

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

PATRICK J. CLOUD,	:	CIVIL ACTION
	:	
Plaintiff,	:	
	:	
v.	:	
	:	
IRWIN GOLDBERG, CYNTHIA WARD,	:	
FRANK BRUNO, NANCY WYLER,	:	
TRACY GRANT, and ROBERT DITROLIO,	:	
	:	
Defendants.	:	NO. 98-4250

Reed, S.J.

February 11, 2000

M E M O R A N D U M

Now before the Court is the motion of defendants Irwin Goldberg, Cynthia Ward, Frank Bruno, Nancy Wyler, Tracy Grant, and Robert Ditrolio for summary judgment (Document No. 27). Upon consideration of the motion, plaintiff’s response (Document No. 32), and the pleadings and evidence pursuant to Rule 56 of the Federal Rules of Civil Procedure, the motion will be granted.

I. BACKGROUND

Plaintiff Patrick J. Cloud (“Cloud”) is a 38-year-old man serving a sentence for burglary. He suffers from a number of serious medical conditions, including diabetes, HIV, hepatitis, depression, and *idiopathic thrombocytopenic purpura*, a condition that causes low platelet levels. It is this last condition that concerns the Court today.

Cloud was incarcerated at the Delaware County Prison from May 27, 1997, to September 4, 1998. During that time, his platelet count was, according to the complaint, “dangerously low.” (Attachment to Complaint, at 1). Plaintiff avers that defendants, officials and staff at the

Delaware County Prison, failed to treat his low platelet condition and thereby caused him depression, anxiety, and insomnia. (Id. at 2).

Plaintiff acknowledges that his platelet condition was monitored by prison officials. The day after he arrived at the Delaware County Prison, plaintiff received a health evaluation. (Id.). At that time, he informed prison physician Dr. Margaret Carrillo¹ that he suffered from, among other ailments, “platelet problems.” (Id.; Defendant’s Motion for Summary Judgment, Exhibit B, Health Evaluation for Patrick J. Cloud). Dr. Carrillo took his blood sample for testing during his initial health evaluation on May 28, 1997, (Attachment to Complaint, at 1), and the test revealed that his platelet count was “dangerously low.” (Id.). Additional blood samples were taken in July 1997, October 1997, January 1998, and July 1998. (Id.).

Plaintiff’s recollections as to the monitoring of his platelet condition are corroborated by his deposition testimony, medical records, and laboratory reports. Dr. Carrillo noted in plaintiff’s medical records on May 29, 1997, two days after his arrival at the Delaware County Prison, the words “chronic thrombocytopenia,” indicating a diagnosis of *idiopathic thrombocytopenic purpura*. (Defendant’s Motion for Summary Judgment, Exhibit C, Progress Notes, May 29, 1997, Jan. 9, 1998). Plaintiff’s low platelet counts were noted on his medical records on numerous occasions. (Id., June 17, 1997; Jan. 9, 1998; and Jan. 20, 1998). Laboratory reports reveal that prison medical staff submitted plaintiff’s blood samples for analysis 10 times over the course of the first 13 months of his incarceration, on June 27, 1997; August 13, 1997; September 11, 1997; September 20, 1997; November 18, 1997; November 28, 1997; January 7, 1998; January 22,

¹ Dr. Carrillo is not a defendant in this case, and plaintiff stated in his deposition testimony that he believed “Dr. Carrillo did what she could.” (Deposition of Patrick J. Cloud, Mar. 24, 1999, at 26) (“Cloud Deposition”).

1998; April 29, 1998; and July 29, 1998. (Defendant's Motion for Summary Judgment, Exhibit C, Laboratory Reports).

Cloud's allegations in his complaint concerning the treatment he received for his platelet condition conflict with his own deposition testimony and his medical records. He avers that he received no treatment for his low platelet count at the Delaware County Prison and was told by Dr. Carrillo that there was "nothing we can do about platelets" and merely warned not to get into fights or "bang [his] head." (Attachment to Complaint, at 1). However, at his deposition, Cloud testified that while at the Delaware County Prison, he was given the prescription medication "Prednisone" for his low platelet count, and it raised his platelet count from 4,000 to 20,000. (Cloud Deposition, at 45). Medical records also indicate that within a week of plaintiff's arrival, prison medical staff began treating his low platelet count with Prednisone and continued to do so until plaintiff refused to take it any longer. (Defendant's Motion for Summary Judgment, Exhibit E, Progress Notes, June 4, 1997, July 24, 1998).²

Plaintiff asserts that upon being transferred to another prison facility, S.C.I. Camphill, he received prescription medication, Decadron, that raised his platelet count within 9 days. (Plaintiff's Letter to Judge Angell, Document No. 29, filed July 30, 1999; Cloud Deposition, at 46). Plaintiff infers from this that defendants were deliberately indifferent to his medical needs at the Delaware County Prison. (Cloud Deposition, at 46 ("I got [to S.C.I. Camphill], they put me on a pill for two weeks. I took it, my platelets came up. They came way up. ... Why couldn't

² Dr. Carrillo's progress notes reflect that plaintiff agreed to take a Prednisone prescription on January 9, 1998. The Prednisone was mildly effective in raising plaintiff's platelet count, but had side effects that plaintiff disliked. The Prednisone prescription was terminated in the spring of 1998 at plaintiff's request. (Defendants' Motion for Summary Judgment, Exhibit E, Progress Notes; Exhibit F, Report of Dr. Margaret Carrillo).

