IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF DELAWARE

RANDOLPH BOWERS, III,	:	
	:	
Plaintiff,	:	
	:	
v.	:	Civil Action No. 99-533-JJF
	:	
C.O. MOUNET, et al.,	:	
	:	
Defendants.	:	

Randolph Bowers, III, New Castle, Delaware.
Pro Se Plaintiff.

Seth J. Reidenberg, Esquire, of WHITE & WILLIAMS LLP, Wilmington, Delaware.
Attorney for Defendant P.H.S. Medical Department Supervisor R.N. Marvel.

Stuart B. Drowos, Esquire, Deputy Attorney General, DELAWARE DEPARTMENT OF JUSTICE, Wilmington, Delaware.
Attorney for State Defendants.

MEMORANDUM OPINION

July 18, 2001
Wilmington, Delaware

FARNAN, District Judge.

Presently before the Court is Defendant P.H.S. Medical Department Supervisor R.N. Marvel's Motion to Dismiss (D.I. 30), and State Defendants' Motion to Renew Motion to Dismiss (D.I. 31). For the reasons stated below, the Court will grant Defendant P.H.S. Medical Department Supervisor R.N. Marvel's Motion to Dismiss (D.I. 30), and will grant in part and deny in part State Defendants' Motion to Renew Motion to Dismiss (D.I. 31).

BACKGROUND

According to his Amended Complaint (D.I. 8), on June 13, 1999, while incarcerated in the Multi-Purpose Criminal Justice Facility ("MPCJF"), Randolph Bowers III ("Plaintiff") injured his back while picking up a bucket of water. Plaintiff immediately told Correctional Officer Mounet ("Defendant Mounet") about his injury, but Defendant Mounet did not allow Plaintiff to seek medical treatment.

On June 14, Plaintiff told Correctional Officer Stokes ("Defendant Stokes") about his back injury, and that it was causing him extreme pain. Defendant Stokes told Plaintiff that, if he remembered and when he got time, he would notify the housing unit supervisor about Plaintiff's injury. When Plaintiff advised Defendant Stokes that he believed emergency medical attention was necessary, Defendant Stokes ordered him to complete his work duties and told Plaintiff: "[u]nless you are dying or pass out, I will not be calling or notifying anyone in the medical department." That same day, Corporal Morrison ("Defendant Morrison") visited Plaintiff in Plaintiff's living quarters. After having been advised by Plaintiff regarding the extent of his injury and after having observed Plaintiff's inability to get into the top bunk, Defendant Morrison told Plaintiff: "no doctor or nurse will be contacted about your problem."

On June 18, Plaintiff was seen by a representative of Prison Health Services' medical department ("P.H.S."), who referred Plaintiff to a doctor. On June 21, Dr. Ivens examined Plaintiff at MPCJF. Dr. Ivens advised Plaintiff that he may have slipped a disc in his back, and that he would be referred to an outside physician in two weeks if the back pain persisted.

Plaintiff filed this action on August 13, 1999, against Defendants Mounet, Stokes, and Morrison, Deputy Warden Hawthorne, Warden Williams, (collectively "State Defendants"), and P.H.S. Medical Department Supervisor R.N. Marvel ("Defendant Marvel"), for negligence and for violating 42 U.S.C. § 1983 by denying him medical care in contravention of his Eighth Amendment rights.

The State Defendants filed a motion to dismiss (D.I. 25) on August 10, 2000, and Defendant Marvel filed a motion to dismiss (D.I. 27) on August 21, 2000, both of which were denied by the Court with leave to renew, because Plaintiff had not been properly served with either motion. (D.I. 29). Defendant Marvel re-filed her motion and properly served Plaintiff on April 9, 2001, (D.I. 30), and the State Defendants properly renewed their motion on April 10, 2001 (D.I. 31). Since Plaintiff has failed to file answer briefs within the time frame provided by the Court, the Court will resolve the motions on the papers submitted.

STANDARD OF REVIEW

When a court analyzes a motion to dismiss brought under Rule 12(b)(6) of the Federal Rules of Civil Procedure, the factual allegations of the complaint must be accepted as true. Langford v. City of Atlantic City, 235 F.3d 845, 847 (3d Cir. 2000). The Court must draw all reasonable inferences in

favor of the nonmoving party. Id. In sum, the only way a court can grant a Rule 12(b)(6) motion to dismiss is "if it appears that the [nonmoving party] could prove no set of facts" consistent with the allegations that would entitle it to relief. Id.

