

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

ROBERT P. DEHART :  
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 v. : CIVIL ACTION  
 : No. 95-3633  
 :  
 JOSEPH LEHMAN, DONALD VAUGHN :  
 LAWRENCE REID, THOMAS :  
 STACHELEK, BESSIE WILLIAMS, AND :  
 MARY ANN WILLIAMS :

**MEMORANDUM-ORDER**

**GREEN, S.J.**

**June , 1998**

Presently before this court is the Motion for Summary Judgment of Defendant Laurence Reid, Plaintiff's Response thereto, and Defendant's Reply Memorandum. Plaintiff DeHart alleges his rights under the First and Fourteenth Amendments were violated when (1) Defendants Lehman, Vaughn, Stachelek, B. Williams and Reid denied his request for a vegetarian diet that comported with his Buddhist beliefs.<sup>1</sup> Plaintiff DeHart seeks damages under 42 U.S.C. § 1983.<sup>2</sup> For the reasons set forth below, Defendant's Motion will be granted.

**I. FACTUAL AND PROCEDURAL BACKGROUND**

Plaintiff DeHart is currently incarcerated at the State Correctional Institution ("SCI") at Greene. From December 21, 1983 until April 24, 1995, Plaintiff was incarcerated at SCI Graterford. In the early 1980s, Plaintiff became interested in Buddhism and now considers himself a follower of Mahayana Buddhism. Plaintiff believes that as a Buddhist, he cannot consume or have any contact with animal flesh, dead animals, or animal byproducts. (Defs.' Ex.

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<sup>1</sup> Plaintiff has asserted another claim under the First and Fourteenth Amendments, however, the only claim involving Defendant Reid involves Plaintiff's dietary request. All other defendants have moved for summary judgment under separate motion.

<sup>2</sup> Plaintiff originally attempted to state a claim under Religious Freedom Restoration Act (42 U.S.C. § 2000bb) ("RFRA"). The Supreme Court, however, in City of Boerne v. Flores, 117 S. Ct. 2157 (1997), held the RFRA to be unconstitutional. Accordingly, Plaintiff is no longer pursuing his RFRA claim.

10, p. 118.) Accordingly, in an effort to comply with his Buddhist beliefs, Plaintiff requested that he be provided a vegetarian diet totally devoid of animal and dairy products and byproducts;

On July 18, 1992 in a written letter addressed to Defendant Stachelek, then SCI-Graterford's Deputy Superintendent, Plaintiff requested that he be provided a strict vegetarian diet totally devoid of animal product or byproduct, garlic, onion and all dairy products. (Defs.' Ex. 30.) In addition to these foods, Plaintiff stated in his deposition that he cannot have certain vitamin supplements, which may contain calcium derived from pulverized animal bones or sea shells, and he cannot have the bread which is typically served in prison because it may contain a preservative which comes from a dairy product. (Defs.' Ex. 10, p. 75, 82.) Furthermore, Plaintiff cannot use certain soaps if the tallow in them is derived from animals. (Defs.' Ex. 10, p. 25.)

After consulting SCI Graterford's Administrative Chaplain who, in turn, sought more information from the Philadelphia Buddhist Association, Defendant Stachelek denied Plaintiff's request on the basis that he had no information that Buddhists are prohibited from eating dairy products such as butter, milk and eggs. (Defs.' Ex. 2.) Plaintiff then turned to the Pennsylvania prison system's formal grievance procedure and filed an official grievance on June 8, 1993. (Defs.' Ex. 3.)

