UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

No: 23-2334

Michael Lavern Boyd

Plaintiff - Appellant

v.

Lay, Warden, East Arkansas Regional Unit; Dexter Payne, Director, ADC; Tracy Bennett, Provider, East Arkansas Regional Unit; Angela Davis, Nurse, East Arkansas Regional Unit (originally named as Angela Douglas); Angela Mixon; WellPath Corporation, Medical Service

Defendants - Appellees

Appeal from U.S. District Court for the Eastern District of Arkansas - Delta
(2:23-cv-00050-BSM)

JUDGMENT

Before BENTON, KELLY, and KOBES, Circuit Judges.

The court has carefully reviewed the original file of the United States District Court and orders that this premature appeal be dismissed for lack of jurisdiction. Appellant's motion for leave to proceed on appeal in forma pauperis is denied as moot.

July 03, 2023

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

/s/ Michael E. Gans

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Lay, Warden, East Arkansas Regional Unit, et al.

Appellees

Appeal from U.S. District Court for the Eastern District of Arkansas - Delta
(2:23-cv-00050-BSM)

ORDER

The motion to amend the petition for rehearing is denied. The motion for appointment of counsel is denied.

The petition for rehearing by the panel is denied.

October 05, 2023

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

/s/ Michael E. Gans

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF ARKANSAS
DELTA DIVISION

MICHAEL L. BOYD **PLAINTIFF**
ADC #115890

v. **CASE NO. 2:23-CV-00050-BSM-JTK**

LAY, Warden, East
Arkansas Regional Unit, *et al.* **DEFENDANTS**

ORDER

After *de novo* review of the record, United States Magistrate Judge Jerome T. Kearney's partial recommended disposition [Doc. No. 6] is adopted. Michael Boyd is allowed to proceed with his claims that Tracy Bennett, Angela Douglas, and Mixon were deliberately indifferent to his serious medical needs by taking his ileostomy pouch and denying him ileostomy supplies. All other claims against all other defendants are dismissed without prejudice for failure to state a claim upon which relief may be granted. The clerk is directed to terminate Lay, Dexter Payne, and Well Path Corporation as parties to this lawsuit.

IT IS SO ORDERED this 25th day of April, 2023.

UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF ARKANSAS
DELTA DIVISION

MICHAEL L. BOYD **PLAINTIFF**
ADC #115890

v. **CASE NO. 2:23-CV-00050-BSM-JTK**

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ORDER

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IT IS SO ORDERED this 25th day of April, 2023.

Brian S Miller
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
DELTA DIVISION

MICHAEL L. BOYD
ADC # 115890 PLAINTIFF

v. 2:23CV00050-BSM-JTK

CHARLES FREYDER, et al. DEFENDANTS

PROPOSED FINDINGS AND RECOMMENDATIONS

INSTRUCTIONS

The following partial recommended disposition ("Recommendation") has been sent to United States District Judge Brian S. Miller. Any party may file written objections to all or part of this Recommendation. If you do so, those objections must: (1) specifically explain the factual and/or legal basis for your objections; and (2) be received by the Clerk of this Court within fourteen (14) days of this Recommendation. By not objecting, you may waive the right to appeal questions of fact.

DISPOSITION

I. Introduction

Michael L. Boyd ("Plaintiff") is custody at the East Arkansas Regional Unit ("EARU") of the Arkansas Division of Correction ("ADC"). He filed this pro se civil action under 42 U.S.C. § 1983. (Doc. No. 2). Plaintiff also filed a Motion for Leave to Proceed in forma pauperis, which was granted. (Doc. Nos. 4, 5). The Prison Litigation Reform Act ("PLRA") requires this Court to screen Plaintiff's Complaint. 28 U.S.C. § 1915A(a). As set out below, certain of Plaintiff's allegations fail to state a claim upon which relief may be granted. The Court recommends those claims be dismissed without prejudice.