DISCUSSION

I. Defendant Marvel's Motion to Dismiss (D.I. 30)

A. Exhaustion of Administrative Remedies

Defendant Marvel contends that Plaintiff failed to exhaust his administrative remedies, and that therefore, his Amended Complaint should be dismissed. Under the Prison Litigation Reform Act of 1996, "[n]o action shall be brought with respect to prison conditions under section 1983 . . . 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).

In his Amended Complaint, Plaintiff alleges that he filed a grievance in accordance with the MPCJF's grievance procedure, but that he had received "nothing to date" in response. (D.I. 8 at 2). The United States Supreme Court requires a plaintiff to exhaust administrative remedies even where the grievance process would not provide him the remedy that he is seeking in his federal court action. Booth v. Churner, 121 S. Ct. 1819 (2001). See also Nyhuis v. Reno, 204 F.3d 65, 71 (3d Cir. 2000)(holding that there is no "futility" exception to the prisoner exhaustion requirement). However, this Court recently held that a Section 1983 prisoner complaint should not be dismissed for failure to exhaust administrative remedies when the record indicates the plaintiff filed a grievance that has been completely ignored by prison authorities beyond the time allowed for responding to grievances under the grievance procedure. Chapman v. Brewington-Carr, C.A. No. 97-271-JJF, slip op. at 3-6 (D. Del. May 1, 2001)(declining to extend Nyhuis[1]). See also Powe v. Ennis, 177 F.3d 393, 394 (5th Cir.

[1] Although the Supreme Court's decision in Booth was issued after this Court's decision in Chapman, Booth does not refute the principles announced in Chapman.

1999)("A prisoner's administrative remedies are deemed exhausted when a valid grievance has been filed and the state's time for responding [to the grievance] has expired"); Freeman v. Snyder, 2001 WL 515258, at *5 (D. Del. April 10, 2001)(holding that failure to exhaust administrative remedies is an affirmative defense that must be established by the defendant).

In the instant case, Plaintiff's grievance was not attached to his Amended Complaint, nor was it attached to either Defendants' motion. However, it is clear from Plaintiff's original Complaint that Plaintiff filed his grievance on or prior to June 21, 1999. (D.I. 2). This means that the grievance was filed almost two years before Defendant Marvel re-filed the instant motion, and that prison authorities still have not responded. Although the relevant grievance procedures have not been included as part of the record in this case, it is safe to assume that such a lengthy delay in handling Plaintiff's grievance exceeded the amount of time allowed for prison authorities to respond under said grievance procedure. Accordingly, the Court concludes that the instant case is analogous to Chapman, and that Plaintiff's Amended Complaint cannot be dismissed for failure to exhaust administrative remedies.

B. Failure to State a Section 1983 Claim

Defendant Marvel also contends that Plaintiff's Section 1983 claim must be dismissed pursuant to Rule 12(b)(6). Defendant Marvel notes that, in order to sustain a Section 1983 claim for inadequate medical treatment, "a prisoner must allege acts or omissions sufficiently harmful to evidence deliberate indifference to serious medical needs." (D.I. 30 at 6)(citing Estelle v. Gamble, 429 U.S. 97, 104 (1976)). This standard is met only if the prison authorities deliberately deprive a prisoner of adequate medical care or when the prison authorities fail to act despite their knowledge of "a substantial risk of serious harm." Daniels v Delaware, 120 F. Supp. 2d 411, 426 (D. Del. 2000). In order to be liable under this standard, the prison authorities must have acted wilfully or with "subjective recklessness." Id. at 427.

In his Amended Complaint, Plaintiff alleges that Defendant Marvel acted with deliberate indifference to Plaintiff's medical needs by: (1) failing to promptly schedule Plaintiff for a medical

examination within a reasonable time, and (2) failing to promptly schedule Plaintiff to be examined by a doctor specializing in lower back pain. (D.I. 8 at ¶¶ 32-33). However, Plaintiff fails to allege any facts indicating that Defendant Marvel knew about Plaintiff's injury, or that she acted with a willful or reckless disregard to Plaintiff's medical needs. In fact, such an allegation is refuted by Plaintiff's Amended Complaint, which alleges that Plaintiff was seen by a P.H.S. medical department employee less than a week after he sustained his injury. Absent any allegations that Defendant Marvel knew about Plaintiff's injured back, Plaintiff's Section 1983 claim against Defendant Marvel must be dismissed.

