

**NONPRECEDENTIAL DISPOSITION**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 August 16, 2023\*

Decided August 21, 2023

**Before**

DIANE P. WOOD, *Circuit Judge*

MICHAEL B. BRENNAN, *Circuit Judge*

JOHN Z. LEE, *Circuit Judge*

No. 21-2957

ANDREW DOWAUN,  
*Plaintiff-Appellant,*

*v.*

WEXFORD HEALTH SOURCES, INC.,  
et al.,  
*Defendants-Appellees.*

Appeal from the United States District  
Court for the Southern District of  
Illinois.

No. 19-cv-775-SMY-RJD

Staci M. Yandle,  
*Judge.*

**ORDER**

Andrew Dowaun, an Illinois prisoner, appeals the summary judgment against him for failing to exhaust all administrative remedies about his medical care, as required by the Prison Litigation Reform Act. *See* 42 U.S.C. § 1997e(a). We have no

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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).

reason to disturb that ruling regarding most of his claims. But because for one claim Dowaun could not receive any more relief by completing the exhaustion process, he did not need to exhaust it any further; that claim may proceed to the merits. We thus affirm in part and vacate in part.

Dowaun asserts that while incarcerated at Menard Correctional Center, he received inadequate medical treatment for both of his hands. First, he wanted treatment for problems in his right hand, but, he says, the medical personnel he saw did not address the nerve pain in that hand. Later, he injured his left hand and sought but did not receive prompt treatment for that hand. It took weeks for medical staff to examine his left hand and discover that it was fractured; then more weeks passed before he received a cast for it. In addition, a left-hand finger was broken, but a nurse practitioner refused to provide the necessary splint, citing prison security, and medical staff refused to give him effective medicine for the pain in his left hand.

Illinois has a three-step process for most grievances. *See Williams v. Wexford Health Sources, Inc.*, 957 F.3d 828, 831 (7th Cir. 2020). First, a prisoner may try to resolve a problem informally through his grievance counselor. *Id.* Second, if the grievance remains unresolved, the prisoner may submit a formal grievance to the prison's grievance officer, who reviews it and recommends a decision to the warden, who decides the matter. 20 ILL. ADMIN. CODE § 504.830(e). Third, if the prisoner "still believes that the problem, complaint or grievance has not been resolved to his or her satisfaction, he or she may appeal in writing to the ... Administrative Review Board within 30 days." *Id.* § 504.850(a).

Dowaun went through steps one and two to seek treatment for fractures in both hands. All parties agree that, by the time his counselor reviewed his grievances and the grievance officer and the warden decided them, Dowaun had seen doctors for fractures in both hands. According to the defendants, his left-hand fracture had healed, his pain-medication dosages had been boosted, and "no other requests regarding left hand pain ha[d] been received."

Although his left hand had healed, Dowaun was dissatisfied with the pace of treatment and sued prison officials, medical staff, and Wexford Health Sources, Inc., under 42 U.S.C. § 1983 and state law. At screening, *see* 28 U.S.C. § 1915A, the district court organized his suit into four federal claims (alleging that the defendants ignored his medical needs in violation of his Eighth Amendment rights) and a state-law claim. The first corresponded to his left hand; the second covered his right hand's nerve

damage; the third alleged that nonmedical staff interfered with medical decisions; and the fourth accused prison officials and Wexford of understaffing doctors at the prison. The fifth claim arose under Illinois law for intentional infliction of emotional distress.

The defendants moved for summary judgment on exhaustion. They furnished evidence, which Dowaun did not dispute, that he had not appealed any grievance decisions to the Administrative Review Board. Dowaun countered, first, that he was not required to appeal to the Board if he could not get any further relief and, second, that appeals to the Board were permissive, not required. Some defendants also argued that Dowaun did not raise in any grievance certain claims in this suit. Dowaun replied that he had filed other informal grievances to which the prison never responded and therefore he was unable to exhaust those claims beyond step one.

