UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

CEDRIC TYRONE WALKER,	:	
Plaintiff	:	**No. 1:16-CV-01326**
vs.	:	**(Judge Rambo)**
R. FISHER, et al.,	:	
Defendants	:	

MEMORANDUM

I. Background

On June 27, 2016, Plaintiff Cedric Tyrone Walker, an inmate at the United States Penitentiary at Lewisburg, Lewisburg, Pennsylvania ("USP-Lewisburg") filed the instant civil rights complaint, pro se, pursuant to 28 U.S.C. § 1331. (Doc No. 1.) Named as Defendants are the following three correctional officers employed at USP-Lewisbrug: R. Fisher, J. Romig, and N. Beaver. Walker Claims that his rights under the Eighth Amendment were violated when Defendants chained him to his bunk for several days and failed to provide him with food and water. He further claims that Defendants placed him in handcuffs which cut off blood circulation and caused "open wounds on [his] wrist[s]" and Defendants threatened to tighten the handcuffs "even more" after he requested medical assistance. (Id.)

On January 3, 2017, Defendants filed a motion for summary judgment. (Doc. No. 13.) On January 17, 2017, Defendants filed a statement of material facts, evidentiary materials and a supporting brief. (Doc. Nos. 14, 15.) Defendants argue that Plaintiff has failed to exhaust his administrative remedies. The Court, by Order dated March 21, 2017, directed Plaintiff to file a brief in opposition, a response to Defendants' statement of material facts or any evidentiary materials contravening those submitted by Defendants. (Doc. No. 24.) Rather than filing a response to Defendants' statement of material facts,[1] Plaintiff filed a declaration (Doc. No. 16), requesting that this court dismiss or expunge from his record guilty charges imposed upon him by the disciplinary hearing officer ("DHO") at USP-Lewisburg, a document entitled "exhaustion of administrative remedies" (Doc. No. 21), wherein Plaintiff, without making an argument, merely cites case law and prison grievance procedures relevant filing grievances, and a document entitled "injunctive relief" (Doc. No. 22), wherein Plaintiff expounds on injunctive relief, but again, makes no argument as to his entitlement to it.

[1] Middle District of Pennsylvania Local Rules of Court provide that in addition to filing a brief in response to the moving party's brief in support, "[t]he papers opposing a motion for summary judgment shall include a separate, short and concise statement of material facts responding to the numbered paragraphs set forth in the statement [of material facts filed by the moving party] ..., as to which it is contended that there exists a genuine issue to be tried." See M.D. Pa. LR 56. 1. The rule further states that the statement of material facts required to be served by the moving party will be deemed to be admitted unless controverted by the statement required to be served by the opposing party. See id. Because Plaintiff has failed to file a separate statement of material facts controverting the statement filed by Defendants, all material facts set forth in Defendants' statement (Doc. No. 14) will be deemed admitted.

Then, on April 3, 2017, Plaintiff filed a brief in opposition to Defendants' motion for summary judgment. (Doc. No. 25.) Defendants filed a reply brief (Doc. No. 26), and Plaintiff subsequently filed what he has entitled an "amended brief in opposition to Defendants' motion for summary judgment." (Doc. No. 27.) The motion for summary judgment, having been fully briefed by both parties, is now ripe for disposition.

II. Legal Standard

The Defendants have moved for summary judgment pursuant to Rule 56 of the Federal Rules of Civil Procedure. Federal Rule of Civil Procedure 56(a) requires the court to render summary judgment "if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed.R.Civ.P. 56(a). "[T]his standard provides that the mere existence of some alleged factual dispute between the parties will not defeat an otherwise properly supported motion for summary judgment; the requirement is that there be no genuine issue of material fact." Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 247-48 (1986).

A disputed fact is "material" if proof of its existence or nonexistence would affect the outcome of the case under applicable substantive law. Anderson, 477 U.S. at 248; Gray v. York Newspapers, Inc., 957 F.2d 1070, 1078 (3d Cir. 1992). An issue of material fact is "genuine" if the evidence is such that a reasonable jury

could return a verdict for the nonmoving party. Anderson, 477 U.S. at 257; Brenner v. Local 514, United Brotherhood of Carpenters and Joiners of America, 927 F.2d 1283, 1287-88 (3d Cir. 1991).