II. Screening

The PLRA requires federal courts to screen prisoner complaints seeking relief against a governmental entity, officer, or employee. 28 U.S.C. § 1915A(a). The Court must dismiss a complaint or portion thereof if the prisoner has raised claims that: (a) are legally frivolous or malicious; (b) fail to state a claim upon which relief may be granted; or (c) seek monetary relief from a defendant who is immune from such relief. 28 U.S.C. § 1915A(b).

An action is frivolous if "it lacks an arguable basis either in law or in fact." Neitzke v. Williams, 490 U.S. 319, 325 (1989). Whether a plaintiff is represented by counsel or is appearing pro se, his complaint must allege specific facts sufficient to state a claim. See Martin v. Sargent, 780 F .2d 1334, 1337 (8th Cir.1985).

An action fails to state a claim upon which relief can be granted if it does not plead "enough facts to state a claim to relief that is plausible on its face." Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 570 (2007). In reviewing a pro se complaint under § 1915(e)(2)(B), the Court must give the complaint the benefit of a liberal construction. Haines v. Kerner, 404 U.S. 519, 520 (1972). The Court must also weigh all factual allegations in favor of the plaintiff, unless the facts alleged are clearly baseless. Denton v. Hernandez, 504 U.S. 25, 32 (1992).

III. Discussion

Plaintiff filed this § 1983 lawsuit against ADC Director Dexter Payne, EARU Warden Lay, Provider Tracy Bennett, and Nurses Angela Douglas and Mixon in their personal and official capacities. (Doc. No. 2 at 1-2). Plaintiff also sued Well Path Corporation. (Id. at 2).

This case arises from Plaintiff's medical conditions he claims were brought about by contaminated food and water at the EARU, and alleged deliberate indifference to his serious medical needs. Specifically, in 2016 Plaintiff was exposed to ulcerative colitis; in 2019 Plaintiff

was diagnosed with e-coli and salmonella. (Id. at 5). Plaintiff says the Health Department went to the EARU and "indicated to [Plaintiff] [that] those diseases only come from water and food." (Id. at 5, 6). Plaintiff alleges Defendants Payne and Lay "ignored a condition of confinement" because Plaintiff was exposed to these food or water borne diseases while at the EARU. (Id. at 5). Plaintiff further alleges "medical" tested Plaintiff weekly but never "exposed" his conditions to him.

According to Plaintiff, Defendants Bennett and Douglas were deliberately indifferent to his serious medical needs in 2022. (Id. at 7, 8). Plaintiff had been in the hospital and had an "ileostomy pouch." (Doc. No. 2 at 7). In August 2022, Defendant Douglas "took the ileostomy pouch and toilet paper"; Defendants Bennett and Douglas took the supplies the hospital had given Plaintiff to stop infection and leaks. (Id. at 7, 8). Plaintiff had only "10-4x4" to catch the waste. (Id.). As a result, Plaintiff suffered from an infection, irritation, and pain. (Id.). Plaintiff also brings a First Amendment retaliation claim against Defendants Bennett and Douglas, but he provides no allegations of fact in support of his claim. (Id.).

On September 4, 2022, Defendant Mixon allegedly told Plaintiff during a sick call visit that Plaintiff "could not have any ileostomy supplies." (Id. at 9). Plaintiff claims this denial was deliberate indifference to his serious medical needs. (Doc. No. 2 at 9).

Plaintiff explains that Defendants Bennett, Douglas, and Mixon work for Well Path. (Id. at 10). Plaintiff claims Well Path is "deliberately indifferent because of its unconstitutional policies or practices because of medical staff conduct [their] unprofessional behavior or action directed toward [Plaintiff]." (Id. at 10).

Plaintiff seeks declaratory relief and damages. (Id. at 11).

A. Official Capacity Claims

Plaintiff sued Defendants in their personal and official capacities seeking damages and declaratory relief.

