Orig in Sec
Copy to Mag/Judge Blewitt

25 Jn
6/22/94

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

EUGENE LAMBERT, :
:
Plaintiff :
:
v. : CIVIL NO. 3:CV-92-1070
: (Judge Kosik)
WILLIAM LOVE, et al., :
:
Defendants :

MEMORANDUM

The plaintiff, a prisoner proceeding pro se and in forma pauperis, filed a complaint in the above-captioned action pursuant to 42 U.S.C. § 1983 on August 5, 1992. Plaintiff filed an amended complaint on August 17, 1992. The complaint is based on an accident that allegedly occurred in June of 1987 in which the plaintiff claims he splashed bleach in his eye causing injury. The plaintiff contends that the medical treatment he has been given after the accident has been constitutionally deficient. The case was assigned to United States Magistrate Judge Thomas M. Blewitt.

On September 16, 1993, the defendants filed a motion to dismiss the amended complaint pursuant to Fed. R. Civ. P. 12(b)(6). The plaintiff filed an opposition brief on October 15, 1993. On May 19, 1994 the Magistrate Judge filed a Report and Recommendation[1] in which he recommended that the defendants' motion to dismiss be granted. The Magistrate Judge determined that from the complaint and attached medical records, plaintiff

[1] Document 23.

had failed to state a claim for deliberate indifference. Plaintiff filed objections to the Report and Recommendation on June 3, 1994.[2]

When objections are filed to a Report and Recommendation of a Magistrate Judge we must make a de novo determination of those portions of the Report to which objections are made. 28 U.S.C. § 636(b)(1)(C); see Sample v. Diecks, 885 F.2d 1099, 1106 n. 3 (3d Cir. 1989). In so doing, we may accept, reject, or modify, in whole or in part, the findings or recommendations made by the Magistrate Judge. 28 U.S.C. § 636(b)(1); Local Rule 72.31. Furthermore, although our review is de novo, we are permitted by statute to rely upon the Magistrate Judge's proposed recommendations to the extent we, in the exercise of sound discretion, deem proper. United States v. Raddatz, 447 U.S. 667, 676, 100 S.Ct. 2406, 2413 (1980) and Goney v. Clark, 749 F.2d 5, 7 (3d Cir. 1984).

We have reviewed the Report and Recommendation of the Magistrate Judge, and agree that plaintiff has not stated a claim for deliberate indifference against any of the defendants. See Farmer v. Brennan, ___U.S.___, Civil No. 92-7247, 62 U.S.L.W. 4446 (June 6, 1994)("subjective recklessness", as used in the criminal law, is the appropriate test for deliberate indifference). From the complaint and the attached medical records, there is no indication that any of the defendants "[knew] and disregard[ed] an excessive risk" to plaintiff's

---

[2] Document 24.

health, or that, "they were aware of facts from which the inference could be drawn that a substantial risk of serious harm existed." Id.

Immediately following the accident plaintiff was seen by three separate doctors.[3] Some three and a half years later, in January of 1991, plaintiff requested an eye examination due to "worsening of [his] vision". He was examined by Dr. Burges, who prescribed a stronger pair of glasses, and who allegedly recommended that plaintiff see a specialist.[4] Plaintiff received no response from defendant Suomela regarding his request to see a specialist and was told by defendant Reiners that he was not eligible for an eye exam until January of 1993.[5] Plaintiff filed grievances with prison officials but these were denied.[6]

From the allegations in the complaint listed above, it is clear that the actions of the defendants do not arise to the level of deliberate indifference as defined by the Supreme Court. Plaintiff has seen three separate doctors on four occasions for the eye problem. After his last request, plaintiff was not denied treatment but was merely informed he would have to wait for his regularly scheduled appointment. We find this sufficient. Furthermore, plaintiff's objections fail to shed any new light, factually or legally on the relevant issues. We will

---

[3] Complaint at paragraphs 5-9.

[4] Complaint at paragraphs 10-13.

[5] Complaint at paragraphs 14-16.

[6] Complaint at paragraphs 17-22.

therefore adopt the Report and Recommendation of the Magistrate Judge and will grant the defendants' motion to dismiss. An appropriate Order is attached.

