

dismiss on the present record. For the reasons that follow, the court will grant the motion.

II. STANDARD OF REVIEW

The defendants move to dismiss the amended complaint pursuant to Federal Rule of Civil Procedure 12(b)(6). Dismissal is appropriate pursuant to this Rule if the complaint fails “to state a claim upon which relief can be granted.” FED. R. CIV. P. 12(b)(6). In this inquiry, the court must accept as true and view in the light most favorable to the non-movant the well-pleaded allegations of the complaint. *Doug Grant, Inc. v. Greate Bay Casino Corp.*, 232 F.3d 173, 183-84 (3d Cir. 2000). The court ‘need not accept as true “unsupported conclusions and unwarranted inferences.”’ *Id.* (quoting *City of Pittsburgh v. West Penn Power Co.*, 147 F.3d 256, 263 n.13 (3d Cir. 1998)) (quoting *Schuylkill Energy Res., Inc. v. Pennsylvania Power & Light Co.*, 113 F.3d 405, 417 (3d Cir. 1997)). It is the duty of the court, however, ““to view the complaint as a whole and to base rulings not upon the presence of mere words but, rather, upon the presence of a factual situation which is or is not justiciable.”’ *Id.* at 184 (quoting *City of Pittsburgh*, 147 F.3d at 263).

Although the defendants allege the amended complaint is facially insufficient, they also ask the court to consider materials not contained in the plaintiff’s pleadings, including the affidavit of a prison grievance hearing officer. Thus, to the extent the court relies upon such materials, it will treat the present motion as one for summary judgment pursuant to Federal Rule of Civil Procedure 56. *See, e.g., Camp v. Brennan*, 219 F.3d 279, 280 (3d Cir. 2000) (converting Rule 12(b)(6) attack to one under Rule 56 when declaration of prison hearing officer was considered). Pursuant to Rule 56, 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 judgment as a matter of law.” FED. R. CIV. P.

56(c); *see also Boyle v. County of Allegheny Pa.*, 139 F.3d 386, 392 (3d Cir. 1998). Thus, summary judgment is appropriate only if the moving party shows there are no genuine issues of material fact that would permit a reasonable jury to find for the non-moving party. *Boyle*, 139 F.3d at 392. A fact is material if it might affect the outcome of the suit. *Id.* (citing *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 247-248 (1986)). An issue is genuine if a reasonable jury could possibly find in favor of the non-moving party with regard to that issue. *Id.* In deciding the motion, the court must construe all facts and inferences in the light most favorable to the non-moving party. *Id.*; *see also Assaf v. Fields*, 178 F.3d 170, 173-74 (3d Cir. 1999).

III. FACTUAL BACKGROUND

Following are the facts as alleged by Lemos. On September 30, 1999, several inmates of the MPCJF were walking to the prison chapel, escorted by Correction Officers Burton and Reeves. Lemos and another inmate, Juan Rodriguez, began “horseplaying and laughing.” In response, Burton and Officer Anthony Amado removed the two prisoners from the line and led them to the “interview” or “visit” room near their cells. The officers then separated Lemos and Rodriguez, at which point Lemos, Reeves, and Burton were alone together in the visit room. Reeves then shut the door to the room “and started yelling, ‘What is your problem, Mexican?’” Lemos responded that he did not have a problem with anyone. Burton then punched Lemos and, the plaintiff maintains, “knocked me down to the floor at which point C/O Reeves started kicking me.” After “a good 3 minutes” of being kicked, Lemos was led back to his cell. Upon his return, the Quick Response Team (“QRT”) arrived at his cell and “beat [Lemos] some more.” As a result of the beatings, the plaintiff alleges that his “arm was messed up,” his “nose was swelled [sic] up” and he “receive[d] no medical attention” for his injuries.

The defendants' account of the incident of September 30, 1999 differs. According to the disciplinary report filed by Officer Burton, the incident occurred as Lemos describes until Burton and Reeves went to the interview room to escort the plaintiff back to his cell. At that point, the report indicates that Lemos "became verbally abusive" to Burton. Burton placed his right hand on Lemos's shoulder to guide him back to his cell. Lemos then struck Burton on the side of the neck; Burton responded by grabbing Lemos and putting him on the ground. Burton's affidavit and the Incident Reports filed by Burton and Reeves on September 30, 1999 indicate that at that point, Lemos was handcuffed by Reeves and escorted back to his cell. The QRT then arrived, along with Sergeant Patrick Sheets, and Lemos was escorted to the prison medical unit, where he was examined by Nurse Julie. A report filed by Sergeant Michael McCreanor indicates that, following the medication examination, the plaintiff was "deemed not hurt."

Following the incident, disciplinary charges of assault and disorderly/threatening conduct were filed against Lemos. *See Pre-Hearing Detention Order and Notice of Disciplinary Hearing*, attached to Complaint. It appears from the plaintiff's statements in his complaint that he was found guilty of one or both charges, although the court has received no documentation of such a finding.

