

**UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT**

No: 23-1393

Abdalla Elehamir Mousa

Plaintiff - Appellant

v.

Christina Greve, Correctional Officer; Shawn Howard, Warden; Iowa Department of Corrections

Defendants - Appellees

Appeal from U.S. District Court for the Southern District of Iowa - Central
(4:22-cv-00135-SMR)

JUDGMENT

Before GRUENDER, BENTON, and STRAS, Circuit Judges.

This court has reviewed the original file of the United States District Court. It is ordered by the court that the judgment of the district court is affirmed. See Eighth Circuit Rule 47B.

April 06, 2023

Order Entered at the Direction of the Court:
Clerk, U.S. Court of Appeals, Eighth Circuit.

/s/ Michael E. Gans

APPENDIX B

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF IOWA
CENTRAL DIVISION

ABDALLA ELEHAMIR MOUSA,)	
)	
Plaintiff,)	No. 4:22-cv-00135-SMR-HCA
)	
v.)	
)	
CHRISTINA GREVE and WARDEN SHAWN)	ORDER GRANTING
HOWARD,)	SUMMARY JUDGMENT
)	
Defendants.)	
)	

Plaintiff Abdalla Elehamir Mousa, an inmate currently housed at the Newton Correctional Facility (“NCF”) in Newton, Iowa (“NCF”), filed this pro se complaint under 42 U.S.C. § 1983 alleging a correctional officer touched him inappropriately. ECF No. 1. Defendants filed a motion for summary judgment (ECF No. 13) asking that the action be dismissed for five reasons, including that Mousa has not exhausted his administrative remedies as required by 42 U.S.C. § 1997e(a).

Mousa asks that the Court stay this case until he can complete the grievance procedures. ECF No. 14. For the following reasons, the Court finds Defendants are entitled to summary judgment.

I. SUMMARY OF MATERIAL FACTS

“On a motion for summary judgment, ‘facts must be viewed in the light most favorable to the nonmoving party only if there is a genuine dispute as to those facts.’” *Ricci v. DeStefano*, 557 U.S. 557, 586 (2009) (quoting *Scott v. Harris*, 550 U.S. 372, 380 (2007) (internal quotations omitted)); *see also Torgerson v. City of Rochester*, 643 F.3d 1031, 1042 (8th Cir. 2011) (same).

Mousa has been incarcerated in the Iowa Department of Corrections since December 2019. Defs.’ Statement of Undisputed Material Facts ¶ 1, ECF No. 13-2. The incidents forming the basis of this complaint occurred from March 2021 until October 2021, while Mousa was housed at the

Newton Correctional Facility, where he is still housed. Compl., ECF No. 1 at 5–6. At all relevant times, Defendant Shawn Howard was the Warden of the Newton Correctional Facility. Defs.’ Statement of Undisputed Material Facts ¶ 3, ECF No. 13-2. Defendant Christina Greve is a Correctional Officer at Newton Correctional Facility. *Id.*

Mousa filed this action on April 25, 2022. His complaint alleges Greve sexually harassed him from March 2021 until October 2021. He states he filed a grievance: 1) challenging Greve’s sexual harassment and 2) challenging Greve’s falsification of facts underlying a disciplinary report issued against him. ECF No. 1 at 7. Mousa attaches a copy of a grievance dated November 10, 2021, outlining sexual harassment by Greve and asking that she be fired. ECF No. 1-1. Mousa alleges he received no response to his grievance and was told officials never received his grievance. ECF No. 1 at 5–7. He states because he received no response, he was unable to appeal the grievance. *Id.* at 7.

In December 2021 Correctional Officer Greve wrote a disciplinary report charging Mousa with exposing his penis to her on December 4, 2021. Defs.’ Statement of Undisputed Material Facts ¶ 4, ECF No. 13-2. After a hearing, Administrative Law Judge Kristian Anderson found Mousa guilty of Disciplinary Rule 16 (sexual misconduct and sexual violence) and sanctioned Mousa with 8 days loss of earned time and 10 days disciplinary detention. *Id.* Mousa did not appeal this determination and the sanctions have not been overturned. *Id.*

On December 15, 2021, Mousa wrote a grievance concerning the December 4, 2021, incident, claiming Defendant Greve lied about Mousa exposing himself to her. *Id.* at ¶ 5. Grievance Officer Galbraith determined the grievance was not grievable because it concerned a disciplinary report that had a separate appeal process. *Id.* Mousa did not appeal Galbraith’s determination. Mousa filed no complaint under the Prison Rape Elimination Act (“PREA”) against Greve for incidents between March 2021 and October 2021. *Id.* at ¶ 7. Mousa states in January

2022 he tried to appeal the disciplinary sanction three times, but all three attempts “got lost” and at that point “his allotted time to appeal had elapsed.” ECF No. 1 at 8, ECF No. 1-1 at 2.