C. Negligence Claim

Having concluded that Plaintiff's Section 1983 claim asserted against Defendant Marvel must be dismissed, the only remaining claim against Defendant Marvel is a state law claim for negligence. (D.I. 8 at ¶ 33). Defendant Marvel urges this Court to decline to exercise jurisdiction over the negligence claim pursuant to 28 U.S.C. § 1367. (D.I. 30 at 9). Under 28 U.S.C. § 1367(c)(2), district courts may refuse to exercise their supplemental jurisdiction over state claims if the state claims "substantially predominate[] over the [federal] claim or claims." The Court concludes that, in the instant case, because the only remaining claim asserted against Defendant Marvel is a state law claim, the Court should refrain from exercising jurisdiction over it. See, e.g., True North Composites LLC v. Harris Specialty Chemicals Inc., 00-157-JJF, slip op. at 2-3 (D. Del. March 30, 2001). Accordingly, Plaintiff's claim for negligence against Defendant Marvel should be dismissed for lack of subject matter jurisdiction.

II. State Defendants' Motion (D.I. 31)

A. Exhaustion of Administrative Remedies

The State Defendants contend that Plaintiff's Amended Complaint must be dismissed for failure to exhaust administrative remedies. For the reasons discussed above regarding Defendant Marvel's

motion, the Court concludes that the State Defendants' contention lacks merit.[2]

B. Failure to State a Section 1983 Claim

The State Defendants also contend that Plaintiff's Section 1983 claim should be dismissed for failing to adequately allege deliberate indifference to Plaintiff's medical needs. (D.I. 26 at ¶ 5). Specifically, the State Defendants contend that it is only their responsibility to provide access to medical care, and that, as evidenced by the fact that Plaintiff was seen by medical personnel on June 18, 1999, and by a doctor on June 21, 1999, Plaintiff was not deprived of access to medical care.[3] (D.I. 26 at ¶ 5). The Court concludes, however, that the fact that Plaintiff was eventually seen by a doctor does not necessarily mean that the State Defendants did not act with deliberate indifference, especially when Plaintiff was forced to work for several days, with severe back pain, despite his pleas for medical assistance.

The State Defendants also contend that Plaintiff fails to allege specific facts establishing each State Defendant's personal involvement in the complained of conduct, and therefore, that the Amended Complaint should be dismissed. (D.I. 26 at ¶ 5). The Court concludes that Plaintiff does adequately allege deliberate indifference by several of the State Defendants. For instance, Plaintiff alleges that Defendant Mounet ignored Plaintiff's plea for medical assistance after Plaintiff initially injured his back,

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[2] In their motion, the State Defendants do briefly discuss some of the grievance procedures analyzed in prior decisions of this Court. (D.I. 26 at ¶ 4). However, the State Defendants fail to attach to their motion the grievance procedures relevant to the instant litigation, and the Court refuses to assume that the version of the grievance procedures analyzed in prior decisions is identical to the procedures applicable here. In the future, the State Defendants should attach the relevant portions of the grievance procedure as exhibits to their motion when they seek dismissal for failure to exhaust administrative remedies.

[3] In support of their motion, the State Defendants also offer evidence of Plaintiff's medical care after June 21, 1999. The Court, however, will refuse to consider such evidence because it discusses events outside of the pleadings and is not properly considered when deciding a Rule 12(b)(6) motion to dismiss.

and, apparently, required Plaintiff to continue working. (D.I. 8 at ¶ 9). Plaintiff alleges that the following day, Defendant Stokes ordered Plaintiff to work despite Plaintiff's claim of extreme back pain, and that Defendant Stokes taunted Plaintiff by stating: "Unless you are dying or pass out, I will not be calling or notifying anyone in the medical department." (D.I. 8 at ¶ 15). Also on that same day, Plaintiff alleges that Defendant Morrison visited Plaintiff's living quarters and, after witnessing Plaintiff's inability to get himself into his bunk due to his back pain, told Plaintiff: "That's too bad. No doctor or nurse will be contacted about your problem." (D.I. 8 at ¶¶ 19-20). Based on these pleadings, the Court concludes that Plaintiff does adequately allege deliberate indifference by Defendants Mounet, Stokes, and Morrison.[4]

