

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS**

KEVIN J. SMITH,)	
)	
Plaintiff,)	
)	
vs.)	Case No. 17-cv-0495-JPG
)	
VENERIO SANTOS and)	
LISA KREBS)	
)	
Defendants.)	

MEMORANDUM AND ORDER

GILBERT, District Judge:

Plaintiff Kevin J. Smith, an inmate in Centralia Correctional Center, brings this action for deprivations of his constitutional rights pursuant to 42 U.S.C. § 1983. Plaintiff seeks compensatory damages and fees. This case is now before the Court for a preliminary review of the Complaint pursuant to 28 U.S.C. § 1915A, which provides:

(a) **Screening** – The court shall review, before docketing, if feasible or, in any event, as soon as practicable after docketing, a complaint in a civil action in which a prisoner seeks redress from a governmental entity or officer or employee of a governmental entity.

(b) **Grounds for Dismissal** – On review, the court shall identify cognizable claims or dismiss the complaint, or any portion of the complaint, if the complaint–

(1) is frivolous, malicious, or fails to state a claim on which relief may be granted; or

(2) seeks monetary relief from a defendant who is immune from such relief.

An action or claim is frivolous if “it lacks an arguable basis either in law or in fact.” *Neitzke v. Williams*, 490 U.S. 319, 325 (1989). Frivolousness is an objective standard that refers to a claim that any reasonable person would find meritless. *Lee v. Clinton*, 209 F.3d 1025, 1026-

27 (7th Cir. 2000). An action fails to state a claim upon which relief can be granted if it does not plead “enough facts to state a claim to relief that is plausible on its face.” *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007). The claim of entitlement to relief must cross “the line between possibility and plausibility.” *Id.* at 557. At this juncture, the factual allegations of the *pro se* complaint are to be liberally construed. *See Rodriguez v. Plymouth Ambulance Serv.*, 577 F.3d 816, 821 (7th Cir. 2009).

The Complaint

Plaintiff originally brought suit in the Central District of Illinois on January 31, 2017. (Doc. 1) (Doc. 2). After Judge Harold A. Baker conducted a merits review of that claim, he determined that some claims, specifically the claims arising out of Plaintiff’s time at Centralia Correctional Center, were more properly brought in this judicial district, where Centralia is located. (Doc. 2). The Central District retained claims arising out of Plaintiff’s arrest and detention in a local jail, and those claims do not proceed in this action. (Doc. 2).

As to the claims arising out of Plaintiff’s time at Centralia, Plaintiff has alleged that his right shoulder had been replaced in a surgery on February 4, 2016. (Doc. 1, p. 18). Plaintiff’s shoulder was re-injured during his arrest on April 1, 2016, and the jail declined to treat Plaintiff’s condition because his placement in the Illinois Department of Corrections (“IDOC”) was imminent. (Doc. 1, pp. 17-18). However, the Knox County Jail doctor opined that Plaintiff’s bicep had been torn and that he needed an MRI. (Doc. 1, p. 18). Once Plaintiff arrived at Centralia, Dr. Santos examined his arm, but provided no treatment. (Doc. 1, pp. 18-19). As a result of the lack of treatment, Plaintiff has experienced pain and suffering. (Doc. 1, p. 19). A grievance attached to the Complaint states that other doctors have told Plaintiff that he needs an

MRI and possibly surgery, but that when Santos examined his arm, he told Plaintiff he just needed to exercise. (Doc. 1, pp. 15-16).

Plaintiff filed a grievance on this issue on September 29, 2016. (Doc. 1, p. 15). The grievance officer response indicates that Lisa Krebs was contacted and advised that Plaintiff was being evaluated. (Doc. 1, p. 14). Plaintiff also wrote a letter to Krebs about his bicep. (Doc. 1, p. 19). Krebs wrote back and told Plaintiff that she would have him rescheduled to be reevaluated. *Id.* Plaintiff alleges that Krebs never actually rescheduled him. *Id.*

Discussion

Based on the allegations of the Complaint, the Court finds it convenient to divide the pro se action into 1 count. The parties and the Court will use this designation in all future pleadings and orders, unless otherwise directed by a judicial officer of this Court. The following claim survives threshold review:

Count 1 – Santos and Krebs were deliberately indifferent to Plaintiff’s serious medical need when they failed to take action to treat and evaluate his torn bicep in violation of the Eighth Amendment.

As to Plaintiff’s **Count 1**, prison officials impose cruel and unusual punishment in violation of the Eighth Amendment when they are deliberately indifferent to a serious medical need. *Estelle v. Gamble*, 429 U.S. 97, 104 (1976); *Chatham v. Davis*, 839 F.3d 679, 684 (7th Cir. 2016). In order to state a claim for deliberate indifference to a serious medical need, an inmate must show that he 1) suffered from an objectively serious medical condition; and 2) that the defendant was deliberately indifferent to a risk of serious harm from that condition. *Petties v. Carter*, 836 F.3d 722, 727 (7th Cir. 2016). An objectively serious condition includes an ailment that has been “diagnosed by a physician as mandating treatment,” one that significantly affects an individual’s daily activities, or which involves chronic and substantial pain. *Gutierrez v.*

Peters, 111 F.3d 1364, 1373 (7th Cir. 1997). The subjective element requires proof that the defendant knew of facts from which he could infer that a substantial risk of serious harm exists, and he must actually draw the inference. *Zaya v. Sood*, 836 F.3d 800, 804 (7th Cir. 2016) (citing *Farmer v. Brennan*, 511 U.S. 825, 837 (1994)).