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

EUGENE LAMBERT,	:	
	:	
Plaintiff	:	
	:	
v.	:	CIVIL NO. 3:CV-92-1070
	:	(Judge Kosik)
WILLIAM LOVE, et al.,	:	
	:	
Defendants	:	

ORDER

AND NOW, this 22 day of June, 1994, IT IS HEREBY ORDERED THAT:

[1] the Magistrate Judge's May 19, 1994, Report and Recommendation [Document 23] is adopted;

[2] defendants' motion to dismiss the amended complaint [Document 20] is granted;

[3] the Clerk of Court is directed to close this case and forward a copy of this Memorandum and Order to United States Magistrate Thomas M. Blewitt; and

[4] any appeal of this Order shall be deemed frivolous, without merit and lacking in good faith.

Edwin M. Kosik
United States District Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

EUGENE LAMBERT,	:	CIVIL NO. **3:CV-92-1070**
	:	
Plaintiff	:	(Judge Kosik)
	:	
v.	:	(Magistrate Judge Blewitt)
	:	
WILLIAM LOVE, et al.,	:	
	:	
Defendants	:	

REPORT AND RECOMMENDATION

Plaintiff, an inmate at the State Correctional Institution at Huntingdon (SCI-Huntingdon), filed this civil rights action on August 5, 1992, pursuant to 42 U.S.C. §1983 seeking declaratory, compensatory and punitive relief. A Motion to Dismiss the Complaint was filed by the Defendants. The Plaintiff was afforded the opportunity to amend the complaint. (Doc. 16). An amended complaint was filed on August 17, 1992. (Doc. 19). Named as Defendants are the following individuals: William Love, Superintendent of SCI-Huntingdon; Martin A. Suomela, Health Care Administrator at SCI-Huntingdon; Dr. Charles R. Reiners, physician at SCI-Huntingdon; Steryl L. Grove, Grievance Coordinator at SCI-Huntingdon; and Joseph D. Lehman, Commissioner of the Pennsylvania Department of Corrections. Plaintiff claims that the Defendants violated his Eighth Amendment right to medical care, resulting in pain and suffering.

On September 16, 1993, a Motion to Dismiss the Amended Complaint was filed on behalf of all the Defendants. **(Doc. 20).** A brief in support of the motion was filed on September 30, 1993.

(Doc. 21). The Plaintiff filed a brief in opposition to the Defendants' motion on October 15, 1993. (Doc. 22). The motion is ripe for consideration.

In his complaint, Plaintiff alleges that in June of 1987, he accidentally splashed bleach into his right eye, causing impairment of his vision. Following the injury, the Plaintiff went to the medical department at SCI-Huntingdon and was referred to an eye specialist at J.C. Blair Memorial Hospital. The specialist advised the Plaintiff that it was too early to assess the total damage to his eye and that he would be re-examined in six (6) months. Subsequent to this examination, the Plaintiff was examined by Dr. Burges, an eye doctor at SCI-Huntingdon. Dr. Burges prescribed eyeglasses.

In January of 1991, the Plaintiff requested another eye examination because he felt his vision was getting progressively worse. His request was granted, and Dr. Burges prescribed a stronger pair of eyeglasses. In response to inquiries about vision in his right eye, Dr. Burges advised the Plaintiff that eyeglasses would not improve the vision in his right eye due to the presence of scar tissue. He recommended that the Plaintiff send a request to Defendant Suomela to see an eye specialist.

On March 29, 1992, the Plaintiff sent a request to Defendant Suomela requesting permission to see an eye specialist. (See Exhibit "A"). Defendant Suomela failed to respond. Plaintiff characterizes this failure to respond as "blatant disregard for plaintiff's medical problem." (Doc. 19, ¶29).

On April 5, 1992, the Plaintiff sent a request for medical treatment to Defendant Dr. Reiners. Dr. Reiners responded and informed the Plaintiff that the Department of Corrections policy provides for an examination every two years, and as the Plaintiff had been examined in January of 1992, he was not due for another examination until January of 1993. Plaintiff then filed a grievance. He alleges that Defendants Grove, Love, and Lehman "demonstrated extreme indifference to plaintiff's serious medical condition" when they failed to require that the doctors perform an eye examination in compliance with the eye doctor's recommendation and the initial diagnosis of the eye specialist at J.C. Blair Memorial Hospital. (Doc. 19, ¶31).