When determining whether there is a genuine issue of material fact, the court must view the facts and all reasonable inferences in favor of the nonmoving party. Moore v. Tartler, 986 F.2d 682 (3d Cir. 1993); Clement v. Consolidated Rail Corp., 963 F.2d 599, 600 (3d Cir. 1992); White v. Westinghouse Electric Co., 862 F.2d 56, 59 (3d Cir. 1988). In order to avoid summary judgment, however, the nonmoving party may not rest on the unsubstantiated allegations of his or her pleadings. When the party seeking summary judgment satisfies its burden under Rule 56 of identifying evidence which demonstrates the absence of a genuine issue of material fact, the nonmoving party is required by Rule 56 to go beyond his pleadings with affidavits, depositions, answers to interrogatories or the like in order to demonstrate specific material facts which give rise to a genuine issue. Celotex Corp. v. Catrett, 477 U.S. 317, 324 (1986). The party opposing the motion "must do more than simply show that there is some metaphysical doubt as to the material facts." Matsushita Electric Indus. Co. v. Zenith Radio, 475 U.S. 574, 586 (1986). When Rule 56 shifts the burden of production to the nonmoving party, that party must produce evidence to show the existence of every element essential to its case which it bears the burden of proving at trial, for "a complete failure of proof

concerning an essential element of the nonmoving party's case necessarily renders all other facts immaterial." Celotex, 477 U.S. at 323. See Harter v. G.A.F. Corp., 967 F.2d 846, 851 (3d Cir. 1992).

III. Discussion

Defendants set forth that they are entitled to summary judgment on Plaintiff's claims because Plaintiff failed to fully exhaust the administrative remedies available to him under the Bureau of Prison's ("BOP") procedures. Failure to exhaust is an affirmative defense that must be pled by the defendant. Jones v. Bock, 549 U.S. 199, 216 (2007). "In a motion for summary judgment, where the movants have the burden of proof at trial, 'they [have] the burden of supporting their motion for summary judgment with credible evidence . . . that would entitle [them] to a directed verdict if not controverted at trial.' " Foster v. Morris, 208 F. App'x 174, 179 (3d Cir. 2006) (quoting In re Bressman, 327 F.3d 229, 237 (3d Cir. 2003) (internal quotations omitted)). If "the motion does not establish the absence of a genuine factual issue, the district court should deny summary judgment even if no opposing evidentiary matter is presented." Id. (quoting Nat'l State Bank v. Fed. Reserve Bank of N.Y., 979 F.2d 1579, 1582 (3d Cir. 1992) (internal quotations omitted)).

The BOP has established a multi-tier system whereby a federal prisoner may seek formal review of any issue relating to any aspect of his confinement.

(Doc. No. 15-1, Knepper Declaration.) Inmates must first informally present their complaint to staff in an attempt to resolve the matter. (Id.) If informal resolution is unsuccessful, the inmate then presents the issue to the Warden of the facility within twenty (20) calendar days of the events giving rise to the complaint. (Id.) An inmate who is not satisfied with the Warden's response may appeal to the Regional Director within twenty (20) calendar days. (Id.) If the response of the Regional Director is not satisfactory, the inmate may then appeal to the BOP's Central Office within thirty (30) calendar days. (Id.) Furthermore, if an inmate reasonably believes the issues on which he is filing is sensitive and his safety of well-being would be placed in danger if the request became known, he may submit his remedy directly to the appropriate Regional Director. (Id.) If, however, the Regional Director finds the remedy is not sensitive, it will be rejected with a notice indicating as such and directing the inmate to file at the institution level. (Id.)

In this case, Plaintiff's alleged failure to properly pursue these administrative remedies may have substantive significance for him since the Prison Litigation Reform Act ("PLRA") provides that "[n]o action shall be brought with respect to prison conditions … by a prisoner confined in any jail, prison, or other correctional facility until such administrative remedies as are available are exhausted." 42 U.S.C. § 1197e(a); see Petrucelli v. Hasty, 605 F. Supp. 2d 410 (E.D. N.Y. 2009) (providing that the PLRA's exhaustion requirement applies to Bivens claims).

While this exhaustion requirement is not a jurisdictional bar to litigation, this requirement is strictly enforced by the Courts. The enforcement is mandated by a fundamental recognition that § 1997e's exhaustion requirement promotes important public policies.

