

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF FLORIDA
PANAMA CITY DIVISION

WILLIAM DUNLAP,

PLAINTIFF,

-vs-

Case No. 5:15-cv-00328-WTH-GRJ

CORIZON HEALTH CARE, GULF CORRECTIONAL INSTITUTION,

DEFENDANTS.

ORDER

This matter is before the court on the Report and Recommendation of the Magistrate Judge, ECF No. 36, to which the plaintiff has objected, ECF No. 41. The defendant filed a response, ECF No. 42, to which the plaintiff replied, ECF No. 43. For the reasons which follow, the Report and Recommendation is adopted and this case is dismissed for failure to exhaust administrative remedies.

In the first amended complaint, ECF No. 5, the plaintiff alleges that he requested sick call for a cut and infected toe associated with diabetes. He alleges that he was not seen by medical staff for three or four days and then filed an informal grievance to which prison officials never responded. He admits that he did not file any appeal of that grievance or any further grievances for at least five months. In his complaint he also alleges that "The plaintiff was never seeing [sic] a doctor for more than 5 months, experiencing pain and suffering." ECF No. 5 at 5. The defendant moved to dismiss the case arguing that plaintiff did not

exhaust his administrative remedies by following the prison's grievance procedures. ECF No. 19. This Court agrees with the Magistrate Judge that plaintiff's first amended complaint is due to be dismissed.

This Court agrees with the Magistrate Judge that it is unlikely that plaintiff received an approval of his grievance because then he would have received the medical treatment he sought and would not have suffered five months of no medical treatment as he alleges in his first amended complaint. On the other hand, if he did not receive any response from the defendants, then he should have filed an appeal either up the line to the Warden or directly to the Secretary, since his claim involves a medical issue. Plaintiff does not allege, and nothing in the record reveals, that he filed such an appeal. Also plaintiff offers no evidence to support his allegation in his objections and reply that the defendants or prison officials routinely failed to respond to grievances. Therefore, this bare allegation is insufficient to justify ignoring plaintiff's failure to exhaust his administrative remedies.

Accordingly,

IT IS ORDERED:

The Report and Recommendation of the Magistrate Judge, ECF No. 36, is accepted and incorporated herein by reference. The Clerk is directed to enter a judgment as follows: "Defendant's Motion to Dismiss, ECF No. 19, is granted, and the First Amended Complaint in this case, ECF No. 5, is dismissed with

prejudice. The Motion for Statement of Particulars, ECF No. 45, is denied as moot." The clerk is directed to close the file.

IT IS SO ORDERED.

DONE and ORDERED at Gainesville, Florida this 15th day of August, 2017.

A handwritten signature in blue ink, appearing to read "Pamela Hodgson", is written above a horizontal line.

UNITED STATES DISTRICT JUDGE