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

JOHN NUNEZ GONZALEZ	:	CIVIL ACTION
	:	
	:	
V.	:	
	:	
	:	
EDWARD SWEENEY, et al.	:	04-5482

MEMORANDUM

Baylson, J. **June 28, 2006**

Plaintiff John Nunez Gonzalez ("Plaintiff" or "Gonzalez") filed this action, based on alleged violations of his rights under 42 U.S.C. § 1983, against Defendants Edward G. Sweeney ("Sweeney"), Dale A. Meisel ("Meisel"), and Nancy L. Afflerbach ("Afflerbach") (collectively, "Defendants") on February 10, 2005. The Court has jurisdiction pursuant to 28 U.S.C. § 1331, as the case involves a cause of action arising under federal law. Venue is appropriate under 28 U.S.C. § 1391(b).

Presently before the Court is Defendant's Motion for Summary Judgment (Doc. No. 11) filed on February 10, 2006. Plaintiff submitted a letter to the Court dated March 24, 2006, which, though not a formal response, addresses issues raised in this case.[1]

I. Background

Plaintiff, a pro se litigant, alleges that Defendants, officials at Lehigh County Prison (the

[1] Plaintiff did not file a response to Defendants' Motion for Summary Judgment within the fourteen-day period provided under the Local Rules of Civil Procedure. Though it was received after the appropriate filing date, Plaintiff's letter of March 24, 2006 will be treated as a response to Defendants' motion.

"Prison"), violated his Eighth Amendment rights due to failure to treat his broken rib and failure to properly adjust his housing assignment in order to accommodate his medical condition.[2]

Plaintiff filed an unsigned Complaint on February 10, 2005, followed by a signed Complaint on September 6, 2005. In his Complaint, Plaintiff alleges that he was incarcerated in the Prison beginning on or about April 23, 2003 and that he arrived there with a broken rib. Complaint at 3. Plaintiff contends that although he was suffering from significant pain, the prison officials did not take him to the hospital. Id. He also claims that on June 22, 2003, he was moved from "Pod 1-A" to "Pod 2-B," which required that he sleep in a top bunk. Id. at 4. Though he claims that he told the correctional officer ("CO") of his physical limitations, his request for a cell with an available bottom bunk was denied. Id. Plaintiff alleges that after being placed in the new cell, he fell from the top bunk and injured his jaw, neck, back, and left rib. Id. The Complaint also avers that Plaintiff has undergone extensive treatment from a chiropractor and that x-rays have shown that his jaw is "out of place." Id. Finally, Plaintiff asserts that employees of the Prison regularly ignore inmates' medical problems. Id.

II. Parties' Contentions

A. Defendants' Motion

Defendants argue that Plaintiff was treated for a broken rib at the Prison as soon as it was revealed in an x-ray taken on May 22, 2003. They claim that he was given drugs for his pain as well as a wrap for his chest. Defendants acknowledge that Plaintiff, after he was treated for a broken rib and restricted by the medical staff to a lower bunk, was placed in a cell which had

[2] Sweeney is the Director of Corrections of Lehigh County, Meisel is the Warden of Lehigh County Prison, and Afflerbach is Deputy Warden for Treatment of Lehigh County Prison.

only an upper bunk available. Defendants note that there is a system in place in the Prison under which medical recommendations and restrictions are entered into a computerized housing report. This report is available to COs so that they can meet prisoners' medical needs. Defendants acknowledge that either the CO who required Plaintiff to use an upper bunk ignored the information in the medical report or the restriction was not properly reflected in the computer readout. Def's Br. at 6. In either case, Defendants argue that the mistake was a result of simple negligence, which does not rise to the level of deliberate indifference.

Defendants also maintain that they had no personal contact with Plaintiff during his stay at the Prison from April to October 2003. They assert that liability under 42 U.S.C. § 1983 requires personal involvement in the alleged wrongful conduct, and a defendant must have either directed or known of and acquiesced in the deprivation of plaintiff's rights. Defendants contend that neither Plaintiff's Complaint nor his deposition demonstrate any such link between Defendants' activities and the deprivation of Plaintiff's rights. Because they had no involvement with Plaintiff or his treatment, Defendants maintain that they cannot be held liable in their individual capacities. Id.

