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**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA**

TIMOTHY WATTS,

No. 2:09-CV-1515-KJM-CMK-P

Plaintiff,

vs.

FINDINGS AND RECOMMENDATIONS

R. RAMOS, et al.,

Defendants.

_____ /

Plaintiff, a state prisoner proceeding pro se, brings this civil rights action pursuant to 42 U.S.C. § 1983. Pending before the court is defendants’ motion for summary judgment (Doc. 53).

I. BACKGROUND

A. Plaintiff’s Allegations

This action proceeds on the original complaint filed June 2, 2009. Plaintiff names the following as defendants: Ramos, Murray, Gibson, Casey, Reid, Thompson, and Prince. He alleges that defendants were deliberately indifferent to a serious medical need, in violation of his rights under the Eighth Amendment. Specifically, he claims that he has a well-documented

1 medical file indicating various and serious medical needs, including “heart and knee concerns.”
2 According to plaintiff, his file reveals that, as early as 2006, his medical problems precluded an
3 upper bunk or upper tier cell assignment. He states that documents from 2007 and 2008 confirm
4 this limitation. Plaintiff also states that his “chest pains” are well-documented and preclude him
5 from being subject to any “unreasonable stressful situation.”

6 Plaintiff alleges that, when he attempted to have prison staff follow medical
7 “chronos” for a lower bunk and lower tier cell assignment, he was “ignored, put-off, or told to
8 wait.” Specifically, he claims that defendant Murray, who was the “housing sergeant,” was
9 aware that he was being housed in an upper bunk on an upper tier “as early as 12/7/06.” He
10 states that, on December 8, 2006, he sent defendant Gibson a request for interview, informing
11 him of the situation. While plaintiff states that his request was ignored at first, he was eventually
12 given a lower bunk cell assignment, but remained on the upper tier. Plaintiff states that he next
13 notified defendant Ramos, who is the “housing lieutenant,” of the problem. He adds that
14 defendants Murray and Gibson were “always informed of Plaintiff needing a lower-tier,
15 especially due to ‘climbing and descending’ stairs was ‘dangerous and risky’ due to his ‘knee
16 medical concerns.’” (emphasis in original). According to plaintiff, he informed defendant
17 Thompson via an inmate grievance of his need for a lower tier cell assignment “to no avail.”

18 He claims that defendants Ramos, Murray, Gibson, and Thompson all had
19 “advance knowledge of Plaintiff being housed on the ‘upper tier’” and that they all knew of the
20 “risk to a seriously ill inmate, being called ‘upstairs.’”

21 Next, plaintiff alleges that, on June 18, 2008, he experienced chest pains,
22 dizziness, and difficulty breathing. According to plaintiff there is no way for inmates in their
23 cells to communicate with officers in the control towers and that inmates must “yell between a
24 crack in their door, until control tower hears them.” When plaintiff began experiencing chest
25 pains on June 18, 2008, he and his cellmate took turns yelling to defendant Reid, who was the
26 officer in the control tower at the time. Plaintiff states that defendant Reid “came to his control

1 tower window” and “partially opened Plaintiff’s door” whereupon plaintiff informed defendant
2 Reid that he needed medical attention. Plaintiff alleges that defendant Reid’s response was:
3 “Wait until yard release.”

4 When he was eventually released to the yard, plaintiff went to the dayroom
5 “because he felt insecure walking outside in his condition.” Plaintiff states that he again asked
6 defendant Reid to summon medical personnel, but that defendant Reid ordered plaintiff to return
7 to his cell. According to plaintiff, another inmate overheard defendant Reid say: “The only way
8 you’re leaving this building is in a stretcher.” Plaintiff adds that, by 12:30 p.m., he was “yelling
9 for the tower staff to call medical” and that, a short time later, another inmate in the unit “saw no
10 movement” from plaintiff. This inmate then informed defendant Reid of the situation but
11 defendant Reid said that plaintiff would have to wait until the prison nurse arrived on her “pill
12 call rounds.” Plaintiff claims that, when the nurse – defendant Prince – arrived, she did not go to
13 the plaintiff’s cell. Without further detail, plaintiff alleges that defendant Prince “was aware of
14 Plaintiff’s condition and improper cell confinement.”

