

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

GREGORY LAMONT HUGHES,	:	CIVIL ACTION
Plaintiff	:	
	:	
v.	:	NO. 03-5035
	:	
Capt. THOMAS J. SMITH, et al.,	:	
Defendants	:	

MEMORANDUM

STENGEL, J. **January** , **2006**

Pro se plaintiff Gregory Lamont Hughes brings this complaint against Capt. Smith, Capt. Brumfield, Grievance Coordinator Hatcher, Lt. Crawford, Lt. Marsh, Lt. Soler, Lt. Knauer, Lt. Opalka, Sgt. Alexy, Sgt. Zeidenburg, CO Polo, CO Tomlinson, CO Dombrowsky and CO Heller pursuant to 42 U.S.C. § 1983 for alleged abuse sustained while he was an inmate in the Graterford State Correctional Institution. Hughes sued each of the officers in his individual capacity.¹ Currently before the court is the defendants' motion for summary judgment.

I. BACKGROUND

On February 28, 2005, this court issued a memorandum and order granting the defendants' motion to dismiss in part. Hughes continues to aver the same facts. They are:

On September 17, 2001, Graterford Corrections Officer Polo grabbed Mr. Hughes testicles and penis during a "frisk pat-search." Complaint at 3. He reported the incident to Officer Polo's supervisor, Sgt.

¹The defendants are all represented by the Attorney General of Pennsylvania.

Zeidenberg, but Sgt. Zeidenberg refused to address his complaint. Id. Officer Polo told Mr. Hughes that “no one would believe [him] anyway,” and issued a false misconduct report in order to “cover up his actions.” Id. Hughes then filed a formal grievance with Lt. Crawford, but Crawford refused to investigate the incident. Id. In December 2001, Hughes began receiving threats from several corrections officers, and on January 2, 2002, Officer Tomlinson specifically told him, “Not only I will get you, but there’s [sic] five other officers out to get you.” Id. at 4. On January 20, 2002, Lt. Knauer interviewed him about the alleged sexual assault. Id. at 3. Hughes indicated to Lt. Knauer that he did not intend to pursue charges against Officer Polo, but simply wished not to have any further contact with him. Id. Nevertheless, Lt. Knauer “conspired” to cover it up. Id.

On January 30, 2002, Officer Tomlinson attempted to serve Hughes a food tray, which Hughes refused to accept. Id. at 4. Hughes requested Officer Tomlinson to summon a supervisor so he could “receive a proper food tray,” but Tomlinson tried to force the tray through the wicket door and it dropped to the floor. Id. Tomlinson then slammed a wicket door on Hughes’ fingers, causing severe pain and swelling in his right hand and requiring medical attention. Id. Hughes reported the incident to Sgt. Alexy and Lt. Crawford, but they once again failed to investigate his complaints and planned to “cover up” the alleged assault. Id. Officer Tomlinson filed a misconduct report against Hughes. Id.

Captain Brumfield placed Hughes on a modified diet without proper medical authorization in retaliation for his complaints. Id. In February 2002, Mr. Hughes was taken to the infirmary because he was suffering from stomach cramps and pain from a “pre-illness serious medical condition.” Id. at 5. Lt. Crawford ordered that the doctor return him to segregation without providing medical treatment, and in conjunction with Sgt. Alexy deprived him of adequate meals and medical treatment for seventeen days. Id. Hughes filed a grievance against these officers, but Grievance Coordinator, Leslie Hatcher, refused to process those grievances. Id.

On May 4, 2002, Officer Zeidenberg threatened Mr. Hughes and ransacked his cell, removing legal papers and personal hygiene items. Id. When Hughes tried to report the incident to Lt. Marsh, Marsh refused to see him. Id. Later that afternoon, Officer Zeidenberg snatched a legal paper out of Mr. Hughes’ hands and tore it to pieces. Id. Zeidenberg then summoned several other guards, including Officer Dombrowski, and they forced their way into Hughes’ cell and began to beat him. Id. at 6. Lt. Marsh stood by watching the assault. Id. Hughes was placed in a segregation unit and Officer Zeidenberg filed a falsified misconduct report

in an attempt to “cover-up” the assault. Id. In the segregation unit, Mr. Hughes was deprived of adequate bedding and water for an eight day period. Id.

