IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF DELAWARE

JESSE BROWN,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Civ. No. 03-825-SLR
	)	
FIRST CORRECTIONAL MEDICAL, INC., LINDA HUNTER, and COURTNEY POURT,	)	
	)	
Defendants.	)	

Jesse Brown, Howard R. Young Correctional Institute, Wilmington, Delaware. Pro Se.

Daniel L. McKenty, Esquire of McCullough & McKenty, P.A., Wilmington, Delaware. Counsel for Defendants.

MEMORANDUM OPINION

Dated: June 8, 2005
Wilmington, Delaware

ROBINSON, Chief Judge

I. INTRODUCTION

On July 31, 2003, plaintiff filed this action under 42 U.S.C. § 1983, alleging Eighth Amendment violations for failure to treat his foot injury while he was incarcerated at Howard R. Young Correctional Institute ("Howard Young") in Delaware. (D.I. 17) This court has jurisdiction over this action pursuant to 28 U.S.C. § 1331. Pending before the court is defendants' motion for summary judgment. (Id.) Plaintiff did not respond to defendants' motion despite being given an extended deadline. (D.I. 18) For the reasons stated, defendants' motion shall be granted.

II. BACKGROUND

Plaintiff is an inmate at Howard Young and is employed in the prison's kitchen. (D.I. 17, Ex. 1) While at work on October 3, 2002, a meat rack containing 100 pounds of red meat broke and fell on plaintiff's left foot. (Id.) Plaintiff suffered two broken toes. (Id.) Plaintiff alleges that the prison is failing to treat his foot injury effectively and asserts that the prison has refused to send plaintiff to an outside physician. (Id.) Plaintiff filed a grievance and spoke with Sergeant Moody regarding these concerns. (Id.)

On October 4, 2002, an x-ray was conducted and revealed a fracture in the left great toe. (D.I. 17, Ex. 4) On November 12, 2002, an additional x-ray showed that the fracture was still

present on the left great toe. (Id.) On December 31, 2002, plaintiff visited the prison infirmary for his toe problems and was given medication. On February 14, 2003, a follow up x-ray revealed that the bones and soft tissues on plaintiff's left foot were within normal limits. (Id.)

Plaintiff visited the prison infirmary at least eight other times complaining of toe problems: June 4, 2003, June 19, 2003, June 20,2003, June 21, 2003, July 11,2003, July 23, 2003, July 24, 2003, and July 31, 2003. (Id.) Plaintiff was prescribed medication on at least one occasion. (Id.) Additionally, Dr. Kastre verbally ordered an orthopedic consult for plaintiff on July 23, 2003. (Id.) The consultation request form was completed on July 24, 2003. (D.I. 17, Ex. 5) Plaintiff underwent the consultation on July 31, 2003 and an x-ray revealed that plaintie rorkeep oot was normal. (Id.)

III. STANDARD OF REVIEW

Because the parties have referred to matters outside the pleadings, defendants' motion to dismiss shall be treated as a motion for summary judgment. See Fed. R. Civ. P. 12(b)(6). A court shall grant summary judgment only 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). The moving party bears the burden of proving that no genuine issue of material fact exists. See Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 586 n.10 (1986). "Facts that could alter the outcome are 'material,' and disputes are 'genuine' if evidence exists from which a rational person could conclude that the position of the person with the burden of proof on the disputed issue is correct." Horowitz v. Fed. Kemper Life Assurance Co., 57 F.3d 300, 302 n.1 (3d Cir. 1995) (internal citations omitted). If the moving party has demonstrated an absence of material fact, the nonmoving party then "must come forward with 'specific facts showing that there is a genuine issue for trial.'" Matsushita, 475 U.S. at 587 (quoting Fed. R. Civ. P. 56(e)). The court will "view the underlying facts and all reasonable inferences there m in the light most favorable to the party opposing the motion." Pa. Coal Ass'n v. Babbitt, 63 F.3d 231, 236 (3d Cir. 1995). The mere existence of some evidence in support of the nonmoving party, however, will not be sufficient for denial of a motion for summary judgment; there must be enough evidence to enable a jury reasonably to find for the nonmoving party on that issue. See Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 249 (1986). If the nonmoving party fails to make a sufficient showing on an essential element of its case with respect to which it has the burden of proof, the moving

party is entitled to judgment as a matter of law. See Celotex Corp. v. Catrett, 477 U.S. 317, 322 (1986).

IV. DISCUSSION

To state a violation of the Eight Amendment right to adequate medical care, plaintiff "must allege acts or omissions sufficiently harmful to evidence deliberate indifference to serious medical needs." Estelle v. Gamble, 429 U.S. 97, 106 (1976); accord Smullen v. Kearney, No. CIV.A.02-082-SLR, 2003 WL 21383727, *3, (D. Del. June 13, 2003). Deliberate indifference exists when the prison physician's acts constitute "an unnecessary and wanton infliction of pain," are "repugnant to the conscience of mankind" or offend the "evolving standards of decency." Id. Furthermore, "where the plaintiff has received some care, inadequacy or impropriety of the care that was given will not support an Eight Amendment claim." Norris v. Frame, 585 F.2d 1183, 1186 (3d Cir. 1978), quoted in Smullen at *3.

Plaintiff has regularly been seen by FCM staff members concerning his left foot and received medication, several x-rays and a consultation. (D.I. 17, Exs. 4,5) The latest medical record demonstrated that plaintiff's injury had resolved. (D.I. 17, Ex. 5) Therefore, plaintiff has received care and his allegations that the care was inadequate do not support an Eighth Amendment claim. Defendants' motion for summary judgment shall be granted.

V. CONCLUSION

For the reasons stated, defendants' motion for summary judgment is granted. An order consistent with this memorandum opinion shall issue.

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF DELAWARE

JESSE BROWN,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Civ. No. 03-825 SLR
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FIRST CORRECTIONAL MEDICAL, INC., LINDA HUNTER, and COURTNEY POURT	)	
	)	
	)	
Defendants.	)	

O R D E R

At Wilmington this 8th day of June, 2005, consistent with the memorandum opinion issued this same date;

IT IS ORDERED that:

1. Defendants' motion for summary judgment is granted. (D.I. 17)

2. The Clerk of the Court is directed to enter judgment in favor of defendants and against plaintiff.

United States District Judge