1. Defendants Payne and Lay

"A suit against a government officer in his official capacity is functionally equivalent to a suit against the employing governmental entity." Veatch v. Bartels Lutheran Home, 627 F.3d 1254, 1257 (8th Cir. 2010). Accordingly, Plaintiff's official capacity claims against Defendants Payne and Lay are the equivalent of claims against the state of Arkansas and are barred by Eleventh Amendment. Will v. Michigan Dept. of State Police, 491 U.S. 58, 71 (1989).

2. Defendants Bennett, Douglas, Mixon, and Well Path

Defendants Bennett, Douglas, and Mixon are employed by a third-party employer, Well Path. (Doc. No. 2 at 10). Plaintiff's official capacity claims against Defendants Bennett, Douglas, and Mixon, then, are the equivalent of claims against Well Path. See Sanders v. Sears, Roebuck & Co., 984 F.2d 972, 975-76 (1993). To state a claim against Well Path, Plaintiff must plead that a policy or custom of the employer was the driving force behind the violation of Plaintiff's rights. See Id.

Plaintiff alleges Well Path was "deliberately indifferent because of its unconstitutional polices or practices." (Doc. No. 2 at 10). Plaintiff explains the policy or practice as the "medical staff conduct [their] unprofessional behavior or action directed toward [Plaintiff] because . . . [a]ll . . . Defendants work for Well Path and Defendants actually knew but disregarded [Plaintiff's] extraordinary severe circumstance." (Id.). Plaintiff believes Well Path is "liable for [its] policies because [of] medical staff conduct." (Id.).

Here, Plaintiff seeks to hold Well Path liable for the unlawful acts of its employees, rather than alleging that a policy or practice pursuant to which Defendants Bennett, Douglas, and Mixon acted was the moving force behind the violations of Plaintiff's rights. "A corporation acting under color of state law will be held liable under section 1983 for unconstitutional policies, but will not be liable on a respondeat superior theory." Smith v. Insley's Inc., 499 F.3d 875, 880 (8th Cir. 2007) (internal citations omitted). Because Plaintiff's claims against Well Path are based on respondeat superior, Plaintiff's official capacity claims against Defendants Bennett, Douglas, and Mixon should be dismissed—along with his claims against Well Path Corporation.

B. Personal Capacity Claims

Plaintiff brought suit under 42 U.S.C. § 1983. "Liability under § 1983 requires a causal link to, and direct responsibility for, the alleged deprivation of rights." Madewell v. Roberts, 909 F.2d 1203, 1208 (8th Cir. 1990). "Because vicarious liability is inapplicable to . . . § 1983 suits, a plaintiff must plead that each Government-official defendant, through the official's own individual actions, has violated the Constitution." Parrish v. Ball, 594 F.3d 993, 1001 (8th Cir. 2010) (citing Ashcroft v. Iqbal, 556 U.S. 662, 676 (2009)). Bare allegations void of factual enhancement are insufficient to state a claim for relief under § 1983. See Iqbal, 556 U.S. at 678.

1. Defendants Payne and Lay

Plaintiff brings a conditions of confinement claim against Defendants Payne and Lay. According to Plaintiff, Defendants Payne and Lay "ignored a condition of confinement" because Plaintiff was exposed to food or water borne diseases while at the EARU. (Doc. No. 2 at 5).

To state an Eighth Amendment claim challenging conditions of confinement, an inmate must show the alleged violation is "'objectively [and] sufficiently serious,'" that is, the inmate "'is incarcerated under conditions posing a substantial risk of serious harm.'" Kulkay v. Roy, 847

F.3d 637, 642-43 (8th Cir. 2017). An inmate must also show that the defendant knew of the risk and failed to respond to it in a reasonable way. Id. at 643.

Plaintiff does not allege that Defendants Payne or Lay knew of any dangerous condition, how they knew about any condition, or when they may have gained any such knowledge; Plaintiff's allegations are conclusory. Without establishing that these Defendants knew of a condition posing a substantial risk of harm to Plaintiff before Plaintiff was exposed to the condition, Plaintiff cannot demonstrate that Defendants Payne and Lay were deliberately indifferent.

