

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

EDDIE C. WILSON, SR., : CIVIL ACTION  
Plaintiff, :  
 :  
v. :  
 :  
GEORGE WIGEN, et al., :  
Defendants. : NO. 96-0620

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EDDIE C. WILSON, SR., : CIVIL ACTION  
Plaintiff, :  
 :  
v. :  
 :  
UNITED STATES OF AMERICA :  
Defendant. : NO. 96-1241

**MEMORANDUM AND ORDER**

**J. M. KELLY, J.**

**APRIL 24, 1998**

Defendants in these consolidated actions have filed the present Motion for Summary Judgment on all remaining counts in both actions. While Plaintiff, Eddie C. Wilson, Sr. ("Wilson"), has not filed a response to this Motion for Summary Judgment, Wilson has previously created an extensive record in this matter which will be considered in opposition to the Motion for Summary Judgment.

**PROCEDURAL BACKGROUND**

Wilson filed Wilson v. Wigen, et al., Civil Action No. 96-0620, in January 1996, alleging that Defendants George Wigen ("Wigen"), George Nye ("Nye"), Dr. E. Runkel ("Runkel"), Jesus Vazquez ("Vazquez") and Dr. David Malinov ("Malinov"), had violated his constitutional rights while he was a prisoner at the Federal Correctional Institution at Schuylkill ("Schuylkill"). In August

1996, Wilson filed an amended complaint which added allegations from events that took place in 1996. Wilson subsequently filed Wilson v. United States, Civil Action No. 96-1421, in October 1996, alleging claims against the United States under the Federal Tort Claims Act ("FTCA").

Defendants in Wilson v. Wigen filed a Motion to Dismiss, or in the alternative, for Summary Judgment. Wilson filed a Cross-motion for Summary Judgment. As a result of the Court's disposition of those motions on March 31, 1997, the following causes of action remain in Wilson v. Wigen: 1) Wilson's medical maltreatment claims against Defendants Runkel and Malinov for their interference with Wilson's treatment in not continuing his Prednisone prescription and not providing the proper therapy and work status following Wilson's hip replacement surgery. 2) Wilson's medical maltreatment claim against Vazquez, and in one instance, Nye, as to their interference with prescribed medical treatment in not assigning Wilson to a lower bunk and requiring him to walk to a work assignment while on medically unassigned status. 3) Wilson was also allowed to conduct discovery as to whether Vazquez' denial of a lower bunk and disciplinary action by Wigen, Nye and Vazquez were the result of racial discrimination.

The United States moved to dismiss in Wilson v. United States based upon Wilson's failure to exhaust administrative remedies under the FTCA. Wilson filed a Cross-motion for Summary Judgment. The Court's disposition of these motions resulted in the following negligence claims remaining in Wilson v. United States:

1) failure to timely transfer Wilson for hip surgery, 2) Wilson's assignment to a top bunk and 3) Wilson's assignment to a second floor room which forced him to walk a great distance to work.

Wilson v. United States was transferred from the docket of the Honorable Clarence C. Newcomer to my docket and I ordered the cases consolidated on April 30, 1997. Discovery has proceeded and was scheduled to be completed on October 6, 1997. On October 7, 1997, the Court granted Defendants' Motion to Compel and ordered Wilson to respond to Defendants' Interrogatories within twenty days. When Wilson still did not respond to the Interrogatories, the Court granted Defendants' Motion for sanctions on November 24, 1997. As a result, Wilson is precluded from 1) presenting evidence of white inmates receiving lower bunks at Schuylkill, 2) presenting evidence of discrimination, other than individuals who were named in Wilson's deposition of October 1, 1997, 3) presenting evidence of retaliation in the disciplinary process, other than individuals named in Wilson's deposition and 4) presenting evidence of the conversation alleged in paragraph 43 of the Amended Complaint.

#### **FACTUAL BACKGROUND**

The factual background in this matter was set forth extensively in the Court's Memorandum & Order of March 31, 1997 in Wilson v. Wigen and need only be briefly set forth here. Wilson was incarcerated at Schuylkill in November of 1994. At that time, Wilson was diagnosed with asthma and aseptic necrosis of both hips. Wilson had several medications to control his asthma when he came

to Schuylkill, including Prednisone. Medical staff at Schuylkill prescribed asthma medications to Wilson, but not Prednisone.

