

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

<b>JOSE SANTIAGO,</b>	:	
<b>Plaintiff,</b>	:	<b>CIVIL ACTION</b>
	:	
<b>v.</b>	:	
	:	
<b>VINCENT GUARINI, WARDEN,</b>	:	<b>No. 03-4375</b>
<b>Defendant.</b>	:	

**MEMORANDUM AND ORDER**

**Schiller, J.**

**September 20, 2004**

Plaintiff Jose Santiago, an inmate at Lancaster County Prison, brings this action pro se against Warden Vincent Guarini and Medical Director Robert Doe<sup>1</sup> for alleged violations of Plaintiff’s constitutional right to humane conditions of confinement. Presently before this Court is Defendant Guarini’s motion to dismiss the Amended Complaint pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure. For the reasons stated below, Defendant’s motion is granted.

**I. BACKGROUND**

The following facts are set out in the light most favorable to Plaintiff.<sup>2</sup> During the week of

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<sup>1</sup>By Order dated July 8, 2004, this Court granted Dr. Doe’s motion to dismiss.

<sup>2</sup>On June 30, 2004, Plaintiff filed an Amended Complaint that does not include many of the allegations contained in his original Complaint. Technically, “[a]n amended complaint supercedes the original version in providing the blueprint for the future course of a lawsuit.” *Snyder v. Pascack Valley Hosp.*, 303 F.3d 271, 276 (3d Cir. 2002); *see also* 6 CHARLES ALAN WRIGHT, ARTHUR R. MILLER & MARY KAY KANE, FEDERAL PRACTICE AND PROCEDURE § 1476 (2d ed. 1990) (“[o]nce an amended pleading is interposed, the original pleading no longer performs any function in the case”). However, “[w]here a plaintiff pleads pro se in a suit for the protection of civil rights, the court should endeavor to construe his pleadings without regard for technicalities.” *United States ex rel. Gittlemacker v. County of Philadelphia*, 413 F.2d 84, 86 n.3

June 30, 2003, the sink and toilet in Plaintiff's cell began to leak water. (Compl. ¶ 1.) Plaintiff reported this leak to Officer Jones, who entered a maintenance request in the prison block log. (Compl. ¶ 2.) Plaintiff also submitted a general purpose request form to Defendant complaining about the leak and stating that no action was being taken to alleviate the problem. (Am. Compl. ¶ D.) On July 2, 2003, Plaintiff slipped on his wet cell floor, injuring his hand and back. (Compl. ¶ 3.) He was taken to the prison medical department and evaluated by the nurse on duty. (*Id.* ¶ 6.) Although the nurse recommended that Plaintiff receive immediate treatment at an outside hospital (*id.* ¶ 7), Plaintiff was instead given Motrin and his right hand was x-rayed and placed in a half-cast. (*Id.* ¶¶ 8-10.)

## II. STANDARD OF REVIEW

When deciding a motion to dismiss pursuant to Federal Rule of Civil Procedure 12(b)(6), the court may look only to the facts alleged in the complaint and its attachments. *Jordan v. Fox, Rothschild, O'Brien & Frankel*, 20 F.3d 1250, 1261 (3d Cir. 1994). The court must accept as true all of the factual allegations pleaded in the complaint and draw all reasonable inferences in favor of the non-moving party. *Bd. of Trs. of Bricklayers & Allied Craftsmen Local 6 of N.J. Welfare Fund v. Wettlin Assocs., Inc.*, 237 F.3d 270, 272 (3d Cir. 2001). A motion to dismiss will only be granted if it is clear that relief cannot be granted to the plaintiff under any set of facts that could be proven

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(3d Cir. 1969). Therefore, because Plaintiff is proceeding pro se, this Court will treat his Amended Complaint as having adopted the claims of his original Complaint, even though Plaintiff did not incorporate them explicitly. *See* 6 WRIGHT, *supra* § 1476 (“An amended pleading may adopt some or all of the averments of the original pleading, in conformity with the incorporation by reference practice permitted by Rule 10(c)”); *see also Johnson v. Hill*, 910 F. Supp. 218, 220 (E.D. Pa. 1996) (treating pro se Plaintiff's “Answering Motion” as an amendment to his Complaint).

consistent with the complaint's allegations. *Hishon v. King & Spalding*, 467 U.S. 69, 73 (1984) (citing *Conley v. Gibson*, 355 U.S. 41, 45-46 (1957)).

### III. DISCUSSION

Pursuant to 42 U.S.C. § 1983, Plaintiff claims that Defendant violated his constitutional rights under: (1) the Eighth Amendment; and (2) the Equal Protection Clause of the Fourteenth Amendment.<sup>3</sup> This Court will address those claims in turn.