[defendants] do that for me? A simple pill. I am suing them over a simple pill for them to keep me stable to do my time in prison custody”)).

Cloud asserts that defendants’ failure to provide him with “proper medical care” and a “needed operation,” which he identified at his deposition as a blood transfusion, (Cloud Deposition, at 77-78),³ caused him to suffer depression, insomnia, and anxiety. (Attachment to Complaint, at 2).

II. ANALYSIS

According to Rule 56(c) of the Federal Rules of Civil Procedure, “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 a judgment as a matter of law,” then a motion for summary judgment must be granted. The question before the Court at the summary judgment stage is “whether the evidence presents a sufficient disagreement to require submission to a jury or whether it is so one-sided that one party must prevail as a matter of law.” See Anderson v. Liberty Lobby, 477 U.S. 242, 251-52, 106 S. Ct. 2505, 2511 (1986).

In deciding whether there is a disputed issue of material fact, the “inferences to be drawn from the underlying facts ... must be viewed in the light most favorable to the party opposing the motion.” Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 587, 106 S. Ct. 1348, 1356 (1986) (quoting United States v. Diebold, Inc., 369 U.S. 654, 655, 82 S. Ct. 993, 994

³ Plaintiff stated at his deposition that a blood transfusion would have been unnecessary. (Cloud Deposition, at 77-78). The Court also notes, without relying on, the conclusion contained in Dr. Carrillo’s report that a blood transfusion would not have been effective in raising plaintiff’s platelet count to a stable level, and that such a procedure is usually reserved for emergency circumstances.

(1962)).

A. Deliberate Indifference

It is well established that a *pro se* plaintiff's complaint is to be read liberally. See Haines v. Kerner, 404 U.S. 519, 520, 92 S. Ct. 594, 595-96 (1972); see also, Lewis v. Attorney Gen. of United States, 878 F.2d 714, 722 (3d Cir. 1989). I read plaintiff's complaint to assert a claim under 28 U.S.C. § 1983 that defendants were deliberately indifferent to his medical needs in violation of his constitutional rights under the Eighth Amendment.

The Eighth Amendment to the United States Constitution prohibits "cruel and unusual punishment," and has been interpreted to proscribe "deliberate indifference to serious medical needs of prisoners." Estelle v. Gamble, 429 U.S. 97, 104, 97 S. Ct. 285, 291 (1976).⁴ An Eighth Amendment violation occurs when prison officials respond or fail to respond to a prisoner's medical needs in a manner that acted or failed to act in a way that caused "an unnecessary and wanton infliction of pain" or was "repugnant to the conscience of mankind." Estelle, 429 U.S. at 105-06, 97 S. Ct. at 292. Prison officials have "considerable latitude in the diagnosis and treatment of prisoners," Durmer v. O'Carroll, 991 F.2d 64, 67(3d Cir. 1993), and that allegations of mere negligence and medical malpractice are insufficient to state a claim under the Eighth Amendment.

To establish deliberate indifference, a plaintiff must demonstrate that (1) he had a serious medical need and (2) that defendant was aware of this need and deliberately indifferent to it. See

⁴ Deliberate indifference lies "somewhere between the poles of negligence at one end and purpose or knowledge at the other." Farmer v. Brennan, 511 U.S. 825, 836, 114 S. Ct. 1970, 1978 (1994). Deliberate indifference may be inferred when a prison official knows of a prisoner's need for medical treatment but intentionally fails to provide it; delays necessary medical treatment for a non-medical reason; or prevents a prisoner from receiving medical treatment that was needed or recommended. See Rouse v. Plantier, 182 F.3d 192, 197 (3d Cir. 1999).

Holland v. Ward, No. 97-3923, 1999 U.S. Dist. LEXIS 19411, *8 (E.D. Pa. Dec. 20, 1999) (citing Farmer, 511 U.S. at 837, 118 S. Ct. 1979); Inmates of Allegheny County Jail v. Pierce, 612 F.3d 754, 764 (3d Cir. 1979)); see also Monmouth Cty. Correctional Institutional Inmates v. Lanzaro, 834 F.2d 326, 346 (3d Cir. 1987) (citation omitted), cert. denied, 486 U.S. 1006, 108 S. Ct. 1731 (1988). For the purpose of analysis and in the interest of brevity, I assume *arguendo* that plaintiff's medical need was sufficiently "serious" to satisfy the first prong of the deliberate indifference test, and that defendants were aware of his medical need.