Additionally, the limitations period for a § 1983 action is governed by the statute of limitations for personal-injury actions in the state in which the claim accrues. See Wilson v. Garcia, 471 U.S. 261, 276 (1985); Sanchez v. United States, 49 F.3d 1329, 1330 (8th Cir. 1995). The Eighth Circuit has acknowledged that in Arkansas the general personal-injury statute of limitations is three years. See Ketchum v. City of W. Memphis, 974 F.2d 81, 82 (8th Cir. 1992); Morton v. City of Little Rock, 934 F.2d 180, 182–83 (8th Cir. 1991). Therefore, § 1983 claims accruing in Arkansas have a three-year statute of limitations.

Although courts look to state law for the length of the limitations period, "the accrual date of a § 1983 cause of action is a question of federal law that is *not* resolved by reference to state law." Wallace v. Kato, 549 U.S. 384, 388 (2007). "The general rule is that a claim accrues at the time of the plaintiff's injury." Osborn v. United States, 918 F.2d 724, 731 (8th Cir. 1990) (citing Wehrman v. United States, 830 F.2d 1480, 1483 (8th Cir. 1987)). Under Arkansas law, an "affirmative action[] of concealment of a cause of action will toll the statute of limitations." Spradling v. Hastings, 912 F.3d 1114, 1120 (8th Cir. 2019)

Plaintiff was exposed to ulcerative colitis in 2016 and diagnosed with e-coli and salmonella in 2019. To establish deliberate indifference, Defendants Payne and Lay would have had to be aware of, but ignore, dangerous conditions before Plaintiff's exposure and diagnosis. Because Plaintiff was exposed to ulcerative colitis in 2016 and diagnosed with e-coli and salmonella in 2019, Defendants Payne and Lay would have had to know about, but ignore, the dangerous conditions by then. Plaintiff filed this lawsuit on March 2, 2023—more than three years after his exposure and diagnosis. As such, Plaintiff's claims against Defendants Payne and Lay are time barred.

The Court notes that Plaintiff raised these same conditions of confinement claims against Defendants Payne and Lay in Boyd v. Payne, 2:22-cv-00145-BSM-JTR (E.D. Ark.). In that case, the prison mailbox rule applied and Plaintiff's claims were timely. But United States Magistrate Judge J. Thomas Ray recommended Plaintiff's conditions of confinement claims against Defendants Payne and Lay be dismissed for failure to state a claim on which relief may be granted; United States District Judge Brian S. Miller adopted the recommendation and dismissed the claims without prejudice. Boyd v. Payne, No. 2:22CV00145-BSM-JTR, 2022 WL 18144870, at *2 (E.D. Ark. Nov. 30, 2022), report and recommendation adopted, No. 2:22CV00145-BSM-JTR, 2023 WL 125032 (E.D. Ark. Jan. 6, 2023). That case is ongoing.

In the case at hand, Plaintiff says medical at the EARU did not "expose" his diagnoses to him. (Doc. No. 2 at 5). The Court is uncertain whether Plaintiff means that medical did not explain the relevance of the diagnoses, or that they did not make Plaintiff aware of the diagnoses. If the latter, in Boyd v. Payne, 2:22-cv-00145-BSM-JTR, Plaintiff claimed he was exposed to ulcerative colitis in 2016 through water on Plaintiff's toothbrush; he also acknowledged testing positive to e-coli and salmonella in August 2019. And in another even earlier case, Plaintiff's

Complaint makes clear that Plaintiff was aware of the colitis diagnosis on or around April 9, 2018, and of the e-coli and salmonella diagnoses as of August 23, 2019. Boyd v. Rechcigl, 4:20-cv-00129-DPM (Doc. No. 24 at ¶¶ 25, 26) (Dr. Samad diagnosed Plaintiff with chronic colitis on April 9, 2018; Plaintiff was to be taken to Dr. Samad's office on May 23, 2018 for G.I. exam to confirm diagnosis); (Doc. No. 4 at ¶ 38) ("[O]n 23 August 2019 [Plaintiff] received the results of lab test indicating that he was also suffering from salmonella and E. Colo infections.")[1] As such, to the extent Plaintiff sought to allege active concealment of a cause of action, that attempt fails.