Upon arrival at Schuylkill, Wilson was to be assigned to a lower bunk. When he arrived at the unit, no lower bunk was available. Vazquez asserts that he offered to move another prisoner from a lower bunk but Wilson refused, preferring to not rock the boat. Wilson testifies that Vazquez told him he would have to wait until another bunk became available, then other new white inmates were assigned to lower bunks while Wilson continued to wait. On this Motion for Summary Judgment, the Court must accept Wilson's version.<sup>1</sup>

In May 1995, Wilson was examined by an orthopedic surgeon who recommended that both of Wilson's hips be replaced. In July 1995, Wilson was transferred to a medical center for federal prisoners in Springfield, Illinois and he received hip replacement surgery on both hips. He returned to Schuylkill on March 27, 1996. Following his return to Schuylkill, Wilson was on medically unassigned work status from April 1 through June 30, 1996.

Despite his medically unassigned status, Vazquez ordered Wilson to a work assignment on April 22, 1996. Vazquez' order was confirmed by Nye. Upon reaching his work assignment, Wilson was

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<sup>1</sup>The legal standards for the claims in Wilson v. Wigen were set forth in the Court's March 31, 1997, Memorandum and Order in that matter.

told to return to his block because of his medically unassigned status. Vazquez then ordered Wilson to report the next morning for an administrative work assignment. Wilson placed an unauthorized three-way call through his family to the office of the Regional Counsel and received a thirty day suspension of his telephone privileges. Wilson claims that the thirty day telephone suspension was disproportionately greater than punishment white inmates received for similar offenses.

Wilson suffered repeated asthma attacks. Wilson suffered an asthma attack which lead to full respiratory arrest on July 2, 1996. As a result, he spent a week in the ICU at Pottsville Hospital.

## DISCUSSION

### A. Medical Maltreatment

#### 1. Runkel's Death

It is undisputed that Runkel died before Wilson was transferred back to Schuylkill in March 1996. Accordingly, Runkel cannot be liable for any harms alleged by Wilson that took place after March 1996.

#### 2. Prednisone

In response to Defendants' previous Motion for Summary Judgment, Wilson presented evidence that he had been prescribed Prednisone before he was incarcerated at Schuylkill, but that Malinov and Runkel refused to continue that prescription. Since Wilson suffered a full respiratory arrest related to his asthma, he

presented a compelling argument that Defendants interfered with his prescribed medical treatment knowing that it would cause him pain. Wilson bolstered this argument with a letter from Judge Kline of the District of Maryland, drafted to alert prison officials of the need to allow Wilson to have his asthma medication. Despite the evidence presented by Wilson, Defendants chose not to address the issue of interference with Wilson's prescribed course of medication. Rather, Defendants' previous Motion for Summary Judgment was solely based upon what they perceived as a difference of opinion between Wilson and Defendants as to Wilson's course of treatment. Consequently, the Court denied the Motion for Summary Judgment.

Malinov now states that the decision not to prescribe Prednisone was based upon the potential side effects associated with Prednisone. One such potential side effect is the degeneration of bones, a problem that Wilson already had when he arrived at Schuylkill. In fact, Wilson states in his deposition testimony that before he arrived at Schuylkill, his doctors had advised him that the degeneration of his hips was associated with his use of Prednisone. Based upon the additional evidence now presented to the Court, it can only be said that the decision not to prescribe Prednisone was a calculated medical decision with which Wilson does not agree. More clearly than in the typical situation where an inmate alleges that additional medical attention should have been provided to him, Runkel and Malinov were forced make a reasoned medical decision to balance the difference between

the level of treatment of Wilson's asthma and the prevention of further damage to his hips. See Norris v. Frame, 585 F.2d 1183, 1186 (3d Cir. 1978) ("Where the plaintiff has received some care, inadequacy or impropriety of the care that was given will not support an Eighth Amendment claim." ). This is not a constitutional violation and summary judgment shall be granted to Runkel and Malinov on this issue.

### 3. Hip Therapy

Wilson contends that Malinov failed to provide required therapy on his hip upon his return to Schuylkill in March 1996. On October 16, 1996, Wilson was seen by an orthopedic surgeon who diagnosed scar tissue and calcium build-up on Wilson's left hip. Wilson now needs additional hip surgery. Review of Wilson's medical records reveals no order for therapy upon his return to Schuylkill and Wilson admits that Schuylkill did not have the therapy facilities he believes he required. Wilson's statement linking the lack of therapy to the need for additional surgery is hearsay and therefore inadmissible. Wilson has presented no admissible evidence of this doctor's statement. Since there is neither evidence that therapy was ordered nor evidence of a causal connection between the lack of therapy and the need for additional surgery, Malinov's Motion for Summary Judgment shall be granted on this issue.