15 Plaintiff states that, as defendant Prince was making her rounds, defendant Reid
16 opened his cell door. He states that, while descending the stairs from the upper tier in order to
17 obtain medical attention, his knees weakened and he “rolled half-way down the stairs, where he
18 landed on the lower-tier floor – ‘unconscious.’” According to plaintiff, it was only then that
19 defendant Reid spoke to defendant Prince to inform her of a “fallen inmate.” Plaintiff adds that,
20 even though he was laying unconscious on the floor, “it still took awhile before the alarm was
21 sounded.” Plaintiff claims that inmates who witnessed the situation described defendant Prince’s
22 “manner as ‘indifferent.’” Additional medical staff eventually arrived and plaintiff was put on a
23 stretcher to be taken to an outside hospital. It was later determined that plaintiff had suffered a
24 heart attack.

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1 Plaintiff claims that defendant Casey was the “floor officer” on June 18, 2008, and
2 that he was aware of plaintiff’s medical problem but “failed to get emergency care. . . .” Without
3 stating how defendant Casey was aware of plaintiff’s need for a lower tier cell assignment,
4 plaintiff also stated that defendant Casey “did not correct this continuous violation.”

5 **B. The Parties’ Evidence**

6 Based on their own declarations, plaintiff’s deposition testimony, as well as
7 allegations in the complaint, defendants assert that the following facts are undisputed:

- 8 1. At all relevant times, plaintiff was an inmate at California State Prison –
9 Sacramento (“CSP-SAC”).
- 10 2. At all relevant times, defendants Ramos, Murray, Gibson, Thompson,
11 Reid, Prince, and Casey were staff employed at CSP-SAC.
- 12 3. Upon arrival at Facility B, Building 5 on December 7, 2006, plaintiff was
13 assigned an upper bunk in a cell located on the upper tier.
- 14 4. At that time, there was a shortage of available lower tier lower bunk space
15 due to a large number of inmates with “accommodation chronos” requiring
16 such housing.
- 17 5. On January 2, 2007, a comprehensive accommodation chrono was issued
18 for plaintiff which, for unspecified reasons, provided for: a lower bunk and
19 orthopedic shoes for 12 months and a cane for six months.
- 20 6. The January 2, 2007, accommodation chrono did not specify a lower tier
21 housing assignment.
- 22 7. The chrono was amended by the chief medical officer on May 2, 2007, to
23 provide for a lower tier as well as lower bunk assignment, both for 12
24 months, due to severe bilateral knee derangement.
- 25 8. Despite the amended chrono, plaintiff was not re-housed to a lower bunk
26 in a lower tier cell.
9. Plaintiff submitted an inmate grievance to defendant Thompson on June
20, 2007, complaining that he had not been re-housed to a lower bunk
lower tier cell despite the amended chrono.
10. The accommodation chrono expired on May 2, 2008.
11. At all times plaintiff was housed in Facility B, Building 5 until June 18,
2008, plaintiff ascended and descended the stairs to the upper tier several
times a day without incident.

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- 12. On June 18, 2008, plaintiff became dizzy, blacked out, and lost consciousness while descending the stairs from the upper tier.
- 13. On June 18, 2008, defendant Reid was a tower control officer on Facility B, Building 5 and, as such, was responsible for monitoring the safety and security of the building; in his position in the tower, Reid’s access to the building floor was restricted.
- 14. On June 18, 2008, defendant Casey was assigned as the floor officer.
- 15. On June 18, 2008, at approximately 11:30 a.m., plaintiff notified defendant Reid that he was experiencing chest pain; in response, defendant Reid contacted the medical clinic and asked if plaintiff could be seen, but was told that staff were preparing for the daily medication pass and that a nurse would attend to plaintiff once rounds were completed.
- 16. Defendant Prince – a nurse – arrived at approximately 1:00 p.m. to begin distributing medication; Reid notified Prince of plaintiff’s concerns.
- 17. Defendant Prince and another nurse later reported to plaintiff’s cell and inquired as to his problem; plaintiff reported chest pains, dizziness, and breathing problems; the nurses then told plaintiff that they would return once they completed their rounds.
- 19. A short time later, defendant Prince completed her rounds and inquired of plaintiff whether he could walk down the stairs and over to the medical clinic for evaluation; plaintiff responded in the affirmative.
- 20. Defendant Prince then requested that plaintiff be released from his cell and defendant Reid, who controlled access to and from inmates’ cells from the control tower, complied.
- 21. As plaintiff was descending the stairs to the medical clinic on the ground level, plaintiff became dizzy, blacked out, and struck his chest as he fell the remaining way down the stairs.
- 22. Immediately after plaintiff fell, defendant Reid yelled to defendant Price to get her attention to the situation; defendant Reid then made an institutional announcement over his radio of a “man down” and he pushed the personal alarm button.
- 23. Within two to three minutes additional medical and correctional staff responded to the scene and took plaintiff by rolling gurney to the Facility B emergency area, known as Triage Treatment and Assessment (“TTA”).
- 24. At TTA, plaintiff was examined by nurse Swift; plaintiff reported chest pain at 7 out of 10.
- 25. Plaintiff’s vital signs were taken and were all normal except for an elevated pulse; nurse Swift assessed plaintiff with adjustment disorder related to incarceration.

