

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

STEVEN P. HILL, Sr. #223781,

Plaintiff,

vs.

Case No. 2:08-cv-13852
HON. GEORGE CARAM STEEH

K. GREEN, et al,

Defendant.

_____/

ORDER ACCEPTING REPORT AND RECOMMENDATION(#25)

This matter is before the court on defendants Michael Denise, Matthew Dunaj, Keith Green, Connie Ignasiak and James Van Acker's motion for summary judgment filed on February 25, 2009. In that motion, defendants argue that the plaintiff had not properly exhausted his claims and that the claims were barred by qualified immunity. On August 4, 2009, Magistrate Judge Whalen recommended that the motion be partially granted and partially denied. Magistrate Judge Whalen recommended that the motion be denied as to Plaintiff's Eight Amendment claim against Defendants in their personal capacities because "Defendants' qualified immunity argument omits all mention of the exhausted Eight Amendment claims" and "Defendants' motion is unaccompanied by affidavits by Defendants or other evidence supporting the arguments that they are entitled to judgment as a matter of law on the Eight Amendment claims." Report and Recommendation, at 13. Magistrate Judge Whalen recommended that the motion be granted as to the official capacity claims because "Plaintiff requests monetary damages

but not injunctive relief” and “[m]onetary claims...in their capacity as agents of the state under 42 U.S.C. §1983 are subject to dismissal on the basis of the immunity granted by the Eleventh Amendment.” Report and Recommendation, at 11. Magistrate Judge Whalen recommended that the motion be granted as to plaintiff’s claim of retaliatory job termination for failure to exhaust administrative remedies, because “Plaintiff’s response to the present motion states that he ‘has voluntarily dismissed that claim only in the context of the unexhausted grievance that was filed,’ apparently conceding that the May 28, 2007 Step One grievance was not pursued through Step Three.” Report and Recommendation, at 10. Neither party has filed an objection to the Report and Recommendation. See 28 U.S.C. § 636(b)(1); E.D. Mich. L.R. 72.1(d)(2). Having reviewed the record and the Report and Recommendation, the court hereby ACCEPTS the August 4, 2009 Report and Recommendation as its own. Accordingly,

Defendant’s motion for summary judgment is hereby partially GRANTED and partially DENIED consistent with the analysis set forth in the August 4, 2009 Report and Recommendation.

SO ORDERED.

Dated: August 25, 2009

S/George Caram Steeh
GEORGE CARAM STEEH
UNITED STATES DISTRICT JUDGE

CERTIFICATE OF SERVICE

Copies of this Order were served upon attorneys of record on August 25, 2009, by electronic and/or ordinary mail.

S/Josephine Chaffee
Deputy Clerk