

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

RICHARD PRESLEY, A.K.A. : CIVIL ACTION
RICHARD URBANSKI :
 :
 :
 v. :
 :
 :
 PENNSYLVANIA DEPARTMENT :
 OF CORRECTIONS, et al. : NO. 99-2088

ORDER - MEMORANDUM

AND NOW, this 15th day of July, 1999, the motion to dismiss of defendants Martin F. Horn, Donald T. Vaughn, “Mr. McSurity,” “Mr. Schwartz,” and “Mr. Sanders” is granted.¹ Jurisdiction is federal question. 28 U.S.C. § 1331.

In this § 1983 action plaintiff Richard Presley, an inmate at the State Correctional Institution at Graterford, is alleged to have been injured while performing janitorial services. Compl. ¶ 1. When he slipped while inside a Silo drum — a cylindrical structure used for storage — his right hand was cut by an uncovered exhaust fan. Id. ¶¶ 2, 9. Compensatory and punitive damages are claimed for defendants’ negligence and deliberate indifference. Id. ¶¶ 3, 9, 11.

“No action shall be brought with respect to prison conditions under section

¹Pro se complaints, which are held to less stringent standards than pleadings by lawyers, should not be dismissed unless it appears “beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief.” McDowell v. Del. State Police, 88 F.3d 188, 189 (3d Cir. 1996) (quoting Haines v. Kerner, 404 U.S. 519, 520, 92 S.Ct. 594, 595, 30 L.Ed.2d 652 (1972)).

1983 of this title, or any other Federal law, by a prisoner confined in any jail, prison, or other correctional facility until such administrative remedies as are available are exhausted.” 42 U.S.C. § 1997e(a) (1998). “The Department’s inmate grievance review system provides an adequate and meaningful legal remedy.”² Waters v. Commonwealth, 97 Pa. Commw. 283, 289, 509 A.2d 430, 433 (1986); see also 37 Pa. Code § 93.9(a) (1999) (establishing inmate grievance system); Hanson v. Chesney, 37 F. Supp. 2d. 399, 402 (E.D. Pa. 1999) (dismissing § 1983 complaint for failure to exhaust administrative remedies).

Plaintiff cites several cases for the proposition in various settings that exhaustion is not required. See Wilwording v. Swenson, 404 U.S. 249, 92 S.Ct. 407, 30 L.Ed.2d 418 (1971); Houghton v. Shafer, 392 U.S. 639, 88 S.Ct. 2119, 20 L.Ed.2d 1319 (1968); Damico v. California, 389 U.S. 416, 88 S.Ct. 526, 19 L.Ed.2d (1967); McNeese v. Board of Educ., 373 U.S. 668, 83 S.Ct. 1433, 10 L.Ed.2d 622 (1963); Monroe v. Pape, 365 U.S. 167, 81 S.Ct. 473, 5 L.Ed.2d 492 (1961), overruled by Monell v. Department of Soc. Servs., 436 U.S. 658, 98 S.Ct. 2018, 56 L.Ed.2d 611 (1978). However, those cases either did not involve prisoners as parties or administrative remedies were found to be futile.

²Plaintiff argues to the contrary because prison grievance system proceedings are inadmissible in court. See Department of Corrections, Commonwealth of Pennsylvania, Consolidated Inmate Grievance Review System § VI(F)(1) (1998). Whether those administrative remedies are inadequate on any basis can not be ruled on here given the lack of a sufficient record. If the prison grievance system is inadequate, plaintiff has not presented any evidence to that effect. No view on this issue is expressed.

Plaintiff concedes that he has not made any attempt to use the administrative procedures available to him under Pennsylvania law. Accordingly, this case must be dismissed.³

Edmund V. Ludwig, J.

³Since the exhaustion of administrative remedies is a threshold issue, there is no need to consider defendants' argument that the complaint fails to state a valid § 1983 claim.