- 1 26. An EKG was also performed which revealed signs suggestive a possible
2 acute myocardial infarction.
- 3 27. Plaintiff was then transported to an outside hospital for further treatment;
4 by the time he arrived at the hospital his vial signs, including his pulse,
5 were all normal.
- 6 28. Plaintiff was kept for observation overnight to rule out myocardial
7 infarction; plaintiff was ultimately diagnosed as suffering from five hours
8 of atypical chest pain, of which plaintiff has a history; plaintiff was
9 discharged with no indications for any specific cardiac treatment.
- 10 29. Plaintiff never complained of any musculoskeletal pain or injury resulting
11 from the June 18, 2008, fall.
- 12 30. A second accommodation chrono was issued for plaintiff on December 18,
13 2008, providing for a lower bunk lower tier cell assignment for 12 months.

14 Attached to his opposition, plaintiff provides the declarations of several inmates
15 who were witnesses to the events of June 18, 2008. Inmate Coleman states that he was housed in
16 Facility B, Building 5 on June 18, 2008. He states that, on that day, he “clearly saw and heard
17 C/O Reid well back ‘the only way you’re leaving this building in a stretcher.’” Mr. Coleman adds
18 that, while he heard plaintiff “ask the officer to call medical,” he “did not see C/O Reid get on the
19 phone.” Inmate Jackson also states that he was housed in Facility B, Building 5 on June 18,
20 2008. Mr. Jackson states that, after plaintiff fell, “it took awhile before the alarm was sounded.”
21 Inmate Cole, who was also housed in Facility B, Building 5 on June 18, 2008, states that
22 defendant Reid “took his time to respond to the man down call.”

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1 must demonstrate that the fact in contention is material, i.e., a fact that might affect the outcome
2 of the suit under the governing law, Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986);
3 T.W. Elec. Serv., Inc. v. Pacific Elec. Contractors Ass’n, 809 F.2d 626, 630 (9th Cir. 1987), and
4 that the dispute is genuine, i.e., the evidence is such that a reasonable jury could return a verdict
5 for the nonmoving party, Wool v. Tandem Computers, Inc., 818 F.2d 1433, 1436 (9th Cir. 1987).

6 In the endeavor to establish the existence of a factual dispute, the opposing party
7 need not establish a material issue of fact conclusively in its favor. It is sufficient that “the
8 claimed factual dispute be shown to require a jury or judge to resolve the parties’ differing
9 versions of the truth at trial.” T.W. Elec. Serv., 809 F.2d at 631. Thus, the “purpose of summary
10 judgment is to ‘pierce the pleadings and to assess the proof in order to see whether there is a
11 genuine need for trial.’” Matsushita, 475 U.S. at 587 (quoting Fed. R. Civ. P. 56(e) advisory
12 committee’s note on 1963 amendments).

13 In resolving the summary judgment motion, the court examines the pleadings,
14 depositions, answers to interrogatories, and admissions on file, together with the affidavits, if
15 any. See Fed. R. Civ. P. 56(c). The evidence of the opposing party is to be believed. See
16 Anderson, 477 U.S. at 255. All reasonable inferences that may be drawn from the facts placed
17 before the court must be drawn in favor of the opposing party. See Matsushita, 475 U.S. at 587.
18 Nevertheless, inferences are not drawn out of the air, and it is the opposing party’s obligation to
19 produce a factual predicate from which the inference may be drawn. See Richards v. Nielsen
20 Freight Lines, 602 F. Supp. 1224, 1244-45 (E.D. Cal. 1985), aff’d, 810 F.2d 898, 902 (9th Cir.
21 1987). Finally, to demonstrate a genuine issue, the opposing party “must do more than simply
22 show that there is some metaphysical doubt as to the material facts Where the record taken
23 as a whole could not lead a rational trier of fact to find for the nonmoving party, there is no
24 ‘genuine issue for trial.’” Matsushita, 475 U.S. at 587 (citation omitted).