Defendant Bessie Williams, the grievance coordinator who handled Plaintiff's grievance, denied Plaintiff's request for a special diet after consulting the administrative chaplain at SCI Graterford. (Defs.' Ex. 17, p. 8; Ex. 4.) Plaintiff then appealed the decision of B. Williams to Defendant Vaughn, Superintendent of Graterford. (Defs.' Ex. 5.) Vaughn also denied Plaintiff's request after seeking input from the administrative chaplain. (Defs.' Ex. 5, p. 23; Ex. 6.) Plaintiff appealed Vaughn's decision to Defendant Lehman, the Commissioner of

Corrections. (Defs.' Ex. 7.) Lehman followed administrative procedure and referred Plaintiff's appeal to the Central Office Review Committee ("CORC"). CORC denied Plaintiff's request after receiving legal input from a staff attorney. (Defs.' Ex. 8.) Lehman designated Defendant Reid, then Executive Deputy Commissioner of Corrections, to review the CORC decision. Reid upheld the previous decisions denying Plaintiff's request. (Defs.' Ex. 8.)

During the grievance process, Plaintiff refused meal trays that contained animal products or byproducts and was eventually admitted to the prison infirmary for a neuro-muscular problem caused by the peanut butter and rice diet Plaintiff sustained over a six month period. (Pl.'s Ex. B.) On February 24, 1994, Dr. Sewell prescribed a vegetarian diet of no animal products. (Defs.' Ex. 10, p. 33-35; Pl.'s Ex. C.) Once Plaintiff was moved to the general population, he continued to receive the prescribed diet until he was transferred to SCI Greene on April 23, 1995. In June 1995, Plaintiff filed suit under § 1983 challenging the denial of his special diet request as an infringement on his right to freely exercise his religious beliefs.

## **II. DISCUSSION**

Summary judgment shall be awarded "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the 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). A dispute regarding a material fact is genuine "if the evidence is such that a reasonable jury could return a verdict for the nonmoving party." Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248, 106 S. Ct. 2505, 2510 (1986). The evidence presented must be viewed in the light most favorable to the non-moving party. Lang v. New York Life Ins. Co., 721 F.2d 118, 119 (3d Cir. 1983).

Defendant Reid presents three arguments to support his Motion for Summary Judgment:

A) Plaintiff fails to state claims for relief under the Free Exercise Clause of the First Amendment and Equal Protection Clause of the Fourteenth Amendment;<sup>3</sup> B) Defendant Reid is immune from suit under the doctrine of qualified immunity; and C) Plaintiff is collaterally estopped from bringing the present claim against Defendant.

### **Qualified Immunity**

Under the doctrine of qualified immunity, “government officials performing discretionary functions generally are shielded from liability for civil damages insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known.” Harlow v. Fitzgerald, 457 U.S. 800, 818 (1982). Where a defendant asserts a qualified immunity defense in a motion for summary judgment, the plaintiff bears the initial burden of showing that the defendant’s conduct violated some clearly established constitutional right. Sherwood v. Mulvihill, 113 F.3d 396, 399 (3d Cir. 1997). Only if the plaintiff carries this initial burden must the defendant then demonstrate that no genuine issue of material fact exists as to the objective reasonableness of the defendants’ belief in the lawfulness of their actions. Id. Thus, this court will first turn to the question of whether the Plaintiff has met his initial burden of showing that the Defendant’s actions violated a clearly established constitutional right.<sup>4</sup>

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<sup>3</sup> Defendant raises the issue of a possible Equal Protection claim because Plaintiff stated in his Complaint that Defendants “impermissibly promoted one sect and doctrine of Buddhism over another.” (Defs.’ Ex. 13, ¶ 55.) Plaintiff states in his Response, however, that he only asserts claims for a denial of the right to exercise freely his religious beliefs under the First and Fourteenth Amendments. To the extent Plaintiff has raised an Equal Protection claim, he has failed to produce any evidence to support such a claim.

<sup>4</sup> Where practicable or expedient a court should address whether the plaintiff has alleged a cognizable constitutional claim at all, before turning to the question of whether the constitutional right asserted was “clearly established.” Acierno v. Cloutier, 40 F.3d 597, 606 n. 7 (3d Cir. 1994) (citing Siegert v. Gilley, 500 U.S. 226 (1991)). However, a court may decide a

In assessing whether the law was clearly established on a particular issue, the court must examine decided case law. See Abdul-Akbar v. Watson, 4 F.3d 195, 202 (3d Cir. 1993). The Third Circuit has adopted “a broad view of what constitutes an established right of which a reasonable person would have known.” Stoneking v. Bradford Area School District, 882 F.2d 720, 726 (3d Cir. 1989) (citations omitted). The Third Circuit does not require strict factual identity between applicable precedent and the case at issue. Id. (citation omitted). However, there must be “some but not precise factual correspondence” between the relevant precedents and the conduct at issue. Id. (citations omitted). Officials are expected to “apply general, well-developed legal principles.” Id. (citation omitted).

