

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

ANTHONY P. HEARD, JR.,

Plaintiff,

v.

OPINION and ORDER

JAMES PATTERSON and JOLINDA WATERMAN,

20-cv-548-jdp

Defendants.

Plaintiff Anthony P. Heard, Jr., appearing pro se, is a prisoner at Wisconsin Secure Program Facility. Heard alleges that prison medical staff delayed in treating his severe leg swelling, exacerbating the problem and causing him pain. He seeks leave to proceed in forma pauperis with his case, and he has made an initial partial payment of the filing fee as previously directed by the court.

The next step is for me to screen Heard's 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 and 1915A. In doing so, I must accept his allegations as true, *see Bonte v. U.S Bank, N.A.*, 624 F.3d 461, 463 (7th Cir. 2010), and construe the 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). I will allow Heard to proceed on claims against defendants for the delay in his treatment.

ALLEGATIONS OF FACT

Heard suffers from chronic knee and leg pain, as well as leg deformity and chronic swelling of his legs, causing him pain. On April 7, 2018, Heard's swelling increased, with pitting (after being pressed touched, the skin would retain a dimple). And Heard's left leg began to show discoloration. The on-call doctor instructed the nurses to cover his legs with dressing, give him medication, and send him to the hospital if his legs "opened," by which I take him to mean leakage of fluid or blood. On April 8, Heard remained in pain but he felt better and the discoloration had stopped.

Heard was supposed to see defendant Dr. James Patterson on April 9, but Patterson moved that appointment to the next day. Heard was not seen by Patterson the next day. Heard's unit manager spoke to defendant Health Services Unit Manager Jolinda Waterman about Heard's condition; Waterman said that Heard would be seen on April 12. Heard wasn't seen that day either. Medical staff told him that the delay was caused by Patterson being out sick all that week, which Heard says conflicts with Waterman's statements and the fact that Patterson was able to make notes in his chart, including rescheduling his appointment date.

Patterson finally met with Heard on April 18. By this point, Heard's swelling had significantly increased. Patterson did not appear to have read Heard's file beforehand, because he stated that Heard did not have a history of swelling in his right leg, which is incorrect. In May, Heard won an inmate grievance about delay in his treatment.

I take Heard to be saying that the delay in care caused his symptoms to worsen and linger. By March 2019, his legs were still swollen with pitting. In October 2019, he started to bleed from his left ankle; this was the first time that he experienced that symptom. The discoloration of his legs that set in during the delay in April 2018 became permanent.

ANALYSIS

Heard contends that defendants Patterson and Waterman violated the Eighth Amendment to the United States Constitution by delaying in treating his swollen legs. The Eighth Amendment prohibits prison officials from acting with conscious disregard toward prisoners' serious medical needs. *Estelle v. Gamble*, 429 U.S. 97, 103–04 (1976). A “serious medical need” is a condition that a doctor has recognized as needing treatment or one for which the necessity of treatment would be obvious to a lay person. *Johnson v. Snyder*, 444 F.3d 579, 584–85 (7th Cir. 2006). A medical need is serious if it is life-threatening, carries risks of permanent serious impairment if left untreated, results in needless pain and suffering, significantly affects an individual's daily activities, *Gutierrez v. Peters*, 111 F.3d 1364, 1371–73 (7th Cir. 1997), or otherwise subjects the prisoner to a substantial risk of serious harm, *Farmer v. Brennan*, 511 U.S. 825, 847 (1994). A defendant “consciously disregards” an inmate's need when the defendant knows of and disregards “an excessive risk to an inmate's health or safety; the official must both be aware of the facts from which the inference could be drawn that a substantial risk of serious harm exists, and he must also draw the inference.” *Snipes v. Detella*, 95 F.3d 586, 590 (7th Cir. 1996). However, inadvertent error, negligence, gross negligence, and ordinary malpractice are not cruel and unusual punishment within the meaning of the Eighth Amendment. *Vance v. Peters*, 97 F.3d 987, 992 (7th Cir. 1996).

Heard's symptoms as described in his complaint are enough to show a serious medical need and that he needed prompt treatment. He contends that defendant Dr. Patterson delayed in seeing him for nine days after his original appointment date. Heard contends that this delay caused his symptoms to worsen and linger. He also contends that Patterson didn't take appropriate steps to understand the extent of Heard's problems, as evidenced by Patterson not

knowing that Heard had a history of swelling in his right leg. I conclude that Heard's allegations are enough to state an Eighth Amendment claim against Patterson, although at summary judgment or trial, Heard will have show that Patterson could have indeed treated him or was otherwise responsible for finding him care during the nine-day delay; if the evidence shows that Patterson was ill and unable to work, then it's unlikely that Heard will be able to prove conscious disregard on Patterson's part. Heard will also have to prove that more prompt treatment would have made a difference in lessening his pain or that it would have improved his long-term condition.

As for defendant Waterman, claims against supervisory officials like Waterman often fail because the plaintiff fails to show that the defendant was personally involved in harming the plaintiff; a plaintiff cannot succeed on a constitutional claim against a supervisor based merely on the misdeeds of her employees. *See Doyle v. Camelot Care Ctrs., Inc.*, 305 F.3d 603, 615 (7th Cir. 2002). But Heard contends that Waterman was responsible for scheduling his appointments and particularly for ensuring that Heard received care after his first two appointment dates fell through. Because I can reasonably infer that Waterman knew about Heard's problem and did not ensure that he was promptly seen, I will allow Heard to proceed on an Eighth Amendment claim against Waterman.

ORDER

IT IS ORDERED that:

1. Plaintiff Anthony P. Heard, Jr. is GRANTED leave to proceed on Eighth Amendment claims against defendants James Patterson and Jolinda Waterman.
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 defendants. Plaintiff should not

attempt to serve defendants on his own at this time. Under the agreement, the Department of Justice will have 60 days from the date of the Notice of Electronic Filing of this order to answer or otherwise plead to plaintiff's complaint if it accepts service for defendants.

3. For the time being, plaintiff must send defendants a copy of every paper or document that he files with the court. Once plaintiff learns the name of the lawyer or lawyers who will be representing defendants, he should serve the lawyer directly rather than defendants. The court will disregard documents plaintiff submits that do not show on the court's copy that he has sent a copy to defendants or to defendants' attorney.
4. Plaintiff should keep a copy of all documents for his own files. If he is unable to use a photocopy machine, he may send out identical handwritten or typed copies of his documents.
5. 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 them.

Entered July 7, 2020.

BY THE COURT:

/s/

JAMES D. PETERSON
District Judge