

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

GREGORY MOORE,
Plaintiff,

vs

Case No: 07-14640
Honorable Victoria A. Roberts

UNITED STATES OF AMERICA,
Defendant.

ORDER

Plaintiff, a federal prisoner at FCI Milan, brought this medical malpractice action against the United States under the Federal Tort Claims Act. After a bench trial, the Court held that the on-site doctor at FCI Milan breached the standard of care as to one of Plaintiff's claims, but that Plaintiff was not injured by the breach and was not entitled to damages. Plaintiff now requests in his *pro se* Motion to Alter or Amend the Judgment and Motion for a New Trial that the Court reverse its ruling. For the reasons stated below, Plaintiff's motion is **DENIED**.

"A district court may grant a Rule 59(e) motion to alter or amend judgment only if there is: '(1) a clear error of law; (2) newly discovered evidence; (3) an intervening change in controlling law; or (4) a need to prevent manifest injustice.'" *Henderson v. Walled Lake Consolidated Schools*, 469 F.3d 479, 496 (6th Cir. 2006).

Plaintiff argues that the Court committed a clear error of law by failing to consider whether he experienced pain and suffering as a result of the doctor's breach. However, as Defendant points out, the Court actually considered this issue in depth. See Findings of Fact and Conclusions of Law, pp. 11-12, §§ 69-78; pp. 16-18, §§ 8-14.

In addition, Plaintiff relies upon *Cheese v. United States*, 290 F. Appx. 827 (6th Cir. 2008) for the proposition that he was not required to prove injury in order to recover damages for pain and suffering. Plaintiff misstates the holding of *Cheese*. In *Cheese*, a patient was wrongfully discharged from the hospital while still in pain. The Court awarded her damages for the one additional day of pain and suffering she endured as a result of the wrongful discharge. Here, Plaintiff failed to show that he suffered any additional pain and suffering as a result of the delay in referring him to an orthopedic surgeon for his ankle. *Cheese* is inapplicable.

Plaintiff also attempts to relitigate factual issues which were already decided by this Court. Rule 59(e) motions are not a means for a party to relitigate, or seek to reverse a judgement for, matters already decided. The Court's holding was fully supported by the evidence at trial.

Plaintiff fails to show that this Court committed a clear error of law in its verdict against him. His motion is **DENIED**.

IT IS ORDERED.

S/Victoria A. Roberts
Victoria A. Roberts
United States District Judge

Dated: November 17, 2011

The undersigned certifies that a copy of this document was served on the attorneys of record and Gregory Moore by electronic means or U.S. Mail on November 17, 2011.

S/Linda Vertriest
Deputy Clerk