

**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
EASTERN DIVISION**

DAVID I. NAMER,
REG. #15869-034

PLAINTIFF

v.

2:10-cv-00112-JTK

UNITED STATES OF AMERICA

DEFENDANT

ORDER

This matter is before the Court on Plaintiff's Motions to Compel and for Reconsideration (Doc. Nos. 33, 40). Defendant filed a Response to the Motion to Compel (Doc. No. 35) and Plaintiff filed a Reply (Doc. No. 37). In response to the Court's July 26, 2011 Order, Defendant filed an additional Response (Doc. No. 41) and Plaintiff filed a Reply (Doc. No. 42).

Plaintiff is a federal inmate incarcerated at the Federal Correctional Institution (FCI), Forrest City, Arkansas, who filed this Federal Tort Claims Act (FTCA) action against Defendant based on injuries he received in two accidents at the Unit.

In his Motion to Compel, Plaintiff asks the Court to order Defendants to provide investigation reports, notes, journals, logs, and all other documents relating to the two incidents at issue in his Complaint. Plaintiff also asks for all records of his attempts to receive medical treatment and any medical reports.

In its Response, Defendant states it submitted responses to Plaintiff's first two sets of discovery, which included 781 pages of medical records, a diagram of the food services area, color photographs of the food services area, and names of people responsible during the incidents at issue. Defendant also refers to additional documents attached to its Response to Plaintiff's Motion for Relief, and states that Plaintiff was previously told that no incident or investigative reports of the

incidents were produced (Doc. No. 32). Finally, Defendant states that any attempt by Plaintiff to depose FCI employees should be made through written questions.

Plaintiff filed a Reply in which he disputes the Defendant's Response and states that Defendant provided the names of only one of four witnesses to the April 8, 2008 accident, and failed to provide an incident report which was ordered to be prepared by an inmate employee who witnessed the incident.

The Court then directed Defendant to respond to Plaintiff's contention that he did not receive all the names of the witnesses or the incident report. In the additional Response, Defendant states there were no known witnesses to the first incident at issue in Plaintiff's Complaint, but that two employees responded to the scene after Plaintiff's fall. Defendant identifies those employees. Defendant also states that an incident report has not been recovered, and that if it is found it will be provided to the Plaintiff.

In his additional Reply, Plaintiff accuses Defendant of lying and trying to cover up the incident, stating he is aware of a witness to the accident, named McCoy. Plaintiff also continues to maintain that an incident report of the accident was written by an inmate named Hernandez.

Having reviewed the Plaintiff's Motion and numerous responses and replies, it appears to the Court that Defendant has complied with the majority of Plaintiff's discovery requests and that the current dispute centers on the fact of and identity of witnesses to Plaintiff's fall, and the existence of a post-incident report. Plaintiff may question Defendant further concerning the alleged witness named McCoy, and Defendant is directed to produce to Plaintiff all information concerning a witness or any incident report, if such is discovered.

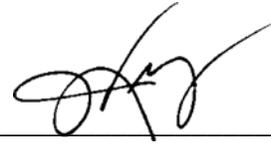
Plaintiff also asks the Court to reconsider the July 26, 2011 Order in which Plaintiff's

Motions for Relief, In Limine, and for Hearing were denied. The Court has reviewed Plaintiff's Motion and finds no legal reason to reverse its prior rulings. Accordingly,

IT IS, THEREFORE, ORDERED that Plaintiff's Motion to Compel (Doc. No. 33) is DENIED without prejudice.

IT IS FURTHER ORDERED that Plaintiff's Motion for Reconsideration (Doc. No. 40) is DENIED.

IT IS SO ORDERED this 23rd day of August, 2011.



JEROME T. KEARNEY
UNITED STATES MAGISTRATE JUDGE