

**NONPRECEDENTIAL DISPOSITION**

To be cited only in accordance with FED. R. APP. P. 32.1

**United States Court of Appeals**

**For the Seventh Circuit**

**Chicago, Illinois 60604**

Submitted November 9, 2022\*

Decided December 2, 2022

**Before**

FRANK H. EASTERBROOK, *Circuit Judge*

DAVID F. HAMILTON, *Circuit Judge*

THOMAS L. KIRSCH II, *Circuit Judge*

No. 22-1578

WILLIAM L. HUBBARD,  
*Plaintiff-Appellant,*

*v.*

MICHAEL MITCHEFF and KIMBERLY  
HOBSON,  
*Defendants-Appellees.*

Appeal from the United States District  
Court for the Southern District of  
Indiana, Terre Haute Division.

No. 2:20-cv-00227-JPH-MG

James Patrick Hanlon,  
*Judge.*

**ORDER**

William Hubbard, an Indiana inmate, sued two medical officers after he missed doses of injections that he typically received monthly to prevent loss of vision. Asserting violations of his Eighth Amendment rights, Hubbard named a prison doctor with the power to approve requests for these injections and a nurse whom he accuses of

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\* We have agreed to decide the case without oral argument because the briefs and record adequately present the facts and legal arguments, and oral argument would not significantly aid the court. FED. R. APP. P. 34(a)(2)(C).

mishandling a complaint about the missed injections. The district court granted the defendants' motion for summary judgment. Because it rightly concluded that neither defendant consciously disregarded a risk to Hubbard's health, we affirm.

In reviewing summary judgment de novo, we construe the record in Hubbard's favor. See *Petties v. Carter*, 836 F.3d 722, 727 (7th Cir. 2016) (en banc). Hubbard has an eye condition that has required monthly injections since 2018 to avert the risk of vision loss. An offsite doctor administers the injections after a prison doctor approves that specialist's request for each set of them. This case concerns missed injections in November 2019, January 2020, and July 2021.

In November 2019, Hubbard's offsite doctor submitted a treatment request to Dr. Michael Mitcheff, a regional medical director and one of the prison's doctors who could approve such requests. Mitcheff promptly approved this request, which sought approval only for Hubbard's visit to the offsite doctor that month. Another (related) request sought approval for the injections that the specialist wanted to administer at the visit. But that request went to a different doctor at the prison (not a defendant), who did not approve it in time for Hubbard to receive his injections in November.

Hubbard complained to Kimberly Hobson, a nurse, about missing his injections in November. After investigating the matter, she replied (inaccurately) that he did not receive the injections because the offsite specialist had not requested them.

The next missed injections occurred two months later, in January 2020. Mitcheff had received a request from the outside specialist for that round of injections. To determine how best to respond to this latest request, about a month before Hubbard's January appointment, Mitcheff asked the prison's onsite optometrist for updated information about Hubbard's eyes. He wanted to know the optometrist's clinical findings and how many injections Hubbard had received since he began his doses over a year earlier. The optometrist (also not a defendant) failed to supply Mitcheff with that information before the appointment date. As a result, Mitcheff did not approve or deny the request, and Hubbard received no injections in January.

Afterwards, the prison received a report from Hubbard's offsite doctor. The specialist explained that the injections "need to be done every 4 weeks to prevent permanent vision loss and to keep the condition from worsening." Hubbard received his injections the next month, and his offsite doctor reported that Hubbard's eyes were doing well: He was "achieving stability with excellent vision in both eyes." The doctor

restated that Hubbard needed “to maintain timely treatment.” And Hubbard timely received his injections each month for over a year.

The third set of missed injections occurred in July 2021. Medical staff told Hubbard that the prison’s change to a new medical provider had delayed his treatment request. The record is silent about whether Mitcheff was involved in processing that request.

This suit under 42 U.S.C. § 1983, asserting that Mitcheff and Hobson deliberately ignored Hubbard’s serious medical needs in violation of his Eighth Amendment rights, came next. In entering summary judgment, the district court ruled that no evidence showed that Mitcheff ignored Hubbard’s medical needs during the three months in question. Mitcheff approved the request that he received in November 2019, he reasonably asked for updated medical information in response to the January 2020 request, and no evidence suggested that he delayed the July 2021 request. The court also explained that, although Hobson inaccurately replied to Hubbard’s complaint about the first set of missed injections, no evidence showed that her response affected Hubbard’s care.