Because Plaintiff failed to state a claim on which relief may be granted as to Defendants Payne and Lay, Plaintiff's claims against them should be dismissed without prejudice.

2. Defendants Bennett, Douglas, and Mixon

Plaintiff claims Defendants Bennett, Douglas, and Mixon were deliberately indifferent to his serious medical needs. He also makes a retaliation claim against Defendants Bennett and Douglas.

a. Deliberate Indifference to Serious Medical Needs

Plaintiff alleges The Eighth Amendment prohibits cruel and unusual punishment. U.S. CONST. AMEND. VIII. This prohibition gives rise to the government's duty to provide medical care to prisoners. "The government has an 'obligation to provide medical care for those whom it is punishing by incarceration." Allard v. Baldwin, 779 F.3d 768, 772 (8th Cir. 2015) (citing Estelle v. Gamble, 429 U.S. 97, 103 (1976)). It follows that the "Eighth Amendment proscribes deliberate indifference to the serious medical needs of prisoners." Robinson v. Hager, 292 F.3d 560, 563 (8th Cir. 2002) (internal citation omitted). "A serious medical need is 'one that has been

[1] The Court may take judicial notice of the proceedings in Plaintiff's earlier because it is directly related to the issues here. Conforti v. United States, 74 F.3d 838, 840 (8th Cir. 1996).

diagnosed by a physician as requiring treatment, or one that is so obvious that even a layperson would easily recognize the necessity for a doctor's attention.'" Schuab v. VonWald, 638 F.3d 905, 914 (8th Cir. 2011) (internal citation omitted). "Deliberate indifference may be demonstrated by prison guards who intentionally deny or delay access to medical care or intentionally interfere with prescribed treatment, or by prison doctors who fail to respond to prisoner's serious medical needs." Dulany v. Carnahan, 132 F.3d 1234, 1239 (8th Cir. 1997). To succeed on a claim of deliberate indifference to a medical need, a plaintiff must show he had an objectively serious medical need and prison officials had actual knowledge of, but deliberately disregarded, that need. See Washington v. Denney, 900 F.3d 549, 559 (8th Cir. 2018); McRaven v. Sanders, 577 F.3d 974, 981 (8th 2009).

Plaintiff alleges that Defendant Douglas took his ileostomy pouch, and that Defendants Bennett, Douglas, and Mixon denied him ileostomy supplies. These claims will be served.

b. Retaliation

Plaintiff brings a First Amendment retaliation claim against Defendants Bennett and Douglas, but he does not provide any factual allegations to support his claim. Bare allegations void of factual enhancement are insufficient to state a claim for relief under § 1983. See Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009). Accordingly, Plaintiff's retaliation claims against Defendants Bennett and Douglas should be dismissed for failure to state a claim on which relief may be granted.

IV. Conclusion

IT IS, THEREFORE, RECOMMENDED that;

1. Plaintiff's official capacity claims be DISMISSED for failure to state a claim on which relief may be granted;

2. Plaintiff's claims against Defendant Well Path Corporation be DISMISSED for failure to state a claim on which relief may be granted;

3. Plaintiff's claims against Defendants Payne and Lay be DISMISSED without prejudice for failure to state a claim on which relief may be granted.

4. Plaintiff's retaliation claims against Defendants Bennett and Douglas be DISMISSED without prejudice for failure to state a claim on which relief may be granted.

IT IS SO RECOMMENDED this 28th day of March, 2023.

JEROME T. KEARNEY
UNITED STATES MAGISTRATE JUDGE

Additional material from this filing is available in the Clerk's Office.