“Delaying treatment may constitute deliberate indifference if such delay exacerbated the injury or unnecessarily prolonged an inmate’s pain.” *Gomez v. Randle*, 680 F.3d 859, 865 (7th Cir. 2012) (internal citations and quotations omitted); *see also Farmer v. Brennan*, 511 U.S. 825, 842 (1994). The Eighth Amendment does not give prisoners entitlement to “demand specific care” or “the best care possible,” but only requires “reasonable measures to meet a substantial risk of serious harm.” *Forbes v. Edgar*, 112 F.3d 262, 267 (7th Cir. 1997). Deliberate indifference may also be shown where medical providers persist in a course of treatment known to be ineffective. *Berry v. Peterman*, 604 F.3d 435, 441-42 (7th Cir. 2010); *Greeno v. Daley*, 414 F.3d 645, 655 (7th Cir. 2005).

Here Plaintiff has alleged that he has a torn bicep, although the Complaint also implies that Santos believes the problem is in his shoulder. Regardless, Plaintiff has also alleged that 2 other doctors have told him that he needs further evaluation via an MRI and possibly surgery to fix the defect. That is sufficient to plausibly allege that Plaintiff suffers from a serious medical need.

Additionally, despite the earlier opinions of the other doctors, Santos has decided to treat Plaintiff by instructing him to exercise, which Plaintiff contends amounts to no treatment at all. Plaintiff further alleges that he is experiencing pain and suffering due to the lack of treatment. On these allegations, the Court finds that Plaintiff has adequately stated a claim for deliberate indifference against Santos.

Plaintiff has also plausibly alleged that Krebs is personally involved in the constitutional violation. He has alleged that she was alerted to his condition through a grievance describing it and that he also wrote to her individually. Plaintiff further alleges that Krebs did not take the steps that she told him she would take towards resolving the issue. This is also a plausible allegation of deliberate indifference against Krebs, and **Count 1** shall also be permitted to proceed against her.

Pending Motions

Plaintiff's Motion for Recruitment of Counsel (Doc. 10) and Motion to Issue an Order (Doc. 14) shall be referred to a United States Magistrate Judge for disposition.

Disposition

IT IS HEREBY ORDERED that **Count 1** survives threshold review against Santos and Krebs.

IT IS ORDERED that the Clerk of Court shall prepare for Defendants Santos and Krebs: (1) Form 5 (Notice of a Lawsuit and Request to Waive Service of a Summons), and (2) Form 6 (Waiver of Service of Summons). The Clerk is **DIRECTED** to mail these forms, a copy of the complaint, and this Memorandum and Order to each Defendant's place of employment as identified by Plaintiff. If a Defendant fails to sign and return the Waiver of Service of Summons (Form 6) to the Clerk within 30 days from the date the forms were sent, the Clerk shall take appropriate steps to effect formal service on that Defendant, and the Court will require that Defendant to pay the full costs of formal service, to the extent authorized by the Federal Rules of Civil Procedure.

IT IS FURTHER ORDERED that, with respect to a Defendant who no longer can be found at the work address provided by Plaintiff, the employer shall furnish the Clerk with the

Defendant's current work address, or, if not known, the Defendant's last-known address. This information shall be used only for sending the forms as directed above or for formally effecting service. Any documentation of the address shall be retained only by the Clerk. Address information shall not be maintained in the court file or disclosed by the Clerk.

Defendants are **ORDERED** to timely file an appropriate responsive pleading to the complaint and shall not waive filing a reply pursuant to 42 U.S.C. § 1997e(g).

Pursuant to Local Rule 72.1(a)(2), this action is **REFERRED** to a United States Magistrate Judge for further pre-trial proceedings.

Further, this entire matter is **REFERRED** to a United States Magistrate Judge for disposition, as contemplated by Local Rule 72.2(b)(2) and 28 U.S.C. § 636(c), *should all the parties consent to such a referral.*

IT IS FURTHER ORDERED that if judgment is rendered against Plaintiff, and the judgment includes the payment of costs under Section 1915, Plaintiff will be required to pay the full amount of the costs, notwithstanding that his application to proceed *in forma pauperis* has been granted. *See* 28 U.S.C. § 1915(f)(2)(A).

Plaintiff is **ADVISED** that at the time application was made under 28 U.S.C. § 1915 for leave to commence this civil action without being required to prepay fees and costs or give security for the same, the applicant and his or her attorney were deemed to have entered into a stipulation that the recovery, if any, secured in the action shall be paid to the Clerk of the Court, who shall pay therefrom all unpaid costs taxed against plaintiff and remit the balance to plaintiff. Local Rule 3.1(c)(1)

Finally, Plaintiff is **ADVISED** that he is under a continuing obligation to keep the Clerk of Court and each opposing party informed of any change in his address; the Court will not

independently investigate his whereabouts. This shall be done in writing and not later than **7 days** after a transfer or other change in address occurs. Failure to comply with this order will cause a delay in the transmission of court documents and may result in dismissal of this action for want of prosecution. *See* FED. R. CIV. P. 41(b).

IT IS SO ORDERED.

DATED: July 25, 2017

s/J. Phil Gilbert
U.S. District Judge