The United States Court of Appeals for the Third Circuit has noted:

> Courts have recognized myriad policy considerations in favor of exhaustion requirements. They include (1) avoiding premature interruption of the administrative process and giving the agency a chance to discover and correct its own errors; (2) conserving scarce judicial resources, since the complaining party may be successful in vindicating his rights in the administrative process and the courts may never have to intervene; and (3) improving the efficacy of the administrative process. Each of these policies, which Congress seems to have had in mind in enacting the PLRA, is advanced by the across-the-board, mandatory exhaustion requirement in § 1997e(a).... [A] a comprehensive exhaustion requirement better serves the policy of granting an agency the "opportunity to correct its own mistakes with respect to the programs it administers before it is haled into federal court." Moreover, "even if the complaining prisoner seeks only money damages, the prisoner may be successful in having the [prison] halt the infringing practice" or fashion some other remedy, such as returning personal property, reforming personal property policies, firing an abusive prison guard, or creating a better screening process for hiring such guards. And when a prisoner obtains some measure of affirmative relief, he may elect not to pursue his claim for damages. In either case, local actors are given the chance to address local problems, and at the very least, the time frame for the prisoner's damages is frozen or the isolated acts of abuse are prevented from recurring. An across-the-board exhaustion requirement also promotes judicial efficiency.... Moreover, even if only a small percentage of cases settle, the federal courts are saved the time normally spent hearing such actions and multiple appeals thereto.... In cases in which inmate-plaintiffs exhaust their remedies in the administrative process and continue to pursue their claims in federal court, there is still much to be gained. The administrative process can serve to create a record

> for subsequent proceedings, it can be used to help focus and clarify poorly pled or confusing claims, and it forces the prison to justify or explain its internal procedures. All of these functions help courts navigate the sea of prisoner litigation in a manner that affords a fair hearing to all claims.

Nyhuis v. Reno, 204 F.3d 65, 75-76 (3d Cir. 2000) (citations omitted). The Third Circuit has further provided that there is no futility exception to § 1997e's exhaustion requirement. Id. Courts have typically required across-the-board administrative exhaustion by inmates who seek to pursue claims in federal court.

Additionally, courts have imposed a procedural default component on this exhaustion requirement, holding that inmates must fully satisfy the administrative requirements of the inmate grievance process before proceeding into federal court. Spruill v. Gillis, 372 F.3d 218 (3d Cir. 2004). Courts have concluded that inmates who fail to fully, or timely, complete the prison grievance process are barred from subsequently litigating claims in federal court. See e.g., Booth v. Churner, 206 F.3d 289 (3d Cir. 2000); Bolla v. Strickland, 304 F. App'x 22 (3d Cir. 2008).

This broad rule favoring full exhaustion allows for a narrowly defined exception. If the actions of prison officials directly caused the inmate's procedural default on a grievance, the inmate will not be held to strict compliance with this exhaustion requirement. See Camp v. Brennan, 219 F.3d 279 (3d Cir. 2000). However, case law recognizes a clear "reluctance to invoke equitable reasons to excuse [an inmate's] failure to exhaust as the statute requires." Davis v.

Warman, 49 F. App'x 365, 368 (3d Cir. 2002). Thus, an inmate's failure to exhaust will only be excused "under certain limited circumstances," Harris v. Armstrong, 149 F. App'x 58, 59 (3d Cir. 2005), and an inmate can defeat a claim of failure to exhaust only by showing "he was misled or that there was some extraordinary reason he was prevented from complying with the statutory mandate." Warman, 49 F. App'x at 368; see also Camp v. Brennan, 219 F.3d 279, 281 (3d Cir. 2000) (exhaustion requirement met where Office of Professional Responsibility fully examined merits of excessive force claim and uncontradicted correctional officers impeded filing of grievance).