However, the Court agrees with the State Defendants that Plaintiff fails to adequately allege deliberate indifference by Defendants Williams and Hawthorne. Plaintiff merely alleges that he sent a letter to Defendant Williams informing Defendant Williams of his inability to obtain medical care, but that this effort "bore no fruit." (D.I. 8 at ¶ 23). However, Plaintiff does not allege when he sent the letter to Defendant Williams. Recognizing that Plaintiff was seen by PHS medical personnel on June 18, 1999, the allegations do not sufficiently establish that Defendant Williams knew of Plaintiff's injury or of Plaintiff's inability to obtain medical care before June 18. Accordingly, the allegations do not sufficiently plead deliberate indifference by Defendant Williams. As to Defendant Hawthorne, Plaintiff fails to allege any facts establishing Defendant Hawthorne's knowledge of Plaintiff's problem or involvement in the complained of conduct.

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[4] The State Defendants also contend that they are entitled to qualified immunity because they acted in good faith, without gross or wanton negligence, in the performance of their discretionary duties. (D.I. 26 at ¶ 9). However, the allegations discussed above are sufficient to rebut the contention of good faith, and therefore, the Court cannot conclude at this juncture that the State Defendants are entitled to qualified immunity.

The State Defendants also contend that they are entitled to Eleventh Amendment immunity. (D.I. 26 at ¶ 11). However, Plaintiff is suing the State Defendants in their individual capacities only. (D.I. 8 at ¶¶ 4, 5, 7). Therefore, Eleventh Amendment immunity is irrelevant to the instant litigation.

Plaintiff does make conclusory allegations that Defendants Williams and Hawthorne failed to timely arrange adequate medical care for Plaintiff. (D.I. 8 at 33). However, since Plaintiff's Amended Complaint fails to allege these Defendants' knowledge of Plaintiff's problem, the only possible theory on which Plaintiff could be relying on to hold these Defendants liable is respondeat superior. However, since supervisory officials cannot be held liable for a Section 1983 violation under respondeat superior, the Court concludes that Plaintiff's Section 1983 claim against Defendants Williams and Hawthorne must be dismissed. See Daniels, 120 F. Supp. 2d at 428 (citing Rode v. Dellarciprete, 845 F.2d 1195, 1207 (3d Cir. 1988)).

C. Negligence Claim

The State Defendants also contend that the Court should dismiss Plaintiff's negligence claim. First, they contend that they are entitled to Sovereign Immunity insofar as they are sued in their official capacities. (D.I. 26 at ¶ 8). However, as noted above, Plaintiff is suing the State Defendants only in their individual capacities, so this contention is irrelevant. Second, the State Defendants contend they are immune from liability for negligence in their individual capacities under the State Tort Claims Act, because they acted in good faith without gross or wanton negligence while performing their discretionary duties. (D.I. 26 at ¶ 10)(citing 10 Del. C. § 4001). As discussed above regarding qualified immunity, the Court concludes that Plaintiff sufficiently alleges facts establishing the State Defendants' bad faith. Accordingly, the State Defendants' motion to dismiss Plaintiff's negligence claim must be denied.

CONCLUSION

For the reasons discussed, the Court concludes that Defendant Marvel's motion to dismiss should be granted. The Court also concludes that the State Defendants' motion to dismiss should be granted as to Plaintiff's claims against Defendants Williams and Hawthorne under 42 U.S.C. § 1983, but should be denied in all other respects.

An appropriate Order will be entered.

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF DELAWARE

RANDOLPH BOWERS, III,	:	
	:	
Plaintiff,	:	
	:	
v.	:	Civil Action No. 99-533-JJF
	:	
C.O. MOUNET, et al.,	:	
	:	
Defendants.	:	

O R D E R

At Wilmington this 18 day of July, 2001, for the reasons set forth in the Memorandum Opinion issued this date;

IT IS HEREBY ORDERED that:

1. Defendant P.H.S. Medical Department Supervisor R.N. Marvel's Motion to Dismiss (D.I. 30) is **GRANTED**.

2. State Defendants' Motion to Renew Motion to Dismiss (D.I. 31) is **GRANTED** as to Plaintiff's claims against Defendants Williams and Hawthorne under 42 U.S.C. § 1983, but is **DENIED** in all other respects.

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UNITED STATES DISTRICT JUDGE