The Defendants have moved to dismiss the complaint. When evaluating a motion to dismiss, the court must accept all material allegations of the complaint as true and construe all inferences in the light most favorable to the Plaintiff. Scheur v. Rhodes, 416 U.S. 232, 236 (1974). A complaint should not be dismissed unless it appears "beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief." Conley v. Gibson, 355 U.S. 41, 44-46 (1957); Ransom v. Marazzo, 848 F.2d 398, 401 (3d Cir. 1988). Similarly, a complaint which sets out facts which affirmatively demonstrate that the plaintiff has no right to recover is properly dismissed without leave to amend. Estelle v. Gamble, 429 U.S. 97, 107-108 (1976).

In order for Plaintiff to state an Eighth Amendment claim under 42 U.S.C. §1983 based on inadequate medical care, the

plaintiff must allege that the defendants acted under the color of state law and that the defendants acted "with deliberate indifference to serious medical needs" of the plaintiff while a prisoner. Estelle v. Gamble, 429 U.S. 97 (1976). A prison official is acting with deliberate indifference when he "knows or should have known of a sufficiently serious danger to an inmate." Young v. Quinlan, 960 F.2d 351 (3d Cir. 1992). The "should have known" standard is met when the "strong likelihood" of harm is so obvious that a lay person would easily recognize the necessity for preventative action. Monmouth County Correctional Inst. Inmates v. Lanzaro, 834 F.2d 326 (3d Cir. 1987). It connotes something more than a negligent failure to appreciate the risk. Colburn v. Upper Darby Township, 838 F.2d 663 (3d Cir. 1983).

According to the Plaintiff, in January of 1991, during his routine eye exam, in response to questions about the condition of his right eye to which he sustained an injury in June of 1987, Dr. Burges recommended that the Plaintiff request to see an eye specialist. Plaintiff alleges that the Defendants' denial of his request to be seen by an eye specialist constituted deliberate indifference to his serious medical condition.

We would first note that the condition of which the Plaintiff complains is not of the serious nature contemplated by

the caselaw.[1] In this respect, the Plaintiff fails to state a claim against any of the named Defendants.

Even if the eye injury were to be considered a serious medical condition, the Plaintiff has failed to allege facts which would indicate that the conduct of any of the Defendants amounted to deliberate indifference.

It was not until March of 1992, some fourteen months after the Plaintiff was treated by Dr. Burges, that the Plaintiff submitted a request to Defendant Suomela to see the eye specialist. The Plaintiff alleges that Defendant Suomela's failure to provide him with an immediate response to his request constituted a blatant disregard for his condition. Approximately six days had passed and the Plaintiff had not received a response from the Defendant. However, this Defendant, as a non-physician, cannot be found to be deliberately indifferent simply because he "failed to respond directly to the medical complaints of a prisoner who was already being treated by the prison doctor." Durmer v. O'Carrol, 991 F.2d 64, 69 (3d Cir. 1993). Moreover, when the Plaintiff did finally

---

1. See, e.g., Williams v. Vincent, 508 F.2d 541 (2d Cir. 1974) (doctor's choosing the "easier and less efficacious treatment" of throwing away the prisoner's ear and stitching the stump may be attributable to "deliberate indifference...rather than an exercise of professional judgment"); Thomas v. Pate, 493 F.2d 151, 158 (7th Cir.), cert. denied sub nom. Thomas v. Cannon, 419 U.S. 879, 95 S.Ct. 143, 42 L.Ed. 2d 119 (1974) (injection of penicillin with knowledge that prisoner was allergic, and refusal of doctor to treat allergic reaction); Jones v. Lockhart, 484 F.2d 1192 (8th Cir. 1973) (refusal of paramedic to provide treatment); Martinez v. Mancusi, 443 F.2d 921 (2d Cir. 1970), cert. denied, 401 U.S. 983, 91 S.Ct. 1202, 28 L.Ed.2d 335 (1971) (prison physician refuses to administer the prescribed pain killer and renders leg surgery unsuccessful by requiring prisoner to stand despite contrary instructions of surgeon.).