Plaintiff fails to show that defendants were deliberately indifferent to his medical needs.⁵ To the contrary, the evidence before the Court shows that the medical care provided to plaintiff at the Delaware County Prison was not lacking in any manner sufficient to infringe upon plaintiff's constitutional rights.

First, a reasonable jury could not find on the evidence now before the Court that plaintiff did not, as he alleges, receive "proper medical care" at the Delaware County Prison. The allegations in plaintiff's complaint indicate, and medical records confirm, that his platelet levels were monitored on a regular basis by medical staff through regular check-ups and 10 blood tests over a period of 13 months. (Defendants' Motion for Summary Judgment, Exhibit C, Laboratory Reports). Plaintiff acknowledges in his deposition, and medical records show, that his platelet

⁵ It is not clear that plaintiff's medical condition was sufficiently serious. See, e.g., Palladino v. Wackenhut Corrections, No. 97-2401, 1998 U.S. Dist. LEXIS 19173 (E.D. Pa. Dec. 10, 1998) (plaintiff claiming inadequate medical treatment of inactive tuberculosis could not show that he suffered serious injury to support Eighth Amendment claim).

Furthermore, I assume without holding that defendants are individuals who were personally and directly involved in the violation of his rights; that is, individuals who knew or should have known of his serious medical need and were thus bound not to be deliberately indifferent to it. Holland, 1999 U.S. Dist. LEXIS 19411, *13-14 (citing Rode v. Dellarciprete, 845 F.2d 1195 (3d Cir. 1988)). There is real doubt as to whether defendants were directly or personally involved in his medical treatment. However, because I conclude that plaintiff has not produced sufficient evidence of deliberate indifference, it is not necessary to decide whether plaintiff has shown that defendants meet the requirement of direct and personal involvement.

condition was treated with prescription drugs, including Prednisone. In fact, plaintiff eventually refused to take Prednisone because he disliked its side effects. (Defendant's Motion for Summary Judgment, Exhibit E, Progress Notes, July 24, 1998). Medical staff also explored alternative medications with plaintiff and consulted with outside doctors on plaintiff's condition. (Id., July 24, 1998; Attachment to Complaint at 1). In short, the evidence shows that defendants provided adequate medical treatment for plaintiff's platelet condition.

Second, Cloud has failed to show that defendants were deliberately indifferent in not providing a blood transfusion or other medication. He has acknowledged since filing his complaint that a blood transfusion would have been unnecessary. (Cloud Deposition, at 78). Plaintiff's medical condition was not so severe that a drastic step like a blood transfusion was necessary; his medical records reflect that he "tolerate[d] thrombocytopenia remarkably well despite alarmingly low platelets," and suffered none of the particularly dangerous symptoms of low platelet levels, such as internal bleeding. (Defendants' Motion for Summary Judgment, Exhibit E, Progress Notes, Jan. 20, 1998, May 9, 1998).

Furthermore, plaintiff offers no direct evidence that defendants were deliberately indifferent in failing to prescribe an alternate medication.⁶ All plaintiff offers is an implication, based on the effectiveness of the medication he received at another prison facility, that defendants were deliberately indifferent in not providing such medication to plaintiff during his incarceration at Delaware County Prison. The sole foundation for the implication is hindsight; plaintiff wishes the Court to infer from the subsequent success of a medication both knowledge

⁶ Nothing on the record suggests defendants knew that Decadron existed or that it would be effective in controlling plaintiff's platelet levels, and no evidence suggests that prison physicians recklessly or negligently withheld Decadron or any other treatment from plaintiff.

and indifference on the part of defendants. It is a leap that no reasonable jury could make. While plaintiff may have a right to receive reasonable treatment for serious medical conditions of which prison officials are aware, he does not have a constitutional right to perfect or flawless medical care. I conclude that plaintiff's personal inference of deliberate indifference is not supported by the record and thus is insufficient to create a genuine issue of material fact as to whether defendants or any other employee of Delaware County Prison were deliberately indifferent to his medical needs.

Finally, on a more general note, plaintiff suffers from a number of medical problems, including diabetes, HIV, hepatitis, and depression, all of which were monitored and treated by medical staff at the Delaware County Prison. Plaintiff acknowledges receiving regular doses of prescription medication for his other maladies, (Cloud Deposition, at 37-39), and aside from his low platelet count complaint, plaintiff neither alleges nor demonstrates deficiencies in any other aspect of the medical care he received at the Delaware County Prison. Thus, by plaintiff's own account, prison officials were not deliberately indifferent to his overall medical needs, many of which were quite serious. It strikes this Court that no fair-minded jury could help but find it highly unlikely that defendants would have been deliberately indifferent to only one aspect of plaintiff's many medical problems while adequately treating the rest of plaintiff's medical problems. Because plaintiff has produced nothing that could convince a reasonable jury that this improbable state of affairs existed in the Delaware County Prison, I will grant summary judgment.