Defendants seek judgment as a matter of law. ECF No. 15-1 at 3. They contend: 1) Mousa’s claims are barred by 42 U.S.C. 1997 (e) (a) (failure to exhaust administrative remedies prior to filing this lawsuit); 2) the claims are barred by 42 U.S.C. §1997(e)(e) (as Plaintiff suffered no physical injury as a result of defendants’ actions); 3) Mousa’s claims are barred by *Heck v. Humphrey*, 512 U.S. 477, 486–87 (1994) (“Heck”) and 4) all claims against Defendant Howard are barred because Howard had no involvement in any of the incidents of which Mousa complains. ECF No. 13-1 at 6.

At all relevant times, the prison had a grievance policy for inmates to use to grieve the issues prior to raising them in a § 1983 lawsuit. ECF No. 13-1 at ¶ 6. The prison also had a Prison Rape Elimination Act Policy (“PREA Policy”) which Mousa could have accessed to file a complaint regarding Greve, but he did not. *Id.* at ¶ 8. Mousa filed three grievances while housed at Newton Correctional Facility, but did not finish the grievance process for any of them. Aff. of Ernest Galbreath, ECF No. 15-3 at 161.

In response to the motion for summary judgment, Mousa asks to stay the action so that he can fully exhaust his remedies within the prison’s system. He states filed a grievance on November 10, 2021 but did not realize until the State filed its motion for summary judgment that the administrative law judge had not ruled on his grievance. ECF No. 14 at 1. Mousa asks the Court to stay this case until he exhausts all his remedies within the prison institution and to find an attorney to represent him. *Id.*

The request to stay the case is denied. If Mousa had not exhausted his administrative remedies at the time he filed his complaint, the Court is required to dismiss the case without prejudice. *See Porter v. Sturm*, 781 F.3d 448 (8th Cir. 2015) (requiring dismissal without prejudice

of unexhausted claims). Although Mousa appears to concede he has not exhausted his administrative remedies, the Court considers the facts and arguments submitted in support of Defendants' motion for summary judgment.

II. SUMMARY JUDGMENT STANDARD

The Court will grant summary judgment if, viewing the evidence in the light most favorable to the nonmoving party, "no genuine dispute as to any material fact and the moving party is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). "The non-moving party receives the benefit of all reasonable inferences supported by the evidence, but has 'the obligation to come forward with specific facts showing that there is a genuine issue for trial.'" *Atkinson v. City of Mt. View*, 709 F.3d 1201, 1207 (8th Cir. 2013) (quoting *Dahl v. Rice Cty.*, 621 F.3d 740, 743 (8th Cir. 2010)).

To avoid an entry of summary judgment, the nonmovant must make a sufficient showing on every essential element of its case for which it has the burden of proof at trial. *Celotex Corp. v. Catrett*, 477 U.S. 317, 322–23 (1986). To show a fact is genuinely disputed, a party must support the assertion by:

- (A) citing to particular parts of materials in the record, including depositions, documents, electronically stored information, affidavits or declarations, stipulations (including those made for purposes of the motion only), admissions, interrogatory answers, or other materials; or
- (B) showing that the materials cited do not establish the absence or presence of a genuine dispute, or that an adverse party cannot produce admissible evidence to support the fact.

Fed. R. Civ. P. 56(c)(1).

The quantum of proof the nonmoving party must produce is not precisely measurable, but it must be enough evidence "such that a reasonable jury could return a verdict for the nonmovant." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986); *see also Matsushita Elec. Indus. Co., Ltd. v. Zenith Radio Corp.*, 475 U.S. 574, 586 (1986) (noting the "opponent must do more than simply show that there is some metaphysical doubt as to the material facts"); *Williams v. City of*

Carl Junction, 480 F.3d 871, 873 (8th Cir. 2007) (“[T]he nonmoving party must present more than a scintilla of evidence and must advance specific facts to create a genuine issue of material fact for trial.”) (internal quotation marks omitted)).

III. DISCUSSION

Defendants move for summary judgment on the basis that Mousa’s claims are barred by *Heck v. Humphrey*, 512 U.S. 477, 486–87 (1994) and because Mousa failed to exhaust his administrative remedies with respect to any of his claims as required by 42 U.S.C. § 1997e(a). Defs.’ Mem. Support. Mot. Summ. J., ECF No. 13-1. For the reasons discussed below, the Court finds the undisputed facts show Mousa’s claims are barred in part by *Heck*, 512 U.S. 477 and any claims not barred by *Heck* must be dismissed because Mousa has not exhausted administrative remedies for those claims. The Court does not reach the other arguments for dismissal raised by Defendants.

a. *Heck v. Humphrey*

Mousa alleges he was disciplined for exposing his penis to Correctional Officer Greve. He denies exposing himself, alleges Greve lied about the incident in the disciplinary report, and alleges Greve sexually harassed him on multiple occasions. Mousa lost earned time as a result of the disciplinary report. Defendants assert Mousa’s claim is *Heck* barred.