Moreover, Defendants argue that their actions simply do not amount to deliberate indifference, as prison officials who respond reasonably to a risk have not violated the Eighth Amendment, even if the harm was not ultimately averted. Id. at 7. Defendants contend that even if the policy in place failed in this particular instance, an occasional failure does not rise to the level of deliberate indifference on the part of Defendants. Defendants assert that the policy in place was designed to respond to potential danger to prisoners and to minimize that danger, and the policy did not create a risk of harm to prisoners that was "so great and so obvious" that the

officials should have known of excessive risk and were indifferent to it.

B. Plaintiff's Response

In his letter, Plaintiff again asserts that he did not receive proper medical attention when he arrived at the Prison on April 23, 2003. He claims that he was in severe pain and that the Defendants "ignored" him even though it was an "emergency situation." Pl's Resp. at 1. Plaintiff also alleges that he tried to communicate with all three Defendants but they ignored him and walked past him. Id. at 1–2.

Plaintiff again mentions the injuries allegedly caused by his fall from the top bunk in his cell. He notes that when he was moved to the cell requiring use of the top bunk he was "under medication for pain and sleep," and the prescriptions were listed in the Prison's computerized database. Id. at 2. Plaintiff also notes that he was supposed to be restricted to the "bottom tier and bottom bunk" and was put on bed rest and restricted from playing sports. Id. at 2–3. He alleges that the CO who moved him to the new cell refused to grant his request to be placed in a cell with a bottom bunk. Plaintiff claims that Afflerbach was the one who had him moved from his original cell "for no reason" and that the Defendants are "all connected and they abuse the inmates." Id. at 3. Finally, Plaintiff states that, "[t]he people [he] is accusing in this case are the people who have control of [the Prison] and everybody who works in [the Prison]. [T]hose people are the ones who have control and give . . . orders and . . . put [his] life in danger because they know [his] situation." Id.

III. Legal Standard

Summary judgment is appropriate "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." F.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.

A party seeking summary judgment always bears the initial responsibility for informing the district court of the basis for its motion and identifying those portions of the record that it believes demonstrate the absence of a genuine issue of material fact. Celotex Corp. v. Catrett, 477 U.S. 317, 322 (1986). Where the non-moving party bears the burden of proof on a particular issue at trial, the moving party's initial burden can be met simply by "pointing out to the district court that there is an absence of evidence to support the non-moving party's case." Id. at 325. After the moving party has met its initial burden, "the adverse party's response, by affidavits or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial." F.R. Civ. P. 56(e). Summary judgment is appropriate if the non-moving party fails to rebut by making a factual showing "sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial." Celotex, 477 U.S. at 322. Under Rule 56, the Court must view the evidence presented on the motion in the light most favorable to the opposing party. Anderson, 477 U.S. at 255.

IV. Discussion

A. Defendants' Individual Capacity Liability

Defendants argue that Plaintiff has failed to allege any personal involvement of the Defendants and has not met his burden of establishing deliberate indifference on their part.

Defendants contend that there is simply no link between the activities of the Defendants and the alleged deprivation of Plaintiff's rights. The Third Circuit has held that a Defendant must have been involved in or known of and acquiesced in the deprivation of Plaintiff's rights. Gay v. Petsock, 917 F.2d 768, 771 (3d Cir. 1990) (citing Rode v. Dellarciprete, 845 F.2d 1195, 1207 (3d Cir. 1988)). Each of the three Defendants has filed an "Affidavit of Noininvolvement" in this case which states as follows:

> Affiant was not personally involved, nor did affiant participate in the alleged acts and/or omissions that formed the factual basis for Plaintiff's complaint in the above action.
>
> Affiant did not authorize, approve, encourage, or knowingly acquiesce in the alleged acts and/or omissions that will form the factual basis for Plaintiff's complaint in the above action.