In the absence of competent proof that an inmate was misled by corrections officials, or some other extraordinary circumstances, inmate requests to excuse a failure to exhaust are frequently rebuffed by the courts. Thus, an inmate cannot excuse a failure to timely comply with these grievance procedures by simply claiming that his efforts constituted "substantial compliance" with this statutory exhaustion requirement. Harris v. Armstrong, 149 F. App'x 58, 59 (3d Cir. 2005). Nor can an inmate avoid this exhaustion requirement by merely alleging that the DOC policies were not clearly explained to him. Warman, 49 F. App'x at 368. Thus, an inmate's confusion regarding these grievances procedures does not, standing alone, excuse a failure to exhaust. Casey v. Smith, 71 F. App'x 916 (3d Cir. 2003); see also Marsh v. Soares, 223 F.3d 1217, 1220 (10th Cir. 2000) ("[I]t is

well established that 'ignorance of the law, even for an incarcerated pro se petitioner, generally does not excuse prompt filing.'") (citations omitted).

The Court finds that Defendants are entitled to summary judgment in their favor on the grounds that Plaintiff has failed to satisfy the PLRA's administrative exhaustion requirement. Defendants have attached to their filings the declaration of Jennifer Knepper, an attorney advisor at the USP-Lewisburg. (Doc. No. 15-1.) In utilizing the SENTRY records, Knepper has identified all grievances filed by Plaintiff. (Id.) She provides that all of his grievances were rejected. (Id.) More specifically, those grievances identified with the subject matter of this instant lawsuit were rejected by the Regional Office for not being first filed at the institution level. (Id.) Knepper declares that Plaintiff was directed to re-file at the institution level, but he failed to do so. (Id.)

The Court notes that in Plaintiff's response to the summary judgment motion, he does not dispute the factual underpinnings of the failure-to-exhaust claim raised by Defendants. Rather, it appears to be Plaintiff's contention that Defendants hindered his ability to file his grievances. Specifically, Plaintiff provides in his brief in opposition that Defendants provided him with the wrong forms for filing his grievances, even though he specifically requested a form grievance for the institution level. (Doc. No. 25 at 2.)

In response, Defendants provide refuting evidence by way of two declarations of two correctional officers specifically assigned to Plaintiff. Correctional Counselor R. Bingaman declares that Plaintiff was assigned to him as one of his inmates. (Doc. No. 26-1, Bingaman Declaration.) Bingaman further provides that when requests for a BP-8 [institution level grievance] is received by him from one of his assigned inmates, he provides the inmate with the form with the date on which it was provided, and once the completed BP-8 form is completed, Bingaman assigns it a number and enters it into his log book with the date on which it was returned. (Id.) Bingaman declares that in reviewing his log book, Plaintiff did not request any BP-8 forms from him. (Id.)

Similarly, Correctional Counselor J. Diltz declares that Plaintiff was assigned to him as one of his inmates. (Doc. No. 26-1, Diltz Declaration.) Just as Correctional Counselor Bingaman, Diltz follows the same standard practice of recording BP-8 forms within his log book. (Id.) Diltz declares that in reviewing his log book, Plaintiff did not provide him with any completed BP-8 forms. (Id.) Diltz further provides that Plaintiff's administrative remedy history indicates that he filed several remedies while assigned to his caseload and that the forms themselves indicate where they should be filed and that information is also available to inmates by reviewing the Administrative Remedy Program Statement. (Id.) Further, Diltz declares that if an inmate files a remedy at the wrong

administrative level, the rejection notice directs the inmate where to properly refile. (Id.)

The Court finds that Defendants have satisfied their burden under Rule 56 of the Federal Rules of Civil Procedure in identifying evidence which demonstrates the absence of a genuine issue of material fact. The record and evidence demonstrates that Plaintiff has failed to properly exhaust his administrative remedies. Despite being informed that his grievances should be filed at the institution level, Plaintiff ignored those directives. Claiming confusion or ignorance of the law will not exempt him from the exhaustion requirements. See Warman, 49 F. App'x at 368 (an inmate cannot avoid the exhaustion requirement by merely alleging that the DOC policies were not clearly explained to him); Smith, 71 F. App'x 916 (An inmate's confusion regarding grievances procedures does not, standing alone, excuse a failure to exhaust; Soares, 223 F.3d at 1220 ("[I]t is well established that 'ignorance of the law, even for an incarcerated pro se petitioner, generally does not excuse prompt filing.'") (citations omitted).

IV. Conclusion

For the foregoing reasons, Defendants' motion for summary judgment will be granted. An appropriate order follows.

Date July 24, 2017

s/Sylvia Rambo
SYLVIA H. RAMBO
United States District Judge