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1 **III. DISCUSSION**

2 Defendants argue that plaintiff cannot prevail because the undisputed evidence
3 establishes that they were not deliberately indifferent to any serious medical need. They also
4 argue that they were not deliberately indifferent to any risk of harm posed by plaintiff being
5 housed in an upper tier cell. Additionally, Defendant Thompson argues that he cannot be held
6 liable because his only involvement in plaintiff’s case was to review his inmate grievance.

7 The treatment a prisoner receives in prison and the conditions under which the
8 prisoner is confined are subject to scrutiny under the Eighth Amendment, which prohibits cruel
9 and unusual punishment. See Helling v. McKinney, 509 U.S. 25, 31 (1993); Farmer v. Brennan,
10 511 U.S. 825, 832 (1994). The Eighth Amendment “. . . embodies broad and idealistic concepts
11 of dignity, civilized standards, humanity, and decency.” Estelle v. Gamble, 429 U.S. 97, 102
12 (1976). Conditions of confinement may, however, be harsh and restrictive. See Rhodes v.
13 Chapman, 452 U.S. 337, 347 (1981). Nonetheless, prison officials must provide prisoners with
14 “food, clothing, shelter, sanitation, medical care, and personal safety.” Toussaint v. McCarthy,
15 801 F.2d 1080, 1107 (9th Cir. 1986). A prison official violates the Eighth Amendment only
16 when two requirements are met: (1) objectively, the official’s act or omission must be so serious
17 such that it results in the denial of the minimal civilized measure of life’s necessities; and (2)
18 subjectively, the prison official must have acted unnecessarily and wantonly for the purpose of
19 inflicting harm. See Farmer, 511 U.S. at 834. Thus, to violate the Eighth Amendment, a prison
20 official must have a “sufficiently culpable mind.” See id.

21 **A. Safety**

22 Under the general principles outlined above, prison officials have a duty to take
23 reasonable steps to protect inmates from physical abuse. See Hoptowit v. Ray, 682 F.2d 1237,
24 1250-51 (9th Cir. 1982); Farmer, 511 U.S. at 833. Liability exists only when two requirements
25 are met: (1) objectively, the prisoner was incarcerated under conditions presenting a substantial
26 risk of serious harm; and (2) subjectively, prison officials knew of and disregarded the risk. See

1 Farmer, 511 U.S. at 837. The very obviousness of the risk may suffice to establish the
2 knowledge element. See Wallis v. Baldwin, 70 F.3d 1074, 1077 (9th Cir. 1995). Prison officials
3 are not liable, however, if evidence is presented that they lacked knowledge of a safety risk. See
4 Farmer, 511 U.S. at 844. The knowledge element does not require that the plaintiff prove that
5 prison officials know for a certainty that the inmate's safety is in danger, but it requires proof of
6 more than a mere suspicion of danger. See Berg v. Kincheloe, 794 F.2d 457, 459 (9th Cir. 1986).
7 Finally, the plaintiff must show that prison officials disregarded a risk. Thus, where prison
8 officials actually knew of a substantial risk, they are not liable if they took reasonable steps to
9 respond to the risk, even if harm ultimately was not averted. See Farmer, 511 U.S. at 844.

10 In this case, the undisputed evidence establishes that, when plaintiff fell on June
11 18, 2008, he did not have a current accommodation chrono for a lower tier lower bunk cell
12 assignment. Specifically, the January 2, 2007, amended on May 2, 2007, provided for a 12-
13 month accommodation period, expiring on May 2, 2008. No accommodation chrono was issued
14 again for plaintiff until December 18, 2008. Thus, at the time of plaintiff's fall in June 2008 no
15 chrono was in place and, as a result, defendants could not have known of a risk posed by an
16 upper tier cell assignment.¹ Because the evidence does not establish any apparent risk to
17 plaintiff's safety posed by an upper tier cell assignment during the lapse period when plaintiff
18 fell, defendants cannot have been deliberately indifferent.

