

**NONPRECEDENTIAL DISPOSITION**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 January 5, 2023\*

Decided January 17, 2023

*Before*

DIANE S. SYKES, *Chief Judge*

DAVID F. HAMILTON, *Circuit Judge*

CANDACE JACKSON-AKIWUMI, *Circuit Judge*

No. 22-1134

TERRANCE J. SHAW,  
*Plaintiff-Appellant,*

*v.*

BRIAN CHAPMAN, TONYEKA NOEL,  
and TODD THILLEMANN,  
*Defendants-Appellees.*

Appeal from the United States District  
Court for the Eastern District of Wisconsin.

No. 20-CV-852-JPS

J.P. Stadtmueller,  
*Judge.*

**ORDER**

The Prison Litigation Reform Act requires prisoners to exhaust administrative remedies before filing suit. 42 U.S.C. § 1997e(a). Terrance Shaw, a former Wisconsin

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\* We have agreed to decide the case without oral argument because the briefs and the 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).

prisoner with disabilities, sued correctional officers alleging that they wrongfully transferred him to a cell that did not accommodate his disabilities. The defendants moved for summary judgment, arguing that Shaw had not timely exhausted his claim. The district judge granted the motion, correctly concluding that Shaw failed to exhaust administrative remedies within the time limit prescribed by Wisconsin Department of Corrections rules. We thus affirm.

Shaw was formerly incarcerated at the Racine Correctional Institution in Wisconsin. He is confined to a wheelchair, is incontinent, and has been diagnosed with other medical ailments. Because of his disabilities, Shaw was housed in a cell that accommodated his wheelchair and had a toilet.

This case arises from an incident on November 7, 2018, when, according to Shaw's complaint, prison staff transferred him to a cell that did not accommodate his disabilities. About a week before the incident, Corrections Officer Tonyeka Noel told Shaw that he was moving too slowly as he entered his cell and locked him in the cell for several hours. Shaw complained about Noel, and prison administrators found that she had acted inappropriately. Shaw asserts that on November 7 Noel and other corrections officers ordered him to move to a unit that did not have in-cell toilets and could not accommodate his wheelchair. Shaw protested, but the officers threatened him with segregation if he did not comply. Shaw alleges that he suffered a panic attack before complying with the order. Staff at the other unit determined that the cell could not meet Shaw's medical needs, and Shaw was returned to his initial unit that same day. According to Shaw, Brian Chapman, Noel's supervisor, told Shaw that Noel had transferred him because of Shaw's complaint about the lock-in a week earlier.

Shaw complained about the transfer order. Within a day, he wrote an unsigned letter about it to the prison's complaint examiner and sought psychiatric help, but he did not use the form required for inmate complaints or assert that the transfer was retaliatory. He later formally complained about the transfer using a proper inmate complaint form. The form bears the date "December 16," which is more than 35 days after the November 7 transfer. In this complaint Shaw asserted that the transfer was retaliatory. He also attached a related letter about the transfer, which was dated November 22 and addressed to Chapman. An inmate complaint examiner rejected Shaw's December 16 complaint as untimely because he did not submit it within 14 days of the November 7 incident, as required by prison regulations, and because Shaw did not supply "good cause" for his late filing. WIS. ADMIN. CODE DOC § 310.07(2). Shaw's administrative appeal was rejected.

Shaw responded with this suit under 42 U.S.C. § 1983 alleging that the one-day transfer violated several constitutional rights; Title II of the Americans with Disabilities Act, 42 U.S.C. § 12132; and other laws. The judge dismissed all claims as legally insufficient except for Shaw's First Amendment claim that the defendants had transferred him to the other cell to retaliate for his complaint about the lock-in from a week earlier.

The defendants moved for summary judgment on the First Amendment retaliation claim. They argued that Shaw did not exhaust his administrative remedies because his December 16 complaint about the November 7 transfer was untimely. Shaw replied with two contentions. First, he maintained that he mistyped "December" on his complaint and that it should have read "November 16," thus placing it within 14 days of the November 7 incident. His second argument was that the defendants intimidated him into filing late.

The judge rejected Shaw's assertion that the correct date of his filing was November 16 for two reasons. One, the prison sends confirmation of receipt of inmate complaints within ten days, so if Shaw had filed the complaint on November 16, he would have received a confirmation within ten days (or if he did not, he would have been expected to inquire about the status of his complaint). But Shaw presented no evidence that he had received a confirmation or had inquired about his complaint; the defendants, on the other hand, presented evidence that the complaint was filed on December 16 and the prison sent a confirmation shortly thereafter. Two, Shaw attached to his complaint a November 22 letter to Chapman regarding the transfer, which undercut his claim that he had actually submitted the complaint on November 16.

Finally, the judge explained that Shaw's November 7 letter to the complaint examiner did not satisfy the exhaustion requirement because it did not conform to Department of Corrections rules about the form of inmate complaints. *See* WIS. ADMIN. CODE DOC § 310.07(3)(a). The judge accordingly entered judgment for the defendants. (He did not discuss Shaw's alternative argument about intimidation.)

Under the Prison Litigation Reform Act, prisoners cannot file suit under § 1983 with respect to prison conditions "until such administrative remedies as are available are exhausted." § 1997e(a). On appeal Shaw does not reprise his argument that he misdated his inmate complaint as "December 16." Instead, he argues that administrative remedies were not available because, as he argued in the alternative in the district court, the defendants intimidated him into delaying filing his complaint until December. We will assume that such intimidation could be "good cause" for a late

filing. *See* DOC § 310.07(2). But to overcome summary judgment, Shaw had to present evidence supporting his contention. *See Hurst v. Hantke*, 634 F.3d 409, 412 (7th Cir. 2011). He did not. In the district court, Shaw attested that he was distressed after the incident, but he never attested that he filed his complaint late because the defendants had intimidated him. Moreover, even when a prisoner asserts that he feared reprisal from an officer, he is not excused from exhausting where “the grievance procedure provided him a clear route around” that officer. *Ebmeyer v. Brock*, 11 F.4th 537, 543 (7th Cir. 2021). Shaw’s complaint went to an examiner who was not involved in the transfer incident.

Shaw also argues that his unsigned letter to the complaint examiner immediately after the transfer satisfied the exhaustion requirement. It did not. To properly exhaust administrative remedies, prisoners must comply with the prison’s prescribed requirements for inmate complaints “so that the agency addresses the issues on the merits.” *Woodford v. Ngo*, 548 U.S. 81, 90 (2006) (quoting *Pozo v. McCaughtry*, 286 F.3d 1022, 1024 (7th Cir. 2002)). The Department of Corrections requires that prisoners submit administrative complaints on the “complaint form provided by the department,” state their grievances concisely in fewer than 500 words, and sign the complaint. DOC § 310.07(3). Shaw’s letter did not use the required form, he exceeded 500 words yet never stated his present contention that the transfer was retaliatory, and he did not sign it. Shaw therefore did not exhaust his administrative remedies.

Finally, Shaw argues that his claim under the ADA should survive because it does not require exhaustion of remedies. The judge dismissed Shaw’s ADA claim for failure to state a claim, and Shaw does not explain why that decision was incorrect. This omission constitutes a waiver. *United States v. Tjader*, 927 F.3d 483, 484 (7th Cir. 2019).

AFFIRMED