Sweeney Affidavit at ¶¶ 4–5; Meisel Affidavit at ¶¶ 4–5; Afflerbach Affidavit at ¶¶ 4–5. In addition, Plaintiff, in his deposition admitted that in his entire time in the Prison, he never had a conversation or any direct contact with the Defendants. Gonzalez Dep. at 44:25–45:16; 92:20–93:2, Dec. 29, 2005. The Court therefore concludes that because it is undisputed that Defendants never had direct involvement with Plaintiff, any attempt by Plaintiff to establish liability of Defendants in their individual capacities under § 1983 must fail.

B. Defendants' Supervisory Liability

As for Defendants' liability based on their positions as supervisors, the Third Circuit has held that in order to survive summary judgment, a plaintiff must "present enough evidence to support the inference that the defendants 'knowingly and unreasonably disregarded an objectively intolerable risk of harm.'" Beers-Capitol v. Whetzel, 256 F.3d 120, 132 (3d Cir. 2001) (citing Farmer v. Brennan, 511 U.S. 825, 846 (1994)).

Defendants argue that the response to Plaintiff's injury, both at the outset of his incarceration and after his fall from a bunk on June 22, 2003, was entirely reasonable and does not rise to the level of deliberate indifference to a serious medical need.

1. Initial Treatment for Broken Rib

Turning first to Plaintiff's allegation that he was not promptly treated for a broken rib at the outset of his stay at the Prison, Defendants note that due to Plaintiff's complaints of pain, chest x-rays were taken within days of his arrival. Gonzalez Dep. at 30:24–31:7. Those x-rays did not show a broken rib. Id. at 31:8–21. Moreover, when Plaintiff complained of problems with his ribs for a second time, he was again x-rayed. When the second x-ray revealed a fractured rib, Plaintiff was given pain medication as well as a chest wrap. Plaintiff, however, alleges that he suffered because the Prison medical officials failed to find his broken rib when he was first x-rayed. Id. at 44:8–24.

In Estelle v. Gamble, 429 U.S. 97 (1976), the United States Supreme Court recognized that "[a]n inmate must rely on prison authorities to treat his medical needs; if the authorities fail to do so, those needs will not be met." Id. at 103. The Court concluded that "deliberate indifference to serious medical needs of prisoners constitutes the 'unnecessary and wanton infliction of pain,' proscribed by the Eighth Amendment." Id. at 104. The Third Circuit has held that "[t]he standard enunciated in Estelle is two-pronged: '[i]t requires deliberate indifference on the part of the prison officials and it requires the prisoner's medical needs to be serious.'" Monmouth County Corr. Inst. Inmates v. Lanzaro, 834 F.2d 326, 346 (3d Cir.1987) (quoting West v. Keve, 571 F.2d 158, 161 (3d Cir.1978)).

To satisfy the first prong announced in Estelle, an incarcerated individual must

demonstrate that prison authorities exercised "deliberate indifference" to the individual's medical needs.[3] Id. Neither mere allegations of malpractice nor mere disagreement as to the proper medical treatment support a claim of an Eighth Amendment violation. Id. "Needless suffering resulting from a denial of simple medical care, which does not serve any penological purpose, is inconsistent with contemporary standards of decency and thus violates the Eighth Amendment." Atkinson v. Taylor, 316 F.3d 257, 266 (3d Cir. 2000).