19 **B. Medical Needs**

20 Deliberate indifference to a prisoner's serious illness or injury, or risks of serious
21 injury or illness, gives rise to a claim under the Eighth Amendment. See Estelle, 429 U.S. at
22 105; see also Farmer, 511 U.S. at 837. This applies to physical as well as dental and mental

23
24 ¹ To the extent plaintiff argues that, during the lapse period, the risk must have been
25 obvious because it existed before and after the lapse period, as demonstrated by the chronos, such
26 an argument is not supported by the evidence. In particular, the evidence shows that the first
chrono was issued for unspecified reasons and contained an expiration date. Likewise, the
second chrono also contained an expiration date. Thus, on the face of the chronos, plaintiff's
need for accommodation was temporary and, when the chronos expired, so did the need.

1 health needs. See Hoptowit v. Ray, 682 F.2d 1237, 1253 (9th Cir. 1982). An injury or illness is
2 sufficiently serious if the failure to treat a prisoner's condition could result in further significant
3 injury or the "... unnecessary and wanton infliction of pain." McGuckin v. Smith, 974 F.2d
4 1050, 1059 (9th Cir. 1992); see also Doty v. County of Lassen, 37 F.3d 540, 546 (9th Cir. 1994).
5 Factors indicating seriousness are: (1) whether a reasonable doctor would think that the condition
6 is worthy of comment; (2) whether the condition significantly impacts the prisoner's daily
7 activities; and (3) whether the condition is chronic and accompanied by substantial pain. See
8 Lopez v. Smith, 203 F.3d 1122, 1131-32 (9th Cir. 2000) (en banc).

9 The requirement of deliberate indifference is less stringent in medical needs cases
10 than in other Eighth Amendment contexts because the responsibility to provide inmates with
11 medical care does not generally conflict with competing penological concerns. See McGuckin,
12 974 F.2d at 1060. Thus, deference need not be given to the judgment of prison officials as to
13 decisions concerning medical needs. See Hunt v. Dental Dep't, 865 F.2d 198, 200 (9th Cir.
14 1989). The complete denial of medical attention may constitute deliberate indifference. See
15 Toussaint v. McCarthy, 801 F.2d 1080, 1111 (9th Cir. 1986). Delay in providing medical
16 treatment, or interference with medical treatment, may also constitute deliberate indifference.
17 See Lopez, 203 F.3d at 1131. Where delay is alleged, however, the prisoner must also
18 demonstrate that the delay led to further injury. See McGuckin, 974 F.2d at 1060.

19 In this case, plaintiff claims that defendants were deliberately indifferent to his
20 medical needs leading to and following his fall on June 18, 2008. Specifically, plaintiff claims
21 that defendants Reid and Casey failed to summon emergency care for over an hour while he was
22 experiencing chest pains in his cell. He further alleges that defendant Prince was slow in her
23 response after he fell.

24 The undisputed evidence does not bear out plaintiff's allegations. Plaintiff first
25 reported chest pains at 11:30 a.m. Defendant Reid responded by contacting the medical clinic.
26 Thus, contrary to plaintiff's allegations that defendant Reid, did nothing, he in fact was deliberate

1 in the initial attention given to plaintiff's complaints. An hour-and-a-half later at 1:30 p.m.
2 defendant Prince, a prison nurse, was notified by defendant Reid of plaintiff's complaints. A
3 short time later, defendant Prince reported to plaintiff's cell to discuss his complaints whereupon
4 plaintiff informed defendant Prince that he could walk down the stairs to the medical clinic for
5 evaluation. The evidence further shows that, after plaintiff fell, defendants promptly responded
6 and plaintiff was taken to the TTA area. At best, plaintiff's evidence in response to defendants'
7 motion suggests there may have been some delay in providing medical care. As defendants note,
8 however, plaintiff did not sustain any additional injuries as a result of any alleged delay. His
9 EKG and vital signs were normal, and he reported no injuries resulting from the fall.

11 IV. CONCLUSION

12 Based on the foregoing, the undersigned recommends that defendants' motion for
13 summary judgment (Doc. 53) be granted.

14 These findings and recommendations are submitted to the United States District
15 Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within 14 days
16 after being served with these findings and recommendations, any party may file written
17 objections with the court. Responses to objections shall be filed within 14 days after service of
18 objections. Failure to file objections within the specified time may waive the right to appeal.

19 See Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

21 DATED: March 6, 2013

22 
23 **CRAIG M. KELLISON**
24 UNITED STATES MAGISTRATE JUDGE