

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF ARKANSAS
HOT SPRINGS DIVISION

SYLVESTER O. BARBEE

PLAINTIFF

v.

Case No. 6:14-cv-6082

DR. LISBETH ANN MURPHY,
MARIE LANE, and WENDY KELLEY

DEFENDANTS

ORDER

Before the Court is the Report and Recommendation filed July 27, 2016, by the Honorable Mark E. Ford, United States Magistrate Judge for the Western District of Arkansas. ECF No. 86. Judge Ford recommends that Defendants' Motions for Summary Judgment (ECF Nos. 68, 71) be granted. Plaintiff has responded with objections. ECF No. 87. The Court finds the matter ripe for consideration.

Plaintiff, an inmate of the Arkansas Department of Correction, filed this civil rights action pursuant to 42 U.S.C. § 1983. Plaintiff alleges that Defendants were deliberately indifferent to his medical needs when they failed to limit his work duties because of his allergies, asthma, and right hand issues while he was incarcerated at the Ouachita River Unit.

As to Separate Defendant Wendy Kelley, Plaintiff alleges that Kelley fabricated information about Plaintiff's medical work restrictions in a grievance response by failing to note his allergies.¹ Judge Ford concluded that Plaintiff did not exhaust his administrative remedies against Kelley. In his objections, Plaintiff simply restates his argument that Kelley deliberately failed to note his allergies in a grievance response. Judge Ford, however, noted that Plaintiff did not exhaust any administrative grievances against Kelley during the time period relevant to this

¹ During the time period relevant to this lawsuit, Wendy Kelley was Arkansas Department of Correction Deputy Director. Plaintiff's official capacity claim against Kelly has already been dismissed. ECF No. 46.

case. Plaintiff's objections do not address the exhaustion issue. Accordingly, the Court agrees with Judge Ford that the individual claim against Defendant Kelley should be dismissed for failing to exhaust administrative remedies.

The Court turns now to the claims against Separate Defendants Marie Lane, an advanced practice nurse, and Dr. Lisbeth Ann Murphy. Plaintiff alleges that Lane and Murphy were medically indifferent to his serious medical needs in failing to provide work limitation scripts so that Plaintiff could avoid his exposure to allergens and avoid working with his right hand. Plaintiff claims that, as a result of Lane and Murphy failing to provide the work limitation scripts, he suffered physical injury in the form of an asthma attack, swollen right hand, and respiratory allergy symptoms.

Judge Ford concluded that Plaintiff failed to provide any objectively verifiable evidence that he suffered an asthma attack on July 19, 2013. Judge Ford further concluded that Plaintiff's allegations of a swollen hand and respiratory allergy symptoms are, at most, *de minimus* injuries. Claims under the Eighth Amendment require a compensable injury to be greater than *de minimus*. *Irving v. Dormire*, 519 F.3d 441, 448 (8th Cir. 2008). In his objections, Plaintiff outlines the medical evidence in the record and conclusively states that the evidence shows that his injuries were not *de minimus*. The Court, however, agrees with Judge Ford's characterization of Plaintiffs' injuries, which is supported by the medical evidence. The Court further agrees with Judge Ford's conclusion that Plaintiff received work limitation scripts when his medical conditions warranted it. This conclusion is also supported by the medical evidence. Accordingly, the Court finds that the claims against Separate Defendants Lane and Murphy should be dismissed.

For the reasons stated above, based on its own de novo review, the Court overrules Plaintiff's objections and adopts the Report and Recommendation *in toto*. ECF No. 86. Defendants' Motions for Summary Judgment (ECF Nos. 68, 71) are **GRANTED**, and all remaining claims are **DISMISSED WITH PREJUDICE**.

IT IS SO ORDERED, this 23rd day of August, 2016.

/s/ Susan O. Hickey
Susan O. Hickey
United States District Judge