Here, Plaintiff acknowledges that the Prison officials provided medical treatment on at least two separate occasions. The first set of x-rays, by Plaintiff's own admission, did not reveal any rib fracture. Plaintiff acknowledged in his deposition that the initial x-ray did not show any broken bones and that it was a "medical decision not to treat [his] chest." Gonzalez Dep. at 69:2–7. The second set of x-rays taken in late May did show a fracture, and Plaintiff was provided with medication and other treatment for the problem. When Plaintiff complained of discomfort, both upon arrival and thereafter, he was given x-rays. When those x-rays indicated a fracture, appropriate medical care was provided. The Defendants, as prison officials, oversaw a medical staff which, by all accounts, adequately addressed Plaintiff's complaints and treated any injuries discovered during the exams. Since neither inadvertent failure to provide medical care nor mere negligence amount to deliberate indifference, the Court finds that under Estelle and its progeny, Plaintiff has failed to show that Defendants, or those that they supervised, were deliberately indifferent to Plaintiff's serious medical need.

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[3] For purposes of this decision, the Court finds that the second prong of the Estelle standard has been satisfied, as Plaintiff's broken rib constitutes a serious medical need.

2. <u>Treatment for Injury Sustained in the Prison</u>

Finally, the Court will examine the injuries sustained by Plaintiff when he fell while climbing into an upper bunk. While Plaintiff was sent to the infirmary on the day following the incident, the issue before the Court is whether the Defendants should be liable under the Eighth Amendment for failure to properly supervise. In order to hold a supervisor liable because his policies or practices led to an Eighth Amendment violation, the plaintiff must identify a specific policy or practice that the supervisor failed to employ and show that: "(1) the existing policy or practice created an unreasonable risk of the Eighth Amendment injury; (2) the supervisor was aware that the unreasonable risk was created; (3) the supervisor was indifferent to that risk; and (4) the injury resulted from the policy or practice." <u>Beers-Capitol v. Whetzel</u>, 256 F.3d 120, 134 (3d Cir. 2001) (citing <u>Sample v. Diecks</u>, 885 F.2d 1099, 1118 (3d Cir. 1989)).

In <u>Sample</u>, the Third Circuit set forth two ways by which a plaintiff can establish a supervisor liability claim. 885 F.2d at 1118. The first is by showing that "the supervisory official failed to respond appropriately in the face of an awareness of a pattern of such injuries," and the second is by showing that "the risk of constitutionally cognizable harm is so great and so obvious that the risk and the failure of supervisory officials to respond will alone support findings of the existence of an unreasonable risk, of knowledge of that unreasonable risk, and of indifference to it." <u>Id.</u>

While Plaintiff does not point to specific policymaking inadequacies on the part of Defendants, the Court will examine the relevant policies implicated in the alleged "bunk" injury. The affidavits submitted by each of the Defendants address the policies in use in the Prison and state as follows:

> It is the policy of LCP (Lehigh County Prison) to place identified medical information and restrictions into a computerized housing report for access by the LCP staff, including COs . . .
>
> The medical information and restrictions are entered into the housing unit report and are accessible by computer so that the prison and the prison personnel can adequately meet an inmate's needs.
>
> The policy of entering identified medical information and medical restrictions into the computerized housing unit report that is accessible by LCP staff is designed to avoid deliberate indifference to the serious medical needs of inmates.

Sweeney Affidavit at ¶¶ 6–8; Meisel Affidavit at ¶¶ 6–8; Afflerbach Affidavit at ¶¶ 6–8. These statements have not been refuted by Plaintiff. In fact, during his deposition, Plaintiff stated only that the CO who placed him in the new cell refused to listen to his complaints about the medical restrictions concerning the use of the top bunk. Plaintiff claims that he informed the CO of his broken rib and that he was on bed rest and says that the CO ignored him and told him that it was a jail and not a hotel. Gonzalez Dep. 52:12–53:1. In their brief, Defendants argue that there was no unreasonable risk created by the policies or customs of the Prison and that the CO who placed Plaintiff in the cell with the upper bunk "either ignored the housing unit information listed for the Plaintiff or the information regarding Plaintiff's restriction to a lower bunk was not reflected in the computer readout." Def's Br. at 6. Whether the CO ignored the housing unit report or the report itself was improperly created, Plaintiff has not alleged the medical reporting policies in the Prison are inherently flawed.