submit the request, he failed to inform Defendant Suomela that fourteen months earlier, the eye doctor had recommended that he request to be seen by an eye specialist. A review of the request directed to Defendant Suomela reveals that the Plaintiff simply requested follow-up care and desired to see the specialist as a result of the June of 1987 accident. (Doc. 19, Exhibit "A"). There was no mention of Dr. Burges' recommendation. As stated above, a prison official acts with deliberate indifference when he fails to take action when he knows or should have known of a sufficiently serious danger to an inmate. Clearly, the Plaintiff has not stated a claim with respect to Defendant Suomela.

Plaintiff sent a similar request to Defendant Reiners on April 5, 1992, simply stating that he wanted to "see an eye specialist about correction of impaired vision of the right eye caused by the accidental splashing of a chemical...back in June, 1987." (Doc. 19, Exhibit "B"). The request was treated as a request for an eye examination in a time frame less than that allowed by the Department of Corrections policy, as the Plaintiff had been examined in January of 1991. The request was denied with a notation that "[t]he scars of your right cornea do not change this schedule." Id. Again, despite his allegations to the contrary, the Plaintiff failed to specify that his request was the result of a prior recommendation of Dr. Burges. The Plaintiff fails to allege any facts which would lead this Court to conclude that Defendant Reiners acted with deliberate indifference.

The Plaintiff then pursued his cause by utilizing the grievance procedure. Throughout the entire process, the Plaintiff generally states that he is in need of follow-up care. He fails to mention that Dr. Burges recommended that he request to see an eye specialist. Defendant Grove discussed the matter with Defendant Suomela, and Defendant Suomela advised Defendant Grove that he had reviewed the Plaintiff's medical records and did not find anything that indicated that the Plaintiff had contacted the medical staff regarding any problems. (Exhibit "D"). There are no facts alleged which would indicate that Defendant Grove acted improperly in disposing of the grievance in this manner.

Plaintiff is also proceeding against Defendants Love and Lehman on the theory that the failure of these Defendants to allow him to see the eye specialist amounted to deliberate indifference to his serious medical needs. The roles played by Defendants Love and Lehman were simply review and disposition of a grievance. As we have found that the conduct which was the subject of the grievance did not amount to a constitutional violation, we cannot find that the Defendants who reviewed that grievance engaged in conduct which amounted to a violation of the Plaintiff's constitutional rights.

Based on the foregoing, it is respectfully recommended that the Defendants' motion to dismiss the complaint **(Doc. 20)** be granted and that the complaint be dismissed in its entirety as to all Defendants.

THOMAS M. BLEWITT
United States Magistrate Judge

Dated: May 19, 1994

UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

EUGENE LAMBERT,	:	CIVIL ACTION NO. **3:CV-92-1070**
	:	
Plaintiff	:	(Judge Kosik)
	:	
vs.	:	(Magistrate Judge Blewitt)
	:	
WILLIAM J. LOVE, et al.,	:	
	:	
Defendants	:	

NOTICE

NOTICE IS HEREBY GIVEN that the undersigned has entered the foregoing **Report and Recommendation** dated **May 19, 1994.**

Any party may obtain a review of the Report and Recommendation pursuant to Rule 904.2 which provides:

> Any party may object to a magistrate's proposed findings, recommendations or report under subsections 901.4, 901.5, and 901.6 of these rules, supra, **within ten (10) days** after being served with a copy thereof. Such party shall file with the Clerk of Court, and serve on the magistrate and all parties, written objections which shall specifically identify the portions of the proposed findings, recommendations or report to which objection is made and the basis for such objections. The briefing requirements set forth in Rule 904.1 shall apply. A judge shall make a de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made and may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate. The judge, however, need conduct a new hearing only in his discretion or where required by law, and may consider the record developed before the magistrate, making his own determination on the basis of that record. The judge may also receive further evidence, recall witnesses or recommit the matter to the magistrate with instructions.

THOMAS M. BLEWITT
United States Magistrate Judge

Dated: **May 19, 1994**

AO 72A
(Rev. 8/82)