Beginning in August 2002, Officer Heller and Lt. Opalka denied Hughes access to the exercise yard. Id. at 7. He filed a grievance, which was under investigation at the time he filed his complaint. Id.

This court’s February 28, 2005 order dismissed Hughes’ sexual assault claim, his claims based upon a right to privacy under the Fourth Amendment, and his claim, based upon the Fourteenth Amendment and against the defendant officers for failing to respond to his filed grievances. Hughes’ remaining claims are: 1) an excessive force claim against CO Tomlinson, 2) deliberate indifference by Capt. Brumfield for placing Hughes on Modified Behavior Meals, 3) deliberate indifference to medical needs by Capt. Brumfield and Lt. Crawford for overriding a doctor’s orders, 4) excessive force against Sgt. Zeidenburg and CO Dombrowsky, 5) deliberate indifference by Lt. Marsh to the excessive force, 6) deprivation of food and water against Lt. Soler and Sgt. Alexy, 7) deprivation of exercise time by CO Heller and Lt. Opalka, 8) an overall retaliation claim against all defendants, and 9) a conspiracy claim linking together each defendant, including Capt. Smith. The defendants now move for summary judgment based upon the plaintiff’s deposition and other relevant documents. In particular, the defendants argue Hughes failed to fully exhaust his administrative remedies for his grievances, and that his complaint belies the factual record.

II. STANDARD of REVIEW

Summary judgment is appropriate “if the pleadings, depositions, answers to interrogatories, and admissions on file, together with affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law.” Fed. R. Civ. P. 56(c). An issue is “genuine” if the evidence is such that a reasonable jury could return a verdict for the non-moving party. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986). A factual dispute is “material” if it might affect the outcome of the case under governing law. Id.

In this case, the defendants bear the initial responsibility of informing the court of the basis for their motions and identifying those portions of the record that they believe demonstrate the absence of a genuine issue of material fact. Celotex Corp. v. Catrett, 477 U.S. 317, 322 (1986). While Hughes bears the burden of proof on a particular issue at trial, the defendants’ initial Celotex burden can be met simply by pointing out to the court that there is an absence of evidence to support Hughes’ case. Id. at 325. After the defendants have met their initial burden, Hughes’ response, by affidavits or otherwise as provided in this rule, must set forth specific facts showing that there is a genuine issue for trial. Fed. R. Civ. P. 56(e). That is, summary judgment is appropriate if Hughes fails to rebut the defendants’ assertions by making a factual showing sufficient to establish the existence of an element essential to his case, and on which he will bear the burden of proof at trial. Celotex Corp. v. Catrett, 477 U.S. at 322. Under Rule 56, the court must

view the evidence presented on the motion in the light most favorable to Hughes. Anderson v. Liberty Lobby, Inc., 477 U.S. at 255. If Hughes has exceeded the mere scintilla of evidence threshold and has offered a genuine issue of material fact, then the court cannot credit the defendants' version of events against Hughes, even if the quantity of the defendants' evidence far outweighs that of Hughes'. Big Apple BMW, Inc. v. BMW of North America, Inc., 974 F.2d 1358, 1363 (3d Cir. 1992).

III. DISCUSSION

Upon the conclusion of discovery the story of Mr. Hughes' case against the individual defendants became clear. To begin, Hughes earned more disciplinary time than his maximum sentence allowed him to serve. At all times relevant to this case, Hughes was serving his sentence in the restricted housing unit ("RHU") at SCI-Graterford. Hughes was transferred from L-Unit to J-Unit of the RHU in September of 2001 after the incident with CO Polo.

The defendants now pose many arguments why Hughes' case should be dismissed pursuant to their motion for summary judgment. The main arguments are that Hughes failed to fully exhaust his administrative remedies, his claims lack merit, and his allegations fail to rise to the level required for constitutional violations. Before proceeding to these arguments, an understanding of the rules and procedure of the RHU is necessary.