With no showing of a systemic flaw in the medical reporting policies, the Court must conclude that Plaintiff's placement in an upper bunk in the Prison for one night was a one-time failure as to a single prisoner. Plaintiff has therefore failed to meet his burden of showing the existence of a genuine issue of material fact as to whether the Defendants failed to adequately

respond to a pattern of past occurrences of injuries like the Plaintiff's or that the risk of constitutional harm was so great and so obvious that the risk and the failed supervisory response alone were sufficient to meet the four-part test.

First, Plaintiff never alleged, and did not establish during the course of discovery, that there was a pattern of injuries like the ones that he suffered, so the first method of meeting the Sample test is inapplicable.[4] At most, Plaintiff has alleged that Defendants were aware of (and somehow responsible for) his placement in a cell with only an upper bunk available. This is insufficient to survive summary judgment, as a successful deliberate indifference claim requires a showing that the Defendants knew of the risk to the Plaintiff before the Plaintiff's injury occurred. Beers-Capitol, 256 F.3d at 137 (citing Lewis v. Richards, 107 F.3d 549, 553 (7th Cir. 1997)).

Plaintiff also fails to satisfy the second method of establishing a supervisor liability claim, as he is unable to show that "the risk of constitutionally cognizable harm is so great and so obvious that the risk and the failure of supervisory officials to respond will alone support findings of the existence of an unreasonable risk, of knowledge of that unreasonable risk, and of indifference to it." Sample, 885 F.2d at 1118. The Defendants' affidavits state that the medical restrictions for prisoners are included in computerized "housing unit reports," which are accessible by prison personnel and are designed to ensure that prisoners receive proper medical attention. Defendants also included in their declarations descriptions of the policies and

[4] The Court notes that Plaintiff in his Complaint, after describing his placement in a cell with an upper bunk and his subsequent fall therefrom, alleges that "this is how Lehigh County employees treat the inmates." Complaint at 4. Although this statement can be seen as a claim of regular mistreatment by employees of the Prison, the allegation was never specified or substantiated, as Plaintiff failed to take any discovery and made no further comments on the matter during his deposition.

procedures in place at the Prison and specifically noted that they are designed to effectively provide safe conditions for the prisoners. Plaintiff has in no way refuted these statements and has failed to establish that there were any prior problems with the implementation of the Prison's procedures. The Third Circuit has recognized that the deliberate indifference standard set out in Farmer is a high one and requires "actual knowledge or awareness on the part of the defendant." Id. While Plaintiff has for purposes of summary judgment established a one-time failure of the medical reporting system in place at the Prison, the evidence is not sufficient to create a genuine issue of material fact as to whether the policies and procedures created a risk of harm to Plaintiff that was "so great and so obvious" that Defendants "must have known of the excessive risk but were indifferent to it." Beers-Capitol, 256 F.3d at 138.

V. Conclusion

For the reasons stated above, the Courts concludes that Defendants, both through their brief and the various affidavits attached thereto, have met their initial burden under F.R. Civ. P. Rule 56 and shown that there are no issues of material fact and that they are entitled to judgment as a matter of law. Plaintiff's only response to the motion was his four-page letter dated March 24, 2006, and he failed to address both the arguments set forth in Defendants' brief and the assertions contained in the three affidavits filed by each of the Defendants. Therefore, looking at the evidence presented in the Motion in the light most favorable to the non-moving party, the Court finds that a reasonable jury could not return a verdict for the Plaintiff, and Defendants' Motion for Summary Judgment will therefore be granted.

An appropriate Order follows.

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ORDER

AND NOW this 28th day of June, 2006, upon consideration of Defendants' Motion for Summary Judgment (Doc. No. 11), and the response thereto, it is ORDERED that the Motion for is GRANTED. Judgment is entered in favor of Defendants Edward G. Sweeney, Dale A. Meisel, and Nancy L. Afflerbach and against Plaintiff John Nunez Gonzalez. The Clerk shall close this case.

BY THE COURT:

s/ Michael M. Baylson
Michael M. Baylson, U.S.D.J.

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