In *Heck v. Humphrey*, 512 U.S. 477 (1994), the Supreme Court stated:

when a state prisoner seeks damages in a § 1983 suit, the district court must consider whether a judgment in favor of the plaintiff would necessarily imply the invalidity of his conviction or sentence; if it would, the complaint must be dismissed unless the plaintiff can demonstrate that the conviction or sentence has already been invalidated.

Id. at 487.

Mousa challenges discipline that included the loss of good-time credit, and because a judgment in his favor as to that disciplinary would necessarily imply the invalidity of his

disciplinary conviction his claim as to that disciplinary is foreclosed. *See Edwards v. Balisok*, 520 U.S. 641, 644–48 (1997) (extending *Heck* to prison discipline decisions); *Portley-El v. Brill*, 288 F.3d 1063, 1066–67 (8th Cir. 2002) (under *Heck*, § 1983 action seeking damages for prison discipline that resulted in loss of good-time credits does not arise until inmate has successfully challenged discipline through habeas or some other proceeding); *Scott v. Coleman*, 493 F. App’x 810, 811 (8th Cir. 2012) (same).

Mousa lost good time for the disciplinary report he challenges, and he is therefore barred from challenging the validity of that disciplinary report until he overturns it in a habeas proceeding.

b. Exhaustion of administrative remedies

Mousa’s complaint is not limited to the incident on December 4, 2021, for which the disciplinary report was issued. He contends Greve harassed him on multiple occasions and a finding in his favor as to those allegations would not necessarily imply the invalidity of his disciplinary conviction for the December 4, 2021, incident.

An inmate may not, however, sue under federal law until he exhausts available administrative remedies within the prison system. 42 U.S.C. § 1997e(a). Administrative remedies are not available if “prison administrators thwart inmates from taking advantage of a grievance process through machination, misrepresentation, or intimidation.” *Ross v. Blake*, 578 U.S. 632, 642 (2016). To establish the administrative remedies were not available, the inmate must show that a reasonable inmate of ordinary firmness would have failed to file a grievance in his situation. *East v. Minnehaha Cty.*, 986 F.3d 816, 821–22 (8th Cir. 2021). If an inmate fails to file an appeal after his grievances go unanswered, and he was not prevented from doing so, he has not exhausted the process. *Crowley v. Naylor*, 783 F. App’x 637 (8th Cir. 2019).

The purpose of the exhaustion requirement is to provide prison officials notice of the problem raised by the plaintiff and an opportunity to resolve that problem “before being haled into court.” *Jones v. Bock*, 549 U.S. 199, 204 (2007). In general, “a grievance suffices if it alerts the prison to the nature of the wrong for which redress is sought.” *Muhammad v. Mayfield*, 933 F.3d 993, 1003 (8th Cir. 2019) (quoting *Strong v. David*, 297 F.3d 646, 650 (7th Cir. 2002)).

Mousa contends he filed a grievance but did not receive a response. ECF No. 1 at 7. He does not, however, allege that he completed the appeal process for any grievance. Defendants submit evidence Mousa filed three grievances while housed at Newton Correctional Facility but did not finish the grievance process for any of them. Aff. of Ernest Galbreath, ECF No. 15-3 at 161.

Based on the record before the Court, the Court concludes Mousa failed to exhaust his available administrative remedies. Because he failed to exhaust his available administrative remedies before initiating this § 1983 action, “[d]ismissal without prejudice is mandatory.” *Porter*, 781 F.3d at 452 (8th Cir. 2015). An inmate’s failure to exhaust all administrative remedies before filing suit requires a court to dismiss the complaint without ruling on the merits, even when administratively, no further action can be taken regarding exhaustion. *See Johnson v. Jones*, 340 F.3d 624, 628 (8th Cir. 2003) (affirming case on merits “because we are the first panel in the circuit to explicitly rule on this issue,” but if “faced with identical circumstances in the future, dismissal is required under section 1997e(a).”); *Barbee v. Corr. Med. Servs.*, 394 F. App’x 337, 338 (8th Cir. 2010) (per curiam) (district court should not have reached merits of claims who raised affirmative defense that plaintiff failed to exhaust administrative remedies).

Consequently, the complaint must be dismissed without prejudice and without further discussion of the merits of the claims. *Id.*

IV. SUMMARY AND CONCLUSION

Based on the foregoing discussion,

IT IS ORDERED Defendants' Motion for Summary Judgment (ECF No. 13) is **GRANTED**. The case is without prejudice.

The Clerk of Court is directed to enter judgment accordingly.

IT IS SO ORDERED.

Dated this 25th day of January, 2023.

Stephanie M. Rose
STEPHANIE M. ROSE, Chief Judge
UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF IOWA

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ORDER

The motion for appointment of counsel filed by Appellant Mr. Abdalla Elehamir Mousa is denied. The petition for rehearing by the panel is also denied.

May 16, 2023

Order Entered at the Direction of the Court:
Clerk, U.S. Court of Appeals, Eighth Circuit.

/s/ Michael E. Gans

APPENDIX C