1. Rules of the RHU

In general, inmates are placed in the RHU for failing to follow the prison's rules and regulations governing inmates in the general population. Declaration of Lieutenant Owens at ¶ 5. The RHU prisoners require heightened supervision and the corrections officers working in the RHU are required to earn a special certification to handle the most problematic of inmates. Id. RHU inmates take their meals, and generally spend their entire day, in their cells. Id. at ¶ 7. Cells on J Unit feature an aperture commonly referred to as a "wicker."² Id. When unlocked during meals or mail delivery, the wicker opens out towards the tier like a table or shelf. Id. Inmates are strictly forbidden from placing their hands on the wicker or to keep it open with a foreign object. Id. For the safety of the officers, inmates are ordered to stand away from the wicker door while it is unlocked and opened. Id. Inmates who have earned misconducts related to throwing their food, etc., are placed on Modified Behavior Meals, commonly referred to as "Food Loaf." Id. at ¶ 8. The shift commander, nursing supervisor or doctor, and deputy superintendent for facilities management can approve such a measure if the inmate was previously on regular meals. Id.

RHU inmates have one opportunity per weekday to exercise. Id. at ¶ 11. That opportunity is during the 6 a.m. to 2 p.m. ("day shift") after breakfast. Id. Prior to breakfast, an announcement is made over the PA system that an officer will be making

² In the Court's previous memorandum the term "wicket" was used instead of "wicker."

the rounds with a sign-up sheet. Id. Any inmate wishing to exercise must stand at his cell door and sign up when the corrections officer comes through with the sign-up sheet. Id. If the inmate fails to do this, he is not placed on the sign-up sheet and will not go to the yard for exercise that day. Id.

Inmates who do not get what they want, or are simply attempting to be disruptive, will often flood their cells by clogging their toilet and sink and running the water. Id. at ¶ 10. When inmates do this, their water is turned off with the approval of the shift commander. Id. The water will be turned on every two hours so the inmate can drink water and flush the toilet. Id.

2. Did Hughes Fully Exhaust his Administrative Remedies?

According to 42 U.S.C. § 1997e(a), the Prison Litigation Reform Act (“PLRA”), a prisoner must fully exhaust all administrative remedies before initiating a 42 U.S.C. § 1983 suit. Section 1997e(a) states:

No action shall be brought with respect to prison conditions under section 1983 of this title, or any other Federal law, by a prisoner confined in any jail, prison, or other correctional facility until such administrative remedies as are available are exhausted.

The Third Circuit upheld the section 1997e exhaustion provision in Nyhuis v. Reno, 204 F.3d 65 (3d Cir. 2000). However, courts have also specifically held that section 1997e does not speak to the courts’ jurisdiction, and in cases where exhaustion is no longer available, a court may reach the merits of the case before dismissing. Id. at 69. See also Jones v. Vaughn, 2005 U.S. Dist. Lexis 17016, Civ. No. 04-1912, (E.D. Pa.,

2005) (Schiller, J.) (42 U.S.C. § 1983 case involving a Graterford inmate in which the court reached the case's merits on the defendants' motion for summary judgment even though the plaintiff's eighth amendment claims were not fully exhausted). In this case the defendants have provided an affidavit from Kristen Reisinger, the assistant chief grievance coordinator, stating that Hughes has failed to fully exhaust all of his claims except for his claims against Sgt. Zeidenburg for his deprivation of bedding and water while being housed in the problematic cell, and the claim regarding the lack of exercise against CO Heller. Declaration of Assistant Chief Grievance Coordinator Reisinger at ¶¶ 6-7. There was no exhaustion of Hughes' grievances regarding the incident with CO Tomlinson, or his placement on food loaf. *Id.* at ¶ 5. Consistent with the precedent set out in Nyhuis, Hughes' unexhausted claims are dismissed. The relevant evidence shows that Hughes failed to fully exhaust his administrative remedies, and the Jones opinion, *supra*, does not require the consideration of unexhausted claims. As described in Nyhuis, requiring the exhaustion of administrative remedies helps the court focus and clarify the issues to be resolved. Nyhuis at 74. Nowhere is that focus more important than in a *pro se* prisoner civil rights claim. I will direct the remainder of my discussion to Hughes' fully exhausted claims.³

³In the alternative, because the parties have completed discovery, Hughes may no longer exhaust his administrative remedies, and Hughes' claims may easily be disposed of at this stage in the litigation, I will briefly address the merits of the case. All of the injuries allegedly sustained by Hughes are de minimus and fail to rise to the level of a violation of the Eighth Amendment. The Supreme Court instructs that the core inquiry in claims of excessive force is "whether force was applied in a good-faith effort to maintain or restore discipline, or maliciously and sadistically." Hudson v. McMillian, 503 U.S. 1, 9 (1992).