The district court entered summary judgment against Dowaun, adopting the recommendation from a magistrate judge who had held an evidentiary hearing. *See Pavey v. Conley*, 544 F.3d 739 (7th Cir. 2008). The magistrate judge credited Dowaun's assertions that in his grievances he complained about fractures in both hands and that he filed unanswered informal grievances. But the judge found that no grievances addressed nerve damage in Dowaun's right hand (claim two); understaffing (claim four); or intentionally inflicting emotional distress (claim five). For claim three (interference with medical decisions), the judge found that Dowaun grieved at step one that medical staff refused to use a splint for security reasons, but the grievance was untimely. Finally, the judge accepted that Dowaun had submitted grievances about treatment of his left-hand fractures (claim one), but that claim was not exhausted because he did not appeal to the Board. Addressing Dowaun's response that he need not have appealed to the Board because he had already received all the relief he could administratively, the judge determined that he still needed to appeal because "some action could have been taken upon a finding of deficiencies in Plaintiff's care."

We review the district court's legal rulings de novo and its factual findings for clear error. *Wallace v. Baldwin*, 55 F.4th 535, 541–42 (7th Cir. 2022). The Prison Litigation Reform Act provides that "[n]o action shall be brought with respect to prison conditions under section 1983 ... until such administrative remedies as are available are exhausted." 42 U.S.C. § 1997e(a). "[A] prisoner must file complaints and appeals in the place, and at the time, the prison's administrative rules require." *Pozo v. McCaughtry*, 286 F.3d 1022, 1025 (7th Cir. 2002). But a prisoner need not exhaust "where the relevant administrative procedure lacks authority to provide any relief or to take any action whatsoever in response to a complaint." *Booth v. Churner*, 532 U.S. 731, 736 (2001). "In

short, if one has no remedy, one has no duty to exhaust remedies.” *White v. Bukowski*, 800 F.3d 392, 395 (7th Cir. 2015).

Starting with the claim about his left hand, Dowaun correctly contends that he exhausted as far as he needed. Dowaun asserts, the defendants do not dispute, and the record confirms, that by the time the prison replied to his grievances, he had received all the treatment he had requested for his left hand and it had healed. Having prevailed without going to the Board, he did not need to exhaust further by appealing to it. This is the rare case where a prisoner’s grievance was “resolved as he requested and where money damages were not available,” thereby completing the exhaustion process. *Thornton v. Snyder*, 428 F.3d 690, 695 (7th Cir. 2005) (prisoner who requested cell item and cell change, and received them, did not need to appeal grievance about them).

The defendants do not identify relief that Dowaun might have received from the Board. The prospect that appealing his grievance might improve medical procedures for others at the prison would have put Dowaun in the role of ombudsman, and that is not a basis for requiring that he exhaust further. *See White*, 800 F.3d at 395–96; *Thornton*, 428 F.3d at 696–97. Likewise, the possibility that an appeal might prompt the prison to discipline staff to get them to start treating a prisoner’s problem, *see White*, 800 F.3d at 395, is not a basis for further exhaustion here, because Dowaun’s hand had already healed. He thus may proceed to the merits of his claim that his treatment was too slow.

But the district court correctly entered summary judgment on the remaining claims. Dowaun has forfeited a challenge to the factual findings that he did not exhaust those claims because, despite receiving notice about his obligation to order the *Pavey* hearing transcripts, he did not do so. Without those transcripts in the record, Dowaun may not contest the findings contained in it. *See* FED. R. APP. P. 10(b)(2); *Hall v. Jung*, 819 F.3d 378, 382–83 (7th Cir. 2016); *Morisch v. United States*, 653 F.3d 522, 529–30 (7th Cir. 2011). Thus, we have no reason to disturb the finding that, in Dowaun’s step-one grievances about his right hand, he complained only that the defendants ignored a fracture. Because Dowaun alleges in claim two that the defendants ignored *nerve damage* in his right hand, the district court permissibly found that prison officials did not have “a fair opportunity to respond to his concern about” nerve damage there. *Hacker v. Dart*, 62 F.4th 1073, 1084 (7th Cir. 2023). For the same reason, we have no basis to overturn the factual findings that Dowaun did not exhaust his other claims.

Dowaun replies that, even without the transcripts, this court can rule that the district court’s findings are legally wrong. In his view, administrative exhaustion was

not “available” because the grievance statute is permissive, rather than mandatory, given that it says he “may” appeal. 20 ILL. ADMIN. CODE § 504.850(a). But permissive appeals *are* available appeals, and the Prison Litigation Reform Act requires prisoners to exhaust all administrative remedies that are available. 42 U.S.C. § 1997e(a).

We AFFIRM the judgment except with respect to Dow aun’s claim about his left-hand injury as to which we VACATE and REMAND for further proceedings.