

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF LOUISIANA

CHRISTOPHER MILLER

VERSUS

CAPTAIN CREDIT, ET AL.

CIVIL ACTION

NO. 12-138-BAJ

RULING AND ORDER


This matter is before the Court on the motion (doc. 4) by defendants for partial summary judgment. Plaintiff has filed an opposition. There is no need for oral argument.

Plaintiff is a former inmate at Hunt Correctional Center, who brings claims for excessive force and denial of medical care. Defendants seek partial summary judgment on the grounds that plaintiff failed to completely exhaust his administrative remedies. Defendants point to the undisputed fact that a second stage response was issued to plaintiff on July 6, 2011, advising him that the matter was being investigated and a response would be submitted in the near future.

In opposition, plaintiff argues that a decision must be made on the second step within 45 days pursuant to the applicable regulation. Plaintiff persuasively argues that there being no evidence that the second stage response was ever made, his administrative remedies are "deemed" exhausted. See, *Powe v. Ennis*, 177 F.3d 393 (5th Cir. 1999).

Accordingly, the motion for partial summary judgment (doc. 4) is hereby DENIED.

Baton Rouge, Louisiana, September 11, 2012.



BRIAN A. JACKSON, CHIEF JUDGE
UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF LOUISIANA