When excessive force is alleged in the context of a prison disturbance, the subjective

3. Was the Lack of Bedding and Water in Hughes' Problematic Cell a Violation of his Constitutional Rights?

According to the defendants, a feature of a problematic cell is that it does not contain soft bedding. It is designed to deprive an inmate of the simple luxuries provided in a regular cell like, for example, a comfortable bed. Furthermore, the water is restricted to certain times of the day as a means of preventing the inmates from intentionally flooding the cell. The fact that Hughes is complaining of the conditions imposed upon him while being housed in the problematic cell does not pose a question of material fact for this case. Hughes was disciplined in accordance with the prison's guidelines; thus, there is no constitutional cause of action imposing individual liability on the correctional officers enforcing said punishment. The named defendants followed SCI-Graterford's rules and regulations regarding prisoner discipline, Hughes did not.

inquiry is "whether force was applied in a good-faith effort to maintain or restore discipline, or maliciously and sadistically to cause harm." *Id.* at 7. The objective inquiry is whether the inmate's injury was more than de minimis. *Id.* at 9-10. When an Eighth Amendment claim arises in the context of a challenge to conditions of confinement, we must determine if prison officials acted with "deliberate indifference" to the inmate's health. *Farmer v. Brennan*, 511 U.S. 825, 837, 128 L. Ed. 2d 811, 114 S. Ct. 1970 (1994). The objective inquiry is whether the inmate was "denied the minimal civilized measure of life's necessities."

Fuentes v. Wagner, 206 F3d. 335, 345 (3d Cir. 2000) (citing *Hudson*, 503 U.S. at 9). In this case, all of Hughes' claims arise after he violated an RHU rule or protocol. Although Hughes liberally uses the phrases "in retaliation" and "with deliberate indifference to" in his complaint, no facts have been presented to support such a claim. On the contrary, all of the misconduct reports provided by the defendants address serious infractions that Hughes admits to doing in his deposition testimony. (Hughes admits to placing his hand in the cell wicker to block the food tray. Deposition of Gregory Lamont Hughes, October 20, 2005, at 20:17-21:9. Hughes admits to threatening CO's. *Id.* at 36:20-37:3. Hughes admits to waving a towel out of his cell wicker, blocking the cell door, and then fighting with the CO's. *Id.* at 42:17-48:11.) In all of these incidents, CO's were placed at risk because of Hughes' behavior and they responded with enough force to quell the disturbance Hughes created. There is no evidence that the CO's used any more force than was necessary, and there is no evidence that Hughes ever sustained a non-de minimus injury. Furthermore, Hughes unexhausted deliberate indifference to medical needs claim also fails for lack of proof of a serious medical need. Hughes was placed on Food Loaf in accordance with the prison's rules. The fact that he refused to eat the food loaf for a period of time does not necessarily give rise to a claim of deliberate indifference to a medical need.

4. Was the Denial of Exercise a Violation of Hughes' Constitutional Rights?

As discussed in the RHU Rules section above, only the inmates registered on the list are able to exercise. Hughes disagreed with this rule and filed grievances regarding its implementation in both the J and L Units of the RHU. In a similar grievance filed by Hughes in October of 2001, Lt. Marsh pointed out that Hughes was simply resisting the procedure. According to Hughes, however, he would stand by his cell door with the lights on ready to register and then Officer Heller intentionally and arbitrarily denied him exercise time.

So every 6 o'clock in the morning, you know, I'll be at the gate with my lights on and requesting for yard exercise. And he stopped at my cell-- this is after like about the fourth or fifth time he denied me yard exercise by not signing my name on that list -- he approached me, he's like, "Yeah, no, you got it in for my buddy Tomlinson, so that's why I'm burning you for your yard, because you got it against my friend."