### 4. Work Status

There is no evidence that Wilson had any work status other than medically unassigned from April 1, 1996 through June 30,

1996. There is also no evidence that Malinov participated in any way in the decision to require Wilson to report to work on April 22, 1996. Accordingly, summary judgment shall be granted to Malinov on this issue.

**B. Interference with Prescribed Treatment**

**1. Lower Bunk Assignment**

There is sufficient evidence in the record that Vazquez denied a lower bunk assignment to Wilson, in contravention of a medical order. Wilson has presented no evidence that his hips were injured or worsened by using the upper bunk. While Vazquez' actions, if believed, are not to be commended, Wilson cannot prove an Eighth Amendment violation without some proof of an injury as a result of Vazquez' actions. See Monmouth County Correctional Institute Inmates v. Lanzaro, 834 F.2d 326, 347 (3d Cir. 1987) (medical maltreatment injury requires unnecessary or wanton infliction of pain or lifelong disability or handicap). It is uncontradicted that Wilson arrived at Schuylkill with badly degenerated hips and he testified at his deposition that he tried to have his hip replacement surgery before he was incarcerated. Since Wilson has presented no evidence of a constitutional injury related to his upper bunk assignment, summary judgment shall be granted to Vazquez on this issue.

**2. April 22, 1996 Work Assignment**

Wilson has presented no evidence of a constitutional injury related to his being sent to work while on medically unassigned status on April 22, 1996. While these actions by

Vazquez and Nye are uncontradicted on the record and not to be commended, summary judgment must be granted in their favor.

**C. § 1981 Allegations**

In the Court's Memorandum and Order of March 31, 1997, Wilson was given the opportunity to develop evidence of disproportionate treatment in the assignment of lower bunks and in disciplining prisoners. Wilson has presented no such evidence to the Court and is, in fact, barred from presenting further evidence on this issue by the Court's Order of November 24, 1997. As a result, Wilson cannot sustain his § 1981 claim and summary judgment shall be granted to Wigen, Nye and Vazquez on this issue.

**D. FTCA Claims**

The United States is subject to claims under the FTCA where a similarly situated private party would be liable. 28 U.S.C. § 2674. Accordingly, the Court looks to applicable state law to determine the liability of the United States. While Wilson claims he was injured by the negligence of the United States in his medical treatment, in essence, his claims are that the individuals responsible for his treatment committed malpractice.

To establish a claim of medical malpractice under Pennsylvania law, a plaintiff must prove 1) a duty owed to the plaintiff by a physician, 2) a breach of that duty by the physician 3) that the breach of the duty was the proximate cause, or a substantial factor in causing plaintiff's harm and 4) damages suffered by the plaintiff that were a direct result of the harm. Mitzelfelt v. Kamrin, 526 Pa. 54, 62, 584 A.2d 888, 891 (1990),

citing Morena v. South Hills Health Sys., 501 Pa. 634, 462 A.2d 680 (1983). "A plaintiff is also required to present an expert witness who will testify, to a reasonable degree of medical certainty, that the acts of the physician deviated from good and acceptable medical standards, and that such deviation was the proximate cause of the harm." Mitzelfelt, 526 Pa. At 62, 584 A.2d at 892, citing Brannan v. Lanckenau Hosp., 490 Pa. 588, 417 A.2d 196 (1980). Wilson has presented no expert medical evidence in this matter. Therefore, summary judgment must be granted in Wilson v. United States on all claims.

#### **CONCLUSION**

Summary judgment shall be granted in favor of Defendants on all counts in these consolidated Complaints. Any claims against Runkel after his death must obviously fail. Defendants have now presented evidence, including Wilson's deposition testimony, from which the only inference that may be drawn is that Runkel and Malinov made a reasoned medical judgment in not prescribing Prednisone to Wilson. Also, there is no evidence that Malinov failed to provide prescribed therapy to Wilson or in any way participated in forcing Wilson to walk to work on April 22, 1996. Further, Wilson has presented no evidence to support his claim that he was injured by an upper bunk assignment or by being forced to walk to a work assignment on April 22, 1996, as well as no evidence of disparate treatment in the assignment of bunks or punishment. Finally, Wilson has failed to produce expert testimony required to

support his malpractice claims against the United States.