IV. DISCUSSION

Burton and Reeves move to dismiss the complaint on several grounds. First, they argue that Lemos has failed to exhaust the administrative remedies available to him prior to filing a § 1983 action as required by the Prison Litigation Reform Act ("PLRA") of 1996. The PLRA mandates that no § 1983 suit regarding prison conditions may be maintained by an inmate "until such administrative remedies as available are exhausted." 42 U.S.C. § 1997e(a). The term "prison

conditions” applies to “the environment in which prisoners live, the physical conditions of that environment, and the nature of the services provided therein.” *Booth v. Churner*, 206 F.3d 289, 291 (3d Cir. 2000). Furthermore, the exhaustion requirement applies to “all inmate lawsuits about prison life, whether they involve general circumstances or particular episodes, and whether they allege excessive force or some other wrong.” *Porter v. Nussle*, 534 U.S. 516, 532 (2002). The “bright line rule” requiring exhaustion of administrative remedies applies even when the ultimate relief sought is not available through the administrative process. *Nyhuis v. Reno*, 204 F.3d 65, 78 (3d Cir. 2000); *Booth*, 206 F.3d at 300. “Substantial” compliance with the administrative remedy scheme, however, will suffice. *Nyhuis*, 204 F.3d at 77-78.

Lemos’s allegations that the Correction Officers used excessive force and then failed to provide him with adequate medical treatment clearly fall within the ambit of the PLRA. Thus, Lemos must have exhausted his administrative remedies before filing the present suit.

At Gander Hill, there are at least three levels of review in the inmate grievance procedure: Informal Resolution; Resident Grievance Committee Recommendation/Warden’s Decision; and Final Decision.² To initiate the first level of review, the inmate files Form 584R, which is forwarded to the relevant shift commanders and unit supervisors. Following an investigation, these employees document their findings on Form 175R, attempt to facilitate a resolution, and report results to the Inmate Grievance Chair (“IGC”). Unresolved grievances continue to Level II, in which the Resident

² Information regarding the prisoner grievance system is derived from Procedure 4.4, “Inmate Grievance Procedure,” of the Procedure Manual issued by Delaware’s Bureau of Prisons and revised May 15, 1997. Procedure 4.4 is implemented at Gander Hill by that institution’s Standard Operating Procedure Policy Number 120.05, “Offender Grievances,” revised January 1, 2001.

Grievance Committee reviews the documentation, hears testimony, and makes a recommendation. The grievant is offered the opportunity to participate in the hearing. The Committee's work is documented on Form 584A and forwarded to the IGC. The Warden or his Designee then responds by way of Form 584B. If either the grievant or the Warden does not concur with the recommendation of the Committee, the dispute is referred to Level III. There, the Bureau Grievance Officer ("BGO") reviews the grievance file and may concur with the Warden, attempt mediation between the parties, or recommend outside review. Finally, the Chief of the Bureau of Prisons accepts or rejects the recommendation of the BGO and issues a final decision.

It is clear from Lemos's complaint that he did not exhaust the prison's grievance procedure before filing the present suit. As his complaint, Lemos filled out and filed the "Form to be Used by a Prisoner in Filing a Complaint under the Civil Rights Act, 42 U.S.C. § 1983." Section II of the form asks, "Is there a prisoner grievance procedure in [the] institution [where you were incarcerated]?" and "Did you present the facts relating to your complaint in the state prisoner grievance procedure?" Lemos answered both questions in the affirmative. In answer to the next questions, "What steps did you take?" and "What was the result?," Lemos asserted: "I put in a grievance and didn't here [sic] from them yet. Still waiting, found guilty 90 days in the hole. But I never went. They forgot."³

The plaintiff's statement that he never heard a response to his grievance complaint and is "[s]till waiting" indicates fairly unequivocally that he did not complete the inmate grievance

³ The plaintiff's statement that he was "found guilty" and ordered to spend 90 days in "the hole" seems to refer to a disciplinary hearing that occurred on or about October 13, 1999 stemming from the incident of September 30, 1999. Apparently, the plaintiff was found guilty of assault and/or disorderly conduct.

procedure.⁴ In addition, the plaintiff does not mention any Level I, II, or III hearings or recommendations in his complaint. Nor has he attached copies of any of the numerous forms which would have been produced during the review process, or records from any hearings which would have occurred. Finally, Sergeant Mary Moody, an employee at Gander Hill involved in the informal resolution of inmate grievances, reviewed all records of grievances and appeals filed by Lemos and found no records of any grievance relating to the incident of September 30, 1999. *See* Affidavit of Sgt. Moody, Ex. A to Defs.' Brief. Sergeant Moody also noted that the plaintiff has filed other, unrelated grievances in the past; thus, he appears to be aware of Gander Hill's inmate grievance procedure and how to use it. *Id.*

Lemos has not adduced any evidence to rebut the allegation that he failed to exhaust his administrative remedies as required by the PLRA. Indeed, from his own statements in the complaint, it appears rather plainly that he has not fulfilled the exhaustion requirement. Accordingly, the court must grant summary judgment to the defendants and dismiss the present action. Because the present suit is prohibited by the PLRA, the court will not address the merits of the plaintiff's claims or the defendants' other asserted grounds for dismissal. *See, e.g., Nyhuis*, 204 F.3d at 78 (affirming dismissal of complaint for failure to exhaust, but vacating portion of district court's opinion addressing merits of plaintiff's claims).

V. CONCLUSION

For the aforementioned reasons,

⁴ The court notes that the hearing of October 13, 1999 stemming from the same incident of which Lemos complains does not satisfy the exhaustion requirement. The disciplinary hearing is distinct from any hearing the plaintiff may have obtained in connection to his grievance. In any case, even if the October 13, 1999 disciplinary hearing included an investigation of Lemos' grievance, it is clear the plaintiff did not invoke the grievance procedure through Level III.

IT IS HEREBY ORDERED that:

1. The defendants' Motion to Dismiss (D.I. 20) is GRANTED;
2. The complaint is DISMISSED WITHOUT PREJUDICE;
3. The Clerk of the court is directed to close this case.

Dated: June 17, 2003

Gregory M. Sleet
UNITED STATES DISTRICT JUDGE