And what it was, that Tomlinson, I think he quit or probably -- I don't think he got a new job, but I think he quit, because, you know, they had me back there on J Block and he was also telling them that, you know, me and this man got in an incident and -- you know, I think he was telling them that. This is what I'm thinking. This is not a fact, but this is kind of what I observed sort of, because they would not, you know, have us around each other, so I guess he felt uncomfortable.

Deposition of Gregory Lamont Hughes, October 20, 2005, at 53:19 - 54:14.

The incidents complained of in this lawsuit occurred during August of 2002. According to the prison logs, Hughes exercised on 8/12, 8/13, 8/20, 8/23, 8/24, 8/28, 8/30, and 8/31. He refused exercise on 8/14, 8/16, 8/17, 8/19, 8/21, 8/26, 8/27, and exercise was not available on 8/15, 8/18, 8/22, 8/25, and 8/29. Hughes alleges that he

was denied exercise time on 8/13, 8/16, 8/17, 8/19, 8/20, 8/26, and 8/27. The prison records show when Hughes got exercise time and demonstrate that his claim for denial of exercise is baseless. It appears that Hughes was simply ignoring the rules. His current complaint is almost exactly the same as his March 2001 claim in which he failed to sign up for yard time. Further, Hughes never mentioned Lt Opalka while he was exhausting his administrative remedies regarding the denial of exercise time.⁴

The only remaining, fully exhausted, claim by Hughes is whether CO Heller actually denied him exercise time in retaliation for the incident with CO Tomlinson. Accepting Hughes' allegation that CO Heller did intentionally "burn" Hughes of his yard time, the resulting injury to Hughes, or lack thereof, is clearly de minimus and fails to rise to a violation of Hughes' Eighth Amendment rights. Generally, lack of exercise can only rise to the level of a constitutional violation "where movement is denied and muscles are allowed to atrophy, [and] the health of the individual is threatened..." French v. Owens, 777 F.2d 1250, 1255 (7th Cir. 1985), cert. denied, 479 U.S. 817 (1986). In this case, not only is there ample evidence that Hughes did in fact exercise on the days in question, there is no evidence that he was ever injured. There has been no evidence of injury or that Hughes' health was ever threatened due to the alleged denial of yard time. The record shows Hughes did exercise on a regular basis during the days in question, and his

⁴Lt. Opalka was the lieutenant for the 6:00 a.m. to 2:00 p.m. shift in which CO Heller allegedly denied him his exercise time. Hughes allegedly complained to Opalka, and then Opalka ignored the complaint. Hughes did not exhaust his administrative remedies against Opalka.

allegation that CO Heller was purposely “burning” him of his yard time appear as Hughes’ lone speculation lacking both factual merit or substance.

IV. CONCLUSION

Upon the completion of discovery it is clear that the defendant’s motion for summary judgment should be granted. The plaintiff failed to exhaust his administrative remedies for most of the alleged violations of his constitutional rights. Of his fully exhausted claims, the defendants have provided evidence that the “problematic cell” was a valued technique for housing problematic inmates, like Mr. Hughes. Hughes has failed to provide any evidence that he was treated differently or in violation of the prison’s own rules. Hughes has failed to pose any question of material fact regarding an individual officer’s liability for placing him in a specifically designed problematic cell. As for Hughes’ claim that he was purposefully denied exercise time, he has failed to pose a material issue of fact regarding a violation of his constitutional rights. Hughes did not suffer any injuries as a result of his alleged denial of yard time and his health was not threatened, as such he does not have an adequate Eighth Amendment claim. An order granting the defendants’ motion for summary judgment follows.

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GREGORY LAMONT HUGHES,	:	CIVIL ACTION
Plaintiff	:	
	:	
v.	:	NO. 03-5035
	:	
Capt. THOMAS J. SMITH, et al.,	:	
Defendants	:	

ORDER

AND NOW, this day of January, 2006, upon consideration of defendants' Motion for Summary Judgment, (Docket # 42) it is hereby **ORDERED** that the Motion is **GRANTED**. All of plaintiff's claims are dismissed with prejudice. The Clerk of the Court shall mark this case as closed for all purposes.

BY THE COURT:

LAWRENCE F. STENGEL, J.