#### A. Violation of the Eighth Amendment

Plaintiff alleges that Defendant violated the Eighth Amendment prohibition on cruel and unusual punishment. "Prison conditions may amount to cruel and unusual punishment if they cause unquestioned and serious deprivations of basic human needs . . . [that] deprive inmates of the minimal civilized measures of life's necessities." *Tillman v. Lebanon County Corr. Facility*, 221 F.3d 410, 417-18 (3d Cir. 2000) (citation and quotation omitted). To demonstrate a deprivation of his basic human needs, a prisoner must show that: (1) objectively, there was a sufficiently serious condition implicating constitutional protection; and (2) subjectively, prison officials acted with a sufficiently culpable state of mind, *i.e.*, deliberate indifference. *Id.* at 418; *see also Wilson v. Seiter*, 501 U.S. 294, 298 (1991). The standard of deliberate indifference is met only when the official in

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<sup>3</sup>Plaintiff's Amended Complaint contains only one cause of action and fails to allege a deprivation of a specific constitutional right. (Am. Comp. ¶ F.) As previously noted, *supra* n.2, this Court incorporates the claims from pro se Plaintiff's original Complaint. Plaintiff's original Complaint also alleges that Defendant violated Plaintiff's right to be free from discrimination pursuant to the Civil Rights Act of 1991, 42 U.S.C. § 2000e-2 (2004). However, it is clear that Plaintiff's reference to this provision was in error, because § 2000e-2 relates to unlawful discrimination in employment. Plaintiff is not an employee of Defendant, and therefore has not alleged a cognizable claim for employment discrimination. Accordingly, Defendant's motion to dismiss is granted with respect to this claim.

question subjectively “knows of and disregards an excessive risk to inmate health or safety; the official must both be aware of facts from which the inference could be drawn that a substantial risk of serious harm exists and he must also draw the inference.” *Farmer v. Brennan*, 511 U.S. 825, 837 (1994). Mere negligence or inadvertence will not satisfy the deliberate indifference standard and cannot constitute a violation of the Eighth Amendment. *Estelle v. Gamble*, 429 U.S. 97, 105-06 (1976).

Plaintiff has failed to state a cause of action under the Eighth Amendment. The sole factual allegation made by Plaintiff with regard to Defendant is that Defendant knew about a water leak in Plaintiff’s cell and did not immediately mandate its repair. (Am. Compl. ¶¶ D, F.) Although Plaintiff uses the words “deliberate indifference,” he has alleged no facts from which the inference could be drawn that Defendant subjectively knew of and appreciated a substantial risk with regard to that leak. *See Thomas v. Zinkel*, 155 F. Supp. 2d 408, 414 (E.D. Pa. 2001) (granting defendants’ motion to dismiss where pro se plaintiff “use[d] the constitutional code words ‘deliberate indifference’” but alleged only that prison officials knew of water leak and should have repaired it); *see also Denz v. Clearfield County*, 712 F. Supp. 65, 66 (W.D. Pa. 1989) (granting defendant’s motion to dismiss where prisoner inserted the phrase “deliberate, willful and wanton” but alleged only that defendant failed to repair his inadequately ventilated cell). Moreover, Plaintiff has not alleged facts to demonstrate that, indeed, the water leak posed a substantial risk to his safety. Slippery prison floors are not objectively serious conditions giving rise to Eighth Amendment protection. *See LeMaire v. Maass*, 12 F.3d 1444, 1457 (9th Cir. 1993) (“slippery prison floors . . . do not state even an arguable claim for cruel and unusual punishment”) (citation and quotation omitted); *Robinson v. Cuyler*, 511 F. Supp. 161, 163 (E.D. Pa. 1981) (holding that a slippery kitchen

floor in a prison is not hazardous enough to merit constitutional protection).

Even construing Plaintiff's pro se pleadings liberally, *see Dluhos v. Strasberg*, 321 F.3d 365, 369 (3d Cir. 2003), this Court can find no set of facts consistent with his allegations under which he could prove a violation of his Eighth Amendment rights. *See Hishon*, 467 U.S. at 73. At most, Plaintiff has successfully alleged that Defendant was negligent, but "negligence does not transform into a constitutional claim solely because it is committed under color of state law." *Zinkel*, 155 F. Supp. 2d at 414 (*citing Estelle*, 429 U.S. at 105-06). Accordingly, Defendant's motion to dismiss is granted with respect to Plaintiff's Eighth Amendment claim.

#### **B. Violation of the Equal Protection Clause**

Plaintiff also alleges that Defendant violated his right to Equal Protection under the Fourteenth Amendment. To state a claim under the Equal Protection Clause, a prisoner must allege that he was treated differently from similarly situated inmates. *Saunders v. Horn*, 959 F. Supp. 689, 696 (E.D. Pa. 1996); *see also City of Cleburne, Tex. v. Cleburne Living Ctr.*, 473 U.S. 432, 439 (1985) (noting that the Equal Protection clause "is essentially a direction that all persons similarly situated should be treated alike"); *Price v. Cohen*, 715 F.2d 87, 91 (3d Cir. 1983) ("To establish a violation of the equal protection clause, a plaintiff must show that [an] allegedly offensive categorization invidiously discriminates against [a] disfavored group."). Plaintiff has failed to allege that Defendant discriminated against him or treated him differently from other inmates, and thus, Plaintiff has not properly alleged an Equal Protection violation. *See Saunders*, 959 F. Supp. at 696 (finding that prisoner had not stated an equal protection claim where he did not state that he was treated differently from other inmates with similar health problems). Accordingly, Defendant's motion to dismiss is granted with respect to Plaintiff's Equal Protection claim.

#### **IV. CONCLUSION**

For the foregoing reasons, Defendant Guarini's motion to dismiss is granted. An appropriate Order follows.

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<b>Defendant.</b>	:	

**ORDER**

AND NOW, this 20<sup>th</sup> day of **September, 2004**, upon consideration of Defendant Vincent Guarini's Motion to Dismiss, Plaintiff's response thereto, and for the foregoing reasons, it is hereby **ORDERED** that:

1. Defendant's Motion to Dismiss (Document No. 37) is **GRANTED**.
2. The Clerk of Court is directed to close this case.

**BY THE COURT:**

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**Berle M. Schiller, J.**