitive damages against all Defendants; and
4. Awarding all such other relief as the Court deems just and equitable.

Pursuant to 28 U.S.C. §1746, Mr. Boucher declares under penalty of perjury, the allegations detailed in this Complaint are true and correct to the best of his knowledge.

 9-7-18  
John Boucher #209123  
(Signed Under Penalty Of Perjury)

Jackson Correctional Inst.  
P.O. Box 233  
Black River Falls, WI 54615