The acts complained of in this case which relate to the diet issue occurred between July 18, 1992 and February 24, 1994. Case law prior to July 18, 1992 reveals that courts had found that inmates have a right, in general, to sufficient food to sustain them in satisfactory health consistent with their religious beliefs. See, e.g., Hunafa v. Murphy, 907 F.2d 46 (7th Cir. 1990)(reversing summary judgment for defendants where Muslim in disciplinary segregation denied non-pork diet); Kahane v. Carlson, 527 F.2d 492 (2d Cir. 1975)(holding Orthodox Jewish inmates are entitled to a kosher diet). Prior to July 1992, however, courts had also rejected requests for highly specialized diets because they conflicted with legitimate penological interests. See Kahey v. Jones, 836 F.2d 948 (5th Cir. 1988) (holding prison not required to prepare highly particularized religious dietary request to accommodate Moslem inmate); Cooper v. Rogers, 788 F. Supp. 255, 258 (D. Md. 1991), aff’d, 959 F.2d 231 (4th Cir. 1992) (denying Orthodox Jewish inmate’s request for catered kosher breakfast did not violate free exercise provision of First

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case on the ground that appears to offer the most direct and appropriate resolution, which in difficult constitutional cases will sometimes be whether the constitutional right was “clearly established” at the time the defendant acted. Id.

Amendment).

Although a general constitutional right to receive a religious diet was recognized in the law at the time of the alleged violation, the case law reveals that the contours of that right were not clearly established. The cases cited by Plaintiff offer no factual correspondence to the conduct at issue in the present case because the present case involves an inmate's request for a highly specialized vegetarian diet. Moreover, Plaintiff's request more closely resembles a case such as Kahey where the prison was not required to accommodate the inmate's request. Thus, at the time of the alleged violation, the state of the law was uncertain, and it cannot be said that the Plaintiff's right to receive a highly specialized vegetarian diet was so clearly established that a reasonable prison administrator would have known that the failure to provide such a diet was a constitutional violation.

### **III. CONCLUSION**

This court concludes that the constitutional right to receive a highly specialized vegetarian diet was not clearly established in the law at the time the alleged violation occurred. Because Plaintiff has failed to show that the Defendant's conduct has violated some clearly established constitutional right, this court need not reach the issue of whether the Defendant's actions were objectively reasonable under the circumstances.<sup>5</sup> Furthermore, this court need not reach the issue of whether Plaintiff is collaterally estopped from bringing his claim against Defendant. Accordingly, Defendant Reid is entitled to qualified immunity from Plaintiff's claim

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<sup>5</sup> While the court need not reach the question of whether the Defendant's conduct was objectively reasonable, the evidence submitted in the Motion for Summary Judgment and Response thereto would permit only one finding that the Defendant's conduct was, indeed, objectively reasonable under the circumstances.

under the First Amendment, and Defendant's Motion for Summary Judgment is granted.

An appropriate Order follows.

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LAWRENCE REID, THOMAS	:	
STACHELEK, BESSIE WILLIAMS, AND	:	
MARY ANN WILLIAMS	:	

**ORDER**

AND NOW, this            day of June, 1998, upon consideration of the oral argument; the Motion for Summary Judgment of Defendant Laurence Reid; Plaintiff Robert DeHart's Response thereto; and Defendant's Reply, IT IS HEREBY ORDERED that Defendant's Motion for Summary Judgment is GRANTED.

BY THE COURT:

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CLIFFORD SCOTT GREEN, S. J.