In sum, Cloud's evidence is inadequate to show deliberate indifference, particularly in light of prison officials' "considerable latitude in the diagnosis and treatment of prisoners,"

Durmer, 991 F.2d at 67. He does not deny that he received medical treatment for his platelet condition; he merely takes issue with the type of medical treatment he received. This amounts to a disagreement over the form of treatment, which does not rise to the level of a constitutional violation. See Maldonado v. Terhune, 28 F. Supp. 2d 284, 289 (D.N.J. 1998)(citing Estelle, 429 U.S. at 107, 97 S. Ct. at 292). I conclude that a trier of fact could not find on the evidence before me that plaintiff, whose platelet condition was monitored with nearly monthly blood tests and treated with prescription medication, has demonstrated that defendants were deliberately indifferent to his platelet condition in a manner that caused “an unnecessary and wanton infliction of pain” or was “repugnant to the conscience of mankind.” Estelle, 429 U.S. at 105-06, 97 S. Ct. at 292. Therefore, defendants’ motion for summary judgment will be granted.

B. Prisoner Litigation Reform Act

Even if plaintiff had produced sufficient evidence to survive summary judgment, his claim is precluded by the Prisoner Litigation Reform Act (“PLRA”), which states, “No federal civil action may be brought by a prisoner confined in a jail, prison, or other correctional facility, for mental or emotional injury suffered while in custody without a prior showing of physical injury.” 42 U.S.C. § 1997e(e).

Cloud states that the failure to treat his platelet condition resulted in “depression, insomnia, and just being in a scary frame of mind.” (Attachment to Complaint, at 2). These are mere emotional and mental injuries that do not satisfy the requirement of § 1997e(e). Plaintiff’s complaint also refers to “red marks on my body” as a result of his platelet condition. (Id. at 1). It does not appear from the complaint that plaintiff intended to include the “red marks” among the injuries he attributed to defendants’ failure to treat him. Courts have barred claims by prisoners

who demonstrate only emotional or mental injury where the alleged physical injury is *de minimis*. See, e.g., Siglar v. Hightower, 112 F.3d 191, 193 (5th Cir. 1997) (prisoner's § 1983 action dismissed where court found that a bruised ear lasting for three days did not constitute physical injury); Porter v. Coombe, No. 97-2394, 1999 U.S. Dist. LEXIS 11924 (S.D.N.Y. Aug. 4, 1999) (prisoner's § 1983 claim for lost weight due to restricted diet punishment did not allege a sufficient physical injury under § 1997e); Luong v. Hatt, 979 F. Supp. 481 (N.D. Tex. 1997) (evidence of minor cuts and bruises due to assault not sufficient to satisfy physical injury requirement of § 1997e). Plaintiff's "red marks" constitute a *de minimis* injury that did not rise to the level of physical injury contemplated by § 1997e.

Thus, Cloud, a prisoner, has asserted a federal civil action under § 1983 for mental and emotional injuries, but has failed to show that he suffered physical injury as a result of defendants' acts or omissions. His claim is therefore barred by the PLRA. See 42 U.S.C. §1997e(e).

An appropriate Order follows.

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

PATRICK J. CLOUD,	:	CIVIL ACTION
	:	
Plaintiff,	:	
	:	
v.	:	
	:	
IRWIN GOLDBERG, CYNTHIA WARD,	:	
FRANK BRUNO, NANCY WYLER,	:	
TRACY GRANT, and ROBERT DITROLIO,	:	
	:	
Defendants.	:	NO. 98-4250

O R D E R

AND NOW, this 11th day of February, 2000, upon consideration of the motion of defendants Irwin Goldberg, Cynthia Ward, Frank Bruno, Nancy Wyler, Tracy Grant, and Robert Ditrolio for summary judgment (Document No. 27), plaintiff's response (Document No. 32), and the pleadings and evidence pursuant to Rule 56 of the Federal Rules of Civil Procedure, and having concluded for the reasons set forth in the foregoing memorandum that there is no genuine issue of material fact, that plaintiff's claims are barred by the Prisoner Litigation Reform Act, 42 U.S.C. § 1997e, and that defendants are entitled to judgment as a matter of law on the merits, it is hereby **ORDERED** that defendant's motion is **GRANTED**.

It is **FURTHER ORDERED** that judgment is hereby **ENTERED** in favor of defendants and against plaintiff.

LOWELL A. REED, JR., S.J.