On appeal, Hubbard contends that he presented a triable claim that these two defendants violated his Eighth Amendment rights. To stave off summary judgment, he had to present evidence from which a factfinder could reasonably conclude that the defendants were deliberately indifferent to a serious medical condition. *See Estelle v. Gamble*, 429 U.S. 97, 104 (1976); *Petties*, 836 F.3d at 727–28. The defendants do not dispute that Hubbard’s eye condition was serious, so we ask whether the evidence suggests that they consciously disregarded his condition. *See Estelle*, 429 U.S. at 104. No evidence suggests that the defendants were deliberately indifferent to it.

We begin with Mitcheff. A reasonable jury could not find that Mitcheff consciously disregarded Hubbard’s eye health in November 2019. No evidence contradicts Mitcheff’s statement that he timely approved the one request related to the injections that he received that month. And Hubbard does not appear to argue otherwise on appeal.

As for January 2020, Hubbard argues that, because Mitcheff decided to seek the most current information about Hubbard’s eye health rather than approve immediately the injection request, Mitcheff consciously ignored Hubbard’s health. He cites *Arnett v. Webster*, 658 F.3d 742, 753 (7th Cir. 2011), to contend that Mitcheff impermissibly

“overruled” the offsite doctor’s request by asking an onsite optometrist for information. Hubbard is correct that a prison doctor’s refusal to follow a specialist’s orders may evince deliberate indifference. *See id.* But, as the defendants point out, Mitcheff did not refuse to follow a specialist’s orders. Rather, Mitcheff reasonably sought the most current data about Hubbard’s treatment history before he answered the specialist’s request. And by seeking that information from the prison’s optometrist a full month before the scheduled injections, Mitcheff timed his request reasonably.

Hubbard replies that Mitcheff is culpable for allowing the inquiry to the optometrist to go unanswered for a month. But nothing in the record suggests that Mitcheff wanted the optometrist to ignore his request, did not care whether the optometrist responded in time, or was even aware that his inquiry went unanswered. Furthermore, so far as the record shows, only after Hubbard missed this set of injections did the specialist warn the prison’s doctors that Hubbard’s eye health could be jeopardized by missed injections. And after that warning, Hubbard’s monthly injections proceeded smoothly for the next year and half. In light of this record, Hubbard’s deliberate-indifference claim fails. *See Petties*, 836 F.3d at 728 (a plaintiff must show that a defendant “did not just slip up, but was aware of, and disregarded, a substantial risk of harm.”).

Finally, Hubbard also faults Mitcheff for the missed July 2021 injections, but no evidence links Mitcheff to that request. In particular, the record is devoid of evidence suggesting that he was assigned to evaluate it or that he caused the delay in approval.

Before concluding our discussion about Mitcheff, we note another defect in Hubbard’s claim. To present a triable case of deliberate indifference, Hubbard had to present evidence that Mitcheff harmed him. *See Lord v. Beahm*, 952 F.3d 902, 905 (7th Cir. 2020); *Gabb v. Wexford Health Sources Inc.*, 945 F.3d 1027, 1032 (7th Cir. 2019). But Hubbard did not offer evidence showing that his condition worsened because of the missed injections. To the contrary, although Hubbard’s offsite doctor reported that Hubbard needed monthly injections to avoid the risk of damage, the doctor stated that after two missed injections Hubbard still had “excellent vision in both eyes.”

Lastly, we briefly address the claim against Hobson. Hubbard contends that her inaccurate reply to his complaint about his missed his injections in November 2019 reflects deliberate indifference. It does not. Hobson investigated his complaint, which is all that the Eighth Amendment demands of prison staff handling grievances. *See Burks v. Raemisch*, 555 F.3d 592, 595 (7th Cir. 2009). True, she arrived at the wrong answer. But

to overcome summary judgment, Hobson had to show that she did so by ignoring his complaint, interfering with the investigation of it, or otherwise acting in bad faith. *See id.* He has not supplied such evidence. Nor has he shown that Hobson's inaccurate response exacerbated his eye condition. *See Lord*, 952 F.3d at 905; *Gabb*, 945 F.3d at 1032.

AFFIRMED